



Date: December 15, 2022

Case: In Re: Rudolph W. Giuliani



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DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

- - - - - X

In the Matter of, Board Docket No.
RUDOLPH GIULIANI, 22-BD-027
Respondent. Disciplinary Docket No.

A Temporarily Suspended Member 2020-D253
of the Bar of the District of Vol. 5
Columbia Court of Appeals. :
Bar Number: 237255 :

- - - - - X

Thursday, December 15, 2022

CONTINUED VIRTUAL HEARING OF
RUDOLPH GIULIANI

Reported by

Kim M. Brantley, C.S.R.

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1 Continued virtual hearing, taken via Zoom,
2 commencing at 9:01 a.m., before the Ad Hoc Hearing
3 Committee, and before Kim M. Brantley, a Court
4 Reporter and Notary Public in and for the District
5 of Columbia, when were present on behalf of the
6 respective parties:
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1 APPEARANCES:
2 Ad Hoc Hearing Committee:
3 ROBERT C. BERNIUS, ESQUIRE
4 Chair
5 MS. CAROLYN HAYNESWORTH-MURRELL
6 Public Member
7 JAY BROZOST, ESQUIRE
8 Attorney Member
9
10 On behalf of the DC Attorney Disciplinary
11 System:
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13 Disciplinary Counsel
14 JASON HORRELL, ESQUIRE
15 Assistant Disciplinary Counsel
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1 APPEARANCES CONTINUED:
2 On behalf of Respondent:
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4 HON. BARRY KAMINS, (RET.) ESQUIRE
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10 ALSO PRESENT:
11 AZADEH MATINPOUR, Paralegal
12 DC Disciplinary Counsel
13
14 ALEXANDRA DeBENEDICTIS, ESQUIRE
15 Aidala Bertuna & Kamins, PC
16
17 JIM PHALEN, ESQUIRE
18 MEGHAN BORRAZAS, Staff
19 Office of the Executive Attorney
20
21
22

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1 I N D E X
2 CONTINUED RESPONDENT'S CASE:
3 WITNESS: REDIRECT: RECROSS:
4 Rudolph Giuliani 1163, 1194 1188
5
6 RESPONDENT'S CASE ON MITIGATION:
7 WITNESSES: DIRECT: CROSS:
8 Rudolph Giuliani 1213
9 Robert Costello 1221
10
11 ARGUMENT ON SANCTIONS: PAGE:
12 By Mr. Fox 1228, 1248
13 By Mr. Leventhal 1239, 1250
14
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1 P R O C E E D I N G S
2 CHAIRMAN BERNIUS: Good morning,
3 everyone.
4 Can you hear me, Mr. Kamins, Mr.
5 Leventhal?
6 MS. BORRAZAS: We can't hear you all.
7 MR. KAMINS: Can you hear us now?
8 MS. BORRAZAS: Yes. Is Alexandra
9 helping you? Is that who --
10 MR. KAMINS: Yes, Alexandra is here.
11 MS. BORRAZAS: All right. I'll let her
12 into the room as well then.
13 It looks like on Mr. Leventhal's screen
14 we just see a blank box. We don't see Mr.
15 Giuliani in it.
16 MR. GIULIANI: I'm here.
17 MS. BORRAZAS: I hear you. We just
18 don't see you.
19 MR. KAMINS: And Mr. Leventhal is off
20 camera, but he is present as well.
21 MS. BORRAZAS: Oh, we see you both on
22 the screen. Oh, we see Mr. Giuliani now. Thank

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1 you.
2 CHAIRMAN BERNIUS: All right, good
3 morning again, everybody, anything -- anything --
4 well, does anyone have anything to talk about
5 before I start?
6 MR. FOX: Not me?
7 MR. KAMINS: Not from us.
8 CHAIRMAN BERNIUS: Okay. I'm going to
9 review the bidding here. Last Thursday, which I
10 think was December 8th, we finished testimony,
11 closed -- closed the record on testimony and had
12 oral arguments for an extensive period of time.
13 After that argument the -- the hearing
14 committee convened in executive session to --
15 basically to deliberate to see whether or not we
16 could decide whether Disciplinary Counsel has
17 proved at least one violation, make a preliminary
18 nonbinding finding to that effect. I think we
19 told the parties that we would issue an order
20 on -- on this past Tuesday.
21 The next day we had -- received a
22 statement from the respondent who referred to some

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1 of the discussions of colloquy at the -- at the
2 oral arguments and offered to -- to put respondent
3 back on the stand to testify further about some of
4 his he pre -- pre-litigation investigation, namely
5 testimony describing interviews he conducted in
6 preparation of that litigation.
7 Disciplinary Counsel has opposed that
8 because it's a -- it's a fairly irregular
9 procedure and not contemplated by the rules and
10 doesn't really think that respondent should have
11 an opportunity to -- to testify about matters that
12 he already testified about.
13 That -- that argument has -- has some
14 appeal but, under the circumstances, since
15 although we had -- we had talked about our
16 decision for an extensive period of time, we
17 didn't -- we didn't -- we didn't issue our final
18 order on it and, under those circumstances, I
19 think that it's appropriate for respondent to
20 testify about the matters that he wants to testify
21 about. It's not going to hurt anybody and I think
22 it -- it is not only fair but -- but lends the

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1 appearance of fairness to this proceeding.
2 So we will allow Mr. Giuliani's limited
3 testimony on the topic that his -- his attorney's
4 have said he wants to testify about.
5 But since we're opening the --
6 reopening the hearing, I wanted to raise another
7 point with the parties, and that is with respect
8 to the -- the written exhibits that have been
9 filed. Looking through them, I saw some exhibits
10 from the docket in the district court litigation
11 in Pennsylvania, but I did not see the briefs and
12 memos that were filed in connection with the
13 motion to dismiss: memos in support of it, and I
14 assume there were more than one, maybe not, and
15 memos in opposition to the motion to dismiss.
16 Now I -- I think that I could
17 properly -- we could properly take -- properly
18 take judicial notice of the content of those
19 memos, but I would -- I would ask, if there's no
20 objection from the parties, that Disciplinary
21 Counsel supplement the record by filing just the
22 memos in -- filed in the district court in

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1 connection with the motion to dismiss.
2 Is there any -- is there any problem
3 with that?
4 MR. KAMINS: We -- we have no
5 objection.
6 MR. FOX: I -- I don't think there's
7 any problem, other than the logistical one of
8 locating them. I will say that there were lots of
9 parties who intervened in the -- at the -- in the
10 district court, so there may be lots of pleadings
11 that are compliant with -- with your request. But
12 what I suggest that we'll do is, after we conclude
13 the proceedings today, over the next day or so, we
14 will endeavor to put our arms around those, show
15 them to respondent's counsel, get an agreement
16 that we've -- we've gotten the universe of -- of
17 stuff and then submit it to you. That --
18 CHAIRMAN BERNIUS: Thank you. I --
19 there could be -- I guess there could be a ton of
20 stuff on this and I'm not -- I certainly don't
21 think that it's worthwhile -- if there are amicus
22 briefs filed, you know, it's just parties or

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1 people that were -- intervened as parties. And
2 hopefully multiple parties filed a -- filed a
3 joint brief. I would have thought that, under the
4 circumstances, you would have tried to do that.
5 MR. FOX: I -- I -- I think there's
6 some of that, but my recollection, and maybe I'm
7 wrong about this, was that there were lot of
8 briefs filed. But maybe we can restrict it to
9 the -- we'll -- we'll -- we'll try to figure out a
10 way to agree among ourselves to --
11 CHAIRMAN BERNIUS: Okay.
12 MR. FOX: -- restrict it to say the
13 parties or something like that.
14 CHAIRMAN BERNIUS: Okay. Thank you.
15 Anything else before we start with the
16 evidence?
17 MR. KAMINS: Nothing from us.
18 CHAIRMAN BERNIUS: Okay. Mr. Kamins,
19 you may call your witness.
20 MR. KAMINS: Yes --
21 CHAIRMAN BERNIUS: Mr. Giuliani, I
22 remind you that you're still under oath.

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1 RUDOLPH GIULIANI
2 called as a witness on behalf of Respondent's
3 Counsel, and after having been previously sworn,
4 was examined and testified further as follows:
5 REDIRECT EXAMINATION
6 ON BEHALF OF RESPONDENT'S COUNSEL
7 BY MR. KAMINS:
8 Q. So Mr. Giuliani, pursuant to the
9 understanding of the -- and the order, I want to
10 focus on any steps you took to investigate the
11 information provided to you concerning the 2020
12 presidential election in Pennsylvania.
13 Now you told us last week that after
14 the election you went to Philadelphia on November
15 4th.
16 Is that correct?
17 A. That is correct, sir.
18 Q. And you told us that you went to the
19 convention center?
20 A. My -- my best recollection is that,
21 after some debate on our trip up there, that's
22 where we decided it was the best place for us to

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1 go first.
2 Q. Okay, and at that point, when you went
3 to the center, did you take any steps at that
4 point to begin any investigation?
5 A. Among other things, yes, but I say that
6 because we were probably -- I and my colleagues --
7 were probably doing what you could describe as ten
8 different things, one of which was witnesses
9 telling me what they had observed, or sometimes
10 saying "Who can I tell it to?"
11 Q. Okay, now this is at the center,
12 correct?
13 A. So at the center my main purpose was to
14 be there to aid Corey Lewandowski and Pam Bondi
15 because they had -- in the -- in the -- in some
16 stage of what Corey described of getting the order
17 to see the ballots reversed, and the sheriff had
18 already denied them. I had been informed of that
19 by a sheriff's underling and also by several
20 NYP -- NYPD, oh, my goodness, Pennsylvania --
21 Philadelphia police officers, who -- who I -- I
22 told I'm very close with, that over the years done

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1 many cases with them. They were involved in our
2 mafia cases in the '80s.
3 Q. But let's just focus on --
4 A. So I -- I felt very comfortable asking
5 them, "Hey, guys, what -- what's going on here?"
6 Q. Right.
7 A. Because Corey told me an incredible
8 story that he showed the sheriff the order --
9 he -- honestly, I didn't exactly know what he was
10 describing. It sounded a little strange that he
11 would have an order to allow him to be within
12 striking distance of the -- of the documents, or
13 the sheriff would refuse to enforce it. So I
14 said, "What's going on here?" And he said,
15 "They're acting" -- he used very foul language and
16 he said they're acting like -- I'm trying to find
17 a nice way to put it -- they're acting like
18 they're basically adjuncts of the democratic
19 party.
20 Q. Now, if I can focus you just --
21 A. That's a nice way to put it.
22 Q. All right. So if I can focus you more

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1 on your efforts to investigate the information
2 that was coming in at that point, were any of the
3 people at the convention center asked to sign any
4 documents?
5 A. The people at the convention center
6 were going into anywhere from highly generalized,
7 very conclusory statements, to extraordinarily
8 detailed statements, something like, "I've been
9 shut out all day and then pushed around like I'm a
10 pig".
11 Q. And were they -- and were they talking
12 to you --
13 A. Or --
14 Q. Were they -- were they talking to you?
15 A. Among others.
16 Q. Okay.
17 A. I was sort of a -- they recognized my
18 face, and when they saw my face, they flocked
19 toward me as sort of a repository I guess of all
20 these complaints they had all day. And some of
21 them were giving me extraordinarily detailed
22 information: "Mr. Mayor, I -- I got here exactly

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1 when I was supposed to at 2:00. They wouldn't let
2 me -- they wouldn't let me look at a single
3 ballot, but I -- that didn't stop me. I kept a
4 record. I kept a record. See, see here? I kept
5 a record of every single ballot they stuffed in.
6 And in two hours, they put in 27 ballots -- oh,
7 and by the way, at such and such a time I saw them
8 tear up two ballots, and I've done this for years
9 and you're not allowed to tear up ballots".
10 Q. All right, did you take any steps to
11 document any of this information?
12 A. The statements were on a continuum
13 of -- so general they wouldn't be particularly
14 useful, except in a litigation, except for flavor
15 to -- it could have been very useful.
16 So very shortly, I -- I think I might
17 have written the first one or two down, realized
18 this was very counterproductive and called over
19 either Mike Roman, who had given me a briefing on
20 the day, or, when I couldn't get Mike, Dr. Ryan,
21 and I said, "Would you corral these people. Would
22 you get -- see if you can get their statements.

