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

DEPOSITION OF: JEFFREY CLARK

Friday, November 5, 2021

Washington, D.C.

The interview in the above matter was held in room [REDACTED]
[REDACTED], commencing at 10:00 a.m.

Present: Representatives Thompson, Lofgren, Schiff, Aguilar, Murphy, Raskin,
Luria, Cheney, and Kinzinger.

1 Appearances:

2

3

4

5 For the SELECT COMMITTEE TO INVESTIGATE

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

7

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 For THE WITNESS:

2

3 HARRY MACDOUGALD

4 Caldwell, Carlson, Elliott & DeLoach, LLP

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

1

2

3 [REDACTED]: Good morning. This is a deposition of Jeffrey B. Clark, conducted by
4 the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol,
5 pursuant to House Resolution 503.

6 Mr. Clark, if you could please state your full name and spell your last name for the
7 record.

8 The Witness. Sure. Jeffrey B. Clark. Clark is C-l-a-r-k.

9 [REDACTED]: This will be a staff-led deposition. Members of the select
10 committee, I believe, are already in attendance and may also choose to ask questions.

11 My name is [REDACTED], and I'm the chief investigative counsel to the select
12 committee. I think we have Vice Chair Cheney, Ms. Lofgren, two members of the select
13 committee, who are attending via Webex.

14 We are conducting a deposition in person.

15 So, under the House deposition rules, neither committee members nor staff may
16 discuss the substance of the testimony that you provide today, unless the committee
17 approves release. This is essentially an executive session of the select committee.

18 You and your attorney will have an opportunity to review the transcript. The
19 court reporter is taking a verbatim account of the testimony. And you'll have a chance,
20 Mr. Clark, to read that and review it before it is finalized to ensure that it is correct.

21 Before we begin, I would like to describe just a few ground rules. We'll follow the
22 House deposition rules that we have provided to your counsel, Mr. MacDougald,
23 previously. Under the House deposition rules, counsel for other persons or government
24 agencies may not attend, but you are permitted to have your attorney present, and I see
25 that you do have your attorney with you.

1 Mr. MacDougald, if you could just introduce yourself and spell your name for the
2 court reporter?

3 Mr. MacDougald. Yes, sir. My name is Harry MacDougald. I represent Mr. Clark
4 in this proceeding. My last name is spelled M-a-c, capital D-o-u-g-a-l-d.

5 ██████████: So, as noted, there is an official reporter transcribing the record of
6 the deposition. Please wait until each question is completed before you begin your
7 response. We will try to wait until your response is complete before we ask our next
8 question. The stenographer cannot record nonverbal responses, such as shaking your
9 head. So it's important that you answer each question with an audible verbal response.

10 We ask that you provide complete answers based on your best recollection. If a
11 question is not clear, please ask for clarification. If you do not know the answer, then just
12 simply say so. You may only refuse to answer a question to preserve a privilege
13 recognized by the select committee. If you refuse to answer a question based on
14 privilege, staff may either proceed with the deposition or seek a ruling from the chairman
15 based on the objection. If the chairman overrules such an objection, you are required to
16 answer the question.

17 I also have to remind you that it is unlawful to deliberately provide false
18 information to Congress. Since your deposition is under oath, we ask that you please
19 stand and raise your right hand to be sworn by the court reporter.

20 [Witness sworn.]

21 BY ██████████:

22 Q So, Mr. Clark, I want to give you a chance to open -- to provide any opening
23 comments you have. But I just want to make sure you know who everyone is on our side
24 of the table.

25 So I'll introduce myself. I am the chief investigative counsel. With me is ██████████

1 [REDACTED] and [REDACTED], who are senior investigative counsel; [REDACTED], who is an
2 investigative counsel; [REDACTED] and [REDACTED], who are also counsel to the committee;
3 and I see [REDACTED], who is the deputy staff director and chief counsel to the select
4 committee; and [REDACTED], who is our parliamentarian. [REDACTED], who is a
5 researcher, is here as well.

6 On the video, again, I think [REDACTED], our staff director, has joined. And I also
7 introduced before Ms. Lofgren and Ms. Cheney.

8 So, with that, if there is anything --

9 Mr. MacDougald. Yes. I would like to advise counsel and the committee that I
10 delivered a letter to [REDACTED], which was addressed to Representative Thompson, on
11 behalf of Mr. Clark that asserts executive privilege with respect to testimony and
12 documents that have been subpoenaed from Mr. Clark.

13 The grounds of our assertion are set forth in the letter. It is 12 pages. And, based
14 on those objections, we do not intend to answer any questions or produce any
15 documents today, but we have appeared in compliance with the subpoena in order to
16 assert those objections, as opposed to just refusing to show up.

17 [REDACTED]. All right. So I appreciate that the letter has been delivered. We did
18 receive it, as you --

19 Mr. MacDougald. And I actually have some copies for other counsel, a few.
20 Maybe not for everybody, but I would be happy to pass those around, keeping one for
21 myself.

22 [REDACTED]. Thank you, Mr. MacDougald.

23 So let me make sure I understand. The letter, which I haven't had a chance to
24 read yet, sets forth the position that Mr. Clark will not answer any question, regardless of
25 its subject matter.

1 Mr. MacDougald. Correct.

2 [REDACTED]: Due to executive privilege.

3 Mr. MacDougald. Correct.

4 [REDACTED]: Will also not produce any documents.

5 The Witness. Correct.

6 Mr. MacDougald. And I interrupt just to say also on the basis that it would be
7 prudent to await the conclusion with finality of the judicial review proceedings that are
8 going on in the DDC.

9 [REDACTED]: Again, I haven't had a chance to read the letter. But I will say for the
10 record that our intention today was to ask questions well beyond direct communications
11 with the former President, questions about your involvement with Members of Congress,
12 questions about your work within the Department of Justice, your interaction within the
13 Department well beyond direct communications with the President.

14 Again, still your position that, beyond direct communications, all of the entire
15 subject matter is subject to executive privilege?

16 Mr. MacDougald. Yes. That is our position, [REDACTED]. And the reason for that
17 is that the privileges that are under the overall umbrella of executive privilege are
18 numerous, including Presidential communications. In addition, as a Department of
19 Justice official, there is a law enforcement privilege, law enforcement investigation
20 privilege. There are -- there is a deliberative process privilege. There are any number,
21 not to mention the attorney-client privilege. So all of these things are applicable in this
22 context. I understand that's disputed by the committee.

23 [REDACTED]: Uh-huh.

24 Mr. MacDougald. And I don't want to get into an argument with you all about
25 that today. That's being argued in court. And there will ultimately be a decision about

1 that. We don't know where that line is going to be drawn.

2 Mr. Clark finds himself in a position of having worked for a President who has
3 asserted executive privilege, giving him a letter asserting executive privilege. And,
4 therefore, as his lawyer, I can't allow him to be exposed to the risk of guessing where that
5 line is going to be drawn. And so, for now, we are standing on executive privilege. We
6 will not be answering any questions or producing any documents.

7 [REDACTED]. You are in receipt, Mr. Clark, of -- are you not, of a letter dated July
8 21st, I believe, of earlier this year, from the Department of Justice, indicating that, in view
9 of the current White House, the current Department of Justice, it would not be
10 appropriate to assert executive privilege?

11 Mr. MacDougald. We understand that's the position of the Department of Justice
12 on this matter --

13 The Witness. But I --

14 Mr. MacDougald. And the White House. I mean, he did receive a letter. Okay?

15 The Witness. I want to reserve all rights as to that letter, including rights to -- to
16 make any and all arguments about it, but I am in receipt of the letter, yes.

17 [REDACTED]. Okay. Can we take 5 minutes?

18 Mr. MacDougald. Sure.

19 [REDACTED]. I just want to consult with the parliamentarian about sort of what, if
20 anything, we need to do on the record to preserve the ongoing conversation.

21 Mr. MacDougald. Sure.

22 [REDACTED]. I appreciate it. Thank you.

23 Mr. MacDougald. Thank you, sir.

24 [REDACTED]. So we'll take a brief recess.

25 [Recess.]

1 BY [REDACTED]:

2 Q Thank you for your indulgence. I had a chance to quickly look at the letter.
3 And I do want to ask a few questions just to clarify more specifically the basis of the
4 privilege assertion and ensure that we have on the record some of the things that
5 happened before today.

6 So, Mr. Clark, you were subpoenaed back on October 13th to appear before the
7 select committee, and we agreed to defer that to today when you obtained new counsel,
8 Mr. MacDougald. Is that right?

