

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)
)
Plaintiff,) Criminal Action
) No. 21-cr-175
vs.)
) JURY TRIAL
Ethan Nordean,) Day 33
Joseph R. Biggs,)
Zachary Rehl,) Washington, DC
Enrique Tarrio,) February 15, 2023
Dominic J. Pezzola,) Time: 1:30 p.m.
)
Defendants.)

TRANSCRIPT OF JURY TRIAL
HELD BEFORE
THE HONORABLE JUDGE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

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* * * * * P R O C E E D I N G S * * * * *

(Whereupon the jurors enter the courtroom.)

THE COURTROOM DEPUTY: We're back on the record in criminal matter 21-175, United States of America versus Ethan Nordean, et al.

THE COURT: All right. Mr. Mulroe, you may continue.

MR. MULROE: Thank you, Your Honor.

Ms. Rohde, can we have 553-2 back up, please. And I think we are on the 11th page. See if that's right.

Yes. Thank you.

REDIRECT EXAMINATION (Contd.)

BY MR. MULROE:

Q. So, agent, before lunch we were taking a look at some communications on Telegram between Enrique Tarrío and Lieutenant Shane Lamond of the D.C. Metro Police; is that right?

A. Yes.

Q. Did we leave off at the message from Lamond to Tarrío on December 11, 2020, asking whether Tarrío wants him to let the uniformed officers know or keep it to himself?

A. Yes.

Q. Let's proceed from there. If we scroll down to the bottom half of the page, past --

Do we see an empty file from Tarrío?

A. We do.

1 Q. And then, after that, do we see a question from Shane
2 Lamond?

3 A. Yes.

4 Q. What was the message -- what's the date and time?

5 A. This is also on December 11th, at 9:36 p.m.

6 Q. Any response from Tarrio that we see here?

7 A. No.

8 Q. What's the message below that?

9 A. It says: Is your group at 11th and E, heading to FP or the
10 Mall? Sent on December 12th, 2020, at 9:49 a.m.

11 Q. Do we see any response in the Telegram chats?

12 A. Would you mind scrolling down?

13 No.

14 Q. We're now on to page 12 of the exhibit.

15 A. Yes.

16 Q. Let's look at the second message on that page. Would you
17 tell us the date and time and read the message?

18 A. This is December 12th, 2020 at 7:30 p.m., from Shane Lamond
19 to Enrique Tarrio: We just locked up one of your guys at 14th
20 and K.

21 Q. Is it customary, in your training and experience, for law
22 enforcement to tell their sources about associates of the
23 sources who have been arrested?

24 A. No.

25 Q. Let's go to -- let's stay at the bottom of that page, until

1 we see a message from Tarrío December 13th, 2020.

2 A. Yes.

3 Q. What's that message?

4 A. It says: We didn't even go into Harry's.

5 Q. And, I'm sorry. I should ask Ms. Rohde to scroll up just a
6 bit.

7 And, agent, please read the message before that, on
8 December 13th at 5:07 p.m.

9 A. Sure. From Shane Lamond to Enrique Tarrío: Shut Down D.C.
10 is going after Harry's again, urging people to report them to
11 ABRA.

12 Q. And, Ms. Rohde, if you could go to the next page, which
13 will be 13.

14 Agent, just walk through the messages on that page by
15 telling us the date and time, the sender, and the text of the
16 message.

17 A. Sure. December 13th, 2020 at 5:13 p.m., from Tarrío to
18 Lamond: What's ABRA?

19 Shortly thereafter, from Lamond to Tarrío: Alcohol
20 Beverage Regulatory Agency.

21 About a minute later, from Tarrío to Lamond: What
22 codes would they have broken?

23 Q. And I'll stop you there.

24 Is it customary in your training and experience for law
25 enforcement to tell their sources about separate enforcement

1 actions by administrative agencies?

2 A. No.

3 Q. Let's go to the next page, top of what will be 14.

4 See another empty file from Tarrio?

5 A. Yes.

6 Q. What's the date and time of that?

7 A. This is also December 13th, 2020, at 5:15 p.m., so just a
8 couple minutes later.

9 Q. Then, if you would read for us the bottom two messages on
10 that page.

11 A. These are both from Shane Lamond to Enrique Tarrio. The
12 first says: There may be no evidence to support it, but they
13 have sent emails to their followers urging them to call ABRA
14 and report violations, and also to call both Harry's and Hotel
15 Harrington, and tell them not to let PB back. Just giving you
16 a heads-up. On a brighter note, guy who stabbed your guys got
17 locked up.

18 Q. And I'll ask you, just generally, agent, in your training
19 and experience -- let me ask it this way: When the FBI is
20 handling confidential human sources, how much sharing of
21 information from FBI to source is there about separate charges,
22 investigations, and arrests?

23 A. There should be none.

24 Q. Let's go to the next page. This will be 15. And show us
25 the bottom two messages, the bottom half of the screen, please,

1 Ms. Rohde.

2 Agent, would you read that exchange, including the dates
3 and times and the senders?

4 A. On December 13th, 2020, at 5:32 p.m., from Tarrío to
5 Lamond: What's the general consensus with D.C. Metro and my
6 guys?

7 December 13th, 2020, at 5:43 p.m., from Lamond to
8 Tarrío: That's too complicated for a text answer. That's an
9 in-person convo over a beer.

10 Q. In your experience, agent, do law enforcement officers,
11 sometimes meet with their sources in person?

12 A. Yes.

13 Q. In your experience, do they drink with their sources?

14 MR. METCALF: Objection as to personal knowledge.

15 THE COURT: If he can.

16 MR. MULROE: I'll withdraw the question.

17 THE COURT: All right.

18 BY MR. MULROE:

19 Q. Let's go a few pages forward to -- let's go to page 20.

20 What do we see at the top of page 20?

21 A. This is an empty message from Lamond to Tarrío.

22 Q. And then the next message after that?

23 A. This is a message on December 17th, 2020, at 11:26 a.m.,
24 from Lamond to Tarrío: You didn't tell me we are going to be
25 neighbors -- with a laughing, crying emoji.

1 Q. And next message after that?

2 A. This is an empty message from Tarrío to Lamond.

3 Q. Next page, top message.

4 A. This is a message from Lamond to Tarrío on December 17th,
5 2020, at 12 o'clock p.m. It reads: If that's the case, sounds
6 like you have a leak.

7 Q. Agent, is it customary for law enforcement to tell their
8 sources about potential leaks in the sources organizations?

9 MR. METCALF: Objection, Your Honor.

10 THE COURT: What's the objection?

11 MR. METCALF: Vague.

12 THE COURT: Overruled.

13 A. No.

14 MR. METCALF: Your Honor, also to personal knowledge,
15 as far as how vague the question was.

16 THE COURT: You may continue. Overruled.

17 BY MR. MULROE:

18 Q. What was the answer, agent?

19 A. No.

20 Q. So, the date here is December 17, 2020; is that right?

21 A. Yes.

22 Q. I'm going to ask Ms. Rohde to pull up Government 553-1,
23 which, I believe, has been admitted. And we'll start at the
24 top there.

25 Agent, did you tell us this is another Telegram

1 extraction from the same Tarrio phone?

2 A. Yes.

3 Q. What's the date of the top message here?

4 A. December 18th, 2020.

5 Q. Are we picking up where we left off on the other one?

6 A. Yes.

7 Q. Read us, please, the sender and the text of the message.

8 A. The sender is Shane Lamond, to Enrique Tarrio, on
9 December 18th, 2020, at 7:34 a.m. It says: Hey, brother. Did
10 you call in an anonymous tip to MPD claiming responsibility for
11 the banner burning?

12 Q. And the next message?

13 A. This is from Tarrio to Lamond on December 18th, 2020, at
14 9:30 a.m. It reads: I did more than that. It's on my social
15 media.

16 Q. And the next message?

17 A. This is on December 18th, 2020, at 9:50 a.m., Lamond to
18 Tarrio: I gotcha. Someone called in an anonymous tip saying
19 that you claimed responsibility for it.

20 Q. Agent, in your experience, how common is it for law
21 enforcement to let their sources know that the source has been
22 the subject of an anonymous tip reporting a crime?

23 MR. PATTIS: Objection. Scope. Foundation. Which
24 agency? The FBI? Local?

25 MS. HERNANDEZ: Objection, Your Honor. Rule 701 and

1 702 and summary witness issues.

2 THE COURT: Sustained.

3 BY MR. MULROE:

4 Q. Agent, let me ask a more general question.

5 In your experience, is there any importance to keeping
6 the details of ongoing investigations confidential?

7 MS. HERNANDEZ: Same objection, Your Honor.

8 THE COURT: Overruled.

9 A. Yes.

10 BY MR. MULROE:

11 Q. Especially from the people who are being investigated?

12 A. Yes.

13 Q. Let's go to the next page.

14 And the second message on that page, if we could, from
15 Shane Lamond at 12/18/20, would you read that, agent?

16 A. Sure. It says: I'm curious to see what happens too. I
17 will check with our CID people to see if they have you on
18 video.

19 Q. And the next message after that:

20 A. Also, you have got the FBI and USSS all spun up over what
21 was said on Infowars the other night about PB dressing up as
22 Biden supporter on inauguration day. Got a email first thing
23 this morning -- with a shocked-face emoji.

24 Q. Agent, in your experience, how common is it for one law
25 enforcement agency to tell a person that other law enforcement

1 agencies are interested in their activities or "spun up" about
2 their activities?

3 MR. METCALF: Your Honor, objection.

4 THE COURT: What's the objection?

5 MR. METCALF: Cumulative. Misleading. Relevance.

6 THE COURT: Let me just hear from the parties at
7 sidebar, briefly.

8 (Bench discussion:)

9 THE COURT: All right. Mr. Mulroe, you know, there
10 have been -- the objections along these lines have been sort
11 of -- in some cases, there have been objections, in others,
12 there haven't, to this line of questioning about what's usual
13 and unusual. Look, he is a fact witness. He's reading the
14 texts. I mean, usual and unusual is, I suppose, also a fact
15 question on some level.

16 But, you continue -- do you plan to continue -- do
17 you plan to continue with this? How much more do we have of
18 what's usual and what's unusual?

19 MR. MULROE: Your Honor, I don't think there's a
20 great deal more, maybe three more questions along those lines.

21 THE COURT: All right. And, Mr. -- what's the
22 objection, if he's just saying -- Mr. Metcalf, what's the
23 objection as to whether he can just say what is usual or
24 unusual about something based on his training and experience?

25 MR. METCALF: I think it goes to confusion of the

1 issues, and it could be a little bit misleading. I wanted to
2 refrain from using those terms. But, ultimately, he already
3 established that Shane Lamond is not a FBI police officer.

4 Am I talking too loud? I'm trying not to.

5 THE COURT: I don't think so.

6 MR. METCALF: Okay. I just saw everyone look at me.

7 It has been established that he is not an FBI police
8 officer, and the witness on the stand is someone who has been
9 trained by the FBI. So, I believe that it's confusing to say
10 what's usual from an FBI agent who's -- who only literally has
11 18 months experience from -- based on my notes, in this context
12 of Mr. Tarrio speaking to Shane Lamond.

13 THE COURT: All right. Look, I'm going to allow him
14 to answer usual and unusual based on the FBI, but I'm not going
15 to allow him to offer opinion testimony -- you know, opinion
16 testimony going beyond that.

17 You may continue.

18 MR. MULROE: Thank you.

19 (Open court:)

20 BY MR. MULROE:

21 Q. Agent, just to be clear, you're employed by the Federal
22 Bureau of Investigation, correct?

23 A. Yes.

24 Q. So your training and experience is in that context?

25 A. Yes.

1 Q. Never worked for D.C. Metro Police?

2 A. No.

3 Q. Do you have training and experience in law enforcement
4 techniques generally, though?

5 A. Yes.

6 Q. I think my last question was how common it was for law
7 enforcement officers of one agency to let a potential subject
8 know that other agencies were spun up about his activities.
9 How common is that?

10 A. I've never heard of it.

11 Q. Let's continue to the next page, 3.

12 Just scrolling down, do we see other missing files from
13 Tarrío to Lamond here?

14 A. Yes.

15 Q. Three of them, to be specific?

16 A. Yes.

17 Q. At the top of page 4, do we see another?

18 A. Yes.

19 Q. What comes after that empty file?

20 A. This is a message from Lamond to Tarrío on December 18th,
21 2020, at 10:42 a.m. It reads: LOL. Yep. That's exactly what
22 O got from FBI and USSS.

23 Q. Do you know the acronym "USSS"?

24 A. I do.

25 Q. What's that?

1 A. United States Secret Service.

2 Q. Go to the next page, please.

3 And what are the dates of these messages?

4 A. These are both December 18th, 2020.

5 Q. Walk us through, please, the messages from Tarrío to Lamond
6 starting at 10:52 a.m.

7 A. The first message reads "LOL," and the second message is an
8 empty message.

9 Q. Let us pause there at December 18th, agent.

10 And, Ms. Harris, if we could have the screen just for
11 the witness.

12 I will ask Ms. Rohde to show the witness Exhibit 500-61.

13 Agent, do you recognize this as being one of the
14 exhibits that you reviewed before coming to court about a week
15 ago?

16 A. Yes.

17 Q. A fair and true and accurate reproduction of the content of
18 phone extractions you reviewed?

19 A. To the best of my knowledge.

20 Q. This is the Skull and Bones chat on December 18th?

21 A. Yes.

22 MR. MULROE: Move to admit 500-61.

23 MR. ROOTS: No objection.

24 THE COURT: It will be admitted.

25 MR. MULROE: And let's publish.

1 THE COURT: And permission to publish.

2 BY MR. MULROE:

3 Q. Looking at the date, agent, is that the same date as the
4 messages we were just walking through between Tarrío and
5 Lamond?

6 A. Yes.

7 Q. Please read for us the messages that Enrique Tarrío sends
8 to the Proud Boys Elders beginning at 3:33 p.m.

9 A. He says: We got the jump on the narrative for the banner
10 burning. This should make it next to impossible for them to
11 use the "hate crime" enhancement, as per my contact at D.C.
12 Metro. This stays in here. Fuck the law. They can eat my
13 dick.

14 MS. HERNANDEZ: Objection. On behalf of Mr. Rehl,
15 the date and the chat group, Your Honor.

16 THE COURT: Any objection is overruled.

17 BY MR. MULROE:

18 Q. Ms. Rohde, let's go back to 553-1, continuing from page 5,
19 we were at, and let's pick it back up on December 18th. Let's
20 actually scroll to the next page, please, 6.

21 And are we still on the 18th here?

22 A. Yes.

23 Q. Ms. Rohde, if you just scroll down.

24 We see a series of more messages from Tarrío?

25 A. Yes.

1 Q. And then, if we could go to the next page, which would
2 be 7.

3 Would you please read the text from the top bubble and
4 tell us the date and time in the center?

5 A. This is on December 18th, 2020, at 4:55 p.m., from Lamond
6 to Tarrío: No. A bit of the opposite. I've been talking to
7 CID about it. They wanted to know what I know about your
8 group, and if I think you all are racist. I told them you are
9 made up of a lot of Latinos and blacks, so not a racist thing.
10 It's not being investigated by FBI, though. Just us, MPD.

11 Q. What's the message from Tarrío that follows that?

12 A. He says: Ahh, okay.

13 Q. And then after that?

14 A. "Awesome."

15 MS. HERNANDEZ: Your Honor, the same hearsay
16 objection. If the Court just wants to accept a continuing
17 objection to these pre-December 19th texts.

18 THE COURT: The objection is noted for the record.

19 MS. HERNANDEZ: Thank you.

20 BY MR. MULROE:

21 Q. Scrolling down to the next page, please, Ms. Rohde.

22 The second message on the page, who is that from?

23 A. From Tarrío.

24 Q. Is that on December 19th, at 12:53:47 a.m.?

25 A. Yes.

1 Q. Another empty file?

2 A. Yes.

3 Q. And then the next message after that, who is that from?

4 A. That's from Lamond to Tarrío.

5 Q. What does he say on the 19th, at 3:11:30 a.m.?

6 A. He says: Got it. We will see if we can ID the person.

7 Q. Based on the messages that preceded it, any indication --

8 MR. JAUREGUI: Objection. Speculation.

9 THE COURT: Mr. Mulroe, what's the question going to
10 be?

11 Hold on. Let's go to the phones.

12 (Bench discussion:)

13 THE COURT: To be clear, I'm trying to give you
14 all -- a person should be able to finish the question. But, if
15 the very question is going to be prejudicial, I understand why
16 some of you are jumping in.

17 Go ahead and articulate -- first of all, Mr. Mulroe,
18 what's the question going to be?

19 MR. MULROE: Well, Your Honor, there is an empty file
20 sent to the chat, and then after it he said: We'll see if we
21 can ID the person.

22 I was simply going to ask: Can we tell from the
23 message that preceded what person and what ID is being
24 discussed here?

25 I suspect the answer is going to be no.

1 MR. JAUREGUI: And, Judge, that's why I jumped in. I
2 knew that was going to be the question. As Your Honor recalls,
3 Mr. McCullough did that to me when he knew what my question was
4 going to be. That's why I jumped in. I thought the question
5 itself, just getting it out of his mouth, was going to be
6 improper. And I object as to speculation.

7 If he's going to answer "no" anyway, what's the point
8 of even asking the question?

9 THE COURT: Well, he's just underscoring the fact
10 that there's no information one way or the other here on -- as
11 to the issue.

12 MR. JAUREGUI: What I understood of Mr. Mulroe's
13 question is that based on the messages that came before it, can
14 you speculate as to who the person is, who they're trying to
15 ID?

16 THE COURT: He suspects the answer is going to be:
17 No, we can't tell.

18 Is that right, Mr. Mulroe? Do I have this correct?

19 MR. MULROE: Yes, Your Honor.

20 THE COURT: I mean, I don't think that's -- he's
21 asking a question, and he's going to say: Based on what I have
22 in front of me, I can't tell.

23 So, I think that's fine. If an unanticipated answer
24 comes out of his mouth, then we'll deal with it, but that's the
25 representation. We don't have any reason to question that

1 representation.

2 MS. HERNANDEZ: Your Honor, I'm sorry. This is
3 Carmen Hernandez. I understand this wasn't the topic of my
4 cross, but this appears, to me, to be way beyond the scope of
5 redirect.

6 THE COURT: Well, you're -- the party that opened the
7 door is not objecting along those lines. I think it is going
8 to get -- let's put it this way: The relationship was -- the
9 issue of whether, through text messages and Telegram chats, the
10 nature of what was being shared here was -- the door was opened
11 to that. So, I think -- you know, I think, at some point, this
12 is going to get cumulative, but --

13 MS. HERNANDEZ: It just seems that the questions
14 aren't just -- I thought -- and, again, it wasn't my -- I
15 didn't open the door, but this is going beyond the direct --
16 the cross. The cross was -- didn't go into the relationship in
17 the manner that the redirect is going into, it appears to me.

18 THE COURT: No. But the cross was about the nature
19 of the relationship and whether it was cooperative and helpful
20 for law enforcement. So, I'm going to -- I mean, particularly,
21 unless the party -- I think there's a limit to whether this --
22 when this gets cumulative. But, I don't have a -- particularly
23 when I don't have an objection from the party that had opened
24 the door, I'm going to allow this to continue a little bit
25 more.

1 But, Mr. Mulroe, there is going to be a point where
2 this gets cumulative.

3 MR. MULROE: Yes, Your Honor.

4 THE COURT: Let's proceed.

5 (Open court:)

6 BY MR. MULROE:

7 Q. Last question. Again, agent, based on what preceded
8 Lieutenant Lamond's message, "We will see if we can ID the
9 person," is it apparent from this extraction which person's ID
10 is at issue?

11 A. I don't believe so. The message is empty.

12 Q. Is it apparent for what purpose an ID is being discussed?

13 A. No.

14 Q. Let's go to page 12.

15 And the message from Shane Lamond on December 19th at
16 11:41 a.m., would you read the whole message to us? You don't
17 have to read the whole URL, but just, I guess, the substance.

18 A. He says: It's growing legs, all right.

19 And then there's a URL to a news article, and the
20 headline in the URL is: Trump Promises Wild Protest in D.C. on
21 Jan 6, the Day Congress to Count Electoral Votes.

22 Q. After that, the next message?

23 A. "Police want to talk to you about the banner. You have a
24 certain phone number you want me to give them?"

25 Q. And next message?

1 A. This is from Tarrío to Lamond on December 20th, 2020, at
2 4:40: Miami-Dade PD reached out. I'm going to use my Fifth.
3 I'll be in D.C. on the 6th. If MDC wants to talk to me, they
4 can see me there.

5 Q. The reference to the 6th -- agent, let me ask you, what
6 month was this message sent?

7 A. December.

8 Q. Next month would be January?

9 A. Yes.

10 Q. Let's go to the next page, 13.

11 And, tell us, please, the date and time, and then read
12 both the first and second message.

13 A. This is on December 20th, 2020, at 4:51 p.m. First message
14 from Lamond to Tarrío: Give me a call when you can.

15 Second message from Tarrío to Lamond: Through here?

16 Q. At this point, Ms. Rohde, I would ask you to go back to
17 553-2, and please go to the bottom of page 21.

18 So, the date of December 20th, at approximately 4:50 or
19 5 o'clock p.m., is that where we just left off in the other
20 exhibit?

21 A. Yes.

22 Q. What do we see in the extraction?

23 A. Here, we see an outgoing call from Tarrío to Lamond lasting
24 411 seconds, recorded at December 20th, 2020, at 4:58 p.m.

25 Q. Ms. Rohde, if you would go to the final page of that

1 exhibit.

2 Agent, tell us the date, time, sender, and content of
3 that message.

4 A. This is an incoming call on December 30th, 2020, at
5 6:34 p.m., from Lamond to Tarrío.

6 Q. Could you tell us the length?

7 A. I'm sorry. Lasting 849 seconds.

8 Q. And I won't try the math, but that's more than ten minutes?

9 A. Yes.

10 Q. If we could have the screen just for the witness,
11 Ms. Harris.

12 I will ask Ms. Rohde to pull up Exhibit 501-58.

13 Agent, do you recognize this as a message from the
14 Ministry of Self-Defense Leaders Group?

15 A. Yes.

16 Q. Fair and accurate based on the extractions, to the best of
17 your knowledge?

18 A. To the best of my knowledge.

19 MR. MULROE: Move to admit 501-58.

20 THE COURT: All right. It will be admitted. And
21 permission to publish.

22 MR. MULROE: Ms. Rohde, if you could take that down
23 for just one moment.

24 Court's indulgence.

25 (Pause.)

1 MR. MULROE: All right. Apologies.

2 Ms. Rohde, if we could have 501-39. That's already
3 in evidence.

4 BY MR. MULROE:

5 Q. And, agent, looking at the top of that exhibit, are we
6 still in the Ministry of Self-Defense Leaders Group?

7 A. Yes.

8 Q. That date, December 30th, is that the same date as the
9 phone calls on Telegram between Lamond and Tarrío that we were
10 just seeing?

11 A. Yes.

12 Q. Ms. Rohde, if you could scroll down to the bottom, please.

13 And just looking at the bottom two messages on the
14 screen, agent, I won't ask you to read them, but what is the
15 substance of what's conveyed in those messages?

16 A. That Mr. Tarrío is going to jail, and that that information
17 should stay in the chat.

18 Q. All right. Ms. Rohde, then, let's return to one of the
19 Lamond-Tarrío extractions, 553-1. And take us to the top of
20 the 14th page, please.

21 Agent, would you read the date, time, sender, and
22 content of the top two messages?

23 A. These are system messages. The first is on December 22,
24 2020, at 8:10 a.m.: Shane, FBI, police set the self-destruct
25 timer to 5 seconds.

1 And then, at December 22nd, 2020, at 8:11 a.m.:

2 NobleLead set the self-destruct timer to 30 seconds.

3 Q. And these are system messages, agent?

4 A. Yes.

5 Q. In your experience, at least with the FBI, is there some
6 importance to maintaining records of contact with sources?

7 A. Yes.

8 Q. Scroll down, please.

9 And, agent, if you would read us the message from Shane
10 Lamond to Enrique Tarrío on December 25th, Christmas day, at
11 12:14 p.m.

12 A. It says: Just a heads-up. CID had me ID you from a photo
13 you posted on Parler kneeling down next to the banner, so they
14 may be submitting an arrest warrant to U.S. Attorney's Office.

15 Q. If we scroll to the final page of this exhibit, Ms. Rohde.

16 Do we see further system messages about the
17 self-destruct timer in the Telegram chat?

18 A. Yes.

19 Q. What are the dates of those messages?

20 A. January 1st, 2020, at 1:49 p.m., and January 4th, 2021, at
21 1:02 p.m.

22 Q. Now, Ms. Rohde, please publish for the jury Exhibit 501-58.

23 January 4th, is that the same day as the final
24 self-destruct system message we saw in the Tarrío-Lamond chats?

25 A. Yes.

1 Q. What message does Tarrío send to the other Ministry of
2 Self-Defense leaders at 1:31 p.m. on that day?

3 A. "The warrant was just signed."

4 Q. Agent, beyond Shane Lamond, Mr. Jauregui asked you about
5 Enrique Tarrío's attitude toward law enforcement more
6 generally. Do you remember that?

7 A. Yes.

8 Q. I'm going to have, Ms. Harris, if I may, please, the screen
9 just for the witness.

10 And I would ask that Ms. Rohde pull up Exhibit 622B, and
11 just have that paused at the beginning for the witness.

12 Agent, do you remember seeing some clips from what's
13 called the "Dunk Tank" video during cross-examination?

14 A. Yes.

15 Q. This appear to be another clip from the Dunk Tank video?

16 A. Yes.

17 Q. And this video, generally, is Enrique Tarrío addressing
18 other Proud Boys members?

19 A. Yes.

20 MR. MULROE: We would move to admit 622B.

21 THE COURT: It will be admitted.

22 MS. HERNANDEZ: Your Honor, is that the entire video
23 or just a section?

24 MR. MULROE: For the record, this is a 46-second clip
25 that has been provided to the defense counsel previously.

1 MS. HERNANDEZ: Thank you.

2 MR. MULROE: Let's play the clip please, Ms. Rohde.

3 (Video played.)

4 BY MR. MULROE:

5 Q. Agent, Ms. Jauregui also asked you about Enrique Tarrío's
6 wishes regarding Proud Boys crossing police lines. Do you
7 remember that?

8 A. Yes.

9 Q. Ms. Rohde, if you would you pull up Exhibit 501-50 that's
10 in evidence. And if we could scroll, down, down. Let's stop
11 there.

12 What's the message from John Stewart at 8:40:17 p.m.?

13 A. "We could have ran them the fuck over in D.C. and they
14 wouldn't have been able to do shit."

15 Q. Based on context of the discussion that we've seen already,
16 agent, who's "them" in this sentence?

17 A. The police.

18 Q. Scroll down a bit more.

19 The 8:42:20 message from Enrique Tarrío, what does that
20 say?

21 A. "I had a plan for it, but someone talked me out of it."

22 Q. And if you scroll down a bit more.

23 The message from Jeremy Bertino at 8:58:03?

24 A. "Cannon kept telling me to give the order to push through
25 them. LOL."

1 Q. The next one?

2 A. "He was wild. LOL."

3 Q. And then down a bit more. If you could just scroll to the
4 bottom.

5 And the message from Tarrio at 9 o'clock and 41 seconds?

6 A. "LOL. I was the one that told him to."

7 Q. And at 9:29:08, from Jeremy Bertino?

8 A. "And I was trying to get him to chill because I figured you
9 wouldn't want us to do that. LOL."

10 Q. Agent, I want to return to the Dunk Tank video that we were
11 just looking at. Now, Mr. Smith described this as an "MoSD
12 video." Do you remember that?

13 A. Yes.

14 Q. Ms. Rohde, could we have -- Ms. Harris, screen just for the
15 witness, please? 514-46, please.

16 Do you recognize this as one of the exhibits you
17 reviewed in preparation for your testimony?

18 A. Yes.

19 Q. This is a message from Tarrio to the President's Chat on
20 late December 2020?

21 A. Yes.

22 Q. Fair and accurate, to the best of your knowledge?

23 A. Yes.

24 MR. MULROE: Move to admit 514-46.

25 THE COURT: It will be admitted. And permission to

1 publish.

2 BY MR. MULROE:

3 Q. And, if we could, Ms. Rohde, just scroll down kind of
4 slowly here.

5 Do we have Enrique Tarrío sending a message to the
6 presidents in the chat?

7 A. Yes.

8 Q. And does he say he's going to be having an open
9 conversation on a stream with you guys?

10 A. Yes.

11 Q. Mention a link and time to be on this thread?

12 A. Yes.

13 Q. Mention that he'll be announcing a solution to national
14 rallies moving forward?

15 A. Yes.

16 Q. And then do we have a pair of links there?

17 A. Yes.

18 Q. So, this chat, agent, Exhibit 514-46, is this in MoSD or
19 the President's Chat?

20 A. This is the President's Chat.

21 Q. I'm going to ask Ms. Rohde to click on the YouTube link.

22 MR. MULROE: Ms. Rohde, are you connected to the
23 internet right now?

24 MS. ROHDE: Yes.

25 I'd ask that she click on the link and see whether

1 that is still active.

2 BY MR. MULROE:

3 Q. And, agent, has a YouTube window popped up?

4 A. It has.

5 Q. And can you see -- you might need to hover over it -- but,
6 the title of the video, if you look at the tab up top?

7 A. OPC Chairman Dunk Tank.

8 Q. So, strictly speaking, is this an MoSD video?

9 A. No.

10 Q. I want to -- just while we're another it, Ms. Rohde, if you
11 could go back to the PDF, to Exhibit 503-25.

12 You recognize this as one that we saw last week?

13 A. Yes.

14 Q. Is this the message where Tarrio shares the link to the
15 MoSD video briefing that we saw parts of, Exhibit 613?

16 A. Yes.

17 Q. Ms. Rohde, please click that link, and we'll see if that is
18 still a functional link.

19 (Video played.)

20 We can pause it.

21 Agent, did that bring us to the same MoSD video that
22 we've been looking at in court?

23 A. Yes.

24 Q. Are these links public?

25 A. Yes.

1 Q. Are they still active, even today?

2 A. Yes.

3 Q. Going back to the Dunk Tank, then. Mr. Smith, I think,
4 showed you two clips from that video to the effect of Tarrío
5 saying: We shouldn't be aggressive; is that right?

6 A. I recall that.

7 Q. Screen just for the witness, please.

8 And I'll ask Ms. Rohde to pull up Government
9 Exhibit 622A.

10 And pause at the beginning.

11 You recognize this clip, agent, as a 2-minute and
12 42-second clip from that same Dunk Tank video?

13 A. Yes.

14 MR. MULROE: Move to admit 622A.

15 MR. JAUREGUI: Your Honor, objection. Under Rule
16 106, I think the entire video should be played for the jury.

17 THE COURT: Okay. Let me hear from you at sidebar.

18 (Bench discussion:)

19 THE COURT: I mean, was this -- did you know this was
20 coming in, Mr. Jauregui?

21 MR. JAUREGUI: Your Honor, yes. The government sent
22 these exhibits over. But if we're going to be just going
23 through these little clips out of order, I think it's
24 misleading. I think the entire video should be shown for the
25 jury.

1 MS. HERNANDEZ: And they sent these videos this
2 morning.

3 No? That's not --

4 MR. MULROE: No, that's incorrect.

5 MR. JAUREGUI: It was last night -- late last night,
6 after I'd already gone to sleep, Your Honor.

7 THE COURT: All right. Look, I have no way of
8 evaluating this argument one way or the other right now. You
9 know, as I said, I think there is -- let's put it this way:
10 We'll take this up, whether you think on -- on recross, this is
11 an area where you think you have some particular part of this
12 that you think you should be able to go into.

13 But, I mean, I'm not going to admit something now
14 through Rule 106 when I have no basis to -- the issue just
15 hasn't been set up for me other than: We think the entire
16 video should be played.

17 So, I'll take it under advisement, and we'll go from
18 there.

19 MR. JAUREGUI: Thank you, Your Honor.

20 (Open court:)

21 MR. MULROE: Is the exhibit admitted?

22 THE COURT: Yes.

23 MR. MULROE: We'll play the clip. And, Ms. Rohde, I
24 may ask you to pause about midway through.

25 (Video played.)

1 Let's pause it there.

2 BY MR. MULROE:

3 Q. So at 1:02, did you hear what Mr. Tarrio said about: A
4 good little elbow?

5 A. Yes.

6 Q. What was that?

7 A. Essentially, that if there weren't cameras around, "a good
8 little elbow" would fix that problem.

9 Q. Ms. Rohde, let's keep playing, and we'll pause it at 1:36.

10 (Video played.)

11 Pause it there. And stepping away from the video for
12 just a minute, Ms. Rohde, could we see Exhibit 500-15, which is
13 in evidence?

14 MR. JAUREGUI: Judge, objection. Outside the scope.

15 THE COURT: All right.

16 (Bench discussion:)

17 MR. JAUREGUI: Judge, it's objection, outside the
18 scope of cross. I did not get into any of this in my
19 cross-examination.

20 THE COURT: What's the basis for going into this --
21 first, outside the scope of cross.

22 Mr. Mulroe, what is this and what are we doing here
23 and why is it within the scope of cross?

24 MR. MULROE: Your Honor, you might recall that during
25 Mr. Smith's cross-examination of the witness, he played clips

1 from this very video. We were unable to make a Rule 106
2 offering at that point because it was not known to us that he
3 was going to do it. So, we're just fleshing out the video a
4 little bit by showing portions that, in our view, are relevant.

5 THE COURT: Well, I don't recall what Mr. Smith did
6 with the video exactly. Can you refresh my memory as to that?
7 At least let me just hear from the government, first, and,
8 then, Mr. Smith, I'll hear from you.

9 MR. MULROE: Yes. He played two clips that were
10 admitted over a hearsay objection where Enrique Tarrío
11 basically told the other presidents, you know: It's not good
12 to be aggressive.

13 And, so, the function and relevance of this clip that
14 we're playing now -- we're going to reach the meat of it in
15 just a moment -- but, it's Enrique Tarrío recounting an episode
16 of him getting ready to commit an act of aggressive violence
17 towards a person, and he stopped himself from doing it only
18 when he found out that the person was actually a conservative.

19 And so I think that that is necessary to rebut the
20 suggestion that this Dunk Tank video is a message of peace and
21 nonviolence from Mr. Tarrío to his subordinates.

22 MR. SMITH: Your Honor, may I be heard?

23 THE COURT: You may.

24 MR. SMITH: What Mr. Mulroe said is not accurate, and
25 that will be reflected by the record. I'll be more specific.

1 We admitted two statements of forward-looking intent
2 from Mr. Tarrío going to the function of the MoSD, the two
3 statements related to what the MoSD was for. Mr. Mulroe just
4 represented to the Court that I asked to admit statements about
5 general -- this was Mr. Mulroe's quote: It's not good to be
6 aggressive.

7 That was not the purpose that we used -- the
8 explanation we used to admit two statements from Mr. Tarrío.
9 They were solely limited to the function of the MoSD, and
10 Mr. Mulroe has expanded it to general points of view on
11 aggression, Your Honor. That would not be relevant testimony
12 because that's character evidence, Your Honor.

13 THE COURT: Understood.

14 Mr. Mulroe, putting aside the character point, if the
15 testimony on cross was about the purpose of the MoSD, I
16 think -- I think we are beyond the scope of cross.

17 MR. MULROE: But, Your Honor, if the video is Tarrío
18 laying out the purpose of MoSD to the presidents, and he says,
19 "I made this" -- I'm not purporting to quote Mr. Smith or the
20 video here, but if he's saying, in sum and substance, "I'm
21 making this because I think we shouldn't be aggressive," I
22 would --

23 MR. SMITH: Your Honor --

24 MR. MULROE: I would like to finish.

25 THE COURT: Please, please. Mr. Mulroe, continue.

1 MR. JAUREGUI: Judge, I'm just asking him to speak a
2 little lower. He's very loud.

3 THE COURT: Okay. Okay.

4 MR. MULROE: Ostensibly, relevance here of the clips
5 Mr. Smith played were that Tarrío was expressing a
6 forward-looking intent, then the jury needs to have the full
7 context of the statement. That if I say on one side of my
8 mouth, I'm making this because we shouldn't be aggressive, and
9 I'm meanwhile telling them, hey, there was this time I was
10 about to knock this guy out and I didn't do it because he
11 turned out to be conservative, that's the point of Rule 106,
12 Judge. We're unable to do it because he sprung these on us. I
13 think the jury needs the full context.

14 THE COURT: Listen, let me put it this way:
15 Regardless of -- I understand the Rule 106 issue, and if I
16 thought these were -- this was fairly within the scope of
17 cross, I would let you do it. But it's a different thing to
18 say, Here's the purpose of the MoSD, versus, By the way, here's
19 this particularly violent, you know, incident that also was
20 going on simultaneously and discussed in this video.

21 You know, this isn't really a Rule 106 thing, and I
22 do think it's beyond the scope.

23 MR. MULROE: Well, Judge, may I just offer one
24 additional basis?

25 THE COURT: Yeah. Sure.

1 MR. MULROE: That apart from Mr. Smith's use of this
2 video specifically, Mr. Jauregui made it one of the themes of
3 his cross-examination that Mr. Tarrío was nonviolent in
4 general. Not just with respect to MoSD, but there were violent
5 people and nonviolent people in the Proud Boys, and Tarrío was
6 one of the nonviolent ones. So, I think we're entitled to
7 rebut that with the defendant's own statement.

8 THE COURT: What is the statement exactly?

9 MR. MULROE: He says, there is -- I mean, I'm not
10 going to be able to quote it for you, but, he recounts -- I
11 mean, it's actually the same story as a clip that we played
12 during the direct, but he's telling it, again, to a different
13 audience here. He says: There was a time he thought someone
14 was an infiltrator. He asked his guys to go bring him to
15 Tarrío. And when he got there, he was about to beat him up,
16 and then he realized that the guy was a conservative
17 journalist.

18 And, in effect, he said: It was a close one. I
19 didn't realize you were a conservative. I was about to beat
20 you up.

21 THE COURT: I mean, I don't think --

22 MR. MULROE: And it's December 26th, Judge. It's
23 right in the period when the MoSD is being formed. He's
24 marketing the MoSD to the presidents.

25 THE COURT: It may be in timing. I believe it's

1 beyond the scope of the cross. It's certainly beyond the scope
2 of Mr. Smith's point. And, you know, the fact that they -- I
3 can't quite recall.

4 Mr. Jauregui, what's your argument about why --
5 Mr. Smith is off the hook. Mr. Jauregui, you might be on the
6 hook.

7 Why is it within the scope -- why is it not within
8 the scope of your cross?

9 MR. JAUREGUI: Well, Judge, first of all, now it's
10 cumulative. The government says they already played this on
11 direct. It's the same story twice now. So, it's definitely
12 cumulative, and it's also propensity evidence. They're trying
13 to say that since he allegedly grabbed some guy and -- you
14 know, some reporter, then he's more prone to have committed the
15 crime in this case. So, it's outside the scope, it's
16 propensity, and it's cumulative.

17 MR. MULROE: Judge, one more thing, if I might.

18 THE COURT: Go ahead.

19 MR. MULROE: When Mr. Smith played these clips during
20 his cross, he played clips from this very same video, and we
21 noted that we were unable to make a Rule 106 point. So, I --
22 the transcript will control, Judge, but I think that you said:
23 You're going to have a chance on redirect, if you think
24 something from this same video needs to come in. And that's
25 what we're trying to do.

1 THE COURT: I think that's right and, in principle, I
2 don't disagree. I'm not shutting you down on some sort of
3 procedural issue. The question is whether it's truly -- well,
4 let's put it this way: Whether it, A, would be truly 106 if
5 you had had the chance to offer it then; or, B, whether it's
6 within the scope of cross.

7 I get that it's the same video, but I don't think --
8 there's really not a basis to say it's truly a 106 issue; and,
9 two, I do think it's beyond the scope of what Mr. -- the
10 parties seem to agree Mr. Smith used the quotes in this
11 particular document for.

12 Then, we turn to Mr. Jauregui's point. And I think
13 whether, again, it's propensity or character, if this incident
14 is already in, I'm just going to rule it -- rule it out of
15 bounds as duplicative. So, let's move past this issue.

16 MR. MULROE: Can I play the original one again?

17 THE COURT: To be clear, I'm not -- I'm not -- to be
18 very clear, if there had been a legitimate 106 issue here, I
19 would have let the government do it. I don't mean to -- if I
20 thought that it truly was within the scope of 106, you know,
21 that's a different matter.

22 So, may you play the original?

23 MR. JAUREGUI: We would object to that, too, Judge.
24 It's cumulative.

25 THE COURT: I'll let them play what's already in

1 evidence.

2 MR. MULROE: We'll move past it.

3 THE COURT: All right.

4 (Open court:)

5 BY MR. MULROE:

6 Q. Let's stay on the topic of violence, agent. Mr. Jauregui
7 asked you whether some Proud Boys are more violent than others.
8 Do you remember that?

9 A. Yes.

10 Q. Is there a term within the chats you reviewed associated
11 with the members of the group who leaned into political
12 violence?

13 A. Are you referring to Rally Boys?

14 Q. Is that a term that you saw in the chats?

15 A. Yes.

16 Q. And what are the Rally Boys?

17 A. Rally Boys are members of the Proud Boys who were more
18 interested, enthusiastic in the rally protest part of the
19 group.

20 Q. And was violence part of that?

21 A. Yes.

22 Q. Let's see Exhibit 500-69.

23 Agent, please read us the third paragraph in this
24 message from Enrique Tarrío to the other elders at 3:30:15 p.m.

25 A. "Rally Boys will always be a thing. We just need to be

1 able to control and harness ourselves in these large numbers."

2 Q. And based on the chats surrounding this one, what was the
3 mechanism to harness and control the Rally Boys?

4 A. The MoSD.

5 Q. Let's stay on that word "rally" for a bit longer, agent.

6 Ms. Rohde, can we have 509-15?

7 And scroll down a bit, please.

8 Now, read us the message from Jeremy Bertino at
9 9:32:52 a.m.

10 A. "No teams. Everything should move forward as planned for
11 the rally tomorrow."

12 Q. Do you remember having a bit of back and forth with
13 Mr. Smith about that word "rally" in that context?

14 A. Yes.

15 Q. Discussion of whether that meant going to watch people
16 speak on a stage?

17 A. Yes.

18 Q. Agent, what word did the members of these chats use to
19 describe the event in Washington, D.C., on November 14th?

20 A. Rally.

21 Q. Was there violence at that event?

22 A. Yes.

23 Q. What word did the members of these groups use to describe
24 the event in D.C. on December 12th?

25 A. Rally.

1 Q. Was there violence at that event?

2 A. Yes.

3 MR. SMITH: Objection. Vague.

4 May I explain?

5 THE COURT: I understand the objection. Sustained as
6 to vagueness.

7 BY MR. MULROE:

8 Q. See Exhibit 503-10, please. And if we scroll down just a
9 bit, Ms. Rohde. Let's actually play the group from
10 BrotherHunter Jake Phillips at 1:06 a.m.

11 (Audio played.)

12 Let's pause it there.

13 Agent, did we hear the word "rally" appear in that
14 message?

15 A. Yes.

16 Q. What was the -- what were the words preceding "rally" in
17 that message?

18 A. "Seek and destroy rally."

19 Q. Any reference to speakers and stages in this message?

20 A. No.

21 Q. Now, agent, to be clear, did Ethan Nordean respond to this
22 message?

23 A. I can't quite recall.

24 Q. Can you scroll down, Ms. Rohde.

25 No messages from Nordean on this exhibit, correct?

1 MR. JAUREGUI: Objection. Leading.

2 THE COURT: Sustained.

3 BY MR. MULROE:

4 Q. Were there any messages from Nordean on these?

5 A. No.

6 Q. All right. Let's see 500-40, please

7 MS. HERNANDEZ: I'm sorry. Mr. Mulroe, what was the
8 number of the one you just went through?

9 MR. MULROE: 503-10.

10 MS. HERNANDEZ: Thank you.

11 BY MR. MULROE:

12 Q. Agent, tell us, please, first, the date of 500-40.

13 A. This is November 20th, 2020.

14 Q. We in the Skull and Bones Elders Chat?

15 A. Yes.

16 Q. And I'll ask you to read the message in a moment.

17 Do we see the word "rally" here?

18 A. Yes.

19 Q. Please read the message from Chris Cannon PB to the other
20 Elders at 4:15:32.

21 A. "I'm 100 percent with you. There wasn't much of a reason
22 to rally before, other than punching commies, but now there's a
23 real reason. We are months away from gulags. It's now or
24 never. We fight or get locked up."

25 Q. Any reference to speakers or stages in this discussion of

1 rally?

2 A. No.

3 Q. Did Ethan Nordean respond to this message?

4 A. Yes.

5 Q. What does he say?

6 A. "Perfectly said, my Brotha."

7 Q. Let's see Exhibit 510-9, please.

8 And, agent, do you remember looking at this one with
9 Mr. Smith?

10 A. Yes.

11 Q. Do we see the same word "rally" appear?

12 A. Yes.

13 Q. And I think that there was discussion between you and
14 Mr. Smith about: What we do tomorrow.

15 Do you recall that?

16 A. Yes.

17 Q. I don't know that you finished your explanation before, so
18 would you tell the jury, please, what is the context of this
19 statement from Mr. Nordean about: As far as what we do
20 tomorrow, that's still what we're trying to figure out?