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1 And maybe we can't get them notarized or signed,
2 but we can get them -- we can get them written up,
3 and then we can get back to them, and just make
4 some sense out of this".
5 Q. Okay. And now you testified also last
6 week that by the 5th, November 5th you had gone to
7 campaign headquarters?
8 A. Yeah, all those things -- right --
9 our -- our original intent was to go to campaign
10 headquarters because we thought we could get a
11 more calmer description of what happened there
12 than in the middle of -- you know, it looked
13 like -- I'm not going to say it was violent, but
14 it had a little element like it was on the verge
15 of possible violence. There was a lot of yelling
16 and -- I don't mean to make a joke. It was like a
17 Philadelphia Eagle football game. But it -- it
18 had -- let's say it wasn't the best place to take
19 statements.
20 Q. Okay, so at some point -- at some point
21 did you, at -- at headquarter, personally
22 interview any people who had information about the

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1 election?
2 A. Yeah. I should say, so we get the
3 testimony in the right -- you know, in the right
4 order, despite the fact that this was chaotic and
5 despite the fact that five other things were going
6 on, and I was getting telephone calls about other
7 cases, I did have -- manage to have a fairly
8 coherent conversation with Mr. Mercer, who sort of
9 helped me in the sense that he was saying, "Here's
10 what they want to tell you". So he put it in
11 categories. He put it in categories for me.
12 And then -- and then I, not as
13 strongly, but more faintly recall someone else
14 helping him, and I do believe that was Mr.
15 Queeder, meaning to say, when he wasn't here, I
16 was here and I continued the watch.
17 Because what -- what Mercer had set up
18 in lieu of being able to see any ballots -- which
19 he was very angry about, because he claimed that
20 every year he did this he was always able to see
21 ballots; democrats never gave him trouble on this
22 before -- he set up a watch, and the watch was --

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1 he designated certain people clear being his
2 number two to set up another group of people that
3 counted ballots that they should have under the
4 law been able to observe.
5 And I should say, it wasn't just the --
6 from their point of view, it wasn't just the law.
7 They really didn't know what the statute said,
8 whether the statute said present, or you can
9 observe, or you can look at it, or you can touch
10 it. They were relying -- most of these people
11 were anywhere from five- to twenty-five-year
12 inspectors, so they were relying on prior
13 practice. And the reason they were in a state of
14 shock was this was so different than prior
15 practice.
16 Q. Now other than --
17 A. They came in that morning fully
18 expecting to sit down. They knew it was going to
19 take forever, because they knew how many -- they
20 were prepared. They even brought extra pairs of
21 glass. And they sat -- they were going to sit
22 down, and some democrat was going to be on one

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1 side, some republican was going to be on the other
2 side. The public official was going to be in the
3 middle. He was going to take the envelope out.
4 The inspector was going to show them the envelope.
5 They were going to check the signature on it.
6 They were going to open it up --
7 CHAIRMAN BERNIUS: Mr. Kamins, I -- the
8 witness is testifying about things that clearly he
9 has no firsthand knowledge of.
10 MR. KAMINS: I'm trying to -- I'm
11 trying to --
12 THE WITNESS: This is hearsay. I'm
13 trying to -- I'm --
14 MR. KAMINS: I'll -- I'll get to the
15 issue at hand, Mr. Bernius.
16 CHAIRMAN BERNIUS: Thank you.
17 BY MR. KAMINS:
18 Q. Yeah, Mr. Giuliani, other than Mr.
19 Kweder and Mr. Mercer, did you personally
20 interview other people --
21 A. Yes.
22 Q. -- who had information about the

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1 election?
2 A. Yes. Other people --
3 Q. And about -- and about how many
4 people -- about approximately how many other
5 people did you personally interview?
6 A. No -- more than four or five; less than
7 ten. And some of them would be brief interviews.
8 Like in the middle of a conversation, one of them
9 would -- I'm looking at some of the names here to
10 try to remind myself, because I remember some of
11 these names. Someone would break in and say,
12 "Yes, that happened to me, too," that kind of
13 thing. And then, when that would happen, I would
14 do the best that I could not to lose them and turn
15 them over to Maria, to -- to Mike.
16 I also had met at this point -- no, I'm
17 sorry. It was later that I did that with Linda.
18 But I eventually did it with Linda Kearns, too.
19 Q. All right. So you're saying --
20 A. It was Linda Kearns as deputy, or --
21 Q. Now when you conducted these interviews
22 personally, did you focus on any particular issue

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1 when interviewing -- interviewing them?
2 A. Well, yeah, they sort of focused me on
3 what I had been hearing as I said coming there,
4 and I had already had a conversation with Ken
5 Starr, I believe, about the idea of a consolidated
6 lawsuit. So I thought that my value here from my
7 little team was not going to be to help Hicks with
8 what he -- he was doing. Because I had already
9 been told by a number of people coming up there
10 what a good lawyer Hicks was and that we could
11 really trust him to put this thing together.
12 Q. So what issue did you focus on?
13 A. The failure to -- the -- what I would
14 call systemic, massive failure to observe.
15 Q. And did -- did that issue fit in with
16 any legal issue you were working on?
17 A. Sure. It fit in -- first of all it was
18 similar to the information or evidence I was
19 getting from four or five other jurisdictions,
20 almost to a T. In fact at times it was confusing,
21 and it's confusing in my memory to separate them.
22 I -- I can get Michigan and what something said to

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1 me in Philadelphia, confused. So it was hitting
2 me that this was all very, very good material if
3 we were going to do an eventual consolidation, and
4 I wanted that preserved as best I could.
5 I was assuming that Hicks, Kearns,
6 Hicks' assistant and Kearns' assistant were
7 handling the Philadelphia part actively, because I
8 had been told they were very good. I also had
9 assured myself -- hadn't met her yet -- but that
10 we had a very good attorney in Pittsburgh.
11 Because during the course of that short time I was
12 there, we had their meeting in charge, we had
13 already run into some pretty bad attorneys.
14 Q. Now did you also make any decisions on
15 rejecting information that you were receiving?
16 A. Well, there was one man who was all
17 over me, very impressive man who had a very, very
18 long, long story of what had happened to him,
19 which I wouldn't even bother you with, a quite
20 credible, long story of what had happened to him,
21 and it was so good that I said to him, you know,
22 we -- "I can't really follow this now, but come

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1 over to the campaign headquarters" -- which he
2 knew -- "and maybe I can have five minutes alone
3 with you".
4 So then this would be a good point
5 to -- to say, you know, we were finished at -- at
6 the convention center and we decided that we would
7 go to the -- that we would go to the campaign
8 headquarters, gather all the information we had.
9 That means myself and my team that I told you
10 about.
11 At that point, Eric Trump, Jr. had
12 shown up and he had information that he had been
13 gathering all day. Corey had other people in
14 other parts of the state that he had either come
15 into the campaign headquarters or calling in.
16 So we were going to all meet at the
17 campaign headquarters and see what's the sum and
18 substance of the evidence he had at that point.
19 Q. All right. In the -- in the next few
20 days going forward, did you make decisions about
21 rejecting any of the information that --
22 A. Yeah, yeah. I told you that, toward

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1 the end --
2 Q. Other than the person you were talking
3 about before. Were there other people --
4 A. No, I rejected -- I rejected -- I don't
5 know, it's hard to say how many. That's -- that
6 one I rejected because, it was a great story and
7 I -- I gave it to Dr. Ryan, and she didn't want to
8 bother Bernie with it, because Bernie was
9 overwhelmed, so she did her own background check.
10 She said, "You're going to have a tough time with
11 this guy" --
12 Q. Other than -- other than --
13 A. He's got a record as long as your arm.
14 Q. Other than that individual, were there
15 other individuals whom you --
16 A. Yeah, we had a person that claimed to
17 be an observer that we could prove wasn't there.
18 We had a person claiming to be a -- a -- a
19 republican observer who was a democrat -- who was
20 a democrat observer who either was trying to set
21 us up or was bitter because he had been fired by
22 the democrats.

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1 So I'd say, I don't know, I -- I can
2 distinctly remember throwing out 15 that you could
3 attribute to Philadelphia. I could be a little
4 wrong, because at the same time I wasn't reviewing
5 them just to -- I was reviewing, you know,
6 Minneapolis with Philadelphia with Atlanta.
7 Q. Well, let's stick -- let's stick to
8 Pennsylvania.
9 A. But I guess the point that I'd like to
10 make for the panel is that it would be unfair if
11 you think we just took every piece of crap that we
12 got. We threw a lot of stuff out.
13 Q. So is it fair to say that you were
14 vetting the information that was -- you personally
15 were vetting much of the information that was
16 coming in?
17 A. Yeah, I was assuming it was being
18 vetted and asking on the way up to me. So
19 sometimes I'd be a little surprised that such a --
20 such a bad one would get that far up.
21 Q. All right. Now, when you testified
22 last week, you did not mention these personal

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1 interviews, correct, that you conducted?
2 A. I don't -- no, I don't believe I did.
3 Q. And -- and was there a reason why you
4 didn't?
5 A. Didn't come up. And I -- I -- I mean,
6 there was only a certain amount of time you have.
7 I didn't know how relevant they would be. I
8 thought -- I mean, my thinking was we had so many
9 affidavits that I submitted. I think I testified
10 I read them all. And I thought that would satisfy
11 the -- the -- the court that I had more than
12 sufficient factual basis for the allegation --
13 Q. The panel, the panel?
14 A. Sorry, the panel. I mean, I -- I
15 read -- I did read through the affidavits, all of
16 them, twice, before I testified, and it seemed to
17 me we had supplied, almost in duplicate,
18 triplicate, whatever, an enormous amount of
19 support for the allegations that we had made, and
20 that that wasn't going to be an issue of personal
21 vetting. But when that came up, I felt sort of
22 unfair because -- I felt it wouldn't be fair if

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1 they thought I didn't -- I didn't do some personal
2 vetting, because I always do in my lawsuits, even
3 if I can only do just a little bit.
4 I used to train my lawyers that you got
5 to -- you've gotta go -- you've gotta go to the
6 bank to observe the bank robbery if you want to
7 try a bank robbery, because there could be a
8 pillar of the way that nobody remembers. And
9 then, you got to get your hands dirty, and you got
10 to talk to the people you're relying on. It gives
11 you things that you otherwise wouldn't get.
12 I didn't -- I didn't want them to think
13 that, because this was truncated, I didn't do
14 that. It -- it kind of worked out that I was able
15 to do it, because I could do it for a different
16 purpose here, which is that overall lawsuit, but
17 it got me into -- I'm looking at this --
18 Q. Now -- now -- now you mentioned --
19 A. I think about 15 of these people, who
20 then again I got to -- and I'm also trying hard,
21 and I will confess, I may have confused one or
22 two, because some of these people came back up

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1 again when we did the Gettysburgh hearing.
2 Q. Now you mentioned a few people by the
3 name of Mr. Kweder and Mr. Mercer.
4 Do you recall any other names of
5 individuals who you personally spoke to?
6 A. Yeah, I spent a -- I spent a lot of
7 time with -- with -- with Katherine.
8 Q. Do you remember her last name?
9 A. Of course I do. Katherine -- I can't
10 remember her last name.
11 Q. Are any other --
12 A. Katherine -- Katherine was in charge of
13 Pittsburgh for us. Katherine had, from the very
14 beginning -- now I remember -- it was a great
15 reluctance to testify but an extraordinary amount
16 of information and -- and -- and even -- even at
17 the point of the argument, the oral argument that
18 I made on the chance that we were going to have a
19 hearing, that Judge Brann would give us a hearing,
20 I was reserving my right to use every amount of
21 skill that I had, and I was waiting mafia people,
22 that's everybody to get her -- to get her to

