

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, <i>et al.</i> ,)	
)	
Petitioners,)	
)	Civil Action No.
v.)	2020CV343938
)	
ALEX WAN, <i>et al.</i> ,)	
)	
Respondents.)	

**RESPONSE OF THE GEORGIA SECRETARY OF STATE TO THE COURT’S ORDER
OF SEPTEMBER 20, 2021**

The Georgia Secretary of State (the “Secretary”) submits the following response pursuant to the Court’s Order of September 20, 2021, requesting information regarding investigations by the Secretary or the Georgia Bureau of Investigation (“GBI”)¹ into alleged fraudulent or counterfeit absentee ballots in the November 3, 2020, General Election in Fulton County, Georgia.

Preliminary Statement

The information provided in this response is part of an open and on-going investigation into the 2020 General Election in Fulton County by the Secretary’s Investigations Division. Because this is a pending investigation by law enforcement, the information and documents are confidential and not subject to public disclosure or examination at this juncture. *See, e.g.*, O.C.G.A. § 50-18-72(a)(4) (exempting records related to ongoing investigations performed by law enforcement and regulatory agencies). This response is being provided at the Court’s request to assist the Court in this action, in which the Secretary has appeared as an amicus curiae, but is

¹ The GBI is an assistive agency. In that capacity, the GBI’s involvement in the Secretary’s investigations into Fulton County was limited to four specific requests for assistance by the Secretary. The GBI’s involvement in those requests for assistance has concluded.

not a party. Nothing in this response is intended or should be construed as a waiver of the confidentiality of the Secretary's pending investigation, or any executive or investigative privileges belonging to the Secretary as provided by law.

Response

The Court has requested information regarding (1) whether the Secretary or the GBI have investigated allegations of fraudulent or counterfeit absentee ballots in the 2020 General Election in Fulton County; and (2) the remedies available for violations of the Georgia Elections Code. This response first discusses the general authority of the Secretary of State and the State Election Board to enforce the Elections Code and investigate possible violations, and then provides information regarding the Secretary's pending investigation into allegations of fraudulent or counterfeit ballots in Fulton County and related findings.

A. The Investigative and Enforcement Authority of the Secretary of State and the State Election Board.

Under the Georgia Elections Code, the State Election Board authorizes the Secretary of State to investigate "frauds and irregularities in primaries and elections." O.C.G.A. § 21-2-31(5). Anyone is able to submit an elections-related complaint to the Secretary of State's office. If the complaint alleges a possible violation of the Elections Code, the investigations division will open a case on the matter, which will be handled by one or more of the investigators within the Secretary's Investigations Division, who are POST-certified law enforcement officers.

Once the Secretary's investigation is completed, the findings of the investigation are presented to the State Election Board at a public meeting. The investigative report includes a recommendation from the Secretary's Investigations Division regarding whether the findings support a violation of the Elections Code or the rules and regulations of the State Election Board.

The State Election Board, upon considering the investigative findings and recommendation, votes on whether there is sufficient probable cause to warrant further legal action on the case.

If the State Election Board finds probable cause that a violation has occurred, there are several actions that it can take. The State Election Board may refer the matter to the Attorney General for further civil legal action or to the local District Attorney for criminal prosecution. O.C.G.A. § 21-2-31(5).² The State Election Board is also vested with the power to hold administrative hearings and issue orders directing compliance with the Elections Code, prohibiting actual or threatened commission of a violation, or assessing civil penalties against a violator. O.C.G.A. § 21-2-33.1(a). The State Election Board may order the following administrative remedies against a violator:

- (1) To cease and desist from committing further violations;
- (2) To pay a civil penalty not to exceed \$5,000.00 for each violation;
- (3) To publicly reprimand any violator found to have committed a violation;
- (4) To require that restitution be paid by any violator to a state, county, or city governing authority when it has suffered a monetary loss or damage as the result of a violation;
- (5) To require violators to attend training as specified by the board; and
- (6) To assess investigative costs incurred by the board against any violator found to have committed a violation.

Id.

To date, there have been no cases presented to the State Election Board involving allegations of fraudulent or counterfeit absentee ballots in Fulton County in the 2020 General Election. Those allegations are still part of an on-going investigation by the Secretary's Investigations Division, as discussed in detail below. Once that investigation has been completed, the Investigations Division will present their findings to the State Election Board, and

² Whether to take further legal action on any referral remains within the discretion of the official to whom the matter is referred.

the State Election Board will decide whether to take further legal action, including whether to refer the matter to the Attorney General's office or local District Attorney.

B. The Secretary's Investigation into Fulton County.

Between mid-October and December 31, 2020, the Secretary's office opened 31 cases into the Fulton County Board of Elections and elections officials for complaints received regarding Fulton County elections during the 2020 election cycle. Of these, 15 have been presented to the State Election Board and 16 remain pending. Thus far in 2021, the Secretary's office has opened 25 Fulton County cases; 6 have already been presented to the State Election Board and 19 remain pending. Each case number may involve multiple complaints in order to streamline the investigative process, so the number of cases opened should not be seen as a proxy for the number of complaints received.

The allegations of fraudulent or counterfeit ballots made by Petitioners in this case have been investigated as part of Case No. SEB 2020-203. The scope of the investigation for Case No. SEB 2020-203 largely mirrors the two primary allegations asserted by the Petitioners, namely: (1) that Fulton County elections employees working at the tabulation center in State Farm Arena on Election Night brought out "suitcases" of ballots after poll watchers and the media had left and then scanned the ballots multiple times; and (2) that suspicious-looking absentee ballots were counted during the post-election risk-limiting audit. (*See* Petition ¶¶ 23-39; 43-59).³ These allegations have been thoroughly investigated by the Secretary's Investigations Division (with

³ These allegations were raised in the original Petition filed on behalf of all Petitioners, as well as by the Sotir/Jeffords Petitioners in their Third Amended and Recast Complaint (*see, e.g.*, ¶¶ 22-25; 30-39; 113-128; 210-224) and the remaining Petitioners in their Third Amendment to Petition for Declaratory and Injunctive Relief (*see, e.g.*, ¶¶ 20-33; 40-51).

assistance from the GBI and FBI on the first allegation), who have concluded that the evidence reviewed thus far does not substantiate either allegation.⁴

1. Investigation of the actions of Fulton County elections workers at State Farm Arena on Election Night.

The Secretary's Investigations Division, with the assistance of the GBI and FBI, has investigated reports that Fulton County elections workers removed "suitcases" of ballots that had been "hidden" under tables and began scanning them late on November 3, 2020, after poll watchers and the media had left. (See Petition ¶¶ 44-54). As discussed below, the investigation did not find sufficient evidence to substantiate these reports. Moreover, as part of discovery in this action, the Petitioners took the deposition of James Callaway, the Deputy Chief Investigator for the Secretary's office, and cross-examined him for several hours regarding the State Farm Arena allegations. Mr. Callaway testified in his deposition that the evidence did not substantiate the allegations.⁵

As Mr. Callaway testified, investigators reviewed nearly 24 hours of security footage for the tabulation room recorded between November 3 and 4, 2020, and interviewed all witnesses present at State Farm Arena during the relevant time period. The investigators' review of the

⁴ The State Farm Arena allegations were investigated by the Secretary's office immediately after they were raised in early December 2020, and officials with the Secretary's office have repeatedly explained the events to the media. See, e.g., December 5, 2020, WSB-TV news report, available at: <https://www.wsbtv.com/news/politics/georgia-election-officials-show-frame-by-frame-what-really-happened-fulton-surveillance-video/T5M3PYIBYFHHFOD3CIB2ULDVDE/> (last accessed October 8, 2021); December 7, 2020, Augusta Chronicle news article, available at: <https://www.augustachronicle.com/story/news/politics/elections/presidential/2020/12/07/secret-suitcase-magic-ballots-actually-bag-ballots-packed/3858322001/> (last accessed October 8, 2021); December 4, 2020, Associated Press news article, available at: <https://apnews.com/article/election-2020-donald-trump-georgia-media-social-media-e9a73462e39e7aa39683f0f582a6659e> (last accessed October 8, 2021).

⁵ Relevant portions of the transcript of James Callaway's deposition are attached as **Exhibit A**.

video confirms that the alleged “suitcases” of ballots were normal ballot bins, which had been filled by elections workers with absentee ballots that had been opened and sorted but not yet scanned for tabulation. Elections workers initially thought that those particular batches of absentee ballots would not be counted that evening, so they placed them in bins and moved them under tables and out of the way to be counted the following day. However, later that evening, the elections supervisor instructed elections workers to continue scanning ballots, and those particular bins of ballots were brought out for scanning.

The Secretary’s investigators also questioned the six Fulton County elections workers who were present at the tabulation center at State Farm Arena during the relevant time period on November 3, 2020. (*See* Callaway Depo., Ex. B, at 25-28). Agents with the GBI and the FBI assisted with those interviews. (*Id.*). The witnesses interviewed included the Chief Registrar for Fulton County, four elections workers, and a media liaison for Fulton County. (*Id.*). Witnesses told investigators that the ballot scanners were frequently jamming, requiring them to make multiple attempts to clearly scan all of the ballots in each batch. In order to tabulate the ballots, the scanners must first get a clear scan of the entire batch of ballots. Scanning is simply one step in the tabulation process. Once a batch of ballots is scanned clearly and free of errors, the elections worker has to click on a separate button on a computer monitor in order to tabulate the ballots. (*Id.* at 30-35).⁶ Investigators reviewed the activity logs for the scanners to corroborate the statements of the witnesses, and the paper jams reported by witnesses and shown in the video

⁶ The Petitioners have alleged that their review of the ballot images in connection with this action showed that a small number of ballots may have been scanned twice. The Secretary’s Investigative Division has opened up a separate investigation into those claims, which is pending.

footage were confirmed by the scanner activity logs. Based upon this evidence, investigators found no evidence of wrongdoing.

In sum, investigators concluded that there was no evidence to corroborate the Petitioners' allegations that elections workers at State Farm Arena scanned and counted fraudulent ballots that they had previously hidden under tables in the tabulation center. The U.S. Attorney for the Northern District of Georgia reached the same conclusion based upon the witness statements to the assisting FBI agents and independent review of the available evidence.⁷

2. Investigation of alleged fraudulent or counterfeit ballots.

Also as part of Case No. SEB 2020-203, the Secretary's investigators looked into statements and sworn affidavits from witnesses who claimed to have seen fraudulent or counterfeit ballots while participating in the post-election risk-limiting audit in Fulton County. None of these witnesses submitted their complaints first-hand to the Secretary's office; rather, the Secretary's office was provided the witness affidavits from third parties, including the Georgia Republican Party. The witness affidavits received by the Secretary's office include nearly all of the affidavits cited by the Petitioners in this case. Investigators interviewed or attempted to interview all of these witnesses.⁸ Investigators also inspected specific boxes and batches of ballots identified by witnesses. Based upon the witness statements and examination of approximately 1,000 absentee ballots and ballot images, the Secretary's investigators have not

⁷ See Interview of former U.S. Attorney BJay Pak by the U.S. Senate Judiciary Committee (Aug. 11, 2021), at 15-25. The relevant portions of this interview are attached as **Exhibit B**. The full transcript can be found at <https://www.judiciary.senate.gov/imo/media/doc/Pak%20Transcript.pdf>.