9 A That's correct.

10 Q And were you given, and I asked you about this before, a letter back -- dated
11 July 26th of 2021, that -- and I'm going to quote from it. It was from the Department of
12 Justice, indicating that committees had sought your testimony about any efforts by
13 President Trump or any DOJ officials to advance unsubstantiated allegations of voter
14 fraud, challenge the 2020 election results, stop Congress' count of the electoral college
15 vote, or overturn President Biden's certified victory.

16 And, in response to congressional inquiries on those subject matters, the
17 Department of Justice indicated -- and I'm going to quote again -- given these
18 extraordinary circumstances, including President Biden's determination that executive
19 privilege -- determination on executive privilege, which was that it wouldn't be
20 appropriate, and having reviewed the scope of the committee's request and reviews, the
21 Department authorizes you to provide unrestricted testimony to the committees
22 irrespective of potential privilege, as long as the testimony is confined to the scope of the
23 interviews as set forth by the committees. And you received that letter back in July. Is
24 that right?

25 A I've answered that question already. I will refer to counsel.

1 Q And are you aware that other representatives of the Department of Justice,
2 frankly your superiors at the time that you were employed there, received a similar letter
3 and have provided testimony to congressional committees?

4 A Yes.

5 Q And, yet, your position today is in stark contrast to theirs.

6 Mr. MacDougald. Yes, we address that in the letter.

7 [REDACTED]. Okay.

8 BY [REDACTED]:

9 Q Now, in the letter, which, again, I appreciate you giving us this morning, but
10 we have not had a chance to review before.

11 Mr. MacDougald. And I would like, on the record, to apologize to you,
12 [REDACTED], and to the committee and staff for being so late in delivering this item to you
13 when you were inquiring about our position. So, two things: One, I want to thank you for
14 the one-week extension. Very much appreciate it. But, secondly, to apologize for the
15 inconvenience. Having just gotten into the matter, we have been working on this right up
16 until yesterday afternoon and preparing what we were going to say, and we just weren't
17 ready to tell you.

18 [REDACTED]. Mr. MacDougald, I understand. These are important issues, and we
19 want to make sure you and your client are fully prepared.

20 Mr. MacDougald. It is a very important matter.

21 [REDACTED]. We are trying our best to get to the facts and want to make sure we
22 are treating all witnesses with fairness and professional consideration.

23 But, going back to the letter, attached to the letter is a letter that you received
24 from Doug Collins, who represented the former President, that essentially says, upon
25 receipt of that DOJ authorization, that the former President will not seek judicial

1 intervention to prevent your testimony or the testimony of the other Department of
2 Justice officials who have already received letters from the Department similar to July
3 26th, 2021, letter.

4 So you attach a letter explicitly from the former President saying that he would
5 not seek judicial intervention to prevent you from going forward with this deposition or
6 other inquiries from Congress.

7 Mr. MacDougald. [REDACTED], we address the letter and what it means in detail
8 in our letter. And we do not agree with the characterization that you just made of that
9 letter. We view that letter as directly asserting executive privilege. And the nonobjection
10 statement that you read from is expressly conditioned on certain things not happening.
11 Those things have happened.

12 Furthermore, the President has in fact filed suit asserting executive privilege
13 against the committee, and specifically, he referenced his invocation of executive
14 privilege with respect to former DOJ personnel, such as Mr. Clark. So, under the
15 circumstances, I represent a client who asked -- the President for whom he worked has
16 unequivocally asserted executive privilege.

17 I understand that you all don't agree with that, and you think the current
18 President has the authority to waive it. We don't agree with that. That's being decided in
19 court now.

20 [REDACTED]. Has there been any further communication, direct communication,
21 from the former President's representatives to Mr. Clark about executive privilege?

22 Mr. MacDougald. I have had no communication with any attorney for Mr. Trump
23 about any of this.

24 [REDACTED]. Your letter indicates -- and I'm looking at pages 2 and 3 -- that the
25 former President did directly direct other witnesses who have been subpoenaed by the

1 subcommittee -- Mark Meadows, Dan Scavino, Kash Patel, and Steve Bannon -- asserting
2 -- instructing them not to testify. Did you get any similar communication from the former
3 President similarly directing that you not provide testimony?

4 Mr. MacDougald. We contend the August 2nd letter from Mr. Collins on its face
5 and in light of subsequent developments constitutes such a direction.

6 [REDACTED]. And your letter also cites the pending litigation. So, to be clear
7 about your position, the pending litigation that the President has filed, Trump v.
8 Thompson, in the D.C. district court governs, in your view, your ability to testify to the
9 select committee without regard to executive privilege.

10 Mr. MacDougald. That's not accurate.

11 [REDACTED]. Okay. Well, help me understand.

12 Mr. MacDougald. So the President has asserted executive privilege. He's
13 instructed Mr. Clark to assert executive privilege.

14 [REDACTED]. And your view is -- I'm sorry to interrupt you.

15 Mr. MacDougald. Yes.

16 [REDACTED]. But that is in the August the 2nd letter?

17 Mr. MacDougald. And in light of subsequent developments and in light of
18 footnote 2 in their brief, in their original brief in support of the application for preliminary
19 injunction. So all those things together clearly instruct Mr. Clark to abide by President
20 Trump's invocation of executive privilege. And, as his attorney, I cannot expose him to
21 the risk of going against that.

22 [REDACTED]. Let me pause and see if anybody else -- go ahead, [REDACTED].

23 Mr. Schiff, do you have any questions?

24 Mr. Schiff. I do. I just want to make sure that I understand correctly. You have
25 not received any communication from the President instructing Mr. Clark to assert

1 executive privilege. Is that correct?

2 Mr. MacDougald. That is not correct. I've just explained that.

3 Mr. Schiff. No, you haven't. So have you received a letter --

4 Mr. MacDougald. You may not agree with the explanation, but it is an
5 explanation. We have a letter from August 2nd asserting --

6 Mr. Schiff. Well --

7 Mr. MacDougald. -- the privilege. We have subsequent developments that
8 invalidate the conditions to testimony --

9 Mr. Schiff. Mr. --

10 Mr. MacDougald. -- we have the President's lawsuit.

11 Mr. Schiff. Do you have a letter from the President instructing Mr. Clark to assert
12 executive privilege?

13 Mr. MacDougald. Yes.

14 Mr. Schiff. Do you have one or do you not?

15 Mr. MacDougald. Yes. It is attached to my letter.

16 Mr. Schiff. Is that a letter to Mr. Clark?

17 Mr. MacDougald. Yes. It is.

18 Mr. Schiff. From the President's counsel instructing him to assert executive
19 privilege.

20 Mr. MacDougald. That's correct.

21 Mr. Schiff. Can I see that letter?

22 This is the letter that concludes: Nonetheless, to avoid further distraction and
23 without in any way otherwise waiving executive privilege associated with matters the
24 committee are purporting to investigate, President Trump will not agree -- will agree not
25 to seek judicial intervention to prevent your testimony or the testimony of five other

1 former Department officials (Richard Donoghue, Patrick Hovakimian, Byung "BJay" Pak,
2 Bobby Christine, and Jeffrey Clark) who have already received letters from the
3 Department similar to the July 26th letter you received. As long as the committees do not
4 seek privileged information from any other Trump administration officials or advisers. If
5 the committee do seek such information, however, we will take all necessary appropriate
6 steps on President Trump's behalf to defend the Office of the Presidency.

7 This is the letter you're referring to?

8 Mr. MacDougald. Yes, Mr. Schiff. I apologize for the --

9 Mr. Schiff. And you are aware that President Trump has not sought judicial
10 intervention to prevent Mr. Clark's testimony?

11 Mr. MacDougald. Not specifically as to Mr. Clark, but the current lawsuit against
12 the committee specifically refers to the invocation of executive privilege as to persons like
13 Mr. Clark in footnote 2 of the opening brief in support of their application for preliminary
14 injunction, which has been delivered, of course, to committee counsel.

15 Mr. Schiff. I just want to make sure that I have the chronology correct. The
16 President's counsel wrote to Mr. Clark saying that they would not seek judicial
17 intervention to prevent his testimony, and they have not done so. Correct?

18 Mr. MacDougald. That is not a fair or accurate summary of the letter. The letter
19 attaches conditions to that, and those conditions have not been met.

20 Mr. Schiff. Well, if, presumably, Counsel, if the conditions have not been met,
21 President Trump was more than capable of seeking judicial intervention to stop
22 Mr. Clark's testimony. Correct?

