

1

2

3

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

8

9

10

11 INTERVIEW OF: MARK ESPER

12

13

14

15 Friday, April 1, 2022

16

17 Washington, D.C.

18

19

20 The interview in the above matter was held via Webex, commencing at 3:04 p.m.

21 Present: Representatives Luria, Lofgren, and Kinzinger.

1

2 Appearances:

3

4

5 For the SELECT COMMITTEE TO INVESTIGATE

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

7

8 [REDACTED], STAFF ASSOCIATE

9 [REDACTED], INVESTIGATIVE COUNSEL

10 [REDACTED] SENIOR INVESTIGATIVE COUNSEL

11 [REDACTED], STAFF ASSOCIATE

12 [REDACTED], PROFESSIONAL STAFF MEMBER

13 [REDACTED], CHIEF INVESTIGATIVE COUNSEL

14 [REDACTED], CHIEF CLERK

15 [REDACTED] PROFESSIONAL STAFF MEMBER

16 [REDACTED], INVESTIGATIVE COUNSEL

17

18

19 For the DEPARTMENT OF DEFENSE, OFFICE OF GENERAL COUNSEL:

20

21 EDWARD RICHARDS

1

2 [REDACTED] So good afternoon, Dr. Esper.

3 This is a transcribed interview of Dr. Mark Esper conducted by the House Select
4 Committee to Investigate the January 6th Attack on the United States Capitol pursuant to
5 House Resolution 503.

6 Dr. Esper, could you please state your full name and spell your last name for the
7 record?

8 Dr. Esper. My full name is Mark T. Esper. My last name is spelled E-s-p-e-r.

9 [REDACTED] It appears, Dr. Esper, that you are not represented personally by
10 counsel, though counsel for the Department of Defense is present for the interview.

11 Mr. Richards, if you could identify yourself for the record and spell your last
12 name -- although I think it's pretty easy -- for the court reporter.

13 Mr. Richards. Yes. Edwards Richards with the Department of Defense, Office
14 of General Counsel, R-i-c-h-a-r-d-s.

15 Thank you.

16 [REDACTED] Thank you.

17 My name is [REDACTED]. I'm the chief investigative counsel for the select
18 committee. In the room with me today is [REDACTED], she's a senior
19 investigative counsel to the select committee, and [REDACTED], who is an
20 investigative counsel as well.

21 This will be a staff-led interview, and members, of course, may choose to also ask
22 questions. I believe we have at least one member of the select committee, Mr.
23 Kinzinger, who has joined us thus far. And if others join, I will note their presence and
24 periodically turn to them if they request it. I'll try to announce their presence when
25 they join so you know who is in the meeting.

1 There is an official reporter who is transcribing the record of the interview.
2 Please wait until each question is completed before you begin your response, and we will
3 try to wait until your response is complete before we ask our next question.

4 The stenographer can't record nonverbal responses, such as shaking of your head,
5 so it's important that you answer each question with an audible verbal response.

6 We ask, Dr. Esper, that you provide complete answers based on your best
7 recollection. If the question isn't clear, please say so and ask for clarification. And if
8 you don't know the answer, then just simply say you don't recall.

9 I also want to remind you -- and this isn't specific to you, this is something we tell
10 all witnesses -- that it is unlawful to deliberately provide false information to Congress
11 and to do so would be in violation of 18 U.S.C. Section 1001 or other statutes.

12 Do you understand what I've just gone over and prepared to proceed?

13 Dr. Esper. I do.

14 [REDACTED] Okay. Great.

15 And if at any point you need a break, just let us know, we can certainly do that.
16 And if you ever need to confer with Mr. Richards, again, just say the word, and we'll
17 facilitate that.

18 Dr. Esper. Okay.

19 [REDACTED] So, Dr. Esper, I understand you have some introductory remarks
20 that you want to make. Now would be a good time for you to do that.

21 Dr. Esper. I do. Thank you.

22 Well, good afternoon.

23 I want to begin by commending the committee for the important work it is doing
24 to bring transparency, understanding, and accountability to the tragic events of January
25 6th, 2021.

1 As someone who worked on Capitol Hill for several years and had an office in the
2 Capitol itself when I worked for the Senate Majority Leader, I was both horrified and
3 saddened by what happened that day.

4 As such, it is important for the country -- and indeed our democracy -- that the
5 American people have a full and complete history of what prompted and fueled the
6 violent insurrection that seemed determined to prevent the peaceful transfer of power
7 from one administration to the next after a legitimately certified election.

8 As you are aware, I was removed from office on November 9th, 2020, merely a
9 week after the election and nearly 2 months prior to the assault on Capitol Hill.

10 I appear before you today willingly with the hope that I might provide some
11 insights over the next hour consistent with our agreement that I would speak to, quote,
12 "my experiences in June 2020 that are directly related and relevant to what happened on
13 January 6th, 2021," end quote, and to the events of that tragic day.

14 Though we're now nearly 2 years removed from June 2020, I will answer all
15 relevant and related questions based on my recollections and to the best of my ability.

16 For example, I'm prepared to speak to the internal discussions regarding the
17 Defense Department's response to events in Washington, D.C., in June 2020, the actual
18 deployment and employment of military personnel during that time, and what the
19 Department learned from these actions.

20 With that, I stand ready to answer your questions. Thank you.

21 [REDACTED] Thank you, Dr. Esper, very much for that.

22 I will note again, as you just indicated, that you're here voluntarily, not pursuant
23 to any sort of subpoena.

24 We have gotten a letter from the White House, and I just want to put that in the
25 record. I believe it's exhibit 13.

1 And, [REDACTED], if you can put it up on the screen, we'll just -- oh, we don't have
2 that one.

3 Well, I assume -- it's addressed to you, Mr. Richards, and I assume that you've
4 shared it with Dr. Esper. It's the March 30th letter from Jonathan Su, the deputy
5 counsel to the President.

6 Mr. Richards. Yes, I have. Thank you.

7 [REDACTED] Great. And I'll just quote briefly. It says, "In light of the unique
8 and extraordinary nature of the matters under investigation, President Biden has
9 determined that an assertion of executive privilege is not in the national interest and,
10 therefore, is not justified with respect to particular subjects within the purview of the
11 select committee."

12 And as you've indicated, Dr. Esper, we've sort of hashed out those subject matters
13 in advance.

14 So to be clear, the current White House counsel and the current administration,
15 President Biden, has indicated that it would not be appropriate to assert executive
16 privilege.

17 EXAMINATION

18 [REDACTED]

19 Q So with that understanding, let me just jump right into the questions.

20 Dr. Esper, tell us where you went to college.

21 A I went to the United States Military Academy at West Point.

22 Q When did you graduate from West Point?

23 A I graduated in 1986.

24 Q Did you -- I assume as a West Point graduate, you enlisted or you joined the
25 United States Army as an officer at that point?

1 A That's correct. I was commissioned a second lieutenant on May 28th,
2 1986.

3 Q All right. And did you serve as an infantry officer during the Gulf War?

4 A I did.

5 Q What was your role during the Gulf War?

6 A I was an operations officer with the 3rd Battalion, 187th Infantry of the 101st
7 Airborne Division.

8 Q What did you do upon the completion of your military service, your
9 Active-Duty military service?

10 A That's correct. I served 10 years on Active Duty after commanding in
11 Europe and then working in the Pentagon. After my -- after departing Active Duty in
12 1996, I joined the Reserves and spent another 11 years in the National Guard and Army
13 Reserve.

14 At the time that I joined the Guard and Reserve, I had also begun work on Capitol
15 Hill -- I'm sorry. I first began work at the Heritage Foundation in Washington, D.C., and
16 then later Capitol Hill in a variety of different jobs after that, leading up to my return to
17 the Pentagon, my fifth -- fourth return to the Pentagon in 2017.

18 Q All right. And in 2017, Dr. Esper, were you appointed by President Trump
19 as Secretary of the Army?

20 A I was, after being confirmed by the Senate.

21 Q Yep. And how long did you serve as Secretary of the Army?

22 A I served from November of 2017 until I was named Acting Secretary of
23 Defense in June of 2019, and I was confirmed a month later, in July 2019.

24 Q I see. And then you served as the Secretary of Defense, the
25 Senate-confirmed Secretary of Defense until November the 9th of 2020. Is that right?

1 A That is correct.

2 Q Okay. And we'll get into the circumstances of your departure from that
3 position a little bit later.

4 When you were appointed as Secretary of Defense, Dr. Esper, did you discuss with
5 President Trump his priorities for the Department of Defense? Did he give you any sort
6 of specific priorities or marching orders that he wanted you to pursue when you began in
7 that position?

8 A No, nothing that I recall.

9 Q Did you have discussions with President Trump over time about the role of
10 the military in domestic affairs?

11 A No, not that I recall.

12 Q Was it -- we talked before, Dr. Esper, before today about the President being
13 enamored with generals or believed very strongly that the military had a potential role to
14 play in various domestic issues. Do you recall that discussion?