⁸ In addition to other witnesses, the Secretary's investigators interviewed Susan Voyles, Barbara Hartman, Sonia Rolle, Gordon Rolle, and Bridget Thorne, all of whom submitted sworn affidavits in this action. Investigators attempted to contact Robin Hall, who also submitted a sworn affidavit in this action, but she declined to be interviewed.

uncovered any absentee ballots that match the descriptions given by affiants or otherwise appear to be fraudulent or counterfeit.

First, investigators looked into the allegations contained in the sworn affidavit of Susan Voyles, which the Petitioners are relying on in their case. (*See* Petition at ¶¶ 25-27 & Ex. E). Ms. Voyles served as an auditor in the risk-limiting audit for Fulton County, and she alleges in her affidavit that she saw a batch of “pristine” absentee ballots during the audit that looked suspicious to her. According to her affidavit, the absentee ballots were not creased and appeared to have been marked by a computer, rather than by hand. The absentee ballots came out of a cardboard box that had been sealed but not signed, which she identifies in her sworn affidavit as Box 5/Batches 28-36. After reviewing her affidavit, two of the Secretary’s investigators inspected all of the ballots in Batches 28-36, which were contained within Box 5 and two other boxes. This inspection was conducted at the Fulton County warehouse on December 31, 2020, in the presence of Fulton County elections workers. While Box 5 was a cardboard box as described by the witness, none of the absentee ballots contain in Box 5 or in Batches 28-36 met the description of being “pristine.” All of the ballots had creases where they had been folded, and none appeared to have been marked or printed from a computer.

Following this inspection, two of the Secretary’s investigators interviewed Ms. Voyles on January 7, 2021. The witness confirmed the statement in her affidavit that she had seen a batch of “pristine” absentee ballots during the risk-limiting audit, and told investigators that the absentee ballots were from Box 5/Batches 28-36. The witness then added the caveat that she could have been mistaken in her sworn statement and that Batches 28-36 instead could have been in Box 135. Investigators followed up on this lead and confirmed with county elections officials that Box 135/Batches 28-36 was not a box/batch combination that existed. The witness also told

investigators that she reported the suspicious-looking absentee ballots to a Fulton County elections official. Investigators interviewed all elections officials meeting the description provided by the witness, and all of them denied having spoken to the witness about suspicious-looking ballots.

Following the interview of Ms. Voyles, investigators interviewed Barbara Hartman, who also submitted an affidavit for Petitioners in this action. (*See* Petition at ¶¶ 28-30 & Ex. F). She served as an auditor for Fulton County and was paired at the same table with Ms. Voyles. While she confirms that she also saw suspicious-looking absentee ballots, she did not take any notes identifying the specific boxes and batches. She also told investigators that, contrary to Ms. Voyles' statement, neither she nor Ms. Voyles had reported any suspicious-looking absentee ballots to Fulton County elections officials out of fear that they would then fold creases in the ballots.

Investigators also interviewed another individual who was identified as a possible corroborating witness for Ms. Voyles' statement. This witness, who was serving as a poll watcher at the risk-limiting audit, stated that he viewed the suspicious absentee ballots at Ms. Voyles and Ms. Hartman's table, and claimed that he got a close enough view of the absentee ballots to see an identification number at the top. He provided investigators with a number that corresponded with Scanner #1, Batch 28. Investigators reviewed the ballot images for Scanner #1, Batch 28, but those ballots did not meet the description of "pristine" and none had perfectly filled-in bubbles.

Investigators also interviewed Sonia-Francis Rolle and Gordon Rolle, both of whom submitted affidavits in support of Petitioners in this action. (*See* Petition at ¶¶ 32-36 & Ex. G and H). These witnesses served as auditors for the risk-limiting audit. These witnesses told

investigators that they only reviewed approximately 200-300 ballots during the audit. While they told investigators that they saw absentee ballots that appeared to not have been folded, they did not report their observations to elections officials and did not take notes regarding a specific box or batch number.

In conclusion, based upon interviews with the foregoing witnesses, as well as other witnesses who were interviewed during the course of the investigation, and the inspection of approximately 1,000 absentee ballots and ballot images, the Secretary's investigators have been unable to substantiate the allegations that fraudulent or counterfeit ballots were counted in the 2020 General Election in Fulton County.

Respectfully submitted, this 12th day of October, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing document with the Clerk of Court using the electronic filing system, which will send notification of such filing to all parties of record via electronic notification.

Dated: October 12, 2021.

/s/ Charlene S. McGowan
Charlene S. McGowan
Assistant Attorney General

EXHIBIT A

CAROLINE JEFFORDS, ET AL. vs FULTON COUNTY, ET AL.
James P. Callaway on 05/05/2021

1 IN THE SUPERIOR COURT OF FULTON COUNTY
2 STATE OF GEORGIA
3
4 CAROLINE JEFFORDS, and)
5 ROBBIN SOTIR,)
6 PETITIONERS,) CIVIL ACTION NO:
7 vs.) 2020CV343938
8 FULTON COUNTY, FULTON COUNTY)
9 BOARD OF REGISTRATION AND)
10 ELECTIONS, and FULTON COUNTY)
11 CLERK OF SUPERIOR COURT AND)
12 MAGISTRATE COURTS,)
13 RESPONDENTS.)

14 VIDEOTAPED DEPOSITION OF
15 JAMES P. CALLAWAY
16 CONDUCTED AT THE GEORGIA SECRETARY OF STATE
17 2 M.L.K. BOULEVARD, SUITE 810
18 ATLANTA, GEORGIA 30334

19 9:47 a.m. EST
20 Wednesday, the 5th day of May 2021

21 Eric Cavanaugh, CCR, GRL 2560
22
23
24
25

1 APPEARANCE OF COUNSEL

2

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24

25

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1 COURT REPORTER'S DISCLOSURE STATEMENT

2

3 I, ERIC CAVANAUGH, Georgia Certified Court
4 Reporter, Certificate Number 2560, in compliance
5 with Code Section 9-11-28 and Code Section
6 15-14-37, make the following disclosure about all
7 arrangements, financial and otherwise, involving
8 the foregoing deposition:

9

10 1.) I was contacted directly by telephone
11 regarding scheduling of the deposition as to date,
12 time and place by the office of the scheduling
13 attorney, or received a message from the office of
14 the scheduling attorney by answering machine and
15 returned the call, with scheduling of the deposition
16 as to date, time and place confirmed, and no prior
17 financial arrangements were negotiated between
18 counsel and myself.

19

20 This 5th day of May, 2021.

21

Eric Cavanaugh

22

23 Eric Cavanaugh, CCR, GRL #2560

24

25

1 MR. CHEELEY: This will be the deposition of
2 the James Callaway. Is that correct?

3 THE WITNESS: That's correct.

4 MR. CHEELEY: It's taken pursuant to subpoena
5 and notice.

6 The deposition is being taken for all purposes
7 allowed under the Georgia Code of Civil Procedure
8 and Evidence. And objections except those going
9 to the form of the question and responsiveness of
10 the answer, I suggest we'll be reserved until
11 further use of the deposition transcript.

12 Anything else you'd like to put on the record?

13 MS. MCGOWAN: Well, since we are not parties,
14 I'll probably -- if I have any objections, I will
15 put them on the record.

16 MR. CHEELEY: That's fine.

17 Anything else?

18 MS. RINGER: No.

19 THE VIDEOGRAPHER: All right. Standby.

20 (Video on)

21 THE VIDEOGRAPHER: We're now on the video
22 record at 9:47 a.m. Eastern time. The date is May
23 5th, 2021. This is the start of Video File Number
24 1.

25 Could the court reporter please swear in the

1 witness.

2 COURT REPORTER: Will you raise your right
3 hand, sir.

4 JAMES P. CALLAWAY,

5 Having been duly sworn, testified under oath
6 as follows:

7 MR. CHEELEY: State your name, full name,
8 please.

9 THE WITNESS: James Patrick Callaway.

10 MR. CHEELEY: All right. And, Mr. Callaway,
11 my name is Bob Cheeley, and if I -- I want to make
12 -- give you a couple of things as we go through
13 the deposition to keep in mind.

14 If you would, please say yes or no if the
15 answer -- or the question calls for a yes or no
16 answer. Then you can explain your answer instead
17 of nodding your head or saying uh-huh or hu-huh.
18 It makes it a lot easier on the court reporter.

19 And if you don't understand a question or if
20 it's unclear to you, I'll be happy to rephrase it
21 if you just let me know.

22 THE WITNESS: Yes, sir.

23 MR. CHEELEY: What do you want to do about
24 reading and signing?

25 MS. MCGOWAN: We would like to read and sign.

1 MR. CHEELEY: All right.

2 EXAMINATION

3 BY MR. CHEELEY:

4 Q. Mr. -- Mr. Callaway, where are you employed?

5 A. Georgia Secretary of State.

6 Q. How long have you been employed --

7 A. Since --

8 Q. -- with the Secretary of State?

9 A. -- October the 5th of 2020.

10 Q. So you've been there less than a year, nine
11 months roughly?

12 A. Yes, sir.

13 Q. And what's your title?

14 A. Deputy chief of investigations.

15 Q. And what do you do in that role?

16 A. In my role, I supervise all investigators'
17 work product in the state of Georgia, the inspectors,
18 any disciplinary issues, performance, appraisals.
19 Basic executive level management of the
20 investigation's office.

21 Q. How many investigators report to you?

22 A. 23.

23 Q. And who do you report to?

24 A. The chief investigator.

25 Q. And that person would be?

1 A. Frances Watson.

2 Q. Is that a man or woman?

3 A. Woman.

4 Q. Did you receive any training when you were
5 hired to serve as deputy chief of investigations?

6 A. Yes, sir. A lot of online training through
7 Firefly, which is what we use for online training.

8 Q. Can you briefly summarize the kind of training
9 you received?

10 A. Basically the -- a lot of stuff with
11 professional licensing, corporations, securities, you
12 know, all the different boards that we have,
13 oversight over the Boxing Commission, cosmetology,
14 massage therapy, podiatry, residential contractors,
15 elections, the process of elections. The --
16 basically the same -- I took a lot of the same
17 training that a poll worker would typically take --
18 or would take.

19 Q. What did you do before coming to work for the
20 Secretary of State?

21 A. I was the chief of police for the city of
22 Morrow.

23 Q. Morrow, Georgia?

24 A. Yes, sir.

25 Q. How long did you serve as the chief of police?

1 A. Four years. I was employed there for 15.
2 Before that, I was a captain over criminal
3 investigations. And before that, I was the commander
4 of the Clayton County Vice Task Force, Narcotics Task
5 Force, Gang Unit. And then before that, I was a
6 deputy sheriff in Rockdale County for a decade. I
7 have 25 years of law enforcement experience.

8 Q. I want to ask you about your training dealing
9 with elections and election processes. Can you kind
10 of summarize what that training taught you?

11 A. It's the process from the time the voter walks
12 in, the rules about voting, the polling places, the
13 notices that have to be up, checking on the poll
14 pads, going over to the BMDs, using the BMDs, and
15 eventually scanning the ballots and then the voter
16 exiting.

