

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 23  
Joseph R. Biggs, )  
Zachary Rehl, ) Washington, DC  
Enrique Tarrio, ) January 31, 2023  
Dominic J. Pezzola, ) Time: 1:45 p.m.  
)  
Defendants. )

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

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\* \* \* \* \* \*AFTERNOON SESSION\* \* \* \* \*

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

THE COURT: All right. Apologies to the parties. Why don't I hear quickly, Mr. Pattis, what you -- where we left -- the objection to where we left off, pick that up outside the presence of the witness, resolve it and move forward.

MR. PATTIS: The government and I tried to work it out but we failed. Much to my surprise, Mr. McCullough was being entirely reasonable, and I wasn't expecting that.

You know, the witness, in response to questions from Mr. Smith, talked about a statement that they've turned over. And I don't recall if Mr. Smith introduced the term or if she did and then he adopted it. I want to refer to *Jencks* material. I want to know what that means to her. I don't want to ask for a legal conclusion. I'm not trying to impeach her on it. It's a transitional to a new topic.

THE COURT: What's the new topic?

MR. PATTIS: I've got -- certainly, I want to have her review some of Mr. Biggs' statements that she has reviewed, the steps she took as an investigator, culling statements that she thought could potentially be of interest.

I want to ask her a little bit about the linkage that

1 Mr. Smith asked about between the so-called culture of violence  
2 and the statements that she identified, and that's about it.

3 THE COURT: When you say "his statements," you mean  
4 the Parler posts?

5 MR. PATTIS: Yes, sir. That's all I'm talking about.  
6 My understanding is the government intends to recall her again  
7 at another point. But at this point, she's here simply for  
8 Parler. And so I've alerted Mr. McCullough of my intention to  
9 ask for Ms. Rhode's assistance in showing some of the 603  
10 series. I expect to be about 15 minutes.

11 THE COURT: All right. Mr. McCullough, what's your  
12 objection to her just saying what *Jencks* is?

13 MR. McCULLOUGH: I object just to the relevance, Your  
14 Honor. I think that issue has been explored. She should not  
15 be, kind of, now further exploring what discovery obligations  
16 are and what discovery issues are. I just don't think that's  
17 appropriate for the jury. She said -- she acknowledged these  
18 are her notes. We've talked about her notes. Discovery issues  
19 are not something that should be presented to the jury.

20 As to the second topic, I suspect that many of our  
21 objections will be with respect to going -- plodding back over  
22 the Biggs' Parler posts: Objection, asked and answered.  
23 Objection -- you know, kind of the same four or three issues  
24 we've raised before.

25 And then finally, as to this last thing about the

1 linkage, again, kind of: Objection, asked and answered. It is  
2 my expectation, as we recall, that Special Agent Camiliere  
3 explained her understanding of the relationship between the  
4 prior November rallies and what happened later. So, I think  
5 she was given an opportunity to expand on that. She didn't.

6 MR. PATTIS: Two comments, briefly.

7 THE COURT: Yes.

8 MR. PATTIS: First, as to *Jencks*, it came up, and if  
9 it was irrelevant, it should have been irrelevant then. It's  
10 an unexplained term and I think I have an interest in a  
11 non-confused jury.

12 As to "asked and answered" as a general class of  
13 objections, it's inapplicable unless and until I've asked and  
14 answered it. Each defendant here has an independent  
15 confrontation right. I don't intend to belabor it. I intend  
16 to move on fairly quickly.

17 But I thought there was a different way to ask that  
18 question, and I intend -- with your permission, of course -- to  
19 ask it.

20 THE COURT: All right. We'll see it as it comes up.  
21 I'll let you ask the question, What is *Jencks*, and we'll move  
22 on from there.

23 MR. PATTIS: Thank you, sir.

24 THE COURT: All right.

25 So, Ms. Harris, you can get the jury and we can bring

1 the witness back on the stand.

2 (Pause.)

3 (Whereupon the jurors enter the courtroom.)

4 THE COURT: All right. You all may be seated.  
5 Welcome back ladies and gentlemen. We will continue with  
6 cross-examination by counsel for Mr. Biggs.

7 MR. PATTIS: Thank you, Judge.

8 KATHRYN CAMILIERE,

9 CROSS-EXAMINATION (Cont.)

10 BY MR. PATTIS:

11 Q. Agent, before the lunch break, I think I had asked you what  
12 your -- about your testimony relating to *Jencks* material. Do  
13 you recall that?

14 A. Yes.

15 Q. What's your understanding? What were you referring to when  
16 you referred to as "the *Jencks* material"?

17 A. Witnesses' prior statements.

18 Q. Okay. And, so, you gave to the government -- and you  
19 understood -- I think your testimony was that there was an  
20 obligation to turn stuff over at some time, correct?