21 MR. METCALF: Objection. Asked and answered.

22 THE COURT: Overruled.

23 A. So, this message is on the evening of January 4th, shortly
24 after Enrique Tarrío's arrest. This is a part of a
25 conversation about the circumstances surrounding Mr. Tarrío's

1 arrest and who's going to be at the courthouse, where they're
2 going to go. Indeed, the next morning, Mr. Nordean is in the
3 chats discussing going to the courthouse.

4 BY MR. MULROE:

5 Q. So "tomorrow" here does not refer to January 6 at all, or
6 does it?

7 A. It does not.

8 Q. Ms. Rohde, let's pull up 509-24. And scrolling down just a
9 bit to see the messages.

10 Do you remember looking at this one with Mr. Jauregui?

11 A. Yes.

12 Q. And there's a message from Bertino about: If Enrique has a
13 better idea, he needs to state it soon.

14 Correct?

15 A. Yes.

16 Q. A message from Donohoe about: We need to pick a specific
17 place.

18 Correct?

19 A. Yes.

20 Q. Scrolling down a little more.

21 Zachary Rehl says: If we still have plans to break off
22 on teams, we can pick them there on the spot, obviously.

23 Is that right?

24 A. Yes.

25 Q. And then scrolling just down a little bit more. We're good

1 there.

2 9:40, Zachary Rehl says: What were some of the
3 objectives agreed on anyway?

4 Correct?

5 A. Yes.

6 Q. Agent. Are you familiar with the terms "strategy" and
7 "tactics"?

8 A. Yes.

9 Q. What do those mean?

10 A. Strategy is the high-level goal of, for example, a military
11 campaign. Tactics are the individual steps that are going to
12 be taken to meet that goal.

13 Q. Ask Ms. Rohde to play Exhibit 613G.

14 (Video played.)

15 Did you hear a reference to "strategic objective" there,
16 agent?

17 A. Yes.

18 Q. Agent, in your experience, is it possible to have a
19 strategic objective in place while the tactics are still being
20 worked out?

21 MS. HERNANDEZ: Objection.

22 MR. SMITH: Objection. Foundation.

23 MS. HERNANDEZ: And beyond the scope.

24 MR. JAUREGUI: Expert testimony, as well, Your
25 Honor.

1 THE COURT: The full gamut. Sustained. The
2 objection is sustained as to the nature of the testimony.

3 Let me hear counsel at sidebar.

4 (Bench discussion:)

5 THE COURT: I'm not sure if the panoply of objections
6 that came at me here included it, but I do think -- let me look
7 just at them. Foundation. Beyond the scope. There was one.
8 Okay.

9 I'm going to sustained it as sort of improper opinion
10 testimony. I think we're going beyond the substance. I think
11 we're going beyond the factual recitation of what's happening
12 here.

13 (Open court:)

14 BY MR. MULROE:

15 Q. Agent, Mr. Smith asked you about the ugly language you
16 sometimes see in the exhibits. Do you recall that?

17 A. Yes.

18 Q. You've reviewed a wide body of chats involving these
19 defendants?

20 A. Yes.

21 Q. Agent, these exhibits that the jury has seen, do these
22 contain an unusual amount of bad language relative to the whole
23 universe?

24 MR. SMITH: Objection. Relevance, Judge.

25 THE COURT: Sustained.

1 BY MR. MULROE:

2 Q. Agent, ask you a slightly different question.

3 Do you have any reason to think that the government
4 cherry-picked these to put bad words before the jury?

5 MR. METCALF: Objection. Goes to --

6 THE COURT: Sustained.

7 MR. METCALF: -- the state of mind of another agency.

8 THE COURT: Sustained. The objection is sustained.

9 BY MR. MULROE:

10 Q. Mr. Jauregui asked you about contact between Mr. Tarrío and
11 Mr. Pezzola. Do you recall that?

12 A. Yes.

13 Q. Ms. Rohde, could we see 60051 -- 600-51?

14 Do you remember seeing this exhibit in your direct?

15 A. Yes.

16 Q. Whose Parler account is this?

17 A. This is Enrique Tarrío's.

18 Q. And who do we see in the photo Tarrío posts?

19 A. Dominic Pezzola.

20 Q. Ms. Rohde, 505-11, please.

21 MS. HERNANDEZ: Objection. Beyond the scope, Your
22 Honor. And cumulative.

23 (Bench discussion:)

24 MS. HERNANDEZ: I'm not sure where we're going with
25 this, but I think he played this already.

1 THE COURT: Mr. Mulroe, just tell me, why is this
2 within the scope?

3 MR. MULROE: It's within the scope because
4 Mr. Jauregui made a big line of his cross-examination that they
5 don't know each other. Never in contact with each other.
6 We're entitled to rebut that, even if it's an exhibit we've
7 already showed.

8 MR. JAUREGUI: Judge, who would Enrique Tarrío --
9 Judge, this Parler post that was put up before this exhibit is
10 misleading. This is a post. There was no communication on
11 Parler between my client and Pezzola. The inference that the
12 government is trying to do here is that there was some sort of
13 communication between my client and Pezzola on Parler. There's
14 no evidence of that whatsoever.

15 THE COURT: See -- well, no one is saying -- look,
16 the exhibit is already in, correct, and you've already had
17 chances to clarify this. I hear what you're saying. I'm going
18 to overrule that objection, and I think these are all within
19 the scope.

20 (Open court:)

21 BY MR. MULROE:

22 Q. So, we saw the Parler posts where Tarrío posts Pezzola's
23 photo, correct?

24 A. Yes.

25 Q. Showing you 505-11. Are we in the lead-up to January 6

1 here?

2 A. Yes. This is January 3.

3 Q. And without going through every exhibit, what is the
4 problem that Pezzola is expressing in these exhibits?

5 A. His hotel plan fell apart.

6 Q. Do we see Enrique Tarrío responding to Dominic Pezzola on
7 that point?

8 A. Yes.

9 Q. 12:31:44, asking: What happened?

10 A. Yes.

11 Q. 12:32:33, does he send a voice note?

12 A. Yes.

13 Q. Scrolling down.

14 Message at 12:33:17, from Tarrío?

15 A. Yes.

16 Q. 12:33:55, does he give him some advice?

17 A. Yes.

18 Q. Let's go to the next exhibit, 505-12.

19 What does Enrique Tarrío say at 12:40:26 p.m., in the
20 same chat?

21 A. "I might have a solution."

22 Q. And if we scroll to the bottom.

23 Is Pezzola's hotel issue eventually solved?

24 A. Yes.

25 Q. Agent, based on your review of all the chats, was Enrique

1 Tarrio a busy person in the days leading up to January 6?

2 A. Yes.

3 Q. Any reason, from the chats, to think that Mr. Tarrio was
4 acting as a travel agent for the general public during that
5 timeframe?

6 MR. METCALF: Objection.

7 MR. SMITH: Objection, Your Honor.

8 MR. METCALF: Argumentative.

9 THE COURT: All right. Sustained.

10 BY MR. METCALF:

11 Q. Some counsel have asked about the lead case agent in this
12 investigation. Do you recall that?

13 A. Yes.

14 Q. And more specifically, do you remember when Mr. Jauregui
15 tried to ask you why we're hiding the lead case agent, who's
16 been at this table all trial?

17 MR. PATTIS: Objection. Judge, may we be heard?
18 Decorum.

19 (Bench discussion:)

20 MR. PATTIS: If that was an improper question from
21 Mr. Jauregui and the government moved for sanctions, it's
22 doubly offensive in this context. And I object and ask the
23 Court to remind Mr. Mulroe, who I have enormous respect for, of
24 that rule.

25 THE COURT: The issue of sanctions wasn't brought up

1 in that question. The issue of sanctions was brought up when
2 Mr. Jauregui tried to elicit grand jury testimony from a
3 witness that, apart from the part that it was grand jury
4 testimony, there was no basis to -- for me to admit through the
5 witness.

6 MR. PATTIS: May I be heard, sir?

7 THE COURT: Yeah.

8 MR. PATTIS: In fairness, the Rule 6, grand jury
9 issues aren't at stake here. The full question was never
10 heard, and that's -- it may or may not be a topic for a
11 different day.

12 But, to suggest that there's any universe in which
13 the form of the question: Do you remember when --

14 (Audio interruption.)

15 MR. PATTIS: I thought the voices in my head finally
16 won.

17 To suggest that there is any universe in which a
18 counsel can say, "Do you remember when my adversary tried to do
19 X," when we know full well he objected -- there was an
20 objection, that's just improper. It's argumentative. We're
21 all tired.

22 I would ask the Court to remind Mr. Mulroe the
23 decorum rule.

24 THE COURT: Well, I'm going to remind him. But, on
25 the other hand, you know, the only reason we're here, and the

1 only reason he felt it necessary to ask that question is
2 because there was an improper question asked on the other side.
3 So, I mean, I agree that it was an improper question.

4 But, on the other hand, again, if he was going to ask
5 him --

6 Mr. Mulroe, I assume your next question was going to
7 be, "Are you trying to hide anything from the jury," or
8 something along those lines; is that fair?

9 MR. MULROE: Your Honor, I was going to follow it
10 with what I would call "neutral questions" about the role of a
11 case agent, a lead, in a large case like this. And if Your
12 Honor thinks the question is inappropriate, I respect that.
13 But, they put that out there. They can't unring that bell. I
14 should be allowed to --

15 MR. PATTIS: Judge, I don't want to make this into an
16 arm wrestling contest, because if it is, we'll win, and we
17 won't win on the merits. This is just not lawyering. This is
18 guttersniping, and Mr. Mulroe is better than that.

19 THE COURT: No. No. No. Let's move past the
20 question that was objected to and get to the heart of this.

21 He's going to ask him about the role of a case agent.

22 MR. PATTIS: Oh, I don't object to that. It was the
23 form of the question.

24 THE COURT: I understand. All right. So, let's just
25 continue.

1 I'm going to sustain the objection as to the
2 question, but, Mr. Mulroe, you may proceed.

3 (Open court:)

4 BY MR. MULROE:

5 Q. Let's talk about case agents, Agent Dubrowski.

6 Relative to other cases that the FBI handles, is this
7 one a large, medium, or small case?

8 A. This is a large case.

9 Q. In a large case, such as this one, does any one, single
10 agent become the expert in every facet of the investigation?

11 MS. HERNANDEZ: Leading.

12 THE COURT: Overruled.

13 A. No. I'm not sure that would be possible.

14 BY MR. MULROE:

15 Q. In a very large case like this one, what is the role of a
16 lead case agent, like Agent Hanec?

17 A. A lead case agent in a case of this size is a case manager.
18 They make sure the trains run on time. They make sure that
19 there are assignments given out. They're, essentially, the
20 first among us, making sure that the case runs efficiently.

21 Q. Mr. Pattis asked you some questions about your professional
22 and personal background. Do you remember that?

23 A. Yes.

24 Q. Agent, did you volunteer to work on the January 6 cases
25 because you have a vendetta against the Proud Boys?

1 A. No.

2 Q. Finally, Mr. Jauregui was asking you about the creation of
3 the Ministry of Self-Defense, and he asked you whether the
4 purpose was, in effect, that if the members didn't behave on
5 January 6, they would be in trouble with MoSD.

6 Is that roughly how he characterized it?

7 A. I recall this exchange.

8 Q. Now, remind us, for this first episode of your testimony,
9 how far in time did we go?

10 A. Until midnight on January 6.

11 Q. Your understanding, that you're going to come back later
12 and testify about messages on January 6 and afterward?

13 A. Yes.

14 Q. Is this jury going to get to see how Enrique Tarrio
15 responded to what his subordinates did on January 6?

16 A. Yes.

17 MR. MULROE: Nothing further.

18 THE COURT: All right. Ladies and gentlemen, we're a
19 little bit ahead of schedule to take our afternoon break, but I
20 am going to take one now to try to save some time on the other
21 end. So, let's take ten minutes for the court reporter, and
22 we'll come back in ten.

23 (Whereupon the jurors leave the courtroom.)

24 THE COURT: All right. I thought it made sense to
25 take our break a few minutes early, just to say -- just so,

1 again, hopefully, we can avoid finishing this out.

2 I do think, like I said -- like I said last night,
3 like I said this morning, the -- I gave the government the
4 latitude on, you know, the CHS issue to do a little bit on
5 that, but -- the testimony the agent gave.

6 I do think -- although, if the government disagrees,
7 I'll hear from them. I do think that topic is fair game for
8 brief recross. That -- that it was initially introduced by
9 the -- on the cross, but, you know, there was no reason for you
10 to think that I would allow anything more. They've kind of
11 opened the door a little crack to, sort of, some things around
12 CHSs generally, and I think if you want to explore that on
13 recross, that's fair.

14 I think, on the other topics, I did not detect
15 another topic that would require recross, but I thought at
16 least I would hear from you so that we could try to address
17 this ahead of time now.

18 MR. JAUREGUI: Judge, if I may.

19 THE COURT: Yes.

20 MR. JAUREGUI: Jauregui for Tarrío.

21 THE COURT: Yes.

22 MR. JAUREGUI: Judge, I think the government has
23 opened the door wide open as to issues with Lamond that I did
24 not get into in my cross. Specifically, their theme throughout
25 the redirect was that my client had an improper relationship of

1 a highly decorated, 22-year veteran, Lieutenant Shane Lamond,
2 the Head of Intelligence of MPD.

3 They're doing this preemptively because they know
4 that he's in my defense witness list, and he's a defense
5 witness. What they've done is, they've dragged his name
6 through the mud, they've insinuated to this jury that this is a
7 dirty cop, so that when he gets up there to testify for the
8 defense, he will be of no use to us.

9 That's what they've done on their redirect, and they
10 made it seem to the jury that --

11 THE COURT: And to be clear, without objection to you
12 regarding scope. But, go ahead.

13 MR. JAUREGUI: Thank you, Judge.

14 And what they've done is, they've said that Enrique
15 Tarrío did not give any information of any value to Lieutenant
16 Shane Lamond. That was their theme over and over again.

17 They've now opened the door to the multitude of
18 messages that we have in our possession where Shane Lamond
19 actually gave information from Enrique Tarrío to his superiors,
20 not only at the Metropolitan Police Department, the assistant
21 chief, he also shared information he gleaned from Tarrío with
22 the Capitol Police. And we have those messages and we have
23 that evidence.

24 So, they've opened the door wide open by arguing that
25 Tarrío gave no information of any value to Lieutenant Shane

1 Lamond, and that Lieutenant Shane Lamond was derelict in his
2 duty and did not provide that information to the chain of
3 command, when we know that's exactly Shane Lamond did.

4 So, they've opened the door to that line of
5 questioning, and I think Your Honor should permit me,
6 respectfully, to get into that, and to show the jury that: Oh,
7 no. Lieutenant Shane Lamond was doing his job. He was
8 receiving information from Tarrío, and then he did what he was
9 supposed to do as a police officer and he shared that
10 information, not only with the superiors in his own department,
11 but even with other departments -- specifically, the Capitol
12 Police.

13 THE COURT: And, timeframe of what we're talking
14 about?

15 MR. JAUREGUI: Same dates, Judge.

16 THE COURT: Okay. So, let me hear from the
17 government on that point.

18 MR. MULROE: Your Honor -- I think that, Your Honor,
19 the record will be very clear that the nature of the
20 relationship between Mr. Lamond and Mr. Tarrío was raised, and
21 squarely raised, during Mr. Jauregui's cross-examination.
22 Whatever he may want to do in his own case in chief I don't
23 think necessitates any broadening of the scope of recross here.

24 I will note that, as been litigated in this case,
25 Mr. Lamond has asserted his Fifth Amendment privilege and

1 stated that he will not be testifying.

2 As far as introducing other communications from other
3 devices, I'm not thinking of nonhearsay basis for him to put
4 those into evidence. I would note that he tried to put them in
5 through this agent, and this agent lacked the foundation to
6 recognize or authenticate them, having never reviewed
7 Mr. Lamond's phone. So, I think that those are, frankly,
8 something -- red herrings.

9 I think that when they raise a topic on
10 cross-examination, we're entitled to meet that on our redirect,
11 and just because we do it fulsomely or effectively does not
12 mean that, then, a whole new topic is opened for recross.

13 So, I think that no recross on the issue of
14 Lieutenant Lamond is appropriate, and I -- frankly, I'm not
15 even sure I heard what the questions on recross would consist
16 of.

17 THE COURT: But, I guess -- so, it seems to me that
18 the government has raised two issues there. One is whether the
19 evidence you seek to -- well, let's do it the first one first.

20 You made the thrust of your cross to be: This was an
21 appropriate relationship. Look at what -- you know, they had a
22 relationship and it was an appropriate relationship and he was
23 providing information and cooperating.

24 Why wasn't this -- why weren't these messages fairly
25 within your ability, at that time, to leverage them and come

1 out -- again, he's the Telegram and the person who's familiar
2 with the electronic evidence that the government has produced.
3 Why wasn't that fairly your -- within the scope -- I mean, you
4 did that all in -- in -- at least verbally with your
5 questioning, even if you didn't introduce evidence to support
6 it. Why isn't that fairly within your -- why wasn't that
7 fairly within your cross?

8 And, then, number two is, if we're talking about
9 evidence that's coming from somewhere else, isn't that another
10 reason why -- in other words, from some device or something --
11 I don't know, from other source that this witness hasn't
12 reviewed and isn't familiar with, isn't that another reason to
13 deny you?

14 MR. JAUREGUI: I understand, Your Honor.

15 Judge, first of all, we found out yesterday, from
16 this agent, that he had actually reviewed Lamond's extraction,
17 his phone. Okay? We did not know that. We learned that just
18 yesterday.

19 I would then say that this isn't hearsay. Okay?
20 This is effect on listener. This is the communication by
21 Lamond to his superiors is an effect on listener. It's also a
22 law enforcement. So, it's absolutely not hearsay.

23 I never said that they had an appropriate
24 relationship at any time during my cross-examination. I said:
25 Isn't it true that my client, Enrique Tarrio, cooperated with

1 law enforcement? Isn't it true that Enrique Tarrio told law
2 enforcement where he was going to be going, how he would be
3 dressing?

4 And that is all substantiated in the messages.

5 THE COURT: Right. And that's my point. You could
6 have done the messages on your cross. So, it's -- there's
7 no -- the government -- there's no reason to permit you to do
8 it on recross when it would have been fair game on your cross.

9 MR. JAUREGUI: I couldn't have brought in the
10 communications with other officers at that point. My client
11 was not having communications with the superiors. My client
12 was having communications with Lieutenant Shane Lamont, so I
13 had the foundation to ask that.

14 But, now that the government has opened the door to
15 insinuate that the communications from my client were, first,
16 inappropriate, I never got into that on cross. They
17 characterize it as inappropriate. They characterize the
18 officer as acting inappropriately. I never got into that in my
19 cross.

20 Not only that, but they characterize the
21 communications as having no use whatsoever to law enforcement.
22 Okay? That -- first of all, I didn't even know they were going
23 to get into that on redirect. If not, of course, I would have
24 done it. If I would have tried to bring in those messages on
25 redirect (sic), the government would have objected right away.

1 It would have been sustained.

2 THE COURT: On cross, you mean.

3 MR. JAUREGUI: On cross. My apologies.

4 It would have been objected to, and it would have
5 been sustained. That's why I didn't do it.

6 THE COURT: I don't know -- well, maybe the
7 difference is -- maybe what I need to focus on is what you're
8 raising is, you're seeking to introduce messages from Lamond up
9 the chain.

10 MR. JAUREGUI: Correct, Your Honor.

11 THE COURT: And that's not what I was focused on.
12 All right. At least I understand factually what you're talking
13 about now.

14 Okay. Well --

15 MR. JAUREGUI: Just to be clear, it's the same time
16 and the exact same topics.

17 THE COURT: Right.

18 MR. JAUREGUI: The topics that Mr. Mulroe came up
19 about the banner burning, the colors. There's -- so, Your
20 Honor knows, I can proffer that there are messages from
21 Lieutenant Shane Lamond specifically telling them: Yes. My
22 contact told me they're not going to be wearing colors. My
23 contact told me they're going to be at BLM Plaza. And my
24 contact told me that -- yes, about the banner burning.

25 And we have example upon example that the information

1 of my client was good, was legitimate, was valid, and
2 Lieutenant Shane Lamond did his job, and he communicated up the
3 chain of command to more than one law enforcement agency.

4 Actually, even where he was staying at, even that he
5 was flying in to be arrested, he -- my client tells him: I'm
6 flying in on this day so you can arrest me.

7 I mean, that's the gist of it. I'm paraphrasing,
8 but -- and it goes up the chain of command.

9 THE COURT: All right. That's, at least
10 conceptually, different than -- you're right that I probably --
11 well, hearsay issues aside, which are not small issues, I think
12 if the point was to -- I think you would have been entitled, if
13 there were -- whatever the messages are in what the government
14 produced to you, if there were messages that put your client in
15 a positive light with Lamond -- he's the Telegram witness, I
16 mean, I think that's all -- that would have all been -- I mean,
17 again, putting aside hearsay and whether there would have been
18 any hearsay issues with that different question about what we
19 have now -- but, I think that would have been in the scope of
20 your cross.

21 So, I realize this is a -- these are, conceptually,
22 separate -- a separate set of messages, but --

23 MR. JAUREGUI: Will Your Honor allow me, just
24 generally, just generally -- I don't want to go through pages
25 and pages of messages. Would Your Honor allow me to generally

1 just ask him, just so that the jury is not left with a
2 misleading impression in their mind: Agent, isn't it true that
3 there are Telegram communications between Lieutenant Shane
4 Lamond and his superior, Jeffery Carroll, Assistant Chief of
5 the Metropolitan Police Department? Isn't it true that there
6 are Telegram communications between Lieutenant Shane Lamond and
7 Jack Donohue of the Capitol Police department of information
8 gleaned from Enrique Tarrio?

9 Just generally, just so that they're not left with
10 that misleading impression, Your Honor.

11 THE COURT: Mr. -- let me hear from the government.

12 MR. MULROE: The communication that Mr. Jauregui is
13 referring to upstream, or up chain, from Lamond to other
14 people, were extracted from Lieutenant Lamond's cell phone.
15 This agent has never put eyes on those messages or on any of
16 those extractions, and Mr. Jauregui asked that question on
17 cross. Mr. Jauregui showed him an extraction from the Lamond
18 phone, and he said: I don't recognize this. I haven't looked
19 at the Lamond phone. That's a separate investigation.

20 So, I think that he did try to bring a cross there,
21 and the agent lacked foundation for it.

22 THE COURT: Mr. Jauregui?

23 MR. JAUREGUI: Judge, my recollection is, I
24 introduced those chats through this agent.

25 THE COURT: No. No. Chats between your client --

1 not things up the chain. In other words --

2 MR. JAUREGUI: No. I never attempted any -- to
3 introduce any chats up the chain.

4 THE COURT: But you did ask -- I mean, Mr. Mulroe is
5 raising the point, and I do recall this -- he's looking for it
6 on the transcript, but I do remember you asking the question
7 and the agent saying: I didn't review anything regarding
8 Lamond's phone.

9 I mean, if that's where this is coming from. So, I
10 don't think you have the foundation to do it, then. And I'm --
11 look, whether that stuff will come in -- again, not to beat a
12 dead horse, but lack -- and I do think you have a little bit of
13 a relevance issue, too, in that the whole reason, right, that
14 chats between your client and Lamond come into the case are
15 because they're relevant to your client's -- well, for various
16 reasons, including your client's state of mind and the back and
17 forth.

18 What Lamond does with them is not reflective of your
19 client's state of mind, one way or the other. So, I think we
20 are getting pretty far afield -- I take your point about the
21 impression, but I do think you have, it sounds like, a
22 foundation issue and a relevance issue. The relevance issue we
23 can talk about in the future, and maybe you'll be able to
24 convince me, but at least you have a foundation issue with this
25 witness.

1 Fair?

2 MR. JAUREGUI: I understand, Your Honor.

3 THE COURT: All right. And we'll -- and, look, to
4 be -- like a lot of issues in the case, to be continued.

5 MR. JAUREGUI: Thank you, Your Honor.

6 THE COURT: Mr. Roots?

7 MR. ROOTS: Yeah. Well, virtually every question
8 involving Shane Lamond was really broadly about CHS handling.
9 The witness was allowed to almost give expertise: What is
10 common? What is normal for CHS handling?

11 So, broadly speaking, it was questioning about this
12 CHS issue. Forget Shane Lamond. It opens the door to a wide
13 variety of recross, in my opinion, about: Well, isn't it true
14 the FBI has engaged in such things?

15 I mean, it isn't so typical as that witness falsely
16 testified. Opened the door to lots of recross, Your Honor.

17 THE COURT: I've already said, I think it's -- I
18 think it is fair, given where we are here, that his general
19 testimony about CHS, that is something that was new, and that
20 is going to be the subject of recross.

21 Now, how far the recross goes, that's another
22 question. And, I don't think it will extend to specific
23 instances, but, I mean, I think that is fair that that is the
24 scope of recross.

25 MR. SMITH: Judge, we only anticipate about two

1 minutes of recross on that subject, and without asking specific
2 questions about the CHS.

3 THE COURT: Okay. Okay.

4 Ms. Hernandez?

5 MS. HERNANDEZ: I have a couple questions -- or some
6 questions about CHSs, and also the Danny Mack issue that
7 Mr. Mulroe opened -- you know, replayed that video and then
8 argued that --

9 THE COURT: So, let me raise that with them.

10 I'm assuming you're not going to object to
11 Ms. Hernandez asking her question about that particular person
12 at this point; is that fair?

13 MR. MULROE: I don't know what the question is.

14 THE COURT: Okay. You understand -- let me formulate
15 the question.

16 You understand that person was a Proud Boy with
17 this -- at this chapter with this leadership position. Is the
18 government going to object to that question?

19 MR. MULROE: That question?

20 THE COURT: Yes.

21 MR. MULROE: No, no objection. If they ask that,
22 yes.

23 THE COURT: Ms. Hernandez, what is the other types of
24 questioning you're thinking of on that topic, just so -- we
25 might as well get it out here.

1 MS. HERNANDEZ: Right. So, the re-video -- the video
2 and re -- transcript that he played, it specifically says
3 "informant" in it. You know, that's the language he added to
4 it. And, he also indicated -- so, I have a few questions about
5 Danny Mack as an informant and, also, his role even -- I think
6 the government tried to elicit that after they found out he was
7 an informant, he got kicked out and all this other stuff.

8 I think I would have 15 minutes, at most, to play on
9 that, to bring out on Danny Mack and the informant.

10 THE COURT: Again, look, I guess I'll put it this
11 way: Again, I ruled that to -- for the -- I ruled that to
12 contextualize -- well, actually, I didn't have to get to it
13 because you abandoned the line of questioning. But, in
14 general, I ruled that you all were going to have to show me why
15 describing a particular -- why going into an individual CHS was
16 relevant to understanding the context of the Telegram chats.

17 Now, the government did, I think over no objection
18 from anyone from the other side, did what they did with regard
19 to the CHS we're talking about. So let's put it this way: I
20 think -- I think it may make sense for you to just discuss this
21 in the ten minutes you have, and see if there's going to be an
22 objection to whatever you would like to do. It seems to me
23 it's at least on the table as a possibility. But, we'll see
24 where it -- we'll see where it goes.

25 Now, I will take -- so, I think what we have at

1 least -- at least clearly in the area of legit recross, is sort
2 of the general concepts of CHS that he gave that testimony to,
3 and maybe what Ms. Hernandez is describing, subject to you all
4 discussing it and seeing where that comes up.

5 So, let's just take ten minutes for the court
6 reporter. We'll come back, we'll see where we are, and try to
7 finish.

8 (Recess.)

9 THE COURTROOM DEPUTY: We are back on the record in
10 criminal matter 21-175, United States of America versus Ethan
11 Nordean, et al.

12 MR. SMITH: Your Honor, may I plug this in to save
13 some time?

14 THE COURT: Sure. Sure. While you're doing that,
15 let me just ask, has the government -- did you have the
16 opportunity to speak with Ms. Hernandez about her lines of
17 questioning? As I thought about it, I wondered if we're going
18 to -- if, ultimately, this is just going to run into a
19 foundation issue, too, for her, and whether he -- this
20 particular witness knows anything about the kinds of things she
21 was thinking she would ask about.

22 MR. MULROE: Yes, Your Honor. I'll just summarize
23 where, I think, the parties are at, and Ms. Hernandez can
24 correct me if I've got it wrong. But, what we, at least, were
25 endeavoring to do on redirect was not to go into anything about

1 whether or not Danny Mack -- the person called Danny Mack was,
2 in fact, a source, but, rather, to demonstrate that he was
3 perceived by the Proud Boys to be a source, and that he was
4 removed from chats for that reason.

5 I think I understood from our conversation during the
6 break that Ms. Hernandez wants to ask some questions and play
7 some additional exhibits directed at that topic. In other
8 words, whether the person known as Danny Mack would have been
9 in a position to interact with or hear statements or read
10 chats, but not whether or not he is, in truth, a source.

11 Again, that's what I understand her to be driving at
12 with her recross. So, I think that, you know, from a
13 foundation standpoint, that's not necessarily a problem. I do
14 think, though, that that is not proper recross because we
15 didn't raise that topic for the first time.

16 I mean, Danny Mack's presence in the -- his presence
17 or absence from the MoSD video meeting is something she brought
18 up on the cross and that we responded to. So, it's not the
19 generalized CHS policies and procedures that Your Honor has
20 authorized recross on. It's slightly different from that.

21 And I just think -- I mean, Your Honor, I think this
22 kind of just goes to a broader question of where the lines are
23 being drawn. I think that the recross just should not be
24 opened up for any topic that was addressed during redirect.

25 MR. SMITH: Your Honor, on the Danny Mack point, we

1 intended to address it in a very narrow way, not to show that
2 Danny Mack is or is not a CHS. I don't even know the answer to
3 that question.

4 But, going to Mr. Mulroe's point about the
5 perceptions of Danny Mack, Mr. Mulroe played some evidence
6 indicating that Mr. Tarrío wanted Mr. Mack removed from the
7 chats because he was perceived to be an FBI. That goes, to our
8 understanding, to one of the general procedures Mr. Mulroe was
9 eliciting questions about, which is: Why would some CHS be
10 reluctant to share information generally?

11 Because they might be outed by people like
12 Mr. Tarrío.

13 We intend to show some evidence indicating that
14 Mr. Mack was removed from that chat group for an entirely
15 separate reason, and that's in a piece of evidence that's
16 already -- that's a statement that's in evidence already, so
17 we're just going to show it for that reason.

18 THE COURT: I mean, I think that seems fair. That
19 does sort of rebut the point the government was making, and
20 it's something that's already in evidence.

21 Ms. Hernandez, what is -- does the government have it
22 right as far as what you intend to do, first?

23 MS. HERNANDEZ: Well, first, they've asked me not to
24 go into -- I have a text message where he admits to being a
25 federal informant. They've asked me not to go into that. I

1 won't. I'll wait until -- on the understanding that I've
2 reserved the ability to ask this witness when he returns, even
3 though it may be a different time scope.

4 THE COURT: So we're --

5 MS. HERNANDEZ: But, as I understand it, they
6 won't -- because they -- I'm sorry. Because they -- sorry --
7 because they indicate that they're going to be providing me
8 more information about his role as the -- as an informant, so
9 I'll leave that aside.

10 THE COURT: Okay.

11 MS. HERNANDEZ: I do want to bring in, as to Danny
12 Mack, two things: He is in conversation with my client after
13 they claim that he's known to be an informant. In other words,
14 by that -- and the date is from the MoSD hearing. What
15 Mr. Mulroe tried to show is that they knew, as of that date,
16 that he was an informant. That's why --

17 THE COURT: They thought.

18 MS. HERNANDEZ: That's the correction he made to the
19 video. So, I want to show, again, the same thing. He seemed
20 to say, you know, he was kicked out or whatever.

21 There is conversation with my client after that time,
22 friendly conversation, and he's talking about still being --
23 still leading a chapter in New Jersey. And there's also a
24 discussion in that Dunk Tank that we all like to talk about
25 now. There's also discussion by Mr. Tarrio about Danny Mack

1 and his role in the December 12th events.

2 Are you going to get that in?

3 MR. SMITH: Yeah. That's this clip I was just
4 referring to.

5 MS. HERNANDEZ: If he's going to get into it, I don't
6 need to.

7 THE COURT: All right. Okay. Look --

8 MR. MULROE: And, Your Honor, I would note a hearsay
9 objection to that clip. Ms. Hernandez summarized it to me as
10 Tarrío telling the participants of the Dunk Tank: Danny Mack
11 was with us on -- and Mr. Smith may know it better than me, but
12 from what I understood, it was being offered for the truth of
13 whether Danny Mack was present at a certain event.

14 THE COURT: Isn't this in evidence already?

15 MR. MULROE: I don't believe so, Your Honor. I think
16 this is a different part of the Dunk Tank video. The Dunk Tank
17 video is two hours long. Mr. Smith offered two small portions
18 of it during his cross. I tried to put in another --

19 MR. SMITH: So, Your Honor, in response to the
20 hearsay point, we -- oftentimes in this case we've been using
21 the phrase "state of mind," and this is the quintessential
22 state of mind issue. Mr. Mulroe said that -- presented
23 evidence indicating that Danny Mack was removed from the chat
24 group because he was, quote, a "fud." That's what Mr. Tarrío
25 called him, a "fud."

1 So. When we introduce an out-of-court statement from
2 Tarrio indicating he thinks Mr. Mack is too aggressive and
3 should be removed, the point of introducing that is not to show
4 that he's too aggressive. It's to show the speaker's state of
5 mind for the purpose in removing Danny Mack, not the fact that
6 he is aggressive.

7 Whether that's true or false is beside the point.
8 It's the fact that Mr. Tarrio believed that, and that was his
9 reason for -- that that was his stated reason for acting, which
10 is not the same thing as whether or not Danny Mack --

11 THE COURT: Mr. Mulroe?

12 MR. MULROE: Your Honor, I mean, again, I haven't
13 seen it, but judging from what I'm hearing, if it's Enrique
14 Tarrio saying, here's why I did what he did, that -- that is a
15 statement that is being offered for the truth of what's being
16 asserted that we can't cross him on. This would be like if
17 some -- you know, I was speeding because I had to go to the
18 bathroom, not because I just robbed the bank. That's to their
19 state of mind. It swallows the hearsay rule. That can't be
20 right.

21 MR. SMITH: Sorry, Your Honor. There is no statement
22 from Mr. Tarrio saying this is why Danny Mack is removed;
23 here's the statement. He's discussing -- Mr. Tarrio is
24 discussing what happened on December 12th, and he says: Danny
25 Mack decided to go on his own. Got some fucking prospects

1 pepper-sprayed. And his line was: Jersey does Jersey things,
2 and that's not how it should be.

3 So, he's expressing irritation with Mr. Mack. We're
4 not offering that statement to say that Jersey does Jersey
5 things, that he got some prospects pepper-sprayed, or that
6 Danny Mack decided to go on his own. It's to show -- the fact
7 that this statement is made is showing that -- a reason
8 Mr. Tarrio might have done something that's different from him
9 being a fud, if that's --

10 THE COURT: I think that's fair. Mr. Mulroe, I think
11 that's fair. If that's what the statement is, I think it's
12 fair.

13 Ms. Hernandez, I'm also, just -- so, we've got the
14 general CHS stuff. And then, if you want to -- let's put it
15 this way: I think if you want to -- because of, kind of, the
16 awkwardness of how this proceeded, again, you're not going to
17 go into the question of whether this person was or was not a
18 CHS. If you want to -- and, I will say, based on my prior
19 ruling, if you had tried to do this -- if you had gone into
20 this, I probably would have sustained an objection on your
21 cross.

22 I think if you want to put in, you know, a few --
23 some context for who this person is so that you can argue
24 something down the road, I'm going to let you -- I'm going to
25 let you do that. Now, I mean, there would be a hearsay --

1 there could be hearsay issues, I suppose.

2 But, Mr. Mulroe?

3 MR. MULROE: Your Honor, could I just -- based on the
4 fact that another portion of the Dunk Tank video is now coming
5 in and being offered as a defense exhibit, I think we need to
6 be entitled to put in the clip that we've offered. So
7 Mr. Smith now is offering another portion of the video meeting
8 in which Tarrío was addressing his subordinates, and he's,
9 again, saying: Hey, this thing's completely separate, this
10 time, from the Ministry of Self-Defense. This thing happened
11 where someone was aggressive. And, purportedly, on its face,
12 Tarrío says: That was bad, that that person was aggressive.

13 I think -- I mean, at this point, I am raising a Rule
14 106 issue, that this is the very same address to the very same
15 audience, and the jury should be able to hear that, you know,
16 nearly in the same breath, he's also bragging about this time
17 that he was going to beat somebody up, but didn't.

18 MR. SMITH: So, Your Honor, this is not about --
19 again, I'll read the quote again.

20 THE COURT: No. No. No. Mr. Smith, you don't have
21 to do it.

22 So, look, I'm going to -- the question is whether it
23 truly is in the same breath. Mr. Smith is offering -- it
24 wants -- seeks to admit this statement for a very particular
25 purpose that does not really -- that has to do with why this --

1 the question of why this person was removed, and -- at least
2 why, at least in Mr. Tarrío's mind, he was removed is what he's
3 trying to rebut.

4 I think -- look, put it this way: This witness is
5 coming back. If you all want to argue to me that it's truly
6 106, I will hear you on that. But, the question is whether it
7 really is, like, in the same breath or whether it's part of a
8 broader meeting, and I don't have the answer to that in front
9 of me.

10 MR. MULROE: May I ask that defense counsel give us
11 the timestamp of when in the video this is?

12 THE COURT: You may.

13 MR. SMITH: And we would ask for a reciprocal
14 timestamp from the government.

15 MR. MULROE: 1 hour and 29 minutes.

16 MR. SMITH: So, we have -- the exhibit that's been
17 admitted for a different timestamp was Nordean 209, and the
18 time is 31 minutes and 28 seconds, to 32 minutes and
19 20 seconds. And the quote here is: Danny Mack decided to go
20 on his own. Got fucking some prospects pepper-sprayed. And
21 his line was: Jersey does Jersey things, and that's not how it
22 should be.

23 And that's all.

24 THE COURT: It's 31:28 to 32:28.

25 MR. SMITH: Correct. And, so, I guess, before we get

1 started, it might be good for Mr. Mulroe to pull up that clip
2 on Nordean Exhibit 209 and show the Court why he believes that
3 he should be allowed to introduce Mr. Tarrio making a general
4 statement about violence.

5 MR. McCULLOUGH: So, Your Honor, the government would
6 like to respond.

7 This, again, is putting the government at a severe
8 disadvantage in terms of the way we're doing these 106
9 arguments. The government provides its videos -- the
10 government provides its videos in advance; it provides them to
11 the defense. The defense has an opportunity to consider them
12 and consider what additional things may come in and the
13 arguments that they may raise as to them.

14 We have done this very effectively, I would add, with
15 counsel for Mr. Tarrio. We've gone through two cycles of this.
16 And, Your Honor, I would just note that we do not seem to have
17 the same ability to do that, for some other reason, with
18 others. And I -- I just -- that is a process issue. That's
19 just a -- that's the only thing I'm commenting on, is that that
20 is a process issue.

21 And, if we could improve the process -- and, Your
22 Honor, I do not want to join Gilligan's Island over there. I
23 want to say that we -- I think we would like -- we would like
24 to have the same opportunity to consider this. I think this
25 Rule 106 -- I respectfully think that Your Honor is ruling

1 correctly on this particular one because it's not in the same
2 breath.

3 Rather, Rule 106 says that in fairness, it should be
4 considered at the same time. So it actually does not have --
5 it could be a different medium, in fact. And, so --

6 MS. HERNANDEZ: Your Honor, the government --

7 MR. McCULLOUGH: Decorum, Your Honor.

8 THE COURT: Ms. Hernandez, please let the prosecutor
9 speak. We can't have people just standing up and interrupting
10 other people. And we also can't have people turning away from
11 me and looking the way you do when I address you. My goodness.
12 Please sit down and let Mr. McCullough have his say. Please
13 sit down.

14 MS. HERNANDEZ: I understand. But, he's misstating
15 the facts.

16 THE COURT: Mr. McCullough, continue.

17 MR. McCULLOUGH: Your Honor, I think the government
18 has raised its point. I -- just from a process perspective, I
19 think that if we could get some improvement here so that we are
20 on fair footing to legitimately litigate these issues. Again,
21 I respectfully think that we've been somewhat disadvantaged
22 here in this case.

23 THE COURT: Let me just comment on this particular
24 case. The problem is, of course, that this has been a fast
25 moving -- I mean, you know, we're on -- in this particular

1 case, we're on recross, right, and the whole -- the way in
2 which this Danny Mack door was opened was not evidence until
3 recently. So, in fairness to Mr. Smith in this particular
4 case, it would have been hard for him to come to you yesterday
5 and say: This is what I'm planning on doing.

6 So, I take it. I take your point.

7 I don't think -- and let me also say this: I don't
8 think, also, given -- I take your point in terms of what the
9 rule says, and in theory, you're right. It could be some other
10 portion of it. So, it need not be directly following it -- the
11 two passage may not be directly followed -- need not directly
12 follow each other.

13 But, to the extent they really are addressing
14 different animals, different topics, I get why you're saying:
15 Well, one shows an attitude toward violence in one way, and one
16 shows another kind of attitude.

17 Okay. That's -- I'm not sure that those broad
18 umbrellas get you 106. But, even assuming they do, even
19 assuming they do, given, again, how these two things have been
20 presented to me, you're not really prejudiced by being able to
21 put it in at some later time because -- in the same way you
22 would be, if the person says, Let me tell you, here's a very
23 important thing, and then the video's cut off and then it's the
24 next sentence that you think needs to be in and the defense has
25 said: No. No. No, you can't put it in now.

1 So, I hear you. All I'm saying is, in this
2 particular -- I agree, look, in general, in general, this is
3 the way -- we need to proceed this way. And I think to the
4 extent -- let me put it this way: To the extent the existing
5 orders in place don't cover what you would like to see happen,
6 I'm open to an order that says, you know, when to provide --
7 especially with videos, what you plan to do on cross.

8 I know the defense doesn't like that. I entered that
9 order over the weekend because I do think you all need the
10 ability -- all sides need the ability to do, for 106 purposes,
11 what you're proposing, so, I'm open to that. But, I think in
12 this particular case, it would have been hard to -- number one,
13 it would have been hard to hold the defense to that, given
14 where we are in terms of recross, number one.

15 And number two, I don't think it's a situation where
16 you're going to be prejudiced, if you convince me later on that
17 through this witness, when he comes back, you're going to be
18 able to put in this and be able to argue it however you want to
19 argue it at closing.

20 Ms. Hernandez, I don't know if you want to be heard
21 on this now, but I will hear from you.

22 MS. HERNANDEZ: So, Your Honor, I told the Court, I
23 think I sent an email this morning, the government produced
24 some information last night at, like, either midnight or near
25 midnight. I was asleep already. This morning -- and just so

1 the Court understands, because the annoying part from my point
2 of view is that I don't -- I don't bicker about minor things.
3 For example, the correction to the transcript Mr. Mulroe sent
4 to me this morning, I believe it was at 6:52 a.m. He sent an
5 earlier email saying he wanted to correct. I said: Where is
6 it?

7 And I think it was 6:52 a.m. that he sent it to me.
8 I was about to leave the house, so that I could be here on
9 time, and I did. I didn't -- when he went to introduce it, I
10 didn't tell the Court: Oh, boy, he didn't give it to me until
11 6:52 this morning and, therefore, you should exclude it.

12 I didn't. I tried to resolve it with him. I asked
13 him, could he do it after lunch? So, he said no. Fine. I let
14 him do it.

15 The point is that when the government stands there
16 and says, We're not getting the Rule 106 materials on a timely
17 basis, well, if you're sending me information at midnight or at
18 6 in the morning or whatever time, as I've told the Court more
19 than once, I understand -- I am not accusing them of doing it
20 intentionally, right? I'm understanding that we're all working
21 to try to get the materials we believe should be introduced as
22 quickly as possible and avoid problems.

23 My irritation is that, in my opinion, the government
24 never misses an opportunity to accuse the defense of failing to
25 do something or other without, at the same time, mentioning the

1 reason it didn't happen was because you sent it at a -- at
2 midnight. I can't -- I can stay up early or -- you know, I
3 can't do both. I can't burn the candle at both ends.

4 And, again, as I say, Mr. Mulroe sent me -- he said:
5 I want to change something.

6 I said: Can you send me what it is?

7 And it came to me at 6:52 a.m. I tried to correct
8 it. I still needed to listen to the video, but I wasn't able
9 to listen to it in time. Fine. I didn't -- my point is, can
10 we be professional? Can we stop accusing each other of minor
11 infractions when that's not the -- if -- that's not what we're
12 doing?

13 That's what irritates me, when the government stands
14 up there -- the government, which has an immensely larger staff
15 than defense counsel, stands up there and complains that we're
16 not giving them information. That's what irritates, and I
17 think it's very unprofessional.

18 So, if I'm irritated when that happens, yes, I am
19 very irritated. And today is an example. And I'll -- I guess
20 I'll repeat it for the last time.