17 Q. Okay. And are you aware that each registered
18 voter is only permitted to cast one vote?

19 A. That's correct. Yes, sir.

20 Q. And -- and be tabulated one vote --

21 A. Yes, sir.

22 Q. -- per election?

23 A. Yes, sir.

24 Q. And what are the criminal penalties if
25 somebody cast a vote where the --

1 A. Oh, it's a felony.

2 Q. -- the vote is tabulated -- or the vote is
3 tabulated multiple times?

4 A. It's a felony.

5 MS. MCGOWAN: Well, those are two different
6 questions. So I'm going to object as --

7 MR. CHEELEY: All right. I'll break it down.

8 MS. MCGOWAN: -- as compound.

9 BY MR. CHEELEY:

10 Q. So what -- what is a felony with respect to
11 voting? Is tabulating the same vote more than one
12 time a felony?

13 A. I'm not a hundred percent sure on that. I do
14 know that double voting is a felony.

15 Q. Okay. So a registered voter cannot double
16 vote, and if they do, it's a felony?

17 A. Yes, sir.

18 Q. Okay. The same thing goes, I guess, for
19 anyone counting votes, that they can't count the same
20 vote multiple times. Would that be a felony?

21 MS. MCGOWAN: If you can answer that. I would
22 just object that it calls for a legal conclusion.

23 THE WITNESS: Yeah. I -- I don't know for a
24 hundred percent certainty. I would have to look
25 at the code section.

1 BY MR. CHEELEY:

2 Q. Okay. Did you on November 3rd, 2020 look --
3 from the emails that you've produced in response to
4 the subpoena and the text messages, you went to
5 several different locations that day. Is that fair
6 to say?

7 A. No.

8 Q. No? Where -- so tell me where you were.

9 A. My morning started at 5:30 in the morning at
10 the Georgia Emergency Management Agency in the State
11 Emergency Headquarters. Myself, along with several
12 other people from our office, were located there for
13 the purpose of state wide oversight of the elections
14 and security of the elections.

15 Any issues that arose, we had inspectors and
16 investigators all over the state of Georgia that were
17 doing poll inspections on their own. They had
18 assignments to go out to do that. And we were real-
19 time monitoring complaints that would come in, any
20 kind of issues at polling places. And if there were
21 any issues, such as late openings or an issue where
22 there was any kind of equipment issues, we would
23 immediately dispatch either a certified investigator
24 or an inspector. The inspectors are not sworn law
25 enforcement, the investigators are. And that was my

1 job that day.

2 That's what those emails and texts were, me
3 sending people from the headquarters out in the field
4 to different locations.

5 Q. And your day, you said, started early that
6 morning?

7 A. 5 -- 5:30 in the morning.

8 Q. 5:30. And did you leave that location at any
9 point in time during that day to go somewhere?

10 A. I did. I was sent to State Farm Arena close
11 to midnight.

12 Q. And who sent you?

13 A. My chief.

14 Q. And that would be Ms. -- Ms. Watson, is it?

15 A. That's correct. Chief Watson.

16 Q. Did you speak with her or text her, and did --
17 how did you receive your --

18 A. We were face to face. We were in the room
19 together.

20 Q. Okay.

21 A. And it was a verbal communication to me that
22 there was an allegation that Fulton County Elections
23 had went home, and they weren't working, and I needed
24 to go physically. I was the only one still around.
25 All the other investigators and inspectors, you know,

1 they pulled a hard 12 to 16 hour day, so we sent all
2 them home around 10 or 10:30, or maybe 11. So I was
3 the only one available. So I left that location and
4 drove to State Farm.

5 Q. All right. Were there any -- had you heard
6 that night that there was any suggestion that there
7 was a water main break at State Farm Arena?

8 A. Not that I recall before I got there.

9 Q. Okay. How about at any point in time after
10 you got there or later in the --

11 A. So when I arrived, I went up to the security
12 door, and I showed them my credentials, my badge and
13 my ID card, and told them who I was.

14 They signed me in, and they took me upstairs
15 to one of the suites. And I was met by Ralph Jones
16 of Fulton County Elections, and I showed him my badge
17 and my ID card, and I told him the reason I was
18 there.

19 And then there was another gentleman, I think
20 his name was Carter, he was a poll monitor. He
21 was -- he was there in the room. And he came over to
22 me, and I showed him my badge and told him I was with
23 the Secretary of State's office. And we began a
24 conversation, and he showed me -- he was pointing up
25 to the ceiling. All the piping is exposed, and he

1 was showing there was a -- a leak and then showed me
2 where they had moved some of the tables and machinery
3 away from where that -- that leak had been. And
4 that's -- that's the first time I remember hearing
5 about any kind of a leak.

6 Q. Okay. Do you know who Carter worked for?

7 A. I -- no, not with specificity. I mean, I can
8 assume he worked for the Secretary of State's office,
9 but I'm not -- I'm not a hundred percent sure.

10 Q. Okay.

11 A. At the time I didn't know if he was a -- a
12 party watcher from a specific party or a -- if just
13 volunteer. I -- I just didn't know.

14 Q. Have you since then come to find out what his
15 last name was?

16 A. No.

17 Q. Was it a young man?

18 A. Uh-huh. (indicating in the affirmative)

19 Q. White?

20 A. White young man, skinny.

21 Q. Okay.

22 A. He was skinny in my opinion.

23 Q. Yeah. I wish I was -- fit that description,
24 skinny. So --

25 A. He was younger, I do know that.

1 Q. Yeah.

2 A. In his 20s, probably early 20s.

3 Q. Okay. So what was going on there when you
4 arrived?

5 A. So, like I said, I was sent there to see if
6 they were still working. They were supposed to be
7 scanning ballots.

8 So, I walk into the room and there was several
9 stations set up. I don't remember how many. And
10 that's what they were doing, they were -- they were
11 scanning ballots. And once I confirmed that they had
12 not stopped working and that they were still scanning
13 ballots, I communicated with my chief that they're
14 still working. My goal was to see if they were still
15 working. I viewed that they were still working.

16 And then I was there for just a little there
17 longer, and me and the gentleman had -- Carter, we're
18 still talking. We're walking around talking, and he
19 showed me where the bathroom was. And then after
20 that point, I was told to go home, and this was after
21 midnight. I want to say it was closer to 12:30.
22 Then I departed the location.

23 Q. Okay.

24 A. And Carter stayed behind.

25 Q. Okay. What did Carter tell you? How long had

1 he been there?

2 A. He didn't say. I assume that was there since
3 early in the morning. I -- he did say he was there
4 early in the morning, so I just assumed that he was,
5 you know, there all day long.

6 Q. Okay. Do you know the names of any of the
7 people that were scanning ballots?

8 A. I have no idea.

9 Q. Have you gone back to watch the video of that
10 night from say after people -- the press and the poll
11 watchers were sent home?

12 A. The only part of the video I watched
13 personally was the part where I watched myself walk
14 in, was greeted by security, went in, talked to Ralph
15 Jones, talked to Carter, and then when I left. I --
16 I did watch that part. But no, personally I haven't
17 watched anything other than that.

18 Q. Okay.

19 MR. CHEELEY: Taylor, can we play that part
20 where Mr. Callaway is seen?

21 (Whereupon video is played)

22 BY MR. CHEELEY:

23 Q. Okay. Is that you?

24 A. That is me.

25 Q. All right. And there were, let's see, one,

1 two, three, four, five desk?

2 A. I believe there was five.

3 Q. And is this Ralph Jones --

4 A. Yeah, that's --

5 Q. -- you're talking to --

6 A. That's Ralph Jones.

7 Q. -- in the red shirt?

8 A. And I had known -- I knew that was Ralph Jones
9 because I had went down to Election's office
10 previously and met him.

11 Q. And the time that's shown is what?

12 A. 12:25.

13 Q. Does that comport with your recollection?

14 A. Yes, sir.

15 Q. So you're on your phone there. Do you know
16 what you were doing: Texting somebody or --

17 A. Telling the chief what was going on, that they
18 were still working. I might have been talking to my
19 wife as well, too. I have two phones.

20 Q. So do you have one phone issued by the
21 Secretary of State?

22 A. I use it for nothing but state business, and I
23 have a personal phone that use for nothing but
24 personal business.

25 Q. And what is the -- your phone number for the

1 state phone?

2 A. I don't know it.

3 Q. You don't?

4 A. I can get it for you, but I don't have it
5 memorized.

6 Q. Okay. Well, let's finish watching this video,
7 please.

8 So you're -- you're aware that they're
9 scanning at each of those, I guess, tables where
10 there's activity?

11 A. Yes, sir.

12 Q. Were there five ladies staffing those five
13 tables?

14 A. I believe so. There was five work stations,
15 and five females and then Ralph Jones.

16 Q. And then who is this person?

17 A. That's the poll monitor.

18 Q. Is that --

19 A. That's Carter.

20 Q. -- Carter?

21 MR. CHEELEY: Charlene, do you know his last
22 name?

23 MS. MCGOWAN: Yes. It's Carter Jones.

24 MR. CHEELEY: Carter Jones.

25 MS. MCGOWAN: And he was appointed by the

1 State Election Board.

2 MR. CHEELEY: Okay.

3 BY MR. CHEELEY:

4 Q. Do you -- did you write up a report or
5 anything about your visit that night?

6 A. I did not. I verbally reported it back.

7 Q. Did it -- in your training for elections and
8 election procedures, did you -- were you taught that
9 Georgia law required, I guess, the counting of
10 ballots to be observed by poll monitors from both
11 sides, both Republicans and Democrats?

12 A. I don't know that code section. That -- what
13 I do know is that I wasn't denied access, and I don't
14 know if anybody -- I don't know the answer, really,
15 what you're trying to get to on that. I didn't -- I
16 didn't observe anything like that.

17 Q. You didn't observe any observers other than
18 Carter Jones?

19 A. Correct.

20 Q. Did you speak to anyone there other than Ralph
21 Jones and --

22 A. No.

23 Q. -- Carter Jones?

24 A. That was it, just Ralph Jones. I just told
25 them who I was there, why I was there.

1 Q. Had you ever --

2 A. And then they left me alone.

3 Q. Had you ever met Ralph Jones before that
4 night?

5 A. Uh-huh. (indicating in the affirmative)
6 Yeah, I met him down at the Election's office.

7 Q. Have you watched the -- the video from say at
8 10:30 p.m. until 1 a.m.?

9 A. Not personally, no.

10 Q. Okay. So all you've watched is the part with
11 where you are shown?

12 A. Uh-huh. (indicating in the affirmative)

13 Q. Is that right?

14 A. Yes, sir.

15 Q. Okay. And what was your reason for doing
16 that: Was is that in preparation for this deposition
17 or...

18 A. No, no. The purpose for me doing that was to
19 see if -- you know, I wanted to see how good the
20 video was, to see that I was there, what time I was
21 there. Because I knew back when this happened, that
22 this would come -- was going to come up in the
23 future, either in the media or in a situation like
24 this.

25 Q. Okay. So you would have watched it

1 approximately when?

2 A. Probably --

3 Q. Back in November?

4 A. Whenever -- the day -- the day that we got it,
5 because it took a long -- a long time to upload here.
6 I do know that. It was either that day or the day
7 after that I just briefly watched the snippet of me
8 going in and leaving.

9 Q. Do you know who requested the video?

10 A. I'm pretty sure it was Adrick Hall, who was --
11 he's retired now. He was the Atlanta supervisor for
12 our investigation's office. He was the one that was
13 working in concert with State Farm Arena to get the
14 entire video pulled and to get it uploaded into our
15 systems.

16 Q. How do you spell his name, Adrick?

17 A. A-d-r-i-c-k, Hall.

18 Q. And what was his title?

19 A. Atlanta -- Atlanta supervisor, investigations.

20 Q. For the Secretary of State?

21 A. Yes, sir.

22 Q. Do you recall -- I may have asked you this.
23 Do you recall the nature of your discussions with
24 Carter Jones that evening?