23 Mr. MacDougald. Yes, Congressman Schiff.

24 Mr. Schiff. And he has not done so. Has he?

25 Mr. MacDougald. Representative, we disagree with that. And we're not here to

1 have an oral argument about these --

2 Mr. Schiff. Counsel, I am just establishing the facts.

3 Mr. MacDougald. Well, the facts are plain in the documents.

4 Mr. Schiff. And you are aware, Mr. Clark, that those in a higher position in the
5 Justice Department, who arguably would have a stronger claim of privilege if there was
6 one to be made, have testified before Congress as to the same matters that you are being
7 asked to testify?

8 The Witness. Mr. MacDougald has answered that question, respectfully,
9 Representative Schiff.

10 Mr. Schiff. You are aware of that, Mr. MacDougald?

11 Mr. MacDougald. Oh, yes. It's addressed in the letter. It's addressed in the letter.

12 And what I would say to you all is I don't want to get into any kind of a bickering or
13 arguing about the contours of executive privilege and whether an argument we have
14 made is correct in person verbally. These are very important matters. We have worked
15 hard on this letter to assert the objections. And we invite you all to respond to us, but we
16 think that dialogue is best conducted in writing because it is so important. And it's
17 important to be clear and precise in what we say.

18 And our position, we've stated it. We're not answering questions today. We're
19 not producing documents today. We are leaving the door open for further dialogue
20 about the points being raised in the letter. And I think that's the process that we ought to
21 pursue.

22 Now, you know, the Trump v. Thompson case will ultimately be decided one way
23 or the other, and then we'll know where we stand on executive privilege. Both sides will
24 know.

25 Mr. Schiff. Before I yield back to committee counsel, I just want to state, for the

1 record, people in a superior position to Mr. Clark's who were at the Justice Department
2 and were his superiors at the time of the events of interest to the committee have
3 testified. The current Justice Department and the current President of the United States
4 have not asserted privilege, in fact have instructed Mr. Clark they will not assert privilege.

5 He has refused to testify. He has refused to testify, not on the basis of any action
6 that President Trump has taken to seek judicial intervention in this proceeding. We have
7 not received any communication that I'm aware of from the former President asserting
8 privilege.

9 And Mr. Clark, in my opinion, is asserting -- arrogating to himself a decision that
10 his superiors disagree with, that the President has not asserted to this committee, and in
11 defiance of the lawful process of this committee.

12 And I yield back to counsel.

13 Mr. MacDougald. And, respectfully, for the record, disagree with Congressman
14 Schiff's assertion, but let's leave it there.

15 [REDACTED]. Let me just ask, to follow up on Congressman Schiff's question, has
16 there been any effort to confirm your interpretation of the August 2nd letter with the
17 former President's counsel?

18 Mr. MacDougald. I have indicated previously I have not communicated with them,
19 but I can read.

20 [REDACTED]. So the interpretation that you're providing today that the August
21 2nd letter is, in fact, a direction not to testify, just based on --

22 Mr. MacDougald. We go through that in detail in this letter.

23 [REDACTED]. Okay.

24 Mr. MacDougald. So there are a number of circumstances that combine the direct
25 statements in the letter.

1 Beyond that, there -- the statement that you all -- the committee is relying on
2 expressly states that it is not waiving anything, and there are conditions attached. Those
3 conditions are not being met, and there is a pending executive privilege lawsuit that
4 specifically refers to people in Mr. Clark's position.

5 ██████████: And, again, Mr. MacDougald, I appreciate that that is your position. I
6 think it's important for us, as we consider options, contempt referrals or litigation, to
7 make a record just to make sure --

8 Mr. MacDougald. I understand that.

9 ██████████: -- that we're clear as to what the basis of the assertion is, on what
10 facts or communications it relies. So I don't mean to sound belligerent. I'm just trying to
11 ensure that we understand --

12 Mr. MacDougald. I understand and respect that. You have a job. I have a job.

13 ██████████: To that end, we do need to go through, not every question that I
14 would have asked, but I do need to flag particular areas that we seek to develop. I
15 understand your position would be, as I go through those, that you will not answer that
16 question due to assertion of executive privilege, but that, Mr. MacDougald, establishes
17 the factual basis of what we're seeking as we consider further proceedings.

18 Mr. MacDougald. We're not willing to do that.

19 ██████████: Well, again, this is a deposition of the select committee. I have to go
20 through and ask some questions that will understandably prompt privilege. But, to
21 ensure that the court ultimately or the Justice Department has a record of the subject
22 matters and can evaluate the privilege claim, it's important for us to put those subject
23 matters in the form of questions directly to Mr. Clark.

24 Mr. MacDougald. Let me confer with Mr. Clark.

25 Do you mind if we step out?

1 [REDACTED]: Yes. Of course. We'll go off the record.

2 [Recess.]

3 [REDACTED]: Mr. MacDougald, again, our intention would be just to complete a
4 record to ensure that the court or the Department has a clear record of the subject
5 matters. And we want to go through those questions, understanding that they will trigger
6 an assertion of privilege, but we think it is important to put them to the scope of our
7 intended areas of inquiry on the record.

8 Mr. MacDougald. Our position is that we have asserted the objection, and there's
9 a pending court proceeding that will determine the contours of executive privilege with
10 respect to the committee's investigation. And it is premature to engage in that exercise
11 and that it is just unproductive to engage these questions. And we invite the committee,
12 as we did in the letter, to have some dialogue with us. But, pending resolution of that
13 case, we do not think that going through that process that you described is productive or
14 worthwhile. It is just not what we are doing.

15 As we say in the letter, if the committee in the meantime would like to
16 significantly narrow the scope of the inquiry that it wishes to pursue with Mr. Clark, we
17 are willing to discuss that and do that. I mean, if it is more narrowly focused on the
18 events of January 6th, that's something that we can work with you on. But, right now,
19 executive privilege not -- Mr. Clark has ethical responsibilities to respect the assertion of
20 privilege until this is determined judicially.

21 [REDACTED]: You, right now, have no idea exactly what it is I intend to ask
22 Mr. Clark because I haven't had a chance yet. We haven't had any negotiations. We
23 haven't had any sort of proffer or exchange of information. So it's important, in the view
24 of the select committee, to establish for Mr. Clark, for the Department of Justice, for
25 potential court to evaluate the claim, to put on the record what the scope of our area of

1 inquiry is of Mr. Clark. And, again, I understand that he's not going to provide -- is
2 unlikely to provide any answers to those questions, and that is his right at this time to
3 assert that privilege.

4 But, to the extent we are going to challenge the privilege, Mr. MacDougald, we
5 need a record that would form the basis of that challenge.

6 Mr. MacDougald. One second.

7 [Discussion off the record.]

8 Mr. MacDougald. The concern that I have, [REDACTED], is that, at some point, this
9 devolves into badgering the witness. And I would be surprised if the committee
10 undertook litigation against Mr. Clark concerning the scope of the executive privilege
11 while the Trump v. Thompson case is ongoing. That would be highly duplicative, wasteful
12 of resources. And most of those privilege questions can be answered by that case.

13 And so, with respect to topics, you know, the assertion of privilege, it's -- you
14 know, my client is in a bind. He's under subpoena. And, yet, the President that he
15 worked for has asserted executive privilege. Okay? He cannot testify under those
16 circumstances, period.

17 And so we've got a court proceeding underway that's going to resolve the scope of
18 that. And the prudent thing is to let that play out. And, like I said, in the meantime, if the
19 committee would like to significantly narrow the scope of the inquiry, we're certainly
20 willing to entertain that. And, of course, we are willing to have a dialogue about the
21 privilege assertions in the document, and if the committee chose to identify with greater
22 specificity in that dialogue what it was seeking, and we could respond and move forward.

23 [REDACTED]. Mr. MacDougald, we haven't had a chance to have this conversation
24 because there has been no discussion, no negotiations.

25 Mr. MacDougald. One at a time.

1 [REDACTED]. I understand. There is, though, the Miers case clearly rejects a
2 blanket assertion of privilege, even when asserted by a sitting President with respect to
3 White House counsel. The privilege must be asserted question by question, area by area.

4 And I understand your point about badgering. I don't intend to badger you or
5 Mr. Clark with those questions.

6 With that said, it's important to get on the record the areas of inquiry so that a
7 court could potentially adjudicate the application of a privilege.