21 A. November 28th.

22 Q. Of 2022, correct?

23 A. Yes.

24 Q. Both had to think for a minute.

25 And thereafter you did another statement, correct?

1 A. I'm --

2 Q. Thereafter you drafted another writing --

3 A. Yes.

4 Q. -- correct?

5 And you gave it to the government, correct?

6 A. Yes.

7 Q. And that writing was prepared in anticipation of your  
8 testimony here today.

9 MR. JAUREGUI: Objection, Your Honor.

10 THE COURT: Overruled.

11 BY MR. PATTIS:

12 Q. That writing was prepared in anticipation of your writing  
13 here today, correct?

14 A. They were notes to myself.

15 Q. Your testimony, correct?

16 A. Yes. Notes to myself.

17 Q. Who said, "Every normal man must be tempted at times to  
18 spit upon his hands, hoist the black flag, and begin slitting  
19 throats"?

20 A. Yes. Those were the words of Mr. Tarrio on October 15th of  
21 2020.

22 Q. But those are H.L. Mencken's words. He was quoting H.L.  
23 Mencken, correct?

24 A. That's correct.

25 Q. And you noted that in your notes, correct?

1 A. I believe so.

2 Q. And you know that you described yourself as a person who  
3 loves to read.

4 A. I do.

5 Q. You have lived in the northeast for a good part of your  
6 life.

7 A. The South, actually, but --

8 Q. Okay. You know H.L. Mencken was the editor of something  
9 called the *American Mercury*?

10 A. I don't know.

11 Q. Did you know he wrote for a Baltimore newspaper?

12 MR. JAUREGUI: Objection. Foundation. Relevance.

13 THE COURT: Sustained.

14 BY MR. PATTIS:

15 Q. Is it a crime to quote H.L. Mencken?

16 A. No.

17 Q. Now, you testified earlier that you, in about January or  
18 February of 2021, received Parler information, correct?

19 A. Yes.

20 Q. And you spent a period of some time -- it could have been a  
21 couple of months, correct?

22 A. Yes.

23 Q. And sorry, I'm bobbing and weaving.

24 A. No, that's fine.

25 Q. I'm trying to get through the Plexiglass.



1           And however much time, you had all the time you needed  
2           to do a thorough review, correct?

3           A.   Yes.

4           Q.   And what you were looking for was potential evidence of a  
5           crime, correct?

6           A.   That's correct.

7           Q.   And potential evidence of a crime in the context of the  
8           Parler posts. You would refer to those as "statements," would  
9           you not?

10          A.   Yes.

11          Q.   In other words, utterances made by people being  
12          investigated as potentially -- as potential criminals, correct?

13          A.   They were statements, yes.

14          Q.   And so you had a decision to make, whether to include or  
15          exclude a statement, correct?

16          A.   Yes.

17          Q.   And when you were trained in the FBI Academy in  
18          investigations, you were taught about things such as evidence,  
19          correct?

20          A.   Yes.

21          Q.   In fact, when Mr. Smith questioned you earlier today he  
22          asked you, "You're looking at information," you said, "No, it  
23          was evidence," correct?

24          A.   Yes.

25          Q.   And evidence, you understand from your training, is direct

1 or circumstantial, correct?

2 A. Yes.

3 Q. A person's statement is a direct evidence of what they've  
4 said, correct? You understand it that way?

5 A. Yes.

6 Q. And circumstantial evidence is what was in their mind --  
7 their state of mind, correct?

8 A. I don't know that I would classify it that way.

9 Q. Okay. But you do understand looking for evidence of a  
10 person's state of mind?

11 A. Yes.

12 Q. Their intent?

13 A. Yes.

14 Q. And that's what you were trying to do with these Parler  
15 posts, correct?

16 A. Yes.

17 Q. But you understood that there's a difference -- it's not a  
18 crime to say things, but utterances might provide direction and  
19 guidance. They could become criminal. There's a line,  
20 correct?

21 A. Yes.

22 Q. And you understand that's what this jury is to determine,  
23 whether that line was --

24 MR. McCULLOUGH: Objection.

25 THE COURT: Sustained.

1 BY MR. PATTIS:

2 Q. Now, you were asked some questions earlier today. I'll  
3 refer to this as the "missing link testimony." And I'm not  
4 referring to evolutionary theory.

5 You talked about a culture of violence, correct?

6 A. Yes.

7 Q. And you were asked to link this culture of violence to  
8 certain utterances that you selected as potentially of  
9 evidentiary value, correct?

10 A. Yes.

11 Q. Okay. And, ultimately, when asked what the missing middle  
12 term was, what the link was, I think you said you can't answer  
13 that question, correct?