21 When Mr. Mulroe stood there -- and, you know, I
22 didn't like the idea. It almost sounded like I had misled the
23 jury because I -- you know, my transcript didn't have that
24 word; I, frankly, didn't like it. But, I didn't go to the
25 Court and say: Well, I didn't find out until 6:52 a.m., and,

1 therefore, you shouldn't be allowed to --

2 I didn't. I think we're beyond -- we should be
3 beyond that. That's the irritation. And I know the Court
4 doesn't want to hear this, but it does appear to us -- it
5 appears to me that the Court is willing to accept the
6 government's recitation of facts and events in a manner that it
7 doesn't do for the defense. That's how it appears and that's
8 how it comes out.

9 And yesterday's -- the way the Court went after
10 Mr. Jauregui yesterday, to me, appeared to be a classic
11 situation. I will tell that. I'm being honest.

12 THE COURT: Ms. Hernandez, I don't want to hear any
13 more of your commentary about how I'm treating the sides
14 differently. I really don't. You've put it on the record you
15 feel that way. That's fine. You may be seated. You may be
16 seated. It's really inappropriate, and it's on -- it's on the
17 record.

18 You know, the last -- it's ironic that you bring it
19 up now, given that literally, the discussion we just had, I
20 ruled in favor of Mr. Smith in every way in terms of what he
21 wants to do here.

22 I'll just say this: I think that the -- I take your
23 point that I hope the sides don't be -- shouldn't be being
24 ticky-tack between each other, and I appreciate that you didn't
25 raise the issues you raised to try to jam up Mr. Mulroe.

1 I do think that the 106 issues are kind of a separate
2 animal. I take your point that you got information late last
3 night, and that provides you the difficulty in responding.
4 But, I also think that, you know, the 106 is kind of almost a
5 separate animal unto itself because one side does need to have
6 the -- whatever the video the other side is intending to
7 produce to be able to review it and see: Do we have something
8 that we think is additional?

9 And you all are -- the sides are in an asymmetry
10 regarding that particular -- the way that plays out because the
11 government has been providing, at least on -- as I understand
12 it, the clips in advance, and they haven't been getting defense
13 clips. Now, again, maybe that's -- is that not correct? You
14 correct me.

15 MS. HERNANDEZ: I would say that's not correct.
16 That's the point. The clips that they sent last -- the clips
17 that I'm saying they sent last night and this morning were, in
18 part, these clips that, now, we're having to respond to. And
19 that's -- this has happened at other times. And, again -- and
20 I brought it to the Court's attention. I understand. I
21 believe -- I don't believe they're doing it to jam us. I
22 believe they're doing it because at whatever time of day or
23 night they figured out: We want to introduce this.

24 And we're doing the same thing. That's the point.
25 We're doing the same thing. I mean, I wanted to introduce the

1 same clip that Mr. Smith is trying to introduce. I only
2 realized that clip was relevant to Mr. Mack today, while we're
3 sitting here.

4 It's not an attempt -- again, no, I'm not
5 withholding -- I don't have the time or energy to withhold
6 information from the government, Your Honor. That's just --
7 that's just my -- my -- my objection to the way the government
8 describes this.

9 I just want to say a couple other things. I do want
10 to cross a little bit on CHS, general. I didn't mean to -- I
11 didn't mean to -- by just talking about that, that was the only
12 scope of my cross.

13 THE COURT: Understood. All right.

14 Mr. Mulroe?

15 MR. MULROE: Your Honor, just very briefly so that
16 the record is clear. The proposed video clips that we tried to
17 offer today, we provided to the defense at 1 o'clock yesterday
18 afternoon. The email that I sent to defense counsel this
19 morning was with respect to what we believe is the corrected
20 transcript, and that email noted that we were proposing nine
21 additional words be added to the transcript, that transcript
22 corresponding to the video that Ms. Hernandez put into evidence
23 yesterday.

24 So, I -- I won't make any argument on than point. I
25 just want to be clear what was sent and when it was sent.

1 THE COURT: And, Ms. Hernandez, just in fairness,
2 that's sort of what I -- let me put it this way: It's one
3 thing to provide what, apparently, they provided late last
4 night or early this morning. That doesn't have rule --

5 Ms. Hernandez, are you --

6 MS. HERNANDEZ: Yes, Your Honor. I'm looking at the
7 email that the government --

8 THE COURT: Okay.

9 MS. HERNANDEZ: I'm not the one talking over here.

10 THE COURT: Listen -- no, I know.

11 My point is only this: That the sides are going to
12 make disclosures, sometimes late at night, early in the
13 morning. But, I think video clips that each side wants to play
14 present 106 issues in the way that some of these other things
15 don't, and that's all. And if there's an order you all want to
16 propose to me that can facilitate with regard to video in
17 Rule 106, the way this plays out -- I know Mr. Pattis doesn't
18 like to preview what he's going to do on cross, and I
19 understand that.

20 But, I do think there's -- maybe that's something we
21 can improve as things go -- as things go on. Maybe there's a
22 way for me to enter an order that can alleviate the Rule 106
23 issues. So, I just put that on the table for the parties to
24 think about because it does implicate both sides.

25 Anything further before we bring the jury back in and

1 Mr. Smith can resume?

2 MR. SMITH: No.

3 THE COURT: So, let's do that. And for the parties,
4 we'll go to 5:15 today. 5:15.

5 While we're waiting, so in terms of the -- I guess
6 I'm speaking particularly to Mr. McCullough. If there are,
7 along the lines we've discussed, Rule 106-related things that
8 you want me to consider down the road, just -- you don't have
9 to -- whether you file something or provide it to chambers in
10 terms of, you know, Here's the clip, here's why we think it's
11 implicated by the rule, at least if you tee those up for me in
12 advance, before you want to do it, then I'll at least have that
13 background.

14 MR. McCULLOUGH: Thank you, Your Honor.

15 THE COURT: All right.

16 (Whereupon the jurors enter the courtroom.)

17 THE COURT: All right. You all may be seated.

18 Ladies and gentlemen, we're going to recognize a
19 limited amount of recross-examination, starting with counsel
20 for Mr. Nordean.

21 RECROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. Good afternoon, agent.

24 A. Good afternoon.

25 Q. So, I have nothing to ask you about Shane Lamond. You

1 spent a good deal of time testifying about him. But, I just
2 want to go back to your initial points on redirect examination
3 about informants.

4 Do you remember being asked about informants generally?

5 A. About CHSs, yes.

6 Q. CHS. That CHSs are another name for informants, but --
7 confidential human sources?

8 A. Yes.

9 Q. Okay. Colloquially referred to as informants?

10 A. I'm not sure it's a colloquial usage, but people who
11 provide information to the FBI.

12 Q. Okay. And to orient you to where I'm heading with the
13 questions, you testified on cross-examination that a number of
14 FBI confidential human sources were members of the Telegram
15 chat groups we were testifying about, correct?

16 A. Yes.

17 Q. Okay. And you testified generally, on redirect
18 examination, that a handler agent would not use an informant --
19 excuse me -- a confidential human source to feed all of the
20 information from one of those chat groups back to the FBI
21 handler agent, correct?

22 A. Yes.

23 Q. So, without -- I don't intend to show you any exhibits
24 involving specific confidential human sources in this case, but
25 I just want to drill down a little bit to what you meant by

1 that, when you said that: The general practice is not to
2 send -- for a CHS to send large amounts of communications back
3 to their handler agent.

4 So I'm going to put up what's been marked as Government
5 Exhibit 509-15. It's already in evidence.

6 So, agent, can you see this chat on the screen?

7 A. Yes.

8 Q. Okay. I'm not going to inquire whether there are any
9 informants on this chat, and nor am I insinuating there are
10 any.

11 A. I now cannot see the chat on my screen.

12 There it is. Thank you.

13 Q. Can you see it now?

14 A. Yes.

15 Q. Okay. So, now, just going back to your general testimony
16 that: An informant would not send to his handler agent at the
17 FBI a large number of communications from a chat group.

18 So, for example, if I were to just draw a line right
19 here, over this entire chat (indicating) -- right?

20 A. My screen is acting up, but I can see it on the screen
21 directly ahead of me.

22 Q. Oh, yeah. That might be a problem because I might ask you
23 to look at the specific chat.

24 THE COURT: Ms. Harris, could you -- oh, it's back
25 up.

1 THE COURTROOM DEPUTY: I'll check. The cord may be
2 loose.

3 I'll have to get John because I'm not sure.

4 THE WITNESS: There are other screens where I can see
5 the chats.

6 BY MR. SMITH:

7 Q. Okay. So, your testimony was -- can you see that I've
8 drawn, like, a yellow line over this entire chunk of chats
9 (indicating)?

10 A. Yes.

11 Q. Okay. So, your testimony was that if there were a
12 confidential human source involved in this chat -- and I'm not
13 suggesting there is -- that the typical practice would not be
14 for a handler agent to say to the confidential human source:
15 Send me everything in this chat group.

16 Is that consistent with your testimony?

17 A. Yes.

18 Q. But, it is consistent with confidential human source usage
19 at the FBI, for example, for an agent to say: Can you tell me
20 about the tenor of communications in a group of individuals
21 that you are informing on?

22 A. Yes.

23 Q. Okay. So, for example, if we were to look at this -- can
24 you see the screen?

25 A. I can.

1 Q. So, assuming that a user named NobleBeard the Immortal were
2 a confidential human source, a handler could ask them: Well,
3 are they -- when they talk about going to the rally, are they
4 referring to the Latinos for Trump rally that Mr. Tarrio was
5 planning on attending?

6 MR. MULROE: Object to the use of the hypothetical as
7 misleading with respect to this individual.

8 MR. SMITH: So, Your Honor, I'm stipulating there are
9 no informants in this chat. So, I was just asking the witness
10 that if -- it would be consistent with normal CHS practice at
11 the bureau to -- for a handler agent to ask a confidential
12 human source: Well, when the individuals you're informing on
13 are referring to attending a rally on January 6, that is the
14 Latinos for Trump rally, that would be consistent with the
15 practice?

16 A. You can certainly ask your handler question -- I'm sorry.
17 The handler can certainly ask their source questions, yes.

18 BY MR. SMITH:

19 Q. About the general nature of conversations that are being
20 had in the communications?

21 A. Yes.

22 Q. Okay. Thank you.

23 So, I think the follow-up question to that is: You've
24 testified that there were a number of confidential human
25 sources in these Telegram chat groups. There's nothing

1 inconsistent with standard Bureau practice for the agents to
2 have inquired with those individuals what the tenor of the
3 chats were in those chat groups, right?

4 A. They would have been free to do so, yes.

5 Q. Okay. To your knowledge, you don't have any knowledge
6 either way whether they did so in these cases?

7 A. I do not.

8 Q. You do know, however, that after January 6, these CHSs were
9 debriefed by their handler agents?

10 MR. MULROE: Objection. Scope. Relevance. Hearsay.

11 THE COURT: Sustained.

12 BY MR. SMITH:

13 Q. So, I'm going to bring up one exhibit that you testified
14 about in this connection. This is Government Exhibit 514-74.
15 Can you see that one?

16 A. Yes.

17 Q. This is a reference to, I think, Mr. Tarrio's Telegram
18 handle saying something like: I need Danny Mack removed from
19 all chats you guys are included in.

20 Right?

21 A. Yes.

22 Q. Okay. And then I think the next chat you testified about
23 was 501-63, where NobleLead, who, I think, is -- that's the
24 Telegram handle identified with Mr. Tarrio, correct?

25 A. Yes.

1 Q. And then in connection with a chat about Danny Mack,
2 Mr. Tarrio, the handle, texts: He's a fud. Right?

3 A. Yes.

4 Q. And did you testify that that meant -- that was -- your
5 understanding of that is that he's a fed?

6 A. That's my reading of this chat, yes.

7 Q. Okay. And, so, I think you testified that that would be an
8 explanation for why Mr. Danny Mack, whoever that may be, would
9 have been excluded from a chat group, right?

10 A. I don't think I was posed that question, no.

11 Q. So, when it says here, "Yo, what the fuck happened with
12 Danny Mack? He's a fed," what was your testimony about what
13 they're discussing here in connection with Danny Mack?

14 A. I don't believe I was posed a question. I'm happy to draw
15 that inference for you, which is that he was removed from chats
16 because he was a fed.

17 Q. Okay. Thank you. That's what I was looking for.

18 So, I'm going to bring up an exhibit that has been
19 admitted, but not this portion of it. It's Nordean 209, and
20 it's at 31 minutes and 28 seconds.

21 MR. SMITH: Permission to publish?

22 THE COURT: Permission granted.

23 BY MR. SMITH:

24 Q. So, do you recall testifying, agent, about a video called
25 the Dunk Tank?

1 A. Yes.

2 Q. And I think on redirect, you watched and testified about a
3 couple of these clips?

4 A. Yes.

5 Q. Okay. I'm going to play this one concerning Danny Mack and
6 then ask for some testimony.

7 (Video played.)

8 Did you hear the comment about Danny Mack? Sorry, agent.

9 Did you hear that remark from Mr. Tarrio about Danny Mack?

10 A. Yes.

11 Q. Did he appear to be indicating that Danny Mack had done
12 something stupid, and so: We shouldn't be bringing retards
13 like Danny Mack into the group?

14 A. That's what was in the clip, yes.

15 Q. Could that be a reason why Danny Mack was excluded from the
16 chat group, not the fact that he was a fud?

17 A. This is a concern that Tarrio raised in this clip. I don't
18 know about the chats.

19 MR. SMITH: That's all, Your Honor. Thank you.

20 Thank you, agent.

21 THE WITNESS: Thank you.

22 THE COURT: All right. Counsel for Mr. Biggs?

23 CROSS-EXAMINATION

24 BY MR. PATTIS:

25 Q. Good afternoon, agent. Don't be put off by the size of the

1 book. I just had some notes. My cross-examination is on the
2 two stickies. Thank you for your patience.

3 If I understood your testimony earlier, and I think I
4 did, the -- one of the jobs of an agent is to collect
5 information, correct?

6 A. Yes.

7 Q. And you're an investigator, correct?

8 A. Yes.

9 Q. And that investigation -- your investigation takes you into
10 a number of fields where -- from which you can draw
11 information, correct?

12 A. Yes.

13 Q. There is open source material?

14 A. Yes.

15 Q. Any of us could, presumably, get that, if we knew how to
16 look, right?

17 A. Yes.

18 Q. Type a search term into Google, voila, there's something,
19 right?

20 A. Yes.

21 Q. And it may or may not be reliable, correct?

22 A. Yes.

23 Q. Another source of information might be a subpoena, correct?

24 A. Yes.

25 Q. If there were authorization under law to compel someone to

1 bring something to a location, that's what a subpoena does,
2 correct?

3 A. Yes.

4 Q. They can't be granted willy-nilly. There has to be
5 justification for them, correct?

6 A. Yes.

7 Q. And to that end, the FBI works with the Justice Department,
8 correct?

9 A. Yes.

10 Q. And there are complex manuals that govern the procedure and
11 the circumstances under which subpoenas can be sought, issued,
12 and obtained, correct?

13 A. Yes.

14 Q. Same analysis with warrants. That's a little bit more
15 formal. A judge has to be persuaded that there are sufficient
16 legal reasons to compel a person to either appear or bring
17 things with them, correct?

18 A. Yes.

19 Q. And then you testified, as well, about confidential human
20 sources. I'll say that, if you like, but I would like to
21 shorten it and say "informants," but you seem put off by that.

22 May I just say "informants"?

23 A. Sure.

24 Q. Thank you, sir.

25 Informants you talked about as volunteers, correct?

1 A. Yes.

2 Q. But it's a little more complicated than the word
3 "volunteer" suggests, is it not?

4 A. What do you mean?

5 Q. Well, I could walk into the FBI and say: I want to give
6 you information about my mother.

7 I mean. That would be volunteering, right?

8 A. Yes.

9 Q. The FBI could also target me as a person from whom it would
10 like to get information, correct?

11 A. What do you mean by "target"?

12 Q. You know what a target letter is.

13 A. In a prosecution context?

14 Q. You know what a target letter is, do you not?

15 A. Yes.

16 Q. A target letter is a letter typically delivered by two
17 agents; not just one, because you always want to have a witness
18 with you when you're going to confront a subject, correct?

19 A. Yes.

20 Q. Two agents can (knocking): We've got a letter for you.
21 You are the target of a potential investigation.

22 Correct? You've seen these letters.

23 A. I have seen letters. I have never delivered one in the
24 manner in which you're suggesting.

25 Q. Okay. You don't knock on the door?

1 A. I have never -- this is inconsistent with how I have --

2 Q. Okay.

3 A. Yeah.

4 Q. But, a person receiving a target letter would be informed
5 that they were the subject of interest to the FBI, correct?

6 MR. MULROE: Object to the characterization of
7 "target letters," which are irrelevant. Outside the scope.

8 MR. PATTIS: As to "volunteer," there are volunteers
9 and there are volunteers.

10 THE COURT: I understand. But, the objection is
11 sustained.

12 BY MR. PATTIS:

13 Q. The FBI might obtain -- the concept of leverage is
14 something you're familiar with, is it not? Getting leverage
15 over a person?

16 A. Yes.

17 Q. And, so, if I volunteer, coming in and saying, "I would
18 like to tell you about my mother," that's great. You didn't
19 have to do any -- apply any leverage. I'm just at the door,
20 right?

21 A. Yes.

22 Q. If you have someone that you're interested in getting
23 information from, it might be helpful to you to get a little
24 bit of leverage over them, correct?

25 A. Sure.

1 Q. And by "leverage," I mean you can give them something in
2 exchange -- you can get something from them, if you give them
3 something they want, that kind of thing, correct?

4 A. Yes.

5 Q. So, you know, you've heard, for example -- and you -- you
6 have -- you are currently involved in investigations unrelated
7 to this case, correct?

8 A. Yes.

9 Q. And you understand, sir, that nothing in my questions is
10 meant to encourage you, suggest, or ask you to disclose
11 anything confidential. You understand that?

12 A. I understand.

13 Q. I want to ask general topical questions; is that fair
14 enough?

15 A. Yes.

16 Q. So, you have been involved in situations where you've said
17 things to people like: Look, that will help you a lot, and it
18 helps us as well.

19 You've said things like that, have you not?

20 A. I have not.

21 Q. Okay. Have you -- would it be -- would that be consistent
22 with an agent's conduct in trying to get information from a
23 person in a voluntary setting?

24 A. Yes.

25 Q. You also have had people say things like, you know: We're

1 getting in your crap. We're getting in your house. We're
2 having to interact with your girlfriend. Look where this got
3 you.

4 An FBI agent might say something like that to encourage
5 them to voluntarily cooperate, correct?

6 A. I have not.

7 Q. No. But, an agent might?

8 A. Yes.

9 Q. And that would be consistent with the agency's practice?

10 A. It would not be inconsistent, no.

11 Q. So, when you say "volunteer," you also make an appeal to a
12 person's interests in asking them to cooperate; fair enough?

13 A. Yes.

14 Q. And, so, it's not simply the case that a person wanders off
15 the street and says: I have got information about my mama.

16 You sometimes go out and ask people if they have
17 information that they're willing to share, correct?

18 A. To be clear, walk-ins, absolutely haven't. But, people do
19 come in and --

20 Q. I get it.

21 A. Yeah.

22 Q. I've been a lawyer probably as long as you've been alive.
23 I know they do, but that's not what I'm asking about. I'm
24 asking about something else.

25 A. I understand.

1 Q. There are situation where you encourage people to
2 volunteer, correct?

3 A. Certainly.

4 Q. And one of the things you were taught about at Quantico and
5 you -- is interrogation techniques, how to question a person,
6 correct?

7 A. Yes.

8 Q. And one of the things that you do to encourage a person to
9 volunteer information is build rapport with them, correct?

10 MR. MULROE: Your Honor, at this point, I'm going to
11 object to outside scope and on 403 grounds.

12 MR. PATTIS: Judge, "volunteer" was the testimony. I
13 think I'm within the scope.

14 THE COURT: You're within the scope so far.

15 MR. PATTIS: I got it. And I understand what you
16 just said -- saying.

17 BY MR. PATTIS:

18 Q. You cultivate a relationship with a confidential human
19 source, or an informant, correct?

20 A. You can.

21 Q. And if you have something that you can offer them by way of
22 reassurance, you'll offer them that, correct?

23 A. You can.

24 Q. The expression "give and go" -- "give and get," you've
25 heard that before, have you not?

1 A. Yes.

2 Q. And sometimes you have to give a little to get a little;
3 fair enough?

4 A. Certain things, yes.

5 Q. And I'm not suggesting -- I am not suggesting bribery or
6 anything unlawful. Simply the ordinary human dynamic of
7 building a relationship; fair enough?

8 A. Yes.

9 Q. Because that's a difficult relationship to manage, isn't
10 it?

11 A. It can be, yes.

12 Q. Sometimes you have to meet with a person multiple times
13 before they volunteer, correct?

14 A. Yes.

15 Q. You have to let them know: I'm not going away. I have
16 questions.

17 Correct?

18 A. Yes.

19 Q. And sometimes you even resort to a little bit of a bluff:
20 We've got information. We know exactly what you've said. We
21 want you to tell us, in your own words, how you said it.

22 You've seen that move made?

23 A. I haven't, but --

24 Q. It is a permissible move?

25 A. It is permissible.

1 Q. And one way that you can get a person to volunteer is to
2 bring them in for what's called a "reverse proffer agreement."
3 You've heard that, have you not?

4 A. Yes.

5 MR. MULROE: Object. Again, on scope and 403.

6 MR. PATTIS: "Volunteer?" And we've got it coming.
7 I don't mean to engage in a speaking objection, but I think the
8 Court understands me.

9 THE COURT: Mr. Pattis, let me just hear you at
10 sidebar.

11 (Bench discussion:)

12 THE COURT: Mr. Pattis, I understand you want to make
13 the point that, you know, it is within the practice that folks
14 may -- that people can arrive at a CHS relationship in all
15 different ways, put it that way. We don't -- I don't know
16 whether -- and maybe you don't know whether any of those ways
17 are at issue here.

18 I understand he testified that, you know, this was a
19 voluntary relationship, but I think, you know, going into the
20 specifics of a situation where someone is facing a charge, I
21 think starts to strain the scope.

22 MR. PATTIS: I was somewhat startled by the
23 "volunteer" comment. And I'll be candid with you, you know,
24 Mr. Bertino was recorded extensively, and we're about to hear
25 from him. And, so, part of my desire to ask these questions is

1 so that the focus sets for when the jury hears from
2 Mr. Bertino. And that may be impermissible from your
3 perspective. I'll be candid with you.

4 THE COURT: All right. Yeah, you're tending
5 toward --

6 MR. PATTIS: I'll move on.

7 THE COURT: All right.

8 (Open court:)

9 BY MR. PATTIS:

10 Q. You were asked, sir -- all right. We're about done. And
11 that's a real promise. I'm not the skipper on Gilligan's
12 Island.

13 You were asked questions about Shane Lamond, correct?

14 A. Yes.

15 Q. And you were asked questions about whether -- about the
16 relationship that Lamond had with Mr. Tarrio, correct?

17 A. Yes.

18 Q. And you offered, from time to time, questions about what
19 law enforcement would do, and then sometimes the same question,
20 in my view, at least, was asked about the limitation with
21 respect to the FBI. I want to explore the difference between
22 FBI and some other law enforcement agents.

23 Did you understand where I'm coming from?

24 A. Yes.

25 MR. MULROE: Object on scope of recross on a narrow

1 topic.

2 MR. PATTIS: I believe it was squarely addressed as
3 to the Lamond-Tarrio relationship, and there were objections as
4 to law enforcement in general.

5 THE COURT: Let me hear you at sidebar.

6 (Bench discussion:)

7 THE COURT: Mr. Pattis, I think the problem is
8 that -- I understand the objections over there. What do you
9 plan to do with him here?

10 MR. PATTIS: I'm tired, and maybe I didn't -- maybe I
11 wasn't paying attention, maybe I didn't hear it rightly. But,
12 my impression was that the cross-examination of -- the redirect
13 examination of this witness as to Mr. Tarrio was to make sure
14 the jury understood the nature of the relationship with Lamond.
15 And that to the degree that, in the government's belief,
16 Mr. Jauregui tried to portray Lamond as a source -- excuse
17 me -- Tarrio as a source, a confidential human source of
18 Lamond, that was false because of the character of the
19 relationship.

20 And then in the course of those questions, from time
21 to time there was a broad category of law enforcement.
22 Eventually, we objected as to "FBI" only, and I just want to
23 explore that boundary briefly. That's where I'm going.

24 THE COURT: Just the distinction between what he
25 knows about the FBI and the fact that he doesn't know what

1 other law enforcement -- the practices of other law enforcement
2 groups?

3 MR. PATTIS: Yes.

4 THE COURT: All right. I think that's permissible.

5 (Open court:)

6 BY MR. PATTIS:

7 Q. I'm old, feeble, and some say a codger, but I think I
8 remember the question.

9 When you were asked questions about the FBI's practices,
10 you weren't talking about the Capitol Police, correct?

11 A. No.

12 Q. You didn't speak to anybody at the Capitol Police --

13 A. No.

14 Q. -- about Mr. Tarrio?

15 A. No.

16 Q. So no Telegram communications with Mr. Tarrio involving
17 Mr. Tarrio in the Capitol Police, correct?

18 A. Not that I recall.

19 Q. Okay. And same question with respect to the Metropolitan
20 Police Department. Did you examine, other than -- well,
21 withdrawn.

22 Did you ever speak to Shane Lamond?

23 A. No.

24 Q. Did you ever speak to Assistant Chief Jeffrey Carroll?

25 MR. MULROE: Objection. Relevance. Scope.

1 THE COURT: Sustained.

2 BY MR. PATTIS:

3 Q. Same question with respect to the Park Police.

4 That's another law enforcement entity that has
5 jurisdiction over the Capitol, or at least did on January 6,
6 2021, correct?

7 THE COURT: What's the question?

8 BY MR. PATTIS:

9 Q. Is that correct?

10 THE COURT: Is what correct?

11 MR. PATTIS: About the Park Police having
12 jurisdiction over the Capitol on January 6.

13 BY MR. PATTIS:

14 Q. Do you know?

15 A. I don't.

16 Q. Did you ever speak to anybody at the Park Police?

17 MR. MULROE: Objection.

18 THE COURT: Sustained.

19 BY MR. PATTIS:

20 Q. So, when you were offering testimony about what the FBI
21 does, that was as a general matter, correct?

22 A. Yes.

23 Q. You don't -- and when you talked about the things that
24 seemed unusual in the video -- the clips that the government
25 showed you, they were unusual in the context in which they were

1 shown to you on the screen here, correct?

2 A. No. Some of the things in those chats are just, standing
3 by themselves, unusual.

4 Q. That's what I mean. Standing by themselves, they're
5 unusual, correct?

6 A. Yes. I'm sorry.

7 Q. But, you don't really know anything about the relationship
8 that Mr. Tarrío had with Mr. Lamond, do you?

9 A. Just what's in the chats.

10 Q. You don't know anything else, do you?

11 A. No.

12 Q. You don't know whether Mr. Lamond was cultivating
13 Mr. Tarrío as a source for the police department, do you?

14 A. I certainly do not.

15 Q. And you don't know whether Mr. Lamond was giving things to
16 Tarrío in exchange for things of far greater value than Tarrío
17 gave him, correct?

18 MR. MULROE: Objection --

19 BY MR. PATTIS:

20 Q. You don't know that?

21 MR. MULROE: -- calls for speculation.

22 THE COURT: I'm going to just sustain as to
23 foundation. He's already answered the question.

24 MR. PATTIS: Nothing further, Judge.

25 THE COURT: All right.

CROSS-EXAMINATION

BY MS. HERNANDEZ:

Q. Good afternoon.

A. Good afternoon.

Q. You're still here.

A. I am.

Q. Carmen Hernandez, and I represent Mr. Rehl.

A. Yes.

Q. Thank you for being here.

You -- today, you spoke quite a bit about confidential human sources. The government asked you about your knowledge of them.

A. Yes.

Q. And the FBI's use of them, correct?

A. Yes.

Q. And I understood you to say that CHSs, confidential human sources, voluntarily provide info to the FBI.

A. Yes.

Q. And, I think, Mr. Pattis tried to present a different view of that in the questions he asked you.

A. Yes.

Q. Okay. And I -- I want to ask you a few other questions about confidential human sources and how the FBI recruits them, keeps them, and uses them.

A. Got it.

1 Q. So, although they voluntarily provide info to the FBI, it
2 is true that confidential human sources are also paid by the
3 FBI?

4 A. They can be. It's certainly not something that happens
5 with every source.

6 Q. I'm sorry?

7 A. It's certainly not something that happens with every
8 source.

9 Q. But it happens with a lot of sources.

10 A. I don't have statistics.

11 Q. Okay. It happens with some sources.

12 A. Yes.

13 Q. And you don't have statistics. Does that mean that you've
14 never -- I don't want to get into confidential information
15 about cases that you're working on.

16 A. I understand.

17 Q. So, I -- just generally speaking, does that mean you've
18 never used a confidential human source that was paid by the
19 FBI?

20 MR. MULROE: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MS. HERNANDEZ:

23 Q. And the fees that are paid to the FBI -- I'm sorry -- to
24 the confidential human sources include fees, a set amount of
25 money, correct?

1 A. Yes.

2 Q. And they also include what the FBI refers to or what the
3 Attorney General refers to as "rewards."

4 A. What do you mean by "rewards"? Sorry.

5 Q. So, I mean, do you think if I -- rewards is an amount of
6 money that is paid to a confidential human source for
7 accomplishing something in his work.

8 A. I see. Yes, sources can be compensated for the work they
9 do.

10 Q. But there's -- there is a term used by the Attorney General
11 and the Department of Justice, which is "rewards."

12 A. Yes.

13 Q. And they also use a term "fees."

14 A. I -- yes.

15 Q. Okay. And the reward, usually, is -- and they also get --
16 and CHSs are also reimbursed for expenses at times?

17 A. Yes.

18 Q. And there is -- is there any limit to the amount of
19 reimbursement?

20 A. I am sure -- I do not know.

21 Q. Okay. And rewards sometimes are based on the value of the
22 assistance that the confidential human source provided?

23 A. Payments can be keyed to the value of the assistance, yes.

24 Q. And when we identify "value," or when the term "value" is
25 used in that context, the value is the value to the Department

1 of Justice?

2 A. Yes.

3 Q. So, if someone -- a confidential human source assists in
4 the conviction of someone, say a large drug trafficker, might
5 their reward be higher than someone, perhaps, a low-level drug
6 trafficker?

7 MR. MULROE: Your Honor, I object at this point on
8 relevance, scope, and 403 sources and methods.

9 THE COURT: Overruled. Overruled. But -- we're
10 within the scope, but we're -- we're within the scope at this
11 point.

12 MS. HERNANDEZ: Okay. And --

13 THE COURT: I'm sorry.

14 MS. HERNANDEZ: I can tell the Court where I'm asking
15 these questions, you know.

16 (Off-the-record discussion between Attorneys
17 Hernandez and Mulroe.)

18 BY MS. HERNANDEZ:

19 Q. In order to get approval for payments, you have to get
20 approval up the ladder? If you know.

21 MR. MULROE: Same objection.

22 THE COURT: Sustained on that.

23 MS. HERNANDEZ: I'm sorry, Your Honor. May we have a
24 sidebar?

25 THE COURT: All right.

1 (Bench discussion:)

2 MS. HERNANDEZ: These questions are coming from a
3 document that the government provided to me this morning, after
4 I requested discovery on the scope of the witness's testimony,
5 and the document is titled The Attorney General's Guidelines
6 Regarding the Use of FBI Confidential Human Sources.

7 And, so, they provided it to me. I'm not going off
8 on a tangent.

9 THE COURT: Well, I'm not saying you're going off --
10 well, let me put it this way: I understand that document
11 exists. I guess my point is, the basic -- he's given very
12 general testimony about CHSSs, and you've established they can
13 be paid. I get it. I guess we start to go into the -- some of
14 these things in greater detail, I'm having trouble seeing the
15 relevance.

16 MS. HERNANDEZ: Well, one of the first questions the
17 government elicited or the witness offered, was that
18 confidential human sources, as he described it, offer
19 information -- sorry, the language he used was "voluntarily
20 provide information," which leaves the impression that, I think
21 as Mr. Pattis tried to get to, that people just walk in and
22 say: Hey, I want to give you this information.

23 And there's this whole document, again, that the
24 government provided to me this morning, which discloses the
25 manner in which they're paid. And I will tell the Court that

1 I've had cases where witnesses who were confidential human
2 sources have been paid hundreds of thousands of dollars.

3 THE COURT: Right. And my point is, you've
4 established they can be paid, and I'm not disagreeing with you
5 that you couldn't get that out there. You've established they
6 get paid. You've even established: Hey, the more work you
7 get, the more you may be paid.

8 I just don't -- I don't see the relevance of further
9 beating the horse of being paid.

10 MS. HERNANDEZ: Okay.

11 THE COURT: Okay.

12 (Open court:)

13 BY MS. HERNANDEZ:

14 Q. And when payments are made to confidential human sources,
15 they're not made via electronic or digital means, correct?

16 MR. MULROE: Same objection.

17 THE COURT: Sustained.

18 BY MS. HERNANDEZ:

19 Q. And those monies may be taxable income; is that correct?

20 MR. MULROE: Same objection.

21 THE COURT: Sustained.

22 BY MS. HERNANDEZ:

23 Q. And the government -- when you -- and one of the benefits
24 of being a confidential human source, if you receive cash
25 payments, is that it's up to the confidential human source to

1 report it or not; is that correct?

2 MR. MULROE: Same objection.

3 THE COURT: Sustained.

4 MS. HERNANDEZ: Your Honor, I think it --

5 BY MS. HERNANDEZ:

6 Q. And the reason I say that is because the Department does
7 not give their confidential human sources, who are paid in
8 cash, a 1099 that shows that they can --

9 MR. MULROE: Same objection.

10 THE COURT: Sustained.

11 BY MS. HERNANDEZ:

12 Q. So, to the extent that you testified that they
13 voluntarily -- a CHS voluntarily provides information to the
14 FBI, that leaves a lot -- the "voluntarily" provides -- leaves
15 a whole group of people who are CHSs out of that; would you
16 agree with me?

17 A. I would not.

18 Q. So the person who gets paid for their information is
19 voluntarily providing information, you think?

20 A. They're free to stop providing information at any time.

21 Q. Well, but, if you're paying somebody -- would you agree
22 with me that when you speak of doing something voluntarily,
23 it -- the average understanding of that does -- is not that
24 you're getting paid for it, correct?

25 A. I -- I gather that that's your understanding.

1 Q. Is it not your understanding?

2 A. My understanding would be that "voluntary" means you're not
3 being compelled to do it.

4 Q. Okay. So, when you go out on a date, that you're going out
5 on a date voluntarily. If you get paid for going on the date,
6 that might not be viewed as voluntary; would you agree with me?

7 MR. MULROE: Objection. Cumulative.

8 THE COURT: The witness can answer the question, if
9 he understands the question.

10 MR. SMITH: Volunteer versus voluntarily. That's the
11 confusion here.

12 MS. HERNANDEZ: Thank you.

13 MR. SMITH: I was trying to help.

14 A. I'm very sorry. Can you ask the question again?

15 BY MS. HERNANDEZ:

16 Q. I'm sorry.

17 So, I just want to establish that when the term
18 "voluntarily" is used to describe what someone does --

19 A. Yes.

20 Q. -- the average understanding is that it does not involve a
21 payment of money.

22 A. I do not agree with that. But, I understand your point.

23 Q. Okay. If you don't agree with that, let me see if you
24 agree with this: If you're getting paid for doing something --

25 A. Yes.

1 Q. -- people would not ordinarily refer to that as doing
2 something voluntarily, right?

3 A. Again, to me, "voluntarily" means you're not being
4 compelled.

5 Q. I understand. But I'm asking you a different question.

6 A. Okay.

7 Q. If you're being paid to do something --

8 A. Yes.

9 Q. -- and you were going to describe that relationship, would
10 you use the term "voluntarily" or would you use a different
11 term?

12 MR. MULROE: Asked and answered.

13 THE COURT: Overruled.

14 MS. HERNANDEZ: Thank you.

15 A. Perhaps you are not a volunteer, but you are performing the
16 work voluntarily.

17 BY MS. HERNANDEZ:

18 Q. Even if you're receiving payment?

19 A. Yes.

20 Q. I see. And then there's the class of people who do things
21 without getting paid, correct?

22 A. Yes.

23 Q. You might go to church without getting paid.

24 A. Yes.

25 Q. And you do that voluntarily.

1 A. Yes.

2 Q. And you don't expect that -- okay. I'll just leave that
3 one.

4 And you might help a lady cross -- an old lady cross the
5 street, or a person that's blind cross the street, correct?

6 A. Yes.

7 Q. And you're doing it voluntarily?

8 A. Yes.

9 Q. Without an expectation of payment?

10 A. Yes.

11 Q. Okay. So, would you -- let me see if we can agree at least
12 on this: If you do things without payment or an expectation of
13 payment, that defines a different category of conduct than
14 someone who gets paid, even if not compelled?

15 A. Yes.

16 Q. Okay. Thank you.

17 And confidential human sources can involve persons
18 convicted of offenses?

19 A. Yes.

20 Q. And persons on parole?

21 A. Yes.

22 Q. On probation?

23 A. Yes.

24 Q. In jail?

25 A. Frankly, I've never --

1 Q. Okay.

2 A. Yep.

3 Q. And the confidential human source can be authorized to
4 take -- to act or to take actions that would otherwise be
5 illegal?

6 A. Yes.

7 Q. But, they would need authorize -- written authorization;
8 would you agree?

9 A. Yes.

10 Q. And usually, if that's going to be authorized, there are
11 standards, or limits, placed on that activity --

12 MR. MULROE: Objection -- apologies.

13 Objection on relevance, scope, 403.

14 THE COURT: Let me hear from -- let me talk with the
15 parties at sidebar.

16 (Bench discussion:)

17 THE COURT: Ms. Hernandez, I just want to explain why
18 I'm sustaining this objection, so you understand. Again,
19 just circling back to why we're here, we're here because the
20 witness has -- the context of these chats, and I don't have --
21 there's no basis to think that the line of questioning about
22 taking illegal action is implicated here. Maybe it will be
23 implicated with some other witness, some -- down the line,
24 but for the purpose for which I've admitted the testimony on
25 CHSs in connection with these chats, I don't see the

1 relevance.

2 MS. HERNANDEZ: Right. I thought the Court -- or,
3 the government had elicited a lot of this sort of background
4 information "in your experience," you know, a lot of, I
5 thought, beyond what was necessary, but the Court allowed. So
6 I'm just trying to establish -- I mean, I only have one or two
7 questions more -- well, I have several questions. So, I'll
8 move on from this.

9 THE COURT: All right. All right.

10 MS. HERNANDEZ: I'll move on from this particular
11 question. I do have other questions on the role and function
12 of confidential human sources.

13 MR. MULROE: Your Honor -- Your Honor, I just want to
14 note that our redirect on this topic was quite short and quite
15 generalized. I'm concerned that if we're going to march
16 through the entire policy manual and just ask about everything
17 in there, I just don't see the relevance, frankly.

18 THE COURT: Again, I think it's fair for them to
19 elicit the issue of the payment and things like that, but when
20 we're talking about an authorized unlawful activity, we're way
21 beyond the kind of testimony that the government elicited and,
22 frankly, that is relevant for the purpose through -- for this
23 witness that would authorize this testimony.

24 MS. HERNANDEZ: Thank you.

25 (Open court:)

1 BY MS. HERNANDEZ:

2 Q. And there are certain recordkeeping functions that an FBI
3 agent has to maintain with respect to a confidential human
4 source, right?

5 A. Yes.

6 Q. You can't just go out and engage with a confidential human
7 source and not keep a record of payment, activities, contacts;
8 is that correct?

9 A. Yes.

10 Q. Okay. So, I just -- and -- and among the things that a
11 confidential human source can do is they can engage in
12 consensual telephone conversations? And by that I mean -- I
13 know what that means. A consensual conversation is a
14 confidential human source can call an associate. The
15 confidential human source is -- has a right to make a phone
16 call, correct?

17 A. Yes.

18 Q. So, you don't need a court order to record that
19 conversation that the confidential human source has with a
20 person you're investigating, for example.

21 A. Yes.

22 Q. Okay. And that's what a consensual telephone conversation
23 is.

24 A. Yes.

25 Q. You'll bring the confidential human source to your office,

1 they'll dial the target of your investigation or someone you're
2 interested in having a conversation with, and either you can
3 listen in or you can record that conversation.

4 A. There are many methods, but --

5 Q. But, essentially, you are able to hear what that
6 conversation -- the contents of that conversation?

7 A. Yes.

8 Q. Okay. And one of the things that you can do is you can --
9 when someone becomes a confidential human source, you can
10 have -- you can allow -- or, they can allow you to monitor
11 their telephones at all time; is that correct?

12 A. I do not have experience with that. I -- I would not know.

13 Q. You don't have experience with that. So, you don't know
14 whether that's a possibility or not?

15 MR. MULROE: Asked and answered.

16 THE COURT: Sustained.

17 MS. HERNANDEZ: I will show you a document in a
18 moment to see if that -- well, I'll move on, if he doesn't have
19 any experience.

20 BY MS. HERNANDEZ:

21 Q. But you're not denying that that's a possibility?

22 A. I just don't know what the --

23 MR. MULROE: Asked and answered.

24 THE WITNESS: Sorry.

25 MS. HERNANDEZ: I'm sorry, Your Honor. He said

1 "asked and answered," so I don't --

2 The question was: You're not denying that that's
3 within the possibility?

4 THE COURT: Overruled.

5 MS. HERNANDEZ: Okay.

6 A. I don't know the regulations. There are rules for all of
7 this stuff. I don't want to give you wrong information.

8 BY MS. HERNANDEZ:

9 Q. Okay. And then your -- I think you said you've been an FBI
10 agent for about three years?

11 A. Yes.

12 Q. I think what you're telling us is you haven't had that
13 situation in any of your cases.

14 A. Yes.

15 Q. Okay. Okay. So, you -- I'm sorry. Do you have the --

16 MS. HERNANDEZ: With the Court's indulgence.

17 Do you have the transcript?

18 MR. MULROE: I'm not sure where it is.

19 MS. HERNANDEZ: Is --

20 MR. MULROE: I don't think it's on the witness stand.

21 MS. HERNANDEZ: Okay.

22 BY MS. HERNANDEZ:

23 Q. Do you remember you started, I believe -- or, early on in
24 your redirect examination, the government played for you a
25 video that you had already -- a short clip of that Zoom video

1 from December 30th. Do you remember that?

2 A. Yes.

3 Q. I'm sorry. Ms. Rohde, could you play the video --

4 (Off-the-record discussion between Mr. Mulroe and Ms.
5 Hernandez.)

6 MR. MULROE: Your Honor, I would object on scope
7 here, as being outside the purpose of the recross.

8 THE COURT: What is the exhibit, Ms. Hernandez?

9 MS. HERNANDEZ: It's the exhibit where I had played
10 a -- I believe it's, like, a 20-second clip. And I had a
11 transcript, and then he corrected it. I just wanted to clarify
12 the correction that he made.

13 THE COURT: Sustained as to scope. Sustained.
14 And -- sustained.

15 MS. HERNANDEZ: Okay. Your Honor, can we be heard on
16 that?

17 THE COURT: Sure.

18 (Bench discussion:)

19 MS. HERNANDEZ: I just wanted to establish that it
20 wasn't some intent by me to -- I just wanted to establish the
21 additional words that he heard are -- you know, you can hear --
22 there's a number of people speaking at the same time. That's
23 all I'm trying to establish.

24 And that's also the Danny Mack video. I'm going to
25 jump off from that to some Danny Mack questions.

1 THE COURT: If you want to ask some Danny Mack
2 questions, that's fine. But this question -- we're, of course,
3 taking more time than it would have taken to answer the
4 question, unfortunately, but -- doing this. But, look, you
5 played it. You had him read the transcript. The government
6 did the same. There's -- this is not a situation where recross
7 is open for.

8 MS. HERNANDEZ: Okay.

9 (Open court:)

10 BY MS. HERNANDEZ:

11 Q. So, when the government started the redirect, they played a
12 video which is the same video I had played for you. Remember?

13 A. Yes.

14 Q. And there were some added words that you read or heard; is
15 that correct?

16 A. There were words in the video that were not in the original
17 transcript, yes.

18 MR. MULROE: Same objection.

19 THE COURT: Sustained.

20 BY MS. HERNANDEZ:

21 Q. And the video referenced a gentleman by the name of Danny
22 Mack?

23 A. Yes.

24 Q. And the -- I believe the questions that were asked of you
25 with respect to Danny Mack was there's some indication that

1 he -- that he was perceived to be an informant?

2 A. Yes.

3 Q. Okay. And, I believe, that during your original -- or
4 during my cross-examination -- let me strike that.

5 And if you recall, that video was from December 30th,
6 2020?

7 A. The --

8 Q. The Zoom video.

9 A. The MoSD? Yes.

10 Q. Yes.

11 A. Yes.

12 Q. I'm going to show you -- and this, I guess, would be only
13 for the witness -- a Telegram -- I believe a Telegram chat
14 between Mr. Mack and Mr. Rehl.