25 A. No, no. Just that -- like I said, you know,

1 he was -- well, he was a very friendly guy. We had
2 good conversations. We were talking about kind of
3 how my day was going and why I was there. Then he --
4 like I said, he showed me where the leak had been and
5 where they had moved some stuff away, and that was --
6 that was pretty much the extent of it besides just --
7 you know, just stuff. You know, it wasn't nothing
8 really substantive about it with him.

9 Q. Right. So have you watched the video from
10 early in the morning hours of November 3rd, before
11 the actual poll workers showed up and see the
12 cleaning crew cleaning up the water that had dripped
13 on the carpet?

14 A. Not me personally, no.

15 Q. Was there any water on the carpet when you
16 were there that night, or dripping coming from the
17 ceiling?

18 A. I don't recall, I don't.

19 Q. Okay. Did you hear in the media that night or
20 later that morning on November 4th, that it was
21 announced that there had been a water main break at
22 State Farm Arena the night before that caused the
23 suspension of --

24 A. I -- I heard that in the media.

25 Q. -- people -- people being able to monitor?

1 A. I did hear that in the media that there was a
2 water main break, and -- but I -- I was confused
3 because I knew it wasn't a water main break. It was
4 just a urinal leak that was leaking down on the
5 ground. They had to move some stuff around. Yeah, I
6 did hear that in the media.

7 Q. Yeah. But you knew it wasn't a water main
8 break?

9 A. Uh-huh. (indicating in the affirmative)

10 Q. A water main break --

11 A. Correct.

12 Q. -- water would be everywhere?

13 A. Right.

14 Q. It's an 8-inch line?

15 A. Right. Yeah, there were big lines above your
16 head, too.

17 Q. But as you sit here today, you don't remember
18 seeing water dripping from the ceiling?

19 A. No, sir.

20 MR. CHEELEY: Taylor, how much time is left on
21 this segment for Mr. Callaway?

22 THE VIDEOGRAPHER: A minute and a half.

23 MR. CHEELEY: Okay.

24 BY MR. CHEELEY:

25 Q. Do you know if anyone else at the -- at the

1 Secretary of State's office within, you know, a day
2 or a week watched the video from State Farm Arena
3 that Mr. Hall would have procured?

4 A. Correct. Several investigators actually. I
5 don't actively investigate cases unless it's just an
6 anomaly. I assign -- I manage, I oversee. So
7 that -- that case was assigned out to a couple of
8 detectives -- or investigators in our offices, and I
9 know that they have watched the entire thing.

10 Q. Okay. Can you give me their --

11 A. But I don't know -- yeah, sure.

12 Q. Give me their names, please.

13 A. Paul Braum

14 Q. B-r?

15 A. A-u-m. You know like Braum shavers?

16 Q. Uh-huh. (indicating in the affirmative)

17 A. And Adrick Hall?

18 Q. Mr. Hall himself?

19 A. Uh-huh. (indicating in the affirmative)

20 Q. Did you speak with them about the -- the --
21 what they had observed on the video?

22 A. Somewhat, yes. You know, we were looking at
23 the video, and I -- I know they had the discussions,
24 I know they looked at the videos, and -- and I saw a
25 brief snippet where the allegations we -- of course

1 we saw in the media where it was alleged that there
2 were suitcases that were pulled out from under the
3 tables. And I didn't understand what they were
4 talking about, suitcases. Because what I observed
5 personally when I was there, and when I observed on
6 video, there were ballot bins that were pulled out,
7 and, you know, that -- I know that was there focus,
8 was to look on that. And, you know, through all
9 that, they were -- that guided their investigations.

10 And when Mr. Hall left our office, the rest of
11 that went over to Paul Braum to finish out. He -- he
12 is the State Farm case agent on that case.

13 **Q. Did he write up a report to your knowledge?**

14 A. He's in the middle of it. He's on page --
15 I know he's got a Spalding County case and this case.
16 They're massive cases, and they're taking him quite a
17 while to -- to finish up and get all the interviews
18 stuff, and he's having to -- he's having to -- we all
19 helped out with the FBI and the GBI, and our
20 investigators, we all went down to Fulton County and
21 interviewed these women that were there that night,
22 and Ralph Jones. They were interviewed by the FBI,
23 the GBI and our office, and it was set up to kind of
24 like this. You'd have FBI, GBI, SOS investigator,
25 and then one witness at a time, they would come in.

1 So what he's working on now is he's been given
2 all the -- the audio tapes of those interviews, and
3 he's having -- we don't have anybody in our office
4 administratively to transcribe, and we don't have the
5 software that works properly to transcribe. So, he's
6 physically having to listen and transcribe all those
7 interviews. So I know that's -- you know, I get case
8 updates a lot, and we just talked about that last
9 week. And that's where he is with that part of it.

10 **Q. And that's Mr. Braum?**

11 A. Correct.

12 **Q. Do you know when these interviews occurred of**
13 **the five women?**

14 A. I think it was in December. I'm not a hundred
15 percent. I know it was in the winter time, because I
16 remember walking down to Fulton County courthouse
17 from here and it was cold.

18 **Q. And they -- so the interviews occurred at the**
19 **courthouse?**

20 A. At the courthouse, correct. At the -- well,
21 at -- at the county -- no, not at the courthouse. It
22 was done at the County Attorney's office in the
23 County Administration Building.

24 But Fulton County made available to us these
25 females as well as Mr. Jones, and I -- I don't recall

1 the female's name that we were in the interview with.

2 I can get it from Paul Braum. He would know.

3 Q. Okay. So you personally sat in on one of
4 those five interviews?

5 A. I did.

6 Q. Do any of the ladies that you saw in that
7 video look like the one that you might have --

8 A. Honestly, I just -- I can't recall.

9 Q. Okay.

10 A. I just don't know.

11 Q. Ruby Freeman, does that name --

12 A. I know it wasn't Ruby Freeman. Because I
13 know -- I know for a fact it wasn't her, because that
14 was already out -- her name is already out in the
15 media.

16 Q. Right.

17 A. Big time. She was interviewed that day.

18 Q. Was --

19 A. But not me.

20 Q. Was it her daughter?

21 A. No. Hu-huh. (indicating in the negative)

22 Q. That was -- had the longer braided hair?

23 A. I don't think so.

24 Q. Okay. All right. Has Mr. Braum said anything
25 to you about what he saw on the video of what those

1 five women were doing say after the media and the
2 poll watchers were sent home that night?

3 A. The -- the discussion was had that, you know
4 -- you know, by everything I personally saw and
5 everything he observed on video, it looked like
6 normal work being done. Normal scanning being done.

7 MR. CHEELEY: Okay. Taylor, let's pull up the
8 video from around -- I think it starts around
9 10:50 p.m.

10 THE VIDEOGRAPHER: Going off the video record
11 at 10:14.

12 (Off video record)

13 THE VIDEOGRAPHER: So I have them titled as
14 Desk 1.

15 MR. CHEELEY: Okay.

16 THE VIDEOGRAPHER: Desk 2, Scans.

17 MR. CHEELEY: Yeah. Let's -- let's show Desk
18 1 and then Desk 2.

19 THE VIDEOGRAPHER: Okay. Do you want it with
20 titles or without?

21 MR. CHEELEY: Without.

22 THE VIDEOGRAPHER: Okay. I'll pull it up and
23 I'll stop it when we get back on the record.

24 MR. CHEELEY: Okay.

25 THE VIDEOGRAPHER: Standby. Now back on the

1 video record at 10:15.

2 (Video On)

3 BY MR. CHEELEY:

4 Q. Okay. Desk 1 that we're identifying as the
5 one that Ruby Freeman, I believe that's her in the
6 purple top, is located at. And I just want you to
7 pay attention to the -- what she does with the
8 scanner. So is that a Dominion scanner?

9 A. I don't know who makes it. I know it's a
10 scanner.

11 Q. It's part of the Dominion vote tabulation
12 system?

13 A. Uh-huh. (indicating in the affirmative)

14 Q. Is that a yes?

15 A. Yes, sir. Sorry.

16 Q. While you were there that night watching this,
17 did you notice if any of these ladies were scanning
18 the standard preprinted ballots or were those ballots
19 that had been printed by Fulton County?

20 A. To be honest with you, I didn't get close
21 enough to tell. I just looked to see that they were
22 scanning ballots.

23 MR. CHEELEY: Okay. Can you back it up there
24 Taylor?

25 THE VIDEOGRAPHER: Sure.

1 MR. CHEELEY: Back it up to the point where --
2 let's just back it on up to where she puts them on
3 for the first time.

4 BY MR. CHEELEY:

5 Q. All right. This is at 11:06 p.m. Do you see
6 that, Mr. Callaway?

7 A. Uh-huh. (indicating in the affirmative)

8 MS. MCGOWAN: If you could, give yes or no
9 answers.

10 THE WITNESS: I'm sorry.

11 MS. MCGOWAN: It will help out the court
12 reporter.

13 THE WITNESS: I'm sorry.

14 BY MR. CHEELEY:

15 Q. And that was a yes?

16 A. Yes. I'm just trying to concentrate. Yes.

17 Q. Okay. So you see Ms. Ruby takes them off the
18 scanner after scanning them?

19 A. Uh-huh. (indicating in the affirmative)
20 They're not tabulated.

21 Q. Huh?

22 A. They're not tabulated.

23 Q. What are they doing there?

24 A. Jammed up. You have to push a button on here
25 to accept it, and she never did that. That's what

1 I was watching.

2 Q. Okay. You see she's --

3 A. That, she's loading it. It jams up. She
4 never pushes accept. She reloads them and does it
5 again.

6 Q. Okay. So she's putting them back on again?

7 A. Uh-huh. (indicating in the affirmative)

8 Before my training that I received at the
9 State Election's office, I would have assumed that as
10 soon as you're scanning these things, it's -- it's
11 sending information. That's not the case. You have
12 to wait until it properly scans all of them without
13 errors or jams, and then after that's done, then you
14 go to your touchscreen and hit accept.

15 MR. CHEELEY: Is that the end of it?

16 THE VIDEOGRAPHER: Yes.

17 MR. CHEELEY: Okay. Let's go to Desk 2.

18 BY MR. CHEELEY:

19 Q. Have you received any specific training on the
20 Dominion --

21 A. I have.

22 Q. -- voting system in terms of how to operate
23 it?

24 A. I have.

25 Q. You have?

1 A. Yes, sir.

2 Q. All right. So want to watch --

3 A. Which one are we looking at?

4 Q. Desk 2.

5 A. Okay.

6 Q. Okay. So the lady in the yellow top put 'em
7 back on. This is the second time.

8 A. Uh-huh. (indicating in the affirmative)

9 Q. She takes them off. Puts them on a third
10 time.

11 She wrote something down on her table, a piece
12 of paper on her table, correct? Puts them back,
13 okay.

14 This is at 11:16 p.m., correct?

15 A. Correct. Same thing, there's the jam. So she
16 has to redo that whole thing over again.

17 Q. How does she know which one's jammed and which
18 ones to put back on?

19 MS. MCGOWAN: Objection. Calls for
20 speculation.

21 Q. Do you know?

22 A. I don't know.

23 Q. Okay. So she puts them on. This is the fifth
24 time.

25 11:21 p.m., correct?

1 A. Correct.

2 Q. She puts them all back on, writes something
3 down. Is that the batch tally sheets that she would
4 filling out in hand?