14 MR. McCULLOUGH: Objection. Misstates.

15 BY MR. PATTIS:

16 Q. "What is the link," you were asked questions. Ultimately  
17 you said, "I have nothing further to add," correct?

18 A. Yes.

19 Q. Does the culture of violence matter -- or, what did you  
20 mean? I guess, whose culture? I mean, for example, there's a  
21 difference between a culture in an inner city area, culture in  
22 a suburban area, correct?

23 MR. McCULLOUGH: Objection. Foundation. Relevance.  
24 403. Scope.

25 MR. PATTIS: She used "culture of violence" exploring

1 it.

2 THE COURT: Overruled.

3 BY MR. PATTIS:

4 Q. What did you mean by that term?

5 A. So, the Proud Boys are not on trial here today. These  
6 defendants are members of the Proud Boys, and as members of the  
7 Proud Boys, they celebrated and posted videos and statements  
8 that indicate a culture of violence.

9 Q. Where?

10 A. On Parler.

11 Q. No. No. No. No.

12 Where did this culture of violence exist?

13 A. Would you mind rephrasing your question, please? I want to  
14 be able to answer you as accurately as possible.

15 Q. Well, I asked a simple question. Where did this culture of  
16 violence -- you say, "the Proud Boys aren't on trial," so where  
17 did this culture of violence exist?

18 A. The defendants were celebrating it on Parler and they were  
19 members of the Proud Boys. So, whoever was following or  
20 viewing their feed could see it.

21 Q. Have you ever heard the expression "guilt by association"?

22 A. Yes.

23 Q. You don't think you're a little guilty of that here, do  
24 you?

25 MR. McCULLOUGH: Objection. Argumentative.

1 THE COURT: Sustained. Sustained.

2 BY MR. PATTIS:

3 Q. So there is this culture of violence, and speech that might  
4 otherwise be okay -- like Mencken's line about slitting  
5 throats -- it could become evidence of a crime, depending on  
6 the context, correct?

7 A. Yes.

8 Q. I would like you --

9 MR. PATTIS: I've asked, Judge, prior to the break,  
10 for the assistance of Ms. Rhode. May I refer to her, with your  
11 permission?

12 THE COURT: You may.

13 MR. PATTIS: Ms. Rhode, may I see 603.1, please --  
14 or, may everyone see it?

15 And, Ms. Harris, these are all exhibits that have  
16 been admitted previously.

17 Can we scroll it up just a touch, please.

18 BY MR. PATTIS:

19 Q. At 10:53:34, Biggs says, "What's happening to this country  
20 is a disgrace. Trump was going to have a blowout. The Dems  
21 forced these states to stop counting because they saw they were  
22 losing. This is pathetic. The Democrats should be ashamed."

23 Culture of violence there?

24 A. It doesn't seem indicative of it, no.

25 Q. Why is it an exhibit?

1 Well, you don't know. Never mind.

2 MR. PATTIS: 603-2, please, Ms. Rohde.

3 BY MR. PATTIS:

4 Q. "The left is literally stealing the election in the wide  
5 open, not even trying to hide it. We have no justice, no law  
6 and order, no democracy."

7 Culture of violence?

8 A. Doesn't seem to indicate it, no.

9 Q. 603-2, 5:20:50. "This is the biggest political scam in  
10 American history. The Democrats are shameful, un-American,  
11 commie pieces of the shit. I hope you all have shitty fucking  
12 lives."

13 Culture of violence?

14 A. It's distasteful, but not a term of violence.

15 Q. No. There's a difference, isn't there, between something  
16 being distasteful, correct?

17 A. Yes.

18 Q. And being a reflection of a culture of violence, correct?

19 A. Yes.

20 Q. And isn't there a difference between, in your mind as an  
21 investigating officer, something reflecting a culture of  
22 violence and something being illegal; isn't that true?

23 A. There could be a differentiation, yes.

24 Q. You were taught, were you not, in the academy that mere  
25 abstract expressions or desires for violence at some future

1 date, that in and of itself is not against the law. You're  
2 aware of that?

3 A. Not in an abstract form, it's not.

4 Q. "The left doesn't realize they're radicalizing people by  
5 stealing this election. They're going to create their own  
6 worst enemy from this."

7 Culture of violence?

8 A. Not necessarily, no.

9 Q. Are we getting warm?

10 A. Closer.

11 Q. Let's go to 603-3. "I'm sorry, but it's sometime to storm  
12 into these election areas where they are counting ballots.  
13 Team Trump was given a court order to go in and watch, and they  
14 are ignoring the order and not letting them in. It's time to  
15 take action peacefully, but get in there and make sure they  
16 don't steal this shit. It's obvious that's what they're  
17 doing."

18 Culture of violence?

19 A. He says "peacefully," and I can take it at its word at this  
20 point.

21 Q. Well, yes and no. I mean, you realize that people  
22 sometimes say things ironically?

23 A. I'm a fact witness, sir. I testified to what he said on  
24 Parler.

25 Q. You're a fact witness, but you used the term "irony" in the

1 report that you gave to the government that last weekend, correct?