15 Will you just take a look at it and see if you recognize
16 it?

17 THE COURTROOM DEPUTY: Can I have an exhibit number,
18 please?

19 MS. HERNANDEZ: I'm sorry?

20 THE COURTROOM DEPUTY: Exhibit number.

21 MS. HERNANDEZ: Exhibit 43 -- or it may be 44.

22 THE COURTROOM DEPUTY: Was this the previous one?

23 MS. HERNANDEZ: It would be 44, then.

24 THE COURT: Ms. Hernandez, does the government have a
25 copy of what we're talking about here?

1 MS. HERNANDEZ: I emailed it to them, I believe.

2 MR. MULROE: I'm happy to look on the screen, Your
3 Honor. I don't think we've seen this before.

4 THE COURT: All right. All right.

5 MS. HERNANDEZ: I identified it for them yesterday
6 and, I believe, I emailed it to you today.

7 BY MS. HERNANDEZ:

8 Q. Can you -- are you able to see it?

9 A. I am.

10 Q. And I don't know whether you can --

11 A. I don't control the screen up here, I don't believe.

12 Q. Okay. So, just so you can see the first page here.

13 A. Yes.

14 Q. This is a part of a Cellebrite extraction report?

15 A. It appears to be so.

16 Q. And, like, on that first page, one of the participants
17 is -- the owner is Mr. Rehl?

18 A. Yes.

19 Q. And the second person listed is a gentleman by the name of
20 Danny Mack?

21 A. Yes.

22 Q. And he's a PB, or a Proud Boy?

23 A. There is a "PB" next to his name.

24 Q. Okay. And you can look through those texts and see if you
25 agree that those are accurate reflections of Telegram messages.

1 A. I have no reason to believe they aren't.

2 Q. Okay.

3 MS. HERNANDEZ: And, so, Your Honor, I would move,
4 under the limited information -- under the limited direction
5 that I thought the Court gave, some background for Mr. Danny
6 Mack. And this conversation, I believe, is with Mr. Rehl.

7 THE COURT: I can't see all of it. I don't know if
8 the government can see all of it.

9 MR. MULROE: I would ask that we just slowly scroll
10 down.

11 MS. HERNANDEZ: Okay.

12 MR. MULROE: Slowly scroll down to the next page,
13 please.

14 MS. HERNANDEZ: I'm sorry. And for the witness,
15 also. You may not have seen it all.

16 (Pause.)

17 MR. MULROE: No objection.

18 THE COURT: All right.

19 BY MS. HERNANDEZ:

20 Q. And, if you need me to move up or down on this --

21 A. I understand.

22 Q. Okay.

23 MS. HERNANDEZ: So, Your Honor, I would move -- this
24 is Rehl Exhibit 44.

25 THE COURT: All right. Without objection. And

1 permission to publish.

2 MS. HERNANDEZ: Thank you.

3 BY MS. HERNANDEZ:

4 Q. And this first Telegram message is from Danny Mack; is that
5 correct?

6 A. Yes.

7 Q. And are you able to tell to whom it is going?

8 A. It appears to be a group chat among four people.

9 Q. And the four people would be Captain Trump, or Mr. Rehl?

10 A. And Danny Mack, Uncle Tony, and Bill Whicker, yes.

11 Q. Okay. Can you read that first text? And this is from
12 December 31st, 2020?

13 A. Yes.

14 Q. And, again, it's after the Zoom December 30th video that
15 we've looked at several times.

16 A. Yes.

17 Q. And, so, this is presumably after it is already known that
18 Mr. -- that Danny Mack is an informant -- or believed that
19 Danny Mack is an informant?

20 A. It's after that comment in the video, yes.

21 Q. So -- and can you read that, please, that first --

22 A. "Tony, having New Jersey is fine with me. To be honest,
23 Jersey Shore is where I started, it's where I'm moving back to
24 and, in time, I hope all the brothers I've met in Jersey, in
25 time, can be mutual friends. Tony is a brother to me, even in

1 these times. I hope nothing bad upon him and all the best
2 moving forward. I have guys that stayed with the Shore Tony,
3 zoning up the rest of the state, and would like, when
4 everything calms, down to work with my state brothers."

5 Q. And do you understand that message to be that they're
6 dividing up New Jersey into Jersey Shore, and the second part
7 is Tony's zoning of the state for purposes of the Proud Boys?

8 MR. MULROE: Objection. Foundation.

9 THE COURT: If the witness can answer based on his
10 review of the Telegram evidence.

11 A. Based on my reading of this, I don't think that's an
12 unreasonable interpretation.

13 BY MS. HERNANDEZ:

14 Q. Okay. And would this have been one of the Telegram
15 messages that you reviewed before for purposes of your
16 testimony here over the last few days?

17 A. It would have been. Though, I admit, this chain is not one
18 that I am close to.

19 Q. You recall?

20 This is one of the -- what was it, 500,000?

21 A. Yes.

22 Q. And you can't remember this one?

23 A. I cannot.

24 Q. And then there's another one, again from Danny Mack,
25 December 31st, at a little bit after -- 9:08?

1 A. Yes.

2 Q. And he continues having this conversation about this. Can
3 you read it, please?

4 MR. MULROE: Your Honor, I'm going to object on 403,
5 cumulative, and scope, if we're going to continue going through
6 this whole chain.

7 THE COURT: Overruled.

8 A. "Buzzy was the one to say give him the shore, BTW. It's
9 where I started, it's where I grew up, and Jersey Shore PBs was
10 my org logo, so I took that. Never saw a vote. It was over
11 the phone with Tony. And then the split happened of Jersey and
12 the Shore.

13 "Then, after Tony took most of the guys is when this
14 word "strong arm" came along, and how bad of a person I am.
15 Before that, it was all cool combos. Some that went with Tony
16 even still talk with me, but they wanted to stay with the pack,
17 and I understand and respect them. Glad to have made so many
18 guys come together.

19 "I am leaving it at that, guys. I'm not a person to
20 defend myself, and many of you have seen me for years. And
21 speaking on years, happy New Year's Eve. Love you, bros."

22 Q. Okay. And that seems to be the same theme as the earlier
23 text that you just read?

24 A. Yes.

25 Q. Okay. And then this one, on January 5th at 8:45 p.m.,

1 again, from Danny Mack.

2 A. Yes.

3 Q. "Jersey Shore will hold its boundaries given by -- given."

4 And "TY" would be thank you?

5 A. Yes.

6 Q. And, again, Jersey Shore seems to be the group that he's
7 retaining -- that Danny Mack is retaining?

8 A. It appears to be.

9 Q. Okay. Thank you.

10 Miss Harris, could you take me off the --

11 Although, I want to show him something else, the witness
12 and the Court and the counsel.

13 BY MS. HERNANDEZ:

14 Q. And I would like you to look at this next -- again, it's an
15 extraction report of a Telegram chat.

16 A. Okay.

17 THE COURTROOM DEPUTY: Exhibit number?

18 A. Could you scroll down a bit more?

19 THE COURT: And please do it slowly so the government
20 has the opportunity to review it.

21 A. This appears to be the same exhibit we were just exploring.

22 MS. HERNANDEZ: Okay. Sorry. It was.

23 THE COURTROOM DEPUTY: And I need the exhibit number.

24 MS. HERNANDEZ: So that was Exhibit 44 that was moved
25 in -- Rehl Exhibit 44.

1 THE COURTROOM DEPUTY: Okay. Got that. Are you
2 putting up another one?

3 MS. HERNANDEZ: Yes. I'd like -- but this has to go
4 to the witness first.

5 THE COURTROOM DEPUTY: Okay. I still need the
6 number.

7 MS. HERNANDEZ: Oh, this would be 45.

8 THE COURTROOM DEPUTY: Thank you.

9 MS. HERNANDEZ: Thank you.

10 BY MS. HERNANDEZ:

11 Q. And this --

12 A. I see it, yes.

13 Q. Okay. So, this is another extraction report from
14 Cellebrite?

15 A. Yes.

16 Q. And that's the program that is able to read information
17 that's been extracted from a phone -- or, from a device?

18 A. Yes.

19 Q. So -- and this -- I should let you look at it first.

20 A. Would you mind scrolling slowly?

21 Q. Okay. I'm on page 1.

22 A. Thank you.

23 Q. (Scrolling text.)

24 A. Thank you.

25 Q. (Scrolling text.)

1 A. Thank you.

2 Q. (Scrolling text.)

3 A. Thank you.

4 Q. (Scrolling text.)

5 A. Thank you.

6 Q. (Scrolling text.)

7 A. Thank you.

8 Q. (Scrolling text.)

9 A. Thank you.

10 Q. (Scrolling text.)

11 A. Great. Thank you.

12 Q. So, does this appear to be a fair and accurate
13 representation of a Cellebrite report?

14 A. Yes.

15 MS. HERNANDEZ: And, Your Honor, I would move this
16 into evidence. This would be Rehl number 45.

17 MR. MULROE: We object on scope and relevance, given
18 the timeframe of these messages, in mid-January 2021, to the
19 extent that they --

20 THE COURT: All right. Let me hear from you at
21 sidebar.

22 (Bench discussion:)

23 THE COURT: Ms. Hernandez, what's the -- what's the
24 relevance?

25 MS. HERNANDEZ: Your Honor, these are the ones where

1 Mr. -- this guy, Danny Mack, admits, or tells Mr. Rehl in a
2 conversation that he's an informant.

3 THE COURT: Okay. Why -- okay.

4 MS. HERNANDEZ: I thought the Court had said that I
5 could go into just a small background on this issue. But,
6 if -- if the Court doesn't want to, I can do it when the
7 witness is brought back.

8 THE COURT: All right. Let's just do this for the
9 purposes of now: I did say -- I didn't mean to suggest that
10 the rules of relevance and hearsay would not be a part of my
11 rulings. So, I think the government has to have the
12 opportunity to look at this and formulate, if they have an
13 objection to it.

14 But -- so, if you want to reserve the right, I think
15 that makes sense. You just reserve the right to come back to
16 this, and we can -- and then we'll deal with it on the flip
17 side with this witness.

18 MS. HERNANDEZ: That's fine.

19 Can I just have him identify the Cellebrite and just
20 the participants, and then I'll move on?

21 THE COURT: Sure. Sure.

22 MS. HERNANDEZ: Thank you.

23 (Open court:)

24 BY MS. HERNANDEZ:

25 Q. Special Agent, just for the record, will -- could you just,

1 if you can, identify who the participants on this particular
2 document are?

3 A. It appears to be Danny Mack and Zachary Rehl.

4 Q. Okay. And that's -- Amanda Campbell, that's Mr. Rehl's
5 spouse; is that correct? Is that why you say it's Zach Rehl's?

6 A. I'm going based off of the email address of zrehl618. But,
7 I agree that the name that appears is Amanda Campbell.

8 Q. Okay.

9 MS. HERNANDEZ: Thank you. For purposes of today,
10 that's all I wanted to go into.

11 BY MS. HERNANDEZ:

12 Q. I just wanted to go -- one last thing. On redirect, the
13 government played Exhibit 503-10.

14 And, Ms. Rohde, can you pull that up, please?

15 MR. MULROE: Object to scope.

16 THE COURT: What --

17 MS. HERNANDEZ: Can you pull it up so the Judge can
18 see?

19 Your Honor --

20 (Bench discussion:)

21 THE COURT: Okay. Ms. Hernandez, I just wanted the
22 husher to be on.

23 MS. HERNANDEZ: This is the exhibit that the
24 government played the audio of someone named BrotherHunter Jake
25 Phillips, and the government asked several questions about the

1 response by other people. There was a response by Mr. Rehl
2 that the government didn't read. I just want to bring that
3 out. That's it. And that's the end of my redirect.

4 MR. MULROE: Your Honor, this has nothing to do with
5 CHSs. If this is how recross is going to go, this trial is
6 never going to end.

7 THE COURT: No. No. I understand.

8 Ms. Hernandez, the reason -- first of all, it's in
9 evidence already and the reason the government elicited this
10 was to talk about some of the terms used here. And, so -- but,
11 you're free to argue. Your point is in the evidence. And the
12 reason the government used this, the reason this was opened on
13 the door for cross was for reasons that did not have anything
14 to do with your client commenting one way or the other.

15 MS. HERNANDEZ: Right. The reason is to show that
16 they were really violent and "rallies" meant that they would be
17 violent and this person said all this stuff. And they played
18 it -- they played two of the audios, and they ignored my
19 client's comment, which, I believe, is a -- is a rejection, or
20 at least in response to the proposal for --

21 THE COURT: I can't see where on the exhibit. Can
22 you scroll down for a moment --

23 MS. HERNANDEZ: Yep.

24 THE COURT: -- so I can see where you're talking
25 about?

1 Right. Look, Ms. Hernandez, this is -- all right.
2 All right. I'll allow it in this instance, given it followed
3 immediately afterward.

4 (Open court:)

5 MS. HERNANDEZ: Your Honor -- and this exhibit has
6 already been introduced. It's 503-10 -- Government 503-10.

7 So, I would ask, Ms. Harris, could you publish it,
8 please?

9 And can we go back up to the top of the page,
10 Ms. Rohde?

11 BY MS. HERNANDEZ:

12 Q. And, Special Agent, this was a video that -- I mean, this
13 was an exhibit that you -- that the government introduced a few
14 minutes ago. Do you recall this exhibit?

15 A. Yes.

16 Q. And they played this audio from BrotherHunter Jake
17 Phillips?

18 A. Yes.

19 Q. Could you come down a little, please?

20 And this is the -- where this Brother Jake Phillips
21 seems to be suggesting a lot of violence or activity that -- I
22 believe the way the government questioned was that it was
23 inconsistent with the defendants' argument that they were
24 involved in nonviolent activity.

25 A. He discusses seek and destroy missions, yes.

1 Q. Okay. Seek and destroy mission.

2 Can you go down, Ms. Rohde, please?

3 And, the audio that was played for you was at
4 1:06:28 a.m.?

5 A. Yes.

6 Q. And then at 1:12:18 a.m., Mr. Rehl responds. Can you read
7 what he says?

8 A. "Events will def be much more uniform/organized in the
9 future, especially national events. We don't want D.C.
10 situations happening again. We're putting a lot of time into
11 getting this right. One of those steps is this chapter here."

12 Q. And when he says "We don't want D.C. situations again," he
13 meant we don't want the December 12th stabbing happening again;
14 is that correct?

15 A. There is no further context in this chat.

16 Q. This chat is from December 28, 2020, correct?

17 A. Yes.

18 Q. So that's before January 6?

19 A. Yes.

20 Q. Is there any other event in December that you're familiar
21 with in these chats at this time?

22 A. In --

23 MR. MULROE: Objection. Scope. Waste of time.

24 THE COURT: Overruled. The witness can answer.

25 A. In December, no. This appears to be a reference to the

1 earlier D.C. rallies.

2 BY MS. HERNANDEZ:

3 Q. Okay. And we had -- you testified and then we had a number
4 of questions about how one can either affirm or reject or be
5 silent on statements made by others.

6 A. Yes.

7 Q. And would you agree with me that Captain Trump, Mr. Rehl's
8 response here can be taken as: Let's move on from your --

9 What was the term you used? Seek and destroy comments?

10 A. The term he used. "Seek and destroy missions."

11 Q. Yes.

12 A. I'm not sure I would say this is "move on." This is a
13 response to it.

14 Q. And it's a response that is a rejection or -- it's not an
15 affirmation. How about that?

16 A. He does not say -- like, he does not put a checkmark next
17 to that voice note, no.

18 Q. He does not put a checkmark. And is that, like, a
19 technical or --

20 A. No. I'm just trying to communicate he doesn't say:
21 100 percent stamp, yes.

22 Q. So he doesn't say "100 percent stamp, yes." And you would
23 agree with me that one way to read this is to say: I don't
24 agree with what you're saying, but I'm being diplomatic?

25 A. I don't think I have -- I don't think I can testify as to

1 what was in Mr. Rehl's head when he posted this.

2 Q. But, you can testify, as you said, that it's not checkmark,
3 I agree with it?

4 MR. MULROE: Your Honor, can I be heard at sidebar?

5 THE COURT: You may.

6 (Bench discussion:)

7 MR. MULROE: Your Honor, this is a rerun of the
8 cross. This has nothing to do with the topic of redirect.

9 THE COURT: We're done. We're done with this. We're
10 done.

11 (Open court:)

12 MS. HERNANDEZ: Thank you, Your Honor. I'm done with
13 cross-examination.

14 Thank you.

15 THE WITNESS: Thank you.

16 MS. HERNANDEZ: And hope not to see you tomorrow.
17 Nothing personal.

18 Thank you.

19 And thank you, Ms. Rohde and Ms. Harris and the
20 Court. And Mr. Mulroe.

21 THE COURT: All right. Counsel for Mr. Tarrio.

22 MR. JAUREGUI: Thank you.

23 CROSS-EXAMINATION

24 BY MR. JAUREGUI:

25 Q. Good afternoon, again, agent.

1 A. Afternoon.

2 Q. Agent, would it be fair to say that inside the Proud Boys
3 organization, there were multiple informants?

4 A. There were multiple CHSS, yes.

5 Q. And these informants, they sent hundreds of messages on
6 Telegram, correct?

7 A. I don't have the exact number.

8 Q. Well, I do, at least as to one of them.

9 MR. MULROE: Object to counsel testifying.

10 THE COURT: Sustained.

11 MR. JAUREGUI: Okay.

12 MR. MULROE: And object to scope of this line of
13 questioning.

14 THE COURT: Well, let's -- sustained.

15 BY MR. JAUREGUI:

16 Q. You don't know the exact number of messages, correct?

17 MR. MULROE: Same objection.

18 THE COURT: Overruled. He can answer the question
19 again.

20 A. No, I don't.

21 BY MR. JAUREGUI:

22 Q. You don't know the exact number of messages, do you?

23 A. No.

24 Q. Does hundreds of messages sound consistent with your review
25 of the Telegram extractions?

1 MR. MULROE: Same objection on scope.

2 THE COURT: Sustained.

3 BY MR. JAUREGUI:

4 Q. Now, these informants, they interacted with other Proud
5 Boys in cyberspace, correct?

6 A. They chatted with other people, yes.

7 Q. On Telegram, on Parler; would that be fair?

8 A. I don't know about Parler. On Telegram, yes.

9 Q. Okay. They sent messages, they followed messages, they
10 replied to messages; would that be fair?

11 MR. MULROE: Object on scope.

12 THE COURT: Sustained. Sustained.

13 MR. JAUREGUI: Okay.

14 BY MR. JAUREGUI:

15 Q. And these informants, they also interacted with Proud Boys
16 in person, correct?

17 MR. MULROE: Same objection.

18 THE COURT: Sustained.

19 MR. JAUREGUI: Okay.

20 BY MR. JAUREGUI:

21 Q. And were some of these people present on January 6?

22 MR. MULROE: Same objection.

23 THE COURT: Sustained.

24 MR. JAUREGUI: Okay.

25 BY MR. JAUREGUI:

1 Q. And some of these informants were actually very close to
2 Enrique Tarrio --

3 MR. MULROE: Your Honor, can I be heard at sidebar?

4 THE COURT: You may.

5 (Bench discussion:)

6 THE COURT: Mr. Jauregui, this was all within the
7 scope of what you could have asked and what Mr. Pattis did ask
8 on cross -- well, not -- to be clear, not some of the last
9 questions, but the questions about the presence of CHSs in
10 these chats. So, we've been down this road. The jury
11 understands this.

12 If you have general questions about the CHSs, you may
13 ask them, but we're not talking anymore. Again, given the
14 limitations I put on the scope in the beginning about this,
15 there's nothing else that's relevant to this witness's
16 testimony than what we have already in the record.

17 MR. JAUREGUI: Okay. Judge, I thought I could ask
18 generally.

19 THE COURT: To be clear, I'm not -- I don't think
20 this is of the character that we -- what happened the other
21 day. I'm just saying, this is -- we've got out that there
22 were -- that there were CHSs in there, and what I authorized in
23 terms of redirect -- or, recross has been the fact that, you
24 know, the government put in this -- issues about the way CHSs
25 operate.

1 MR. JAUREGUI: All right. Okay, Your Honor. Thank
2 you.

3 (Open court:)

4 BY MR. JAUREGUI:

5 Q. Now, generally, the informants would provide their handlers
6 information that they've gleaned, correct?

7 A. That is --

8 MR. MULROE: Object on scope, if it's about
9 particular CHSs.

10 THE COURT: Sustained.

11 BY MR. HULL:

12 Q. I'm talking about generally, not any specific CHSs.
13 Generally, CHSs provide information to their handlers; isn't
14 that, right?

15 A. Yes.

16 Q. And some of that information could be Telegram messages;
17 isn't that true, agent?

18 A. Sure. Yes.

19 Q. Emails, perhaps?

20 A. Yes.

21 Q. Text messages?

22 A. Yes.

23 Q. Summaries of phone calls?

24 A. They could, like, report -- yes.

25 Q. Okay. Then, they provide that information to the handler,

1 and then the handler would, using investigative techniques,
2 confirm that information to see whether or not the informant is
3 being truthful, correct?

4 A. I'm sorry. There is no -- I want to make sure I understand
5 your question. It's: When I receive information, I -- no.
6 I'm sorry. No.

7 Q. I'll rephrase. My apologies. Okay?

8 When an informant gives information, let's say, to an
9 FBI agent --

10 A. Uh-huh.

11 Q. -- the FBI agent doesn't just take it at face value, does
12 he?

13 A. It is our job to record what is being told to us.

14 Q. Correct. And then you investigate to determine whether the
15 information given to you by the informant is true or false, to
16 determine whether the informant is a good informant or a bad
17 informant, correct?

18 A. That information becomes a part of the investigation and is
19 evaluated like we evaluate all evidence that we receive.

20 Q. Right. You corroborate that information to determine
21 whether the information is reliable, correct?

22 A. Sure.

23 Q. Okay. And then the handler passes up that information,
24 that agent, to his chain of command in the FBI, correct?

25 A. Generally, no.

1 Q. The handler does not share the information with other FBI
2 agents conducting a large-scale investigation? They don't do
3 that?

4 A. There is -- there is incredibly strict protocols protecting
5 how CHS information is shared inside the Bureau.

6 Q. Okay. And reports are created. Again, very regulated,
7 very strict procedures. But all this information is
8 documented, correct?

9 MR. MULROE: Your Honor, I'm going to object here on
10 403 and sources and methods.

11 THE COURT: All right.

12 MR. MULROE: And relevance. And scope.

13 THE COURT: It's -- we always like to end on an
14 objection, ladies and gentlemen, to save time. It's now -- I
15 have 5:13, so we're two minutes until we were going to break
16 for the day. So, why don't I have you all -- we'll see -- I
17 want to excuse you for the day. We'll see you all at 9 -- at
18 9 o'clock sharp tomorrow.

19 (Whereupon the jurors leave the courtroom.)

20 THE COURT: Sir, you may step down.

21 THE WITNESS: Thank you.

22 THE COURT: All right. Please, you all may be
23 seated. And, you know, you don't have to wait for me to say
24 it. When the jury leaves, you may be seated.

25 So, I think, Mr. Jauregui -- I mean, the question --

1 the pending question, I think, was: All the information, it's
2 regulated. All this information is documented, correct?

3 Look, I think, you know, you get that question. But,
4 again, I think going much further down this road will start to
5 be beyond the scope and irrelevant, at least for the purposes
6 that this witness has been testifying about CHSs at all.

7 All right. So --

8 MR. MULROE: Your Honor, I would ask that when we
9 return tomorrow morning, that that same kind of boundary be
10 held for any of the remaining cross.

11 And I would note that the questions we asked on
12 redirect about these general CHS issues, I don't know how many
13 transcript pages they occupied, it was pretty brief.

14 And, so, I know that each counsel has a right to full
15 cross-examination on behalf of their client, but I think to the
16 extent that there is extensive re-plowing of ground that's
17 already been tilled, we would likely raise a cumulative or
18 waste-of-time objection, if it's the same points being reversed
19 over and over again.

20 THE COURT: I think --

21 MR. MULROE: I mean, especially because, you know,
22 Mr. Pattis raised the issue of CHSs during his cross, any
23 defense counsel who crossed after that, arguably, already had
24 the opportunity to discuss these issues. So, I just -- the
25 issue of general CHS matters, we fully recognize, is an

1 important one. But, I do worry about the precedent, if recross
2 is permitted based on everything that's raised during the
3 government's redirect, that the trial is going to become
4 protracted.

5 THE COURT: Don't worry about -- I think I've fully,
6 hopefully repeatedly, rejected the notion of law of the case in
7 terms of direct in scope.

8 Look, I'm going to take each thing as I see it. I
9 mean, I've given them some leeway to go into these broad
10 issues. You know, the fact that -- the pending question was, I
11 think, as I said: Are reports written up?

12 I think that's fine, but we're not going to go much
13 beyond that. And we are running out of, I think, probably
14 fertile territory to be covered.

15 Mr. Pattis?

16 MR. PATTIS: I think I know the answer to this, but
17 duty requires me to ask. Will we be seated here on
18 February 28th and March 1st? I ask because of another trial
19 commitment elsewhere. And, if this trial is going to proceed,
20 I will need a transcript to show to someone who expects to see
21 me.

22 THE COURT: Look, you all -- I mean, the last update
23 I got from the government was that they thought their case
24 would end around then. So, I think, doesn't that answer your
25 question?

1 MR. PATTIS: It does. But I just needed to have it
2 in a form that I can get a certified transcript done.

3 THE COURT: You know, multiple parties have been
4 asking about -- have been receiving transcripts, so,
5 whatever -- if you submit a request the way everyone else does,
6 I'm sure you'll get your transcript.

7 So, we'll begin at 9 o'clock tomorrow. We'll finish
8 up with this witness, and we'll move on to the next witness.

9 I will -- I'll start tomorrow with -- just because I
10 think it makes sense to -- for you all to have this before we
11 begin the next witness, there was -- Mr. Roots, you'd filed
12 that motion that had to do with how a -- for a mistrial that
13 had to do with how the plea agreement was used with regard to
14 the prior Mr. Greene.

15 I'm going to deny that motion, and I'll just lay out
16 my reasoning first thing tomorrow morning. I don't think
17 anything the government did warranted a mistrial or even was
18 improper. But, I thought the government needed that -- both
19 sides needed that before they put on the next cooperator, so
20 they know where I come out on that. So I'll lay that out for
21 you first thing tomorrow morning.

22 We'll see you all at 9 o'clock.

23 * * *

24

25

1 CERTIFICATE OF OFFICIAL

2
3 I, JANICE DICKMAN, do hereby certify that the above and
4 foregoing constitutes a true and accurate transcript of my
5 stenographic notes and is a full, true and complete transcript
6 of the proceedings to the best of my ability.

7 Dated this 16th day of February, 2023

8
9

10 _____
11 Janice E. Dickman, CRR, CMR, CCR
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INDEX

WITNESS:

Peter Dubrowski

Redirect Examination (cont.) Mr. Mulroe.....	9470
Recross Examination By Mr. Smith.....	9554
Recross Examination By Mr. Pattis.....	9561
Recross Examination By Ms. Hernandez.....	9576
Recross Examination By Mr. Jauregui.....	9608

EXHIBITS:

Government Exhibit 500-61.....	9481
Government Exhibit 514-46.....	9494
Government Exhibit 622B.....	9492
Rehl Exhibit 44.....	9595
Rehl Exhibit 45.....	9602

* * *

0	1420 [1] - 9469:2 14th [3] - 9471:19, 9490:20, 9507:19 15 [3] - 9468:7, 9473:24, 9534:8 153 [1] - 9469:10 16th [1] - 9618:7 17 [1] - 9475:20 17th [2] - 9474:23, 9475:4 18 [1] - 9479:11 18th [11] - 9476:4, 9476:9, 9476:13, 9476:17, 9480:20, 9481:4, 9481:9, 9481:20, 9482:19, 9482:21, 9483:5 19th [4] - 9483:17, 9483:24, 9484:5, 9487:15 1:02 [2] - 9491:21, 9499:3 1:06 [1] - 9508:10 1:06:28 [1] - 9606:4 1:12:18 [1] - 9606:6 1:30 [1] - 9468:8 1:31 [1] - 9492:2 1:36 [1] - 9499:9 1:49 [1] - 9491:20 1st [2] - 9491:20, 9616:18	2023 [2] - 9468:7, 9618:7 20530 [1] - 9468:16 20777 [1] - 9469:8 209 [4] - 9469:10, 9543:17, 9544:2, 9560:19 20th [5] - 9488:1, 9488:13, 9488:18, 9488:24, 9509:13 21 [1] - 9488:17 21-175 [2] - 9470:4, 9535:10 21-cr-175 [1] - 9468:4 22 [1] - 9490:23 22-year [1] - 9523:1 22nd [1] - 9491:1 25th [1] - 9491:10 26th [1] - 9503:22 271 [1] - 9468:21 28 [3] - 9543:18, 9560:20, 9606:16 28th [1] - 9616:18 29 [1] - 9543:15	44 [5] - 9593:21, 9593:23, 9595:24, 9599:24, 9599:25 44 9595 [1] - 9619:10 45 [2] - 9600:7, 9601:16 45 9602 [1] - 9619:10 46-second [1] - 9492:24 49 [1] - 9469:13 4:15:32 [1] - 9509:20 4:40 [1] - 9488:2 4:50 [1] - 9488:18 4:51 [1] - 9488:13 4:55 [1] - 9483:5 4:58 [1] - 9488:24 4th [3] - 9491:20, 9491:23, 9510:23
1	2	3	5
1 [3] - 9543:15, 9552:17, 9600:21 100 [3] - 9509:21, 9607:21, 9607:22 10010 [1] - 9468:25 10016 [1] - 9469:16 1014 [1] - 9469:13 106 [24] - 9497:16, 9498:14, 9500:1, 9502:11, 9502:15, 9502:21, 9504:21, 9505:4, 9505:8, 9505:18, 9505:20, 9542:14, 9543:6, 9544:8, 9544:25, 9545:3, 9546:18, 9547:10, 9548:16, 9551:1, 9551:4, 9553:14, 9553:17, 9553:22 106-related [1] - 9554:7 1099 [1] - 9582:8 10:42 [1] - 9480:21 10:52 [1] - 9481:6 11 [1] - 9470:19 11201 [1] - 9468:21 1123 [1] - 9468:24 113 [1] - 9469:18 11:26 [1] - 9474:23 11:41 [1] - 9487:16 11th [3] - 9470:9, 9471:5, 9471:9 12 [3] - 9471:14, 9475:5, 9487:14 12/18/20 [1] - 9477:15 12:14 [1] - 9491:11 12:31:44 [1] - 9516:9 12:32:33 [1] - 9516:11 12:33:17 [1] - 9516:14 12:33:55 [1] - 9516:16 12:40:26 [1] - 9516:19 12:53:47 [1] - 9483:24 12th [6] - 9471:10, 9471:18, 9507:24, 9539:1, 9540:24, 9606:13 13 [2] - 9472:13, 9488:10 1301 [1] - 9468:18 13th [6] - 9472:1, 9472:8, 9472:17, 9473:7, 9474:4, 9474:7 14 [1] - 9473:3	2-minute [1] - 9497:11 20 [3] - 9474:19, 9474:20, 9543:19 20-second [1] - 9591:10 20001 [1] - 9618:13 20005 [2] - 9468:19, 9469:2 2020 [30] - 9470:19, 9471:10, 9471:18, 9472:1, 9472:17, 9473:7, 9474:4, 9474:7, 9474:23, 9475:5, 9475:20, 9476:4, 9476:9, 9476:13, 9476:17, 9480:21, 9481:4, 9483:5, 9488:1, 9488:13, 9488:24, 9489:4, 9490:24, 9491:1, 9491:20, 9494:20, 9509:13, 9593:6, 9596:12, 9606:16 2021 [3] - 9491:20, 9574:6, 9601:18	3 [2] - 9480:11, 9516:2 30 [1] - 9491:2 30th [5] - 9489:4, 9490:8, 9591:1, 9593:5, 9596:14 31 [2] - 9543:18, 9560:20 31:28 [1] - 9543:24 31st [2] - 9596:12, 9597:25 32 [1] - 9543:18 32:28 [1] - 9543:24 33 [1] - 9468:6 33012 [1] - 9469:13 33014 [1] - 9469:11 333 [1] - 9618:12 383 [1] - 9469:4 3:11:30 [1] - 9484:5 3:30:15 [1] - 9506:24 3:33 [1] - 9482:8	5 [3] - 9482:18, 9488:19, 9490:25 500,000 [1] - 9597:20 500-15 [1] - 9499:12 500-40 [2] - 9509:6, 9509:12 500-61 [2] - 9481:12, 9481:22 500-61 9481 [1] - 9619:8 500-69 [1] - 9506:22 501-39 [1] - 9490:2 501-50 [1] - 9493:9 501-58 [3] - 9489:12, 9489:19, 9491:22 501-63 [1] - 9559:23 503-10 [5] - 9508:8, 9509:9, 9603:13, 9605:6 503-25 [1] - 9496:11 505-11 [2] - 9514:20, 9515:25 505-12 [1] - 9516:18 509-15 [2] - 9507:6, 9556:5 509-24 [1] - 9511:8 510-9 [1] - 9510:7 514-46 [3] - 9494:15, 9494:24, 9495:18 514-46 9494 [1] - 9619:9 514-74 [1] - 9559:14 553-1 [3] - 9475:22, 9482:18, 9490:19 553-2 [2] - 9470:8, 9488:17 59047 [1] - 9469:19

<p>5:07 ^[1] - 9472:8 5:13 ^[2] - 9472:17, 9614:15 5:15 ^[3] - 9473:7, 9554:4 5:32 ^[1] - 9474:4 5:43 ^[1] - 9474:7 5th ^[1] - 9598:25</p>	<p>9</p> <p>9 ^[5] - 9494:5, 9614:17, 9614:18, 9617:7, 9617:22 909 ^[1] - 9468:24 99 ^[1] - 9469:16 9:08 ^[1] - 9597:25 9:29:08 ^[1] - 9494:7 9:30 ^[1] - 9476:14 9:32:52 ^[1] - 9507:9 9:36 ^[1] - 9471:5 9:40 ^[1] - 9512:2 9:49 ^[1] - 9471:10 9:50 ^[1] - 9476:17</p>	<p>act ^[2] - 9500:16, 9586:4 acting ^[4] - 9517:4, 9527:18, 9540:9, 9556:20 action ^[1] - 9586:22 Action ^[1] - 9468:4 actions ^[2] - 9473:1, 9586:4 active ^[2] - 9496:1, 9497:1 activities ^[4] - 9478:1, 9478:2, 9480:8, 9588:7 activity ^[4] - 9586:11, 9587:20, 9605:21, 9605:24 add ^[1] - 9544:14 added ^[3] - 9534:3, 9552:21, 9592:14 additional ^[6] - 9502:24, 9536:7, 9544:12, 9551:8, 9552:21, 9591:21 address ^[5] - 9522:16, 9537:1, 9542:14, 9545:11, 9603:6 addressed ^[2] - 9536:24, 9572:2 addressing ^[3] - 9492:17, 9542:8, 9546:13 administrative ^[1] - 9473:1 admit ^[11] - 9481:22, 9489:19, 9492:20, 9494:24, 9497:14, 9498:13, 9501:4, 9501:8, 9518:4, 9542:24, 9597:17 admits ^[2] - 9537:24, 9602:1 admitted ^[11] - 9475:23, 9481:24, 9489:20, 9492:21, 9494:25, 9498:21, 9500:10, 9501:1, 9543:17, 9560:19, 9586:24 advance ^[3] - 9544:10, 9551:12, 9554:12 adversary ^[1] - 9518:18 advice ^[1] - 9516:16 advisement ^[1] - 9498:17 affirm ^[1] - 9607:4 affirmation ^[1] - 9607:15 afield ^[1] - 9531:20 afternoon ^[9] -</p>	<p>9521:19, 9552:18, 9554:23, 9554:24, 9561:25, 9576:3, 9576:4, 9608:25, 9609:1 agencies ^[3] - 9473:1, 9478:1, 9480:8 agency ^[5] - 9476:24, 9477:25, 9480:7, 9514:7, 9529:3 Agency ^[1] - 9472:20 agency's ^[1] - 9567:9 agent ^[93] - 9470:13, 9472:7, 9472:14, 9473:18, 9474:2, 9474:10, 9475:7, 9475:18, 9475:25, 9476:20, 9477:4, 9477:15, 9477:24, 9479:10, 9479:21, 9481:9, 9481:13, 9482:3, 9487:7, 9488:5, 9489:2, 9489:13, 9490:5, 9490:14, 9490:21, 9491:3, 9491:9, 9492:4, 9492:12, 9493:5, 9493:16, 9494:10, 9495:18, 9496:3, 9496:21, 9497:11, 9506:6, 9506:23, 9507:5, 9507:18, 9508:13, 9508:21, 9509:12, 9510:8, 9512:6, 9512:16, 9512:18, 9513:15, 9513:21, 9514:2, 9516:25, 9517:4, 9517:11, 9517:15, 9519:11, 9519:21, 9520:10, 9520:16, 9520:17, 9520:24, 9522:5, 9525:5, 9526:16, 9530:2, 9530:15, 9530:21, 9530:24, 9531:7, 9554:23, 9555:18, 9555:21, 9556:3, 9556:6, 9556:16, 9557:14, 9557:19, 9558:11, 9560:24, 9561:8, 9561:20, 9561:25, 9562:4, 9567:4, 9567:7, 9588:3, 9590:10, 9608:25, 9609:2, 9612:17, 9613:9, 9613:11, 9613:24 Agent ^[4] - 9520:5,</p>
<p>6</p>	<p>A</p>		
<p>6 ^[18] - 9482:20, 9487:21, 9511:5, 9515:25, 9517:1, 9518:8, 9520:24, 9521:5, 9521:10, 9521:12, 9521:15, 9548:18, 9558:13, 9559:8, 9574:5, 9574:12, 9606:18, 9610:21 600-51 ^[1] - 9514:13 60051 ^[1] - 9514:13 601 ^[1] - 9468:15 613 ^[1] - 9496:15 613G ^[1] - 9512:13 6175 ^[1] - 9469:10 622A ^[2] - 9497:9, 9497:14 622B ^[2] - 9492:10, 9492:20 622B..... 9492 ^[1] - 9619:9 6523 ^[1] - 9618:12 6:34 ^[1] - 9489:5 6:52 ^[5] - 9548:4, 9548:7, 9548:11, 9549:7, 9549:25 6th ^[2] - 9488:3, 9488:5</p>	<p>a.m ^[20] - 9471:10, 9474:23, 9476:9, 9476:14, 9476:17, 9480:21, 9481:6, 9483:24, 9484:5, 9487:16, 9490:24, 9491:1, 9507:9, 9508:10, 9548:4, 9548:7, 9549:7, 9549:25, 9606:4, 9606:6 abandoned ^[1] - 9534:13 ability ^[6] - 9525:25, 9538:2, 9544:17, 9547:10, 9618:6 able ^[16] - 9484:14, 9493:14, 9498:12, 9503:10, 9507:1, 9531:23, 9542:15, 9546:20, 9547:18, 9549:8, 9551:7, 9589:5, 9594:8, 9596:7, 9600:16 ABRA ^[3] - 9472:11, 9472:18, 9473:13 absence ^[1] - 9536:17 absolutely ^[2] - 9526:22, 9567:18 accept ^[2] - 9483:16, 9550:5 accomplishing ^[1] - 9578:7 account ^[1] - 9514:16 accurate ^[7] - 9481:17, 9489:16, 9494:22, 9500:24, 9594:25, 9601:12, 9618:4 accuse ^[1] - 9548:24 accusing ^[2] - 9548:19, 9549:10 acronym ^[1] - 9480:23</p>		
<p>7</p>			
<p>7 ^[1] - 9483:2 700 ^[1] - 9468:18 701 ^[1] - 9476:25 702 ^[1] - 9477:1 7166 ^[1] - 9469:7 7:30 ^[1] - 9471:18 7:34 ^[1] - 9476:9</p>			
<p>8</p>			
<p>849 ^[1] - 9489:7 8:10 ^[1] - 9490:24 8:11 ^[1] - 9491:1 8:40:17 ^[1] - 9493:12 8:42:20 ^[1] - 9493:19 8:45 ^[1] - 9598:25 8:58:03 ^[1] - 9493:23</p>			

<p>9520:16, 9602:25, 9605:12</p> <p>agent's [1] - 9566:22</p> <p>agents [7] - 9520:5, 9559:1, 9559:9, 9564:17, 9564:20, 9571:22, 9614:2</p> <p>aggression [1] - 9501:11</p> <p>aggressive [11] - 9497:5, 9500:12, 9500:16, 9501:6, 9501:21, 9502:8, 9540:2, 9540:4, 9540:6, 9542:11, 9542:12</p> <p>ago [2] - 9481:15, 9605:14</p> <p>agree [17] - 9505:10, 9519:3, 9547:2, 9582:16, 9582:21, 9583:6, 9583:22, 9583:23, 9583:24, 9585:11, 9586:8, 9594:25, 9603:7, 9607:7, 9607:23, 9607:24, 9608:3</p> <p>agreed [1] - 9512:3</p> <p>agreement [2] - 9570:2, 9617:13</p> <p>ahead [6] - 9484:17, 9504:18, 9521:19, 9522:17, 9523:12, 9556:21</p> <p>Ahh [1] - 9483:12</p> <p>al [2] - 9470:5, 9535:11</p> <p>Alan [1] - 9469:15</p> <p>alcohol [1] - 9472:19</p> <p>alive [1] - 9567:22</p> <p>allegedly [1] - 9504:13</p> <p>alleviate [1] - 9553:22</p> <p>allow [9] - 9479:13, 9479:15, 9486:24, 9522:10, 9529:23, 9529:25, 9589:10, 9605:2</p> <p>allowed [5] - 9519:14, 9532:9, 9544:3, 9550:1, 9587:5</p> <p>almost [3] - 9532:9, 9549:22, 9551:4</p> <p>Amanda [2] - 9603:4, 9603:7</p> <p>Amendment [1] - 9524:25</p> <p>America [3] - 9468:3, 9470:4, 9535:10</p> <p>amount [5] - 9513:22, 9554:19, 9577:24,</p>	<p>9578:5, 9578:18</p> <p>amounts [1] - 9556:2</p> <p>analysis [1] - 9563:14</p> <p>animal [2] - 9551:2, 9551:5</p> <p>animals [1] - 9546:14</p> <p>announcing [1] - 9495:13</p> <p>annoying [1] - 9548:1</p> <p>anonymous [3] - 9476:10, 9476:18, 9476:22</p> <p>answer [16] - 9474:8, 9475:18, 9479:14, 9484:25, 9485:7, 9485:16, 9485:23, 9537:2, 9543:8, 9583:8, 9592:3, 9597:9, 9606:24, 9609:18, 9616:16, 9616:24</p> <p>answered [6] - 9510:21, 9575:23, 9584:12, 9589:15, 9589:23, 9590:1</p> <p>anticipate [1] - 9532:25</p> <p>anyway [2] - 9485:7, 9512:3</p> <p>apart [3] - 9503:1, 9516:5, 9518:3</p> <p>apologies [4] - 9490:1, 9528:3, 9586:12, 9613:7</p> <p>apparent [2] - 9487:9, 9487:12</p> <p>appeal [1] - 9567:11</p> <p>appear [7] - 9492:15, 9508:13, 9510:11, 9550:4, 9561:11, 9563:16, 9601:12</p> <p>appeared [1] - 9550:10</p> <p>apply [1] - 9565:19</p> <p>appreciate [1] - 9550:24</p> <p>appropriate [4] - 9525:14, 9525:21, 9525:22, 9526:23</p> <p>approval [2] - 9579:19, 9579:20</p> <p>area [2] - 9498:11, 9535:1</p> <p>arguably [1] - 9615:23</p> <p>argue [5] - 9541:23, 9543:5, 9547:18, 9547:19, 9604:11</p> <p>argued [1] - 9533:8</p> <p>arguing [1] - 9523:24</p> <p>argument [4] - 9498:8,</p>	<p>9504:4, 9552:24, 9605:23</p> <p>argumentative [2] - 9517:8, 9518:20</p> <p>arguments [2] - 9544:9, 9544:13</p> <p>arm [2] - 9519:16, 9598:14</p> <p>arrest [4] - 9491:14, 9510:24, 9511:1, 9529:6</p> <p>arrested [2] - 9471:23, 9529:5</p> <p>arrests [1] - 9473:22</p> <p>arrive [1] - 9570:14</p> <p>article [1] - 9487:19</p> <p>articulate [1] - 9484:17</p> <p>aside [4] - 9501:14, 9529:11, 9529:17, 9538:9</p> <p>asleep [1] - 9547:25</p> <p>asserted [2] - 9524:25, 9540:16</p> <p>assignments [1] - 9520:19</p> <p>assistance [2] - 9578:22, 9578:23</p> <p>Assistant [2] - 9530:4, 9573:24</p> <p>assistant [1] - 9523:20</p> <p>assists [1] - 9579:3</p> <p>associate [1] - 9588:14</p> <p>associated [1] - 9506:10</p> <p>associates [1] - 9471:22</p> <p>assume [1] - 9519:6</p> <p>assuming [4] - 9533:10, 9546:18, 9546:19, 9558:1</p> <p>asymmetry [1] - 9551:9</p> <p>attempt [1] - 9552:4</p> <p>attempted [1] - 9531:2</p> <p>attending [2] - 9558:5, 9558:13</p> <p>attention [2] - 9551:20, 9572:11</p> <p>attitude [3] - 9492:5, 9546:15, 9546:16</p> <p>Attorney [4] - 9469:18, 9578:3, 9578:10, 9580:5</p> <p>Attorney's [2] - 9468:20, 9491:14</p> <p>Attorneys [1] - 9579:16</p> <p>audience [2] -</p>	<p>9503:13, 9542:15</p> <p>audio [5] - 9508:11, 9518:14, 9603:24, 9605:16, 9606:3</p> <p>audios [1] - 9604:18</p> <p>authenticate [1] - 9525:6</p> <p>authorization [2] - 9562:25, 9586:7</p> <p>authorize [2] - 9586:7, 9587:23</p> <p>authorized [5] - 9536:20, 9586:3, 9586:10, 9587:20, 9611:22</p> <p>Avenue [3] - 9468:18, 9469:16, 9618:12</p> <p>average [2] - 9582:23, 9583:20</p> <p>avoid [2] - 9522:1, 9548:22</p> <p>awesome [1] - 9483:14</p> <p>awkwardness [1] - 9541:16</p>
B			
<p>background [5] - 9520:22, 9554:13, 9587:3, 9595:5, 9602:5</p> <p>bad [6] - 9513:22, 9514:4, 9542:12, 9597:1, 9598:14, 9613:16</p> <p>bank [1] - 9540:18</p> <p>Bankruptcy [1] - 9469:21</p> <p>banner [6] - 9476:11, 9482:9, 9487:23, 9491:13, 9528:19, 9528:24</p> <p>based [18] - 9478:24, 9479:11, 9479:14, 9484:7, 9485:13, 9485:21, 9487:7, 9489:16, 9493:15, 9507:2, 9516:25, 9541:18, 9542:3, 9578:21, 9597:9, 9597:11, 9603:6, 9616:2</p> <p>basic [1] - 9580:11</p> <p>basis [8] - 9498:14, 9499:20, 9502:24, 9505:8, 9518:4, 9525:3, 9548:17, 9586:21</p> <p>bathroom [1] - 9540:18</p>			