15 A I don't. If you can restate that and help me understand the relevancy to
16 January 6th, 2021, that would be helpful.

17 Q Yeah. I'm just going back to our previous conversation where you indicated
18 there were times where he periodically would raise a military solution to things like
19 border enforcement or logistics support for COVID relief or things that were happening
20 exclusively domestically.

21 A Well, again, relevant to January 6th, 2021, and civil unrest in June 2020, that
22 tended to be the case, with regard to my experience in June 2020, that the President was
23 inclined to use the military.

24 Q Yeah. Yeah, I guess I'm just talking more broadly about whether or not you
25 had concerns, based on not just what happened in June of 2020 and leading up to

1 January 6th, about the President's sort of perception of the appropriate role of the
2 military in domestic affairs.

3 Mr. Richards. So, █ if I could just interject here.

4 I just want to be clear about what our conversations with White House counsel
5 regarding executive privilege were, and that was based on the expectation that this
6 interview be about the summer June 2020 civil unrest and lessons learned from that and
7 actions taken specific to that.

8 So I just want to be clear that, as far as going beyond that scope, we have not
9 engaged any coordination with the White House counsel's office regarding any potential
10 assertion of privilege. So I just want to be clear that that, those issues, have not -- we
11 will have to defer on as far as specific Presidential conversations beyond June summer
12 2020 civil unrest issues.

13 Over.

14 █ Yeah. And to be clear, Ed, I'm not looking to develop
15 conversations about border security or COVID. I'm sort of laying a foundation for
16 discussions about the appropriateness of the use of military resources for particular tasks
17 that informs the summer 2020 response and very relevant to the preparations for
18 January 6th.

19 Mr. Richards. Understood. Thank you.

20 And just if we could keep it specific to the June events, I think that's the safest
21 area [inaudible].

22 Over.

23 █

24 Q Okay. All right. Well, let's talk about the summer protests then, Dr.
25 Esper.

1 Just by way of context, the murder of George Floyd occurred on May the 25th of
2 2020.

3 On May the 28th, the Minnesota National Guard was activated. Governor Tim
4 Walz in Minnesota activated it.

5 Then, on May the 29th, Friday, President Trump tweeted about "thugs" in
6 Minnesota and warns, "When the looting starts, the shooting starts," and the protests
7 turned violent in Minnesota.

8 On May the 30th, there were protests that spread around the country and
9 continued into May the 31st.

10 And then on June the 1st, that's when I want to start asking you about your
11 specific involvement, on June the 1st.

12 When did you first talk to President Trump about the potential use of military
13 assets in response to the summer protests around the country in the wake of the murder
14 of George Floyd?

15 A On the day of June 1st, my recollection of the first time that this was
16 discussed was in an Oval Office meeting with him that morning.

17 Q Okay. Tell us, if you could, about the conversation that you had with
18 President Trump on June the 1st?

19 A Relevant with regard to January 6th, 2021, the President's inclination was to
20 deploy up to 10,000 troops, Active-Duty forces, to the Capitol to quell the protests.

21 Q Okay. Did you have a reaction to that, Dr. Esper, when the President raised
22 the potential deployment of Active-Duty troops to quell the protests?

23 A Yes. My reaction was that Active-Duty forces are not the means by which
24 this should be addressed. My view was that this is a law enforcement action and that
25 law enforcement should lead, and that if there's any use of the military, it should be the

1 National Guard in support of the law enforcement, the D.C. Metro Police in particular.

2 Q I see. Okay.

3 How did the President react when you conveyed this, the National Guard and
4 domestic law enforcement are the right forces to respond to the unrest around the
5 country?

6 A I think he and I, along with Attorney General Barr alongside me, went back
7 and forth on multiple times on this issue until we were able to persuade him that the use
8 of law enforcement was the best way forward, supported by National Guard that would
9 be -- that would come from both D.C. and from outside of Washington, D.C.

10 Q Tell us who else was present for the conversation.

11 A I recall, obviously, the President, myself, Attorney General Barr, General
12 Milley, and the Vice President. There were others present, but I just don't recall who
13 they were.

14 Q I see.

15 And of the folks that you just named, Dr. Esper, was everyone else in the room
16 supportive of the position you took? In other words, there isn't yet a predicate for the
17 deployment of Active-Duty troops, this is a National Guard and law enforcement matter.

18 A That was the position taken by myself, Attorney General Barr, and General
19 Milley.

20 Q All right. And the three of you were unified in that position?

21 A Yes.

22 Q And did all three of you convey that view, consistent view, to the President?

23 A Yes.

24 Q How about the Vice President, did he have a position, or was he just
25 evaluating the information you provided?

1 A I don't recall him speaking on this matter during that meeting.

2 Q Okay. Was there specific discussion during that meeting about the
3 Insurrection Act?

4 A Yes, the Insurrection Act did come up during the discussion.

5 Q Tell us who brought it up and what was -- tell us more about the discussion
6 specifically about that provision of law.

7 A I cannot recall exactly who brought it up when, but I know that the
8 discussion was about -- and it could have been that Attorney General Barr and I both
9 raised it or discussed it at various points -- that if there was a use of the Active-Duty
10 military, it would require invocation of the Insurrection Act to deploy them into the
11 District of Columbia.

12 And I had tried to make -- address the distinctions between the various authorities
13 and capabilities between Active-Duty forces and National Guard forces.

14 Q Yeah. Did General Barr have some experience, prior experience with the
15 Insurrection Act from his prior service as Attorney General that he conveyed during that
16 meeting?

17 A I have -- I don't recall. But I do know that he did based on my
18 understanding of his previous tenure in government during the 1992 Los Angeles riots.

19 Q Okay. So he had some direct experience about sort of the conditions that
20 would justify the invocation of the Insurrection Act?

21 A That was my sense, yes.

22 Q All right. How about General Milley, what was his position on this, the
23 Insurrection Act specifically?

24 A General Milley supported my position as my senior adviser and also
25 recommended that law enforcement be the lead and that if there was a need for

1 additional support, if there was insufficient law enforcement, then that should come from
2 National Guard troops as I had proposed in the meeting.

3 Q Yeah. And I appreciate that, Dr. Esper, and I understand that was the
4 consistent position.

5 But maybe take a step back and just sort of explain, if you can, for us, for a lay
6 audience, why that's important or why, in your view, it's appropriate for National Guard
7 and domestic law enforcement to respond in a domestic mass demonstration versus
8 Active-Duty troops, just as a matter policy-wise, that that is the right response.

9 A I think there are a number of reasons. I likely won't get them exactly right.
10 But it's fair to say that they, obviously, operate under different authorities, whether
11 they're under Federal control, under invocation of the Insurrection Act, and there are
12 scenarios in which that happens, or if they're under State control in which that happens.

13 Secondly, they are -- "they" being the National Guard -- are trained in this mission
14 and have more experience in this mission than would Active-Duty forces.

15 And, thirdly, I always like to add that typically the National Guard is employed in
16 the community in which they live and, therefore, have a better understanding of the
17 community and what is happening at the time. So it makes them better attuned to
18 what is happening in the area in which they are operating.

19 Q I see. So fair to say a unit like the 82nd Airborne, they're warfighters, they
20 are trained for a very different mission than the National Guard, who are equipped and
21 trained to respond to situations like a mass demonstration?

22 A Yes.

23 Q Sort of the right tool for the job is the Guard, not a warfighting unit like the
24 82nd Airborne?

25 A Yes.

1 Q I see. Okay.

2 And the National Guard, do they generally around the country train for this kind of
3 response working with domestic law enforcement to deploy during the middle of a sort of
4 free speech demonstration activity?

5 A Well, again, if I want to answer as accurately as possible, I'd have to go back
6 and understand what the training plans of all these various Guard units across the United
7 States and the territories are.

8 But generally, yes, the Guard trains on this as what we call a mission-essential task
9 to deal with civil unrest or other type of activities.

10 But, again, I would defer to the State, the Adjutant Generals or the head of the
11 National Guard, to give you a more complete response.

12 Q Yeah, I understand.

13 So what kinds of conditions, in your view, would have to exist hypothetically to
14 justify the invocation of the Insurrection Act and the deployment of an Active-Duty unit in
15 the middle of a domestic disturbance?

16 A Well, I think it would be -- you know, a lot of is speculation. It's situational
17 dependent.

18 As I recall, I believe, in the 1992 Los Angeles riots, the use of outside National
19 Guard was requested by the Governor. So that is one scenario.

20 Again, I think, as I said during my public statement on June 3rd before the Nation,
21 that it would have to be a very dire and urgent situation that would justify deploying
22 Active-Duty forces to supplement law enforcement.

23 Q And, in your view, there was not a sufficiently dire, urgent situation existing
24 in the summer of 2020 in Washington or elsewhere that would justify the invocation of
25 the Insurrection Act?

1 A That's correct.

2 Q Okay.

3 I want to call your attention to, I believe, a call that you had with the Nation's
4 Governors on that very same day, June the 1st?