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1 testify --
2 Q. Would it refresh your recollection to
3 review any -- any notes that you have to --
4 A. (Reading) Katherine Friess.
5 Q. Katherine?
6 A. Friess, F-r-i-e-s-s.
7 Q. Okay.
8 A. Katherine Friess.
9 Q. Are there any other individuals you can
10 recall by name who you interviewed?
11 A. No, I would have to see the name.
12 When I looked at these names, I can
13 tell you the ones that I met, the ones that I
14 interviewed, like Mr. Dietrich, I remember
15 interviewing him; Mr. Ganks (phon), I remember
16 interviewing him; I remember interviewing the
17 lady -- not -- not -- not a significant witness,
18 but kind of a -- kind of a sad situation whom had
19 her son with her who was -- who was suffering from
20 a disability and felt that she had been
21 mistreated.
22 Q. Now you mentioned Mr. Kweder --

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1 A. Kind of -- that one I kind of hugged
2 her and -- and apologized to her for the way she
3 was treated, although she really wasn't --
4 obviously she wasn't (indistinguishable).
5 Q. Now you mentioned Mr. Kweder before.
6 Could you just spell that for the panel.
7 A. I hope I have it right. K-w-e -- I
8 believe it is g-e-r.
9 Q. Are there any other --
10 A. Justin.
11 Q. Right. Are there any other names that
12 you can recall? If not, we'll move on. I just
13 wanted to see if --
14 A. I remember an attorney named McBlaine,
15 because I think I knew him from before. I -- I
16 knew McBlaine from some -- I did -- I had very
17 close friends in Philadelphia in the bar and in
18 politics, including several federal judges. Some
19 of the people that came up to me were members of
20 like republican clubs that I had been involved in,
21 after Dick Thornburgh, or -- or Arlen Specter,
22 both of whom were political allies. People I

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1 campaigned for; they campaigned for me.
2 Q. Now it was brought out last week that
3 Mr. Hicks withdrew from the case on November 12th,
4 correct?
5 A. Yeah, that's the date that we figured
6 out, by process of elimination -- I -- I --
7 Q. So prior -- prior to the --
8 A. I thought of it as closer in time to
9 the actual argument; by "closer" meaning the day
10 before the closing, three days, maybe because
11 everything was compressed to me.
12 Q. Prior to the time Mr. Hicks withdrew,
13 were you conducting these -- this investigative
14 work?
15 A. Well, prior to the time Mr. Hicks
16 withdrew, it was pretty clear that I wasn't going
17 to have that much input in the case, except like I
18 was with the other cases, which is to review it to
19 see could it fit into a group of cases that could
20 be consolidated.
21 That -- that didn't mean -- the end
22 result was they were a group we realized after

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1 analysis couldn't be, and a group that could be,
2 and at this point -- at this point I was just
3 looking for the characteristics that Starr and
4 others had given me that I should be looking for,
5 and also trying to get them on paper, god forbid
6 if we lost some of the witnesses.
7 Q. Once Mr. Hicks withdrew, did your role
8 with regard to investigation change?
9 A. Yeah, because in helping Mr. Hicks, as
10 I did, with the -- with -- with the documents that
11 he was doing, he said might be -- he said it might
12 be helpful during the hearing we're having on this
13 if you come and either argue or I use you as a
14 witness on the other possibilities of this case.
15 Q. And how did things change once --
16 A. And I said, okay, let's -- we never got
17 a chance to resolve it.
18 Q. Right, so once --
19 A. And I don't think we ever resolved it.
20 That seemed like a good idea.
21 Q. So once he did withdraw, how did your
22 role change?

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1 A. Well, at first it was unclear what
2 would happen, if we had enough time to have --
3 first of all, would Linda be able to argue it.
4 Answer, no. Linda wasn't able. We were able --
5 we were able to get that recommendation pretty
6 darn quickly. Second, can we find another lawyer?
7 We had several recommendations. Don't think I
8 have the time to answer -- I remember talking to
9 some lawyers on the phone. I'm not sure the
10 lawyers who were going to argue it, but the
11 lawyers who were friends of friends who could tell
12 you, as I'm sure --
13 MR. FOX: Mr. Chairman, are we
14 discussing this matter that is appropriate? I
15 think we're way off base here.
16 MR. KAMINS: I just -- Mr. Chair, I
17 just wanted to sort of draw a line when the
18 investigative work stopped and when -- in order to
19 help the panel understand what Mr. Giuliani's role
20 before Mr. Hicks withdrew from the case and -- and
21 after.
22 CHAIRMAN BERNIUS: Well, the testimony

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1 is tending to meander a little bit so if about we
2 could be a little more precise in our answer, Mr.
3 Giuliani, it would -- it would help move things
4 along.
5 MR. KAMINS: So -- so -- so --
6 THE WITNESS: Let me see if I can sum
7 up.
8 BY MR. KAMINS:
9 Q. Let me ask -- let me see if I can...
10 Did your investigative work or role
11 stop at the point that Mr. Hicks withdrew?
12 A. No.
13 Q. All right. Well what was your role
14 after he withdrew in the -- in the case? Were you
15 contemplating --
16 A. Shortly -- shortly thereafter it's
17 remained pretty much the same because, for a
18 period of time I assumed we were going to get
19 someone to take over Hicks' role to set. Could
20 have been Kearns. Could have been somebody we
21 hired. Conversations that I was talking too much
22 about were conversations to get recommendations

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1 someone to do that.
2 We finally -- I don't remember exactly
3 how we finally focused on Mr. Scaringi. I spoke
4 to him and he was quite willing to take it on with
5 the caveat that he -- he didn't have enough time.
6 And he said he -- the judge was a very reasonable
7 judge, that there was -- it was a short time
8 period. But he -- he could see possibility of
9 maybe no more than a day or two that the judge
10 might give him. And in that case he would be
11 comfortable arguing the whole thing. He said, "If
12 the judge gives me a truncated period of time,
13 then maybe you'll have to split it with me,
14 because even though you don't know the case, you
15 know it better than I do".
16 CHAIRMAN BERNIUS: Mr. Kamins, we
17 are -- we are really running far afield of what
18 this brief testimony was supposed to be about.
19 MR. KAMINS: All right.
20 BY MR. KAMINS:
21 Q. Anything further on the investigation
22 that you did?

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1 A. No. It got resolved that I was going
2 to argue and I did the best I could in the 13, 14
3 hours that I had when it was obvious I was going
4 to argue to get ready on that part of the case.
5 MR. KAMINS: Okay. I have no
6 further -- yeah, I have no further questions.
7 CHAIRMAN BERNIUS: Mr. Fox?
8 RECROSS EXAMINATION
9 ON BEHALF OF DISCIPLINARY COUNSEL
10 BY MR. FOX:
11 Q. I just want to get the chronology
12 straight.
13 As I understand it, Mr. Giuliani, on
14 the 4th you had a meeting with former President
15 Trump and then went to the headquarters in
16 Virginia.
17 Is that correct?
18 A. You know, Mr. Fox, I think the election
19 was on -- please help me again -- the election was
20 on the 3rd?
21 Q. Yes.
22 A. Okay, yeah, it was the 4th. Yeah.

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1 Q. And it was -- it was at the
2 headquarters in Virginia where you discovered
3 that -- where -- where you began the process of
4 having complaints drafted in these various
5 jurisdictions around the country?
6 Let me try this: You mentioned a moment
7 ago a conversation with Mr. Starr in connection
8 with the idea of a consolidated law school --
9 lawsuit. Was that while you were in Virginia
10 before you went to Philadelphia?
11 A. It was either in Virginia before I went
12 to Philadelphia or in the car as I was driving
13 from Arlington to -- to Philadelphia.
14 Q. Okay. And I think you testified that,
15 while you were in Philadelphia, there were
16 telephone calls about the other cases that you
17 were putting together.
18 Is that correct?
19 A. Both before I left and during the --
20 they were continuous through the day and night.
21 Q. Okay. So the -- the concept of the
22 consolidated lawsuit with these cases in other

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1 jurisdictions was reached before you went to
2 Philadelphia, correct?
3 A. Yeah, I don't know if -- yeah, I would
4 say the possibility. It wasn't, by no means,
5 number one, we had decided we were going to do it,
6 number two, we didn't know if we had the facts to
7 do it, number three, we didn't know if we would
8 attack... a hundred questions, but certainly a
9 possibility that everyone that I talked to thought
10 we should keep open.
11 Q. Now -- and -- and -- and it was also
12 before you went to Philadelphia that you got Mr.
13 Hicks started on preparing the case in
14 Pennsylvania.
15 Is that correct?
16 A. Yeah. I would say, Mr. Fox, he was
17 already started on it in some ways.
18 Q. Okay. Now, as I understood the
19 witnesses that you personally talked to, there was
20 Mr. Mercer, and his two draft affidavits are
21 attached to the letter that you sent me in March
22 of 2020, correct?

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1 A. I think that's right.
2 Q. Okay. If you want to look at it, I'll
3 show it to you. It's --
4 A. No, no, I'm sure -- I'm sure you're
5 right about that. I just don't -- I don't -- I
6 don't personally recollect it right now, but I'm
7 sure you're right.
8 Q. And -- and -- and -- and Mr. Kweder --
9 and that's K-w-e-d-e-r -- his affidavit you also
10 sent to me in that same correspondence?
11 A. That, I don't recall, but again, I'm
12 (indecipherable).
13 Q. And Ms. Friess, F-r-i-e-s-s, who you
14 alluded to, it wasn't an affidavit but she had
15 some notes that you also sent to me at the time,
16 correct?
17 A. Yes, sir, I did.
18 Q. Now are there statements from any of
19 the other witnesses that you interviewed that are
20 included in the materials that your lawyers
21 introduced as Exhibit 1 in this case?
22 A. I -- I thought there were a few -- I

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1 thought there were a few others. I'm relying
2 on -- I thought maybe I put McBlaine in, maybe
3 Peterson.
4 Q. All right.
5 A. I tried to give you -- I mean, I --
6 again, numbers -- the numbers between two and 300,
7 right? So I tried to give you five, six, seven
8 representative ones, picked very quickly.
9 Probably I shouldn't even say "representative,"
10 because we didn't do a particularly good job of
11 saying, well one for this category, one for that
12 category. We gave you the ones that we could put
13 our hands on.
14 I think we wanted to assure you that we
15 didn't make -- we wanted to assure you that we
16 didn't make this stuff up.
17 Q. And -- and the last thing I wanted to
18 ask about was, you -- you said there were up to 15
19 witnesses who you found to be unreliable and who
20 you rejected.
21 Am I -- do I have that right?
22 A. Yeah, that's a very, very rough

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1 guesstimate.
2 Q. Okay. And are these people you spoke
3 to, or are these people whose -- whose statements
4 that you saw -- you saw?
5 A. Both.
6 Q. Both, okay. And have you provided to
7 us any of those statements from the people that
8 you thought were unreliable?
9 A. If they were -- if we had kept them in
10 the file, you would have gotten them. I don't
11 know -- I see -- I seem to recall having reread,
12 in getting ready for one of these litigations, the
13 statement -- the big, long statement from the guy
14 that him impressed me, and we spent a lot of time
15 on that.
16 Q. Do you remember his name?
17 A. I think it was Brown.
18 Q. Brown, okay?
19 A. But I could -- I could be wrong.
20 MR. FOX: Thank you. That's all I
21 have.
22 MR. KAMINS: I just -- I just have one