<p>beat [4] - 9503:15, 9503:19, 9531:11, 9542:17</p> <p>beating [1] - 9581:9</p> <p>become [2] - 9520:10, 9616:3</p> <p>becomes [2] - 9589:9, 9613:18</p> <p>beer [1] - 9474:9</p> <p>BEFORE [1] - 9468:11</p> <p>begin [2] - 9617:7, 9617:11</p> <p>beginning [4] - 9482:8, 9492:11, 9497:10, 9611:14</p> <p>behalf [2] - 9482:14, 9615:15</p> <p>behave [1] - 9521:4</p> <p>belief [1] - 9572:15</p> <p>believes [1] - 9544:2</p> <p>bell [1] - 9519:13</p> <p>below [1] - 9471:8</p> <p>bench [16] - 9478:8, 9484:12, 9497:18, 9499:16, 9513:4, 9514:23, 9517:19, 9570:11, 9572:6, 9580:1, 9586:16, 9591:18, 9601:22, 9603:20, 9608:6, 9611:5</p> <p>benefits [1] - 9581:23</p> <p>Bertino [4] - 9493:23, 9494:7, 9507:8, 9511:12</p> <p>bertino [2] - 9570:24, 9571:2</p> <p>beside [1] - 9540:7</p> <p>best [6] - 9481:19, 9489:16, 9489:18, 9494:22, 9597:1, 9618:6</p> <p>better [3] - 9511:13, 9519:18, 9539:11</p> <p>between [18] - 9470:14, 9482:4, 9490:9, 9510:13, 9514:10, 9515:11, 9515:13, 9524:20, 9530:3, 9530:6, 9530:25, 9531:14, 9550:24, 9571:21, 9572:24, 9579:16, 9591:4, 9593:14</p> <p>Beverage [1] - 9472:20</p> <p>beyond [20] - 9479:16, 9486:4, 9486:15, 9492:4, 9501:16, 9502:22, 9504:1,</p>	<p>9505:9, 9512:23, 9513:7, 9513:10, 9513:11, 9514:21, 9550:2, 9550:3, 9587:5, 9587:21, 9615:5, 9616:13</p> <p>bicker [1] - 9548:2</p> <p>Biden [1] - 9477:22</p> <p>big [1] - 9515:4</p> <p>Biggs [3] - 9468:6, 9469:1, 9561:22</p> <p>Bill [1] - 9596:10</p> <p>bit [25] - 9472:6, 9479:1, 9483:6, 9486:24, 9493:18, 9493:22, 9494:3, 9500:4, 9507:5, 9507:7, 9507:12, 9508:9, 9511:9, 9511:25, 9521:19, 9522:4, 9531:12, 9552:10, 9555:25, 9563:14, 9565:24, 9569:19, 9576:10, 9597:25, 9599:18</p> <p>blacks [1] - 9483:9</p> <p>blind [1] - 9585:5</p> <p>BLM [1] - 9528:23</p> <p>bluff [1] - 9569:19</p> <p>body [1] - 9513:18</p> <p>Bones [2] - 9481:20, 9509:14</p> <p>book [1] - 9562:1</p> <p>bottom [10] - 9470:22, 9471:25, 9473:9, 9473:25, 9488:17, 9490:12, 9490:13, 9494:4, 9516:22</p> <p>boundaries [1] - 9599:3</p> <p>boundary [2] - 9572:23, 9615:9</p> <p>bounds [1] - 9505:15</p> <p>boy [1] - 9548:10</p> <p>Boy [2] - 9533:16, 9594:22</p> <p>Boys [17] - 9482:8, 9492:18, 9493:6, 9503:5, 9506:7, 9506:13, 9506:16, 9506:17, 9506:25, 9507:3, 9520:25, 9536:3, 9597:7, 9609:2, 9610:5, 9610:15</p> <p>bragging [1] - 9542:16</p> <p>break [5] - 9511:21, 9521:19, 9521:25, 9536:6, 9614:15</p> <p>breath [4] - 9542:16,</p>	<p>9542:23, 9543:7, 9545:2</p> <p>bribery [1] - 9569:5</p> <p>brief [2] - 9522:8, 9615:13</p> <p>briefing [1] - 9496:15</p> <p>briefly [3] - 9478:7, 9552:15, 9572:23</p> <p>brighter [1] - 9473:16</p> <p>bring [15] - 9496:21, 9503:14, 9527:24, 9530:20, 9534:9, 9538:11, 9550:18, 9553:25, 9559:13, 9560:18, 9563:1, 9563:16, 9570:2, 9588:25, 9604:2</p> <p>bringing [1] - 9561:12</p> <p>broad [3] - 9546:17, 9572:21, 9616:9</p> <p>broadening [1] - 9524:23</p> <p>broader [2] - 9536:22, 9543:8</p> <p>broadly [2] - 9532:8, 9532:11</p> <p>Broadway [1] - 9468:24</p> <p>broken [1] - 9472:22</p> <p>Brooklyn [1] - 9468:21</p> <p>bro [1] - 9598:21</p> <p>Brotha [1] - 9510:6</p> <p>brother [2] - 9476:9, 9596:25</p> <p>Brother [1] - 9605:20</p> <p>BrotherHunter [3] - 9508:10, 9603:24, 9605:16</p> <p>brothers [2] - 9596:24, 9597:4</p> <p>brought [6] - 9517:25, 9518:1, 9527:9, 9536:17, 9551:20, 9602:7</p> <p>BTW [1] - 9598:8</p> <p>bubble [1] - 9483:3</p> <p>build [1] - 9568:9</p> <p>Building [1] - 9468:24</p> <p>building [1] - 9569:7</p> <p>Bureau [3] - 9479:22, 9559:1, 9614:5</p> <p>bureau [1] - 9558:11</p> <p>burn [1] - 9549:3</p> <p>burning [4] - 9476:11, 9482:10, 9528:19, 9528:24</p> <p>busy [1] - 9517:1</p> <p>buzzy [1] - 9598:8</p> <p>BY [77] - 9470:12, 9474:18, 9475:17,</p>	<p>9477:3, 9477:10, 9479:20, 9482:2, 9482:17, 9483:20, 9487:6, 9490:4, 9493:4, 9495:2, 9496:2, 9499:2, 9506:5, 9508:7, 9509:3, 9509:11, 9511:4, 9513:14, 9514:1, 9514:9, 9515:21, 9517:10, 9520:4, 9520:14, 9554:22, 9557:6, 9558:18, 9559:12, 9560:23, 9561:24, 9565:12, 9568:17, 9571:9, 9573:6, 9574:2, 9574:8, 9574:13, 9574:19, 9575:19, 9576:2, 9577:22, 9579:18, 9581:13, 9581:18, 9581:22, 9582:5, 9582:11, 9583:15, 9584:17, 9588:1, 9589:20, 9590:8, 9590:22, 9592:10, 9592:20, 9594:7, 9595:19, 9596:3, 9597:13, 9599:13, 9600:10, 9602:24, 9603:11, 9605:11, 9607:2, 9608:24, 9609:15, 9609:21, 9610:3, 9610:14, 9610:20, 9610:25, 9612:4, 9612:11</p>
C			
<p>Cadman [1] - 9468:21</p> <p>calms [1] - 9597:4</p> <p>cameras [1] - 9499:7</p> <p>campaign [1] - 9512:11</p> <p>Campbell [2] - 9603:4, 9603:7</p> <p>candid [2] - 9570:23, 9571:3</p> <p>candle [1] - 9549:3</p> <p>cannon [1] - 9493:24</p> <p>Cannon [1] - 9509:19</p> <p>cannot [2] - 9556:11, 9597:23</p> <p>Capitol [8] - 9523:22, 9524:11, 9530:7, 9573:10, 9573:12, 9573:17, 9574:5, 9574:12</p> <p>Captain [2] - 9596:9,</p>			

9607:7
Carmen [4] - 9469:6,
 9469:7, 9486:3, 9576:7
Carroll [2] - 9530:4,
 9573:24
case [32] - 9475:5,
 9504:15, 9517:11,
 9517:15, 9519:11,
 9519:21, 9520:5,
 9520:7, 9520:8,
 9520:9, 9520:15,
 9520:16, 9520:17,
 9520:20, 9524:22,
 9524:24, 9531:14,
 9532:4, 9539:20,
 9545:22, 9545:24,
 9546:1, 9546:4,
 9547:12, 9555:24,
 9566:7, 9567:14,
 9616:6, 9616:23
cases [7] - 9478:11,
 9520:6, 9520:24,
 9559:6, 9577:15,
 9581:1, 9590:13
cash [2] - 9581:24,
 9582:8
category [2] -
 9572:21, 9585:13
CCR [1] - 9618:11
cell [1] - 9530:14
Cellebrite [4] -
 9594:14, 9600:14,
 9601:13, 9602:19
center [1] - 9483:4
certain [4] - 9487:24,
 9539:13, 9569:4,
 9588:2
certainly [7] - 9504:1,
 9558:16, 9558:17,
 9568:3, 9575:14,
 9577:4, 9577:7
CERTIFICATE [1] -
 9618:1
certified [1] - 9617:2
certify [1] - 9618:3
chain [10] - 9524:2,
 9528:9, 9529:3,
 9529:8, 9530:13,
 9531:1, 9531:3,
 9597:17, 9598:6,
 9613:24
Chairman [1] - 9496:7
chambers [1] - 9554:9
chance [2] - 9504:23,
 9505:5
chances [1] - 9515:17
change [1] - 9549:5
chapter [3] - 9533:17,
 9538:23, 9606:11
character [5] -

9501:12, 9501:14,
 9505:13, 9572:18,
 9611:20
characterization [1] -
 9565:6
characterize [3] -
 9527:17, 9527:20
characterized [1] -
 9521:6
charge [1] - 9570:20
charges [1] - 9473:21
chat [33] - 9481:20,
 9482:15, 9484:20,
 9490:17, 9491:17,
 9495:6, 9495:18,
 9516:20, 9537:14,
 9539:23, 9555:15,
 9555:20, 9556:6,
 9556:9, 9556:11,
 9556:17, 9556:19,
 9556:23, 9557:12,
 9557:15, 9558:9,
 9558:25, 9559:3,
 9559:22, 9560:1,
 9560:6, 9560:9,
 9561:16, 9593:13,
 9596:8, 9599:15,
 9606:15, 9606:16
Chat [4] - 9494:19,
 9495:19, 9495:20,
 9509:14
chats [31] - 9471:11,
 9486:9, 9491:24,
 9506:10, 9506:14,
 9507:2, 9507:18,
 9511:3, 9513:18,
 9516:25, 9517:3,
 9530:24, 9530:25,
 9531:3, 9531:14,
 9534:16, 9536:4,
 9536:10, 9537:7,
 9557:5, 9557:8,
 9559:3, 9559:19,
 9560:15, 9561:18,
 9575:2, 9575:9,
 9586:20, 9586:25,
 9606:21, 9611:10
chatted [1] - 9610:6
check [2] - 9477:17,
 9557:1
checkmark [3] -
 9607:16, 9607:18,
 9608:2
chernan7@aol.com
 [1] - 9469:8
cherry [1] - 9514:4
cherry-picked [1] -
 9514:4
chief [2] - 9523:21,
 9524:22

Chief [2] - 9530:4,
 9573:24
chill [1] - 9494:8
Chris [1] - 9509:19
Christmas [1] -
 9491:10
CHS [23] - 9522:4,
 9532:8, 9532:10,
 9532:12, 9532:19,
 9533:2, 9534:15,
 9534:19, 9535:2,
 9536:19, 9537:2,
 9537:9, 9541:14,
 9541:18, 9552:10,
 9555:6, 9556:2,
 9558:10, 9570:14,
 9582:13, 9614:5,
 9615:12, 9615:25
CHSs [21] - 9522:12,
 9533:6, 9555:5,
 9555:6, 9559:8,
 9576:16, 9578:16,
 9580:12, 9582:15,
 9586:25, 9604:5,
 9609:4, 9611:9,
 9611:12, 9611:22,
 9611:24, 9612:9,
 9612:12, 9612:13,
 9615:6, 9615:22
chunk [1] - 9557:8
church [1] - 9584:23
CID [3] - 9477:17,
 9483:7, 9491:12
circling [1] - 9586:19
circumstances [2] -
 9510:25, 9563:11
claim [1] - 9538:13
claimed [1] - 9476:19
claiming [1] - 9476:10
clarify [2] - 9515:17,
 9591:11
class [1] - 9584:20
classic [1] - 9550:10
clear [13] - 9479:21,
 9484:13, 9505:17,
 9505:18, 9508:21,
 9523:11, 9524:19,
 9528:15, 9552:16,
 9552:25, 9567:18,
 9611:8, 9611:19
clearly [1] - 9535:1
click [3] - 9495:21,
 9495:25, 9496:17
client [16] - 9515:11,
 9515:13, 9522:25,
 9526:25, 9527:10,
 9527:11, 9527:15,
 9529:1, 9529:5,
 9529:14, 9530:25,
 9531:14, 9538:12,

9538:21, 9604:14,
 9615:15
client's [4] - 9531:15,
 9531:16, 9531:19,
 9604:19
clip [19] - 9492:15,
 9492:24, 9493:2,
 9497:11, 9497:12,
 9498:23, 9500:13,
 9503:11, 9539:3,
 9539:9, 9542:6,
 9544:1, 9552:1,
 9552:2, 9554:10,
 9561:14, 9561:17,
 9590:25, 9591:10
clips [17] - 9492:12,
 9497:4, 9497:23,
 9499:25, 9500:9,
 9502:4, 9504:19,
 9504:20, 9551:12,
 9551:13, 9551:16,
 9551:18, 9552:16,
 9553:13, 9561:3,
 9574:24
close [3] - 9503:18,
 9597:18, 9611:1
closing [1] - 9547:19
CMR [1] - 9618:11
codes [1] - 9472:22
codger [1] - 9573:7
collect [1] - 9562:4
colloquial [1] -
 9555:10
colloquially [1] -
 9555:9
colors [2] - 9528:19,
 9528:22
COLUMBIA [1] -
 9468:1
combos [1] - 9598:15
coming [10] - 9481:14,
 9497:20, 9526:9,
 9531:9, 9542:4,
 9543:5, 9565:17,
 9570:6, 9571:23,
 9580:2
command [4] -
 9524:3, 9529:3,
 9529:8, 9613:24
comment [5] -
 9545:23, 9561:8,
 9570:23, 9596:20,
 9604:19
commentary [1] -
 9550:13
commenting [2] -
 9544:19, 9604:14
comments [1] -
 9607:9
commies [1] - 9509:22

commit [1] - 9500:16 commitment [1] - 9616:19 committed [1] - 9504:14 common [5] - 9476:20, 9477:24, 9480:6, 9480:9, 9532:10 communicate [1] - 9607:20 communicated [1] - 9529:2 communication [4] - 9515:10, 9515:13, 9526:20, 9530:12 communications [14] - 9470:14, 9525:2, 9527:10, 9527:11, 9527:12, 9527:15, 9527:21, 9530:3, 9530:6, 9556:2, 9556:17, 9557:20, 9558:20, 9573:16 compel [2] - 9562:25, 9563:16 compelled [3] - 9583:3, 9584:4, 9585:14 compensated [1] - 9578:8 complains [1] - 9549:15 complete [1] - 9618:5 completely [1] - 9542:9 complex [1] - 9563:10 complicated [2] - 9474:8, 9564:2 concept [1] - 9565:13 concepts [1] - 9535:2 conceptually [2] - 9529:10, 9529:21 concern [1] - 9561:17 concerned [1] - 9587:15 concerning [1] - 9561:5 conduct [2] - 9566:22, 9585:13 conducting [1] - 9614:2 confidential [43] - 9473:20, 9477:6, 9555:7, 9555:14, 9555:19, 9555:24, 9557:12, 9557:14, 9557:18, 9558:2, 9558:11, 9558:24, 9563:19, 9566:11,	9568:18, 9572:17, 9576:10, 9576:16, 9576:23, 9577:2, 9577:14, 9577:18, 9577:24, 9578:6, 9578:22, 9579:3, 9580:18, 9581:1, 9581:14, 9581:24, 9581:25, 9582:7, 9585:17, 9586:3, 9587:12, 9588:3, 9588:6, 9588:11, 9588:14, 9588:15, 9588:19, 9588:25, 9589:9 Confidential [1] - 9580:6 confirm [1] - 9613:2 confront [1] - 9564:18 confusing [1] - 9479:9 confusion [2] - 9478:25, 9583:11 Congress [1] - 9487:21 connected [1] - 9495:22 connection [4] - 9559:14, 9560:1, 9560:13, 9586:25 Conor [1] - 9468:17 Conor.mulroe@usdoj.gov [1] - 9468:19 consensual [3] - 9588:12, 9588:13, 9588:22 consensus [1] - 9474:5 conservative [4] - 9500:18, 9502:11, 9503:16, 9503:19 consider [4] - 9544:11, 9544:12, 9544:24, 9554:8 considered [1] - 9545:4 consist [1] - 9525:15 consistent [7] - 9557:16, 9557:18, 9558:10, 9558:14, 9566:21, 9567:9, 9609:24 constitutes [1] - 9618:4 Constitution [1] - 9618:12 cont [1] - 9619:4 contact [7] - 9482:11, 9491:6, 9514:10, 9515:5, 9528:22, 9528:23, 9528:24	contacts [1] - 9588:7 contain [1] - 9513:22 Contd [1] - 9470:11 content [3] - 9481:17, 9489:2, 9490:22 contents [1] - 9589:6 contest [1] - 9519:16 context [15] - 9479:11, 9479:24, 9493:15, 9502:7, 9502:13, 9507:13, 9510:18, 9517:22, 9534:16, 9541:23, 9564:13, 9574:25, 9578:25, 9586:20, 9606:15 contextualize [1] - 9534:12 continue [12] - 9470:6, 9475:16, 9478:16, 9478:17, 9479:17, 9480:11, 9486:24, 9501:25, 9519:25, 9545:16, 9598:5 continued [1] - 9532:4 continues [1] - 9598:2 continuing [2] - 9482:18, 9483:16 control [4] - 9504:22, 9507:1, 9507:3, 9594:11 conversation [16] - 9495:9, 9510:25, 9536:5, 9538:12, 9538:21, 9538:22, 9588:13, 9588:19, 9588:22, 9589:2, 9589:3, 9589:6, 9595:6, 9598:2, 9602:2 conversations [2] - 9558:19, 9588:12 conveyed [1] - 9490:15 convicted [1] - 9585:18 conviction [1] - 9579:4 convince [2] - 9531:24, 9547:16 convo [1] - 9474:9 cool [1] - 9598:15 cooperate [2] - 9567:5, 9567:12 cooperated [1] - 9526:25 cooperating [1] - 9525:23 cooperative [1] - 9486:19 cooperator [1] - 9617:19	cop [1] - 9523:7 copy [1] - 9593:25 cord [1] - 9557:1 correct [85] - 9479:22, 9485:18, 9508:25, 9511:14, 9511:18, 9512:4, 9515:16, 9515:23, 9528:10, 9535:24, 9543:25, 9548:5, 9549:7, 9551:13, 9551:14, 9551:15, 9555:15, 9555:21, 9559:24, 9562:5, 9562:7, 9562:11, 9562:21, 9562:23, 9563:2, 9563:5, 9563:8, 9563:12, 9563:17, 9563:25, 9564:10, 9564:18, 9564:22, 9565:5, 9565:24, 9566:3, 9566:7, 9567:5, 9567:17, 9568:2, 9568:6, 9568:9, 9568:19, 9568:22, 9569:13, 9569:17, 9571:13, 9571:16, 9573:10, 9573:17, 9574:6, 9574:9, 9574:10, 9574:21, 9575:1, 9575:5, 9575:17, 9576:14, 9577:25, 9581:15, 9581:19, 9582:1, 9582:24, 9584:21, 9585:5, 9588:8, 9588:16, 9589:11, 9592:15, 9596:5, 9603:5, 9606:14, 9606:16, 9609:6, 9609:16, 9610:5, 9610:16, 9612:6, 9613:3, 9613:14, 9613:17, 9613:21, 9613:24, 9614:8, 9615:2 corrected [2] - 9552:19, 9591:11 correction [3] - 9538:18, 9548:3, 9591:12 correctly [1] - 9545:1 corresponding [1] - 9552:22 corroborate [1] - 9613:20 counsel [15] - 9492:25, 9513:3, 9517:11, 9518:18, 9543:10, 9544:15,
---	--	--	---

9549:15, 9552:18,
9554:19, 9561:22,
9599:12, 9608:21,
9609:9, 9615:14,
9615:23
Count [1] - 9487:21
couple [4] - 9473:8,
9533:5, 9552:9, 9561:3
course [4] - 9527:23,
9545:24, 9572:20,
9592:2
Court [23] - 9483:16,
9501:4, 9517:23,
9518:22, 9544:2,
9547:22, 9548:1,
9548:10, 9548:18,
9549:25, 9550:3,
9550:5, 9550:9,
9570:8, 9579:14,
9580:25, 9587:2,
9587:5, 9595:5,
9599:12, 9602:4,
9602:6, 9608:20
court [24] - 9469:21,
9479:19, 9481:14,
9487:5, 9496:22,
9498:20, 9506:4,
9513:13, 9515:20,
9520:3, 9521:21,
9535:5, 9540:1,
9571:8, 9573:5,
9581:12, 9587:25,
9588:18, 9592:9,
9602:23, 9605:4,
9608:11, 9612:3,
9618:11
COURT [204] - 9468:1,
9470:6, 9474:15,
9474:17, 9475:10,
9475:12, 9475:16,
9477:2, 9477:8,
9478:4, 9478:6,
9478:9, 9478:21,
9479:5, 9479:13,
9481:24, 9482:1,
9482:16, 9483:18,
9484:9, 9484:13,
9485:9, 9485:16,
9485:20, 9486:6,
9486:18, 9487:4,
9489:20, 9492:21,
9494:25, 9497:17,
9497:19, 9498:7,
9498:22, 9499:15,
9499:20, 9500:5,
9500:23, 9501:13,
9501:25, 9502:3,
9502:14, 9502:25,
9503:8, 9503:21,
9503:25, 9504:18,

9505:1, 9505:17,
9505:25, 9506:3,
9508:5, 9509:2,
9510:22, 9513:1,
9513:5, 9513:25,
9514:6, 9514:8,
9515:1, 9515:15,
9517:9, 9517:25,
9518:7, 9518:24,
9519:19, 9519:24,
9520:12, 9521:18,
9521:24, 9522:19,
9522:21, 9523:11,
9524:13, 9524:16,
9525:17, 9527:5,
9528:2, 9528:6,
9528:11, 9528:17,
9529:9, 9530:11,
9530:22, 9530:25,
9531:4, 9532:3,
9532:6, 9532:17,
9533:3, 9533:9,
9533:14, 9533:20,
9533:23, 9534:10,
9535:14, 9537:18,
9538:4, 9538:10,
9538:17, 9539:7,
9539:14, 9540:11,
9541:10, 9542:20,
9543:12, 9543:24,
9545:8, 9545:16,
9545:23, 9550:12,
9552:13, 9553:1,
9553:8, 9553:10,
9554:3, 9554:15,
9554:17, 9556:24,
9559:11, 9560:22,
9561:22, 9565:10,
9568:14, 9570:9,
9570:12, 9571:4,
9571:7, 9572:5,
9572:7, 9572:24,
9573:4, 9574:1,
9574:7, 9574:10,
9574:18, 9575:22,
9575:25, 9577:21,
9579:9, 9579:13,
9579:22, 9579:25,
9580:9, 9581:3,
9581:11, 9581:17,
9581:21, 9582:3,
9582:10, 9583:8,
9584:13, 9586:14,
9586:17, 9587:9,
9587:18, 9589:16,
9590:4, 9591:8,
9591:13, 9591:17,
9592:1, 9592:19,
9593:24, 9594:4,
9595:7, 9595:18,
9595:25, 9597:9,

9598:7, 9599:19,
9601:20, 9601:23,
9602:3, 9602:8,
9602:21, 9603:16,
9603:21, 9604:7,
9604:21, 9604:24,
9606:24, 9608:5,
9608:9, 9608:21,
9609:10, 9609:14,
9609:18, 9610:2,
9610:12, 9610:18,
9610:23, 9611:4,
9611:6, 9611:19,
9612:10, 9614:11,
9614:13, 9614:20,
9614:22, 9615:20,
9616:5, 9616:22,
9617:3
court's [1] - 9489:24
Court's [2] - 9551:20,
9590:16
courthouse [2] -
9511:1, 9511:3
courtroom [4] -
9470:2, 9521:23,
9554:16, 9614:19
COURTROOM [11] -
9470:3, 9535:9,
9557:1, 9593:17,
9593:20, 9593:22,
9599:17, 9599:23,
9600:1, 9600:5, 9600:8
Courts [1] - 9469:21
cover [1] - 9547:5
covered [1] - 9616:14
crack [1] - 9522:11
crap [1] - 9567:1
CRC [1] - 9469:21
created [1] - 9614:6
creation [1] - 9521:2
crime [3] - 9476:22,
9482:11, 9504:15
Criminal [1] - 9468:4
criminal [2] - 9470:4,
9535:10
CRM [1] - 9468:18
cross [57] - 9486:4,
9486:16, 9486:18,
9492:13, 9499:18,
9499:19, 9499:21,
9499:23, 9499:25,
9501:15, 9501:16,
9502:17, 9503:3,
9504:1, 9504:8,
9504:20, 9505:6,
9515:4, 9522:9,
9522:24, 9524:21,
9525:10, 9525:20,
9526:7, 9526:24,
9527:6, 9527:8,

9527:16, 9527:19,
9528:2, 9528:3,
9529:20, 9530:17,
9530:20, 9536:18,
9539:18, 9540:16,
9541:21, 9547:7,
9552:10, 9552:12,
9553:18, 9555:13,
9562:1, 9572:12,
9585:4, 9585:5,
9593:4, 9604:13,
9608:8, 9608:13,
9611:8, 9615:10,
9615:15, 9615:22
CROSS [3] - 9561:23,
9576:1, 9608:23
cross-examination
[14] - 9492:13, 9499:19,
9499:25, 9503:3,
9515:4, 9524:21,
9525:10, 9526:24,
9555:13, 9562:1,
9572:12, 9593:4,
9608:13, 9615:15
CROSS-
EXAMINATION [3] -
9561:23, 9576:1,
9608:23
crossed [1] - 9615:23
crossing [1] - 9493:6
CRR [2] - 9469:21,
9618:11
crying [1] - 9474:25
CT [1] - 9469:5
cultivate [1] - 9568:18
cultivating [1] -
9575:12
cumulative [12] -
9478:5, 9486:12,
9486:22, 9487:2,
9504:10, 9504:12,
9504:16, 9505:24,
9514:22, 9583:7,
9598:5, 9615:17
curious [1] - 9477:16
customary [3] -
9471:21, 9472:24,
9475:7
cut [1] - 9546:23
cyberspace [1] -
9610:5
cycles [1] - 9544:15

D

D.C [14] - 9470:15,
9472:9, 9474:5,
9480:1, 9482:11,
9487:20, 9488:3,
9493:13, 9507:19,

9507:24, 9606:9,
9606:12, 9607:1,
9618:13
Dade [1] - 9488:2
Daniel [1] - 9469:1
Danny [49] - 9533:6,
9534:5, 9534:9,
9536:1, 9536:8,
9536:16, 9536:25,
9537:2, 9537:5,
9538:11, 9538:25,
9539:10, 9539:13,
9539:23, 9540:5,
9540:10, 9540:22,
9540:24, 9541:6,
9543:19, 9546:2,
9559:18, 9560:1,
9560:8, 9560:12,
9560:13, 9561:5,
9561:8, 9561:9,
9561:11, 9561:13,
9561:15, 9591:24,
9591:25, 9592:1,
9592:21, 9592:25,
9594:20, 9595:5,
9596:4, 9596:10,
9596:18, 9596:19,
9597:24, 9599:1,
9599:7, 9602:1, 9603:3
date [22] - 9471:4,
9471:17, 9472:15,
9473:6, 9475:20,
9476:3, 9482:3,
9482:15, 9483:4,
9488:11, 9488:18,
9489:2, 9490:8,
9490:21, 9509:12,
9538:14, 9538:15,
9583:4, 9583:5
Dated [1] - 9618:7
dates [4] - 9474:2,
9481:3, 9491:19,
9524:15
David [1] - 9468:23
days [2] - 9517:1,
9597:16
DC [4] - 9468:7,
9468:16, 9468:19,
9469:2
dead [1] - 9531:12
deal [4] - 9478:20,
9485:24, 9555:1,
9602:16
debriefed [1] - 9559:9
December [50] -
9470:19, 9471:5,
9471:10, 9471:18,
9472:1, 9472:8,
9472:17, 9473:7,
9474:4, 9474:7,

9474:23, 9475:4,
9475:20, 9476:4,
9476:9, 9476:13,
9476:17, 9480:20,
9481:4, 9481:9,
9481:20, 9482:19,
9483:5, 9483:17,
9483:24, 9487:15,
9488:1, 9488:7,
9488:13, 9488:18,
9488:24, 9489:4,
9490:8, 9490:23,
9491:1, 9491:10,
9494:20, 9503:22,
9507:24, 9539:1,
9540:24, 9591:1,
9593:5, 9596:12,
9596:14, 9597:25,
9606:13, 9606:16,
9606:20, 9606:25
decided [3] - 9540:25,
9541:6, 9543:19
decorated [1] - 9523:1
decorum [3] -
9517:18, 9518:23,
9545:7
def [1] - 9606:8
defend [1] - 9598:20
defendant's [1] -
9503:7
defendants [1] -
9513:19
Defendants [2] -
9468:9, 9468:22
defendants' [1] -
9605:23
Defense [5] - 9489:14,
9490:6, 9492:2,
9521:3, 9542:10
defense [18] -
9492:25, 9523:4,
9523:8, 9542:5,
9543:10, 9544:11,
9546:24, 9547:8,
9547:13, 9548:24,
9549:15, 9550:7,
9551:12, 9552:17,
9552:18, 9615:23
defines [1] - 9585:13
definitely [1] - 9504:11
degree [1] - 9572:15
delivered [2] -
9564:16, 9564:23
demonstrate [1] -
9536:2
deny [2] - 9526:13,
9617:15
denying [2] - 9589:21,
9590:2
Department [7] -

9523:20, 9530:5,
9563:7, 9573:20,
9578:11, 9578:25,
9582:6
department [3] -
9524:10, 9530:7,
9575:13
departments [1] -
9524:11
DEPUTY [11] - 9470:3,
9535:9, 9557:1,
9593:17, 9593:20,
9593:22, 9599:17,
9599:23, 9600:1,
9600:5, 9600:8
derelict [1] - 9524:1
describe [4] -
9507:19, 9507:23,
9583:18, 9584:9
described [2] -
9494:11, 9580:18
describes [1] - 9552:8
describing [2] -
9534:15, 9535:3
desire [1] - 9570:25
destroy [5] - 9508:18,
9605:25, 9606:1,
9607:9, 9607:10
destruct [4] - 9490:24,
9491:2, 9491:17,
9491:24
detail [1] - 9580:14
details [1] - 9477:6
detect [1] - 9522:14
determine [3] -
9613:14, 9613:16,
9613:20
device [2] - 9526:10,
9600:17
devices [1] - 9525:3
dial [1] - 9589:1
dick [1] - 9482:13
DICKMAN [1] - 9618:3
Dickman [2] -
9469:21, 9618:11
difference [2] -
9528:7, 9571:21
different [20] -
9502:17, 9503:12,
9505:21, 9514:2,
9518:11, 9529:10,
9529:18, 9536:20,
9538:3, 9539:16,
9541:8, 9543:17,
9545:5, 9546:14,
9570:15, 9576:19,
9584:5, 9584:10,
9585:13
differently [1] -
9550:14

difficult [1] - 9569:9
difficulty [1] - 9551:3
digital [1] - 9581:15
diplomatic [1] -
9607:24
direct [5] - 9486:15,
9503:12, 9504:11,
9514:14, 9616:7
directed [1] - 9536:7
direction [1] - 9595:4
directly [4] - 9546:10,
9546:11, 9556:21
dirty [1] - 9523:7
disadvantage [1] -
9544:8
disadvantaged [1] -
9545:21
disagree [1] - 9505:2
disagreeing [1] -
9581:4
disagrees [1] - 9522:6
disclose [1] - 9566:10
discloses [1] -
9580:24
disclosures [1] -
9553:12
discovery [1] - 9580:4
discuss [2] - 9534:20,
9615:24
discussed [4] -
9484:24, 9487:12,
9502:20, 9554:7
discusses [1] -
9605:25
discussing [5] -
9511:3, 9535:4,
9540:23, 9540:24,
9560:13
discussion [25] -
9478:8, 9484:12,
9493:15, 9497:18,
9499:16, 9507:15,
9509:25, 9510:13,
9513:4, 9514:23,
9517:19, 9538:24,
9538:25, 9550:19,
9570:11, 9572:6,
9579:16, 9580:1,
9586:16, 9591:4,
9591:18, 9601:22,
9603:20, 9608:6,
9611:5
distinction [1] -
9572:24
District [1] - 9469:21
DISTRICT [3] - 9468:1,
9468:1, 9468:12
dividing [1] - 9597:6
document [7] -
9505:11, 9580:3,

<p>9580:5, 9580:10, 9580:23, 9589:17, 9603:2 documented [2] - 9614:8, 9615:2 DOJ [1] - 9468:18 DOJ-CRM [1] - 9468:18 dollars [1] - 9581:2 Dominic [3] - 9468:8, 9514:19, 9516:6 done [14] - 9523:5, 9523:9, 9523:14, 9527:6, 9527:24, 9541:8, 9544:14, 9561:11, 9571:10, 9608:9, 9608:10, 9608:12, 9617:2 Donohoe [1] - 9511:16 Donohue [1] - 9530:7 door [16] - 9486:7, 9486:10, 9486:15, 9486:24, 9522:11, 9522:23, 9523:17, 9523:24, 9524:4, 9527:14, 9532:12, 9532:16, 9546:2, 9564:25, 9565:19, 9604:13 doubly [1] - 9517:22 Down [1] - 9472:9 down [40] - 9470:22, 9471:12, 9480:12, 9482:23, 9483:21, 9489:22, 9490:12, 9491:8, 9491:13, 9493:10, 9493:18, 9493:22, 9494:3, 9495:3, 9505:2, 9507:7, 9508:8, 9508:24, 9511:8, 9511:20, 9511:25, 9516:13, 9541:24, 9545:12, 9545:13, 9554:8, 9555:25, 9586:23, 9595:10, 9595:12, 9595:20, 9597:4, 9599:18, 9604:22, 9605:19, 9606:2, 9611:10, 9614:20, 9615:4 dragged [1] - 9523:5 draw [3] - 9556:18, 9560:14, 9562:10 drawn [2] - 9536:23, 9557:8 dressings [2] - 9477:21, 9527:3 drill [1] - 9555:25 drink [1] - 9474:13</p>	<p>Drive [1] - 9469:18 driving [1] - 9536:11 drug [2] - 9579:4, 9579:5 Dubrowski [2] - 9520:5, 9619:3 Dunk [13] - 9492:13, 9492:15, 9494:10, 9496:7, 9497:3, 9497:12, 9500:20, 9538:24, 9539:10, 9539:16, 9542:4, 9560:25 duplicative [1] - 9505:15 during [14] - 9492:13, 9499:24, 9503:12, 9504:19, 9517:4, 9524:21, 9526:24, 9536:5, 9536:24, 9539:18, 9593:3, 9593:4, 9615:22, 9616:2 duty [2] - 9524:2, 9616:17 dynamic [1] - 9569:6</p>	<p>9616:19 email [20] - 9468:16, 9468:17, 9468:19, 9468:22, 9468:25, 9469:3, 9469:5, 9469:8, 9469:11, 9469:14, 9469:17, 9469:19, 9469:22, 9477:22, 9547:23, 9548:5, 9552:18, 9552:20, 9553:7, 9603:6 emailed [2] - 9594:1, 9594:6 emails [2] - 9473:13, 9612:19 emoji [2] - 9474:25, 9477:23 employed [1] - 9479:21 empty [9] - 9470:24, 9473:4, 9474:21, 9475:2, 9480:19, 9481:8, 9484:1, 9484:19, 9487:11 encourage [4] - 9566:10, 9567:4, 9568:1, 9568:8 end [6] - 9521:21, 9563:7, 9604:3, 9604:6, 9614:13, 9616:24 endeavoring [1] - 9535:25 ends [1] - 9549:3 energy [1] - 9552:5 enforcement [24] - 9471:22, 9472:25, 9474:10, 9475:7, 9476:21, 9477:25, 9480:3, 9480:7, 9486:20, 9492:5, 9526:22, 9527:1, 9527:2, 9527:21, 9529:3, 9571:19, 9571:22, 9572:4, 9572:21, 9573:1, 9574:4 engage [3] - 9570:7, 9588:6, 9588:11 engaged [1] - 9532:14 enhancement [1] - 9482:11 enormous [1] - 9517:23 Enrique [31] - 9468:7, 9470:14, 9471:19, 9472:9, 9473:11, 9476:8, 9482:7, 9491:10, 9492:5,</p>	<p>9492:17, 9493:5, 9493:19, 9495:5, 9500:10, 9500:15, 9506:24, 9510:24, 9511:12, 9514:17, 9515:8, 9516:6, 9516:19, 9516:25, 9521:14, 9523:14, 9523:19, 9526:25, 9527:1, 9530:8, 9540:13, 9611:2 enter [3] - 9470:2, 9553:22, 9554:16 entered [1] - 9547:8 enthusiastic [1] - 9506:18 entire [7] - 9492:22, 9497:16, 9497:24, 9498:15, 9556:19, 9557:8, 9587:16 entirely [1] - 9537:14 entitled [5] - 9503:6, 9515:6, 9525:10, 9529:12, 9542:6 entity [1] - 9574:4 episode [2] - 9500:15, 9521:8 Erik [1] - 9468:15 erik.kenerson@ usdoj.gov [1] - 9468:17 especially [4] - 9477:11, 9547:7, 9606:9, 9615:21 essentially [3] - 9499:7, 9520:19, 9589:5 establish [5] - 9583:17, 9587:6, 9591:19, 9591:20, 9591:23 established [6] - 9479:3, 9479:7, 9580:12, 9581:4, 9581:5, 9581:6 et [2] - 9470:5, 9535:11 Ethan [5] - 9468:6, 9470:4, 9508:21, 9510:3, 9535:10 evaluate [1] - 9613:19 evaluated [1] - 9613:19 evaluating [1] - 9498:8 Eve [1] - 9598:21 evening [1] - 9510:23 event [6] - 9507:19, 9507:21, 9507:24, 9508:1, 9539:13, 9606:20</p>
E			
<p>early [5] - 9521:25, 9549:2, 9553:4, 9553:12, 9590:23 East [2] - 9468:21, 9469:18 eat [1] - 9482:12 effect [5] - 9497:4, 9503:18, 9521:4, 9526:20, 9526:21 effectively [2] - 9525:11, 9544:14 efficiently [1] - 9520:20 either [5] - 9547:24, 9559:6, 9563:16, 9589:2, 9607:4 elbow [2] - 9499:4, 9499:8 elders [1] - 9506:24 Elders [3] - 9482:8, 9509:14, 9509:20 Electoral [1] - 9487:21 electronic [2] - 9526:2, 9581:15 elicit [3] - 9518:2, 9534:6, 9587:19 elicited [4] - 9580:17, 9587:3, 9587:21, 9604:9 eliciting [1] - 9537:9 elsewhere [1] -</p>			