5 Do you recall participating in a call that the President convened for all of the
6 Nation's Governors to discuss the unrest that was beginning to occur around the country?

7 A I do.

8 Q Was that before or after this meeting in the Oval Office at which you
9 discussed with the President the Insurrection Act?

10 A That was immediately after the meeting in the Oval Office on the morning of
11 Monday, June 1st.

12 Q Okay. Who was present for the call with you in the White House?

13 A Well, there were -- of the persons that I can recall, again, clearly the
14 President, the Attorney General, myself, and General Milley. There were numerous
15 other persons in the room, but I just cannot recall who the others were.

16 Q All right. And who spoke during the call, if you remember?

17 A The President, the Attorney General, myself, and General Milley.

18 Q Okay.

19 A And, of course, the Governors who were on the line spoke. Several
20 Governors spoke as well.

21 Q Do you remember anything in particular that the President said? I assume
22 he opened the call.

23 A He did. I think, you know, we both have the transcript, and so it's all
24 accurate. At least the one I sent you, I believe, is the most accurate accounting of that
25 conversation.

1 Q Okay. Good. Well, let's turn to it. It's exhibit No. 3, and I think we can
2 actually share it on the screen. And I don't want to go through the whole thing with you
3 but just a couple of things.

4 In the very beginning it looks like President Trump did open the call, and he
5 indicated at the very to, "It shouldn't be hard to take care of it. We're going to take care
6 of it," speaking about response to the violence. "And we've got a number of people
7 here that you'll be seeing.

8 "General Milley is here, who's head of Joint Chief of Staff, a fighter, a warrior, had
9 a lot of victories and no losses. And he hates to see the way it's being handled in the
10 various States. And I just put him in charge."

11 Do you recall the President at the beginning of the call saying that General Milley
12 was in charge?

13 A Yes, I do.

14 Q And how did General Milley react, either in real time or tell you later that he
15 interpreted that or his reaction to that statement?

16 A Well, this matter came up in the Oval Office meeting just prior to this call
17 with the Governors. General Milley said in response to the President that he is not in
18 charge, he has no command authority, he is an adviser. I agreed with him and
19 supported his statement because it is accurate under the law.

20 And so at the conclusion of the Oval Office meeting, the President actually put
21 Attorney General Barr in charge of this matter. So we thought we had clarified it and
22 concluded it properly upon departure from the Oval Office that morning.

23 Q I see. So before the call, there's a discussion in the Oval Office about who's
24 in charge. The consensus seems to you to be it's Attorney General Barr, given that it'll
25 be largely domestic law enforcement. Yet on the call, the President says, I've just put

1 General Milley in charge, in contrast to that understanding?

2 A Yes, that's what happened.

3 Q Okay. And just explain to us, why is it that General Milley doesn't have
4 command authority? What in terms of the chain of command -- you called him an
5 adviser. Explain that to us.

6 A Well, we would have to dig into the law, the exact text of the law.

7 But under the law -- it may be Goldwater-Nichols -- but the Chairman of the Joint
8 Chiefs of Staff is identified as a senior adviser to the Secretary of Defense, to the
9 President of the United States, and also to the National Security Council.

10 And it may be as explicit to say that he has no command authority, but he is able
11 to communicate direction from me to the chain of command. Again, the Chairman of
12 the Joint Chiefs of Staff is not in the chain of command.

13 Q Understood. And Attorney General Barr, who is the Attorney General of
14 the United States, does he have supervisory authority over all of the Federal law
15 enforcement agencies within the Department of Justice?

16 A Under the law, I don't know, but I would presume that he has authorities
17 over law enforcement to some degree.

18 Q Yes. Okay.

19 Now, when you had your opportunity to speak, Dr. Esper, just tell us generally
20 what was your intention. What message you were trying to convey when the
21 conversation turned to you?

22 A And just for context, help me understand the angle here with regard to
23 January 6th, 2021.

24 Q Well, all of this, this whole line about the summer of 2020, is important
25 because, in a very similar preparation for what everyone understood to be a mass

1 demonstration event, the lessons learned, particularly the lessons learned or not learned
2 by the President and others close to him, directly inform the events of January 6th.

3 So the questions about what happened in the summer with respect to the
4 demonstration events then, the use of the Guard, the potential use of Active-Duty forces
5 bear upon the preparation and response at the Capitol on January 6th.

6 A Can you be more specific in terms of what you're asking me to answer then
7 in that context?

8 Q I'm just asking you about when you were called upon in the meeting with the
9 Governors and you have a chance to convey to them, they all command National Guard
10 units in their States, what was your message? I mean, we can go right to the transcript,
11 but I just wanted your general sense of your intention when you had your opportunity to
12 address the Governors.

13 A Right. My attention was that, obviously, law enforcement should lead, but
14 that they all had more than enough -- most of them, many of them had enough National
15 Guard under their control within their States available to support law enforcement in
16 their States if they felt that was necessary.

17 And I encouraged them to use their National Guard if that was the case, and, of
18 course, offered whatever support that we could help from the Department of Defense,
19 and actually cited the performance of Governor Walz, I recall, from Minnesota, who had
20 actually employed his Guard and was able to calm the situation so that peaceful
21 protestors can express their concerns and dissatisfaction without being -- without their
22 lives and property being risked in the process.

23 Q Understood.

24 Page 4, [REDACTED] if you can scroll down.

25 It looks at 14:03 of the call is when Dr. Esper first begins speaking. So the

1 transcript here, it's really the second paragraph that I wanted to read.

2 "And so at my urging, I agree, we need to dominate the battlespace. You have
3 deep resources in the Guard. I stand ready, the Chairman stands ready, and the head of
4 the National Guard stands ready to fully support you in terms of helping mobilize the
5 Guard in doing what they need to do.

6 "Again, most of the Guard has not been called up. There's only a few States -- I
7 count two States where more than 1,000 troops have been called up. I think the sooner
8 that you mass and dominate the battlespace, the quicker this dissipates and we can get
9 back to the right normal."

10 So your reference to dominate the battlespace, tell us more what you meant by
11 that.

12 A "Dominate the battlespace" is a common phrase within the Pentagon. It's
13 a phrase we use often. It's about the three-dimensional geographical boundaries in
14 which a military unit operates.

15 As you'll see, if you look at General Milley's comments, going down another 10 or
16 15 minutes, General Milley also uses the phrase "dominate the battlespace" and other
17 terms that I use as well. So it's a very common phrase.

18 Obviously, in retrospect, it was not the appropriate -- it was not appropriate to
19 bring military lexicon into this context, and it was something that I regretted.

20 But, nonetheless, it's about, again, understanding the three-dimensional box in
21 which you employ a military force.

22 Q Understood. And it sounds like very clearly, you even say, at my urging,
23 hey, Governors, you have this tool at your disposal, the National Guard, that is the
24 appropriate place to find help and support, and we will do -- we at DOD will do all we can
25 to support you if you choose to activate your Guard.

1 That's essentially your bottom line message?

2 A Yes, because my sense was that if they were unable to get control of the
3 streets with law enforcement, they had their own resources available to them, the
4 National Guard, that that would be a far better way forward than the President
5 considering invocation of the Insurrection Act and either trying to deploy Guard from
6 other States or, worse, trying to deploy Active-Duty forces into a State.

7 And so I was trying to urge them to consider using their own Guard so that we
8 could avoid that situation.

9 Q Yep. I see Ms. Lofgren has just joined us as well.

10 Now, you're anticipating my very next question, Dr. Esper. It sounds like this
11 direct urging to the Governors that they consider deployment of their respective National
12 Guards is entirely consistent with the advice you had given the President in the Oval
13 Office about the appropriate use of the Guard, not appropriate at this point to have
14 Active-Duty troops.

15 Is that fair to say?

16 A That's correct. Consistency is important. And I'm, again, familiar with
17 what I believed, given my time from West Point through my many years in the military
18 and then my multiple assignments at the Pentagon, what the appropriate role of the
19 military is when it comes to civilian -- support the civilian authorities and the proper use
20 of the Armed Forces.

21 Q Right. And was it your hope at this point, Dr. Esper, that if the Governors
22 did take your good advice and deploy their Guard units that the situation would stabilize
23 and then obviate the discussion or the need to continue to talk about the Insurrection Act
24 or the deployment of troops?

25 A Well, yes. My hope was, first and foremost, that they could do that

1 through the use of law enforcement only. And as we would often discuss internally, law
2 enforcement meant, you know, local, county, and State law enforcement and, if need be,
3 if additional law enforcement was necessary, then preferably call upon Federal law
4 enforcement. My view was that the military should be last in line, and last in the end of
5 that line should be Active-Duty military.

6 So the bottom line was I was urging them, as best I could, given the context of just
7 coming out of the meeting with the President in the Oval Office with regard to this topic,
8 that they would call up additional law enforcement or, if need be, their own National
9 Guard so we could avoid anything that might suggest the need for invocation of the
10 Insurrection Act and deployment of either Guard or, worse yet, again, Active-Duty forces
11 into a State.