8 Mr. MacDougald. I think that if the committee is interested in pursuing the
9 inquiry, balancing Mr. Clark's interests in complying with his duties as a lawyer in light of
10 President Trump's invocation of the privilege, the fair thing to do to Mr. Clark is to let the
11 Trump v. Thompson case play out rather than badgering.

12 Now, if there is some alternative method of preserving the record, I'm happy to
13 discuss that. But I think sitting here for 5 hours while counsel and committee members
14 propound questions that we're not going to answer is not a good use of anybody's time.
15 And, as far as -- and, again, on the timing of this and us not having had a dialogue, before
16 I got involved, Mr. Clark asked for a three-week extension. That was not agreed to.
17 That's okay. You get to decide, which made the one week you gave me especially
18 appreciated when I -- when we spoke.

19 But it is a significant matter. There are weighty and difficult legal issues involved.
20 And, you know, I'm not going to let Mr. Clark traduce either attorney-client or executive
21 privilege or any other privileges in response to these questions. I don't know where that
22 line is going to end up. So I have to protect him. So we are just not going to answer the
23 questions.

24 [REDACTED]. I understand. We're talking past each other. I'm not trying to talk
25 you out of your position at this point. I'm simply trying to establish a record that can be

1 considered by the select committee first and ultimately potentially by the Attorney
2 General of the United States if there's a criminal contempt referral or a Federal judge if
3 there is some sort of effort civilly to enforce the subpoena. We don't have that complete
4 record at this point. I'm not saying that any of that's going to happen, but we need to
5 create a record to consider next steps. So it's not meant to be badgering. I understand.

1

2 [11:00 a.m.]

3 Mr. MacDougald. Okay. And my suggestion and request to the committee is to
4 make that record after the decision is made in Trump v. Thompson, and you'll know
5 where we stand.

6 [REDACTED]. But we are not necessarily going to wait for Trump v. Thompson to
7 be resolved before we seek enforcement action, and that's why we need to make the
8 record today.

9 And, again, I understand that these questions will prompt, according to what
10 you've said thus far, some kind of executive privilege assertion. I want to make sure we
11 understand the basis of that assertion and that you understand and that ultimately a
12 court understands what are the areas that we seek to develop with Mr. Clark.

13 Again, not meant to be badgering. It's just essentially clarifying our positions and
14 creating a record for others to review thereafter.

15 So let me just --

16 Mr. MacDougald. We are not going to participate in that, [REDACTED], and we are
17 concluded, and we are leaving.

18 [REDACTED]. So, to be clear, you're refusing to answer any of these questions or
19 even go through and assert privilege question by question --

20 Mr. MacDougald. Correct.

21 [REDACTED]. -- based on the representations in the letter and --

22 Mr. MacDougald. Correct.

23 [REDACTED]. -- a blanket assertion?

24 Mr. MacDougald. Correct.

25 [REDACTED]. Go ahead, Mr. Clark.

1 The Witness. The blanket assertion point is inaccurate. The points are made in
2 the letter. Mr. MacDougald has made the points, and we're going over the same thing
3 again and again, and it's not productive. And so you'll see that the letter makes the
4 arguments about what would be prudent and efficient from this, you know, point
5 forward, and that's what we're going to stand on.

6 [REDACTED]. Uh-huh.

7 Mr. MacDougald. And we're -- you know, we will engage in that dialogue with
8 you, as invited in the letter, but the process that you contemplated today will not go
9 forward.

10 [REDACTED]. Let me stop again and see if anyone else has any questions.

11 Mr. Schiff. I do have one question. Well, a couple of questions.

12 So, counsel, on behalf of your client, are you refusing to answer any questions
13 today regarding the subject matter of our committee?

14 Mr. MacDougald. Our position is stated in the letter, Congressman.

15 Mr. Schiff. And, just for clarity, are you refusing to answer any questions about
16 the subject matter of January 6th to our committee?

17 Mr. MacDougald. Well, actually, our letter invites the committee to narrow its
18 scope to the events of January 6th.

19 Mr. Schiff. But, counsel, you're refusing today --

20 Mr. MacDougald. But the committee has not done that.

21 Mr. Schiff. Well, counsel for the committee was endeavoring to go through the
22 questions and find out what your client would answer and what they would not.

23 Do I understand your position today is that you are giving a blanket refusal to
24 answer any questions about the events of January 6th to this committee?

25 The Witness. Representative Schiff, you're mischaracterizing our position. That

1 question has been asked and answered about six times now.

2 Mr. Schiff. Well, then --

3 The Witness. If I had a transcript, I could count them.

4 Mr. Schiff. Then do you object to our asking you questions today about
5 January 6th?

6 The Witness. We've already answered that question. We think --

7 Mr. Schiff. So then you're refusing to answer questions today. Just want to
8 establish a very clean record. You're refusing to answer any questions today about
9 January 6th?

10 The Witness. We think that you need to have a dialogue with Mr. MacDougald
11 about that before that proceeds.

12 Mr. Schiff. So --

13 Mr. MacDougald. You can take that up if the scope is narrowed. But, as we sit,
14 the scope is not narrowed.

15 Mr. Schiff. Well, counsel, this would be an opportunity for you to narrow the
16 scope and answer questions --

17 Mr. MacDougald. It's not for me to narrow the scope.

18 Mr. Schiff. Answer questions that you believe are within the scope and refuse,
19 and then we can decide what repercussion from that refusal. But, today, you are refusing
20 to answer any questions whether they're within your perceived idea of the scope of the
21 committee or not. Is that correct?

22 Mr. MacDougald. We have asserted our position that we're not answering
23 questions today. We've invited the committee to engage in a dialogue with us about
24 narrowing the scope. That invitation remains open.

25 Mr. Schiff. Well --

1 Mr. MacDougald. But, as of this moment, the scope has not been narrowed, and
2 the -- our position remains as previously stated.

3 Mr. Schiff. Well, let me ask one illustrative question, then.

4 Mr. Clark, in your letter to the committee, you state you gave an interview to the
5 press about January 6th, and your comments were not included in the article, and you
6 expressed some dissatisfaction that your comments about January 6 were not included in
7 the Bloomberg article.

8 What were your comments to the press about January 6th?

9 Mr. MacDougald. I think that's stated in the letter.

10 Mr. Schiff. No, it isn't.

11 What were your comments to the press about January 6th?

12 The Witness. It is stated in the letter, so that stands as the answer.

13 Mr. Schiff. Well, would you please tell us what those comments were?

14 The Witness. It's what the letter says, Representative.

15 Mr. Schiff. The letter doesn't tell us what you told the reporter, so I'm asking you:
16 What did you tell the reporter --

17 The Witness. That's --

18 Mr. Schiff. -- about January 6th.

19 The Witness. That's not accurate, Representative Schiff. If you read the letter, it
20 represents what was stated to the reporter.

21 Mr. Schiff. Well, read to me from the letter what it is you told the reporter about
22 January 6th, then, if it's included --

23 The Witness. Respectfully, Representative Schiff, I think that request, you know,
24 to have me read something that's in a letter that you have is badgering. It crosses the line
25 into that.

1 Mr. Schiff. Well, Mr. Clark, it's not in the letter.

2 And is it your position, counsel, that somehow Mr. Clark can assert executive
3 privilege over statements he gave to the press on behalf of the former President?

4 Mr. MacDougald. We made reference to that in the letter, Congressman, in the
5 context of inviting the committee to narrow the scope. We're happy to have that
6 discussion, but it needs to occur in writing so that we know where we stand.

7 Mr. Schiff. My question is --

8 Mr. MacDougald. This is an important matter for Mr. Clark, and I'm advising him --
9 I'm trying to protect him, and I'm -- we're going to do that based on a scope that is set
10 forth in writing that we can analyze and decide whether we're going to object to it or not.

11 Mr. Schiff. My --

12 Mr. MacDougald. We don't have that, and I'm not going to let him answer those
13 questions.

14 Mr. Schiff. Counsel, you would agree, would you not, that statements your client
15 made to the press are not covered by any conceivable privilege? Can we agree on that?

16 Mr. MacDougald. Hypothetically.

17 Mr. Schiff. Are you objecting, nonetheless, to his answering questions about what
18 he told the press about January 6th that were not included in an article?

19 Mr. MacDougald. I am objecting to the way the committee is proceeding with
20 respect to Mr. Clark. You have a very broad-scope subpoena that has not been narrowed,
21 and we have invited the committee to narrow the scope and expressed a willingness to
22 testify more narrowly about January 6th.

23 We're not going to do that on the fly. We'll have a dialogue with the committee
24 as counsel, and we will proceed in an orderly manner to resolve that scope issue. But
25 we're not going to do it on the fly in this deposition.

