

Statement of Michael J. Romano
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Before the Senate Committee on the Judiciary
Hearing on Arctic Forst Investigation

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Good morning Chairman Grassley, Ranking Member Durbin, and members of the Committee. Thank you for the opportunity to discuss the Special Counsel's election interference case, codenamed Arctic Frost, and his office's collection of toll records. It is an honor to speak with you today.

My name is Michael Romano. I was an attorney in the Department of Justice for almost eighteen years. Immediately before my resignation, I was a Deputy Chief of the Capitol Siege Section here in Washington, D.C. It was a great privilege to serve the United States by prosecuting crimes committed during the violent riot at the U.S. Capitol on January 6, 2021.

When I first learned of this hearing, I was surprised. Surprised because, from my perspective as a long-serving federal prosecutor, there is nothing remotely scandalous or controversial about the collection of toll records. Toll records show that a phone number called another phone number, when the call was placed, and how long it lasted. They do not include content. They do not capture conversations, voice mails, or text messages. When the Special Counsel's Office collected toll records, it did not gain access to anyone's thoughts or to any private discussions—only to the fact that the calls happened.

Subpoenas for toll records are routine in criminal investigations, especially where those investigations involve conspiracy and obstruction of justice. Both of those crimes turn heavily on a person's intent, which makes communications especially important. In such cases, investigators and prosecutors often seek to understand who the target of an investigation spoke with, when, and for how long. Investigators and prosecutors may also seek to understand who other people spoke with, even if those others are not suspected of any criminal wrongdoing.

Nondisclosure orders are also routine. It is often best practice for investigations to be conducted as covertly as possible. That is especially important where there are concerns of tampering, witness intimidation, or attempts by key parties to get together and agree on a story, which, based on what I know of the election interference case, was a real concern. After all, critical witnesses—which may have included some of you, Senators, and your colleagues and staff—did have their lives threatened on January 6 by supporters of the President.

This collection of toll records was not weaponization. It was not a witch hunt. It was not a pretext to harm enemies. If this was any of those things, the Special Counsel would have used this information against you, somehow. But as I understand, that didn't happen. Based on what I know, his office followed Department policy in the collection of evidence, safeguarded that evidence, and kept it confidential, just as I would expect any federal prosecutor to do. I understand that some of you had your toll records collected and that you are unhappy about that. That is understandable: nobody enjoys having government collect their information. But apart from that unhappiness, you were not harmed.

Indeed, given the gravity of the crimes under investigation in the election interference case, the Special Counsel needed to investigate fulsomely. Remember what we were dealing with, after January 6. The Capitol had been ransacked by a violent mob. Throughout the grounds and building, police officers were assaulted. They were punched, kicked, tackled, and spat on, battered with poles, hit with chairs, crushed in doors, blasted with pepper and bear spray, and shocked with stun guns. The rioters stormed the building, causing millions of dollars of damage to the seat of our government. They tried to overturn the results of the election and, by force or threat of force, install their preferred candidate despite the outcome. And in the process, your lives, your staff members' lives, and the lives of the officers who protected you were put in danger.

There were no small crimes on January 6, 2021. I have heard the criticism that misdemeanor defendants, accused of trespass offenses, were treated too harshly—and I strongly disagree with it. The people who trespassed at the Capitol, and committed disorderly behavior, enabled the mob violence. Without the volume of people who stormed the Capitol, less violence would have been committed, less damage would have been done. As one judge observed, commenting on these cases, every raindrop contributes to a flood. And based the evidence I reviewed, many misdemeanor defendants understood exactly what the riot meant to accomplish, and meant to achieve the same goals as the people who used violence. They knowingly lent their bodies to the effort, even if they committed no violence themselves.

The crimes committed on January 6 demanded to be investigated. Working as part of the Capitol Siege Section, prosecuting rioters, and having a role in leading the effort, was the apex of my work in the Department of Justice. It is the most righteous effort I have been a part of, with the finest team of investigators, prosecutors, and staff I have worked with. It was an honor to serve my country and do this work. President Trump's role in the election interference case deserved to be investigated, too, and it merited all of the tools available to federal investigators and prosecutors.