12 Q Yep. Understood. So there's sort of a cascade of potential responses that
13 start with local police, that move on to State, to Federal law enforcement, all civilian.

14 Then we get to the National Guard if the situation demands it. And only
15 thereafter, in an extreme situation, would there be a predicate for Active-Duty troops to
16 respond in a domestic disturbance situation, is generally the sort of spectrum what you
17 believe was appropriate?

18 A That is typically how we discussed it, both internally and with the President
19 and other members of the Cabinet.

20 Q Okay. So at the end of the Oval Office meeting and the phone call, was it
21 your understanding that the issue was at least temporarily resolved, that the President
22 had not invoked the Insurrection Act or made any order with respect to Active-Duty
23 troops, or was it still unresolved?

24 A There was no immediate decision to invoke the Insurrection Act, although I
25 felt that the issue had -- was hanging heavily in the air, in the sense that if we were

1 unable to get sufficient Guard into the city by the evening, and if the law enforcement
2 under Attorney General Barr's direction was unable to get sufficient law enforcement into
3 the city by the evening, and if the protests continued and violence erupted like it had in
4 the previous nights, that we could find ourselves back in the Oval Office and faced with
5 another consideration of invocation of the Insurrection Act to call up additional forces.

6 Q I see.

7 I see Mrs. Luria has joined us as well?

8 So it sounds like the resolution of your conversation with the President was sort of
9 situational? You convinced him that at the moment there wasn't the predicate to
10 invoke the act but that it was going to be an ongoing fluid situation and conditions would
11 dictate that decision?

12 A I think Attorney General Barr and I were successful in convincing him that
13 Attorney General Barr could call up sufficient law enforcement, numbering up to 5,000
14 folks, and that I could do the same with regard to the Guard, the combination of D.C.
15 National Guard and out-of-State National Guard, to match, if need be, the Attorney
16 General's number of folks, and that would be sufficient to keep the peace, if you will, in
17 D.C. for that evening and for any subsequent evenings.

18 And so my immediate task after the call with the Governors was to get quickly
19 back to the Pentagon, begin working with the head of the National Guard, and begin
20 reaching out to Governors to get Guard units into D.C. for the evening.

21 Q I understand. Okay.

22 So you're focused not just on the nationwide protests in various cities,
23 Minneapolis included, but a very specific situation in Washington, D.C., around Lafayette
24 Park?

25 A Well, we're focused on D.C. at this point.

1 Q Okay. And it sounds like their numbers suggested in this conversation or
2 these conversations on June 1st, 5,000 was the number that Attorney General Barr
3 indicated, the number of law enforcement that he believed could be deployed, and the
4 equal number of National Guard troops, both the D.C. Guard and some other States, in
5 your view, could also be brought to bear on the situation in Washington, D.C.?

6 A Yes.

7 Q Okay. So did you take steps then to essentially mobilize those 5,000 Guard
8 troops in the wake of those discussions with the President?

9 A Yes. Well, we already had several hundred D.C. National Guardsmen
10 deployed on the streets of D.C. in support of Metro PD, I think, as I recall. So the key
11 was to call up the remainder of those troops.

12 And then, of course, with the aid of General Lengyel, the head of the National
13 Guard, I began reaching out to the Governors who were -- of neighboring States. So
14 Virginia, Maryland, Pennsylvania, New York. I had made phone calls to three of those.
15 I did not end up calling New York because it was my understanding that they were
16 deploying Guard to assist already.

17 Q All right. So the D.C. National Guard -- in which I believe you served
18 yourself at some point. Is that right, Dr. Esper?

19 A I did, that's correct.

20 Q They have a limited number. What is it, around a thousand guardsmen
21 that are available max at D.C. National Guard?

22 A I think it's 1,200 personnel, roughly.

23 Q Okay.

24 A You would have to get the actual numbers from the commander.

25 Q Yeah. So it was important -- it was necessary then to hit the 5,000 target

1 for other States to -- for Governors in other States to deploy their Guards to support the
2 D.C. Guard at Lafayette Square? Is that right?

3 A Yes. If in support to law enforcement, Attorney General Barr thought he
4 needed up to 5,000, we would have to go outside of D.C. to mobilize those numbers.

5 Q I see.

6 And was the decision to actually mobilize them because there was a necessity or
7 to have them available if needed?

8 A No. The decision was made to mobilize -- to ask that the Governors
9 mobilize elements of their Guard and to deploy them to D.C. to support law enforcement.

10 Q I see. Okay.

11 And then did that happen? Were you successful in getting those Governors in
12 other States to mobilize the Guard and get those guardsmen to D.C.?

13 A It depends. We had -- I had different responses from different States.
14 But I think, at the end of the day, we were successful in getting a sufficient number of
15 troops, National Guard troops, in D.C. in enough time to support law enforcement.

16 Q I see.

17 So did you take any steps at this time to prepare to move the 82nd Airborne from
18 where they're stationed closer to Washington?

19 A Again, I'm just trying to understand the relevance here to January 6th, 2021,
20 because my understanding is that no Active-Duty troops, et cetera, were involved in
21 January 6th, 2021.

22 Q No, they weren't, exactly, Dr. Esper. But, again, the preparations that you
23 took and the discussions you had and the efforts you took to placate the President in the
24 summer directly inform decisions made on January 6th.

25 So the way in which you managed his persistent desire in the face of your advice

1 that the Insurrection Act wasn't appropriate is directly relevant to the issues we're
2 examining.

3 A Yeah. So if you can give me some more information, because, obviously, I
4 wasn't there on January 6th. You made -- you alluded to decisions that President Trump
5 made. If you could help me, I can sharpen my responses and maybe help you better.

6 Q Well, my understanding is that you took action to actually move the 82nd
7 Airborne closer to the city to essentially placate the President, to stall him, to let him
8 know that you were actually taking some step in the hope that it would buy time and
9 stabilize the situation with the Guard and law enforcement. It was a management, in
10 the midst of your discussions with him, about the use of Active-Duty troops in the city.

11 Is that accurate?

12 A That's generally accurate.

13 Q Tell us more specifically how you did that.

14 A Well, I directed General Milley, after we left the Governors call, to begin
15 moving those forces to bases outside of D.C. and that they were not to make any further
16 movement without my personal explicit permission -- or authorization, I should say.
17 And that included -- that was, you know, the 82nd Airborne and the alerting of the 3rd
18 Infantry at Fort Myer.

19 Q Okay. And was that, Dr. Esper, motivated by the discussion you had had
20 with the President earlier or meant to be a demonstration to him that you were acting
21 upon or preparing for something that he wanted to do, despite the fact that it was
22 against your advice?

23 A I -- there reached -- there came a point in the White House -- in the Oval
24 Office discussion that I felt that we were on the precipice of the President ordering
25 Active-Duty troops into the District of Columbia to quell the protests.

1 And so my proposal was to begin immediately deploying National Guard troops
2 and, if necessary, I could -- I would move the 82nd outside the city in case we were
3 unable to get the Guard there in time.

4 I thought that move would obviate his decision or a decision by him to actually
5 order the deployment of Active-Duty forces into the city.

6 And so that proposal worked and we were able to avoid a worse situation.

7 Q I see. Did you convey to him the fact that the 82nd Airborne had been
8 moved to Fort Belvoir in the event that they were needed?

9 A I don't recall doing that. Like I said, once I left the Governors call on
10 June 1st, I returned to the Pentagon and don't recall having other conversations with the
11 President after that with regard to the movement of forces.

12 Q Okay. That was my next question.

13 Did you ever have any further discussions after that June 1st meeting in the Oval
14 Office with the President about the deployment of Active-Duty troops in the summer
15 protests? And I mean across the country. Did it come up again in discussions with
16 him?

17 A I don't recall so.

18 Q Okay. Now -- and you indicated, I believe, just in response to my previous
19 question, that you placed a condition on the troops that were moved to Fort Belvoir that
20 they not be deployed without your personal approval. Is that right?

21 A That's correct.

22 Q Why did you add that particular condition of your personal approval before
23 they could be moved?

24 A Because I was aware of the gravity of such a movement, and I wanted to
25 make sure that authority to do that resided with me and not with a lower-level

1 commander or anybody else.

2 Q Okay.

3 A That was one thing I did not want to happen.

4 Q And it didn't happen, correct? They never were deployed, they stayed at
5 Belvoir, and the situation was stabilized by the combination of the law enforcement and
6 the National Guard troops?

7 A It did not happen. And as soon as I felt that I could, I began the
8 redeployment of Active-Duty forces.

9 Q Let's talk about later on in the evening of June 1st, the 6 o'clock walk that
10 you took with some others, with the President and others, to Lafayette Square.

11 Do you recall the circumstances that led to you being with the President and
12 General Milley in Lafayette Square that evening?