<p>events [4] - 9539:1, 9550:6, 9606:8, 9606:9</p> <p>eventually [2] - 9516:23, 9572:22</p> <p>evidence [29] - 9473:12, 9490:3, 9493:10, 9499:13, 9501:12, 9504:12, 9506:1, 9515:14, 9523:23, 9525:4, 9525:19, 9526:2, 9526:5, 9526:9, 9537:5, 9537:13, 9537:15, 9537:16, 9537:20, 9539:14, 9539:23, 9546:2, 9552:22, 9556:5, 9597:10, 9601:16, 9604:9, 9604:11, 9613:19</p> <p>exact [4] - 9528:16, 9609:7, 9609:16, 9609:22</p> <p>exactly [5] - 9480:21, 9500:6, 9503:8, 9524:3, 9569:20</p> <p>Examination [5] - 9619:4, 9619:4, 9619:5, 9619:5, 9619:6</p> <p>EXAMINATION [5] - 9470:11, 9554:21, 9561:23, 9576:1, 9608:23</p> <p>examination [19] - 9492:13, 9499:19, 9499:25, 9503:3, 9515:4, 9524:21, 9525:10, 9526:24, 9554:19, 9555:2, 9555:13, 9555:18, 9562:1, 9572:12, 9572:13, 9590:24, 9593:4, 9608:13, 9615:15</p> <p>examine [1] - 9573:20</p> <p>example [10] - 9512:10, 9528:25, 9548:3, 9549:19, 9556:18, 9557:19, 9557:23, 9566:5, 9588:20</p> <p>exchange [4] - 9474:2, 9521:7, 9566:2, 9575:16</p> <p>exclude [1] - 9548:11</p> <p>excluded [2] - 9560:9, 9561:15</p> <p>excuse [3] - 9555:19, 9572:16, 9614:17</p> <p>Exhibit [28] - 9481:12,</p>	<p>9489:12, 9491:22, 9492:10, 9493:9, 9495:18, 9496:11, 9496:15, 9497:9, 9499:12, 9506:22, 9508:8, 9510:7, 9512:13, 9544:2, 9556:5, 9559:14, 9593:20, 9593:21, 9595:24, 9599:24, 9599:25, 9603:13, 9619:8, 9619:9, 9619:9, 9619:10, 9619:10</p> <p>exhibit [28] - 9471:14, 9488:20, 9489:1, 9490:5, 9491:15, 9498:21, 9508:25, 9514:14, 9515:6, 9515:9, 9515:16, 9516:3, 9516:18, 9542:5, 9543:16, 9559:13, 9560:18, 9591:8, 9591:9, 9593:17, 9599:17, 9599:21, 9599:23, 9603:23, 9604:21, 9605:5, 9605:13, 9605:14</p> <p>EXHIBITS [1] - 9619:7</p> <p>exhibits [8] - 9481:14, 9494:16, 9497:22, 9513:16, 9513:21, 9516:4, 9536:7, 9555:23</p> <p>existing [1] - 9547:4</p> <p>exits [1] - 9580:11</p> <p>expanded [1] - 9501:10</p> <p>expect [1] - 9585:2</p> <p>expectation [2] - 9585:9, 9585:12</p> <p>expects [1] - 9616:20</p> <p>expenses [1] - 9578:16</p> <p>experience [18] - 9471:21, 9472:24, 9473:19, 9474:10, 9474:13, 9476:20, 9477:5, 9477:24, 9478:24, 9479:11, 9479:24, 9480:3, 9491:5, 9512:18, 9587:4, 9589:12, 9589:13, 9589:19</p> <p>expert [2] - 9512:24, 9520:10</p> <p>expertise [1] - 9532:9</p> <p>explain [2] - 9508:4, 9586:17</p>	<p>explanation [3] - 9501:8, 9510:17, 9560:8</p> <p>explore [3] - 9522:12, 9571:21, 9572:23</p> <p>exploring [1] - 9599:21</p> <p>expressing [3] - 9502:5, 9516:4, 9541:3</p> <p>expression [1] - 9568:24</p> <p>extend [1] - 9532:22</p> <p>extensive [1] - 9615:16</p> <p>extensively [1] - 9570:24</p> <p>extent [6] - 9546:13, 9547:4, 9582:12, 9601:19, 9615:16</p> <p>extracted [2] - 9530:14, 9600:17</p> <p>extraction [8] - 9476:1, 9487:9, 9488:22, 9526:16, 9530:17, 9594:14, 9599:15, 9600:13</p> <p>extractions [5] - 9481:18, 9489:16, 9490:19, 9530:16, 9609:25</p> <p>eyes [1] - 9530:15</p>	<p>9545:20, 9566:13, 9567:12, 9569:3, 9569:7, 9587:18, 9601:12, 9609:2, 9610:7, 9610:10</p> <p>fairly [5] - 9502:16, 9525:24, 9526:3, 9526:6, 9526:7</p> <p>fairness [4] - 9518:8, 9545:3, 9546:3, 9553:1</p> <p>false [3] - 9540:7, 9572:18, 9613:15</p> <p>falsely [1] - 9532:15</p> <p>familiar [5] - 9512:6, 9526:1, 9526:12, 9565:14, 9606:20</p> <p>far [9] - 9475:15, 9510:19, 9521:9, 9525:2, 9531:20, 9532:21, 9537:22, 9568:14, 9575:16</p> <p>fast [1] - 9545:24</p> <p>favor [1] - 9550:20</p> <p>FBI [47] - 9473:19, 9473:21, 9476:24, 9477:20, 9479:3, 9479:7, 9479:9, 9479:10, 9479:14, 9480:22, 9483:10, 9490:24, 9491:5, 9520:6, 9532:14, 9537:7, 9555:11, 9555:14, 9555:20, 9556:17, 9557:19, 9563:7, 9564:5, 9564:9, 9565:5, 9565:13, 9567:4, 9571:21, 9571:22, 9572:22, 9572:25, 9574:20, 9576:17, 9576:23, 9577:1, 9577:3, 9577:19, 9577:23, 9578:2, 9580:6, 9582:14, 9588:2, 9590:9, 9613:9, 9613:11, 9613:24, 9614:1</p> <p>FBI's [2] - 9573:9, 9576:14</p> <p>February [3] - 9468:7, 9616:18, 9618:7</p> <p>fed [3] - 9560:5, 9560:12, 9560:16</p> <p>fedcases@metcalflawny.com [1] - 9469:17</p> <p>Federal [1] - 9479:21</p> <p>federal [1] - 9537:25</p> <p>feeble [1] - 9573:7</p> <p>feed [1] - 9555:19</p>
F			
<p>face [3] - 9477:23, 9542:11, 9613:11</p> <p>facet [1] - 9520:10</p> <p>facilitate [1] - 9553:16</p> <p>facing [1] - 9570:20</p> <p>fact [14] - 9478:13, 9478:14, 9485:9, 9504:2, 9536:2, 9540:5, 9540:8, 9541:6, 9542:4, 9545:5, 9561:16, 9572:25, 9611:23, 9616:10</p> <p>facts [2] - 9545:15, 9550:6</p> <p>factual [1] - 9513:11</p> <p>factually [1] - 9528:12</p> <p>failing [1] - 9548:24</p> <p>fair [25] - 9481:17, 9489:16, 9494:22, 9519:8, 9522:7, 9522:13, 9527:8, 9532:1, 9532:18, 9532:23, 9533:12, 9537:18, 9541:10, 9541:11, 9541:12,</p>			

fees [3] - 9577:23, 9577:24, 9578:13 fell [1] - 9516:5 felt [1] - 9519:1 fertile [1] - 9616:14 few [7] - 9474:19, 9521:25, 9534:4, 9541:22, 9576:22, 9597:16, 9605:13 fields [1] - 9562:10 Fifth [2] - 9488:2, 9524:25 fight [1] - 9509:24 figure [1] - 9510:20 figured [2] - 9494:8, 9551:23 file [6] - 9470:24, 9473:4, 9480:19, 9484:1, 9484:19, 9554:9 filed [1] - 9617:11 files [1] - 9480:12 final [3] - 9488:25, 9491:15, 9491:23 finally [2] - 9518:15, 9521:2 fine [8] - 9485:23, 9548:13, 9549:9, 9550:15, 9592:2, 9596:22, 9602:18, 9616:12 finish [4] - 9484:14, 9501:24, 9535:7, 9617:7 finished [1] - 9510:17 finishing [1] - 9522:1 first [31] - 9473:12, 9477:22, 9481:7, 9484:17, 9488:12, 9490:23, 9499:21, 9500:7, 9504:9, 9509:12, 9520:20, 9521:8, 9525:19, 9526:15, 9527:15, 9527:22, 9536:15, 9537:22, 9537:23, 9580:16, 9594:12, 9594:16, 9596:4, 9596:11, 9596:21, 9600:4, 9600:19, 9604:8, 9617:16, 9617:21 First [2] - 9469:4, 9488:13 fix [1] - 9499:8 FL [2] - 9469:11, 9469:13 fleshing [1] - 9500:3 flip [1] - 9602:16 Floor [2] - 9469:4, 9469:16 flying [2] - 9529:5, 9529:6 focus [2] - 9528:7, 9571:1 focused [1] - 9528:11 folks [1] - 9570:13 follow [3] - 9519:9, 9546:12, 9558:23 follow-up [1] - 9558:23 followed [3] - 9546:11, 9605:2, 9610:9 followers [1] - 9473:13 following [1] - 9546:10 follows [1] - 9483:11 footing [1] - 9545:20 FOR [1] - 9468:1 foregoing [1] - 9618:4 forget [1] - 9532:12 form [3] - 9518:13, 9519:23, 9617:2 formal [1] - 9563:15 formed [1] - 9503:23 formulate [2] - 9533:14, 9602:12 forth [2] - 9507:12, 9531:17 forward [6] - 9474:19, 9495:14, 9501:1, 9502:6, 9507:10, 9597:2 forward-looking [2] - 9501:1, 9502:6 foundation [13] - 9476:23, 9512:22, 9513:7, 9525:5, 9527:13, 9530:21, 9531:10, 9531:22, 9531:24, 9535:19, 9536:13, 9575:23, 9597:8 four [2] - 9596:8, 9596:9 FP [1] - 9471:9 frankly [6] - 9525:7, 9525:14, 9549:24, 9585:25, 9587:17, 9587:22 free [3] - 9559:4, 9582:20, 9604:11 friendly [1] - 9538:22 friends [1] - 9596:25 front [2] - 9485:22, 9543:8 fuck [3] - 9482:12, 9493:13, 9560:11 fucking [2] - 9540:25, 9543:20 fud [5] - 9539:24, 9539:25, 9541:9, 9560:2, 9561:16 full [7] - 9502:6, 9502:13, 9513:1, 9518:9, 9518:19, 9615:14, 9618:5 fully [2] - 9615:25, 9616:5 fulsomely [1] - 9525:11 function [4] - 9500:13, 9501:2, 9501:9, 9587:11 functional [1] - 9496:18 functions [1] - 9588:2 future [2] - 9531:23, 9606:9	G	game [2] - 9522:7, 9527:8 gamut [1] - 9513:1 gather [1] - 9582:25 general [25] - 9474:5, 9477:4, 9501:5, 9501:10, 9503:4, 9517:4, 9532:18, 9534:14, 9535:2, 9537:8, 9541:14, 9544:3, 9547:2, 9552:10, 9556:1, 9556:15, 9558:19, 9566:13, 9572:4, 9574:21, 9580:12, 9611:12, 9615:12, 9615:25 General [2] - 9578:3, 9578:10 General's [1] - 9580:5 generalized [2] - 9536:19, 9587:15 generally [18] - 9473:18, 9480:4, 9492:6, 9492:17, 9522:12, 9529:24, 9529:25, 9530:9, 9537:10, 9555:4, 9555:17, 9577:17, 9611:18, 9612:5, 9612:12, 9612:13, 9613:25 gentleman [2] - 9592:21, 9594:19 gentlemen [3] - 9521:18, 9554:18, 9614:14	Gilligan's [2] - 9544:22, 9571:11 girlfriend [1] - 9567:2 gist [1] - 9529:7 given [14] - 9520:19, 9532:18, 9546:8, 9546:19, 9547:13, 9550:19, 9580:11, 9599:3, 9601:17, 9605:2, 9611:13, 9613:15, 9616:9 glad [1] - 9598:17 gleaned [3] - 9523:21, 9530:8, 9612:6 goal [2] - 9512:10, 9512:12 goodness [1] - 9545:11 Google [1] - 9562:18 gotcha [1] - 9476:18 govern [1] - 9563:10 Government [8] - 9475:22, 9497:8, 9556:4, 9559:14, 9605:6, 9619:8, 9619:9, 9619:9 government [67] - 9497:21, 9500:7, 9504:10, 9505:19, 9514:3, 9515:12, 9517:21, 9522:3, 9522:6, 9522:22, 9524:17, 9525:18, 9526:2, 9527:7, 9527:14, 9527:25, 9529:13, 9530:11, 9533:18, 9534:6, 9534:17, 9535:15, 9537:19, 9537:21, 9543:14, 9544:5, 9544:7, 9544:9, 9544:10, 9545:6, 9545:17, 9547:23, 9548:15, 9548:23, 9549:13, 9549:14, 9551:11, 9552:6, 9552:7, 9553:7, 9574:24, 9576:11, 9580:3, 9580:17, 9580:24, 9581:23, 9587:3, 9587:21, 9590:24, 9592:5, 9592:11, 9593:24, 9595:8, 9599:19, 9602:11, 9603:13, 9603:24, 9603:25, 9604:2, 9604:9, 9604:12, 9605:13, 9605:22, 9611:24, 9616:23, 9617:17,
---	----------	---	---

9617:18
government's [3] -
 9550:6, 9572:15,
 9616:3
grabbed [1] - 9504:13
grand [3] - 9518:2,
 9518:3, 9518:8
granted [2] - 9560:22,
 9563:4
great [3] - 9478:20,
 9565:18, 9601:11
greater [2] - 9575:16,
 9580:14
Greene [1] - 9617:14
grew [1] - 9598:9
ground [1] - 9615:16
grounds [1] - 9568:11
group [17] - 9471:9,
 9482:15, 9483:8,
 9506:11, 9506:19,
 9508:9, 9537:14,
 9539:24, 9556:17,
 9557:15, 9557:20,
 9560:9, 9561:13,
 9561:16, 9582:15,
 9596:8, 9599:6
Group [2] - 9489:14,
 9490:6
groups [6] - 9507:23,
 9555:15, 9555:20,
 9558:25, 9559:3,
 9573:2
growing [1] - 9487:18
guess [9] - 9487:17,
 9525:17, 9534:10,
 9543:25, 9549:19,
 9554:5, 9580:11,
 9580:13, 9593:12
Guidelines [1] -
 9580:5
gulags [1] - 9509:23
guttersniping [1] -
 9519:18
guy [5] - 9473:16,
 9502:10, 9503:16,
 9504:13, 9602:1
guys [10] - 9471:19,
 9473:16, 9474:6,
 9495:9, 9503:14,
 9559:19, 9597:2,
 9598:13, 9598:18,
 9598:19

H

half [2] - 9470:23,
 9473:25
hand [2] - 9518:25,
 9519:4
handle [3] - 9559:18,

9559:24, 9560:2
handler [14] - 9555:18,
 9555:21, 9556:3,
 9556:16, 9557:14,
 9558:2, 9558:11,
 9558:16, 9558:17,
 9559:9, 9612:25,
 9613:1, 9613:23,
 9614:1
handlers [2] - 9612:5,
 9612:13
handles [1] - 9520:6
handling [3] -
 9473:20, 9532:8,
 9532:10
Hanec [1] - 9520:16
happy [3] - 9560:14,
 9594:2, 9598:21
hard [3] - 9546:4,
 9547:12, 9547:13
harness [2] - 9507:1,
 9507:3
Harrington [1] -
 9473:15
Harris [8] - 9481:10,
 9489:11, 9492:8,
 9494:14, 9556:24,
 9599:10, 9605:7,
 9608:19
Harry's [3] - 9472:4,
 9472:10, 9473:14
Hassan [2] - 9469:9,
 9469:10
hassan@
nhassanlaw.com [1] -
 9469:11
hate [1] - 9482:11
Haven [1] - 9469:5
Head [1] - 9523:2
head [2] - 9518:15,
 9608:1
heading [2] - 9471:9,
 9555:12
headline [1] - 9487:20
heads [2] - 9473:16,
 9491:12
heads-up [2] -
 9473:16, 9491:12
hear [30] - 9478:6,
 9497:17, 9499:3,
 9500:7, 9500:8,
 9508:13, 9512:15,
 9513:3, 9515:17,
 9522:7, 9522:16,
 9524:16, 9530:11,
 9536:9, 9542:15,
 9543:6, 9547:1,
 9547:21, 9550:4,
 9550:12, 9561:8,
 9561:9, 9570:9,

9570:24, 9572:5,
 9572:11, 9586:14,
 9589:5, 9591:21,
 9601:20
heard [15] - 9480:10,
 9500:22, 9517:17,
 9518:6, 9518:10,
 9525:15, 9547:20,
 9566:5, 9568:25,
 9570:3, 9591:15,
 9591:21, 9592:14,
 9608:4, 9611:3
hearing [2] - 9538:14,
 9540:13
hears [1] - 9571:1
hearsay [14] -
 9483:15, 9500:10,
 9526:19, 9526:22,
 9529:11, 9529:17,
 9529:18, 9539:8,
 9539:20, 9540:19,
 9541:25, 9542:1,
 9559:10, 9602:10
heart [1] - 9519:20
HELD [1] - 9468:11
held [1] - 9615:10
help [3] - 9566:17,
 9583:13, 9585:4
helpful [2] - 9486:19,
 9565:23
helps [1] - 9566:18
hereby [1] - 9618:3
Hernandez [29] -
 9469:6, 9469:7,
 9486:3, 9533:4,
 9533:11, 9533:23,
 9535:3, 9535:16,
 9535:23, 9536:6,
 9537:21, 9539:9,
 9541:13, 9545:8,
 9547:20, 9550:12,
 9552:22, 9553:1,
 9553:5, 9576:7,
 9579:17, 9586:17,
 9591:5, 9591:8,
 9593:24, 9601:23,
 9603:21, 9604:8,
 9605:1
HERNANDEZ [106] -
 9476:25, 9477:7,
 9482:14, 9483:15,
 9486:13, 9492:22,
 9493:1, 9498:1,
 9509:7, 9509:10,
 9512:21, 9512:23,
 9514:21, 9514:24,
 9520:11, 9533:5,
 9534:1, 9537:23,
 9538:5, 9538:11,

9538:18, 9539:5,
 9545:6, 9545:14,
 9547:22, 9551:15,
 9553:6, 9553:9,
 9576:2, 9577:22,
 9579:12, 9579:14,
 9579:18, 9579:23,
 9580:2, 9580:16,
 9581:10, 9581:13,
 9581:18, 9581:22,
 9582:4, 9582:5,
 9582:11, 9583:12,
 9583:15, 9584:14,
 9584:17, 9587:2,
 9587:10, 9587:24,
 9588:1, 9589:17,
 9589:20, 9589:25,
 9590:5, 9590:8,
 9590:16, 9590:19,
 9590:21, 9590:22,
 9591:9, 9591:15,
 9591:19, 9592:8,
 9592:10, 9592:20,
 9593:19, 9593:21,
 9593:23, 9594:1,
 9594:5, 9594:7,
 9595:3, 9595:11,
 9595:14, 9595:19,
 9595:23, 9596:2,
 9596:3, 9597:13,
 9599:13, 9599:22,
 9599:24, 9600:3,
 9600:7, 9600:9,
 9600:10, 9601:15,
 9601:25, 9602:4,
 9602:18, 9602:22,
 9602:24, 9603:9,
 9603:11, 9603:17,
 9603:23, 9604:15,
 9604:23, 9605:5,
 9605:11, 9607:2,
 9608:12, 9608:16
Hernandez.....
9576 [1] - 9619:5
herrings [1] - 9525:8
Hialeah [1] - 9469:13
hide [1] - 9519:7
hiding [1] - 9517:15
high [1] - 9512:10
high-level [1] -
 9512:10
higher [1] - 9579:5
Highland [1] - 9469:8
highly [1] - 9523:1
himself [2] - 9470:20,
 9500:17
hold [3] - 9484:11,
 9547:13, 9599:3
Hollow [1] - 9469:7
honest [2] - 9550:11,

<p>9596:22 Honor [93] - 9470:7, 9475:9, 9475:14, 9476:25, 9477:7, 9478:3, 9478:19, 9482:15, 9483:15, 9484:19, 9485:2, 9485:19, 9486:2, 9487:3, 9492:22, 9497:15, 9497:21, 9498:6, 9498:19, 9499:24, 9500:22, 9501:11, 9501:12, 9501:17, 9501:23, 9512:25, 9514:22, 9517:7, 9519:9, 9519:12, 9524:5, 9524:18, 9526:14, 9528:10, 9528:20, 9529:23, 9529:25, 9530:10, 9532:2, 9532:5, 9532:16, 9535:12, 9535:22, 9536:19, 9536:21, 9536:25, 9539:8, 9539:15, 9539:19, 9540:12, 9540:21, 9542:3, 9542:18, 9544:5, 9544:16, 9544:22, 9544:25, 9545:6, 9545:7, 9545:17, 9547:22, 9552:6, 9552:15, 9553:6, 9554:14, 9558:8, 9561:19, 9568:10, 9579:7, 9579:23, 9582:4, 9587:13, 9589:25, 9591:6, 9591:15, 9594:3, 9595:3, 9595:23, 9598:4, 9601:15, 9601:25, 9603:19, 9604:4, 9605:5, 9608:4, 9608:7, 9608:12, 9611:3, 9612:1, 9614:9, 9615:8 HONORABLE [1] - 9468:11 hook [2] - 9504:5, 9504:6 hope [4] - 9550:23, 9596:24, 9597:1, 9608:16 hopefully [2] - 9522:1, 9616:6 horse [2] - 9531:12, 9581:9 hotel [2] - 9516:5, 9516:23</p>	<p>Hotel [1] - 9473:14 hour [1] - 9543:15 hours [1] - 9539:17 house [2] - 9548:8, 9567:1 hover [1] - 9496:5 Hull [2] - 9469:1, 9469:1 HULL [1] - 9612:11 Human [1] - 9580:6 human [41] - 9473:20, 9555:7, 9555:14, 9555:19, 9555:24, 9557:12, 9557:14, 9557:18, 9558:2, 9558:12, 9558:24, 9563:19, 9568:18, 9569:6, 9572:17, 9576:11, 9576:16, 9576:23, 9577:2, 9577:18, 9577:24, 9578:6, 9578:22, 9579:3, 9580:18, 9581:1, 9581:14, 9581:24, 9581:25, 9582:7, 9585:17, 9586:3, 9587:12, 9588:3, 9588:6, 9588:11, 9588:14, 9588:15, 9588:19, 9588:25, 9589:9 hundreds [3] - 9581:2, 9609:5, 9609:24 husher [1] - 9603:22 hypothetical [1] - 9558:6</p>	<p>9571:2 implicate [1] - 9553:24 implicated [3] - 9554:11, 9586:22, 9586:23 importance [2] - 9477:5, 9491:6 important [2] - 9546:23, 9616:1 impossible [1] - 9482:10 impression [5] - 9530:2, 9530:10, 9531:21, 9572:12, 9580:20 improper [8] - 9485:6, 9513:9, 9517:20, 9518:20, 9519:2, 9519:3, 9522:25, 9617:18 improve [2] - 9544:21, 9553:21 improvement [1] - 9545:19 IN [1] - 9468:1 in-person [1] - 9474:9 inappropriate [4] - 9519:12, 9527:16, 9527:17, 9550:16 inappropriately [1] - 9527:18 inauguration [1] - 9477:22 incident [2] - 9502:19, 9505:13 include [2] - 9577:24, 9578:2 included [2] - 9513:6, 9559:19 including [2] - 9474:2, 9531:16 income [1] - 9581:19 incoming [1] - 9489:4 inconsistent [4] - 9559:1, 9565:1, 9567:10, 9605:23 incorrect [1] - 9498:4 incredibly [1] - 9614:4 indeed [1] - 9511:2 INDEX [1] - 9619:1 indicate [1] - 9538:7 indicated [1] - 9534:4 indicating [7] - 9537:6, 9537:13, 9539:23, 9540:2, 9556:19, 9557:9, 9561:11 indication [2] - 9484:7, 9592:25 individual [3] -</p>	<p>9512:11, 9534:15, 9558:7 individuals [3] - 9557:20, 9558:12, 9559:2 indulgence [2] - 9489:24, 9590:16 inference [2] - 9515:11, 9560:15 infiltrator [1] - 9503:14 info [2] - 9576:17, 9577:1 informant [21] - 9534:3, 9534:5, 9534:7, 9534:9, 9537:25, 9538:8, 9538:13, 9538:16, 9555:18, 9556:16, 9568:19, 9593:1, 9596:18, 9596:19, 9602:2, 9613:2, 9613:8, 9613:15, 9613:16, 9613:17 informants [15] - 9555:3, 9555:4, 9555:6, 9555:9, 9556:9, 9558:9, 9563:21, 9563:22, 9563:25, 9609:3, 9609:5, 9610:4, 9610:15, 9611:1, 9612:5 information [62] - 9473:21, 9485:10, 9490:16, 9523:15, 9523:19, 9523:21, 9523:25, 9524:2, 9524:8, 9524:10, 9525:23, 9528:25, 9530:7, 9537:10, 9538:8, 9547:24, 9548:17, 9549:16, 9551:2, 9552:6, 9555:11, 9555:20, 9562:5, 9562:11, 9562:23, 9564:6, 9564:10, 9565:23, 9566:22, 9567:15, 9567:17, 9568:9, 9569:20, 9577:14, 9580:19, 9580:20, 9580:22, 9582:13, 9582:18, 9582:19, 9582:20, 9587:4, 9590:7, 9595:4, 9600:16, 9612:6, 9612:13, 9612:16, 9612:25, 9613:2, 9613:5, 9613:8,</p>
I			
	<p>ID [8] - 9484:6, 9484:21, 9484:23, 9485:15, 9487:8, 9487:9, 9487:12, 9491:12 idea [2] - 9511:13, 9549:22 identified [2] - 9559:24, 9594:5 identify [3] - 9578:24, 9602:19, 9603:1 ignored [1] - 9604:18 II [1] - 9469:15 illegal [2] - 9586:5, 9586:22 immediately [1] - 9605:3 immensely [1] - 9549:14 Immortal [1] - 9558:1 impermissible [1] -</p>		

<p>9613:15, 9613:18, 9613:20, 9613:21, 9613:23, 9614:1, 9614:5, 9614:7, 9615:1, 9615:2 informed [1] - 9565:4 informing [2] - 9557:21, 9558:12 Infowars [1] - 9477:21 infractions [1] - 9549:11 initial [1] - 9555:2 inquire [1] - 9556:8 inquired [1] - 9559:2 inside [2] - 9609:2, 9614:5 insinuate [1] - 9527:15 insinuated [1] - 9523:6 insinuating [1] - 9556:9 instance [1] - 9605:2 instances [1] - 9532:23 Intelligence [1] - 9523:2 intend [3] - 9537:13, 9537:22, 9555:23 intended [1] - 9537:1 intending [1] - 9551:6 intent [3] - 9501:1, 9502:6, 9591:20 intentionally [1] - 9548:20 interact [2] - 9536:9, 9567:2 interacted [2] - 9610:4, 9610:15 interest [1] - 9565:5 interested [4] - 9478:1, 9506:18, 9565:22, 9589:2 interests [1] - 9567:12 internet [1] - 9495:23 interpretation [1] - 9597:12 interrogation [1] - 9568:5 interrupting [1] - 9545:9 interruption [1] - 9518:14 introduce [9] - 9526:5, 9528:8, 9531:3, 9540:1, 9544:3, 9548:9, 9551:23, 9551:25, 9552:1 introduced [5] - 9522:8, 9530:24,</p>	<p>9548:21, 9605:6, 9605:13 introducing [2] - 9525:2, 9540:3 investigate [1] - 9613:14 investigated [2] - 9477:11, 9483:10 investigating [1] - 9588:20 Investigation [1] - 9479:22 investigation [9] - 9517:12, 9520:10, 9530:19, 9562:9, 9564:21, 9589:1, 9613:18, 9614:2 investigations [3] - 9473:22, 9477:6, 9566:6 investigative [1] - 9613:1 investigator [1] - 9562:7 involve [2] - 9583:20, 9585:17 involved [4] - 9557:12, 9566:6, 9566:16, 9605:24 involving [4] - 9513:18, 9532:8, 9555:24, 9573:16 ironic [1] - 9550:18 irrelevant [2] - 9565:7, 9615:5 irritated [2] - 9549:18, 9549:19 irritates [2] - 9549:13, 9549:16 irritation [3] - 9541:3, 9548:23, 9550:3 Island [2] - 9544:22, 9571:12 issue [31] - 9485:11, 9486:9, 9487:10, 9498:14, 9502:15, 9505:3, 9505:8, 9505:15, 9505:18, 9516:23, 9517:25, 9518:1, 9522:4, 9525:13, 9531:13, 9531:22, 9531:24, 9532:12, 9533:6, 9535:19, 9539:22, 9542:14, 9544:18, 9544:20, 9570:17, 9587:19, 9602:5, 9615:22, 9615:25 issued [1] - 9563:11 issues [19] - 9477:1,</p>	<p>9479:1, 9518:9, 9522:23, 9525:18, 9529:11, 9529:18, 9532:4, 9542:1, 9545:20, 9550:25, 9551:1, 9553:14, 9553:23, 9611:24, 9615:12, 9615:24, 9616:10 itself [2] - 9485:5, 9551:5 IV [1] - 9469:1</p> <p style="text-align: center;">J</p> <p>Jack [1] - 9530:7 jail [2] - 9490:16, 9585:24 Jake [4] - 9508:10, 9603:24, 9605:16, 9605:20 jam [2] - 9550:25, 9551:21 Jan [1] - 9487:21 Janice [2] - 9469:21, 9618:11 JANICE [1] - 9618:3 Janicedickmandcd @gmail.com [1] - 9469:22 January [22] - 9488:8, 9491:20, 9491:23, 9510:23, 9511:5, 9515:25, 9516:2, 9517:1, 9520:24, 9521:5, 9521:10, 9521:12, 9521:15, 9558:13, 9559:8, 9574:5, 9574:12, 9598:25, 9601:18, 9606:18, 9610:21 Jason [1] - 9468:14 jason.mccullough2 @usdoj.gov [1] - 9468:16 Jauregui [25] - 9469:12, 9469:12, 9492:4, 9493:5, 9497:20, 9503:2, 9504:4, 9504:5, 9506:6, 9511:10, 9514:10, 9515:4, 9517:14, 9517:21, 9518:2, 9521:2, 9522:20, 9530:12, 9530:16, 9530:17, 9530:22, 9550:10, 9572:16, 9611:6, 9614:25 JAUREGUI [46] -</p>	<p>9484:8, 9485:1, 9485:12, 9497:15, 9497:21, 9498:5, 9498:19, 9499:14, 9499:17, 9502:1, 9504:9, 9505:23, 9509:1, 9512:24, 9515:8, 9522:18, 9522:20, 9522:22, 9523:13, 9524:15, 9526:14, 9527:9, 9528:3, 9528:10, 9528:15, 9528:18, 9529:23, 9530:23, 9531:2, 9532:2, 9532:5, 9608:22, 9608:24, 9609:11, 9609:15, 9609:21, 9610:3, 9610:13, 9610:14, 9610:19, 9610:20, 9610:24, 9610:25, 9611:17, 9612:1, 9612:4 Jauregui's [2] - 9505:12, 9524:21 Jauregui..... 9608 [1] - 9619:6 jdhill@hullmcguire. com [1] - 9469:3 Jeffery [1] - 9530:4 Jeffrey [1] - 9573:24 Jeremy [3] - 9493:23, 9494:7, 9507:8 Jersey [16] - 9538:23, 9541:1, 9541:4, 9543:21, 9596:22, 9596:23, 9596:24, 9597:6, 9598:9, 9598:11, 9599:3, 9599:6 job [3] - 9524:7, 9529:2, 9613:13 jobs [1] - 9562:4 John [3] - 9469:1, 9493:12, 9557:3 join [1] - 9544:22 Joseph [1] - 9468:6 journalist [1] - 9503:17 Judge [25] - 9485:1, 9499:14, 9499:17, 9502:1, 9502:12, 9502:23, 9503:22, 9504:9, 9504:22, 9505:23, 9513:24, 9515:8, 9515:9, 9519:15, 9522:18, 9522:22, 9523:13, 9524:15, 9526:15, 9530:23, 9532:25,</p>
---	--	---	--

9568:12, 9575:24, 9603:17, 9611:17 judge [3] - 9504:17, 9517:17, 9563:15 JUDGE [2] - 9468:11, 9468:12 judging [1] - 9540:13 jump [2] - 9482:9, 9591:25 jumped [2] - 9485:1, 9485:4 jumping [1] - 9484:16 jurisdiction [2] - 9574:5, 9574:12 jurors [4] - 9470:2, 9521:23, 9554:16, 9614:19 jury [24] - 9491:22, 9497:16, 9497:25, 9502:6, 9502:13, 9510:18, 9513:21, 9514:4, 9518:2, 9518:3, 9518:8, 9519:7, 9521:14, 9523:6, 9523:10, 9524:6, 9530:1, 9542:15, 9549:23, 9553:25, 9571:1, 9572:14, 9611:10, 9614:24 JURY [2] - 9468:5, 9468:10 Justice [3] - 9563:7, 9578:11, 9579:1 justification [1] - 9563:5	knocking [1] - 9564:20 knowledge [9] - 9474:14, 9475:14, 9481:19, 9489:17, 9489:18, 9494:22, 9559:5, 9576:11 known [4] - 9500:2, 9536:8, 9538:13, 9596:17 knows [3] - 9528:20, 9535:20, 9572:25	9575:12, 9575:15 lamond [1] - 9524:20 Lamond's [5] - 9487:8, 9525:7, 9526:16, 9530:14, 9531:8 Lamond-Tarrio [2] - 9490:19, 9572:3 Lamont [1] - 9527:12 language [4] - 9513:15, 9513:22, 9534:3, 9580:19 large [10] - 9507:1, 9519:11, 9520:7, 9520:8, 9520:9, 9520:15, 9556:2, 9556:17, 9579:4, 9614:2 large-scale [1] - 9614:2 larger [1] - 9549:14 last [17] - 9480:6, 9487:7, 9496:12, 9498:5, 9522:2, 9547:24, 9549:20, 9550:18, 9551:2, 9551:16, 9551:17, 9553:3, 9597:16, 9603:12, 9611:8, 9616:22 lasting [2] - 9488:23, 9489:7 late [5] - 9494:20, 9498:5, 9551:2, 9553:3, 9553:12 Latinos [3] - 9483:9, 9558:4, 9558:14 latitude [1] - 9522:4 laughing [1] - 9474:25 law [26] - 9471:21, 9472:24, 9474:10, 9475:7, 9476:20, 9477:24, 9477:25, 9480:3, 9480:6, 9482:12, 9486:20, 9492:5, 9526:22, 9527:1, 9527:21, 9529:3, 9562:25, 9571:19, 9571:22, 9572:4, 9572:21, 9573:1, 9574:4, 9616:6 Law [4] - 9469:7, 9469:10, 9469:12, 9469:18 lawyer [1] - 9567:22 lawyering [1] - 9519:17 lay [2] - 9617:15, 9617:20 laying [1] - 9501:18	lead [6] - 9515:25, 9517:11, 9517:15, 9519:11, 9520:16, 9520:17 lead-up [1] - 9515:25 Leaders [2] - 9489:14, 9490:6 leaders [1] - 9492:2 leadership [1] - 9533:17 leading [4] - 9509:1, 9517:1, 9520:11, 9538:23 leak [1] - 9475:6 leaks [1] - 9475:8 leaned [1] - 9506:11 learned [1] - 9526:17 least [22] - 9491:5, 9500:7, 9522:16, 9526:4, 9528:12, 9529:9, 9531:24, 9534:23, 9535:1, 9535:24, 9543:1, 9543:2, 9551:11, 9554:11, 9554:12, 9571:20, 9574:5, 9585:11, 9604:20, 9609:8, 9615:5 leave [6] - 9470:18, 9521:23, 9538:9, 9548:8, 9585:2, 9614:19 leaves [4] - 9580:20, 9582:14, 9614:24 leaving [1] - 9598:19 leeway [1] - 9616:9 left [4] - 9476:5, 9488:19, 9530:1, 9530:9 legal [1] - 9563:16 legit [1] - 9535:1 legitimate [2] - 9505:18, 9529:1 legitimately [1] - 9545:20 legs [1] - 9487:18 length [1] - 9489:6 letter [6] - 9564:12, 9564:14, 9564:16, 9564:20, 9565:4 letters [3] - 9564:22, 9564:23, 9565:7 level [3] - 9478:15, 9512:10, 9579:5 leverage [6] - 9525:25, 9565:13, 9565:14, 9565:19, 9565:24, 9566:1 Lieutenant [14] - 9470:15, 9487:8,
L			
lack [1] - 9531:12 lacked [2] - 9525:5, 9530:21 ladder [1] - 9579:20 ladies [3] - 9521:18, 9554:18, 9614:14 lady [2] - 9585:4 Lake [1] - 9469:18 Lakes [1] - 9469:11 Lamond [73] - 9470:15, 9470:18, 9471:2, 9471:18, 9472:9, 9472:18, 9472:19, 9472:21, 9473:11, 9474:5, 9474:7, 9474:21, 9474:24, 9475:2, 9475:4, 9476:8, 9476:13, 9476:17, 9477:15, 9479:3, 9479:12, 9480:13, 9480:20, 9481:5, 9482:5, 9483:5, 9484:4, 9487:15, 9488:1, 9488:14, 9488:15, 9488:23, 9489:5, 9490:9, 9490:19, 9491:10, 9491:24, 9492:4, 9522:23, 9523:1, 9523:16, 9523:18, 9524:1, 9524:3, 9524:7, 9524:25, 9525:14, 9526:21, 9528:8, 9528:21, 9529:2, 9529:15, 9530:4, 9530:6, 9530:13, 9530:17, 9530:19, 9531:14, 9531:18, 9532:8, 9532:12, 9554:25, 9571:13, 9571:16, 9572:3, 9572:14, 9572:16, 9572:18, 9573:22, 9575:8,			
K			
keep [3] - 9470:20, 9499:9, 9588:7 keeping [1] - 9477:5 keeps [1] - 9576:24 KELLY [1] - 9468:11 Kenerson [1] - 9468:15 kept [1] - 9493:24 keyed [1] - 9578:23 kicked [2] - 9534:7, 9538:20 kind [10] - 9495:3, 9522:10, 9536:22, 9541:15, 9546:16, 9551:1, 9551:4, 9566:3, 9587:21, 9615:9 kinds [1] - 9535:20 kneeling [1] - 9491:13 knock [2] - 9502:10, 9564:25			

<p>9523:1, 9523:15, 9523:25, 9524:1, 9524:7, 9525:14, 9527:12, 9528:21, 9529:2, 9530:3, 9530:6, 9530:14 light [1] - 9529:15 likely [1] - 9615:17 limit [2] - 9486:21, 9578:18 limitation [1] - 9571:20 limitations [1] - 9611:14 limited [4] - 9501:9, 9554:19, 9595:4 limits [1] - 9586:11 line [11] - 9478:12, 9515:4, 9524:4, 9534:13, 9541:1, 9543:21, 9556:18, 9557:8, 9586:21, 9586:23, 9609:12 lines [8] - 9478:10, 9478:20, 9486:7, 9493:6, 9519:8, 9535:16, 9536:22, 9554:7 link [6] - 9495:11, 9495:21, 9495:25, 9496:14, 9496:17, 9496:18 links [2] - 9495:16, 9496:24 list [1] - 9523:4 listed [1] - 9594:19 listen [5] - 9502:14, 9549:8, 9549:9, 9553:10, 9589:3 listener [2] - 9526:20, 9526:21 literally [2] - 9479:10, 9550:19 litigate [1] - 9545:20 litigated [1] - 9524:24 Livingston [1] - 9469:19 LLC [1] - 9469:4 local [1] - 9476:24 location [1] - 9563:1 locked [3] - 9471:19, 9473:17, 9509:24 logo [1] - 9598:10 LOL [6] - 9480:21, 9481:7, 9493:25, 9494:2, 9494:6, 9494:9 look [33] - 9470:13, 9471:16, 9478:13, 9479:6, 9479:13, 9496:6, 9498:7,</p>	<p>9513:6, 9515:15, 9525:21, 9531:11, 9532:3, 9534:10, 9539:7, 9542:22, 9543:4, 9547:2, 9556:23, 9557:23, 9562:16, 9566:17, 9567:2, 9592:4, 9593:15, 9594:2, 9594:24, 9599:14, 9600:19, 9602:12, 9605:1, 9615:3, 9616:8, 9616:22 looked [2] - 9530:18, 9596:15 looking [13] - 9482:3, 9490:5, 9490:13, 9494:11, 9496:22, 9501:1, 9502:6, 9510:8, 9511:10, 9531:5, 9545:11, 9553:6, 9560:17 loose [1] - 9557:2 loud [2] - 9479:4, 9502:2 love [1] - 9598:21 low [1] - 9579:5 low-level [1] - 9579:5 lower [1] - 9502:2 lunch [2] - 9470:13, 9548:13</p>	<p>9599:7, 9602:1, 9603:3 Mack's [1] - 9536:16 maintain [1] - 9588:3 maintaining [1] - 9491:6 Mall [1] - 9471:10 mama [1] - 9567:15 manage [1] - 9569:9 manager [1] - 9520:17 manner [4] - 9486:17, 9550:6, 9564:24, 9580:25 manual [1] - 9587:16 manuals [1] - 9563:10 march [1] - 9587:15 March [1] - 9616:18 marked [1] - 9556:4 marketing [1] - 9503:24 material [1] - 9562:13 materials [2] - 9548:16, 9548:21 math [1] - 9489:8 matter [4] - 9470:4, 9505:21, 9535:10, 9574:21 matters [1] - 9615:25 McCullough [1] - 9485:3 McCullough [8] - 9468:14, 9544:5, 9545:7, 9545:12, 9545:16, 9545:17, 9554:6, 9554:14 McGuire [1] - 9469:1 MD [1] - 9469:8 MDC [1] - 9488:3 mean [49] - 9478:14, 9485:20, 9486:20, 9497:19, 9498:13, 9503:9, 9503:11, 9503:21, 9505:19, 9512:9, 9519:3, 9525:12, 9526:3, 9528:2, 9529:7, 9529:16, 9531:4, 9531:9, 9532:15, 9532:23, 9536:16, 9536:21, 9537:18, 9540:12, 9541:25, 9542:13, 9545:25, 9551:25, 9552:10, 9552:11, 9564:4, 9564:7, 9564:11, 9566:1, 9570:7, 9575:4, 9577:13, 9577:17, 9578:4, 9578:5, 9587:6, 9588:12, 9602:9, 9605:12, 9614:25,</p>	<p>9615:21, 9616:9, 9616:22 means [4] - 9581:15, 9583:2, 9584:3, 9588:13 meant [6] - 9507:15, 9555:25, 9560:4, 9566:10, 9604:16, 9606:13 meanwhile [1] - 9502:9 meat [1] - 9500:14 mechanism [1] - 9507:3 media [1] - 9476:15 medium [2] - 9520:7, 9545:5 meet [4] - 9474:11, 9512:12, 9525:10, 9569:12 meeting [3] - 9536:17, 9542:7, 9543:8 members [7] - 9492:18, 9506:11, 9506:17, 9507:18, 9507:23, 9521:4, 9555:14 memory [1] - 9500:6 mention [2] - 9495:11, 9495:13 mentioning [1] - 9548:25 merits [1] - 9519:17 message [69] - 9470:18, 9471:4, 9471:8, 9471:16, 9471:17, 9472:1, 9472:3, 9472:7, 9472:16, 9474:21, 9474:22, 9474:23, 9475:1, 9475:2, 9475:3, 9475:4, 9476:3, 9476:7, 9476:12, 9476:16, 9477:14, 9477:19, 9480:20, 9481:7, 9481:8, 9483:11, 9483:22, 9484:3, 9484:23, 9487:8, 9487:11, 9487:15, 9487:16, 9487:22, 9487:25, 9488:6, 9488:12, 9488:13, 9488:15, 9489:3, 9489:13, 9491:9, 9491:24, 9492:1, 9493:12, 9493:19, 9493:23, 9494:5, 9494:19, 9495:5, 9496:14, 9500:20,</p>
M			
<p>mack [1] - 9540:2 Mack [53] - 9533:6, 9534:5, 9534:9, 9536:1, 9536:8, 9536:25, 9537:2, 9537:5, 9537:6, 9537:14, 9538:12, 9538:25, 9539:10, 9539:13, 9539:23, 9540:5, 9540:10, 9540:22, 9540:25, 9541:3, 9541:6, 9543:19, 9546:2, 9552:2, 9559:18, 9560:1, 9560:8, 9560:12, 9560:13, 9561:5, 9561:8, 9561:9, 9561:11, 9561:13, 9561:15, 9591:24, 9591:25, 9592:1, 9592:22, 9592:25, 9593:14, 9594:20, 9595:6, 9596:4, 9596:10, 9596:18, 9596:19, 9597:24, 9599:1,</p>			

9506:24, 9507:8,
9508:14, 9508:17,
9508:19, 9508:22,
9509:16, 9509:19,
9510:3, 9510:23,
9511:12, 9511:16,
9516:14, 9537:24,
9596:4, 9597:5
messages [47] -
9472:14, 9473:9,
9473:25, 9481:3,
9481:5, 9482:4,
9482:7, 9482:24,
9484:7, 9485:13,
9486:9, 9490:13,
9490:15, 9490:22,
9490:23, 9491:3,
9491:16, 9491:19,
9508:25, 9509:4,
9511:9, 9521:12,
9523:18, 9523:22,
9525:24, 9527:4,
9527:6, 9527:24,
9528:8, 9528:20,
9529:13, 9529:14,
9529:22, 9529:25,
9530:15, 9594:25,
9597:15, 9601:18,
9609:5, 9609:16,
9609:22, 9609:24,
9610:9, 9610:10,
9612:16, 9612:21
met [1] - 9596:24
METCALF [14] -
9474:14, 9475:9,
9475:11, 9475:14,
9478:3, 9478:5,
9478:25, 9479:6,
9510:21, 9514:5,
9514:7, 9517:6,
9517:8, 9517:10
Metcalf [4] - 9469:15,
9469:15, 9478:22
methods [3] - 9579:8,
9589:4, 9614:10
Metro [4] - 9470:15,
9474:5, 9480:1,
9482:12
Metropolitan [3] -
9523:20, 9530:5,
9573:19
Miami [2] - 9469:11,
9488:2
Miami-Dade [1] -
9488:2
mid [1] - 9601:18
mid-January [1] -
9601:18
midnight [5] -
9521:10, 9547:24,

9547:25, 9548:17,
9549:2
midway [1] - 9498:24
might [20] - 9496:5,
9499:24, 9504:5,
9504:17, 9516:21,
9533:25, 9537:11,
9541:8, 9544:1,
9556:22, 9562:23,
9565:13, 9565:23,
9567:4, 9567:7,
9579:4, 9583:6,
9584:23, 9585:4
military [1] - 9512:10
mind [11] - 9471:12,
9514:7, 9530:2,
9531:16, 9531:19,
9539:21, 9539:22,
9540:5, 9540:19,
9543:2, 9600:20
Ministry [5] - 9489:14,
9490:6, 9492:1,
9521:3, 9542:10
Mink [1] - 9469:7
minor [2] - 9548:2,
9549:10
minute [2] - 9472:21,
9499:12
minutes [14] - 9473:8,
9489:8, 9521:21,
9521:25, 9533:1,
9534:8, 9534:21,
9535:5, 9543:15,
9543:18, 9560:20,
9605:14, 9614:15
misleading [7] -
9478:5, 9479:1,
9497:24, 9515:10,
9530:2, 9530:10,
9558:7
misled [1] - 9549:22
Miss [1] - 9599:10
misses [1] - 9548:24
missing [1] - 9480:12
mission [1] - 9606:1
missions [2] -
9605:25, 9607:10
misstating [1] -
9545:14
mistrial [2] - 9617:12,
9617:17
moment [5] - 9489:23,
9500:15, 9509:16,
9589:18, 9604:22
money [3] - 9577:25,
9578:6, 9583:21
monies [1] - 9581:19
monitor [1] - 9589:10
month [2] - 9488:6,
9488:8

months [2] - 9479:11,
9509:23
Moore [1] - 9468:20
morning [18] -
9477:23, 9498:2,
9511:2, 9522:3,
9547:23, 9547:25,
9548:4, 9548:11,
9548:18, 9551:17,
9552:19, 9553:4,
9553:13, 9580:3,
9580:24, 9615:9,
9617:16, 9617:21
MoSD [19] - 9494:11,
9495:18, 9496:8,
9496:15, 9496:21,
9501:2, 9501:3,
9501:9, 9501:15,
9501:18, 9502:18,
9503:4, 9503:23,
9503:24, 9507:4,
9521:5, 9536:17,
9538:14, 9593:9
most [2] - 9534:8,
9598:13
mother [2] - 9564:6,
9565:18
motion [2] - 9617:12,
9617:15
mouth [3] - 9485:5,
9485:24, 9502:8
move [23] - 9481:22,
9489:19, 9492:20,
9494:24, 9497:14,
9505:15, 9506:2,
9507:10, 9519:19,
9569:22, 9569:24,
9571:6, 9587:8,
9587:10, 9589:18,
9595:3, 9595:20,
9595:23, 9601:15,
9602:20, 9607:8,
9607:12, 9617:8
moved [2] - 9517:21,
9599:24
moving [4] - 9495:14,
9545:25, 9596:23,
9597:2
MPD [3] - 9476:10,
9483:10, 9523:2
MR [255] - 9470:7,
9470:12, 9474:14,
9474:16, 9474:18,
9475:9, 9475:11,
9475:14, 9475:17,
9476:23, 9477:3,
9477:10, 9478:3,
9478:5, 9478:19,
9478:25, 9479:6,
9479:18, 9479:20,