2 A. Yes.

3 Q. That the Proud Boys sometimes, as you acknowledge, use  
4 language in an ironic or joking fashion, correct?

5 A. Yes, they do, to hide intentions at times. That's what the  
6 idea of the culture of irony is.

7 Q. The culture of?

8 A. Irony.

9 Q. So we've got a culture, now, of violence and a culture of  
10 irony. I would like you to stop me each time we find a new  
11 culture.

12 MR. McCULLOUGH: Objection. Misstates.

13 BY MR. PATTIS:

14 Q. So in this culture --

15 THE COURT: Sustained.

16 BY MR. PATTIS:

17 Q. In this culture of irony --

18 MR. McCULLOUGH: Objection, misstates. Relevance.  
19 Foundation.

20 MR. PATTIS: She talked about culture of irony just a  
21 moment ago, sir.

22 THE COURT: The witness -- Mr. Pattis, you can pose  
23 your question.

24 BY MR. PATTIS:

25 Q. In this culture of irony, I suppose if I were to say The



1 cow jumped over the moon, you wouldn't take me seriously,  
2 correct?

3 A. No.

4 Q. I might be joking?

5 A. Could be.

6 Q. I might be ironic.

7 A. Might be.

8 Q. Could be code words for violence?

9 A. I don't know, sir.

10 Q. What? You don't know?

11 A. Not in the context.

12 Q. Okay. But you could imagine a context in which that might  
13 be a code word, "attack," right?

14 A. Potentially.

15 Q. You would want corroborating evidence of that intention,  
16 correct?

17 A. Yes.

18 Q. And corroborating evidence is more than something occurring  
19 later, correct?

20 A. Not necessarily.

21 Q. Are you saying, ma'am, that -- you were asked a question by  
22 Mr. Nordean's counsel about causation and correlation.

23 Remember that?

24 A. He mentioned causation, correlation, yes.

25 Q. You were asked a question about it, too. Do you recall

1 that?

2 A. Yes. He asked me if causation always means correlation.

3 Q. And you said, "Sometimes causation is" -- or, "sometimes  
4 correlation is" -- "sometimes the fact that something occurred  
5 beforehand means that it caused the thing that happened later."

6 Correct?

7 A. Yes.

8 Q. And in those cases, you usually need some mechanism, some  
9 evidence, correct?

10 A. Yes.

11 Q. The mere fact that A precedes B doesn't prove that A caused  
12 B, absent more, correct?

13 A. Not necessarily.

14 Q. Well, give me an instance in which A happened before B that  
15 necessarily proved A caused B.

16 A. I'm sorry, will you rephrase.

17 Q. Give me an instance in which A occurs before B in which it  
18 conclusively proves that A caused B. Give me an example.

19 You can't, can you?

20 MR. McCULLOUGH: Objection. Argumentative, Your  
21 Honor.

22 MR. PATTIS: No. No, it's not argumentative.

23 BY MR. PATTIS:

24 Q. You can't give me one, can you?

25 THE COURT: Overruled.

1 A. No. I can't think of one at this moment.

2 BY MR. PATTIS:

3 Q. And you're a reader, right?

4 A. Yes.

5 Q. You've read Hume's *Treatise of Human Nature*.

6 A. I don't know.

7 Q. Okay. You don't know if you've read it?

8 A. No.

9 Q. Okay. It stands for the proposition that just because the  
10 sun has risen every day, we don't know --

11 MR. McCULLOUGH: Objection. Foundation.

12 BY MR. PATTIS:

13 Q. Does that refresh your recollection?

14 THE COURT: Witness can answer.

15 A. Can you say it again? I couldn't hear you.

16 BY MR. PATTIS:

17 Q. David Hume argued that just because the sun rises every  
18 day, there's no logical reason to assume that it will again.

19 A. That seems accurate, yes.

20 Q. Okay.

21 MR. PATTIS: 603-9, please, Ms. Rohde.

22 BY MR. PATTIS:

23 Q. "The state of the country now is all the evidence you need  
24 to understand why we have the Second Amendment."

25 Culture of violence?

1 A. No, not necessarily.

2 THE COURTROOM DEPUTY: This exhibit is not in  
3 evidence.

4 MR. PATTIS: Ah, my mistake. I thought we did move  
5 603-9 in.

6 Ms. Rohde, can you take it down, please?

7 May I speak to the government, Judge?

8 THE COURT: You may.

9 (Pause.)