13 A Yeah. With regard to timeline, it did not happen at 6 o'clock. I was en
14 route to the FBI command post.

15 At around 6:20 or so, I got a call that the President wanted an update on the
16 employment of forces to support law enforcement that evening in the city. General
17 Milley was already downtown at the FBI command post and was en route back to the
18 White House, I was told.

19 So I immediately had my vehicle turned around, and I went back to the White
20 House, arriving sometime, I don't know, around 6:30 p.m. or so.

21 Q Okay. And what was your understanding as to why you were needed at the
22 White House at 6:30 or so that evening?

23 A I was told that General Milley and I were supposed to update the President
24 on the plans to deploy or to use forces that evening in the city to support law
25 enforcement, consistent with the discussion earlier in the day.

1 Q I see. So you expected a continuation of the discussion you'd had in the
2 Oval Office that morning about security in the district that day?

3 A Yes.

4 Q What happened when you arrived?

5 A When I arrived, there was -- I went into the outer office -- what's called the
6 outer Oval, which is where the President's assistants sit and handle, you know, his
7 calendars, et cetera. There was a large gathering of people.

8 And I immediately inquired as to, when does the meeting begin? Somebody
9 spoke up and said, "There is no meeting." I said, "Well, if that's the case, then I'm
10 returning back out to -- return back to the FBI command post to prepare for the evening."

11 And at that point, since I was already there, somebody said, "No, don't do that.
12 The President wants you -- wants you to join him to go check out the damage at the
13 church in Lafayette Park."

14 Q Okay. So did you then proceed to walk toward the church with the
15 President?

16 A Well, some time passed, in which case I did some other work, if you will,
17 talking to others in the room.

18 Eventually, I guess the President was doing a press conference, it concluded, we
19 were asked to line up and then join him in the room that faces Lafayette Park in the
20 White House.

21 Q What happened next?

22 A The President greeted us. I asked him, "Where are we going?" something
23 like that, or, "What are we doing? Where are we going?" He didn't respond. He
24 turned and began walking across -- walking out off the Portico toward Lafayette Park.

25 Q Did you follow?

1 A We were told to follow the President at a distance, "we" being myself,
2 Attorney General Barr, and General Milley.

3 Q Told by whom?

4 A I can't recall. It was probably somebody from the communications team or
5 something like that.

6 Q I see. Okay.

7 So walk us forward. Just describe for us what occurred as you walked toward
8 Lafayette Park.

9 A Well, you know, obviously, we walked on the -- I think it's a gravel road, if
10 you will, toward the exterior fence of the White House. And once we emerged from the
11 White House we were greeted by a throng of reporters and others in the park. And I
12 think that was our first sense that something was amiss with regard to this checking out
13 the damage at the church in Lafayette Park.

14 Q Yeah. Did you feel like that was inappropriate, that the presence of the
15 press or that something was amiss? Tell us more specifically what was, in your view,
16 amiss and what troubled you about what was occurring.

17 A I thought it was inappropriate that I was there, and I know that General
18 Milley felt the same.

19 Q Why?

20 A Because this was a domestic law enforcement action, and the presence of a
21 senior -- the senior military officer and the Secretary of Defense is, I think, inappropriate
22 in that context. It was particularly so for General Milley, being a uniformed officer.

23 For me, I'm a political appointee, so there are times at which I have to be
24 discerning with regard to where I involve myself. My aim was always to remain
25 apolitical. But in this context I felt that it was inappropriate for me to be there.

1 Q I see.

2 So where did you go? Just tell us how the event unfolded and ultimately
3 concluded.

4 A Well, we wrapped our -- we wound our way through Lafayette Park,
5 eventually ending at the road opposite the church. The throng stopped there.

6 President Trump stepped forward across the street. And that's when, you know,
7 he took those photos with regard to him holding the Bible and said a few words to the
8 press.

9 I was not there in the front. I was moving toward the back, actually, of those
10 gathered.

11 Q Purposely, so that you would not be --

12 A Yes, I was trying to avoid the situation.

13 Q Understood.

14 And then at that point walked back to the White House and the crowd dispersed
15 and you eventually did get a chance to do what you were there to do and meet with
16 members of the National Guard?

17 A Well, as soon as we walked out of the gate, I had actually determined before
18 I actually left the White House, the Oval Office, that if there was going to be a walk to the
19 park, I wanted to at least go see the National Guardsmen and talk to them and make sure
20 they were prepared for the evening, get a sense of how they were feeling about their
21 mission, so forth and so on. So as we walked through the park, I tried to locate them
22 visually and was unable to.

23 After the President raised the Bible and spoke to the group and we began the walk
24 back, I actually peeled off from the throng and tried to move westward in the park to find
25 the National Guard again and was unable to locate them. Before I was concerned I

1 might not be able to make my way back into the White House compound, so I had to
2 quickly rejoin the group.

3 Q Okay. And then did you actually get back to the White House compound
4 before you departed?

5 A I did.

6 Q Okay. Now, after this occurred, Dr. Esper, did you feel the need to issue an
7 apology or to clarify that the military should not have a role in domestic law
8 enforcement?

9 A At that point in time, I felt the important thing was to get to the FBI
10 command post and prepare for the evening and make sure that we were in a position to
11 support law enforcement that evening given what was -- given what had happened that
12 day and what was expected that night.

13 Q Okay. So is it fair to say that over the next couple of days the situation was
14 stabilized, with the combination of law enforcement and the National Guard, and by June
15 the 3rd, a couple of days later, things were, again, generally stabilized?

16 A So later that night on June 1st, I had been out on the streets by myself, with
17 Attorney General Barr and with General Milley at different moments, checking on the
18 troops, talking to them, assessing the situation, making sure that everybody understood
19 their mission and was set for the evening.

20 I returned to the FBI command post later that night, roughly around 11 p.m., and
21 had the chance to sit down with my team and discuss what was happening. It was our
22 first chance to really step back and assess the situation as a team.

23 At that point in time I realized, upon the advice of my staff, that it was important
24 to send a message to the force, with regard to DOD support to civilian law enforcement,
25 what it meant, to talk about our oath to the Constitution.

1 So I asked my head of public affairs that evening to immediately return home to
2 begin drafting a message to the Department that would go out the next day. I wanted
3 to get it out before most of our forces in the United States left home the next day.

4 And so he returned home, he began crafting, and then the next morning I
5 reviewed a draft. And then that afternoon, after lunch, the memorandum was issued to
6 all DOD personnel.

7 If you don't have a copy, I'd like to submit it for the record.

8 Q Please, yeah.

9 First of all, tell us why you felt it was important, Dr. Esper, to issue a memorandum
10 to the joint force.

11 A I thought it was important to make sure, given a combination of what was
12 being reported in the media, what was being seen, the optics of the situation, that I issue
13 a very, very clear statement from the civilian -- senior civilian head of the Department
14 about what the role was in the military with regard to support to civil authorities, our
15 oath to the Constitution, and the importance we place in the proper civil-military affairs.

16 So in five paragraphs I laid this out. I would say the most important paragraph I'll
17 read to you briefly.

18 Q Please, please.

19 A In the third paragraph I say, quote, "Department of Defense personnel have
20 taken an oath to defend the Constitution of the United States. I, myself, have taken it
21 many times in my military and civilian careers and believe strongly in it.

22 "As part of that oath, we commit to protecting the American people's right to
23 freedom of speech and to peaceful assembly. I, like you, am steadfast in my belief that
24 Americans who are frustrated, angry, and seeking to be heard must be ensured that
25 opportunity. And like you, I am committed to upholding the rule of law and protecting

1 life and liberty so that the violent actions of a few do not undermine the rights and
2 freedoms of law-abiding citizens."

3 And then I, in the final paragraph, I remind everybody of the importance of being
4 apolitical.

5 I wanted to send that message out to send, again, a clear message from the
6 Department's senior civilian about our role. And importantly as well, I wanted to send
7 out the first message to set the tone and tenor so that General Milley, my service
8 secretaries, and my service chiefs could send out a cascading series of letters and
9 messages to the field as well reinforcing this message.

10 I wanted to go first so that if there was any fallout it would be -- it would rest on
11 my back and not theirs.

12 And so, again, I directed that message. It came out the next day. I think
13 General Milley's came out later, after mine, if not the day after that. And my
14 understanding is that others sent out messages following that as well.

15 Q I understand.

16 You mentioned the potential fallout. When you issued that memorandum to the
17 joint force, did you expect that there would be fallout or that the President, in particular,
18 would be critical of that statement or might have a negative reaction?

19 A I estimated that that could be the case, yes.

20 Q Tell us more. Why? What informed your sense that he might have a
21 negative reaction?

22 A It was just my sense, from having worked with him at that point for nearly a
23 year and hearing his views with regard to the employment of the military in situations like
24 this, and it was just my sense, given my experience, that that might strike him as
25 inappropriate or maybe undermining his message or his approach toward dealing with

1 protests in the streets.