1 Mr. Schiff. Before I yield back to counsel, I'd like the record to reflect the witness
2 today refuses to answer any questions about January 6th, including questions as to
3 comments he made to the press that could not be even conceivably, I think as counsel
4 has acknowledged, within the realm of privilege.

5 And, with that, I yield back to committee counsel.

6 ██████████. Mr. MacDougald, with all due respect, Mr. Clark has been
7 subpoenaed to appear before this committee. It is a legal obligation, on a date certain, to
8 answer questions. That does not include a legal obligation by the committee to
9 negotiate, or to set forth in advance particular subject matters. It's a legal obligation to
10 show up and answer questions, or to assert a privilege in response to specific questions.

11 My understanding is that, despite that legal obligation and an offer to go through
12 the questions and assert a privilege point by point, he's refusing to answer any such
13 questions. I just want to make clear that that is his position.

14 The Witness. The letter explains our position, and the letter is not based
15 exclusively on executive privilege. You need to read the letter, respectfully, ██████████,
16 very carefully.

17 ██████████. Well, Mr. Clark, I just got the letter when you walked in the door --

18 The Witness. And that's why we're proposing that we depart for today.

19 ██████████. But you have a legal obligation to be here today to answer
20 questions.

21 The Witness. I think, if you read the letter, you will see that even that is in
22 dispute.

23 ██████████. I think your position is, again, a blanket assertion and refusal to
24 answer --

25 The Witness. You continue to try to characterize my position as if it were that, but

1 that's a mischaracterization, and we do not accept that.

2 [REDACTED]: Before we go off the record, let me see if anyone else -- Mr. Raskin,
3 Mr. Kinzinger, Ms. Cheney -- have any questions.

4 Mr. Raskin. I just wonder if Mr. Clark's counsel has any authority for the
5 proposition that he can categorically refuse to answer any questions as opposed to
6 invoke the privilege he says he has with respect to the specific questions.

7 Mr. MacDougald. Our legal authority is set forth in the letter, Congressman.

8 Mr. Raskin. Well, the letter seems to be the magic solution for everything, but
9 could you name the Supreme Court decision that you're refusing to?

10 Mr. MacDougald. Congressman Raskin, as I previously stated, we're not going to
11 engage in legal debate or argument over this. We've set forth a written objection. The
12 committee can respond to it in writing, and we'll deal with that at that time. But we're
13 not going to do Q&A on legal points in this deposition.

14 Mr. Raskin. Okay. Well, then, I will just state for the record that the subpoenaed
15 witness has refused to answer any questions of fact. He's refused to engage in any
16 questions and interpreting any questions of law and continually refers to the letter that
17 they gave us today. So I would just say I think that this witness is categorically refusing to
18 engage in any of the obligations that he's required to engage in.

19 And I'll yield back.

20 [REDACTED]: Yeah. Mr. Kinzinger, go ahead.

21 Mr. Kinzinger. Just -- yeah. Just a real quick -- and, since the letter is the focus,
22 can you tell me when this letter, if you would, was completed? Did you finish it 5 minutes
23 prior to coming in at 10 o'clock, being as you had a legal obligation to show up today, and
24 is that why we just got this at this moment -- your legal obligation was completed just a
25 couple minutes ago -- or had you had this in hand a few days prior when maybe you could

1 have shared it and we would have been, you know, better armed to discuss since this is
2 the only thing you're willing to discuss?

3 Mr. MacDougald. Thank you, Congressman.

4 You may not have been tuned in earlier when I explained to [REDACTED] my
5 apology for giving this to him just this morning.

6 I was just engaged last week. We've been working continuously on this letter up
7 through yesterday afternoon, late, and I've been conferring with Mr. Clark. So I've been
8 continuously involved in the preparation of this letter since sometime last week.

9 I can't remember what day I first got started, but it was just late. We didn't have
10 time. We were working on it up through yesterday.

11 And I apologize to the committee and to counsel and committee staff for any
12 inconvenience that the late delivery of this position may have caused. But I'm doing the
13 best I can. It's just me. It's just me trying to help Mr. Clark, and I've done everything that
14 I could to get this ready in the time that I had available, and that went up almost to the
15 last minute.

16 [REDACTED]. Other members? Ms. Cheney, anything from you?

17 Ms. Cheney. Thank you very much, [REDACTED], yes. I'd like to ask the witness when he
18 first met Congressman Scott Perry?

19 Mr. MacDougald. I will assert the privilege objection to that question,
20 respectfully, Congressman Cheney.

21 Ms. Cheney. And what's the basis for the privilege assertion about your meeting a
22 Member of Congress?

23 Mr. MacDougald. The privilege objection is set forth in the letter, Congressman.
24 It's a detailed legal question, and the parameters of the privileges that attend aides and
25 advisers to the President extends in many directions. We understand that's disputed by

1 the committee, and it's a particular application. But pending the resolution of the Trump
2 v. Thompson case, we're not willing to answer any questions of that nature until we know
3 exactly where the line is.

4 Ms. Cheney. And I'd like to also know when, Mr. Clark, you became engaged in
5 the debates about the Georgia election procedure?

6 Mr. MacDougald. Same objection.

7 Ms. Cheney. I'm sorry. Could you please state that for the record?

8 Mr. MacDougald. Same objection, Congressman -- Representative. I called you a
9 Congressman a minute ago. I apologize.

10 Ms. Cheney. So what objection is that? You're claiming executive privilege with
11 respect to your knowledge about Georgia election procedures?

12 Mr. MacDougald. You're talking about me or Mr. Clark?

13 Ms. Cheney. I'm talking about Mr. Clark, your client.

14 Mr. MacDougald. We assert privileges in the letter that cover that,
15 Representative.

16 Ms. Cheney. Did you have any interaction with any other Members of Congress?

17 Mr. MacDougald. Same objection, respectfully.

18 Ms. Cheney. And in terms of your assertions about Dominion voting machines and
19 smart thermostats, could you explain where you got that information?

20 Mr. MacDougald. Same objection, respectfully.

21 Ms. Cheney. So I just want to be clear that I want the record to show that
22 Mr. Clark is refusing to answer any questions, including those questions that have nothing
23 to do with any of his interaction with the President, questions that couldn't conceivably
24 be covered by any assertion of executive privilege.

25 And, with that, I'll yield back, [REDACTED].

1 [REDACTED]: Thank you. Anyone else? Mr. Aguilar, Ms. Luria, Ms. Lofgren?

2 Ms. Lofgren. I'm fine.

3 [REDACTED]: No? Okay.

4 Just a couple of things. The subpoena also today was to produce documents as
5 well as deposition testimony. Are there any documents -- and this may be covered in the
6 letter, but, again, haven't had a chance to read it -- that you have that are responsive to
7 produce to the select committee?

8 Mr. MacDougald. We are asserting the objection as to all the document requests,
9 and noting in the letter that there is very substantial overlap between the letters -- the
10 documents requested from the Archives --

11 [REDACTED]: Okay.

12 Mr. MacDougald. -- and the documents requested from Mr. Clark.

13 [REDACTED]: Uh-huh.

14 Mr. MacDougald. And, consequently, we do not have any responsive documents
15 for you today.

16 [REDACTED]: Okay. So very substantial overlap suggests that there are some
17 documents that Mr. Clark possesses that are not included in the Archives.

18 Mr. MacDougald. Well, that's not right. Whether he has custody or control of the
19 document is one thing.

20 [REDACTED]: Uh-huh.

21 Mr. MacDougald. Whether it's covered in the request at the Archives is another.

22 [REDACTED]: We specifically -- and I think this was the product of an email that I
23 sent you -- have been interested in his use of a personal email, CivUSDOJ@gmail.com.

24 Was there any use of that email for subject matters related to the select
25 committee's inquiry, and have those documents been identified as responsive?

1 [Witness conferred with counsel.]

2 The Witness. I'll answer.

3 Mr. MacDougald. He'll answer the question.

4 The Witness. So my strong recollection, right -- and we're talking about events that
5 are closing on a year ago -- is that that's not an email address that I established. That's an
6 email address that the tech contractors who had offices inside DOJ for the Civil Division
7 established, and that that was used for purposes of, you know -- so, if I would do an
8 argument -- and I did several arguments, including in those months -- I wouldn't tend to do
9 it from my desk. I would tend to do it either from a side desk that I had, or from the
10 conference room.