10 MR. PATTIS: I would offer 209, Judge -- or, 603-9.

11 THE COURT: Any objection?

12 MR. McCULLOUGH: No objection.

13 THE COURT: All right. It will be admitted, and  
14 permission to publish.

15 BY MR. PATTIS:

16 Q. "The state of the country now is all the evidence you need  
17 to understand why we have the Second Amendment."

18 Is that evidence of a culture of violence?

19 A. No.

20 Q. Is it evidence of a culture of irony?

21 A. No.

22 Q. Any other culture? Maybe gun culture?

23 A. Could be.

24 Q. Okay. So we got a gun culture, too?

25 A. Your words, not mine.

1 Q. Okay. Then we won't use them.

2 How would you characterize 603-9?

3 A. Looks like free speech, to me.

4 Q. Me, too.

5 Free speech about a controversial topic, correct?

6 A. Yes.

7 MR. PATTIS: 603-15. Can we see the video, Ms.

8 Rohde?

9 BY MR. PATTIS:

10 Q. You've seen this video before, correct?

11 A. Correct.

12 Q. And you see the woman -- whoops -- in the center?

13 MR. McCULLOUGH: Start it again.

14 BY MR. PATTIS:

15 Q. She's got a helmet on?

16 A. Yes.

17 Q. And she's going to show something in her left hand in a  
18 moment.

19 What's that?

20 A. It's a knife.

21 Q. A switchblade, correct?

22 A. I can't tell what kind of knife. It's a knife.

23 Q. You didn't see the blade dart out quickly? You didn't see  
24 the blade dart out quickly?

25 Stop.

1           You didn't see --

2       A.   It appeared to be.

3       Q.   And she gets knocked down?

4       A.   Yes.

5       Q.   Maybe knocked out?

6       A.   Yes.

7       Q.   And then there's a post beneath it.  "Pull out a  
8       switchblade, get knocked out."

9           I gather that's not evidence of a culture of irony, in  
10       your view, correct?

11      A.   No, not necessarily.

12      Q.   But is it necessarily evidence of a culture of violence?

13      A.   Not necessarily.

14      Q.   Okay.

15           MR. PATTIS:  603-19, please.

16      BY MR. PATTIS:

17      Q.   There's -- there are two entries there.  The first one  
18       comes at 5:25:17.  That's a March for Trump sign, apparently  
19       bearing the indicia of the Proud Boys, what you refer to as  
20       symbolology, correct?

21      A.   Yes.

22      Q.   And then at 5:25:31, "Call to action.  Get your fucking ass  
23       there on the 12th."

24           Culture of violence?

25      A.   No.

1 Q. In fact, you would -- you have been taught that one of your  
2 jobs as a Federal Bureau of Investigation special agent is to  
3 protect people in the exercise of their constitutional rights,  
4 correct?

5 A. Yes.

6 Q. Thus, the oath, you've sworn to protect and serve the  
7 Constitution of the United States, correct?

8 A. Yes.

9 Q. And among those rights is the freedom of people to petition  
10 for grievances -- petition for the redress of grievances,  
11 correct?

12 A. Yes.

13 Q. And to peacefully -- or, peaceably assemble, correct?

14 A. Yes.

15 Q. 603-22. I think you testified about this one as well.  
16 This was a message apparently posted -- or, pasted into Joe  
17 Biggs' feed on Parler, correct?

18 A. Yes.

19 Q. And it comes from a woman named Alyssa Milano, correct?

20 A. Yes.

21 Q. I would characterize this as an appeal for peace.

22 How would you characterize it?

23 A. I would agree.

24 Q. And Joe Biggs, what does he say?

25 A. "No, bitch. This is war."

1 Q. Culture of irony there?

2 A. I don't think so.

3 Q. Culture of violence?

4 A. Yes.

5 Q. Why?

6 A. He refers to "war" and used an expletive, as well.

7 Q. I tell you to read *War and Peace*, I'm using a word,  
8 correct?

9 A. Yes.

10 Q. I talk about the battle between the sexes, do you expect me  
11 to go home and beat my wife?

12 A. I do not.

13 Q. Sometimes words are used metaphorically.

14 A. Sometimes they are.

15 Q. Sometimes they're used hyperbolically.

16 A. Yes.

17 Q. Sometimes they're used emotionally.

18 A. Yes.

19 Q. Now, if I go home and my wife is beaten up and I can't  
20 account for the time between when she was last seen not beaten  
21 and the time she was found beaten, I might have some explaining  
22 to do, correct?

23 A. Yes.

24 Q. That might be one of the occasions in where the event B  
25 makes what I said at A pretty sinister, correct?



1 A. Yes.

2 Q. But absent more evidence -- you would need more evidence  
3 than that to conclude that I'd beaten my wife, wouldn't you?

4 A. Yes.

5 Q. 603-26. I think we talked about this. Texas -- Mr. Biggs  
6 writes a post at 3:56:35. "The Texas Supreme Court lawsuit  
7 odds of Biden beating @realdonaldtrump in four key battleground  
8 states less than a quadrillion to the fourth power."