2 But I thought it was more important that I send a clear message to the
3 Department with regard to where I stood and what our responsibilities were both to the
4 Constitution, given our oath, and at least certainly for the military, for those uniformed
5 personnel, as a member of the profession of arms.

6 Q Yeah. Did then you get any pushback or reaction from the President after
7 you issued the memorandum?

8 A Not that was conveyed to me.

9 Q Okay. Did you at any point -- I know not in that memo, but sometime soon
10 thereafter -- publicly provide your perspective on the appropriateness of the Insurrection
11 Act in situations like the one at Lafayette Square?

12 A I'm sorry, I didn't understand the question.

13 Q Well, just 2 days later there was a press conference in which you talked a
14 little bit about the situations that would justify the invocation of the Insurrection Act.

15 Do you recall that press event where you talked about the Insurrection Act?

16 A Well, yes, most notably. On June 2nd, as turmoil continued in the country
17 and talk of the invocation of the Insurrection Act continued, I became very
18 concerned -- also as protests and unrest continued across the country in, I think,
19 hundreds of cities -- that the Republic, if you will, was getting a little wobbly, as I would
20 say.

21 And I felt the need to get out there and send a clear message with regard to
22 where I stood on the issue of invocation of the Insurrection Act and, further, with regard
23 to where I stood on a variety of issues, from the tragic, awful murder of George Floyd to a
24 variety of things.

25 And my sense was I wanted to make that statement in the hopes that it would

1 stabilize the situation across the country and that we could turn the temperature down
2 somewhat.

3 Associated with this was a plan to begin some de-escalatory actions to signal to
4 the American people that DOD, at least, was trying to dial things back and, again, stabilize
5 the situation so that we could have a more rational approach to it.

6 Q And what form did that take, your effort to deescalate, to clarify your
7 comments on the Insurrection Act? Was that in not the memo, but in a press statement
8 that you gave on June the 3rd?

9 A I gave a live -- made a live statement before the country from the Pentagon
10 on the morning of June 3rd. And, obviously, you have the transcript, so --

11 Q Yeah.

12 A That was the approach I decided to take so that my words would be clear
13 and clearly coming from me with regard to my view on these matters.

14 Q Yeah. And just reading from the transcript, Dr. Esper, of your comments
15 from the Pentagon on June the 3rd, you said, "I've always believed and continue to
16 believe that the National Guard is best suited for performing domestic support to civil
17 authorities in these situations, in support of local law enforcement. I say this not only as
18 Secretary of Defense, but also as a former soldier and a former member of the National
19 Guard.

20 "The option to use Active-Duty forces in a law enforcement role should only be
21 used as a matter of last resort and only in the most urgent and dire of situations. We
22 are not in one of those situations now. I do not support invoking the Insurrection Act."

23 And I believe [REDACTED] is, yeah, putting that up on the screen.

24 So it sounds like, Dr. Esper, you very intentionally wanted to make clear to the
25 Nation that we were not in the summer of 2020, in Washington or elsewhere, in a

1 situation, a dire situation in which the Insurrection Act would have been appropriate. Is
2 that right?

3 A That's correct.

4 Q And did this statement then prompt a negative reaction from the President?

5 A Yes, it did.

6 Q Tell us more about what was conveyed to you by him or others on his behalf.

7 A I was immediately summoned over to the White House to appear before the
8 President and to discuss this, my statement, with him.

9 Q Tell us about that conversation. What did he say?

10 A It was a very direct conversation between him and me. And he was quite
11 upset and yelling. And I tried to respond to all his questions and point out what I said
12 and did not say, et cetera, reminding him that my position remained unchanged from
13 where it was on Monday and that I stood by what I said at the podium just a half hour
14 earlier.

15 Q Okay. Do you remember anything in particular that he said? What
16 specifically made him angry? Was it the timing or the statement being not cleared, or
17 was it the underlying position that you expressed?

18 A I think it was a number of things. I think the most memorable was that he
19 thought that I took away his authority, that I was acting as President and that I took away
20 his authority to invoke the Insurrection Act.

21 Q I see. And what did you say in response, Dr. Esper, in the face of that
22 reprimand?

23 A I can't recall the timing. As you all know, I have a memoir coming out that,
24 given the time to think through it, I was able to catalog in detail as best as I could recall.

25 But at one point we had a disagreement about what I said. And so I pulled out a

1 copy of my transcript and put it on the table and pushed it over to him to show him
2 exactly what I said.

3 And then at another point, again, he asserted that I took away his ability to invoke
4 the Insurrection Act, which legally I did not, but I was not inclined to disabuse him of that
5 notion given where things stood.

1

2 [4:05 p.m.]

3 [REDACTED]

4 Q I see. His interpretation was that you had essentially prevented him then
5 from thereafter invoking it given the position you took in this public statement?

6 A Yes.

7 Q Okay. Now, after this difficult conversation with the President, did he
8 continue between then and the end of your service as Secretary of Defense to raise the
9 Insurrection Act or the use -- possible use -- of Active-Duty troops in domestic disturbance
10 situations? Did it come up again?

11 A It came up at least a few times throughout the summer with regard to
12 deployment of the Guard to other cities, such as Portland and Seattle.

13 I don't recall talk of the Active-Duty deployment because I think I was successful in
14 ending that inclination on June 3rd.

15 But, obviously, with regard to the deployment of National Guard troops to Seattle
16 and Portland, would likely require invocation of the Insurrection Act, because you might
17 be ordering the deployment of Guard from one State into another State without the
18 Governors' permission on either end.

19 Q I see. So in the context of continuing unrest in Portland and Seattle, the
20 use of other Guard assets would have required invocation of the act, and that was
21 something discussed with the President?

22 A Well, again, I -- you need to get the lawyers in here who understand the law
23 very well. But my recollection is that you have to have the consent of both States'
24 Governors to deploy the Guard, or you have to invoke the Insurrection Act.

25 Q Right. Fair to say, Dr. Esper, that your position on the possible invocation

1 of the act never wavered, you never reached a point where conditions in your view rose
2 to the level where it would be appropriate to invoke the act throughout the rest of your
3 term as SecDef?

4 A That's correct.

5 Q And you conveyed that consistently to the President?

6 A That's correct.

7 Q Did he continually push back or challenge that or raise again the prospect of
8 the potential invocation of the act?

9 A He continued through the summer of 2020 to push for, at times, the
10 deployment of National Guard troops into cities such as Portland and Seattle -- those are
11 the two notable -- to -- again, to address the protesters.

12 Q Yeah. And much like Lafayette Square, did it ever become necessary to do
13 that or were the combination of law enforcement -- civilian law enforcement and the
14 State National Guard troops able to quell the violence and stabilize those situations
15 ultimately?

16 A I never thought so. I think -- I thought that Department of Homeland
17 Security did a good job, maybe at times supported by DOJ. I just can't recall. But I
18 thought Federal law enforcement did a good job in terms of defending.

19 And, of course, again, the law is important here, but at least for the deployment of
20 Guard, it is limited to the defense of Federal persons, property, and functions, as I recall.

21 And I think that Federal law enforcement arrived in places like Portland, for sure,
22 and maybe Seattle, to do those things. And so there was, again, never a need. I'm not
23 even sure that the Governors called up their own Guard to support in those cities.

24 Q It was strictly the Federal law enforcement or State, local, Federal law
25 enforcement agents that were able to stabilize those situations?

1 A Yes, and that is the appropriate response, to use law enforcement. And,
2 again, as I had said to you all today, and I had said multiple times in the past, that it
3 should be -- it should work its way from the lowest level up in terms of using law
4 enforcement.

5 Q Yep. Understood. So let me just finish my portion before I ask █
6 █ to have a few more questions.

7 Did this in part lead to your termination as SecDef later that year in November,
8 this dispute that you had, an ongoing dispute with the President about his power under
9 the Insurrection Act?

10 A I suspect it was one of several things and maybe the most notable of those
11 things.

12 Q Let's just talk briefly about your termination. How were you notified about
13 it? And what, if any, explanation were you given?

14 A I think this is outside the scope of what we agreed to, but I'll deviate for a
15 moment because it's a very simple answer.

16 I was informed by Chief of Staff Mark Meadows on the -- around lunchtime on
17 November 9th. And his basic message was something along the lines that I was being
18 terminated because I was insufficiently loyal or not loyal to the President. And I
19 responded that my oath was to the Constitution and not to the President.

20 Q I understand.

21 All right. Thank you, Dr. Esper.

22 I think █ has a few more?

23 █

24 Q Hi, Dr. Esper. I just want to talk briefly. And I'm cognizant of time, and
25 I've also reviewed the testimony you provided to the House Armed Services Committee

1 about the events of the summer.

2 And I want to talk -- ask you to just explain briefly, if you could, about some of the
3 lessons learned that you spoke about then, starting with that the troops should only be
4 used as a last resort in direct civilian law enforcement roles.

5 Obviously, that wasn't a lesson learned from that summer, in particular, but how
6 did that play out during the summer?