9481:22, 9481:23,
9481:25, 9482:2,
9482:17, 9483:20,
9484:8, 9484:19,
9485:1, 9485:12,
9485:19, 9487:3,
9487:6, 9489:19,
9489:22, 9490:1,
9490:4, 9492:20,
9492:24, 9493:2,
9493:4, 9494:24,
9495:2, 9495:22,
9496:2, 9497:14,
9497:15, 9497:21,
9498:4, 9498:5,
9498:19, 9498:21,
9498:23, 9499:2,
9499:14, 9499:17,
9499:24, 9500:9,
9500:22, 9500:24,
9501:17, 9501:23,
9501:24, 9502:1,
9502:4, 9502:23,
9503:1, 9503:9,
9503:22, 9504:9,
9504:17, 9504:19,
9505:16, 9505:23,
9506:2, 9506:5,
9508:3, 9508:7,
9509:1, 9509:3,
9509:9, 9509:11,
9510:21, 9511:4,
9512:22, 9512:24,
9513:14, 9513:24,
9514:1, 9514:5,
9514:7, 9514:9,
9515:3, 9515:8,
9515:21, 9517:6,
9517:7, 9517:8,
9517:10, 9517:17,
9517:20, 9518:6,
9518:8, 9518:15,
9519:9, 9519:15,
9519:22, 9520:4,
9520:14, 9521:17,
9522:18, 9522:20,
9522:22, 9523:13,
9524:15, 9524:18,
9526:14, 9527:9,
9528:3, 9528:10,
9528:15, 9528:18,
9529:23, 9530:12,
9530:23, 9531:2,
9532:2, 9532:5,
9532:7, 9532:25,
9533:13, 9533:19,
9533:21, 9535:12,
9535:22, 9536:25,
9539:3, 9539:8,
9539:15, 9539:19,
9540:12, 9540:21,

<p>9542:3, 9542:18, 9543:10, 9543:13, 9543:15, 9543:16, 9543:25, 9544:5, 9545:7, 9545:17, 9552:15, 9554:2, 9554:14, 9554:22, 9557:6, 9558:6, 9558:8, 9558:18, 9559:10, 9559:12, 9560:21, 9560:23, 9561:19, 9561:24, 9565:6, 9565:8, 9565:12, 9568:10, 9568:12, 9568:15, 9568:17, 9570:5, 9570:6, 9570:22, 9571:6, 9571:9, 9571:25, 9572:2, 9572:10, 9573:3, 9573:6, 9573:25, 9574:2, 9574:8, 9574:11, 9574:13, 9574:17, 9574:19, 9575:18, 9575:19, 9575:21, 9575:24, 9577:20, 9579:7, 9579:21, 9581:16, 9581:20, 9582:2, 9582:9, 9583:7, 9583:10, 9583:13, 9584:12, 9586:12, 9587:13, 9589:15, 9589:23, 9590:18, 9590:20, 9591:6, 9592:18, 9594:2, 9595:9, 9595:12, 9595:17, 9597:8, 9598:4, 9601:17, 9603:15, 9604:4, 9606:23, 9608:4, 9608:7, 9608:22, 9608:24, 9609:9, 9609:11, 9609:12, 9609:15, 9609:17, 9609:21, 9610:1, 9610:3, 9610:11, 9610:13, 9610:14, 9610:17, 9610:19, 9610:20, 9610:22, 9610:24, 9610:25, 9611:3, 9611:17, 9612:1, 9612:4, 9612:8, 9612:11, 9614:9, 9614:12, 9615:8, 9615:21, 9616:16, 9617:1</p> <p>MS [107] - 9476:25, 9477:7, 9482:14, 9483:15, 9483:19, 9486:2, 9486:13,</p>	<p>9492:22, 9493:1, 9495:24, 9498:1, 9509:7, 9509:10, 9512:21, 9512:23, 9514:21, 9514:24, 9520:11, 9533:5, 9534:1, 9537:23, 9538:5, 9538:11, 9538:18, 9539:5, 9545:6, 9545:14, 9547:22, 9551:15, 9553:6, 9553:9, 9576:2, 9577:22, 9579:12, 9579:14, 9579:18, 9579:23, 9580:2, 9580:16, 9581:10, 9581:13, 9581:18, 9581:22, 9582:4, 9582:5, 9582:11, 9583:12, 9583:15, 9584:14, 9584:17, 9587:2, 9587:10, 9587:24, 9588:1, 9589:17, 9589:20, 9589:25, 9590:5, 9590:8, 9590:16, 9590:19, 9590:21, 9590:22, 9591:9, 9591:15, 9591:19, 9592:8, 9592:10, 9592:20, 9593:19, 9593:21, 9593:23, 9594:1, 9594:5, 9594:7, 9595:3, 9595:11, 9595:14, 9595:19, 9595:23, 9596:2, 9596:3, 9597:13, 9599:13, 9599:22, 9599:24, 9600:3, 9600:7, 9600:9, 9600:10, 9601:15, 9601:25, 9602:4, 9602:18, 9602:22, 9602:24, 9603:9, 9603:11, 9603:17, 9603:23, 9604:15, 9604:23, 9605:5, 9605:11, 9607:2, 9608:12, 9608:16</p> <p>MT [1] - 9469:19 mud [1] - 9523:6 Mulroe [36] - 9468:17, 9470:6, 9478:9, 9484:9, 9484:17, 9487:1, 9499:22, 9500:24, 9501:3, 9501:10, 9501:14, 9509:7, 9515:1, 9517:23, 9518:22, 9519:6, 9519:18,</p>	<p>9520:2, 9528:18, 9531:4, 9533:7, 9537:5, 9537:8, 9538:15, 9539:22, 9540:11, 9541:10, 9542:2, 9544:1, 9548:3, 9549:4, 9549:21, 9552:14, 9579:17, 9591:4, 9608:20</p> <p>MULROE [129] - 9470:7, 9470:12, 9474:16, 9474:18, 9475:17, 9477:3, 9477:10, 9478:19, 9479:18, 9479:20, 9481:22, 9481:25, 9482:2, 9482:17, 9483:20, 9484:19, 9485:19, 9487:3, 9487:6, 9489:19, 9489:22, 9490:1, 9490:4, 9492:20, 9492:24, 9493:2, 9493:4, 9494:24, 9495:2, 9495:22, 9496:2, 9497:14, 9498:4, 9498:21, 9498:23, 9499:2, 9499:24, 9500:9, 9501:17, 9501:24, 9502:4, 9502:23, 9503:1, 9503:9, 9503:22, 9504:17, 9504:19, 9505:16, 9506:2, 9506:5, 9508:7, 9509:3, 9509:9, 9509:11, 9511:4, 9513:14, 9514:1, 9514:9, 9515:3, 9515:21, 9519:9, 9520:4, 9520:14, 9521:17, 9524:18, 9530:12, 9533:13, 9533:19, 9533:21, 9535:22, 9539:8, 9539:15, 9540:12, 9542:3, 9543:10, 9543:15, 9552:15, 9558:6, 9559:10, 9565:6, 9568:10, 9570:5, 9571:25, 9573:25, 9574:17, 9575:18, 9575:21, 9577:20, 9579:7, 9579:21, 9581:16, 9581:20, 9582:2, 9582:9, 9583:7, 9584:12, 9586:12, 9587:13, 9589:15, 9589:23,</p>	<p>9590:18, 9590:20, 9591:6, 9592:18, 9594:2, 9595:9, 9595:12, 9595:17, 9597:8, 9598:4, 9601:17, 9603:15, 9604:4, 9606:23, 9608:4, 9608:7, 9609:9, 9609:12, 9609:17, 9610:1, 9610:11, 9610:17, 9610:22, 9611:3, 9612:8, 9614:9, 9614:12, 9615:8, 9615:21</p> <p>mulroe [3] - 9485:18, 9501:25, 9550:25 Mulroe's [2] - 9501:5, 9537:4 mulroe's [1] - 9485:12 Mulroe.....9470 [1] - 9619:4 multiple [4] - 9569:12, 9609:3, 9609:4, 9617:3 multitude [1] - 9523:17 mutual [1] - 9596:25</p>
N			
<p>N.W [1] - 9618:12 Nadia [1] - 9468:20 nadia.moore@usdoj.gov [1] - 9468:22 name [6] - 9523:5, 9555:6, 9592:21, 9594:19, 9594:23, 9603:7 named [2] - 9558:1, 9603:24 narrative [1] - 9482:9 narrow [2] - 9537:1, 9571:25 national [2] - 9495:13, 9606:9 nature [6] - 9486:10, 9486:18, 9513:2, 9524:19, 9558:19, 9572:14 Nayib [2] - 9469:9, 9469:10 nds@ davidbsmithpllc.com [1] - 9468:25 near [1] - 9547:24 nearly [1] - 9542:16 necessarily [1] - 9536:13 necessary [3] - 9500:19, 9519:1,</p>			

<p>9587:5 necessitates [1] - 9524:23 need [19] - 9496:5, 9506:25, 9511:16, 9528:7, 9539:6, 9542:5, 9546:10, 9546:11, 9547:3, 9547:9, 9547:10, 9551:5, 9559:18, 9586:7, 9588:18, 9595:20, 9599:23, 9600:5, 9616:20 needed [4] - 9549:8, 9617:1, 9617:18, 9617:19 needs [5] - 9502:6, 9502:13, 9504:24, 9511:13, 9546:24 neighbors [1] - 9474:25 neutral [1] - 9519:10 never [19] - 9480:1, 9480:10, 9509:24, 9515:5, 9518:9, 9525:6, 9526:23, 9527:16, 9527:18, 9530:15, 9531:2, 9548:24, 9564:23, 9565:1, 9577:14, 9577:18, 9585:25, 9598:10, 9604:6 new [2] - 9525:12, 9532:19 New [8] - 9468:18, 9468:25, 9469:5, 9469:16, 9538:23, 9596:22, 9597:6, 9598:21 news [1] - 9487:19 next [35] - 9472:12, 9473:3, 9473:24, 9474:22, 9475:1, 9475:3, 9476:12, 9476:16, 9477:13, 9477:19, 9480:11, 9481:2, 9482:10, 9482:20, 9483:1, 9483:21, 9484:3, 9487:22, 9487:25, 9488:8, 9488:10, 9491:13, 9494:1, 9511:2, 9516:18, 9519:6, 9546:24, 9559:22, 9594:23, 9595:12, 9599:14, 9607:16, 9617:8, 9617:11, 9617:19 Nicholas [1] - 9468:23 night [10] - 9477:21,</p>	<p>9498:5, 9522:2, 9547:24, 9551:3, 9551:17, 9551:23, 9553:4, 9553:12 nilly [1] - 9563:4 nine [1] - 9552:20 NobleBeard [1] - 9558:1 NobleLead [2] - 9491:2, 9559:23 none [1] - 9473:23 nonhearsay [1] - 9525:3 nonviolence [1] - 9500:21 nonviolent [4] - 9503:3, 9503:5, 9503:6, 9605:24 Nordean [14] - 9468:6, 9468:23, 9470:5, 9508:21, 9508:25, 9509:4, 9510:3, 9510:19, 9511:2, 9535:11, 9543:17, 9544:2, 9554:20, 9560:19 normal [2] - 9532:10, 9558:10 Norman [1] - 9469:3 note [9] - 9473:16, 9516:11, 9524:24, 9525:4, 9539:8, 9544:16, 9587:14, 9607:17, 9615:11 noted [3] - 9483:18, 9504:21, 9552:20 notes [3] - 9479:11, 9562:1, 9618:5 nothing [10] - 9521:17, 9554:25, 9558:25, 9566:9, 9575:24, 9597:1, 9604:4, 9608:8, 9608:17, 9611:15 notion [1] - 9616:6 November [2] - 9507:19, 9509:13 npattis@pattisandsmith.com [1] - 9469:5 number [21] - 9487:24, 9509:8, 9526:8, 9547:12, 9547:14, 9547:15, 9555:13, 9556:17, 9558:24, 9562:10, 9591:22, 9593:17, 9593:20, 9599:17, 9599:23, 9600:6, 9601:16, 9607:3, 9609:7,</p>	<p>9609:16, 9609:22 numbers [1] - 9507:1 NW [4] - 9468:15, 9468:18, 9469:2, 9469:10 NY [3] - 9468:21, 9468:25, 9469:16</p> <p style="text-align: center;">O</p> <p>o'clock [7] - 9475:5, 9488:19, 9494:5, 9552:17, 9614:18, 9617:7, 9617:22 object [21] - 9485:6, 9505:23, 9517:22, 9519:22, 9533:10, 9533:18, 9558:6, 9565:6, 9568:11, 9570:5, 9571:25, 9579:7, 9591:6, 9598:4, 9601:17, 9603:15, 9609:9, 9609:12, 9610:11, 9612:8, 9614:9 objected [5] - 9518:19, 9519:20, 9527:25, 9528:4, 9572:22 objecting [1] - 9486:7 objection [74] - 9474:14, 9475:9, 9475:10, 9476:23, 9476:25, 9477:7, 9478:3, 9478:4, 9478:22, 9478:23, 9481:23, 9482:14, 9482:16, 9483:16, 9483:17, 9483:18, 9484:8, 9486:23, 9497:15, 9499:14, 9499:17, 9500:10, 9508:3, 9508:5, 9509:1, 9510:21, 9512:21, 9512:22, 9513:2, 9513:24, 9514:5, 9514:8, 9514:21, 9515:18, 9517:6, 9517:7, 9517:17, 9518:20, 9520:1, 9523:11, 9533:21, 9534:17, 9534:22, 9539:9, 9541:20, 9552:7, 9559:10, 9565:10, 9570:7, 9573:25, 9574:17, 9575:18, 9577:20, 9579:21, 9581:16, 9581:20, 9582:2, 9582:9, 9583:7, 9586:12,</p>	<p>9586:13, 9586:18, 9592:18, 9595:17, 9595:25, 9597:8, 9602:13, 9606:23, 9609:17, 9610:1, 9610:17, 9610:22, 9614:14, 9615:18 objections [5] - 9478:10, 9478:11, 9513:5, 9572:3, 9572:8 objective [2] - 9512:15, 9512:19 objectives [1] - 9512:3 obtain [1] - 9565:13 obtained [1] - 9563:12 obviously [1] - 9511:22 occupied [1] - 9615:13 OF [3] - 9468:1, 9468:10, 9618:1 Off-the-record [1] - 9579:16 off-the-record [1] - 9591:4 offenses [1] - 9585:18 offensive [1] - 9517:22 offer [7] - 9479:15, 9502:23, 9505:5, 9552:17, 9568:21, 9568:22, 9580:18 offered [7] - 9539:12, 9539:17, 9540:15, 9542:5, 9542:6, 9571:18, 9580:17 offering [5] - 9500:2, 9541:4, 9542:7, 9542:23, 9574:20 Office [3] - 9468:20, 9469:7, 9491:14 office [1] - 9588:25 officer [4] - 9479:3, 9479:8, 9524:9, 9527:18 officers [4] - 9470:20, 9474:10, 9480:7, 9527:10 Offices [1] - 9469:10 OFFICIAL [1] - 9618:1 Official [1] - 9618:11 oftentimes [1] - 9539:20 old [2] - 9573:7, 9585:4 once [1] - 9548:19 one [77] - 9471:19, 9476:5, 9477:24, 9480:7, 9481:13, 9485:10, 9489:23, 9490:18, 9494:1,</p>
---	--	---	--

<p>9494:6, 9494:16, 9496:12, 9498:8, 9502:7, 9502:23, 9503:2, 9503:6, 9503:18, 9504:17, 9505:16, 9507:2, 9509:8, 9510:8, 9511:10, 9513:7, 9515:15, 9520:7, 9520:9, 9520:15, 9521:20, 9525:18, 9525:19, 9529:3, 9531:19, 9537:8, 9545:1, 9546:15, 9547:12, 9547:14, 9551:5, 9553:2, 9553:9, 9555:20, 9559:13, 9559:15, 9561:5, 9562:4, 9564:17, 9564:23, 9568:4, 9568:8, 9570:1, 9580:16, 9581:23, 9585:3, 9587:6, 9589:8, 9593:22, 9594:16, 9597:14, 9597:17, 9597:20, 9597:22, 9597:24, 9598:8, 9598:25, 9600:2, 9603:12, 9604:14, 9606:11, 9607:4, 9607:23, 9609:8, 9616:1</p> <p>ones [2] - 9503:6, 9601:25</p> <p>ongoing [1] - 9477:6</p> <p>OPC [1] - 9496:7</p> <p>open [23] - 9479:19, 9486:15, 9487:5, 9495:8, 9506:4, 9513:13, 9515:20, 9520:3, 9522:23, 9523:24, 9547:6, 9547:11, 9562:13, 9571:8, 9573:5, 9581:12, 9587:25, 9592:7, 9592:9, 9602:23, 9605:4, 9608:11, 9612:3</p> <p>Open [1] - 9498:20</p> <p>opened [15] - 9486:6, 9486:10, 9486:23, 9522:11, 9522:23, 9523:17, 9523:24, 9524:4, 9525:12, 9527:14, 9532:16, 9533:7, 9536:24, 9546:2, 9604:12</p> <p>opens [1] - 9532:12</p> <p>operate [1] - 9611:25</p>	<p>opinion [5] - 9479:15, 9513:9, 9532:13, 9548:23</p> <p>opportunity [7] - 9535:16, 9544:11, 9544:24, 9548:24, 9599:20, 9602:12, 9615:24</p> <p>opposite [1] - 9483:6</p> <p>Orange [1] - 9469:4</p> <p>order [8] - 9493:24, 9497:23, 9547:6, 9547:9, 9553:15, 9553:22, 9579:19, 9588:18</p> <p>orders [1] - 9547:5</p> <p>ordinarily [1] - 9584:1</p> <p>ordinary [1] - 9569:6</p> <p>org [1] - 9598:10</p> <p>organization [1] - 9609:3</p> <p>organizations [1] - 9475:8</p> <p>orient [1] - 9555:12</p> <p>original [4] - 9505:16, 9505:22, 9592:16, 9593:3</p> <p>ostensibly [1] - 9502:4</p> <p>otherwise [1] - 9586:4</p> <p>ourselves [1] - 9507:1</p> <p>out-of-court [1] - 9540:1</p> <p>outed [1] - 9537:11</p> <p>outgoing [1] - 9488:23</p> <p>outside [7] - 9499:14, 9499:17, 9499:21, 9504:15, 9565:7, 9568:11, 9591:7</p> <p>overrule [1] - 9515:18</p> <p>overruled [13] - 9475:12, 9475:16, 9477:8, 9482:16, 9510:22, 9520:12, 9579:9, 9584:13, 9590:4, 9598:7, 9606:24, 9609:18</p> <p>own [7] - 9503:7, 9524:10, 9524:22, 9540:25, 9541:6, 9543:20, 9569:21</p> <p>owner [1] - 9594:17</p>	<p>9473:7, 9474:4, 9474:7, 9475:5, 9482:8, 9483:5, 9488:13, 9488:19, 9488:24, 9489:5, 9491:11, 9491:20, 9491:21, 9492:2, 9493:12, 9506:24, 9516:19, 9598:25</p> <p>pack [1] - 9598:16</p> <p>page [34] - 9470:9, 9470:23, 9471:14, 9471:16, 9471:25, 9472:12, 9472:14, 9473:3, 9473:10, 9473:24, 9474:19, 9474:20, 9475:3, 9477:13, 9477:14, 9480:11, 9480:17, 9481:2, 9482:18, 9482:20, 9483:1, 9483:21, 9483:22, 9487:14, 9488:10, 9488:17, 9488:25, 9490:20, 9491:15, 9594:12, 9594:16, 9595:12, 9600:21, 9605:9</p> <p>pages [4] - 9474:19, 9529:24, 9529:25, 9615:13</p> <p>paid [20] - 9577:2, 9577:18, 9577:23, 9578:6, 9580:13, 9580:25, 9581:2, 9581:4, 9581:6, 9581:7, 9581:9, 9582:7, 9582:18, 9582:24, 9583:5, 9583:24, 9584:7, 9584:21, 9584:23, 9585:14</p> <p>pair [1] - 9495:16</p> <p>panoply [1] - 9513:5</p> <p>paragraph [1] - 9506:23</p> <p>paraphrasing [1] - 9529:7</p> <p>Park [4] - 9469:16, 9574:3, 9574:11, 9574:16</p> <p>Parler [8] - 9491:13, 9514:16, 9515:9, 9515:11, 9515:13, 9515:22, 9610:7, 9610:8</p> <p>parole [1] - 9585:20</p> <p>part [14] - 9498:11, 9506:18, 9506:20, 9510:24, 9518:3,</p>	<p>9539:16, 9543:7, 9548:1, 9551:18, 9570:25, 9594:14, 9597:6, 9602:10, 9613:18</p> <p>participants [4] - 9539:10, 9594:16, 9602:20, 9603:1</p> <p>particular [16] - 9498:11, 9505:11, 9533:11, 9534:15, 9535:20, 9542:24, 9545:1, 9545:23, 9545:25, 9546:3, 9547:2, 9547:12, 9551:10, 9587:10, 9603:1, 9612:9</p> <p>particularly [4] - 9486:20, 9486:22, 9502:19, 9554:6</p> <p>parties [7] - 9478:6, 9505:10, 9535:23, 9553:23, 9554:3, 9586:15, 9617:3</p> <p>parts [1] - 9496:15</p> <p>party [3] - 9486:6, 9486:21, 9486:23</p> <p>passage [1] - 9546:11</p> <p>passes [1] - 9613:23</p> <p>past [4] - 9470:23, 9505:15, 9506:2, 9519:19</p> <p>patience [1] - 9562:2</p> <p>pattis [4] - 9570:9, 9572:7, 9611:7, 9616:15</p> <p>Pattis [8] - 9469:3, 9469:4, 9520:21, 9553:17, 9570:12, 9576:19, 9580:21, 9615:22</p> <p>PATTIS [31] - 9476:23, 9517:17, 9517:20, 9518:6, 9518:8, 9518:15, 9519:15, 9519:22, 9561:24, 9565:8, 9565:12, 9568:12, 9568:15, 9568:17, 9570:6, 9570:22, 9571:6, 9571:9, 9572:2, 9572:10, 9573:3, 9573:6, 9574:2, 9574:8, 9574:11, 9574:13, 9574:19, 9575:19, 9575:24, 9616:16, 9617:1</p> <p>Pattis.....9561</p> <p>[1] - 9619:5</p> <p>pause [10] - 9481:9,</p>
P			
<p>P.A [2] - 9469:10, 9469:12</p> <p>P.C [1] - 9469:15</p> <p>p.m [23] - 9468:8, 9471:5, 9471:18, 9472:8, 9472:17,</p>			

9489:25, 9496:20,
9497:10, 9498:24,
9499:1, 9499:9,
9499:11, 9508:12,
9595:16
paused [1] - 9492:11
paying [2] - 9572:11,
9582:21
payment [7] - 9583:21,
9584:18, 9585:9,
9585:12, 9585:13,
9587:19, 9588:7
payments [4] -
9578:23, 9579:19,
9581:14, 9581:25
PB [5] - 9473:15,
9477:21, 9509:19,
9594:22, 9594:23
PBs [1] - 9598:9
PC [1] - 9469:1
PD [1] - 9488:2
PDF [1] - 9496:11
peace [1] - 9500:20
pending [2] - 9615:1,
9616:10
people [28] - 9472:10,
9477:11, 9477:17,
9503:5, 9507:15,
9530:14, 9537:11,
9545:9, 9545:10,
9555:10, 9566:17,
9566:25, 9567:16,
9567:18, 9568:1,
9570:14, 9580:21,
9582:15, 9584:1,
9584:20, 9591:22,
9596:8, 9596:9,
9604:1, 9610:6,
9610:21
pepper [3] - 9541:1,
9541:5, 9543:20
pepper-sprayed [3] -
9541:1, 9541:5,
9543:20
per [1] - 9482:11
perceived [3] - 9536:3,
9537:7, 9593:1
percent [3] - 9509:21,
9607:21, 9607:22
perceptions [1] -
9537:5
perfectly [1] - 9510:6
performing [1] -
9584:15
perhaps [3] - 9579:5,
9584:15, 9612:19
period [1] - 9503:23
permissible [3] -
9569:24, 9569:25,
9573:4

permission [6] -
9482:1, 9489:21,
9494:25, 9560:21,
9560:22, 9596:1
permit [2] - 9524:5,
9527:7
permitted [1] - 9616:2
person [40] - 9474:9,
9474:11, 9477:25,
9484:6, 9484:14,
9484:21, 9484:23,
9485:14, 9487:9,
9500:17, 9500:18,
9517:1, 9526:1,
9533:11, 9533:16,
9536:1, 9536:8,
9541:17, 9541:23,
9542:12, 9543:1,
9546:22, 9563:16,
9564:9, 9565:4,
9565:15, 9566:23,
9567:14, 9568:5,
9568:8, 9569:12,
9570:1, 9582:18,
9585:5, 9588:20,
9594:19, 9598:14,
9598:19, 9604:17,
9610:16
person's [2] - 9487:9,
9567:12
personal [4] -
9474:14, 9475:14,
9520:22, 9608:17
persons [2] - 9585:17,
9585:20
perspective [2] -
9545:18, 9571:3
persuaded [1] -
9563:15
Peter [1] - 9619:3
Pezzola [8] - 9468:8,
9469:15, 9514:11,
9514:19, 9515:11,
9515:13, 9516:4,
9516:6
Pezzola's [2] -
9515:22, 9516:23
Phillips [4] - 9508:10,
9603:25, 9605:17,
9605:20
phone [14] - 9476:1,
9481:18, 9487:24,
9490:9, 9525:7,
9526:17, 9530:14,
9530:18, 9530:19,
9531:8, 9588:15,
9598:11, 9600:17,
9612:23
phones [1] - 9484:11
photo [3] - 9491:12,

9514:18, 9515:23
phrase [1] - 9539:21
pick [3] - 9482:19,
9511:16, 9511:22
picked [1] - 9514:4
picking [1] - 9476:5
piece [1] - 9537:15
place [3] - 9511:17,
9512:19, 9547:5
placed [1] - 9586:11
Plaintiff [2] - 9468:4,
9468:14
plan [6] - 9478:16,
9478:17, 9493:21,
9516:5, 9547:7, 9572:9
planned [1] - 9507:10
planning [2] - 9546:5,
9558:5
plans [1] - 9511:21
play [12] - 9493:2,
9498:23, 9505:16,
9505:22, 9505:25,
9508:9, 9512:13,
9534:8, 9536:6,
9553:13, 9561:5,
9591:3
played [30] - 9493:3,
9496:19, 9497:16,
9498:16, 9498:25,
9499:10, 9499:25,
9500:9, 9502:5,
9503:11, 9504:10,
9504:19, 9504:20,
9508:11, 9512:14,
9514:25, 9534:2,
9537:5, 9561:7,
9590:24, 9591:9,
9592:5, 9592:11,
9592:12, 9603:13,
9603:24, 9604:17,
9604:18, 9605:16,
9606:3
playing [2] - 9499:9,
9500:14
plays [2] - 9551:10,
9553:17
Plaza [2] - 9468:21,
9528:23
plea [1] - 9617:13
PLLC [1] - 9468:23
plowing [1] - 9615:16
plug [1] - 9535:12
point [45] - 9485:7,
9486:11, 9487:1,
9488:16, 9500:2,
9501:14, 9502:11,
9504:2, 9504:21,
9505:12, 9516:7,
9524:17, 9527:5,
9527:10, 9529:12,

9531:5, 9531:20,
9533:12, 9536:25,
9537:4, 9537:19,
9539:20, 9540:3,
9540:7, 9542:13,
9545:18, 9546:6,
9546:8, 9548:1,
9548:15, 9549:9,
9550:23, 9551:2,
9551:16, 9551:24,
9552:24, 9553:11,
9568:10, 9570:13,
9579:7, 9579:11,
9580:11, 9581:3,
9583:22, 9604:11
points [3] - 9501:10,
9555:2, 9615:18
police [8] - 9479:3,
9479:7, 9487:23,
9490:24, 9493:6,
9493:17, 9524:9,
9575:13
Police [14] - 9470:15,
9480:1, 9523:20,
9523:22, 9524:12,
9530:5, 9530:7,
9573:10, 9573:12,
9573:17, 9573:20,
9574:3, 9574:11,
9574:16
policies [1] - 9536:19
policy [1] - 9587:16
political [1] - 9506:11
popped [1] - 9496:3
portion [4] - 9542:4,
9542:7, 9546:10,
9560:19
portions [2] - 9500:4,
9539:17
portray [1] - 9572:16
posed [2] - 9560:10,
9560:14
position [2] - 9533:17,
9536:9
positive [1] - 9529:15
possession [1] -
9523:18
possibility [4] -
9534:23, 9589:14,
9589:21, 9590:3
possible [3] - 9512:18,
9520:13, 9548:22
post [2] - 9515:9,
9515:10
posted [2] - 9491:13,
9608:1
posts [3] - 9514:18,
9515:22
potential [3] - 9475:8,
9480:7, 9564:21

<p>practice [7] - 9556:1, 9557:13, 9558:10, 9558:15, 9559:1, 9567:9, 9570:13</p> <p>practices [2] - 9573:1, 9573:9</p> <p>pre [1] - 9483:17</p> <p>pre-December [1] - 9483:17</p> <p>preceded [3] - 9484:7, 9484:23, 9487:7</p> <p>precedent [1] - 9616:1</p> <p>preceding [1] - 9508:16</p> <p>preemptively [1] - 9523:3</p> <p>prejudiced [2] - 9546:20, 9547:16</p> <p>prejudicial [1] - 9484:15</p> <p>preparation [1] - 9494:17</p> <p>presence [3] - 9536:16, 9611:9</p> <p>present [4] - 9539:13, 9553:14, 9576:19, 9610:21</p> <p>presented [2] - 9539:22, 9546:20</p> <p>President's [3] - 9494:19, 9495:19, 9495:20</p> <p>presidents [4] - 9495:6, 9500:11, 9501:18, 9503:24</p> <p>presumably [2] - 9562:15, 9596:17</p> <p>pretty [2] - 9531:20, 9615:13</p> <p>preview [1] - 9553:18</p> <p>previous [1] - 9593:22</p> <p>previously [1] - 9492:25</p> <p>principle [1] - 9505:1</p> <p>privilege [1] - 9524:25</p> <p>probation [1] - 9585:22</p> <p>problem [6] - 9499:8, 9516:4, 9536:13, 9545:24, 9556:22, 9572:7</p> <p>problems [1] - 9548:22</p> <p>procedural [1] - 9505:3</p> <p>procedure [1] - 9563:10</p> <p>procedures [3] - 9536:19, 9537:8, 9614:7</p>	<p>proceed [5] - 9470:22, 9487:4, 9520:2, 9547:3, 9616:19</p> <p>proceeded [1] - 9541:16</p> <p>proceedings [1] - 9618:6</p> <p>process [4] - 9544:18, 9544:20, 9544:21, 9545:18</p> <p>produce [1] - 9551:7</p> <p>produced [3] - 9526:2, 9529:14, 9547:23</p> <p>professional [2] - 9520:21, 9549:10</p> <p>proffer [2] - 9528:20, 9570:2</p> <p>program [1] - 9600:16</p> <p>promise [1] - 9571:11</p> <p>Promises [1] - 9487:20</p> <p>prone [1] - 9504:14</p> <p>propensity [3] - 9504:12, 9504:16, 9505:13</p> <p>proper [1] - 9536:14</p> <p>proposal [1] - 9604:20</p> <p>propose [1] - 9553:16</p> <p>proposed [1] - 9552:16</p> <p>proposing [2] - 9547:11, 9552:20</p> <p>prosecution [1] - 9564:13</p> <p>prosecutor [1] - 9545:8</p> <p>prospects [3] - 9540:25, 9541:5, 9543:20</p> <p>protecting [1] - 9614:4</p> <p>Protest [1] - 9487:20</p> <p>protest [1] - 9506:18</p> <p>protocols [1] - 9614:4</p> <p>protracted [1] - 9616:4</p> <p>Proud [14] - 9482:8, 9492:18, 9493:6, 9503:5, 9506:7, 9506:17, 9520:25, 9533:16, 9536:3, 9594:22, 9597:7, 9609:2, 9610:4, 9610:15</p> <p>provide [11] - 9524:2, 9547:6, 9553:3, 9554:9, 9555:11, 9576:17, 9577:1, 9580:20, 9612:5, 9612:13, 9612:25</p> <p>provided [7] - 9492:25, 9552:17,</p>	<p>9553:3, 9578:22, 9580:3, 9580:7, 9580:24</p> <p>provides [6] - 9544:9, 9544:10, 9551:3, 9582:13, 9582:14</p> <p>providing [5] - 9525:23, 9538:7, 9551:11, 9582:19, 9582:20</p> <p>public [2] - 9496:24, 9517:4</p> <p>publish [8] - 9481:25, 9482:1, 9489:21, 9491:22, 9495:1, 9560:21, 9596:1, 9605:7</p> <p>pull [9] - 9475:22, 9489:12, 9492:10, 9493:9, 9497:8, 9511:8, 9544:1, 9603:14, 9603:17</p> <p>punching [1] - 9509:22</p> <p>purportedly [1] - 9542:11</p> <p>purporting [1] - 9501:19</p> <p>purpose [11] - 9487:12, 9501:7, 9501:15, 9501:18, 9502:18, 9521:4, 9540:5, 9542:25, 9586:24, 9587:22, 9591:7</p> <p>purposes [6] - 9547:10, 9597:7, 9597:15, 9602:9, 9603:9, 9615:5</p> <p>push [1] - 9493:24</p> <p>put [36] - 9486:8, 9498:9, 9502:14, 9505:4, 9514:4, 9515:9, 9519:13, 9525:3, 9525:4, 9529:14, 9530:15, 9534:10, 9534:19, 9539:18, 9541:14, 9541:22, 9542:6, 9543:4, 9546:21, 9546:25, 9547:4, 9547:18, 9550:14, 9552:22, 9553:2, 9553:23, 9556:4, 9561:25, 9563:21, 9570:15, 9580:10, 9607:16, 9607:18, 9611:14, 9611:24, 9617:19</p> <p>putting [5] - 9501:14,</p>	<p>9529:17, 9544:7, 9600:2, 9606:10</p> <p style="text-align: center;">Q</p> <p>Quantico [1] - 9568:4</p> <p>questioned [1] - 9605:22</p> <p>questioning [9] - 9478:12, 9524:5, 9526:5, 9532:11, 9533:24, 9534:13, 9535:17, 9586:21, 9609:13</p> <p>questions [39] - 9478:20, 9486:13, 9519:10, 9520:21, 9525:15, 9533:2, 9533:5, 9533:6, 9534:4, 9536:6, 9537:9, 9555:13, 9558:17, 9566:9, 9566:13, 9569:16, 9570:25, 9571:13, 9571:15, 9571:18, 9572:20, 9573:9, 9576:20, 9576:22, 9579:15, 9580:2, 9580:16, 9587:7, 9587:11, 9591:25, 9592:2, 9592:24, 9603:25, 9607:4, 9611:9, 9611:12, 9615:11</p> <p>quickly [1] - 9548:22</p> <p>quintessential [1] - 9539:21</p> <p>quite [5] - 9504:3, 9508:23, 9576:10, 9587:14</p> <p>quote [6] - 9501:5, 9501:19, 9503:10, 9539:24, 9542:19, 9543:19</p> <p>quotes [1] - 9505:10</p> <p style="text-align: center;">R</p> <p>racist [2] - 9483:8, 9483:9</p> <p>raise [6] - 9525:9, 9533:9, 9536:15, 9544:13, 9550:25, 9615:17</p> <p>raised [8] - 9524:20, 9524:21, 9525:18, 9545:18, 9550:25, 9561:17, 9615:22, 9616:2</p> <p>raising [3] - 9528:8,</p>
--	---	---	--

9531:5, 9542:13
rallies [3] - 9495:14,
 9604:16, 9607:1
Rally [5] - 9506:13,
 9506:16, 9506:17,
 9506:25, 9507:3
rally [17] - 9506:18,
 9507:5, 9507:11,
 9507:13, 9507:20,
 9507:25, 9508:13,
 9508:16, 9508:18,
 9509:17, 9509:22,
 9510:1, 9510:11,
 9558:3, 9558:4,
 9558:13, 9558:14
ran [1] - 9493:13
rapport [1] - 9568:9
rather [2] - 9536:2,
 9545:3
re [3] - 9534:1, 9534:2,
 9615:16
re-plowing [1] -
 9615:16
re-video [1] - 9534:1
reach [1] - 9500:14
reached [1] - 9488:2
read [30] - 9471:17,
 9472:7, 9473:9,
 9474:2, 9476:7,
 9477:15, 9482:7,
 9483:3, 9487:16,
 9487:17, 9488:11,
 9490:14, 9490:21,
 9491:9, 9506:23,
 9507:8, 9509:16,
 9509:19, 9536:9,
 9542:19, 9592:5,
 9592:14, 9596:11,
 9596:21, 9598:3,
 9598:23, 9600:16,
 9604:2, 9606:6,
 9607:23
reading [3] - 9478:13,
 9560:6, 9597:11
reads [4] - 9475:5,
 9476:14, 9480:21,
 9481:7
ready [1] - 9500:16
real [2] - 9509:23,
 9571:11
realize [2] - 9503:19,
 9529:21
realized [2] - 9503:16,
 9552:2
really [11] - 9502:21,
 9505:8, 9532:8,
 9542:25, 9543:7,
 9546:13, 9546:20,
 9550:14, 9550:16,
 9575:7, 9604:16

reason [28] - 9485:25,
 9509:21, 9509:23,
 9514:3, 9517:3,
 9518:25, 9519:1,
 9522:9, 9526:10,
 9526:12, 9527:7,
 9531:13, 9536:4,
 9537:15, 9537:17,
 9540:9, 9541:7,
 9544:17, 9549:1,
 9561:15, 9582:6,
 9595:1, 9604:8,
 9604:9, 9604:12,
 9604:15
reasoning [1] -
 9617:16
reasons [3] - 9531:16,
 9563:16, 9604:13
reassurance [1] -
 9568:22
rebut [5] - 9500:19,
 9503:7, 9515:6,
 9537:19, 9543:3
receive [3] - 9581:24,
 9613:5, 9613:19
receiving [4] - 9524:8,
 9565:4, 9584:18,
 9617:4
recently [1] - 9546:3
recess [1] - 9535:8
reciprocal [1] -
 9543:13
recitation [2] -
 9513:11, 9550:6
recognize [10] -
 9481:13, 9489:13,
 9494:16, 9496:12,
 9497:11, 9525:6,
 9530:18, 9554:18,
 9593:15, 9615:25
recollection [1] -
 9530:23
record [17] - 9470:3,
 9483:18, 9492:24,
 9500:25, 9524:19,
 9535:9, 9550:14,
 9550:17, 9552:16,
 9579:16, 9588:7,
 9588:18, 9589:3,
 9591:4, 9602:25,
 9611:16, 9613:13
recorded [2] -
 9488:24, 9570:24
recordkeeping [1] -
 9588:2
records [1] - 9491:6
recounting [1] -
 9500:15
recounts [1] - 9503:10
recross [30] - 9498:10,

9522:8, 9522:13,
 9522:15, 9524:23,
 9525:12, 9525:13,
 9525:15, 9527:8,
 9532:13, 9532:16,
 9532:20, 9532:21,
 9532:24, 9533:1,
 9535:1, 9536:12,
 9536:14, 9536:20,
 9536:23, 9546:1,
 9547:14, 9554:19,
 9554:21, 9571:25,
 9591:7, 9592:6,
 9604:5, 9611:23,
 9616:1
Recross [4] - 9619:4,
 9619:5, 9619:5, 9619:6
recross-examination
 [2] - 9554:19, 9554:21
recruits [1] - 9576:23
red [1] - 9525:8
REDIRECT [1] -
 9470:11
Redirect [1] - 9619:4
redirect [23] - 9486:5,
 9486:17, 9504:23,
 9522:25, 9523:9,
 9525:10, 9527:23,
 9527:25, 9535:25,
 9536:24, 9555:2,
 9555:17, 9561:2,
 9572:12, 9587:14,
 9590:24, 9592:11,
 9603:12, 9604:3,
 9608:8, 9611:23,
 9615:12, 9616:3
refer [2] - 9511:5,
 9584:1
reference [6] - 9488:5,
 9508:19, 9509:25,
 9512:15, 9559:17,
 9606:25
referenced [1] -
 9592:21
referred [1] - 9555:9
referring [5] - 9506:13,
 9530:13, 9539:4,
 9558:4, 9558:13
refers [2] - 9578:2,
 9578:3
reflected [1] - 9500:25
reflections [1] -
 9594:25
reflective [1] - 9531:18
refrain [1] - 9479:2
refresh [1] - 9500:6
regard [3] - 9534:18,
 9553:16, 9617:13
Regarding [1] -
 9580:6

regarding [4] - 9493:6,
 9523:12, 9531:7,
 9551:10
regardless [1] -
 9502:15
regulated [2] - 9614:6,
 9615:2
regulations [1] -
 9590:6
Regulatory [1] -
 9472:20
Rehl [19] - 9468:7,
 9469:6, 9482:14,
 9511:21, 9512:2,
 9576:7, 9593:14,
 9594:17, 9595:6,
 9595:24, 9596:9,
 9599:25, 9601:16,
 9602:1, 9603:3,
 9604:1, 9606:6,
 9619:10, 9619:10
Rehl's [4] - 9603:4,
 9603:5, 9607:7, 9608:1
reimbursed [1] -
 9578:16
reimbursement [1] -
 9578:19
reject [1] - 9607:4
rejected [1] - 9616:6
rejection [2] -
 9604:19, 9607:14
related [1] - 9501:3
relationship [20] -
 9486:8, 9486:16,
 9486:19, 9522:25,
 9524:20, 9525:21,
 9525:22, 9526:24,
 9568:18, 9569:7,
 9569:9, 9570:14,
 9570:19, 9571:16,
 9572:3, 9572:14,
 9572:19, 9575:7,
 9584:9
relative [2] - 9513:22,
 9520:6
relevance [20] -
 9478:5, 9500:13,
 9502:4, 9513:24,
 9531:13, 9531:22,
 9559:10, 9573:25,
 9577:20, 9579:8,
 9580:15, 9581:8,
 9586:13, 9587:1,
 9587:17, 9601:17,
 9601:24, 9602:10,
 9614:12
relevant [7] - 9500:4,
 9501:11, 9531:15,
 9534:16, 9552:2,
 9587:22, 9611:15