9 Again, you were aware that there was litigation about  
10 the election, correct?

11 A. Yes.

12 Q. And that Mr. Trump raised scores of lawsuits, correct?

13 A. Yes.

14 Q. Lost every single one of them.

15 A. I believe so, yes.

16 Q. But, nonetheless, persisted in telling people, "Stop the  
17 steal," correct?

18 A. Yes.

19 Q. Even doing so on -- well, up and to January 4th, correct?

20 A. Yes.

21 Q. And beyond, correct?

22 A. Yes.

23 Q. Perhaps to this day, correct?

24 A. Yes.

25 Q. Now, culture of violence here? Culture of irony? Neither?

1 A. No.

2 Q. Or just freedom of expression?

3 A. Yes.

4 Q. And among the things you understand the First Amendment  
5 guarantees is a right to go to court, to have your -- a right  
6 to bring an action in court. You don't have any guarantee of  
7 the outcome, but anybody, even the United States government,  
8 can bring any kind of case they want into a courtroom, correct?

9 A. Yes.

10 Q. 603-27. Mr. Biggs appears to be disappointed in the  
11 supreme court, doesn't he?

12 A. Appears so.

13 Q. "Death to SCOTUS."

14 Correct?

15 A. Yes.

16 Q. Culture of irony?

17 A. No.

18 Q. Hyperbole?

19 A. Could be.

20 Q. Culture of violence?

21 A. Yes.

22 Q. So when is hyperbole a -- hyperbole is an overstatement,  
23 correct?

24 A. It's an exaggeration.

25 Q. So, "Death to SCOTUS," do you think he was calling for the

1 actual death of the United States Supreme Court?

2 A. I have no way to know. I just see what he wrote here on  
3 Parler.

4 Q. No. You have no idea, correct?

5 A. Based on what he said here, he is calling for death to  
6 SCOTUS.

7 Q. You have no idea whether he was being ironic or engaging in  
8 hyperbole, do you?

9 A. No.

10 MR. PATTIS: 603-30, please.

11 BY MR. PATTIS:

12 Q. That reflects several posts, correct?

13 A. Yes.

14 Q. There is an article there that is reprinted -- or,  
15 withdrawn -- that is linked in the posting at 8:47:39, correct?

16 A. Correct.

17 Q. From *The Gateway Pundit*?

18 A. Yes.

19 Q. "Police protecting antifa, Washington, D.C., last night.  
20 Proud Boys going."

21 Correct?

22 A. Correct.

23 Q. Had you any -- withdrawn.

24 At the time you retrieved this message -- withdrawn  
25 again.

1           Is this a message you selected and passed on as of  
2           potential evidentiary value? Do you know?

3           A. I don't recall.

4           Q. Do you know or did you know in January or February of 2021  
5           or in the months thereafter, what kind of publication *The*  
6           *Gateway Pundit* is or was?

7           A. No, not at the time.

8           Q. So you don't know whether it was right-wing organization?  
9           Left wing? More credible than the *The New York Times*?

10          A. You said in January or February of 2021. I did not know at  
11          the time.

12          Q. Yeah. At the time this message was passed along, you had  
13          no idea, correct?

14          A. Correct.

15          Q. Biggs writes, "We had antifa scum on the run all night,  
16          crying like little bitches."

17                 Culture of irony?

18          A. No.

19          Q. Hyperbole?

20          A. Could be.

21          Q. Yeah. Because "crying like little bitches," what's that  
22          even mean, right?

23          A. You would have to ask Mr. Biggs.

24          Q. You never did?

25          A. No.

1 Q. "We had antifa scum on the run all night."

2 Culture of violence?

3 A. Not the "on the run all night," no.

4 Q. No. But, "We had the scum" -- okay. Okay. Okay.

5 "Antifa scum," how about that, culture of violence?

6 A. No.

7 MR. PATTIS: 603-33, please.

8 BY MR. PATTIS:

9 Q. Joe Biggs, December 14th, 2020, 3:28:19. *The Gateway*  
10 *Pundit*, again another link. "Breaking: State police block GOP  
11 electors entering Michigan Capitol. Cast votes President  
12 Trump. No reason given."

13 And there was a video there, correct?

14 A. I don't recall if it was a video or an article.

15 Q. Okay. Then, Mr. Biggs writes within an hour, "We will be  
16 back to D.C. on inauguration bigger and stronger than ever."

17 Correct?

18 A. Yes.

19 Q. Culture of violence?

20 A. No.

21 MR. PATTIS: Last text on this page please,

22 Ms. Rhode. Can you scroll up a bit?

23 BY MR. PATTIS:

24 Q. I'm going to read this. It takes a moment.

25 "If police block electors from entering a building to

1 cast a vote for Trump, We the People will treat your thin" --  
2 I'm going to say -- "think blue line like we do antifa. We  
3 will knock you to your senses and bypass your unconstitutional  
4 asses."