7 A You're right, that wasn't a lesson learned. I think that was a rule of thumb
8 that I took into all these discussions, as did General Milley. And that continued to be the
9 push that we would have, is that you should exhaust your law enforcement resources first
10 before calling up the military, any parts of the military.

11 Q It sounds like you had multiple conversations with the former President
12 about that topic, that the military's a secondary role, particularly, for domestic civil
13 disturbance protests. Did he ever seem to understand that concept?

14 A I don't think he ever embraced it because we would, at subsequent
15 meetings, come back with his inclination to use, again, the military first, the Guard later.

16 Q Did he understand the difference between the Active-Duty military versus
17 the National Guard, as you described it?

18 A I don't know. A lot of people don't understand the differences between
19 Active Duty, National Guard, and Federal Reserves. It's a little complicated. But I'm
20 not sure. I would be speculating.

21 Q You also spoke about that the police -- there was an issue with law
22 enforcement not wanting distinct uniforms during that summer versus when the military
23 is present. And that was one of the issues that came out from the summer. Do you
24 remember that?

25 A Yes, we learned a few things that I think caused confusion, certainly, in the

1 minds of some in the media and certainly as a result in the minds of Americans.

2 The images of law enforcement using shields that said military police or in some
3 cases law enforcement wearing uniforms that were kind of a green fatigue or camouflage
4 confused people and led many to believe that the National Guard had been deployed
5 against protesters in Lafayette Park, which was not the case.

6 And it led to some other allegations, that the Guard employed PepperBalls and
7 tear gas and other things that just were not accurate based on the reporting given to me
8 within days by Major General Walker, the commander of the D.C. National Guard, and
9 Secretary of the Army McCarthy.

10 So I had directed Secretary McCarthy within days to conduct what we call an
11 after-action review in the Army to get to the bottom line about lessons learned from the
12 events of the week of June 1st. And I told him that once he had done that, I wanted him
13 to sit down with law enforcement and do the same. I mentioned this to Bill Barr, and I
14 told him I wanted to do this, and he agreed.

15 And so I left that task to Secretary McCarthy to begin accumulating lessons like the
16 two that you mentioned so that we could do better the next time.

17 Q Right. I think one I didn't mention was about the equipment being lent to
18 civilian law enforcement that was labeled military. You alluded to that as well. And I
19 think you described in the hearings that the National Guard cross-leveled its riot shield.
20 Are you familiar with that testimony?

21 A The report I had heard within days of Lafayette Park actions on June 1st was
22 that some members of law enforcement who were going to be facing the protesters in
23 the park had no -- didn't have shields. And so our servicemembers, the National Guard,
24 lent them their shields. They were going to be staying behind, I guess, guarding, again,
25 Federal property.

1 So they lent them their shields, which I understand why they did it. It was good
2 to share the commitment of protective equipment, if you will. But now you had civilian
3 law enforcement carrying around shields that said military police, and that confused the
4 situation with regard to who was doing what on the ground in Lafayette Park.

5 Q And is it fair to say that left a visual that the National Guard was in charge of
6 that civil disturbance protest that was not accurate?

7 A I don't know if it was -- I don't know if it left the impression that they were in
8 charge, but it certainly left the impression that they were participating. And, again, both
9 would be inaccurate based on reports given to me not long thereafter by General Walker
10 and Secretary McCarthy.

11 And I believe that I testified to this. And I also believe that the DOD IG report
12 that you all sent me affirmed it as well.

13 Q One of the lessons learned that Secretary McCarthy told us, told the
14 committee about, was that from the summer it was clear that because he and General
15 Walker were collated with each other, that there was a lot of verbal back and forth
16 between them, and that kind of sped up the response time.

17 Whereas, and I'll quote what he said, that, "What we learned in the process was
18 we were not capturing a lot of the information in writing in the orders process, which is
19 fundamental because of the stress of the situation and the speed of the situation."

20 General Piatt also told the committee that, "From the summer the breakdown
21 showed that one of the lessons we learned is we do not have clear, established
22 operational procedures for use of the National Guard soldiers in civil disturbance."

23 Is that an accurate assessment by both General Piatt and Secretary McCarthy that
24 you agree with?

25 A I don't know. They never conveyed that to me, that communications or

1 lack of written orders was an issue. So I don't want to speculate on it.

2 Q Did you feel that there was -- did you get more involved in the request for
3 the D.C. National Guard before the time -- before you left?

4 A I was not involved beforehand. Typically, that went -- as I recall, I think it
5 came into the Department and would go straight to the Secretary of the Army as the
6 designated civilian lead.

7 I think the only further involvement I had -- and, of course, a lot of this discussion
8 ended after the summer -- was to adopt our lessons learned from the events of June 1st
9 and make sure that we didn't repeat them.

10 So we talked about, for example, not sharing shields unless they were -- the
11 markings were removed or covered, things like that. I made the request of law
12 enforcement, the Acting Secretary of DHS, in particular, to make sure his people were not
13 using military-style uniforms.

14 So we tried to implement the lessons learned from the summer to make sure that
15 should this arise any time in the future that we would be in a better situation, if you will.

16 Q And was that memorialized in some way?

17 A You know, I can't recall. I know we discussed it in the meeting a week or
18 two after. But I can't recall how it was memorialized or if it was memorialized.

19 Q I think General Milley told the committee that he along with you contributed
20 to writing some of the lessons learned in terms of -- in the form of a letter of some sort.

21 Do you remember discussing that with General Milley in terms of writing down
22 what occurred over the summer and making sure it didn't happen again?

23 A I don't recall physically writing a letter or a memo. I do recall discussing
24 these things in a larger meeting with -- I think General Milley was there. I know
25 Secretary McCarthy was there. I know General Walker was there and others. And this

1 was a week or 2 -- like I said, sometime within the first 2 weeks, I want to say, of the
2 events of June 1st. And we discussed these things, again, uniforms, shields, things like
3 that.

4 Q I just want to show you briefly exhibit 4. If we can bring that up. And this
5 appears to be -- it was an attachment to exhibit 11, which was a November 3rd email.
6 You're not on that email. However, I just want to pull it up.

7 And this is a memo that's directed for the Secretary of Army, which broadly
8 discusses some of the issues that we've discussed.

9 Do you remember seeing this memo in this form?

10 A I don't.

11 Q Okay. Do you remember kind of discussing some of these concepts,
12 though, in terms of the last paragraph itself? "My expectation is that the D.C. National
13 Guard will only be employed as a last resort, and, if so, will be clearly marked and/or
14 distinguished from law enforcement entities."

15 A Well, again, I don't recall this memo. I don't know -- I see that it was sent
16 to the Secretary of the Army. I don't know who it was sent from. And so I don't recall
17 a specific paragraph.

18 I will say, though, that the thrust of the last paragraph is consistent with what I've
19 been telling you all, that my view was that the military should be the last -- should be at
20 the back of the queue, behind law enforcement, and that at the front of the military
21 queue should be the National Guard and in the rear of the military queue should be
22 Active-Duty forces.

23 So that is consistent. And as I told you, I thought it was very important as a
24 lesson learned from June 1st that the military be distinguished from law enforcement and
25 that the way to do that was to get law enforcement to use nonmilitary style uniforms.

1 And I guess in some cases, if we could clearly identify our own folks, that that would be a
2 good thing, too.

3 Q And just so I'm clear, was there ever any such guidance issued to the D.C.
4 National Guard, regardless of whether you've seen this memo or not, that memorialized
5 these lessons that you just talked about?

6 A I don't know. I would not have issued that to the D.C. Guard. I would
7 have given guidance to Secretary McCarthy to give that guidance to the D.C. Guard. But
8 I never did that I can recall.

9 Q Was any guidance issued to the Secretary of the Army about employment
10 guidance for the D.C. National Guard in your --

11 A I know I gave -- go ahead. I'm sorry.

12 Q Before the summer events, did any such guidance exist for the Secretary of
13 the Army issued by the Secretary of Defense?

14 A Prior to June 1st?

15 Q Correct.

16 A Not by me, and I'm not sure that there were any standing orders either.
17 Not that I recall.

18 Q Okay. We're wrapping up, Dr. Esper. I just have one question about the
19 summer events.

20 Were you aware of an effort by the White House to federalize the Metropolitan
21 Police Department?

22 A No.

23 Q And were you aware that the Joint Chief, General Milley's office, was kind of
24 tracking the violence and monitoring it across the country and were receiving daily data
25 reports?

1 A Yes. I know General Milley kind of carried these stats around with him on a
2 daily basis.

3 I tended to get reports from my -- up from my Assistant Secretary for Homeland
4 Defense Ken Rapuano. He was -- and to be clear, because this was often the question, it
5 was not any information that was gathered by the military, as I was told, because -- but it
6 was information conveyed to him from, I think, either DHS, DOJ, or both.

7 Q Right. And it showed kind of these three or four cities where there was
8 rioting, but nothing nationwide that would have been the predicate for the Insurrection
9 Act. That was General Milley's general substance to us.