11 And so I would have the tech person set up a loaner laptop, and then I would email
12 him the Zoom link or whatever, you know, the instrumentality was. And then I think -- so
13 that -- I think he would open that account on the loaner laptop, and then, you know,
14 connect to the court link for the argument. So I think that's what that account is for.

15 I did make an effort to see if, you know -- I have senses of kind of like what
16 passwords might be, could I log into that, and I couldn't. And I suspect, again, based on my
17 best recollection as I sit here, that the reason why I couldn't log in is I didn't create the
18 account, so I don't know what the password is.

19 [REDACTED]. Did you use a gmail account, a personal email account, to conduct any
20 official business during your time at the Department?

21 The Witness. I think that, on that, we're going to stand on the letter.

22 [REDACTED]. How about personal cell phone? Were there communications, text
23 messages that you might possess responsive to the subpoena on a personal device?

24 The Witness. Same as the last --

25 Mr. MacDougald. Same objection.

1 [REDACTED]. So, to be clear, no documents have been produced, and the letter
2 indicates that, to the extent that documents in your possession are responsive, they're
3 being withheld on the same assertion of executive privilege?

4 Mr. MacDougald. Correct. And the other privileges identified in the letter. There
5 are other privileges identified in the letter, but the executive privilege is the front and
6 center.

7 [REDACTED]. Okay. What are they? I'm sorry. Again --

8 Mr. MacDougald. Well, there is a -- we enumerate, and I believe these are all
9 subsidiary to the executive --

10 [REDACTED]. That's my question. Are they all within the executive --

11 The Witness. No.

12 Mr. MacDougald. Well, no. That's a subtle legal point.

13 The Witness. Yeah. I would say no. I think that you should look at the
14 enumeration, and we stand on that.

15 Mr. MacDougald. And then we reserve any other objections or rights that he may
16 have under the Constitution or otherwise.

17 [REDACTED]. All right. So --

18 Mr. Schiff. If I could just --

19 [REDACTED]. Yes.

20 Mr. Schiff. -- follow up on that question.

21 What privilege are you asserting would apply to enable you to refuse to answer a
22 question about whether you used personal electronic devices in the course of your
23 government business?

24 Mr. MacDougald. We're asserting privileges set forth in the letter, Congressman.

25 Mr. Schiff. And what privilege in particular, because you refer to a number of

1 privileges? So, for this specific question -- that is, whether Mr. Clark used personal devices
2 to communicate government business -- which specific privilege enables Mr. Clark to
3 refuse to answer that question?

4 Mr. MacDougald. Given the lack of specificity of the question, we can do no more
5 than allude to the privileges that are asserted in the letter, which are the full panoply of
6 executive, Federal law enforcement, and so on, privileges that are in the letter, and plus
7 the reservation that we've made. So, you know, I -- again, with respect, Congressman, we
8 do not want to engage in a debate or a law school set of hypotheticals about this.

9 Mr. Schiff. Well, counsel, you said my question wasn't very specific. Let me try to
10 make it very, very specific.

11 Mr. Clark, did you use personal electronic devices to conduct government business
12 while you were at the Department of Justice? Yes or no?

13 The Witness. This has been asked and answered, Representative.

14 Mr. Schiff. I don't have an answer, so would you please answer the question for
15 me?

16 Mr. MacDougald. We would object based on privileges set forth in the letter,
17 Congressman.

18 Mr. Schiff. And, counsel, which specific privilege entitles this witness to refuse to
19 answer a question about whether he used personal devices -- I'm not asking about the
20 content, not asking about communications with the President, but merely the simple fact
21 of whether he used personal electronic devices to conduct government business. What
22 specific privilege are you asserting that gives him the right to refuse to answer that
23 question?

24 Mr. MacDougald. We rest on the privileges asserted in the letter, Congressman.
25 We object.

1 Mr. Schiff. Let the record reflect that counsel has cited no particular privilege to
2 refuse to answer that question.

3 [REDACTED]. So, Mr. MacDougald, I'm just looking at the letter, again, not having a
4 chance yet to read it carefully. And, on page 2, it says, the general category of executive
5 privilege, the specific categories of presidential communications, law enforcement, and
6 deliberative process privileges, as well as attorney-client privilege, and the work product
7 doctrine, all harmonize on this point. Is that the universe of privileges that that sentence
8 that I just read from your letter that Mr. Clark is asserting today?

9 Mr. MacDougald. Well, the -- you should read the entire letter

10 [REDACTED]. I appreciate that, but I'm -- again, not having had a chance to do that, I
11 just want to make sure it's clear on the record.

12 Mr. MacDougald. Well, we think the letter is clear, and the letter is on the record.

13 [REDACTED]. At the time of these events, Mr. Clark was an employee of the
14 Department of Justice, right, and his client was the people of the United States, not
15 President Trump or anyone else. So help me understand how any attorney-client privilege
16 could possibly be implicated when a Department of Justice official, a member of the
17 executive branch, in the course of his professional responsibilities, is engaged in talking to
18 his superiors or anyone else within the executive branch?

19 Mr. MacDougald. [REDACTED], I will say maybe for the fifth or sixth time, we're not
20 going to engage in legal argument on these points in the deposition. If you want to engage
21 in legal argument in letters or court filings, we're happy to do that, but we're not going to
22 do it in this deposition,

23 [REDACTED]. Yeah.

24 Mr. MacDougald. And so I think we have, you know, reached an impasse and,
25 consequently, we --

1 The Witness. I --

2 Mr. Raskin. I have two follow-up --

3 The Witness. I would say that we've not reached an impasse, and there have been
4 repeated attempts to characterize the position as absolutist. It's not. We're inviting a
5 dialogue in the letter. But, for today, I think that we're done.

6 Mr. MacDougald. We're done.

7 The Witness. Yeah.

8 Mr. MacDougald. We're done for the day.

9 ██████████. Mr. Raskin, go ahead.

10 Mr. Raskin. Well, I just want to follow up on your question about the
11 attorney-client privilege.

12 Who is the attorney, and who is the client that are covered by the attorney-client
13 privilege being invoked in the letter?

14 Mr. MacDougald. It's asked and answered. The privilege is set forth in the letter.

15 Mr. Raskin. Well, forgive me, because I'm not in the room right now. The letter
16 arrived late, thank you for your apology about that, but one way to make that apology
17 meaningful might be to restate the point of your own letter. Who is the attorney, and who
18 is the client in the attorney-client privilege being asserted in your letter?

19 Mr. MacDougald. We're happy to engage in that dialogue in correspondence with
20 committee counsel, but we're not going to do it in the deposition, Congressman.

21 Mr. Raskin. Wow. Okay.

22 I yield back to you, ██████████. Thanks.

23 ██████████ Okay. Well, I can tell you, Mr. MacDougald, that we're not going to
24 conclude the deposition. I think what we'd like to do is take a recess, look again at your
25 letter temporarily and reconvene, maybe in an hour or so. I understand the position, but,

1 again, we have been given a letter with very substantial legal arguments that we just need
2 a minute -- more than a minute --

3 Mr. MacDougald. I think you need more than a minute. I mean --

4 [REDACTED] Yeah.

5 Mr. MacDougald. -- to be fair to the witness, it will -- you need to let us go, and
6 then you all study it and figure out what you want to say about it, and then we'll respond.

7 [REDACTED] Yeah. We --

8 [REDACTED] Respectfully, that's not the way it works. The witness was subpoenaed
9 to be here today. Whether it's an inconvenience for him to wait an hour or so while the
10 committee and the staff discuss this, he doesn't have any right to avoid being
11 inconvenienced by a brief delay like that.

12 The Witness. So I think the response on that is I see no indication, from the fact
13 that the same questions are being asked over and over again, that anything is going to
14 change as a result of that. So, you know, we -- we're going to depart at this point. We
15 have the dialogue. We want it to be open. You can come back to us.

16 And we recognize that the letter will require your study, but, you know, you've also
17 placed me in a position where you did not give the full extension that was requested in
18 light of personal circumstances and in light of, you know, the situation that's -- I have to
19 deal with in terms of managing life generally, and so, I think, at this point, we would like to
20 conclude things, and that's our position.

21 Again, that's not a closed door. It's an open door to dialogue.

22 [REDACTED] Mr. Clark, with all due respect, the door has been open since July
23 when the Department of Justice wrote you a letter. I first personally reached out to your
24 counsel in August. The indication was that perhaps you would come in for a voluntary
25 interview. And, when that ultimately was not something to which you agreed, the

1 committee issued you a subpoena with a legal obligation.