5 I'll pause and we'll continue in a moment.

6 Culture of irony?

7 A. Hard to say. I don't think so.

8 Q. Culture of violence?

9 A. Potentially, yes.

10 Q. But you don't know, do you?

11 A. No.

12 Q. "Get in our way and get walked over. You will become the  
13 enemy of the state. You will be tried for treason. You will  
14 have no chance. Fuck around and find out. We aren't here to  
15 play games. This is war."

16 There's that "war" word again, correct?

17 A. Yes.

18 Q. No idea of whether it was hyperbole or expression of intent  
19 to engage in violence, correct?

20 A. No. Correct.

21 Q. No idea whether it reflects a culture of violence, correct?

22 A. Typically when people talk about war, it reflects a culture  
23 of violence.

24 Q. Typically, they do. But in politics, when Richard Nixon  
25 declared a War on Crime, how many people got shot in downtown

1 Washington, D.C.?

2 A. I don't know.

3 Q. None. Would that be a fair statement, as a result of  
4 his War on Crime?

5 MR. McCULLOUGH: Objection. Foundation.

6 THE COURT: Sustained.

7 BY MR. PATTIS:

8 Q. People use speech to motivate, correct?

9 A. Yes.

10 Q. The War on Crime was a metaphor, correct?

11 A. Yes.

12 MR. PATTIS: 603-46, please, Ms. Rhode.

13 BY MR. PATTIS:

14 Q. Who's that handsome man in the middle of that photo?

15 A. Defendant Pezzola.

16 Q. Defendant Pezzola? Not Dominic Pezzola, but "Defendant  
17 Pezzola"?

18 A. He's a defendant today.

19 Q. He's presumed innocent, ma'am.

20 A. He's still a defendant.

21 Q. Is that important for you to say that every time you refer  
22 to him?

23 MR. McCULLOUGH: Objection --

24 THE COURT: Sustained.

25 MR. McCULLOUGH: -- argumentative.

1 THE COURT: Sustained.

2 BY MR. PATTIS:

3 Q. Beneath, "epic."

4 Culture of violence?

5 A. The word "epic," no.

6 Q. The photograph?

7 A. Potentially.

8 Q. Is it any different than what you might see as a poster  
9 announcing a new film to be shown at a local theater?

10 A. I've also seen such posters with Isis and al-Qaeda.

11 Q. We can talk as much as you want about ISIS and al-Qaeda.

12 Do you know Clint Watts?

13 A. No.

14 Q. You know who I'm talking about?

15 A. No.

16 Q. You've not read his book on the use of social media to  
17 track terrorists, ISIS and Al-Qaeda?

18 A. No.

19 Q. Never met him at the War College?

20 A. No.

21 Q. Okay. If a filmmaker posted this and put it out on  
22 Constitution Avenue -- I'm not even sure if there are any  
23 theaters on Constitution Avenue. I'm from Connecticut. But  
24 let's suppose they did, would they be guilty of a crime?

25 A. No.



1 MR. PATTIS: 603-50, please, Ms. Rohde.

2 BY MR. PATTIS:

3 Q. "Mike Pence will betray President Trump. This is my  
4 prediction. I will be in D.C. to witness this historic Judas  
5 moment when he turns on the right to do for mere coin."

6 Correct?

7 A. Yes.

8 Q. And I think you testified that when you received the data  
9 from Parler, the data was such that you drew the conclusion  
10 that this post had been deleted.

11 A. I didn't "draw the conclusion." It said it was deleted.

12 Q. Well, but you don't know that it was. You just took at  
13 face value what it said, and that's what you're repeating here  
14 today, correct?

15 A. Parler said it was a fair and accurate copy of all the data  
16 they had.

17 Q. I know. And, so, you're just repeating what Parler told  
18 you, correct?

19 A. Yes.

20 Q. Culture of irony?

21 A. No.

22 Q. A culture of violence?

23 A. No.

24 Q. I mean, that refers, I think, "Judas," Judas Iscariot.

25 Isn't that the man who betrayed Jesus?

1 A. Yes.

2 Q. At the Last Supper Jesus turned to him and said, "What  
3 though do, doest quickly."

4 Correct?

5 A. I believe so.

6 Q. Free speech, isn't it?

7 A. It is.

8 Q. And there's nothing unlawful, as you understand it, in  
9 having passionate feelings about government?

10 A. No, nothing at --

11 Q. You've --

12 MR. PATTIS: I apologize. I spoke over the witness,  
13 Judge.

14 BY MR. PATTIS:

15 Q. Would you finish your answer, ma'am? I apologize to you.

16 A. There's nothing unlawful in that.

17 Q. You've read deeply in American history?

18 A. I have read American history books, yes.

19 Q. And you realize that we are a culture and people steeped in  
20 violence with respect to one another about political affairs,  
21 haven't you?