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1 question.
2 RE-REDIRECT EXAMINATION
3 ON BEHALF OF RESPONDENT:
4 BY MR. KAMINS:
5 Q. Mr. Giuliani, if you rejected
6 information from individuals, did you -- did you
7 keep them or did you just discard them?
8 A. I gave them back -- I -- I -- I'm sorry
9 to say I can't tell you. I gave it back to
10 whoever gave it to me.
11 There's only one unrelated completely
12 in Philadelphia that we kept a record of, because
13 it had national security implications, and that we
14 had an investigation done of. All the rest were
15 the typical thing you get in these cases where
16 somebody wants to be a witness for ego reasons
17 or -- none of them seemed particularly
18 significant. I guess I thought they were going to
19 be preserved but I didn't get it all
20 (indecipherable).
21 MR. KAMINS: And Mr. Chair, just for
22 the record, there is an affidavit that was

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1 submitted by Ms. Friess. It's -- it's in the
2 record.
3 CHAIRMAN BERNIUS: Mr. Fox, anything
4 else?
5 MR. FOX: No, nothing.
6 CHAIRMAN BERNIUS: Mr. Giuliani, I made
7 a note of your -- as you were testifying, and I
8 just wanted to get back to it.
9 I think -- I think you said -- my notes
10 say you said that, "My value was not to help Hicks
11 work up -- basically work up the -- the
12 Pennsylvania case". You -- you were focused on
13 systemic issues which related to the multidistrict
14 litigation.
15 Is that -- is that -- was that your
16 testimony?
17 THE WITNESS: Certainly up to the point
18 where I was drafted to be the only one
19 representing Philadelphia. At that point then I
20 had somewhere between 12 and -- less than 24 hours
21 to be the complete guy for Philadelphia.
22 CHAIRMAN BERNIUS: And I heard that

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1 you -- I heard you went to the Philadelphia
2 Convention Center and talked to some people there.
3 But did you go to -- did you have any involvement
4 in Centre County?
5 THE WITNESS: No, I didn't go there
6 directly. I spoke to people from there, read a
7 lot of affidavits from there, but I didn't go, no.
8 CHAIRMAN BERNIUS: And do you have
9 those affidavits?
10 THE WITNESS: Well they're in the group
11 of -- I mean, a number -- I see a number of the
12 names from are from Centre County, those
13 affidavits are from Centre County.
14 CHAIRMAN BERNIUS: Who was -- who was
15 leading the investigation on that? Was it Hicks?
16 THE WITNESS: No, it was a woman. I'd
17 have to go back and get her name. She was a very
18 competent woman who was -- who was in charge of
19 Centre. There were two people, both females, who
20 were in charge of Centre County.
21 CHAIRMAN BERNIUS: And who was in --
22 who led the investigative work for Chester County.

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1 THE WITNESS: Well the investigators
2 were -- were the same. Mike Roman was more or
3 less the investigator for Pennsylvania. He picked
4 people for different counties. What I'm
5 responding to is who was in charge of the
6 inspectors in those -- in those counties. I spoke
7 to them. There were two in Centre County. There
8 were two in Delaware County. There was Ms. Friess
9 and a second person in charge in Allegheny County
10 whose affidavit was quite lengthy and supports a
11 lot of -- corroborates a lot of what Katherine
12 Friess said.

13 CHAIRMAN BERNIUS: If -- if -- if we
14 were to -- who is the -- who is the person who
15 would be most knowledgeable about the facts
16 underlying the -- the federal litigation? Would
17 that be Mr. Hicks?

18 THE WITNESS: Well up to the point
19 that -- I guess the answer is it's in stages. Up
20 to the point that he left, he would be the one who
21 would be the most valuable.

22 After it was -- after it was -- after

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1 he had left, then it would probably be a
2 combination of me, Joe diGenova, Vicky Toensing
3 and -- and Jenna Ellis, who -- who -- and then
4 ultimately then Mr. Scaringi got up to speed and
5 he was able to take over the case.

6 CHAIRMAN BERNIUS: And Mr. -- Mr.
7 Hicks, is he still with the Porter Wright Firm?

8 THE WITNESS: I'm not absolutely
9 certain, sir.

10 CHAIRMAN BERNIUS: He's not on your
11 witness list. Can you explain why?

12 THE WITNESS: Well -- well, he didn't
13 want to be a witness.

14 MR. KAMINS: We attempted to contact
15 him and he did not cooperate.

16 MR. LEVENTHAL: And I think it was the
17 same with Mr. Fox. I think because the Committee
18 of 65 brought a complaint against him and he's
19 under -- a lot of our witnesses were under advice
20 of attorneys not to give any statements because of
21 other investigations.

22 THE WITNESS: We had a real problem.

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1 Even character witnesses have been unwilling to
2 testify because of repercussions from their law
3 firms.

4 CHAIRMAN BERNIUS: Anything else from
5 the panel?

6 MR. BROZOST: Yes, Mr. Bernius. I have
7 a couple of quick questions.

8 Mr. Giuliani, your testimony this
9 morning dealt with individuals you interviewed or
10 spoke to about the observational boundaries or
11 vantage point issues.

12 Is that correct?

13 THE WITNESS: Mostly, sir, because
14 that's what I thought -- we were talking about
15 many things, but I elected to focus on that
16 because that -- I thought that was the issue you
17 were concerned about.

18 MR. BROZOST: But the other part of
19 your lawsuit dealt with Notice and Cure.

20 Did you do any investigative work on
21 that portion of the case.

22 THE WITNESS: An almost equal amount

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1 of -- of statements that I were given, possibly
2 more because they were shorter. You don't have
3 to -- the set of facts isn't as long about that.

4 I probably spoke to as many people who said to me,
5 "I wasn't able to fix the ballot but I know that
6 the people in another county did," or I was -- I
7 was told that I couldn't cure the ballot but three
8 friends of mine said that in the democratic county
9 they were willing to do it".

10 There's testimony that in general that
11 it was not allowed in republican counties with the
12 reason why that the republican counsel had advised
13 them that it would be a violation of the law if
14 they -- if they did it because the legislation
15 hadn't properly been amended, and that the action
16 of the secretary of state was extra-constitutional
17 extralegal.

18 So you had this division between
19 democrat counties that were following her
20 interpretation, ignoring the fact that the statute
21 made it illegal, and the republican counties that
22 were taking the let's say stricter view that

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1 the -- the -- the secretary of state doesn't have
2 the ability to change the law under Article 2,
3 Section 2, Clause 1.
4 MR. BROZOST: Yeah, no I understand
5 that from many --
6 THE WITNESS: Well many people told me
7 that and I -- I --
8 MR. BROZOST: Do you have affidavits or
9 documents in the record?
10 THE WITNESS: There are many
11 affidavits. There are about 22 affidavits like
12 that among the maybe -- I -- I gave the number
13 during my testimony. One night in between
14 testimony I went and counted them, and it's in the
15 record. I -- I pulled out the affidavits among
16 the 200 and whatever that relate to, not just
17 Notice and Cure, but disparate treatment between
18 republicans and democrats.
19 MR. BROZOST: No, I understand --
20 THE WITNESS: Both -- both individually
21 and --
22 MR. BROZOST: Was that provided to Mr.

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1 Fox in the affidavits?
2 THE WITNESS: They're in the
3 affidavits, yes, sir. They're in the -- they're
4 in Exhibit 1, Plaintiff's Exhibit Number 1.
5 MR. BROZOST: Do you recall any of the
6 names?
7 THE WITNESS: I could get them in a
8 minute. I don't -- I mean, I don't -- I have
9 them -- I can get you some of the names.
10 MR. BROZOST: Okay, I'll check the
11 exhibit list. Thank you, Mr. Giuliani.
12 THE WITNESS: About -- about -- it's
13 about 22, two categories. One of them talks about
14 entire counties that where republicans were not
15 allowed to cure, democrats were. So I'm talking
16 about individual acts where republican was allowed
17 and a democrat wasn't.
18 MR. BROZOST: Thank you.
19 That's all, Mr. Bernius.
20 CHAIRMAN BERNIUS: Ms. Murrell,
21 anything?
22 MS. HAYNESWORTH-MURRELL: No, not at

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1 this time. Thank you.
2 CHAIRMAN BERNIUS: Okay, thank you, Mr.
3 Giuliani. You're excused.
4 THE WITNESS: Thank you, sir.
5 (Witness is excused.)
6 CHAIRMAN BERNIUS: Now, the -- the
7 panel may have some follow-up questions on the
8 evidence before we -- before we go into executive
9 session.
10 Any questions, Mr. Brozost, Ms.
11 Haynesworth-Murrell?
12 MR. BROZOST: Well, I had a question,
13 and maybe this could be addressed in your
14 supplemental briefs, but I couldn't -- I'm still
15 wrestling with the idea of voter dilution.
16 How was that argument reflected in any
17 way in the relief sought.
18 THE WITNESS: I would say that the --
19 many of the laws and decisions of --
20 CHAIRMAN BERNIUS: No, this is not --
21 Mr. Giuliani, this is not a question addressed to
22 you. I'm sorry. This is a -- this is a question

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1 addressed to your counsel.
2 MR. GIULIANI: I thought you meant when
3 I put it in the complaint.
4 MR. LEVENTHAL: Do you want us to
5 address that now or do you want us -- you know, I
6 think we put some of that in our legal memorandum
7 that we had given you.
8 MR. BROZOST: No, I read that. I read
9 that.
10 MR. LEVENTHAL: It wasn't enough
11 apparently. All right, we'll have to do better
12 next time. And we will.
13 But -- but basically what we're saying
14 is that, if we're not counting -- and we have case
15 law in there, that if we're not counting the votes
16 of people who are not allowed to cure, then their
17 vote was diluted in comparison to people whose
18 vote was allowed to be cured. And -- and I think
19 that's clearly a voter dilution standing argument.
20 Now you had pointed out to us that, you
21 know, we -- we couldn't get any relief from suing
22 the republican counties, because they were -- they

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1 believed they were following the law. Now, if
2 we're incorrect, then Mr. Giuliani only hurt his
3 own client, but it's not frivolous. It's not
4 patently frivolous. It's not a bad argument.
5 MR. BROZOST: So what is the relief
6 that you'd be requesting for voter dilution?
7 MR. LEVENTHAL: Well, we -- we would
8 like to find out in -- in discovery what -- who -
9 how many ballots were allowed to be cured in the
10 democratic counties, particularly the seven
11 counties, but it's -- it's also, as we pointed
12 out, an Equal Protection argument that, even if it
13 were done differently in -- in democratic,
14 republican counties, even if it was done in some
15 republican counties, that runs afoul of Bush v.
16 Gore, and -- and -- and Pierce, and one case that
17 I can't even pronounce, but it's in there. It's
18 a -- it's a -- I think it's a Ninth Circuit case,
19 Giaforos (phon), and I can't pronounce it but it's
20 in our papers, clearly a violation of Equal
21 Protection. Even if they did it in some
22 republican counties and not in some democratic

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1 counties, it has to be uniform. It must be
2 uniform.
3 MR. BROZOST: Thank you.
4 CHAIRMAN BERNIUS: Anything else from
5 the panel?
6 MS. HAYNESWORTH-MURRELL: Not at
7 this -- no. No, thank you.
8 CHAIRMAN BERNIUS: All right the -- the
9 hearing committee will now --
10 MR. FOX: Mr. Bernius --
11 CHAIRMAN BERNIUS: -- resume its
12 executive session pursuant to Board Rule XI.11 --
13 I'm sorry, Mr. Fox?
14 MR. FOX: I wanted to make one
15 representation with respect to Mr. Hicks.
16 We did attempt to interview Mr. Hicks,
17 and we spoke with the general counsel for his law
18 firm, and their position was that Mr. Hicks'
19 obligations of confidentiality to his clients
20 under 1.6 refute -- prevented him from being able
21 to speak with us. So it was not -- they did not
22 say that they refused to do it because he was