5 A. I would assume so, yes.

6 Q. Okay. This is 11:30. I think this is, by my
7 count, number six scan. Is that right?

8 A. Yes.

9 Q. Puts them back on, seven.
10 Scanning them again. This is 11:37. Eight,
11 is that correct?

12 A. Correct.

13 Q. She's putting them back on the scanner. This
14 will be nine, correct?

15 A. Correct.

16 Q. Same set of ballots?

17 A. Yes.

18 Q. She pushes her monitor. She's writing
19 something on -- in hand on batch tally sheet. Writes
20 something down at 11:42 p.m., correct?

21 A. Is that where it stops?

22 Q. At 11:42.

23 A. I wanted to see the next -- I wanted to see
24 what -- where she was going to put that and go back
25 --

1 Q. Yeah, right.

2 A. -- push her screen. Because like I said, she
3 was -- like, that scanner was giving her complete
4 fits. You could see how many times it was giving her
5 issues, so much so she had to open the machine and
6 wipe it down.

7 And like I said before, we looked into this
8 already. And through my knowledge and training, I --
9 I didn't know until I worked here and got the
10 training, that when they're -- when they're scanning
11 like that, it's not record -- it's not tabulating.
12 It doesn't tabulate until you get your batch down
13 correctly. You know, you could scan 25 different
14 times, and you're not tabulating until you hit the
15 "accept" button. And we compared the number of
16 ballots that were received as well to the number of
17 people that were checked into the poll pads.

18 So there was -- you know, if that was the case
19 where all those ballots would have been counted, the
20 numbers would have been completely on its head. It
21 would have been -- you had all these ballots that
22 were counted and not that many people on the poll
23 pads that had checked in to actually vote.

24 Q. Well --

25 A. They also digitally imaged these, and Paul

1 Braum, the investigator, went and got the digital
2 imaging of these from Fulton County. So I know
3 that's a part of the case file, too, and that's
4 something that's -- that was being looked into and
5 investigated as well.

6 Q. All right. When you said the pad poll
7 tablets, right?

8 A. Yes, sir.

9 Q. That's used when people actually show up to
10 vote, right?

11 A. Correct. Correct.

12 Q. But those aren't used when people mail in
13 absentee ballots, correct?

14 A. Unless you -- no. If you walk in with an
15 absentee ballot and you say hey, you know, I want to
16 turn this in, I want to vote in person, then -- then
17 there'll be -- the poll pads, no, not for absentee
18 voting.

19 Q. Okay. But that's what was going on at the
20 State Farm Arena that night was the tabulation of the
21 absentee ballots, correct?

22 A. Actually, I don't know. I don't know if it
23 was absentee or in -- I know -- I'm assuming it's all
24 absentee voting because everything else would be on a
25 BMD.

1 Q. Okay. And so if there were 147,000 certified,
2 roughly, absentee ballots that were certified by
3 Fulton County to the Secretary of State, you wouldn't
4 expect there would be but just a small number of
5 those to be turned in by hand and at a polling place,
6 correct, and where the tabulation, the -- what'd you
7 call it, the tab -- the tablet was used?

8 A. Correct. Now, you'd be surprised. I was
9 surprised at how many people got an absentee ballot,
10 and this was state wide but I don't know -- I would
11 assume Fulton County would be the same, people just
12 wanted to go in person, and they will turn in their
13 absentee ballots to the election's worker to cancel
14 it out so they could have access to a -- an actual
15 ballot to where they could scan it.

16 Q. Okay. To your knowledge, has there been a --
17 has the Secretary of State or Mr. Braum, to your
18 knowledge, done an audit where he compares the number
19 of actual paper ballots, absentee paper ballots, with
20 the scanned images and the outer envelopes for those
21 paper ballots?

22 MS. MCGOWAN: Object to form. I didn't
23 understand that question. Did you?

24 MR. CHEELEY: I'll be happy to rephrase it.

25 THE WITNESS: Yeah, please do.

1 BY MR. CHEELEY:

2 Q. To your knowledge, has Mr. Braum, or anyone
3 else at the Secretary of State's office, or even at
4 -- to your knowledge, anyone at Fulton County, done
5 an audit where they compared the actual number of
6 absentee paper ballots with the actual scanned images
7 of those ballots and the actual number of outer
8 envelopes for those absentee ballots?

9 A. I can't speak to that, because honestly I
10 don't -- I've heard some things that the secretary
11 has done. I can't speak for the secretary. I'll
12 just leave it at that, because I do know there were
13 some things done. I don't know exactly what was
14 done.

15 I know Braum had some digital imaging. I
16 don't know specifically what was done.

17 My involvement with an audit was the signature
18 audit at Cobb County. I was there for that for both
19 days.

20 Q. Okay. But focusing only Fulton County's
21 absentee ballots. To your knowledge, has Mr. Braum
22 sought to compare the total number of paper absentee
23 ballots that were tabulated -- or sent in by a
24 voter --

25 A. Uh-huh.

1 Q. -- and tabulated with the actual number of
2 outer envelopes that the ballots would have been
3 mailed in or delivered in, in person, with the total
4 number of scanned images --

5 A. Right.

6 Q. -- of those ballots?

7 A. Right. I understand your question. I -- I
8 don't know the answer to that.

9 Q. Okay. Would that be a reliable way to -- to
10 determine whether or not all the ballots were
11 properly counted, to have an audit consisting of
12 those three components: The paper ballots, the outer
13 envelopes, and the scanned images in your opinion?

14 A. I'm not going to give my opinion, sir. I'll
15 -- I'll just give you what -- you know, that would be
16 something that Paul would be working on. He's --
17 he's got this case.

18 I know that we've looked at it from several
19 different angles, and I know the work -- some of the
20 work that he's done. Like I said, he has not written
21 his reports yet, so I don't know everything he's
22 done. I just know some of the steps that he's taken
23 along the way, some of the people that have been
24 interviewed, and some of the documents that he has
25 requested from Fulton County Election's office. And

1 a lot of that deals with absentee voters, and quite
2 frankly all aspects of that with absentee voters,
3 how'd they, you know, request their ballots, how did
4 they -- how did they -- not how they voted, but, you
5 know, what manner they voted, that kind of thing.

6 Q. Would it surprise you that there are --
7 according to the batch tally sheets, that there's a
8 couple of hundred batch tally sheets missing that
9 were reported to the Secretary of State?

10 A. I had not heard that.

11 Q. Would that be significant to you?

12 A. It would be.

13 Q. Okay. Have you done anything to look into
14 that or do you know if Mr. Braum has?

15 A. I'm not sure. I can follow up with
16 Investigator Braum --

17 Q. Okay.

18 A. -- and tell him that, something that you just
19 told me.

20 Q. Okay. Have you watched the video from State
21 Farm Arena from say 8 a.m. until 10 a.m. that
22 morning --

23 A. No, sir.

24 Q. -- where the black suitcases were brought in
25 and put under a table?

1 MS. MCGOWAN: Object to form.

2 A. No, sir. I haven't, no. The -- the only
3 video I've seen was the one that I'm -- I'm in, and
4 now this part of it that you've shown it. And I've
5 seen snippets with my other investigators.

6 Q. Okay. So I'll represent to you that the video
7 shows that these black suitcases on wheels were
8 brought in and placed under the table with a black
9 table cloth over it before 10 a.m., and they were
10 taken out later that day, that evening, and the
11 contents thereof were begun to be scanned.

12 Is -- is there any way in your mind that they
13 would have already had that ready to go to scan prior
14 to the close of the election that day?

15 MS. MCGOWAN: I'm --

16 MS. RINGER: Objection.

17 MS. MCGOWAN: I'm going to object to that.
18 I mean, it assumes facts not -- not in evidence
19 about the black suitcases and calls for a great
20 deal of speculation. He's already told you that
21 he has not watched the video, and you're --
22 honestly, you're just testifying right now.

23 BY MR. CHEELEY:

24 Q. Are you able to answer the question?

25 A. I know they were very busy, as were all

1 election offices. I know there was a lot of movement
2 that went around.

3 I do know this allegation has already been
4 looked into by Investigator Braum and other people in
5 our office, other people in the Secretary of State's
6 office.

7 And I was there that night. I didn't see
8 anything that looked out of place when I was there.

9 And I do know that the allegations of things
10 under the tables, they were ballot bins that were
11 properly sealed with the Secretary of State's seals
12 on them, and that's what the investigation showed on
13 our end, that part of it.

14 Again, it's not been finalized. He's not
15 finished his report out. But do I know that was
16 looked into early on, and since it was so much in the
17 media, obviously, and that part of it, we were able
18 to show that there were ballot bins that were proper
19 and they were sealed.

20 Q. Okay. How -- how is the seal placed upon a
21 ballot bin?

22 A. I'm not a hundred percent sure to be honest
23 with you.

24 Q. Okay.

25 A. I just remember my guys talking to me, telling

1 me they were sealed.

2 Q. Who -- and who was that?

3 A. I believe it was Investigator Braum.

4 Q. So did he have any photographs of -- of the
5 seal to your knowledge?

6 A. Not to my knowledge. He might have. I'm not
7 sure.

8 Q. Okay. Do you -- have you seen any portion of
9 his draft report?

10 A. No, sir. I won't see that until he's pretty
11 much completed all that, his exhibits, and he'll turn
12 it into me. I'll probably have to take it home
13 because it's going to be so big, and I'll read over
14 it and make any -- you know, tell him to make any
15 corrections or any additional information that's
16 needed. And then at that point, you know, I'll turn
17 it over to the chief. She'll do, you know, the same
18 thing, she'll check it off. And then at that point
19 it'll be put set on agenda item for a State Election
20 Board meeting, you know, later down the road.

21 Q. When --

22 A. And that's the process.

23 Q. When do you expect Paul Braum's report to be
24 completed?

25 A. I -- I can't speak to that. I'm not sure.

1 He's got other cases as well. This is not his only
2 case.

3 Q. Okay.

4 A. And we've been quite busy to be honest with
5 you.

6 Q. I'm sure.

7 A. Uh-huh.

8 Q. Do you expect it in the next six months or the
9 next three months?

10 A. I would say definitely probably within the
11 next six months. We stopped -- I stopped assigning
12 him cases completely, because he was just inundated
13 with a large Spalding County case. I know he's
14 already got 50 pages written up on that one. There
15 was multiple witnesses he had to go -- we had to give
16 a couple of people to help him on that one, and I --
17 like I said, I haven't assigned him anything to give
18 him the time to work on this and the Spalding County
19 case. Because I was -- he was just going to be
20 simply overwhelmed, and I didn't want to lose him as
21 an employee.

22 Q. Okay. In the response to the subpoena, did --
23 did you pull together from your from or phones a --
24 do you have like a monthly bill that you get that has
25 the phone numbers that you dialed that night or

EXHIBIT B

1 COMMITTEE ON THE JUDICIARY

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4 UNITED STATES SENATE

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7 WASHINGTON, D.C.

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13 INTERVIEW OF: BYUNG J. "BJay" PAK

14
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16
17 Wednesday, August 11, 2021

18
19
20 The interview commenced at 10:30 a.m.

Appearances:

For the COMMITTEE ON THE JUDICIARY:

SENATOR RICHARD BLUMENTHAL

SENATOR JON OSSOFF

SARA ZDEB, Majority Chief Counsel for Oversight

JOSEPH M. CHARLET, Majority Counsel

QUINTON BRADY, Minority Investigative Counsel

JOSHUA FLYNN-BROWN, Minority Deputy Chief Investigative
Counsel

DANIEL PARKER, Minority Investigator

BRADLEY WEINSHEIMER, DOJ

EMILY LOEB, DOJ

KIRA ANTELL, DOJ

CHRISTINA CALCE, DOJ

COUNSEL FOR WITNESS:

EDWARD T. KANG, Alston & Bird

RYAN MARTIN-PATTERSON, Alston & Bird

1 Ms. Zdeb. It is 10:31 and we can go on the record.

2 Mr. Pak, good morning. Thank you very much for being
3 with us. I'm going to go over a very short preamble and
4 then I'm going to turn it over to my colleague,
5 Mr. Charlet, to start asking some questions.