2 You changed counsel, and we gave your new counsel a brief indulgence because he
3 had just been retained. And, as a matter of professional courtesy to Mr. MacDougald, we
4 gave you an extra week.

5 But, with all due respect, we have been willing to talk with you, work with you,
6 wanted to do this voluntarily since this summer. So this is not a last-minute attempt to
7 force you without ample notice of our interest to answer questions on the record. Our
8 efforts in good faith to engage with you extend 4 months.

9 The Witness. So, as the letter indicates, I had been reviewing various things,
10 studying legal doctrines, conferring with counsel, so we have similarly proceeded in good
11 faith, and we continue to want to proceed in good faith.

12 But, for today, you know, sitting here to have the same questions be asked and for
13 attempts to, you know, respectfully, to be made to mischaracterize our position, that's not
14 something that it seems to be prudent to continue to do.

15 [REDACTED] The Rules of the House provide that the chair will rule on objections or
16 assertions of privilege. The chair has not yet had an opportunity to rule. Part of the reason
17 for a brief recess and discussion with the chairman is to get -- again, this is all part of
18 completing our record such that the committee can consider other options.

19 So we can stand in recess subject to the call of the chair. We're not concluding the
20 deposition. But the Rules of the House provide a recess subject to the call of the chair as
21 we consult with him and seek his potential ruling on your executive privilege assertion.

22 The Witness. That involves procedures that you will decide how to invoke, and, you
23 know -- but, in terms of our presence, though, we're going to depart. We've made our
24 position clear, and we've made our willingness to engage in a dialogue from this point
25 forward clear, and I think that's where we stand.

1 ██████████ Before I go -- yeah, go ahead, Mr. Raskin.

2 Mr. Raskin. ██████████, what I would just say is that what I'm taking from the
3 representation is that Mr. Clark's lawyer has declared us at an impasse, and Mr. Clark has
4 declared that they're going to leave despite the fact that they're being told to stay under
5 the rules of the committee.

6 ██████████. That is precisely my interpretation.

7 The Witness. Much like -- much like our dispute about the notion of absolutism, the
8 notion that we're at an impasse is also a mischaracterization. I've repeatedly said and the
9 letter says that the dialogue remains open.

10 Mr. Schiff. And, counsel, I just want to add to the record that we were presented
11 with this letter right --

12 ██████████. At 10 o'clock.

13 Mr. Schiff. -- at 10 o'clock this morning. Counsel apologized for the late delivery of
14 this letter, yet counsel has insisted that a one-hour recess to consider the letter further and
15 consult with the chairman of the committee is beyond their willingness to accommodate,
16 and it is their intention to walk out of the deposition notwithstanding the deposition
17 continues.

18 I yield back to counsel.

19 ██████████. Again, my view is precisely the same as Mr. Raskin's and Mr. Schiff's.
20 Disappointing, but we will consider you to have left the deposition that is subject to recall
21 by the chair.

22 Mr. MacDougald. Okay.

23 [Mr. Clark and Mr. MacDougald left the deposition at 11:29 a.m.]

24 ██████████. Okay. We're still on the record, Ms. Lofgren. I just want to make sure
25 that there are things that are entered for the record, right.

1 Exhibit 1 is the letter to Mr. Clark that was sent by the Department of Justice on
2 July 26th, 2021, which I'd ask that we mark and be part of the record as exhibit 1.

3 I believe exhibit 2 will be the letter that Mr. MacDougald delivered to the select
4 committee today.

5 I don't think we need the subpoena to be an exhibit. That's already part of the
6 committee's record.

7 [REDACTED]. We're okay because he showed up.

8 [REDACTED]. He did. So those two exhibits and the DOJ letter and his letter to us
9 will be formally part of the record of the deposition.

10 [Clark Exhibit No. 1

11 Was marked for identification.]

12 [Clark Exhibit No. 2

13 Was marked for identification.]

14 [REDACTED]. And, before we go off the record, is there any other representations
15 here, Mr. Schiff?

16 Mr. Schiff. I would just like to include in the record a copy of the Bloomberg
17 article that counsel for Mr. Clark references in which, per counsel's letter, Mr. Clark was
18 disappointed it didn't include his discussion of January 6th, the interview that was
19 published.

20 He summarizes that conversation with the reporter, but was unwilling today to
21 discuss even what he told the reporter during that interview, and failed to identify any
22 privilege that would cover, even conceivably, an interview that Mr. Clark gave with the
23 press about January 6.

24 And I would like that to be included in the record.

25 [Clark Exhibit No. 3

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Was marked for identification.]

[REDACTED]: I appreciate that.

What I would propose to do quickly is to go through the exercise that he refused to indulge and just put on the record the areas that I intended to develop with him, just, again, so that, for consideration by a court or by DOJ, at least the subject matters that we intended to develop are reflected in an official proceeding.

[REDACTED]: And I just want to make sure that the record reflected when the witness left. It did.

[REDACTED]: Okay. So -- and this won't take 5 hours, as Mr. Clark suggested, but I intended to develop with him a series of questions about documents, what he maintains, his use of personal devices or emails, to get a little bit more information about categories of responsive information that he maintains, whether or not he was withholding any of them on a privilege basis. He has not produced any documents or a privilege log to the committee.

I then intended to develop very simple things about his background, his professional background, his educational background, his current employment.

I would have proceeded then to questions about the institutional role of the Department of Justice in matters of election integrity. There was a November 9th memo from Attorney General Barr to the Department that authorized U.S. Attorneys' offices to investigate credible allegations of voter fraud. I wanted to ask him about the Civil Division or the Environment of Natural Resources Division having any role in voter fraud investigations.

I wanted to ask him about communications he had with President Trump, from his initial introduction to President Trump, which we think occurred sometime in December of 2020, the role of Congressman Perry or Mark Meadows in facilitating that introduction,

1 what they discussed, whether it was about the election or otherwise; who else might
2 have participated in the communication with President Trump, and the specific
3 representations of that discussion.

4 We wanted to talk to him about the White House contacts policy and the fact that
5 his communications with the President violated that White House policy, and the fact that
6 he didn't notify Attorney General Rosen or Deputy Attorney General Donaghue of those
7 communications.

8 We wanted to talk about the reaction by the Department of Justice leadership to
9 their discovery of that meeting, any representations he made to them.

10 We then wanted to talk specifically about efforts that he took, proposed that the
11 Department take with respect to election fraud. We wanted to ask him, for instance,
12 about an ODNI briefing that he sought about alleged interference with Dominion voting
13 machines by the Chinese Government, and a draft letter to Georgia officials that he put
14 forth that asked the Department, or was the Department asking Georgia legislative
15 officials to convene a special session and consider the appointment of an alternate slate
16 of electors. We intended to go through specific representations in that draft letter and
17 ask for their basis.

18 I also wanted to ask him about metadata in that draft letter that indicates some
19 involvement with the White House Communications Agency and the drafting or
20 preparation of that letter.

21 I also wanted to ask him about the response to that proposal from Mr. Rosen and
22 Mr. Clark, which was very strongly negative, Mr. Donaghue's indication that it was
23 factually inaccurate because the Department was not investigating serious allegations of
24 fraud, and institutionally, it would be inappropriate for the Department to suggest to a
25 State that it convene its legislature in a special session, get his reaction to Mr. Donaghue's

1 criticism of those two proposals.

2 I wanted to ask him about a December 28th meeting -- subsequent meeting with
3 Rosen and Donaghue about additional conversations with the White House about the
4 Georgia draft letter or other possible steps to take -- that the Department would take to
5 intervene in the counting of the votes.

6 I wanted to ask him specifically about whether he had any involvement in the
7 appointment of a special counsel, the possibility of holding a press conference to
8 announce the Department's involvement, or the Department's joining a Supreme Court
9 case as a potential plaintiff despite other professionals in the Department indicating that
10 the Department had no standing.

11 We ultimately wanted to ask him about efforts by the President to install him as
12 Acting Attorney General, the basis for that possibility, his discussions with the President
13 about actions he might take if he were appointed as Acting Attorney General. There was
14 a -- wanted to ask him ultimately about a meeting in the Oval Office with the President
15 and others at which his possible appointment as Acting Attorney General was discussed
16 and when the President ultimately decided not to make a change and appoint Mr. Clark
17 as the Acting Attorney General.

18 Finally, we wanted to ask him a series of questions about things beyond his
19 interactions with the President. For instance, his potential involvement in meetings in
20 advance of January 6th with campaign officials, with lawyers who purported to represent
21 the former President, who had come up with theories as to the Vice President's authority
22 to reject slates of electors.