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1 under investigation or complaints had been made
2 about him, but he thought that his obligations of
3 confidentiality and maintaining privilege
4 prevented him from assisting us, in essence. And
5 so that was the reason that we resorted to the
6 subpoena --
7 MR. LEVENTHAL: May I comment --
8 MR. GIULIANI: No, no --
9 MR. LEVENTHAL: May -- may I comment --
10 MR. GIULIANI: The client waived that.
11 MR. LEVENTHAL: Excuse me --
12 MR. GIULIANI: That's the client's
13 privilege. He waived it. That's President
14 Trump's privilege, not the law firm. Mr. Trump
15 had waived privilege for me to testify.
16 MR. LEVENTHAL: Sir -- Mr. Bernius --
17 Mr. Chair, may I -- may I comment on that?
18 We -- I personally emailed Mr. Hicks,
19 who would not respond. I spoke to Ms. Kearns, and
20 when she heard what I wanted her to do, she said
21 she doesn't feel comfortable talking about that.
22 I also had contacted, by email, Mr. Scaringi; no

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1 response. And I just want to point out, that when
2 I looked up -- I had no knowledge of what had
3 happened, but I saw that the Committee of 65
4 brought charges against all of them and I -- look,
5 we're talking about inferences here, right? My
6 inference is they did not want to talk because
7 they were subject to a -- discipline complaint by
8 the Committee of 65 in Pennsylvania.
9 CHAIRMAN BERNIUS: Okay. I think now
10 we're getting off on a little bit of a tangent.
11 MR. LEVENTHAL: No, but I wanted to
12 respond.
13 CHAIRMAN BERNIUS: Okay. As I was
14 saying, the hearing committee will now go back
15 into executive session, pursuant to Board Rule
16 XI.11, and I -- I note again that we spent
17 considerable time last week in executive session
18 discussing this matter.
19 The rule provides that, in relevant
20 part, quote, "At the conclusion of the evidentiary
21 portion of the hearing and after hearing such
22 final argument as the hearing committee chair

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1 shall permit, the hearing committee shall go into
2 executive session and decide preliminarily whether
3 it finds a violation of any disciplinary rule that
4 has been proven by Disciplinary Counsel".
5 Because of the extensive nature of our
6 earlier deliberations, I will recess this hearing
7 for 15 minutes until 10:10, when we will resume.
8 If we need more time, we will let -- we
9 will let you know and -- and -- continue the
10 recess longer. But right now I think 15 minutes
11 is a reasonable time in which we can consider the
12 testimony we heard this morning in addition to
13 what we discussed last week.
14 So take a break until 10:10. Thank
15 you.
16 MS. BORRAZAS: Opening up the breakout
17 rooms now.
18 (Whereupon at 9:56 a.m. the hearing
19 committee convened for executive session.)
20 (Whereupon at 10:18 a.m. the hearing
21 resumed.)
22 CHAIRMAN BERNIUS: Pursuant to Board

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1 Rule XI.11 the hearing committed has convened in
2 executive session to conclude our preliminary
3 consideration of this matter in light of this
4 morning's testimony.
5 We began our deliberations immediately
6 after closing arguments last week and have
7 considered the evidence presented during the
8 hearing, including that presented this morning,
9 the parties' closing arguments, and they're
10 written submissions.
11 Based on our consideration of the
12 record, we have made a preliminary -- preliminary,
13 nonbinding determination that disciplinary has
14 proved at least one of the charged rule violations
15 by clear and convincing evidence. I must
16 emphasize that under Board Rule XI.11, this
17 decision is preliminary and it is not binding.
18 This is not the final decision of the hearing
19 committee.
20 Following the conclusion of the
21 hearing, we will ask the parties to submit
22 post-hearing briefs and we will then prepare a

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1 report and recommendation, which we will file with
2 the Board on Professional Responsibility.
3 Board Rule XI.11 also provides that, in
4 all cases in which the hearing committee is able
5 to reach such a preliminary, nonbinding
6 determination, the hearing committee shall
7 immediately resume the hearing and permit
8 Disciplinary Counsel to present evidence of prior
9 discipline, if any. Respondent shall be permitted
10 to present any additional evidence in mitigation.
11 We will turn to that now. Mr. Fox, do
12 you have anything to offer at this point?
13 MR. FOX: I do not.
14 MR. KAMINS: Excuse me, Mr. Chair,
15 before we go into the mitigation, I just have a
16 question.
17 Will we be permitted at this point -- I
18 know it's preliminarily, but you mentioned that
19 one of the charges has been -- at least one of the
20 charges has been proven. Are we entitled to know
21 which -- what that charge is?
22 CHAIRMAN BERNIUS: No. The -- the

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1 Board has been clear on that, that, because it's
2 preliminary, because it's not binding, it's not
3 required nor is it appropriate for us to discuss
4 that at this time.
5 MR. GIULIANI: How can we respond? How
6 can we respond?
7 CHAIRMAN BERNIUS: Now, Mr. -- Mr. Fox
8 has nothing.
9 Mr. Kamins, do you have anything to
10 offer in mitigation of sanction?
11 MR. KAMINS: Yes, Mr. Chair, we -- Mr.
12 Chair, we would call Mr. Robert Costello. I -- I
13 think he's in the waiting room.
14 MS. BORRAZAS: No one is in the waiting
15 room at this time.
16 MR. LEVENTHAL: Well, we were just on
17 the phone -- we were just on the phone and he used
18 the link we had sent him last week.
19 MR. LEVENTHAL: Can I call him quickly?
20 MR. KAMINS: Well, in the meantime, I
21 wanted to offer additional mitigation through Mr.
22 Giuliani. We would offer, of course, the

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1 testimony that he gave last week in connection
2 with his public service. I would not have him go
3 through that again. I would offer that portion of
4 the record as mitigation.
5 Would that be acceptable?
6 CHAIRMAN BERNIUS: Yes.
7 MR. KAMINS: All right, in addition to
8 that, I just have a few questions, a few brief
9 questions of Mr. Giuliani. If I can proceed?
10 CHAIRMAN BERNIUS: Yes, you may.
11 (Rudolph Giuliani resumes the witness
12 stand.)
13 RESPONDENT'S CASE ON MITIGATION
14 DIRECT EXAMINATION BY MR. KAMINS:
15 Q. Mr. Giuliani, last week you described
16 your years in public service.
17 In addition to that, have you been
18 responsible for founding any charitable
19 organizations?
20 A. I was -- I wouldn't say I founded, but
21 I was helpful in putting together -- well, yes, I
22 was. I did find an organization known as the Twin

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1 Towers Fund that was set up several days after
2 September 11. I was the -- I was the head of it.
3 I -- I don't remember exactly -- I guess I was the
4 CEO or the chairman or someone else was the CEO.
5 And I raised -- I -- I -- I started that
6 organization for the specific purpose of making
7 sure that my fire fighters and police officers who
8 died on September 11, that their families would
9 never have to worry about educating their children
10 or taking care of their children or would never
11 want for physical things, because there was
12 nothing else I could do for them.
13 We did that for other police officers
14 that died. Very often when the city -- while I
15 say mayor, approximately 52 police officers were
16 killed in the line of duty, and 48 fire fighters
17 and a number of sanitation workers and teachers
18 and -- as to each one of them I always set up a
19 fund in addition to the city's funds, which --
20 which were, believe it or not, more substantial
21 than the federal government provides for soldiers,
22 which shocked me.

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1 Q. In addition to the Twin Tower Fund --
2 A. And we raised -- so we raised -- we
3 raised two hundred and -- excuse me if I have the
4 numbers slightly off, we raised about \$220M. We
5 distributed every penny to the widows, the
6 orphans, the grandparents. We spent no money on
7 administration with the exemption of the money for
8 an accountant, which you have to spend on
9 administration under New York law, because if you
10 don't, then it's considered a conflict of
11 interest. The rest of the administrative money,
12 we didn't spend because I got people to donate
13 their time or I got them to contribute
14 specifically to pay the administrative bill of a
15 lawyer who had to review something or a person who
16 had to build a building. Because I wanted to make
17 sure that I could say to you, if you give me -- if
18 you give my \$5,000, every penny goes to -- goes to
19 the -- to the widows.
20 The second organization I was very
21 involved with was established at or about the same
22 time and -- oh, and that organization, I started

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1 and I concluded it in three years when all of the
2 money was distributed. I was put through a
3 hellish audit by -- by Mr. Schweitzer before he
4 became --
5 Q. You're talking about the Twin Tower
6 Fund?
7 A. Yeah, and is found -- it was found to
8 have wasted no money at all, which he was
9 reluctant to put out, but he did.
10 Q. And what was the second --
11 A. The second one was the Twin Tower Fund.
12 The Twin Tower Fund --
13 Q. That's the one you've been talking
14 about.
15 A. Oh I'm sorry. I'm sorry. Tunnel to
16 Towers. Tunnel Towers was established three or
17 four days after the attack by a family, an
18 extraordinary family known as the Siller family.
19 Stephen Siller was a New York City firefighter, 29
20 years old, lived in Brooklyn. On the day that
21 happened he was off duty, going to play golf with
22 his brother, Frank, and instead of playing golf,

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1 he canceled it; he kissed his four children at
2 home good-bye that were all watching television.
3 He ran to his firehouse, which was four blocks
4 away, he broke into his fire house. He took out
5 his bunker gear, which ways about 70 pounds. He
6 put it on his back, and he ran through the
7 Brooklyn Battery Tunnel...

8 He ran through the Brooklyn Battery
9 Tunnel, to the Twin Towers, ran into the Twin
10 Towers, has been documented as having saved
11 approximately 13 people, who have given testimony
12 about that. Thereafter we lost track of him and
13 he died.

14 The Siller family, several days after,
15 decided to start a run through the Brooklyn
16 Battery Tunnel in memory of what their brother
17 Stephen did to raise money for the same purpose:
18 to -- to give to the families of the firefighters,
19 the police officers, the rescue workers, the
20 construction workers, et cetera.

21 I had to give them permission to do
22 that. At first I was reluctant to do it, because

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1 the FBI and the CIA wanted that tunnel to be just
2 for them, so that they could move very, very
3 important material. This is no longer classified
4 information, but one of the buildings that went
5 down was a CIA special site. So it had to be
6 guarded very carefully for -- for a month, and it
7 led to a lot of the conspiracy -- a slurry of
8 conspiracy theories. But in any -- in any event,
9 we started that. I had been involved in it from
10 day one -- from day one on the board. I chair
11 their golf tournament. I chair their dinners. I
12 go to their events. I sat down with major donors
13 and helped raise three million and five million
14 and eight million.

15 The long and short of it is, after they
16 took care of the needs of all of the firefighters
17 and police officers, they expanded to taking care
18 of the needs of firefighters, police officers and
19 military people who died in the line of duty.
20 They -- they paid the mortgage on the home
21 immediately. They also helped them with getting
22 the children through school. They're with them

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1 for the rest of their lives with help.

2 And then for catastrophically injured
3 warriors -- because in the wars we fight now, less
4 people die but more people are seriously injured
5 and live -- they built smart homes. They built
6 homes so that you can have a maximum degree of
7 independence. And it's a wonderful thing to -- to
8 see. I believe they've done over a hundred of
9 these homes; they're on schedule to do a thousand,
10 and they have a program you may have seen on
11 television. This ask you to put in \$11 a month so
12 that you will build these homes for paraplegic and
13 catastrophically injured warriors.

14 Just this morning I was late coming
15 here because we had a telethon for them to raise
16 money with Frank Siller, who is the person who
17 runs it. So I feel I have an obligation any time
18 he asks me or anybody else having to do with
19 September 11th to do whatever I can do to -- to --
20 to help. I help.

21 I also help out with a lot of Catholic
22 charities and sports charities, but those are the

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1 two that I devote the most of my time to.

2 I read -- I read The Nice Before
3 Christmas to the foster children at Hail House
4 every year. I've done it for 27 years. I dress
5 up as Santa Claus.