10 Do you agree with that?

11 A I think we tried to track and understand what was happening in all the cities,
12 at least the major cities across the United States, in terms of how people were protesting,
13 how violent was it, or was it not.

14 And, again, it was not -- my understanding was it was law enforcement
15 information, that's who was -- that was who was collecting it and providing it.

16 Q Right, I understand that, that it was law enforcement. The information
17 provided, however, didn't show anything that would have triggered, in your mind or
18 General Milley's mind, the need for the Insurrection Act?

19 A No. Again, I never felt the need to invoke the Insurrection Act.

20 Q And just in terms of the discussions that you had after June 1st events with
21 Secretary McCarthy, General Walker, and General Milley, with just in looking back now,
22 was it your intent for the Secretary of the Army or the Secretary of Defense to be more
23 involved in the deployment of the D.C. National Guard?

24 A Let me answer this a few ways.

25 I think given what happened the week of June 1st and some of the events that

1 happened -- so we, for example, we were surprised that a helicopter was used on the
2 evening of June 1st. And within an hour of being informed, I immediately directed an
3 investigation. We were later surprised that another National Guard aircraft was used
4 and conducted another investigation.

5 So I think there were a number of things that surprised us during the course of the
6 week of June 1st that prompted us to get more involved in these types of deployments.
7 And so we took a more active -- I certainly did. I know Secretary McCarthy did.

8 And I think the thing is this was a unique event. It's fair to say protests and civil
9 unrest like this probably hadn't happened in decades, a couple generations. And so we
10 were no longer dealing with the normal requests that would come through the system for
11 additional National Guard support for a July 4th celebration or a National Guard traffic
12 control support for a parade, or something like that.

13 We were in a completely new situation now. And I think, as a result, we all took
14 a more active interest in what was happening down to the tactical level to make sure that
15 we were, again, abiding by kind of the core principles of civil-military relations, the
16 military support to civilian authorities, et cetera, et cetera.

17 Q It's fair to say there was more scrutiny involved in some of the requests for
18 the D.C. National Guard?

19 A Yes.

20 ████████ Let me turn it over to see if any of our members have any
21 questions. I see Mrs. Luria is on. I know Ms. Lofgren was on earlier.

22 Anyone else have any?

23 Mr. Kinzinger. No questions --

24 ████████ Mr. Kinzinger?

25 Mr. Kinzinger. No questions here.

1 [REDACTED] Okay. Thanks.

2 Mrs. Luria. This is Elaine. No questions right now. I just want to say thank
3 you to the Secretary for joining our conversation.

4 [REDACTED]

5 Q Dr. Esper, the only other question I have, just looking back over my notes, is
6 just to briefly go back to the discussions you had with President Trump around the June
7 events.

8 Did he ever during those discussions talk about his desire to look tough or the
9 desire for how the deployment of troops would -- the message it would send, or the
10 optics, or the sort of look that it would convey? Was that part of his -- sort of his
11 discussion or his case, so to speak, for using Active-Duty troops?

12 A If memory serves me correct, on -- at the June 1st meeting he thought that
13 what was happening in the country with regard to the civil unrest made the United States
14 look weak, made him look weak. There was talk along those -- rhetoric along those
15 lines.

16 I think, again, you have the transcript there. I think he said similar things in the
17 call with the Governors that same day.

18 Q Yeah, he does. Exactly. And I'm trying to get a sense -- and I don't want
19 to you to speculate -- but whether his point or in the discussion was motivated more by
20 looking strong versus tactically what would be the best solution to safely quell the
21 violence, if you have a sense as to which of those priorities, whether they conflicted, or
22 what he mentioned as his reason for wanting the Active-Duty troops.

23 A Yeah, I don't want to speculate as to why he leaned toward Active-Duty, and
24 if not Active-Duty, then the military Guard. There could be a number of explanations,
25 that maybe he thought that that would be a more effective force. I just don't know

1 which of those that I would -- it would be, again, speculation.

2 Q Yeah. No, again, I don't want you to speculate. I'm just really asking what
3 he said. Did he say, "We have look strong, this looks terrible, we look weak"? It
4 sounds like both from the call with the Governors and from your recollection of the
5 conversation in the Oval Office that how things looked was part of the conversation.

6 A Well, yes, as I said, he thought that we looked weak abroad. And I think in
7 the call with the Governors he expressed that he looked or that the -- he and the
8 Governors looked weak or the Governors looked weak by not responding more forcefully
9 to the protests.

10 Q Yeah. Okay. All right.

11 [REDACTED]

12 Q Just one more question along that line.

13 Along with the conversations about the Insurrection Act, it was reported that
14 several high-level Pentagon officials threatened to resign if the President did invoke the
15 Insurrection Act.

16 Are you familiar with that? Was that ever communicated to the President?

17 A I don't recall that at all, frankly. I'd love to know who you heard that from,
18 but I just don't recall that.

19 Q Oh, it was in The New York Times. I didn't hear it.

20 A Well, there was, as I said, there was a lot of inaccurate or incomplete
21 reporting that was going on during that timeframe. And so, you know, as you'll see in
22 my transcript of June 3rd, I think in the first paragraph I say there's been some reporting,
23 some good, some bad.

24 And another reason why I wanted to give the press conference on June 3rd was to
25 clarify some things that were in the press that just simply were not accurate. And so I

1 tried to address them as well.

2 So I appreciate you conveying the source, but I just don't recall anybody -- I don't
3 recall it ever being reported, and I don't recall it ever being talked about within the
4 Pentagon.

5 Q And, ultimately, do you believe that the 5,000 National Guard that ultimately
6 came for the summer protests, did that prevent the President from invoking the
7 Insurrection Act once he saw that presence in the District?

8 A So I'll give a long-winded answer. I think that, first of all, I think there is
9 credit due to Attorney General Barr for pulling in a lot of law enforcement folks to be
10 there on the scene in D.C. on June 1st and getting them there in a timely manner.

11 You know, whether or not the additional forces provided by the D.C. Guard and
12 others was needed, I don't know. But needless to say, we did not have violence the
13 evening of June 1st or June 2nd like we had in the previous nights.

14 As you probably know, there were National Guardsmen injured, there were Secret
15 Service injured, there were Park Police injured, there was a lot of destruction going on.

16 So we did not see the level of violence the evening of June 1st that we had in the
17 previous nights.

18 So I think the proposal to -- that Bill Barr and I put forward, that he call up law
19 enforcement and I would call in Guard, was successful in tamping the violence down.
20 But it was certainly successful in terms of obviating the President's inclination to or desire
21 to deploy Active-Duty troops into the city, which, again, I was opposed to for the reasons I
22 stated.

23 [REDACTED]

24 Q Dr. Esper, is there anything else that you think is relevant? Is there
25 anything that we haven't asked you that -- I appreciated your opening statement. But

1 upon reflection and our conversation, anything else you think we should know, the
2 committee should know?

3 A I think with regard to January 6th, 2021, again, it was a tragic day. It was
4 terrible. What we saw, what we witnessed, you know, I made a statement that
5 afternoon about these things that if you don't have for the record we can share with you
6 for the record, probably my first public statement since leaving office.

7 But, anyways, I don't think I have anything further to add at this point in time.

8 Q You did issue a series of tweets that afternoon, and I'll just read them into
9 the record.

10 You say, "As this transition plays out over the next 2 weeks, I am confident the
11 U.S. military will stay out of politics and remain true to its sworn oath to support and
12 defend the Constitution and the American people as the most trusted and respected
13 institution in the country."

14 You say, "This must end now for the good of the Republic. I commend
15 congressional leaders for meeting tonight to complete their constitutional task of
16 counting the electoral college votes that will affirm Joe Biden as the next President of the
17 United States.

18 "This afternoon's assault on the Capitol was appalling and un-American. This is
19 not how citizens of the world's greatest and oldest democracy behave. The
20 perpetrators who committed this illegal act were inspired by partisan misinformation and
21 patently false claims about the election."

22 It's a series of three tweets that I think I read out of order. But is that what you
23 recall, Dr. Esper, is the statement that you just referenced that you issued on
24 January 6th?

25 A Yes. That is.

1 Q And consistent, I take it, still with your views on the events at the Capitol
2 that day.

3 A Yes. It is.

4 [REDACTED] All right. Well, we really appreciate your willingness to speak with
5 us. Again, you did this voluntarily and took time to provide this useful information. So
6 thank you very much.

7 Thank you, Mr. Richards, for your help as well.

8 Mr. Richards. Thank you.

9 Dr. Esper. Thank you all very much as well.

10 [REDACTED] All right. Thank you. Have a good afternoon.

11 Dr. Esper. You, too. Goodbye.

12 [Whereupon, at 4:33 p.m., the interview was concluded.]

1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the
5 answers made by me to the questions therein recorded.

6

7

8

9

10 Witness Name

11

12

13

14 Date

15