6 This is a transcribed interview of BJay Pak. Chair
7 Durbin requested this interview as part of the Judiciary
8 Committee's investigation into efforts to involve the
9 Justice Department in former President Trump's attempts to
10 overturn the 2020 Presidential election.

11 Would the witness please state and spell his name for
12 the record?

13 The Witness. Byung J. Pak, B-y-u-n-g. Jin, as in
14 J-i-n, my middle name. Last name is P-a-k.

15 Ms. Zdeb. Thank you. On behalf of the Chair, I thank
16 Mr. Pak for appearing here today. We appreciate your
17 willingness to appear voluntarily.

18 My name is Sara Zdeb. I'm the Majority chief
19 oversight counsel for the Judiciary Committee, and I will
20 now ask everyone else on the Zoom to introduce themselves
21 for the record except for Mr. Pak's counsel, who we will
22 get to in just a minute. And we can start with the
23 Senator.

24 Senator, you're on mute.

25 Mr. Blumenthal. Sorry about that.

1 Ms. Zdeb. Is there any reason why you are unable to
2 provide truthful answers to today's questions?

3 Mr. Pak. I know of no reason.

4 Ms. Zdeb. Finally, we ask that you not speak about
5 what we discussed in this interview with anyone outside of
6 those of us on this Zoom in order to preserve the integrity
7 of our investigation.

8 Is there anything else that my colleagues on Senator
9 Grassley's staff would like to add before we get started?

10 Mr. Flynn-Brown. I have nothing to add at this time.
11 Thank you, Sara.

12 Ms. Zdeb. Mr. Pak, do you or your counsel have any
13 questions before we get started?

14 Mr. Pak. I do not.

15 Mr. Kang. None.

16 Ms. Zdeb. Great. In that case, this is the end of my
17 preamble. It is 10:37 and I'm going to turn it over to my
18 colleague, Mr. Charlet, to begin our first round of
19 questioning.

20 BY MR. CHARLET.

21 Q. All right. Thank you.

22 Good morning, Mr. Pak. I'm going to start with a few
23 questions about your background just for the record before
24 we begin. Could you tell us about your most recent --
25 could you tell us what your most recent role at the

1 Department of Justice was?

2 A. Yes. I was the United States attorney for the
3 Northern District of Georgia from October 10th to January
4 4th, 2021.

5 Q. Thank you. And prior to your confirmation as
6 U.S. Attorney for the Northern District of Georgia, can you
7 give us a brief overview of your professional experience?

8 A. Prior to becoming United States attorney, I was
9 in private practice. I also, during my private practice
10 years, I served in the Georgia general assembly as a state
11 representative for six years starting from January 2011 to
12 January 2017. It's a part-time legislature here, so I also
13 practiced law during that time.

14 Prior to that, previously I served in the Department
15 of Justice as an assistant United States attorney in the
16 Northern District of Georgia from 2002 to 2008. And prior
17 to that, I was also in private practice.

18 Q. All right. Thank you. And when you were the
19 U.S. Attorney for the Northern District of Georgia, what
20 did your responsibilities include when it came to
21 investigations concerning election fraud?

22 A. As the chief federal law enforcement officer in
23 the district, I obviously supervised all federal
24 investigations that were under my purview in accordance
25 with the Justice manual in coordination with, as necessary,

1 the Election Crimes Branch and working with all federal law
2 enforcement agencies, but primarily the Federal Bureau of
3 Investigation, and also coordinating any type of
4 investigation with state and other local authorities.

5 Q. And prior to the 2020 election and the time
6 period surrounding that, can you describe how and how often
7 you interacted directly with the deputy attorney general
8 and/or the attorney general while you were a U.S. Attorney?

9 A. It was -- it wasn't an everyday occurrence but,
10 yes, we do interact with the attorney general and the
11 deputy attorney general. In particular through the deputy
12 attorney general's office, my primary contact as a U.S.
13 Attorney would have been the principal associate deputy
14 attorney general or better known as PADAG.

15 The deputy attorney general is kind of viewed as the
16 chief operating officer of the Department so we were in
17 contact with the DAG's office more frequently and, of
18 course, the attorney general's office.

19 In addition, through my duties and work on the
20 subcommittees of the attorney general's advisory committee,
21 I would often work with various component heads and also
22 had some interactions with the attorney general and the
23 deputy attorney general individually.

24 Q. And you just described the deputy attorney
25 general as the chief operations officer. Do you mean that

1 your interactions with him were more administrative or did
2 they also include the substance of investigations in your
3 regular interactions?

4 A. It could be both. Because the United States
5 Attorney's Offices, the administrative side, there is the
6 executive office for the U.S. Attorneys, so that generally
7 gets handled through EOUSA. But it is possible and it
8 happened when you have substantive cases, particularly
9 things that are sensitive or something that would draw the
10 attention nationally, that we would coordinate with the
11 deputy attorney general's office.

12 And as a matter of practice, if there are sensitive
13 cases that are going on, investigations going on, the
14 guidelines show that we have to kind of file a sensitive
15 investigative report internally through EOUSA and the DAG's
16 office so that they are made aware of what is going on
17 throughout the country.

18 Q. Okay. Thank you. We will probably return to
19 some of those subjects as we go through the rest of the
20 interview.

21 So on December 1st, 2020, Attorney General Barr
22 publicly announced that the Department of Justice had found
23 no evidence of widespread election fraud in the 2020
24 election. He reaffirmed this finding on December 21st,
25 2020, two days before his resignation.

1 Prior to December 1st, had your office looked into
2 allegations in Georgia of election fraud?

3 A. There were complaints and allegations that were
4 coming in. The way we usually handle election fraud cases
5 is that each district is required to designate a district
6 elections officer and the FBI investigative component does
7 the same. And so we established a hotline so if there is
8 a -- allegations of some type of criminal violation that
9 they would call and bring in the leads.

10 Unlike the state and local prosecutors, the U.S.
11 Attorney's Offices do not have their own investigators, so
12 we rely on our federal law enforcement agencies to at least
13 track down the substance of the allegation and to do some
14 preliminary investigation to see if there is anything
15 there, whether or not the allegation is true.

16 In particular, during the election cycle, the district
17 election officer would give the front office of our office,
18 which is me and also my FAUSA and crim chief, regular
19 reports about some of the investigations going on,
20 generally things that have progressed to a level where the
21 U.S. Attorney needs to be aware of it. As you can imagine,
22 in every election there is usually some call comes in and
23 the deputy election officer is responsible for working with
24 the FBI to track down some allegations, to see if there are
25 any substance, to see if there is enough evidence to

1 actually investigate or open a case. Of course they are in
2 constant communication with the Department of Justice, the
3 Election Crimes division, when they do this.

4 For me, for that time period that you referenced,
5 Mr. Charlet, on December 4th, I believe, there was news
6 reports that came out related to a state Senate hearing on
7 election irregularities. I don't recall exactly the name
8 of the committee that they had, but it made the news
9 because at the time, Mr. Giuliani, Rudy Giuliani, came down
10 to the state of Georgia, at the capitol, and showed a video
11 that he described as a suitcase full of ballots being run.
12 And this hit the news. I did not know whether or not that
13 complaint was made directly to the Department or my office,
14 but it was all over the news. He called it a smoking gun
15 of election fraud.

16 Following the morning of that news cycle when
17 Mr. Giuliani came down and testified -- he didn't testify
18 because the state Senate doesn't have power to put people
19 under oath. So any statements are not subject to perjury.
20 I think people probably should know that.

21 And as -- by way of background, I have to tell you
22 that as a state legislator at the time, one of the
23 frustrating things about policymaking at the state level
24 was that we couldn't make sure what people are telling us
25 are exact in fact truth because we couldn't put them under

1 oath.

2 But in any event, when he testified -- when he told
3 the state Senate committee that this was a suitcase full of
4 ballots that they pulled out from underneath a table and
5 that it ran through, that it was evidence of fraud, of
6 course that raised my interest to see what he was talking
7 about.

8 That morning, I believe in December 4th, the morning
9 after, I did have a conversation with the attorney general
10 at the time, Attorney General Barr, related to another
11 matter that has nothing to do with the election fraud cases
12 that you're talking about. But at the time, Attorney
13 General Barr asked me if I had seen the news about this
14 allegation of this suitcase full of ballots and I said I
15 did hear about that. And then Attorney General Barr said
16 that, you know, he had an upcoming meeting with the White
17 House and, given the fact that he had made a statement two
18 days before that there was no widespread fraud that he
19 thought that this investigation -- or I'm sorry, the
20 videotape might come up during the discussion. So he asked
21 me to make it a priority to find out some more details
22 about the allegation made by Mr. Giuliani.

23 I told him I would do that. He asked me to make it a
24 top priority. So I said I'd be certain to do that.

25 At this point, we didn't even have a copy of the

1 videotape. We didn't even know what the videotape was
2 about. I just saw the news clip about it. So at the time,
3 you know, I obviously contacted the people responsible for
4 investigation in my office and relayed to them in general
5 that we want to find out what's going on with this
6 videotape. And oh, the attorney general asked me to keep
7 me kind of posted on any updates that I might get.

8 Per protocol, I definitely then called Rich Donoghue,
9 who was at the time the principal associate deputy attorney
10 general. The U.S. Attorney's kind of main contact with the
11 deputy attorney general's office. That's kind of protocol
12 because we coordinate and we would certainly want to let
13 them know that the attorney general wanted us to kind of
14 track down the videotape and see what was going on there.
15 But I talked to Rich Donoghue and told him about my
16 conversation with Attorney General Barr and that we are
17 trying to get a copy of the videotape and find out what --
18 some additional facts surrounding that.

19 So my district election officer was the main person
20 who reached out to the FBI. I did have a conversation with
21 the special agent in charge here about the videotape to see
22 if in fact the FBI knew about the videotape. They had not.
23 It was the first time they had heard of it. And so they
24 were going to coordinate with the Secretary of State's
25 office, who were already investigating this videotape, to

1 find out what -- the facts behind that videotape.

2 And so operationally, the FBI kind of chooses when to
3 reach out and whatnot. I just merely told them to go ahead
4 and let's try to find out what's going on with the
5 videotape, given the fact that the attorney general is
6 going to the White House through -- this may come up. And
7 I told him it was a top priority to do that.

8 At the same time, I think that I had not had any
9 conversation with Main Justice other than Rich Donoghue and
10 the attorney general about the case and they were -- I know
11 that the FBI had reached out to the Secretary of State's
12 office to start the process. The protocol is, because this
13 is during the election time where there's an election
14 cycle, and in particular in Georgia at the time, there was
15 a U.S. Senate runoff election scheduled for January 5th, I
16 believe, Tuesday, January 5th, I was very sensitive to the
17 fact that we can't do anything overt that may be viewed one
18 way or the other by the voters, whether giving --
19 inadvertently giving legitimacy to some claim of
20 irregularity of fraud or -- so we were very sensitive to
21 that.