6 MR. KAMINS: All right, thank you.
7 (Witness is excused.)

8 MR. KAMINS: That concludes that
9 portion of Mr. Giuliani's testimony. We'd now
10 like to --

11 Is Mr. Costello in the waiting room?
12 MS. BORRAZAS: He is.

13 MR. KAMINS: All right. Could you
14 please let him in?

15 CHAIRMAN BERNIUS: Yes, letting him in
16 now.

17 (Robert Costello on the witness stand.)
18 MS. BORRAZAS: Mr. Costello, can you
19 start your camera.

20 CHAIRMAN BERNIUS: Sorry. Good
21 morning, Mr. Costello.

22 THE WITNESS: Good morning.

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1 CHAIRMAN BERNIUS: Do you swear or
2 affirm that the testimony you give in this matter
3 will be the truth, the whole truth and nothing but
4 the truth, so help you god?
5 THE WITNESS: Absolutely, yes.
6 CHAIRMAN BERNIUS: You made proceed,
7 Mr. Kamins.
8 MR. KAMINS: Thank you.
9 Whereupon,
10 ROBERT COSTELLO,
11 called as a witness on behalf of Respondent, and
12 after having been first duly sworn, was examined
13 and testified as follows:
14 DIRECT EXAMINATION
15 BY COUNSEL FOR RESPONDENT:
16 BY MR. KAMINS:
17 Q. Mr. Costello, are you currently
18 practicing law?
19 A. I am.
20 Q. And where are you admitted to practice?
21 A. I'm admitted to practice in the State
22 of New York the Southern District of New York, the

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1 Eastern District of New York and the United States
2 Supreme Court.
3 Q. And are you currently employed?
4 A. I am.
5 Q. And where are you employed?
6 A. I'm a partner at Davidoff Hutcher &
7 Citron, at 630 Third Avenue, New York, New York.
8 Q. And what type of practice are you
9 engaged in?
10 A. I do civil and criminal litigation.
11 The criminal litigation is limited to white collar
12 investigations.
13 That type of material.
14 Q. And prior to your practice, private
15 practice, did you serve in public service?
16 A. I did. I was an assistant United
17 States attorney in the Southern District of New
18 York and deputy chief for the criminal division of
19 that office.
20 Q. And what types of cases --
21 A. This is a little anecdote: before that,
22 in between my second and third year of law school,

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1 I was a student assistant in the United States
2 Attorneys Office for the Southern District of New
3 York, where I worked directly with Rudy Giuliani.
4 Q. That's what I was getting to. So you
5 know Mr. Giuliani?
6 A. For 51 years.
7 Q. And tell us again, how did you meet
8 him?
9 A. When I took a job as a student
10 assistant in the United States Attorneys Office,
11 during the summer between my second and third year
12 of law school, the Assistant U.S. Attorney that I
13 was assigned to was Rudolph W. Giuliani, who at
14 the time had a full head of hair and a moustache.
15 But I still recognize him.
16 Q. And since that time, have you
17 maintained a relationship with Mr. Giuliani?
18 A. I have, absolutely. And for the last
19 three years I've been representing Mr. Giuliani in
20 connection with an investigation of the Southern
21 District of New York into alleged FARA, Foreign
22 Agent Registration Act violations, which turned

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1 out to be absolutely nothing.
2 Two or three weeks ago, the United
3 States Attorneys Office, breaking with tradition,
4 issued a public statement saying that they were
5 not bringing any charges against Mr. Giuliani, and
6 this is after we had reviewed -- at least I had --
7 reviewed every email and text message written on
8 any of his electronic devices for the past 20
9 years.
10 Q. You -- you personally reviewed that
11 those -- that information?
12 A. I did. My assignment was -- we had a
13 special master in that case, because Mr. Giuliani
14 was not only a lawyer but the personal counsel for
15 the President of the United States. The U.S.
16 Attorneys Office initiated the move for a special
17 master so that we could review privileged
18 documents and make claims of privilege. That
19 meant that every single piece of electronic
20 evidence was delivered to the special master, who
21 delivered it to me, to decide whether we were
22 going to claim executive privilege,

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1 attorney/client privilege, work product privilege,
2 et cetera. And then the special master would make
3 a ruling and if we disagreed, the district judge
4 would then be the decider of that. But we never
5 needed to go to the district judge. We agreed on
6 virtually everything.

7 Q. All right --

8 A. But in the process, I had to review
9 every single email and text message way outside of
10 the scope of the criminal investigation. But, you
11 know, I -- I don't know anybody that could stand
12 up to that kind of scrutiny. I literally have
13 seen Mr. Giuliani's electronic soul.

14 Q. Now, Mr. Costello, based on your 50 --
15 or more than fifty-year relationship with Mr.
16 Giuliani, have you formed an opinion as to the
17 character of Mr. Giuliani?

18 A. Absolutely. He's one of the finest
19 individuals I've had the pleasure to meet in my
20 life. I know this guy probably better than
21 himself actually, because I saw him practicing
22 when he was an unknown assistant U.S. attorney.

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1 And by the way, during his career, he never lost a
2 case as an assistant U.S. attorney, and I think
3 everybody knows his record as the United States
4 Attorney for the Southern District of New York.

5 This is an extraordinary guy, an
6 extraordinary lawyer who really -- his inner soul
7 believes in winning. He doesn't take chances in
8 cases. This -- the thought that this guy would
9 file a frivolous lawsuit is just unimaginable to
10 me, because Rudy Giuliani is smart enough to know
11 that a frivolous lawsuit is going to result, at
12 the very least, in a loss -- and he doesn't like
13 to lose -- and it's -- it could result in a
14 situation that he's in right any.

15 So, there's not a chance in the world
16 that this guy would have knowingly filed a
17 frivolous lawsuit.

18 He was in charge of seven, I think, or
19 eight state litigations at the same time, and so
20 he had to rely on other people, other lawyers who
21 were practiced in the art of election law, which
22 is certainly not Mr. Giuliani's specialty. He has

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1 a lot more knowledge about that than I certainly
2 do. But there isn't a chance in the world. I
3 would stake my life on that, that he wouldn't file
4 a frivolous lawsuit knowingly.

5 MR. KAMINS: I have nothing further,
6 Mr. Bernius.

7 MR. FOX: No questions.

8 CHAIRMAN BERNIUS: Mr. Fox?

9 MR. FOX: No questions.

10 CHAIRMAN BERNIUS: Thank you, Mr.
11 Costello.

12 THE WITNESS: Thank you. Thank you
13 all.

14 (Witness is excused.)

15 CHAIRMAN BERNIUS: Mr. Kamins, anything
16 else?

17 MR. KAMINS: No, nothing further.
18 No -- no further mitigation.

19 CHAIRMAN BERNIUS: Thank you. The --
20 with the exception of the supplementation of the
21 record with the district court's filings that we
22 discussed earlier, the -- the case is closed. The

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1 hearing is completed.

2 I think it would -- it would be
3 productive at this point, though, if we had some
4 oral argument on the issue of sanction.

5 In my experience, assuming we find a
6 violation after the filing of the briefs and
7 proposed findings of fact, assuming we reach that
8 point, we have to make a recommendation on
9 sanction, which is often one of the most difficult
10 decisions a hearing committee or indeed the Board
11 can make.

12 So I'd like to hear first Mr. Fox
13 and -- and then respondent as to what their
14 recommendations are as to sanction in this case.

15 First, Mr. Fox, do you have any
16 comments?

17 ARGUMENT ON SANCTIONS
18 ON BEHALF OF DISCIPLINARY COUNSEL
19 BY MR. FOX:

20 MR. FOX: Yes. As I'm -- as I know you
21 know very well, Mr. Bernius, there's substantial
22 case law about how the hearing committee and

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1 ultimately the court reaches sanction in these
2 cases: the so-called five factors, the notion that
3 the sanction should be consistent with sanctions
4 imposed in other similar cases.
5 But I believe that in this situation
6 that that case law is irrelevant. I said I think
7 in the -- my initial argument in this case that
8 what Mr. Giuliani did was use his law license to
9 undermine the legitimacy of a presidential
10 election, and by doing so, to undermine the basic
11 premise of the democratic system that we all live
12 in, enshrined in our Constitution, which is that,
13 when an election is over and the results are
14 determined, losers concede and the winner governs;
15 a principal that was established in 180, as I
16 think I said in my opening statement as well.
17 When we didn't have political parties in those
18 days -- they called them factions -- but when John
19 Adams was defeated in his effort to get a second
20 term, there was at the time considerable
21 apprehension as to what would happen...
22 Remember this was a very new system of

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1 government. Benjamin Franklin famously said, at
2 the conclusion of the Constitutional Convention,
3 if it's republican, you can keep it, and there was
4 a question as to whether you can keep it. And
5 Adams established that we could by going back to
6 Massachusetts and retiring and allowing Jefferson
7 to become president. That principal has endured
8 in the United States ever since.
9 In 1865 -- 1861, obviously some states
10 did not want to acknowledge -- did not want to
11 continue in the union, but even then I don't think
12 the challenge to Lincoln's presidency was that he
13 hadn't been elected. The challenge was they
14 wouldn't -- the southern states would not live
15 with it.
16 And I guess the closest we came after
17 that was maybe -- was the Hayes-Tilden election
18 and the famous Wormley House deal which, to our
19 shame, ended with reconstruction.
20 But in all those cases, the losing
21 candidate and his supporters conceded and they did
22 not do what Mr. Giuliani did. Mr. Giuliani has

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1 testified on several occasions that he believes
2 there was a conspiracy. Well there was a
3 conspiracy and he was the head of it. I'm not
4 saying it was a criminal conspiracy, but it was
5 certainly a civil conspiracy, and the conspiracy
6 was he left the White House on January -- on -- on
7 November 4 and immediately determined that they
8 were going to challenge the results of this
9 election, before they had any evidence.
10 MR. GIULIANI: It's not on the record.
11 MR. FOX: They went -- you know, he
12 testified, he reiterated it today. They were
13 going to put together some kind of national
14 challenge in multiple states. It was shoot first,
15 ask questions later. Lawyers can't do that, but
16 in the context in which Mr. Giuliani did it, it
17 was the most serious violation of Rule 3.1 that
18 this country is ever going to experience, I hope.
19 And so, I think this case, the
20 seriousness of the misconduct, calls for only one
21 sanction, and that is the sanction of disbarment.
22 CHAIRMAN BERNIUS: Mr. Fox, let me ask

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1 you first, is there -- is there any Pennsylvania
2 law that -- that deals with sanction on 3.1 --
3 Rule 3.1 violations?
4 MR. FOX: Mr. Bernius, I don't know off
5 the top of my head, but I will tell you this, the
6 case law in the District of Columbia is that, even
7 though you are applying the substantive law of the
8 state in which the misconduct occurred, that you
9 apply the sanction rule for the District of
10 Columbia. We'll provide you cases on that at the
11 appropriate time. So I think the DC sanction law
12 is the one that's appropriate.
13 CHAIRMAN BERNIUS: Are you suggesting
14 that we should disregard the five- or six-factor
15 test that's been laid out by the court of appeals?
16 MR. FOX: I don't know that I would use
17 the word "disregard" as much as I would say that
18 the first of those factors, the nature of the
19 misconduct in this case is so overwhelming that
20 the other factors are I believe irrelevant.
21 CHAIRMAN BERNIUS: Because I don't know
22 if you'd bring a petition to ignore the test. I