23 We wanted to ask him about the Willard War Room and communications with
24 Steve Bannon, Rudy Giuliani, Bernie Kerik, John Eastman, and others. We wanted to ask
25 him about what he did and what he was aware of on January 6th itself. We wanted to ask

1 him about further interactions at any time he had with the Chief of Staff Mark Meadows,
2 including Mr. Meadows' travel to Georgia, and interaction with Georgia State officials.

3 We wanted to ask Mr. Clark about any campaign activities or discussions with
4 representatives of the Trump campaign, Bill Stepien, and Jason Miller.

5 We wanted to get his substantive view on the Eastman memos. The Eastman
6 memos put forward the theory that the Vice President need not certify the slates of
7 electors that were put forth and were pending his review on January the 6th.

8 We wanted to ask him about any discussions he had with various State officials in
9 Georgia, in Pennsylvania, or elsewhere.

10 We wanted to ask him about interaction with a man named John Lott, who
11 worked at the Department of Justice and wrote a memo that involved some allegations of
12 voter fraud.

13 And we wanted to ask him about the Gohmert v. Pence litigation, the one matter
14 in which the Department did intervene, but simply to indicate that there was no standing
15 by the plaintiff, Congressman Gohmert, to bring that litigation. Mr. Clark actually signed
16 the pleading indicating that the Department -- the Department's view that Mr. Gohmert
17 had no standing, and the case should be dismissed.

18 Let me stop and see if any of my colleagues have additional subject matters that
19 they wanted to flag so that the record reflects the universe of things that we wanted to
20 develop with Mr. Clark. [REDACTED], anything?

21 [REDACTED]. Nope.

22 [REDACTED]. No.

23 [REDACTED]. The only caveat I'd have to all of that was that that is what we
24 intended to ask him as of now, but that this is an ongoing investigation. We continue to
25 develop new facts and seek documents that we haven't yet received, and that that may

1 not ultimately be the final universe of subject matters for Mr. Clark. But that is what we
2 intended to ask him about today.

3 [REDACTED]. And, of course, any other questions that would come up as a result of
4 things that Mr. Clark told us in the deposition.

5 [REDACTED]: Yeah.

6 For the record -- I suppose it's clear, but to make it crystal clear, I proposed going
7 through that list on the record with Mr. Clark so that he and his lawyer would have a
8 sense of the subject matters and would articulate in response to each category the basis
9 for his assertion of executive privilege. He refused to indulge, walked out of the
10 deposition before we had a chance to ask those questions.

11 So I'm now simply making this for the record, but not for Mr. Clark, because he
12 has left the deposition.

13 All right. Anything else that anyone has before we go off the record? [REDACTED],
14 anything?

15 Mr. Schiff, any other statements that we want to make sure are reflected in the
16 official record?

17 Mr. Schiff. Well, I know our committee wanted to ask, among other questions,
18 whether he had destroyed or erased any cell phone or other digital device during the
19 course of 2021. But, as he would not even answer questions as to whether he used
20 personal devices for the conduct of government business, he did not allow us the
21 opportunity to ask that line of questioning either.

22 I viewed his refusal as categorical, without even an assertion of privilege or a
23 claimed assertion of privilege, but a constant reference to a letter, a letter that, in and of
24 itself, was not from the former President directing him not to testify. There has been no
25 legal action by the former President to intervene in this proceeding.

1 Given that his colleagues in the Justice Department in higher positions of authority
2 have testified and his refusal even to answer questions about his statements about
3 January 6th made to the press, those refusals at least strike this member of the
4 committee as not in good faith, and I yield back.

5 ██████████: Yeah. Any other Members? Yes? Mrs. Luria.

6 Mrs. Luria. I just wanted to add for the record that, you know, although he
7 referred to the letter numerous times and refused to answer the vast majority of
8 questions, I felt that he negated his claim to privilege by actually -- his universal claim to
9 privilege for every question by actually answering a select question about the use of the
10 gmail account.

11 So, although he claimed overall privilege, he did negate that on his own by
12 answering a single question, and so that -- I just wanted to place that that was my
13 impression on the record.

14 ██████████: Uh-huh. All right. Any other members of the committee? Yeah.
15 And I'll say that this record will remain open and that we are just going to -- the
16 deposition will stand in recess subject to the call of the chair, so the record will not be
17 closed, but does anyone else have anything now to add? No?

18 I think I made my points about the state of engagement with Mr. Clark. The select
19 committee reached out to him through counsel back in August. We repeatedly sought his
20 voluntary cooperation, and it wasn't until he indicated he would not agree to a date for a
21 voluntary cooperation that we moved to issue him a subpoena

22 He changed counsel very late, only about a week ago. Mr. MacDougald was
23 retained a week ago, but he had previous counsel with whom we were very directly
24 engaged on multiple occasions.

25 All right. Then I think we can go off the record at this point with the caveat that

1 the deposition will stand in recess subject to the call of the chair.

2 [Whereupon, at 11:43 a.m., the deposition was recessed, subject to the call of the

3 chair.]

1

2 [4:15 p.m.]

3 Chairman Thompson. So we will reconvene the deposition of Jeffrey Bossert
4 Clark.

5 The committee will come to order.

6 I understand that [REDACTED], the Select Committee's Chief Investigative Counsel,
7 can update the committee on additional communications with Mr. Clark's attorney.

8 And I now recognize [REDACTED].

9 [REDACTED]. Thank you, Mr. Chairman.

10 Upon the postponement or the recess of -- not postponement -- the recess of the
11 deposition this morning, I immediately reached out to Harry MacDougald, who's counsel
12 to Mr. Clark. Called him. His cell phone, voice mail was full. Sent him a text message,
13 asking him to call me. And then sent an email, essentially letting him know we were
14 going to reconvene at 4:00 o'clock for the purpose of you, Mr. Chairman, considering and
15 ruling upon his objection, and received an email response from Mr. MacDougald at 3:25
16 p.m., indicating that he was already en route back to his office in Atlanta.17 He said it will not be possible for us to return at 4:00. He could not allow Mr. Clark
18 to appear without counsel. And then he sets forth some specific objections to the
19 process, the rules of the House which have the chairman ruling on objections.20 And I will make that email exchange part of the record as an exhibit to the
21 deposition.22 Chairman Thompson. Thank you very much.23 Earlier today, Mr. Clark's attorney, Harry MacDougald, delivered to the
24 Select Committee a letter asserting blanket privileges and objecting to Mr. Clark's further
25 participation in the subpoenaed deposition.

1 Pursuant to House Deposition Authority Regulation 7, a witness may refuse to
2 answer questions only to preserve a privilege. That same authority empowers the chair
3 to rule on any objection.

4 Do we want to recognize other members? If so, we could open the floor for
5 discussion. I know Mr. Raskin, who's in a CPC meeting, had indicated he wanted to say
6 something or potentially.

7 Does any other member wish to be heard on the objection?

8 Ms. Lofgren. I think it's quite clear that Mr. Clark has failed to adhere to the
9 subpoena, the Rules of the House, the precedents in law, in statute, and is completely
10 acting in a lawless way.

11 Chairman Thompson. Well, I thank the gentlelady. And the chair, at this point, is
12 prepared to rule on the objection.

13 As I stated in a letter I sent to Mr. Clark's attorney this afternoon, Mr. Clark does
14 not enjoy categorical claims of privilege across every element of the Select Committee
15 investigation as authorized by House Resolution 503.

16 Accordingly, I overrule the objections asserted by Mr. Clark and direct the witness
17 to answer the questions posed by members and committee counsel, asserting relevant
18 specific privileges on a question-by-question basis.

19 Since the witness has decided not to reappear pursuant to notice, my ruling will
20 be communicated to Mr. Clark in writing. The chair will allow Mr. Clark, until Tuesday, to
21 cooperate with my direction to answer the Select Committee's questions in light of this
22 ruling.

23 Accordingly, the deposition stands in recess subject to the call of the chair. We
24 will close that part of the deposition. And we will now, for the benefit of the
25 Select Committee, just talk about the committee's business, strategy, and what other

1 items we might want to discuss.

2 [REDACTED]: Mr. Chairman, thank you.

3 We wanted to go off the record. We want to make sure we can go off the record
4 now.

5 We will let the court reporter go and thank her very much for her patience today.

6 So we are off the record as of now.

7 [Whereupon, at 4:21 p.m., the committee was recessed, subject to the call of the
8 chair.]

9