22 And so the FBI was coordinating with the Election
23 Crimes Branch about doing some investigative steps, which
24 is the protocol. And the agents were -- it took a few
25 days, I think, to kind of get ready to find out kind of

1 what happened. I think that the plan was to try to
2 interview the individuals who were depicted in the video
3 and what we found out was the videotape was of a
4 surveillance camera located at the State Farm Arena here in
5 Fulton County, Atlanta on the night of the ballot
6 tabulation.

7 So it took a couple of days. Meanwhile, I saw the
8 news reports of the implementation manager for the
9 Secretary of State's office related to the Dominion voting
10 machines to discuss kind of what the actual videotape
11 showed. Gabe Sterling was the person. He went on the news
12 and described kind of what the Secretary of State's
13 investigation had shown in terms of videotape. At this
14 point, we still did not have a videotape. That the luggage
15 or suitcase that was referenced by Mr. Giuliani was in fact
16 a secure ballot box and that there was a miscommunication
17 as to why the poll watchers from each parties were
18 mistakenly sent home. And they were -- it was around, I
19 believe, late evening that night that the Fulton County
20 elections director decided to kind of come back tomorrow to
21 continue the tabulation, so they started packing up.

22 And seeing that the partisan poll watchers, the people
23 from the Democratic Party and the Republican Party, thought
24 that they were done for the night and they left the State
25 Farm Arena, and then the communication was made by the

1 Secretary of State's office calling down to the State Farm
2 Arena and saying what's going on there? And they said,
3 we're done for the night, and the Secretary of State's
4 office told them that, no, no, no, you've got to continue
5 tabulating because there's a lot of work to be done.

6 So they were reopening or bringing back the secure
7 ballot box to open to be retabulated. As a matter of fact,
8 in the news segment, they showed clips of the entire
9 evening, which you could see the workers actually packing
10 up the suitcase -- or they referred to it as a suitcase --
11 but the secure ballot box and putting it underneath the
12 table. And then -- so once the full picture was shown, it
13 was clear that it was the exact same box that they pulled
14 out to start recounting at the time.

15 So I forwarded that news article to my district
16 election officer to make sure that they had the latest
17 information. By then, I think that they were making plans
18 to try to interview the individuals. We also heard reports
19 that someone had identified the people who were depicted in
20 the video and they were in fact getting some death threats.
21 So there was another need to kind of talk to the
22 individuals there.

23 And at the same time, I had reached out to the
24 Secretary of State's office to see if there was any
25 investigative files, like memos of interviews of these

1 individuals that we could start taking a look at. And they
2 had -- ultimately, the lead investigator had not written a
3 report, actual written memorandum of the interviews of the
4 people working that night as depicted on the video, but she
5 did send me an audio recording of the interviews that they
6 conducted that day. And so I obviously listened to it and
7 I forwarded it to the FBI and also the district election
8 officer.

9 And I also listened to the tape in conjunction with
10 watching the video and the explanation of it and it was all
11 consistent. So I was comfortable in my mind at least,
12 without -- just looking at what the Secretary of State's
13 done, that the story seems to be consistent. But the FBI
14 wanted to make sure and also talk to some of the people
15 there who are depicted and they were trying to arrange
16 that.

17 But I did get a call that the reason they were not yet
18 having interviewed those individuals were that the Main
19 Justice had not authorized them at that point to reach out
20 to the poll workers and to interview them. And then I
21 asked why not. And I think the protocol was the FBI
22 coordinates with their headquarters, who coordinates with
23 the Department of Justice Election Crimes Branch to kind of
24 take every step in terms of -- because of the sensitivity
25 surrounding elections. I said that's fine.

1 So at that point, I called Rich Donoghue and told
2 him -- gave him an update on kind of the investigation in
3 terms of what I did, in terms of listening to the
4 interviews, looked at the news report and what the FBI had
5 told me that they have -- the reason they have yet to kind
6 of interview them. And that was my extent of kind of
7 telling Rich that that's why -- the PIN has not authorized
8 them to look at or authorized them to interview.

9 And my understanding, based on my discussion with the
10 FBI, was that there was a disagreement in terms of the
11 interpretation of the November 6th memo issued by AG Barr.
12 But I've never talked to election crimes or anybody in
13 Justice. I did tell Rich that that was the issue.

14 And so eventually, a few days later, I think that Rich
15 Donoghue called me and told me that they had resolved the
16 issue and that the FBI would go ahead and do the interview.
17 And then he sent me an email confirming kind of his
18 discussion with the deputy director, David Bowdich, related
19 to getting the FBI to go ahead and interview the
20 individuals.

21 And I know that they've done that and they actually
22 did a little bit more in terms of looking after the
23 sensitivities of kind of doing interviews because at the
24 same time that the FBI wanted to interview the witnesses,
25 the Secretary of State's office was doing a follow-up

1 interview of those witnesses. So I think operationally
2 they decided to do them together and not separately. And
3 so the special agent in charge had informed me and called
4 me that the interviews were consistent with what was in the
5 audit recordings and there was nothing irregular about the
6 events, and the allegations or statements made by
7 Mr. Giuliani during the Senate hearing were contradicted by
8 the FBI and my own investigation of the situation.

9 I called back to -- during the time, I kept Attorney
10 General Barr kind of informed where we are. I think I
11 talked to him maybe twice very briefly. And then once it
12 was -- the FBI had concluded their assessment interviews, I
13 called the attorney general along with -- I called Rich
14 Donoghue as well to tell him exactly what was going on.
15 And I told the attorney general that there was no substance
16 to the allegations. And he said, okay, thank you very much
17 for letting me know.

18 And that was the last time I communicated with either
19 the deputy attorney general or the attorney general related
20 to the State Farm video.

21 And then the next thing I found out is that, you know,
22 the attorney general had issued -- that he was going to
23 resign.

24 With respect to the other type of investigations,
25 there was nothing that kind of -- the FBI had taken steps

1 to kind of verify few at that point, enough. I mean, there
2 were allegations coming in. We were trying to make sure
3 that we have resources and attention to particular types of
4 complaints that were coming in. In particular, there were
5 lots of threats being made to various people who were
6 involved --

7 Mr. Weinsheimer. At this point, I'm concerned that
8 Mr. Pak may be going beyond the scope. I don't think it's
9 appropriate for him to talk about all of the
10 investigations. The scope deals with the circumstances on
11 which he left his position and pressure from the White
12 House or Department leadership. So I just want to be
13 careful that he doesn't go into other investigations that
14 aren't within that scope.

15 Mr. Charlet. I'll take a quick moment to note for the
16 record that Senator Ossoff has joined the interview.

17 BY MR. CHARLET.

18 Q. So first thank you, Mr. Pak. That was a lot of
19 detail. Just to clarify a couple of points really quickly.
20 First, you said that it took a few days to sort all of this
21 out. Do you recall about what day it was when you had
22 determined on your own separately that there was no
23 credibility to these allegations regarding the State Farm
24 Arena video?

25 A. Me individually, I think it took maybe two or

1 three days from my call with the attorney general when I
2 got the audited recording via email. And so that was the
3 day that I took time to review the evidence that the
4 Secretary of State's office had collected at that time. I
5 have not seen any other evidence other than look at the
6 audio recording and the video recording of it and I just
7 kind of concluded that it was consistent with what's been
8 reported to the public by the Secretary of State's office.

9 So unless there was something else that was going on,
10 I was comfortable that the main allegation that
11 Mr. Giuliani made with respect to the secure ballot box
12 being a suitcase full of fake ballots, that was not true.
13 That was debunked. I was satisfied of the explanation. So
14 it took about three days, I want to say, after -- two or
15 three days -- I can't remember exactly when -- that
16 everything kind of came to its natural kind of conclusion
17 based on the evidence that we see.

18 Q. And then were the interviews where there was a
19 bit of a delay before they were actually conducted, was
20 that on the same timeline or about when -- when were those
21 completed?

22 A. Mr. Pak. I think it was right around the same
23 time they got completed. The two or three-day delay was, I
24 think, the FBI was gathering preliminary evidence to review
25 to do the interviews. It's not like you just go ahead and

1 go. You want to make sure you have the facts straight and
2 their previous statements and things like that.

3 And it was during this time also where I think that
4 they were -- I don't know this personally, but I heard a
5 couple days after, when I talked to the FBI of where the
6 status of the interviews were, it was kind of waiting for
7 the authorization from the Election Crimes division or
8 branch, I'm sorry, that they were working through those
9 issues. And so it was right around the same time so -- and
10 not -- so the delay until like when we got most of the
11 evidence kind of reviewed and done the interviews was right
12 around the same time. In total, maybe three days, three to
13 four days from December 4th call that I had with the
14 attorney general.

15 Q. And then for the interviews themselves, I was
16 just unclear so just to clarify, were they for the people
17 or with the people making the allegations or the poll
18 workers who are seen in the video?

19 A. The authorization I think the FBI had received
20 was only for the individuals that are depicted in the video
21 who was at the State Farm location and so I think that my
22 recollection is they interviewed five to seven people,
23 which were -- I think there were five people who were poll
24 workers, and then there was two additional. One
25 actually -- there was a Secretary of State's office law

1 enforcement officer present on the night of the video and
2 so I can't remember if it was he or she. I know they were
3 talking to him and also I think they talked to someone with
4 respect to making a call that they were going to close down
5 for the night and then the reopening, the circumstances
6 surrounding like reopening of ballot boxes, continue
7 counting. That's my recollection. They might have
8 interviewed more people but I seem to recall that was the
9 authorization given by the Election Crimes Branch or the
10 Department itself and so that was narrow in scope.

11 Q. And then you also said there was an additional
12 sensitivity because people were receiving death threats.
13 Was that also the poll workers who appear in the video who
14 were receiving those threats?

15 A. That's correct.

16 Q. Okay.

17 A. That's correct. And there were others as well,
18 but those in particular, the name of the individual who was
19 in the video was leaked to the public by someone and as a
20 result, we were getting -- we were very sensitive to that.
21 That's another reason to kind of touch base with them.

22 Q. Okay. Great. So I'm going to take one step
23 back before doubling back into some of the substance since
24 we're trying to establish the timeline of what happened
25 when and where.

1 So when Barr first made his declaration that there was
2 no evidence of widespread election fraud on December 1st,
3 at that time, your office, at least insofar as the Northern
4 District of Georgia was concerned, is it correct that you
5 had not found any election fraud sufficient to change the
6 outcome of the election by December 1st?

7 A. That's correct. At that time, there wasn't
8 anything like that. And I think that -- just to give you
9 context, Mr. Charlet, the PADAG at the time, which is Rich
10 Donoghue, would from time to time check in, right? And
11 that's kind of the job of the PADAG, to check in with the
12 U.S. Attorney's Offices, make sure that there's not
13 anything that the front office should know about.

14 And so -- but the short answer to your question, yes,
15 there was absolutely nothing that -- of any investigation
16 that would cause a widespread fraud or anything like that
17 going on in the district.

18 Q. And then around the time of December 1st when
19 Attorney General Barr made that declaration, you had no
20 other reason to doubt his conclusion that the Justice
21 Department had found no evidence of widespread election
22 fraud in the 2020 election?

23 A. That's correct.

24 Q. Okay. Thank you. So I want to get back to
25 your explanation of how exactly your office works through

1 election fraud allegations or voter fraud allegations. You
2 had discussed there being a district officer who was
3 concerned with these matters and also that your office
4 coordinated with the FBI. So I'm just going to try to
5 understand how that functions a little bit more.