<p>reliable [2] - 9562:21, 9613:21</p> <p>reluctant [1] - 9537:10</p> <p>remaining [1] - 9615:10</p> <p>remark [1] - 9561:9</p> <p>remember [20] - 9492:6, 9492:12, 9493:7, 9494:12, 9506:8, 9507:12, 9510:8, 9511:10, 9514:14, 9517:14, 9518:13, 9518:18, 9520:22, 9531:6, 9555:4, 9573:8, 9590:23, 9591:1, 9592:12, 9597:22</p> <p>remind [4] - 9517:23, 9518:22, 9518:24, 9521:8</p> <p>removed [10] - 9536:4, 9537:6, 9537:14, 9539:23, 9540:3, 9540:22, 9543:1, 9543:2, 9559:18, 9560:15</p> <p>removing [1] - 9540:5</p> <p>repeat [1] - 9549:20</p> <p>repeatedly [1] - 9616:6</p> <p>rephrase [1] - 9613:7</p> <p>replayed [1] - 9533:7</p> <p>replied [1] - 9610:10</p> <p>report [8] - 9472:10, 9473:14, 9582:1, 9594:14, 9599:15, 9600:13, 9601:13, 9612:24</p> <p>reporter [5] - 9469:21, 9504:14, 9521:21, 9535:6, 9618:11</p> <p>reporting [1] - 9476:22</p> <p>reports [2] - 9614:6, 9616:11</p> <p>represent [1] - 9576:7</p> <p>representation [3] - 9485:25, 9486:1, 9601:13</p> <p>represented [1] - 9501:4</p> <p>reproduction [1] - 9481:17</p> <p>request [1] - 9617:5</p> <p>requested [1] - 9580:4</p> <p>require [1] - 9522:15</p> <p>requires [1] - 9616:17</p> <p>rerun [1] - 9608:7</p> <p>reserve [2] - 9602:14, 9602:15</p>	<p>reserved [1] - 9538:2</p> <p>resolve [1] - 9548:12</p> <p>resort [1] - 9569:19</p> <p>respect [11] - 9503:4, 9517:23, 9519:12, 9552:19, 9558:7, 9571:21, 9573:19, 9574:3, 9588:3, 9592:25, 9598:17</p> <p>respectfully [3] - 9524:6, 9544:25, 9545:21</p> <p>respond [4] - 9508:21, 9510:3, 9544:6, 9551:18</p> <p>responded [2] - 9521:15, 9536:18</p> <p>responding [2] - 9516:6, 9551:3</p> <p>responds [1] - 9606:6</p> <p>response [9] - 9471:6, 9471:11, 9539:19, 9604:1, 9604:20, 9607:8, 9607:13, 9607:14</p> <p>responsibility [2] - 9476:10, 9476:19</p> <p>rest [1] - 9597:3</p> <p>resume [1] - 9554:1</p> <p>retaining [2] - 9599:7</p> <p>retards [1] - 9561:12</p> <p>return [3] - 9490:18, 9494:10, 9615:9</p> <p>returns [1] - 9538:2</p> <p>reverse [1] - 9570:2</p> <p>reversed [1] - 9615:18</p> <p>review [6] - 9516:25, 9531:7, 9551:7, 9597:10, 9599:20, 9609:24</p> <p>reviewed [9] - 9481:14, 9481:18, 9494:17, 9506:10, 9513:18, 9525:6, 9526:12, 9526:16, 9597:15</p> <p>reward [2] - 9578:15, 9579:5</p> <p>rewards [5] - 9578:3, 9578:4, 9578:5, 9578:11, 9578:21</p> <p>rightly [1] - 9572:11</p> <p>RMR [1] - 9469:21</p> <p>Road [1] - 9469:7</p> <p>road [4] - 9541:24, 9554:8, 9611:10, 9615:4</p> <p>robbed [1] - 9540:18</p> <p>Roger [2] - 9469:17, 9469:18</p>	<p>rogerisaacroots@outlook.com [1] - 9469:19</p> <p>rohde [1] - 9494:14</p> <p>Rohde [42] - 9470:8, 9472:5, 9472:12, 9474:1, 9475:22, 9481:12, 9482:18, 9482:23, 9483:21, 9488:16, 9488:25, 9489:12, 9489:22, 9490:2, 9490:12, 9490:18, 9491:15, 9491:22, 9492:10, 9493:2, 9493:9, 9495:3, 9495:21, 9495:22, 9496:10, 9496:17, 9497:8, 9498:23, 9499:9, 9499:12, 9507:6, 9508:9, 9508:24, 9511:8, 9512:13, 9514:13, 9514:20, 9591:3, 9603:14, 9605:10, 9606:2, 9608:19</p> <p>ROHDE [1] - 9495:24</p> <p>role [7] - 9519:10, 9519:21, 9520:15, 9534:5, 9538:8, 9539:1, 9587:11</p> <p>Room [1] - 9618:12</p> <p>ROOTS [2] - 9481:23, 9532:7</p> <p>Roots [3] - 9469:17, 9469:18, 9532:6</p> <p>roots [1] - 9617:11</p> <p>roughly [1] - 9521:6</p> <p>rule [9] - 9476:25, 9505:14, 9517:24, 9518:23, 9540:19, 9546:9, 9553:4, 9554:11</p> <p>Rule [15] - 9497:15, 9498:14, 9500:1, 9502:11, 9502:15, 9502:21, 9504:21, 9518:8, 9542:13, 9544:25, 9545:3, 9548:16, 9553:17, 9553:22, 9554:7</p> <p>ruled [4] - 9534:11, 9534:14, 9550:20</p> <p>rules [2] - 9590:6, 9602:10</p> <p>ruling [2] - 9541:19, 9544:25</p> <p>rulings [1] - 9602:11</p> <p>run [2] - 9520:18, 9535:18</p>	<p>running [1] - 9616:13</p> <p>runs [1] - 9520:20</p>
S			
<p>Sabino [1] - 9469:12</p> <p>sabino@jaureguilaw.com [1] - 9469:14</p> <p>sanctions [3] - 9517:21, 9517:25, 9518:1</p> <p>save [3] - 9521:20, 9535:12, 9614:14</p> <p>saw [7] - 9479:6, 9491:24, 9496:12, 9496:15, 9506:14, 9515:22, 9598:10</p> <p>scale [1] - 9614:2</p> <p>schedule [1] - 9521:19</p> <p>scope [59] - 9476:23, 9486:4, 9499:14, 9499:18, 9499:21, 9499:23, 9501:16, 9502:16, 9502:22, 9504:1, 9504:7, 9504:8, 9504:15, 9505:6, 9505:9, 9505:20, 9512:23, 9513:7, 9514:21, 9515:2, 9515:3, 9515:19, 9523:12, 9524:23, 9526:3, 9529:19, 9532:24, 9538:3, 9552:12, 9559:10, 9565:7, 9568:11, 9568:13, 9568:14, 9570:5, 9570:21, 9571:25, 9573:25, 9579:8, 9579:10, 9580:4, 9586:13, 9591:6, 9591:13, 9598:5, 9601:17, 9603:15, 9606:23, 9609:12, 9610:1, 9610:11, 9611:7, 9611:14, 9612:8, 9614:12, 9615:5, 9616:7</p> <p>screen [15] - 9473:25, 9481:10, 9489:10, 9490:14, 9492:8, 9494:14, 9497:7, 9556:6, 9556:11, 9556:20, 9557:24, 9575:1, 9594:2, 9594:11</p> <p>screens [1] - 9557:4</p> <p>scroll [20] - 9470:22, 9472:5, 9482:20, 9482:23, 9490:12,</p>			

9491:8, 9491:15,
9493:10, 9493:18,
9493:22, 9494:3,
9495:3, 9507:7,
9508:8, 9508:24,
9516:22, 9595:9,
9595:12, 9599:18,
9604:22
scrolling [15] -
9471:12, 9480:12,
9483:21, 9511:8,
9511:20, 9511:25,
9516:13, 9600:20,
9600:23, 9600:25,
9601:2, 9601:4,
9601:6, 9601:8,
9601:10
search [1] - 9562:18
seated [6] - 9550:15,
9550:16, 9554:17,
9614:23, 9614:24,
9616:17
second [8] - 9471:16,
9477:14, 9481:7,
9483:22, 9488:12,
9488:15, 9594:19,
9597:6
seconds [8] - 9488:24,
9489:7, 9490:25,
9491:2, 9494:5,
9543:18, 9543:19,
9560:20
Secret [1] - 9481:1
section [1] - 9492:23
see [76] - 9470:9,
9470:24, 9471:1,
9471:6, 9471:11,
9472:1, 9473:4,
9474:20, 9477:16,
9477:17, 9480:12,
9480:17, 9482:24,
9484:6, 9484:20,
9487:8, 9488:4,
9488:22, 9488:23,
9491:16, 9495:25,
9496:5, 9496:17,
9499:12, 9506:22,
9508:8, 9509:6,
9509:17, 9510:7,
9510:11, 9511:9,
9513:16, 9514:13,
9514:18, 9515:15,
9516:6, 9521:14,
9534:21, 9534:23,
9534:24, 9535:6,
9547:5, 9551:7,
9556:6, 9556:11,
9556:13, 9556:20,
9557:4, 9557:7,
9557:24, 9559:15,

9578:8, 9581:8,
9583:23, 9584:20,
9585:11, 9586:25,
9587:17, 9589:18,
9593:15, 9594:8,
9594:12, 9594:24,
9595:7, 9595:8,
9600:12, 9603:18,
9604:21, 9604:24,
9608:16, 9613:2,
9614:16, 9614:17,
9616:8, 9616:20,
9617:22
seeing [5] - 9490:10,
9492:12, 9514:14,
9535:4, 9580:14
seek [6] - 9508:18,
9525:19, 9605:25,
9606:1, 9607:9,
9607:10
seeking [1] - 9528:8
seeks [1] - 9542:24
seem [4] - 9505:10,
9523:10, 9544:16,
9563:21
Self [5] - 9489:14,
9490:6, 9492:2,
9521:3, 9542:10
self [4] - 9490:24,
9491:2, 9491:17,
9491:24
Self-Defense [5] -
9489:14, 9490:6,
9492:2, 9521:3,
9542:10
self-destruct [4] -
9490:24, 9491:2,
9491:17, 9491:24
send [7] - 9492:1,
9516:11, 9549:6,
9556:2, 9556:16,
9557:15
sender [5] - 9472:15,
9476:7, 9476:8,
9489:2, 9490:21
senders [1] - 9474:3
sending [2] - 9495:5,
9548:17
sends [1] - 9482:7
sense [4] - 9521:24,
9534:20, 9602:15,
9617:10
sent [19] - 9471:10,
9473:13, 9484:20,
9488:6, 9497:21,
9498:1, 9547:23,
9548:3, 9548:4,
9548:7, 9549:1,
9549:4, 9551:16,
9551:17, 9552:18,

9552:25, 9609:5,
9610:9
sentence [2] -
9493:16, 9546:24
separate [9] - 9472:25,
9473:21, 9529:22,
9530:19, 9537:15,
9542:9, 9551:1, 9551:5
series [1] - 9482:24
Service [1] - 9481:1
set [5] - 9490:24,
9491:2, 9498:15,
9529:22, 9577:24
sets [1] - 9571:1
setting [1] - 9566:23
several [3] - 9587:7,
9596:15, 9603:25
severe [1] - 9544:7
Shane [30] - 9470:15,
9471:1, 9471:18,
9472:9, 9473:11,
9476:8, 9477:15,
9479:3, 9479:12,
9487:15, 9490:24,
9491:9, 9492:4,
9523:1, 9523:16,
9523:18, 9523:25,
9524:1, 9524:3,
9524:7, 9527:12,
9528:21, 9529:2,
9530:3, 9530:6,
9532:8, 9532:12,
9554:25, 9571:13,
9573:22
share [3] - 9537:10,
9567:17, 9614:1
shared [4] - 9486:10,
9523:21, 9524:9,
9614:5
shares [1] - 9496:14
sharing [1] - 9473:20
sharp [1] - 9614:18
shit [1] - 9493:14
shocked [1] - 9477:23
shocked-face [1] -
9477:23
Shore [7] - 9596:23,
9597:2, 9597:6,
9598:9, 9598:12,
9599:3, 9599:6
shore [1] - 9598:8
short [2] - 9587:14,
9590:25
shorten [1] - 9563:21
shortly [2] - 9472:19,
9510:23
show [19] - 9473:24,
9481:12, 9524:6,
9534:14, 9537:1,
9537:13, 9537:17,

9538:15, 9538:19,
9540:3, 9540:4,
9541:6, 9544:2,
9555:23, 9589:17,
9593:12, 9599:11,
9604:15, 9616:20
showed [4] - 9497:4,
9515:7, 9530:17,
9574:25
showing [3] - 9500:4,
9515:25, 9541:7
shown [2] - 9497:24,
9575:1
shows [3] - 9546:15,
9546:16, 9582:8
shut [1] - 9472:9
shutting [1] - 9505:2
sic [1] - 9527:25
side [7] - 9502:7,
9519:2, 9534:18,
9551:5, 9551:6,
9553:13, 9602:17
sidebar [10] - 9478:7,
9497:17, 9513:3,
9570:10, 9572:5,
9579:24, 9586:15,
9601:21, 9608:4,
9611:3
sides [7] - 9547:10,
9550:13, 9550:23,
9551:9, 9553:11,
9553:24, 9617:19
signed [1] - 9492:3
silent [1] - 9607:5
simply [3] - 9484:22,
9567:14, 9569:6
simultaneously [1] -
9502:20
single [1] - 9520:9
sit [2] - 9545:12,
9545:13
sitting [1] - 9552:3
situation [6] -
9547:15, 9550:11,
9568:1, 9570:20,
9590:13, 9592:6
situations [3] -
9566:16, 9606:10,
9606:12
Sixth [1] - 9469:16
size [2] - 9520:17,
9561:25
skipper [1] - 9571:11
Skull [2] - 9481:20,
9509:14
sleep [1] - 9498:6
slightly [2] - 9514:2,
9536:20
slowly [5] - 9495:4,
9595:9, 9595:12,

<p>9599:19, 9600:20 small [4] - 9520:7, 9529:11, 9539:17, 9602:5 SMITH [28] - 9500:22, 9500:24, 9501:23, 9508:3, 9512:22, 9513:24, 9517:7, 9532:25, 9535:12, 9536:25, 9539:3, 9539:19, 9540:21, 9542:18, 9543:13, 9543:16, 9543:25, 9554:2, 9554:22, 9557:6, 9558:8, 9558:18, 9559:12, 9560:21, 9560:23, 9561:19, 9583:10, 9583:13 Smith [24] - 9468:23, 9468:23, 9469:4, 9494:11, 9497:3, 9500:5, 9500:8, 9501:19, 9504:5, 9504:19, 9505:10, 9507:13, 9510:9, 9510:14, 9513:15, 9539:11, 9539:17, 9542:7, 9542:20, 9542:23, 9546:3, 9550:20, 9552:1, 9554:1 smith [1] - 9502:5 Smith's [3] - 9499:25, 9503:1, 9504:2 Smith..... 9554 [1] - 9619:4 social [1] - 9476:14 solely [1] - 9501:9 solution [2] - 9495:13, 9516:21 solved [1] - 9516:23 someone [17] - 9476:18, 9479:8, 9493:21, 9503:13, 9542:11, 9562:25, 9565:22, 9570:20, 9579:3, 9579:4, 9579:5, 9583:18, 9585:14, 9589:1, 9589:9, 9603:24, 9616:20 sometimes [9] - 9474:11, 9513:16, 9553:12, 9567:16, 9569:2, 9569:12, 9569:19, 9571:19, 9578:21 somewhat [2] - 9545:21, 9570:22</p>	<p>somewhere [1] - 9526:9 soon [1] - 9511:13 sorry [27] - 9472:5, 9486:2, 9489:7, 9509:7, 9538:6, 9540:21, 9558:16, 9561:8, 9575:6, 9577:6, 9577:23, 9578:4, 9579:13, 9579:23, 9580:19, 9583:14, 9583:16, 9589:24, 9589:25, 9590:15, 9591:3, 9593:19, 9595:14, 9599:22, 9613:4, 9613:6 sort [9] - 9478:10, 9505:2, 9513:9, 9515:12, 9522:11, 9535:1, 9537:19, 9553:2, 9587:3 sought [1] - 9563:11 sound [1] - 9609:24 sounded [1] - 9549:22 sounds [2] - 9475:5, 9531:21 source [37] - 9473:21, 9476:21, 9526:11, 9536:2, 9536:3, 9536:10, 9555:19, 9557:12, 9557:14, 9557:18, 9558:2, 9558:12, 9558:17, 9562:13, 9562:23, 9568:19, 9572:16, 9572:17, 9575:13, 9577:5, 9577:8, 9577:18, 9578:6, 9578:22, 9579:3, 9581:24, 9581:25, 9586:3, 9588:4, 9588:7, 9588:11, 9588:14, 9588:15, 9588:19, 9588:25, 9589:9 Sources [1] - 9580:6 sources [31] - 9471:22, 9471:23, 9472:25, 9473:20, 9474:11, 9474:13, 9475:8, 9476:21, 9491:6, 9555:7, 9555:14, 9555:24, 9558:25, 9563:20, 9576:11, 9576:17, 9576:23, 9577:2, 9577:9, 9577:11, 9577:24, 9578:8, 9579:8, 9580:18,</p>	<p>9581:2, 9581:14, 9582:7, 9585:17, 9587:12, 9614:10 speaker's [1] - 9540:4 speakers [2] - 9508:19, 9509:25 speaking [8] - 9479:12, 9496:8, 9532:11, 9554:6, 9570:7, 9577:17, 9591:22, 9598:21 Special [2] - 9602:25, 9605:12 specific [8] - 9480:15, 9500:25, 9511:16, 9532:22, 9533:1, 9555:24, 9556:23, 9612:12 specifically [6] - 9503:2, 9517:14, 9522:24, 9524:11, 9528:21, 9534:2 specifics [1] - 9570:20 speculate [1] - 9485:14 speculation [3] - 9484:8, 9485:6, 9575:21 speeding [1] - 9540:17 spent [1] - 9555:1 split [1] - 9598:11 spot [1] - 9511:22 spouse [1] - 9603:5 sprayed [3] - 9541:1, 9541:5, 9543:20 sprung [1] - 9502:12 spun [3] - 9477:20, 9478:1, 9480:8 squarely [2] - 9524:21, 9572:2 stabbed [1] - 9473:16 stabbing [1] - 9606:13 staff [1] - 9549:14 stage [1] - 9507:16 stages [2] - 9508:19, 9509:25 stake [1] - 9518:9 stamp [2] - 9607:21, 9607:22 stand [2] - 9479:8, 9590:20 standard [1] - 9559:1 standards [1] - 9586:11 standing [3] - 9545:9, 9575:2, 9575:4 standpoint [1] - 9536:13 stands [3] - 9548:15,</p>	<p>9549:13, 9549:15 start [4] - 9475:23, 9580:13, 9615:4, 9617:9 started [5] - 9544:1, 9590:23, 9592:11, 9596:23, 9598:9 starting [2] - 9481:6, 9554:19 startled [1] - 9570:22 starts [1] - 9570:21 state [11] - 9511:13, 9514:7, 9531:16, 9531:19, 9539:21, 9539:22, 9540:4, 9540:19, 9597:3, 9597:4, 9597:7 statement [14] - 9502:7, 9503:7, 9503:8, 9510:19, 9537:16, 9540:1, 9540:15, 9540:21, 9540:23, 9541:4, 9541:7, 9541:11, 9542:24, 9544:4 statements [6] - 9501:1, 9501:3, 9501:4, 9501:8, 9536:9, 9607:5 STATES [2] - 9468:1, 9468:12 States [4] - 9468:3, 9470:4, 9481:1, 9535:10 statistics [2] - 9577:10, 9577:13 stay [6] - 9471:25, 9490:17, 9506:6, 9507:5, 9549:2, 9598:16 stayed [1] - 9597:2 staying [1] - 9529:4 stays [1] - 9482:12 stenographic [1] - 9618:5 step [1] - 9614:20 stepping [1] - 9499:11 steps [2] - 9512:11, 9606:11 Steven [1] - 9469:15 Stewart [1] - 9493:12 stickies [1] - 9562:2 still [14] - 9482:21, 9490:6, 9496:1, 9496:18, 9497:1, 9510:20, 9511:21, 9512:19, 9538:22, 9538:23, 9549:8, 9576:5, 9598:16, 9600:5</p>
---	---	---	--

<p>stipulating ^[1] - 9558:8</p> <p>stood ^[1] - 9549:21</p> <p>stop ^[4] - 9472:23, 9493:10, 9549:10, 9582:20</p> <p>stopped ^[1] - 9500:17</p> <p>story ^[2] - 9503:11, 9504:11</p> <p>strain ^[1] - 9570:21</p> <p>strategic ^[2] - 9512:15, 9512:19</p> <p>strategy ^[2] - 9512:6, 9512:10</p> <p>stream ^[1] - 9495:9</p> <p>Street ^[5] - 9468:15, 9469:2, 9469:4, 9469:10, 9469:13</p> <p>street ^[3] - 9567:15, 9585:5</p> <p>strict ^[2] - 9614:4, 9614:7</p> <p>strictly ^[1] - 9496:8</p> <p>strike ^[1] - 9593:4</p> <p>strong ^[1] - 9598:14</p> <p>stuff ^[5] - 9531:11, 9534:7, 9541:14, 9590:7, 9604:17</p> <p>stupid ^[1] - 9561:12</p> <p>subject ^[7] - 9476:22, 9480:7, 9532:20, 9533:1, 9535:3, 9564:18, 9565:5</p> <p>submit ^[1] - 9617:5</p> <p>submitting ^[1] - 9491:14</p> <p>subordinates ^[3] - 9500:21, 9521:15, 9542:8</p> <p>subpoena ^[2] - 9562:23, 9563:1</p> <p>subpoenas ^[1] - 9563:11</p> <p>substance ^[4] - 9487:17, 9490:15, 9501:20, 9513:10</p> <p>substantiated ^[1] - 9527:4</p> <p>sufficient ^[1] - 9563:15</p> <p>suggest ^[4] - 9518:12, 9518:17, 9566:10, 9602:9</p> <p>suggesting ^[5] - 9557:13, 9564:24, 9569:5, 9605:21</p> <p>suggestion ^[1] - 9500:20</p> <p>suggests ^[1] - 9564:3</p> <p>Suite ^[3] - 9468:18,</p>	<p>9468:24, 9469:10</p> <p>sum ^[1] - 9501:20</p> <p>summaries ^[1] - 9612:23</p> <p>summarize ^[1] - 9535:22</p> <p>summarized ^[1] - 9539:9</p> <p>summary ^[1] - 9477:1</p> <p>superior ^[1] - 9530:4</p> <p>superiors ^[4] - 9523:19, 9524:10, 9526:21, 9527:11</p> <p>support ^[2] - 9473:12, 9526:5</p> <p>supporter ^[1] - 9477:22</p> <p>suppose ^[2] - 9478:14, 9542:1</p> <p>supposed ^[1] - 9524:9</p> <p>surrounding ^[2] - 9507:2, 9510:25</p> <p>suspect ^[1] - 9484:25</p> <p>suspects ^[1] - 9485:16</p> <p>sustain ^[2] - 9520:1, 9575:22</p> <p>Sustained ^[1] - 9514:8</p> <p>sustained ^[36] - 9477:2, 9508:5, 9509:2, 9513:1, 9513:2, 9513:9, 9513:25, 9514:6, 9514:8, 9517:9, 9528:1, 9528:5, 9541:20, 9559:11, 9565:11, 9574:1, 9574:18, 9577:21, 9579:22, 9581:17, 9581:21, 9582:3, 9582:10, 9589:16, 9591:13, 9591:14, 9592:19, 9609:10, 9609:14, 9610:2, 9610:12, 9610:18, 9610:23, 9612:10</p> <p>sustaining ^[1] - 9586:18</p> <p>swallows ^[1] - 9540:19</p> <p>system ^[4] - 9490:23, 9491:3, 9491:16, 9491:24</p>	<p>9512:11, 9512:19</p> <p>tangent ^[1] - 9580:8</p> <p>Tank ^[13] - 9492:13, 9492:15, 9494:10, 9496:7, 9497:3, 9497:12, 9500:20, 9538:24, 9539:10, 9539:16, 9542:4, 9560:25</p> <p>target ^[9] - 9564:9, 9564:11, 9564:12, 9564:14, 9564:16, 9564:21, 9565:4, 9565:7, 9589:1</p> <p>Tarrio ^[119] - 9468:7, 9469:9, 9470:14, 9470:18, 9470:19, 9470:24, 9471:6, 9471:19, 9472:1, 9472:9, 9472:17, 9472:19, 9472:21, 9473:4, 9473:11, 9474:4, 9474:8, 9474:21, 9474:24, 9475:2, 9475:4, 9476:1, 9476:8, 9476:13, 9476:18, 9479:12, 9480:13, 9480:20, 9481:5, 9482:4, 9482:7, 9482:24, 9483:6, 9483:11, 9483:23, 9484:4, 9488:1, 9488:14, 9488:15, 9488:23, 9489:5, 9490:9, 9490:16, 9490:19, 9491:10, 9491:24, 9492:1, 9492:17, 9493:19, 9494:5, 9494:19, 9495:5, 9496:14, 9497:4, 9499:3, 9500:10, 9500:15, 9500:21, 9501:2, 9501:8, 9501:17, 9502:5, 9503:3, 9503:5, 9503:15, 9506:24, 9514:10, 9514:18, 9515:8, 9515:22, 9516:6, 9516:14, 9516:19, 9517:1, 9517:3, 9521:14, 9522:20, 9523:15, 9523:19, 9523:21, 9523:25, 9524:8, 9524:20, 9526:25, 9527:1, 9530:8, 9537:6, 9537:12, 9538:25, 9539:10, 9539:24, 9540:2, 9540:8,</p>	<p>9540:14, 9540:22, 9540:23, 9541:8, 9542:8, 9542:12, 9544:3, 9544:15, 9558:4, 9559:24, 9560:2, 9561:9, 9561:17, 9571:16, 9572:3, 9572:13, 9572:17, 9573:14, 9573:16, 9573:17, 9575:8, 9575:13, 9575:16, 9608:21, 9611:2</p> <p>Tarrio's ^[7] - 9492:5, 9493:5, 9510:24, 9510:25, 9514:17, 9543:2, 9559:17</p> <p>Tarrio-Lamond ^[1] - 9491:24</p> <p>taught ^[1] - 9568:4</p> <p>taxable ^[1] - 9581:19</p> <p>teams ^[2] - 9507:10, 9511:22</p> <p>technical ^[1] - 9607:19</p> <p>techniques ^[3] - 9480:4, 9568:5, 9613:1</p> <p>tee ^[1] - 9554:11</p> <p>Telegram ^[28] - 9470:14, 9471:11, 9475:25, 9486:9, 9490:9, 9491:17, 9526:1, 9529:15, 9530:3, 9530:6, 9534:16, 9555:14, 9558:25, 9559:17, 9559:24, 9573:16, 9593:13, 9594:25, 9596:4, 9597:10, 9597:14, 9599:15, 9609:6, 9609:25, 9610:7, 9610:8, 9612:16</p> <p>telephone ^[2] - 9588:12, 9588:22</p> <p>telephones ^[1] - 9589:11</p> <p>ten ^[5] - 9489:8, 9521:21, 9521:22, 9534:21, 9535:5</p> <p>tending ^[1] - 9571:4</p> <p>tenor ^[2] - 9557:20, 9559:2</p> <p>term ^[11] - 9506:10, 9506:14, 9562:18, 9578:10, 9578:13, 9578:24, 9583:17, 9584:10, 9584:11, 9607:9, 9607:10</p> <p>terms ^[11] - 9479:2, 9512:6, 9544:8,</p>
T			
<p>tab ^[1] - 9496:6</p> <p>table ^[3] - 9517:16, 9534:23, 9553:23</p> <p>tack ^[1] - 9550:24</p> <p>tactics ^[3] - 9512:7,</p>			

9546:8, 9547:14,
9550:20, 9554:5,
9554:10, 9604:10,
9611:23, 9616:7
territory [1] - 9616:14
testified [12] -
9532:16, 9555:13,
9555:17, 9558:24,
9559:13, 9559:22,
9560:7, 9561:2,
9563:19, 9570:18,
9582:12, 9607:3
testify [5] - 9521:12,
9523:7, 9560:4,
9607:25, 9608:2
testifying [6] - 9525:1,
9555:1, 9555:15,
9560:24, 9609:9,
9615:6
testimony [30] -
9479:15, 9479:16,
9494:17, 9501:11,
9501:15, 9512:24,
9513:2, 9513:10,
9518:2, 9518:4,
9521:8, 9522:5,
9532:19, 9535:2,
9556:15, 9557:7,
9557:11, 9557:16,
9560:12, 9561:6,
9562:3, 9568:12,
9574:20, 9580:4,
9580:12, 9586:24,
9587:21, 9587:23,
9597:16, 9611:16
text [16] - 9472:15,
9474:8, 9476:7,
9483:3, 9486:9,
9537:24, 9596:11,
9598:23, 9600:23,
9600:25, 9601:2,
9601:4, 9601:6,
9601:8, 9601:10,
9612:21
texts [4] - 9478:14,
9483:17, 9560:2,
9594:24
THE [222] - 9468:1,
9468:1, 9468:11,
9470:3, 9470:6,
9474:15, 9474:17,
9475:10, 9475:12,
9475:16, 9477:2,
9477:8, 9478:4,
9478:6, 9478:9,
9478:21, 9479:5,
9479:13, 9481:24,
9482:1, 9482:16,
9483:18, 9484:9,
9484:13, 9485:9,

9485:16, 9485:20,
9486:6, 9486:18,
9487:4, 9489:20,
9492:21, 9494:25,
9497:17, 9497:19,
9498:7, 9498:22,
9499:15, 9499:20,
9500:5, 9500:23,
9501:13, 9501:25,
9502:3, 9502:14,
9502:25, 9503:8,
9503:21, 9503:25,
9504:18, 9505:1,
9505:17, 9505:25,
9506:3, 9508:5,
9509:2, 9510:22,
9513:1, 9513:5,
9513:25, 9514:6,
9514:8, 9515:1,
9515:15, 9517:9,
9517:25, 9518:7,
9518:24, 9519:19,
9519:24, 9520:12,
9521:18, 9521:24,
9522:19, 9522:21,
9523:11, 9524:13,
9524:16, 9525:17,
9527:5, 9528:2,
9528:6, 9528:11,
9528:17, 9529:9,
9530:11, 9530:22,
9530:25, 9531:4,
9532:3, 9532:6,
9532:17, 9533:3,
9533:9, 9533:14,
9533:20, 9533:23,
9534:10, 9535:9,
9535:14, 9537:18,
9538:4, 9538:10,
9538:17, 9539:7,
9539:14, 9540:11,
9541:10, 9542:20,
9543:12, 9543:24,
9545:8, 9545:16,
9545:23, 9550:12,
9552:13, 9553:1,
9553:8, 9553:10,
9554:3, 9554:15,
9554:17, 9556:24,
9557:1, 9557:4,
9559:11, 9560:22,
9561:21, 9561:22,
9565:10, 9568:14,
9570:9, 9570:12,
9571:4, 9571:7,
9572:5, 9572:7,
9572:24, 9573:4,
9574:1, 9574:7,
9574:10, 9574:18,
9575:22, 9575:25,
9577:21, 9579:9,

9579:13, 9579:22,
9579:25, 9580:9,
9581:3, 9581:11,
9581:17, 9581:21,
9582:3, 9582:10,
9583:8, 9584:13,
9586:14, 9586:17,
9587:9, 9587:18,
9589:16, 9589:24,
9590:4, 9591:8,
9591:13, 9591:17,
9592:1, 9592:19,
9593:17, 9593:20,
9593:22, 9593:24,
9594:4, 9595:7,
9595:18, 9595:25,
9597:9, 9598:7,
9599:17, 9599:19,
9599:23, 9600:1,
9600:5, 9600:8,
9601:20, 9601:23,
9602:3, 9602:8,
9602:21, 9603:16,
9603:21, 9604:7,
9604:21, 9604:24,
9606:24, 9608:5,
9608:9, 9608:15,
9608:21, 9609:10,
9609:14, 9609:18,
9610:2, 9610:12,
9610:18, 9610:23,
9611:4, 9611:6,
9611:19, 9612:10,
9614:11, 9614:13,
9614:20, 9614:21,
9614:22, 9615:20,
9616:5, 9616:22,
9617:3
theme [3] - 9522:24,
9523:16, 9598:22
themes [1] - 9503:2
themselves [2] -
9575:3, 9575:4
theory [1] - 9546:9
thereafter [1] -
9472:19
therefore [2] -
9548:11, 9550:1
they've [13] - 9522:10,
9523:5, 9523:6,
9523:9, 9523:14,
9523:17, 9523:24,
9524:4, 9537:23,
9537:25, 9612:6
thing's [1] - 9542:9
thinking [3] - 9525:3,
9533:24, 9535:21
thinks [2] - 9519:12,
9540:2
third [1] - 9506:23

thousands [1] -
9581:2
thread [1] - 9495:11
three [3] - 9478:20,
9480:15, 9590:10
throughout [1] -
9522:24
thrust [1] - 9525:20
ticky [1] - 9550:24
ticky-tack [1] -
9550:24
tilled [1] - 9615:17
timeframe [3] -
9517:5, 9524:13,
9601:18
timely [1] - 9548:16
timer [3] - 9490:25,
9491:2, 9491:17
timestamp [3] -
9543:11, 9543:14,
9543:17
timing [1] - 9503:25
TIMOTHY [1] -
9468:11
tip [3] - 9476:10,
9476:18, 9476:22
tired [2] - 9518:21,
9572:10
title [1] - 9496:6
titled [1] - 9580:5
today [8] - 9497:1,
9549:19, 9552:2,
9552:17, 9554:4,
9576:10, 9594:6,
9603:9
together [1] - 9598:18
tomorrow [11] -
9507:11, 9510:14,
9510:20, 9511:5,
9608:16, 9614:18,
9615:9, 9617:7,
9617:9, 9617:16,
9617:21
Tony [7] - 9596:10,
9596:22, 9596:25,
9597:2, 9598:11,
9598:13, 9598:15
Tony's [1] - 9597:7
took [2] - 9598:10,
9598:13
top [12] - 9473:3,
9474:20, 9475:3,
9475:24, 9476:3,
9480:17, 9483:3,
9490:5, 9490:19,
9490:22, 9496:6,
9605:9
topic [14] - 9486:3,
9506:6, 9518:10,
9522:7, 9522:15,

<p>9525:9, 9525:12, 9533:24, 9536:7, 9536:15, 9536:24, 9572:1, 9587:14, 9608:8</p> <p>topical [1] - 9566:13</p> <p>topics [4] - 9522:14, 9528:16, 9528:18, 9546:14</p> <p>toward [3] - 9492:5, 9546:15, 9571:5</p> <p>towards [1] - 9500:17</p> <p>Townsend [1] - 9468:24</p> <p>trafficker [2] - 9579:4, 9579:6</p> <p>trained [1] - 9479:9</p> <p>training [6] - 9471:21, 9472:24, 9473:18, 9478:24, 9479:24, 9480:3</p> <p>trains [1] - 9520:18</p> <p>TRANSCRIPT [1] - 9468:10</p> <p>transcript [18] - 9504:22, 9531:6, 9534:2, 9548:3, 9549:23, 9552:20, 9552:21, 9590:17, 9591:11, 9592:5, 9592:17, 9615:13, 9616:20, 9617:2, 9617:6, 9618:4, 9618:5</p> <p>transcripts [1] - 9617:4</p> <p>travel [1] - 9517:4</p> <p>treating [1] - 9550:13</p> <p>TRIAL [2] - 9468:5, 9468:10</p> <p>trial [5] - 9517:16, 9604:5, 9616:3, 9616:18, 9616:19</p> <p>tried [15] - 9517:15, 9518:2, 9518:18, 9525:4, 9527:24, 9534:6, 9538:15, 9539:18, 9541:19, 9548:12, 9549:7, 9552:16, 9572:16, 9576:19, 9580:21</p> <p>trouble [2] - 9521:5, 9580:14</p> <p>true [12] - 9481:17, 9526:25, 9527:1, 9530:2, 9530:5, 9532:13, 9540:7, 9577:2, 9612:17, 9613:15, 9618:4, 9618:5</p> <p>truly [6] - 9505:3,</p>	<p>9505:4, 9505:8, 9505:20, 9542:23, 9543:5</p> <p>Trump [5] - 9487:20, 9558:4, 9558:14, 9596:9, 9607:7</p> <p>truth [3] - 9536:10, 9539:12, 9540:15</p> <p>truthful [1] - 9613:3</p> <p>try [7] - 9489:8, 9521:20, 9522:16, 9530:20, 9535:6, 9548:21, 9550:25</p> <p>trying [16] - 9479:4, 9484:13, 9485:14, 9494:8, 9504:12, 9504:25, 9510:20, 9515:12, 9519:7, 9543:3, 9552:1, 9566:22, 9583:13, 9587:6, 9591:23, 9607:20</p> <p>turn [1] - 9505:12</p> <p>turned [1] - 9502:11</p> <p>turning [1] - 9545:10</p> <p>twice [1] - 9504:11</p> <p>two [26] - 9473:9, 9473:25, 9490:13, 9490:22, 9497:4, 9500:9, 9501:1, 9501:2, 9501:8, 9505:9, 9525:18, 9526:8, 9532:25, 9538:12, 9539:17, 9544:15, 9546:11, 9546:19, 9547:15, 9562:2, 9564:16, 9564:20, 9587:6, 9604:18, 9614:15</p> <p>TY [1] - 9599:4</p> <p>type [1] - 9562:18</p> <p>types [1] - 9533:23</p> <p>typical [2] - 9532:15, 9557:13</p> <p>typically [1] - 9564:16</p>	<p>under [6] - 9497:15, 9498:17, 9562:25, 9563:11, 9595:4</p> <p>underscoring [1] - 9485:9</p> <p>understood [8] - 9485:12, 9501:13, 9536:5, 9539:12, 9552:13, 9562:3, 9572:14, 9576:16</p> <p>unfortunately [1] - 9592:4</p> <p>uniform/organized [1] - 9606:8</p> <p>uniformed [1] - 9470:20</p> <p>UNITED [2] - 9468:1, 9468:12</p> <p>United [4] - 9468:3, 9470:4, 9481:1, 9535:10</p> <p>universe [3] - 9513:23, 9518:12, 9518:17</p> <p>unlawful [2] - 9569:6, 9587:20</p> <p>unless [1] - 9486:21</p> <p>unprofessional [1] - 9549:17</p> <p>unreasonable [1] - 9597:12</p> <p>unrelated [1] - 9566:6</p> <p>unring [1] - 9519:13</p> <p>unto [1] - 9551:5</p> <p>unusual [10] - 9478:13, 9478:14, 9478:18, 9478:24, 9479:14, 9513:22, 9574:24, 9574:25, 9575:3, 9575:5</p> <p>up [71] - 9470:8, 9471:19, 9472:5, 9473:16, 9473:17, 9475:22, 9476:5, 9477:20, 9477:21, 9478:1, 9480:8, 9482:19, 9483:9, 9489:12, 9491:12, 9492:10, 9493:9, 9496:3, 9496:6, 9497:8, 9498:10, 9498:15, 9503:15, 9503:20, 9509:24, 9511:8, 9515:9, 9515:25, 9517:1, 9517:25, 9518:1, 9523:7, 9528:8, 9528:18, 9529:2, 9529:8, 9530:13, 9531:1, 9531:3, 9535:4, 9536:18,</p>	<p>9536:24, 9542:17, 9544:1, 9545:9, 9549:2, 9549:14, 9549:15, 9550:19, 9550:25, 9554:11, 9556:4, 9556:20, 9556:25, 9558:23, 9559:13, 9560:18, 9579:20, 9581:25, 9594:11, 9595:20, 9597:3, 9597:6, 9598:9, 9600:2, 9603:14, 9603:17, 9605:9, 9613:23, 9616:11, 9617:8</p> <p>update [1] - 9616:22</p> <p>upstream [1] - 9530:13</p> <p>urging [2] - 9472:10, 9473:13</p> <p>URL [3] - 9487:17, 9487:19, 9487:20</p> <p>usage [2] - 9555:10, 9557:18</p> <p>user [1] - 9558:1</p> <p>uses [1] - 9576:24</p> <p>USSS [3] - 9477:20, 9480:22, 9480:23</p> <p>usual [6] - 9478:12, 9478:14, 9478:18, 9478:23, 9479:10, 9479:14</p>
V			
<p>vague [3] - 9475:11, 9475:15, 9508:3</p> <p>vagueness [1] - 9508:6</p> <p>valid [1] - 9529:1</p> <p>value [10] - 9523:15, 9523:25, 9575:16, 9578:21, 9578:23, 9578:24, 9578:25, 9613:11</p> <p>variety [1] - 9532:13</p> <p>various [1] - 9531:15</p> <p>vendetta [1] - 9520:25</p> <p>verbally [1] - 9526:4</p> <p>versus [4] - 9470:4, 9502:18, 9535:10, 9583:10</p> <p>veteran [1] - 9523:1</p> <p>via [1] - 9581:15</p> <p>Video [1] - 9496:19</p> <p>video [64] - 9477:18, 9492:13, 9492:15, 9492:17, 9492:22, 9493:3, 9494:10, 9494:12, 9496:6,</p>			
U			
<p>U.S. [3] - 9468:20, 9469:21, 9491:14</p> <p>ugly [1] - 9513:15</p> <p>ultimately [2] - 9479:2, 9535:18</p> <p>umbrellas [1] - 9546:18</p> <p>unable [3] - 9500:1, 9502:12, 9504:21</p> <p>unanticipated [1] - 9485:23</p> <p>Uncle [1] - 9596:10</p>			

9496:8, 9496:15, 9496:21, 9497:4, 9497:12, 9497:16, 9497:24, 9498:16, 9498:25, 9499:10, 9499:11, 9500:1, 9500:3, 9500:6, 9500:20, 9501:17, 9501:20, 9502:20, 9503:2, 9504:20, 9504:24, 9505:7, 9512:14, 9533:7, 9534:1, 9536:17, 9538:19, 9539:16, 9539:17, 9542:4, 9542:7, 9543:11, 9549:8, 9551:6, 9552:16, 9552:22, 9553:13, 9553:16, 9560:24, 9561:7, 9574:24, 9590:25, 9591:3, 9591:24, 9592:12, 9592:16, 9592:21, 9593:5, 9593:8, 9596:14, 9596:20, 9605:12 video's [1] - 9546:23 videos [4] - 9498:1, 9544:9, 9544:10, 9547:7 view [5] - 9500:4, 9501:10, 9548:2, 9571:20, 9576:19 viewed [1] - 9583:6 violations [1] - 9473:14 violence [9] - 9500:16, 9506:6, 9506:12, 9506:20, 9507:21, 9508:1, 9544:4, 9546:15, 9605:21 violent [5] - 9502:19, 9503:4, 9506:7, 9604:16, 9604:17 virtually [1] - 9532:7 voice [2] - 9516:11, 9607:17 voices [1] - 9518:15 voila [1] - 9562:18 voluntarily [18] - 9567:5, 9576:17, 9577:1, 9580:19, 9582:13, 9582:14, 9582:19, 9582:22, 9583:5, 9583:10, 9583:18, 9584:2, 9584:3, 9584:10, 9584:16, 9584:25, 9585:7 voluntary [4] -	9566:23, 9570:19, 9583:2, 9583:6 volunteer [14] - 9520:24, 9564:3, 9565:8, 9565:17, 9567:11, 9568:2, 9568:9, 9568:12, 9569:13, 9570:1, 9570:6, 9570:23, 9583:10, 9584:15 volunteering [1] - 9564:7 volunteers [3] - 9563:25, 9565:8, 9565:9 vote [1] - 9598:10 Votes [1] - 9487:21 vs [1] - 9468:5	9487:17, 9513:22, 9525:12, 9531:13, 9546:1, 9580:23, 9582:15, 9598:6 wide [4] - 9513:18, 9522:23, 9523:24, 9532:12 wild [1] - 9494:2 Wild [1] - 9487:20 willing [2] - 9550:5, 9567:17 willy [1] - 9563:4 willy-nilly [1] - 9563:4 win [2] - 9519:16, 9519:17 window [1] - 9496:3 wishes [1] - 9493:6 withdraw [1] - 9474:16 withdrawn [1] - 9573:21 withhold [1] - 9552:5 withholding [1] - 9552:5 witness [45] - 9477:1, 9478:13, 9479:8, 9481:11, 9481:12, 9489:10, 9492:9, 9492:11, 9494:15, 9497:7, 9499:25, 9518:3, 9518:5, 9523:4, 9523:5, 9526:11, 9529:15, 9531:25, 9532:9, 9532:15, 9535:20, 9538:2, 9543:4, 9547:17, 9558:9, 9564:17, 9572:13, 9580:17, 9583:8, 9586:20, 9586:23, 9587:23, 9590:20, 9593:13, 9595:14, 9597:9, 9599:11, 9600:4, 9602:7, 9602:17, 9606:24, 9615:6, 9617:8, 9617:11 WITNESS [6] - 9557:4, 9561:21, 9589:24, 9608:15, 9614:21, 9619:2 witness's [2] - 9580:4, 9611:15 witnesses [1] - 9581:1 won [1] - 9518:16 wondered [1] - 9535:17 word [10] - 9507:5, 9507:13, 9507:18, 9507:23, 9508:13, 9509:17, 9510:11,	9549:24, 9564:2, 9598:14 words [11] - 9508:16, 9514:4, 9526:10, 9531:1, 9536:8, 9538:13, 9552:21, 9569:21, 9591:21, 9592:14, 9592:16 works [1] - 9563:7 worry [2] - 9616:1, 9616:5 wrestling [1] - 9519:16 written [2] - 9586:7, 9616:11
W			
wait [2] - 9538:1, 9614:23 waiting [1] - 9554:5 walk [5] - 9472:14, 9481:5, 9564:5, 9567:18, 9580:21 walk-ins [1] - 9567:18 walking [1] - 9482:4 wanders [1] - 9567:14 wants [7] - 9470:19, 9483:16, 9488:3, 9536:6, 9542:24, 9550:21, 9553:13 warrant [2] - 9491:14, 9492:3 warranted [1] - 9617:17 warrants [1] - 9563:14 Washington [6] - 9468:7, 9468:16, 9468:19, 9469:2, 9507:19, 9618:13 waste [2] - 9606:23, 9615:18 waste-of-time [1] - 9615:18 watch [1] - 9507:15 watched [1] - 9561:2 ways [2] - 9570:15, 9570:16 wearing [1] - 9528:22 week [2] - 9481:14, 9496:12 weekend [1] - 9547:9 West [1] - 9469:13 whatsoever [2] - 9515:14, 9527:21 Whicker [1] - 9596:10 whole [9] - 9487:16,			
Y			
Year's [1] - 9598:21 years [3] - 9590:10, 9598:20, 9598:21 yellow [1] - 9557:8 yesterday [7] - 9526:15, 9526:18, 9546:4, 9550:10, 9552:17, 9552:23, 9594:5 yesterday's [1] - 9550:9 Yo [1] - 9560:11 York [3] - 9468:18, 9468:25, 9469:16 YouTube [2] - 9495:21, 9496:3			
Z			
Zach [1] - 9603:5 zachary [1] - 9511:21 Zachary [3] - 9468:7, 9512:2, 9603:3 zoning [2] - 9597:3, 9597:7 Zoom [3] - 9590:25, 9593:8, 9596:14 zrehl618 [1] - 9603:6			