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1 mean, I think whatever sanction we apply has to be
2 consistent with the application of the test that
3 the court of appeals has -- has articulated.
4 MR. FOX: Well, I understand that
5 and -- and -- and what I've just suggested to you
6 I think is a way to harmonize the -- the
7 recommendation with that --
8 CHAIRMAN BERNIUS: You've got -- you've
9 got some -- you've got some problems, though.
10 Don't you mean in the -- in terms of the
11 comparability, the -- probably the most egregious
12 case that I'm aware of in -- in terms of 3.1 is
13 Pierson, which was -- which was a lawsuit that
14 brought over the alleged loss of a pair of pants
15 and damages were \$62M. That was a pretty extreme
16 claim, and the -- and the sanction was 90 days.
17 So from 90 days to disbarment is quite a leap,
18 isn't it?
19 MR. FOX: I -- I agree with you 100%,
20 but I don't think that the comparison of an
21 extremely frivolous complaint over a pair of pants
22 against a dry cleaner compares with violating the

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1 basic oath that we all take to support the
2 Constitution. That's whatever DC lawyer says.
3 And to try to undermine the legitimacy of the
4 election.
5 And look -- I mean, you -- you -- you
6 cannot be oblivious to what has gone on in this
7 country since November 3rd of 2020, and the harm
8 that Mr. Giuliani initiated, which is part of a
9 continuum. It goes from filing lawsuits that are
10 all unsubstantiated to, you know, efforts to get
11 the vice president not to certify the results of
12 the election, to what we started --
13 CHAIRMAN BERNIUS: We're getting a
14 little beyond the record here, though right? I
15 mean, that's --
16 MR. FOX: I don't think it's beyond the
17 record to -- you know, to look at the events that
18 everybody in this country knows occurred, and this
19 was part of the continuum. I think it was a
20 harm -- a fundamental harm to the fabric of the
21 country that could well be irreparable. But it
22 certainly is something that -- that -- that the

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1 court -- that this hearing committee, the Board
2 and all through the court ought to say cannot be
3 tolerated; that certainly in the future any lawyer
4 that engages in this kind of misconduct, harming
5 the country as this has done, has at least got to
6 realize that his or her law license is at risk.
7 And, yes, it's unprecedented but I think the harm
8 that was done is unprecedented.
9 I've, you know, been involved in the
10 disciplinary system for 35 years maybe, and I
11 can't think of another case that approaches this
12 in terms of the seriousness of the misconduct.
13 So, it -- it is my position, and I'm going to
14 adhere to this position -- you may or not -- you
15 obviously may not agree with it -- but it is my
16 position that the only, the only sanction that's
17 appropriate for this kind of conduct is
18 disbarment.
19 CHAIRMAN BERNIUS: One of the other
20 factors that we have to take into account is --
21 is -- is mitigation evidence and -- and on that
22 there is, it seems to me, a, you know, a fair

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1 amount that has been testified to in terms of Mr.
2 Giuliani's conduct, although most of it appears to
3 be quite some time ago.
4 Is that -- how do you factor that into
5 your recommendation.
6 MR. FOX: Look, Mr. Giuliani -- I mean,
7 you know, Mr. Giuliani's service as the United
8 States Attorney and his service as the mayor is --
9 is not without criticism. There is no question
10 that his conduct in the wake of the events of 9/11
11 was admirable, more than admirable. But as you
12 said, that was 20 years ago, and I don't know
13 whether something has happened to Mr. Giuliani in
14 the interim or what, but, you know, it's like
15 there's two different people. There's the person
16 who responded in a way that very few people could
17 respond to 9/11 and showed remarkable leadership
18 at that time, and there's the person who attempted
19 to undermined -- who attempted to undermine the
20 legitimacy of a presidential election, without a
21 basis to do so. And I don't think that --
22 MR. KAMINS: We would object -- Mr.

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1 Chair. We would object to this discussion. It's
2 not part of the record and we think it's
3 inappropriate.
4 CHAIRMAN BERNIUS: Overruled.
5 MR. FOX: And I don't think that that
6 prior service justifies imposing a sanction lesser
7 than disbarment for this extraordinary misconduct
8 in which he engaged.
9 CHAIRMAN BERNIUS: Anything else, Mr.
10 Fox?
11 MR. FOX: No, sir.
12 MR. BROZOST: Mr. Bernius, I have a
13 question for Mr. Fox.
14 In the discussion, you laid out a
15 litany where there was a peaceful transfer of
16 power throughout American history, and what I am
17 struggling with is -- is any time there is a
18 challenge to an election that is unsuccessful --
19 MR. GIULIANI: Please take it clear I
20 had nothing to do with that.
21 MS. BORRAZAS: Mr. Giuliani, can you
22 put yourself on mute, please.

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1 MR. BROZOST: Would that constitute
2 sanctionable activity, if it's unsuccessful?
3 MR. FOX: No, sir.
4 I mean, look, let's go to Bush v. Gore.
5 Bush v. Gore was a state election challenge in an
6 election that was decided I -- my recollection was
7 less than 500 votes statewide, and there was a
8 legitimate election challenge that was filed and
9 I -- there -- there -- there's nothing wrong with
10 that. And if -- let's take Pennsylvania for
11 example. Eighty thousand votes is a lot to
12 overcome. But Pennsylvania's got, you know,
13 provisions and laws. The states run the
14 elections. File an election challenge if you've
15 got a basis to do so. I don't think there's
16 anything wrong with that. But that isn't what
17 they did. They brought a civil rights action in
18 federal court. And I believe all of the actions
19 that were filed nationwide that Mr. Giuliani
20 headed up were -- were -- were similarly filed in
21 federal court. They weren't election challenges
22 to close elections. I mean, that's perfectly

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1 legitimate, but that wasn't what they did. And --
2 and -- and it was a coordinated effort to
3 undermine the legitimacy of the election. And
4 if -- if -- if we don't believe in elections in
5 this country, we've lost our democracy. And that
6 is what they -- he attempted to do, and it is not
7 an election contest. That -- I have no problem
8 with that.
9 MR. BROZOST: Thank you.
10 CHAIRMAN BERNIUS: Mr. Kamins or Mr.
11 Leventhal?
12 ARGUMENT ON SANCTIONS
13 ON BEHALF OR RESPONDENT
14 BY MR. LEVENTHAL:
15 MR. LEVENTHAL: I will take the lead on
16 this, if I may, Mr. Bernius.
17 Number one, Mr. Giuliani has totally
18 cooperated in the DC Counsel's investigation. He
19 has met -- he has agreed to meet with Mr. -- Mr.
20 Fox on a video zoom to explain his position
21 earlier. It's evidenced by two of our -- two of
22 our submissions that Mr. Kamins and I have

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1 submitted, which is in the record in our -- in our
2 exhibits. So -- so we just want to know, let you
3 know that he's absolutely cooperating. We want
4 the panel to know that this truncated time frame,
5 where everything had to be decided by November
6 23rd for the certification of Pennsylvania, that
7 he relied on others, including Mr. Hicks, who
8 argued the Pierce case, which had an Equal
9 Protection argument that was relied on here and
10 which we relied on, amongst other cases. He
11 relied on others to file the initial lawsuit. His
12 contribution was that this occurred in other
13 states.
14 The fact that other lawyers left the
15 case -- I don't want to go into detail, but you
16 can look at Judge Brann's introduction. He noted
17 that attorneys for the plaintiffs both appeared
18 and withdrew within 72 hours. Both withdrawals
19 came because of pressure from their firms and
20 external threats against the lawyers personally.
21 On November 9th the complaint was
22 filed, as you know, by Hicks and McGee. On

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1 November 12th they moved to withdraw and two Texas
2 attorneys came in as cocounsel to Kearns.
3 On November 13th, the Third Circuit
4 just issued its Bognet decision, which was -- cert
5 was applied for shortly thereafter.
6 On November 15th, Kearns and Scott,
7 without Mr. Giuliani's -- filed the first -- filed
8 the amended complaint. On November 16th,
9 defendants filed a motion to dismiss. Later that
10 evening Kearns, along with Scott and Hughes, moved
11 to withdrew from litigation. This withdrawal, as
12 the earlier litigation, was occasioned by pressure
13 from their law firms, as well as personal threats
14 against the lawyers.
15 As Mr. -- as they had only been i the
16 case of 72 hours, Judge Brann let them withdraw
17 but kept Kearns in the case so that there would be
18 continuity and that she could answer questions.
19 Oral argument was scheduled for the
20 next day on November 17th, and Judge Brann wanted
21 to have someone to be able to answer the
22 questions.

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1 On the 16th, Scaringi entered his
2 notice of appearance and asked for more time. He
3 planned to argue this case. He wasn't given more
4 time so Mr. Giuliani stepped in the lurch.
5 So he, faced with the attrition of
6 counsel who would argue the case, made an
7 application to appear pro hac vice, and the court
8 accepted that.
9 If you also look at Judge Brann's
10 colloquy with the attorneys, it doesn't appear
11 that he was going to sanction Mr. Giuliani, even
12 though he could have.
13 Now, let's take politics out of this
14 equation and let's treat Mr. Giuliani like any
15 other attorney, as Mr. Bernius has said with the
16 five factors. That case was a \$92M lawsuit over a
17 pair of pants, where I think -- correct me if I'm
18 wrong -- there was 19,000 or \$30,000 for car
19 fare -- a car service to go to another dry
20 cleaner, emotional distress, and there was a
21 ninety-day suspension. Why disregard the
22 precedent in this case? Why not treat Mr.

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1 Giuliani like any other lawyer?
2 His mitigation, his long service to the
3 country, both as the third highest ranking person
4 in the Attorney General's Office; as the U.S.
5 Attorney for the Southern District of New York,
6 where he prosecuted numerous financial misconduct
7 cases, as well as organized crime cases, breaking
8 up the five families in New York; his charitable
9 contributions that continue now in the wake of
10 9/11, this politics is not in the record. One
11 federal judge has absolved him from anything
12 regarding January 6th in this case.
13 This is not about politics. In fact
14 this would chill any advocacy and this is --
15 Mr. -- Mr. Fox is asking us to take politics, we
16 should take this out of the equation, judge him
17 like any other attorney.
18 So we believe that, in light of the
19 preliminary finding, not a final recommendation,
20 that there was clear and convincing evidence that
21 Mr. Giuliani might have violated a -- one of the
22 rules in at least one aspect of this litigation,

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1 although we do obviously take issue with that. We
2 feel that, assuming arguendo, this would be the
3 final, we believe the least serious discipline
4 should be imposed, otherwise you're going to chill
5 effective advocacy in the future, and politics
6 should not pay -- play any part, we hope, and we
7 trust, in this committee's final recommendation.
8 CHAIRMAN BERNIUS: What's your view of
9 the appropriate sanction?
10 MR. LEVENTHAL: At least a letter of
11 reprimand or -- or a private admonition.
12 CHAIRMAN BERNIUS: So he -- he should
13 not be sanctioned so harshly -- as harshly as
14 somebody who sued a dry cleaner over a lost pair
15 of pants?
16 MR. LEVENTHAL: Well, but he didn't
17 just sue a dry cleaner. He asked for \$92M in
18 damages. Mr. Giuliani didn't -- look, his case
19 was denied -- his case was over very quickly.
20 They went to the appeal court a couple of days
21 later and didn't pursue it after that.
22 CHAIRMAN BERNIUS: Roy Pierson was

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1 sanctioned and suspended for 90 days --
2 MR. LEVENTHAL: Correct.
3 CHAIRMAN BERNIUS: Because of his --
4 essentially because of the extensive remedy that
5 he sought. He sought incredible money damages
6 for -- that were way out of whack with the loss of
7 a pair of pants.
8 So how -- how -- respond to Mr. Fox's
9 argument that, really what's going on here is that
10 he's seeking sanction based on the extraordinary
11 remedy that was sought by Mr. Giuliani in that
12 litigation, which would have disrupted our entire
13 society. How do you -- isn't that more
14 significant than a simple money damages claim?
15 MR. LEVENTHAL: I -- I don't want to be
16 repetitive, but I think I pointed out earlier in
17 this case that it is -- in the request for
18 preliminary or temporary restraining order, it was
19 just sought to keep the status quo, don't certify
20 the election until a hearing can be held and where
21 he would try and attempt to prove the allegations
22 made on the Due Process, the Equal Protection