6 So how exactly does that officer, the district
7 election officer, fit into the way the U.S. Attorney's
8 Office is run? Do you directly oversee their work or is
9 there sort of a hierarchy that they sit within?

10 A. There's a hierarchy. The district election
11 officer, the criminal division chief, the first assistant
12 and then myself, those are kind of the leadership team
13 related to these things. All of them are career except for
14 me. They were career officers. As a matter of fact, the
15 district election officer used to work in the civil rights
16 division of the Department and so he was a perfect fit, in
17 my mind, and he's handled several cases.

18 So he would report regularly to the criminal division
19 chief and also, if necessary, to the FAUSA, then to me, but
20 it wasn't a regular kind of direct line. I did not ask him
21 for a report on every little thing that's going on on every
22 single basis. It would be once a week unless there was
23 something significant that we needed to -- that he decided
24 to elevate to the front office. So that's kind of the
25 supervisory chain.

1 Q. Okay. And then does that officer -- is he the
2 one -- he or she -- the one that coordinates with the local
3 FBI field office for the preliminary investigations that
4 you were discussing?

5 A. That's correct, yes.

6 Q. And you made mention of this before, but I
7 guess I'm asking on a more general level. How does the
8 intake process for voting or election related allegations
9 look? Is it always through a hotline that you set up or is
10 there a more general way in which the intake process works?

11 A. It's a hotline. We publicize the hotline and
12 the district election officer, the FBI's phone number. We
13 do a press release and I go on the radio and press to tell
14 them that if they need to call, contact the FBI or the U.S.
15 Attorney's Office. Other kind of complaints would come
16 into various AUSAs or myself and I would forward those to
17 the district election officer.

18 So, but there was a main way and then there's
19 obviously some other ways people would send information and
20 then we funneled it to the district election officer to
21 work with the FBI to track down.

22 Q. And then you also said on or about December
23 4th, AG Barr himself called you because he had concerns
24 about these allegations and wanted to understand more what
25 was happening.

1 Outside of the election fraud context and I guess
2 prior to the 2020 general election season, would you say
3 that officials from Main Justice often alerted your office
4 of allegations of crimes of any kind that should be
5 investigated?

6 A. It's not often. And the attorney general did
7 not call me for this case. He actually called me about
8 another matter and then this came up. But it's not every
9 day when the attorney general will call but from time to
10 time there would be conversations with the front office of
11 Main Justice about various cases, but in terms of the
12 actual allegations coming down from the AG's office, no,
13 that's rare.

14 Q. Okay.

15 And in the election fraud context, you were confirmed
16 in 2017 so you were the U.S. Attorney for the Northern
17 District of Georgia during the state's 2018 general
18 election, correct?

19 A. That's correct.

20 Q. During that election, do you recall officials
21 from Main Justice alerting your office to allegations of
22 election fraud that should be investigated?

23 A. No.

24 Q. So I want to turn your attention to an exhibit
25 that we have marked as Majority 1, and for the record, we

1 can mark it as Exhibit 1.

2
3 (Exhibit 1, email marked Majority1, was
4 marked for identification.)

5 BY MR. CHARLET.

6 Q. It's an email from Richard Donoghue to you
7 forwarding you a discussion that Mr. Donoghue had with
8 David Bowdich. Do you have that document in front of you?

9 A. I do.

10 Q. Thanks. So he forwarded this exchange that he
11 had with FBI Deputy Director David Bowdich about interviews
12 that AG Barr wanted to conduct in Atlanta. But before we
13 talk about the allegations in more detail, as you can see
14 in the underlying email that Donoghue sent Bowdich, AG Barr
15 had issued a policy change directly after the 2020 general
16 election on November 9th, 2020.

17 Do you recall the nature of that policy change?

18 A. I think -- I remember the memo. The memo, in
19 substance, I mean, in summary, basically said that the
20 general policy is that we defer investigation into election
21 fraud or tabulation until everything has been certified or
22 finalized. However, they are -- the policy currently
23 allows some preliminary inquiries, not on a wide open case
24 but preliminary inquiries that you can make including doing
25 some interviews.

26 And the memo had said that -- I think he was

1 reiterating that we had had authority under limited
2 circumstances to do preliminary inquiries in cases where
3 there is -- I can't remember exactly but I think cases
4 where there is a substantial, I think, allegation, I think
5 those were the terms, of some type of fraud that could
6 impact, potentially impact the outcome of an election. And
7 that's the substance of what I remember the memo saying.

8 Q. Okay. And then could you describe how if in
9 any way this policy change manifested in your work as a
10 U.S. Attorney? Were you approached by Main Justice at any
11 point to take a more forward-leaning approach to election
12 fraud investigations?

13 A. Apart from the memo, no, they have not. You
14 know, we took a -- internally at the U.S. Attorney's Office
15 that I was leading, I took the approach of being
16 conservative, of not -- of deferring every case that we
17 can, particularly because, as I noted before, there was yet
18 another election coming up.

19 By early December, the general election had been
20 completed. It would not be an open polling place type of
21 investigation that people are very sensitive to. But we
22 just wanted to make sure that we don't do anything that
23 would leave the public with an impression that we give some
24 kind of substance to any type of allegation or otherwise.
25 And so we were very sensitive to that.

1 I didn't read the memo as being a directive to be
2 forward-leaning in terms of investigations. I took it as
3 being sensitive but reminding that you can do it under
4 certain circumstances when there is substantial allegations
5 of fraud that could have, potentially have an
6 outcome-determinative impact.

7 Q. And in this email to Bowdich, Mr. Donoghue
8 alludes to a, quote, unquote, policy disagreement between
9 Public Integrity and DOJ leadership over the application of
10 this policy change. Did you ever become aware of that
11 policy disagreement at some point?

12 A. Yeah, my conversation with the FBI about why
13 there was a delay in terms of them doing the interview, the
14 special agent in charge told me that they were waiting for
15 authorization from the headquarters to go ahead and do
16 that. Then I asked him and said, you know, I think the
17 headquarters -- I think they refer to as PIN but I think
18 it's election crimes division -- felt like there was not a
19 substantial allegation.

20 And so that's the conversation. That's when I was
21 aware that I think there was a disagreement because in my
22 mind, the Attorney General wanted us to kind of track down
23 the allegation. He had authorized it, to do the
24 interviews. So that's why I called Rich Donoghue because
25 that is a disagreement between what the Attorney General

1 and I had wanted versus what the election crimes division's
2 reading the memo. And so that's how I became aware of the
3 disagreement on the interpretation.

4 Q. And just to make sure that I understand, your
5 understanding of the policy disagreement is that the
6 Elections Crime Branch or PIN did not think the State Farm
7 allegations were substantial and that is why they had
8 concerns about the investigative steps that were being
9 authorized by the Attorney General?

10 A. I think that was one of. The other was whether
11 or not it should be deferred, you know, done now versus
12 later.

13 But I would not talk to the election crimes division
14 so I wouldn't know exactly what the nature of the
15 disagreement was. I think it was interpretation over the
16 memo, the application of the memo, and so that's what I
17 communicated to Rich Donoghue, that I believed that that
18 was the reason why the FBI had not done their interviews
19 yet.

20 Q. And the interviews did happen within the course
21 of a few days despite this disagreement, is that correct?

22 A. That's correct.

23 Q. And was this the only time that this seeming
24 policy disagreement manifested itself in your work, at
25 least when it came to the 2020 election?

1 A. Yes.

2 Q. Okay. So in the policy, the underlying policy
3 itself, the final paragraph notes -- actually, let me enter
4 that for the record. So this document is Majority 2, or
5 it's marked as Majority 2. We'll mark it as Exhibit 2.

6
(Exhibit 2, two-page policy statement
7 marked Majority 2, was marked for
8 identification.)

9 BY MR. CHARLET.

10 Q. It's a two-page document and on the second
11 page, in the last paragraph, the first line states, "While
12 it is imperative that credible allegations be addressed in
13 a timely and effective manner, it is equally imperative
14 that the Department personnel exercise appropriate caution
15 and maintain the Department's absolute commitment to
16 fairness, neutrality and nonpartisanship."

17 So as I read it, that policy seems to indicate that
18 DOJ should investigate credible allegations in a timely
19 manner. Was that your understanding?

20 A. That's correct.

21 Q. And in regards to the State Farm Arena video,
22 would you agree that the investigation did happen in a
23 timely manner?

24 A. I believe so.

25 Q. And on a higher level, were you ever asked to

1 look into allegations that you didn't find credible?

2 A. No.

3 Q. So let's go back to the actual allegations in
4 this email. So the interviews that AG Barr wanted to
5 conduct in Atlanta were related to allegations that we
6 discussed previously, that poll workers at State Farm Arena
7 were stuffing ballots into suitcases.

8 Were you aware -- or sorry.

9 When were you aware that the Georgia Secretary of
10 State's office had investigated the allegations and
11 concluded they were unfounded?

12 A. I saw at least the implementation manager, Gabe
13 Sterling, was on TV giving an interview of explaining away
14 the video, and so that was the first time that he
15 represented they looked into it, they'd done some
16 investigation. I didn't know what they exactly did but
17 that's when I became aware that at least the Secretary of
18 State's office had look into the video.

19 Q. And based on your previous testimony, this
20 email is on December 7th so you would have been several
21 days into your own investigation into this issue, is that
22 correct?

23 A. Yes.

24 Q. Do you know exactly why Mr. Donoghue forwarded
25 this exchange to you?

1 A. I think it was just to let me know that he had
2 raised the issue with the FBI or talked -- discussed it
3 with the FBI.

4 Q. And as you said, your office did not conclude
5 that these allegations were credible, is that correct?

6 A. Ultimately, yes.

7 Q. And do you recall about when you -- or sorry.
8 Did you relay these conclusions back to either
9 Mr. Donoghue or Mr. Rosen or AG Barr, and could you just
10 help us understand exactly when that took place?

11 A. It was a couple of days after or the night of
12 when the FBI completed their interviews. I just had a
13 short call with the Attorney General, wanted to let him
14 know that we've done all these things, we tracked down the
15 witnesses, the FBI talked to them, it was consistent with
16 what we knew before with respect to the audio.

17 I told him that I personally looked at the video and
18 listened to the interview audio and found the witnesses'
19 statements to be consistent with what's been reported and
20 that I don't see anything that would give an indication
21 that the suitcase, the alleged suitcase or box was anything
22 irregular other than there was some misunderstanding as to
23 why the poll workers left the State Farm Arena -- or not
24 poll workers -- the poll watchers left the State Farm
25 Arena. There was nothing nefarious to open any kind of

1 case.

2 Q. Okay. Thank you.

3 So our time is running short in this round so I'm
4 going to turn back to my colleague, Ms. Zdeb, to finish out
5 this round of questioning for the Majority.

6 Ms. Zdeb. Thank you, Joe.

7 BY MS. ZDEB:

8 Q. Mr. Pak, I wanted to follow up on a couple of
9 other aspects of the lengthy and quite helpful and detailed
10 explanation that you provided us about the State Farm
11 situation.

12 I think you indicated that it was on December 4th that
13 Attorney General Barr had this discussion with you about
14 something else, but that during the course of that
15 discussion, he raised these allegations which had just been
16 made in the public domain; is that correct?

17 A. That's correct.

18 Q. And I think you said he raised it by way of
19 saying that he was preparing to have some sort of
20 conversation with the President and he was hoping you could
21 look into the allegations in preparation for that
22 conversation.

23 Did I hear that correctly?

24 A. No. He called me and the conversation came up
25 like this. He asked me if I've seen the videotape that's