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1 argument. And if that were sustained -- as I
2 pointed out in the legal memorandum that I
3 submitted, in the Wisconsin Supreme Court case,
4 four judges said that the remedy requested was too
5 drastic and three judges in the majority pointed
6 out in a footnote that asking for such further and
7 equitable relief, that anything is possible,
8 including maybe a new election, if he proved it.
9 So he didn't ask for anything drastic
10 in the -- in the temporary restraining order. He
11 basically asked for relief if everything was
12 proven. So he didn't -- he didn't ask to stop
13 everything, turn the election over to Mr. Trump.
14 He asked for keeping the status quo until a
15 hearing can be held. Now I know I said that
16 before, but I'm saying again.
17 CHAIRMAN BERNIUS: Thank you, Mr.
18 Leventhal.
19 Mr. Fox, anything else?
20 MR. FOX: No, I have nothing at this
21 point in time.
22 CHAIRMAN BERNIUS: Anything from the

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1 hearing committee?
2 MR. LEVENTHAL: Can I -- can I have a
3 moment, please, to confer with my client? I'm
4 going to take my microphone off.
5 (Brief pause.)
6 MR. LEVENTHAL: Yes, there's one more
7 thing I'd like to state.
8 Nowhere in the charges does it charge
9 Mr. Giuliani with undermining democracy, with
10 destroying democracy, and I think it's a little
11 unfair to -- for that to be a factor in your
12 calculus of the appropriate sanction.
13 If anything, a federal judge has found
14 under Iqbal Twombly, which Mr. Fox is relying on,
15 in Bernie Thompson vs. Trump, that any claim
16 against Mr. Giuliani does not cross the line from
17 conceivable to plausible as a conspirator.
18 So, look, we didn't bring that in.
19 They should not be able to bring -- to bring that
20 in. It's irrelevant to this determination on
21 sanction, and I think Mr. -- Mr. Fox is trying to
22 sway the -- the panel -- the panel for a more

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1 harsh sanction by bringing in this background,
2 this noise that is not in the complaint or the
3 record.
4 CHAIRMAN BERNIUS: How about that, Mr.
5 Fox? What do you have to say to that?
6 REBUTTAL ARGUMENT ON SANCTIONS
7 ON BEHALF OF DISCIPLINARY COUNSEL
8 BY MR. FOX:
9 MR. FOX: The notion that this is
10 politics and that we should ignore what is going
11 on in this country is to me -- blinks reality.
12 I mean, this is case is not motivated
13 by politics in the sense of -- well, the basic
14 problem I think with -- with what Mr. Giuliani did
15 was the notion that politics means anything goes.
16 Even when Mr. Leventhal was describing the
17 situation a moment ago, there was a sort of an
18 assumption: well, this lawsuit is going to be
19 brought, and Mr. Giuliani comes in at the last
20 minute. No. Lawsuits, asking courts to deprive
21 voters of their right to vote, those are not --
22 that's not common politics in this country. This

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1 is not politics. They -- they're -- they're
2 trying to ignore the will of the voters. They're
3 trying openly to ask a judge to disqualify six
4 hundred -- at minimum, 680,000 voters with a
5 notion that anything goes; it's just politics;
6 anything goes; you just got to win. And that is
7 something that somebody has to put a stop to.
8 And if you want to take a blinder view
9 and compare this to a guy who filed a frivolous
10 lawsuit about a pair of pants, you can obviously
11 do that. But I think that the court ultimately
12 ought to say -- not that we're trying to -- I
13 forget the word that Mr. Leventhal used, to chill
14 advocacy I think he said, but we are trying to
15 deter -- that's the business that I'm in, is
16 deterrence -- we are trying to deter people from
17 engaging in this kind of misconduct, and this
18 misconduct was so serious that it should never be
19 allowed to happen again, and -- I don't know that
20 we can prevent it, but the one thing we can do to
21 try to deter it is to impose the most serious
22 sanction that can be imposed. It's not politics.

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1 It's what -- you know, it -- it is part of our
2 duty as lawyers to make sure that people don't use
3 their law licenses to undermine the Constitution
4 of the United States, and disbarment is the only
5 sanction for that.
6 CHAIRMAN BERNIUS: Okay, thank you --
7 MR. LEVENTHAL: May I say -- say one
8 thing, Mr. Bernius? This is not in the record.
9 Everything he said about that he was going to
10 bring a lawsuit before he found anything -- any
11 declarations, affidavits, any theory; not in the
12 record. That is Mr. Fox's conclusion; not in the
13 record. That's argument; no -- no evidence to
14 that.
15 CHAIRMAN BERNIUS: Okay. Thank you.
16 I -- well as to the last point, we will
17 be able to figure that out, because the next step
18 is -- as you know, we've made our preliminary
19 decision. We will make a final decision after the
20 parties file findings of fact, proposed findings
21 of fact and conclusions of law.
22 And I'm not sure if the transcript has

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1 come out yet, but we will issue an order to this
2 effect. But for the -- basically for the benefit
3 of respondents mostly -- respondent mostly,
4 because you -- you haven't -- I -- I don't think
5 you've been involved in the system before, the --
6 the filings are kind of like summary judgment
7 findings. The findings of fact, proposed findings
8 of fact are to be supported by specific references
9 to the record. Disciplinary Counsel's going to do
10 that, and then respondent will reply, and you have
11 to respond directly to each of the allegations --
12 the alleged facts citing your own -- if you
13 disagree, you site your own record evidence.
14 They're accompanied by the conclusion of law and
15 both of Mr. Kamins' and Mr. -- Mr. Leventhal were
16 judges and -- and so what I'm going to say
17 probably will resonate with them: less is more.
18 We -- the tighter the writing, the better, and
19 we'll -- there'll be a page limit, but that
20 doesn't mean that you have to achieve it.
21 So the -- overall, I think the calendar
22 will be 30 days after the transcript for

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1 Disciplinary Counsel, 30 days for respondents --
2 respondent to reply, and then another 15 days for
3 Disciplinary Counsel to reply.
4 And these dates are -- will be
5 pretty -- pretty cemented in because the rules
6 mandate that the hearing committee issue its
7 report and recommendation within a -- within a
8 deadline. So basically the more time we give you,
9 we take time away from ourselves, and that's an
10 unhappy prospect.
11 So any -- any comments or questions?
12 MR. FOX: Mr. Bernius, actually my --
13 the comment I'm going to make may be irrelevant in
14 light of the fact if you really meant to say 30
15 days, 30 days and 15. Because normally it's ten
16 business days, ten business days, and five. That
17 would have given me a huge problem, because I
18 have -- I am scheduled to try Mr. Clark on January
19 9, and -- which would have been right in the
20 middle. I could do 30 -- and -- and -- and that
21 case may not go. He said doing everything in his
22 power to delay it, including removing these -- the

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1 disciplinary proceedings to federal court. So I
2 don't know whether it will go on those times, but
3 if it is 30, 30 and 15, I can -- I won't have a
4 problem with that. I would have a problem with a
5 shorter schedule. But if that's what you -- if
6 you meant what you said, then I'm fine.

7 CHAIRMAN BERNIUS: I -- I meant what I
8 said, Mr. Fox.

9 MR. FOX: Thank you.

10 MR. KAMINS: Mr. Chair, I just have one
11 question. Do we -- do we put our own findings of
12 fact, or do we just respond to Mr. Fox's?

13 CHAIRMAN BERNIUS: Both, both.

14 MR. KAMINS: Both? Okay.

15 MR. GIULIANI: Mr. Chairman, I -- I
16 would like to personally object to Mr. Fox's
17 attack on me as having tried to undermine American
18 democracy when there is not a single fact in the
19 record to support that argument. He raised no
20 such argument to give us a chance to rebut it
21 during the case. It is a typical --

22 MR. KAMINS: All right.

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1 MR. GIULIANI: -- unethical cheap
2 attack --

3 MR. KAMINS: Rudy, Rudy --

4 MR. GIULIANI: -- not supported by
5 anything in the record, far more so than anything
6 that I allege that you are questioning.

7 MR. KAMINS: All right, Rudy --

8 MR. GIULIANI: What I allege is
9 supported by documents in the record. I didn't
10 make any of it up. His arguments about democracy
11 presume that I did not have a good-faith belief
12 that there were irregularities in the election,
13 and that the election might very well have been
14 stolen. That belief was based on, not just the
15 250 affidavits in this case, but the thousand
16 affidavits I have in other cases, as well as
17 tests, movies: "2,000 Mules," a report of a
18 Supreme Court justice of the State of Wisconsin.
19 I have -- I have two rooms filled with documents
20 supporting my conclusion.

21 Now you're entitled to two points of
22 view in America. It is a terrible attack on

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1 democracy to unfairly attack an election. It's an
2 even worse attack on a democracy to allow an
3 election to be stolen and not respond to it. And
4 there is enough of a basis to make that argument
5 to those of us who believe that aren't persecuted.
6 I've been investigated by the FBI. The
7 investigation began the day that I represented
8 Donald Trump. They took my iPhone Cloud the day
9 that I represented Donald Trump. You're all
10 lawyers. That never happened to you. They
11 alleged probable cause that I committed a crime in
12 order to get that three years ago. A month ago
13 they candidly admitted there was no probable cause
14 to indict me after three and a half years of
15 investigation. They took every communication of
16 mine, every bank record of mine going back twenty
17 years, they interviewed all of my clients and
18 deprived me of a \$6M law practice in so doing.
19 They raided my law office. In my 17 years in the
20 Justice Department, I never raided a law office,
21 even those representing terrorists and organized
22 criminals...

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1 They found nothing in that. They found
2 no crime, no misdemeanor, nothing. They haven't
3 apologized. They haven't offered to compensate me
4 for the tremendous damage they did, and the -- and
5 the -- and the fact is that it's the same basis
6 that they used is the basis that Mr. Fox is using,
7 the unwillingness to admit that there may be
8 another side to this case.

9 I'm unfortunately the lawyer who has to
10 represent the fact that there is another side to
11 this case, and the fact that you advocate that
12 side of the case does not make you a traitor. It
13 doesn't make you any more -- any -- any more
14 dedicated to democracy than Mr. Fox.

15 And I'll put my work for democracy,
16 I'll put my life at risk and the times that I did
17 for democracy up against Mr. Fox and anyone else.
18 And for that man to engage in that kind of a
19 personal attack when there was no record of that,
20 and for you to allow him to do that, I consider to
21 be an outrage.

22 MR. KAMINS: All right.

1 MR. GIULIANI: And I am personally
2 offended by it and I -- I don't know what has
3 happened to the defensive lawyers who take on
4 unpopular causes, because that is exactly what I
5 did, and I have more than a basis for three
6 quarters of the cases that come into your purview
7 for bringing this case. It just happens to be
8 that my side of it is politically incorrect.

9 MR. KAMINS: Thank you. All right.
10 Thank you, Mr. Chair.

11 CHAIRMAN BERNIUS: Thank you. Unless
12 there's anything else, we're adjourned.

13 MR. KAMINS: Thank you.

14 (Whereupon at 11:19 a.m. the hearing
15 concluded.)
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22

1 CERTIFICATE OF NOTARY PUBLIC
2 I, KIM M. BRANTLEY, C.S.R., the officer
3 before whom the foregoing hearing was taken, do
4 hereby, certify that the proceedings were taken by
5 me in stenotype and thereafter reduced to
6 typewriting under my direction; that said hearing
7 is a true record of the proceedings; that I am
8 neither counsel for, related to, nor employed by
9 any of the parties to the action in which this
10 hearing was taken; and, further, that I am not a
11 relative or employee of any counsel or attorney
12 employed by the parties hereto, nor financially or
13 otherwise interested in the outcome of this
14 action.
15
16

17 _____
18 KIM M. BRANTLEY, C.S.R.
19 Notary Public in and for
20 the District of Columbia
21
22

My commission expires: October 31, 2024

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