22 A. Yes. Historically.

23 Q. Indeed, by contrast to many eras in our history, these are  
24 peaceful times in spite of our divisions, wouldn't you agree?

25 A. Yes.

1 Q. 603-55. "Every lawmaker" -- and I'm going to edit for  
2 fluency.

3 "Every lawmaker who breaks their own stupid fucking laws  
4 should be dragged out of office and hung."

5 Ironical?

6 A. I don't know. I don't think so.

7 Q. Violent?

8 A. Yes.

9 Q. Speech is violent?

10 A. I'm sorry?

11 Q. The speech is violent?

12 A. It seems to be a violent statement.

13 Q. It reflects a culture of violence?

14 A. Yes.

15 Q. A desire to see someone hung?

16 A. Based on the words that are stated there, yes.

17 Q. Do you have any idea when the last time a politician in  
18 this country was tarred and feathered?

19 A. I don't know.

20 Q. Well, it used to be common.

21 MR. McCULLOUGH: Objection. Foundation. Relevance.

22 THE COURT: Sustained.

23 BY MR. PATTIS:

24 Q. "The government should fear the people, not the other way  
25 around."

1           What do you think about that? A culture of violence?

2           A. Seems like free speech.

3           Q. Yeah. And you realize that we're steeped in a mythology in  
4 this country that we are governed by our consent, correct?

5           A. Yes.

6           Q. Consent of the government.

7           "You don't have ruling power over me. We only -- we  
8 only have you to have that privilege. Find" --

9           MR. McCULLOUGH: Objection. Misstates.

10           MR. PATTIS: Let me read it more carefully. Thank  
11 you, Mr. McCullough.

12           BY MR. PATTIS:

13           Q. "The government should fear the people, not the other way  
14 around. You work for us. You don't have ruling power over me.  
15 We only have you to have that privilege. Find around and fuck  
16 out" -- find around -- "fuck around and find out."

17           Excuse me. Thank you.

18           Culture of irony?

19           A. No.

20           Q. Free speech?

21           A. Yes.

22           Q. Why in the world, as you were preparing for testimony in  
23 this case, did you give the government notes reflecting King  
24 Leonidas and Sparta and Thermopylae?

25           A. I would have to look at my notes to see.

1 MR. PATTIS: May I have a moment, Judge?

2 THE COURT: Yes.

3 BY MR. PATTIS:

4 Q. Is it fair to say that in these notes, you were trying to  
5 be prepared for anything that you thought might come up by way  
6 of cross-examination, correct?

7 A. I wanted to be able to testify as fully and accurately as  
8 possible, yes.

9 Q. I'm going to withdraw the question about Thermopylae a  
10 moment.

11 In the notes you brought to that meeting with the  
12 government, you also looked up something and wrote it down from  
13 *Encyclopedia Britannica*?

14 A. Yes.

15 Q. "Civil disobedience," you wrote, "also called passive  
16 resistance. The refusal to obey the demands or commands of a  
17 government or occupying power."

18 Correct?

19 A. Yes.

20 MR. HULL: Your Honor, is it possible for our friend,  
21 Mr. Pattis, to keep his voice up?

22 THE COURT: And, please, if you would remain in your  
23 seat and use the microphone, absolutely.

24 Mr. Pattis, as usual, we all need to do our best to  
25 keep voices up.

1 MR. PATTIS: Some people say I'm tall. When I hear  
2 some of my colleagues talk, I feel scared. So let me holler at  
3 the jury. I hope you don't mind.

4 BY MR. PATTIS:

5 Q. Now, you understand that this isn't the only time you're  
6 expected to testify in this case, correct?

7 A. No, that's not my understanding.

8 Q. You don't believe the government is going to bring you  
9 back?

10 A. I don't know.

11 Q. You've not discussed it with them?

12 A. They said they don't know.

13 Q. But they've told you it's possible, correct?

14 A. Anything is possible, yes.

15 Q. Well, I mean, yes and no. I mean, it's possible that I'll  
16 be struck by a meteorite mid-sentence here, but we know that's  
17 not likely, correct?

18 MR. McCULLOUGH: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. PATTIS:

21 Q. Ma'am, you have a library at home.

22 A. Yes.

23 Q. You have *The Laws of Power* (sic) there, correct?

24 A. Yes.

25 Q. When you return, will you please reread Chapter 14 on

1 spies -- friends posing as -- spies posing --

2 MR. McCULLOUGH: Objection.

3 THE COURT: Sustained.

4 MR. PATTIS: Nothing further, Judge.

5 THE COURT: All right. Very well.

6 Counsel for Mr. Rehl.

7 CROSS-EXAMINATION

8 BY MS. HERNANDEZ:

9 Q. Your only saving grace is that I'm not as well-read as  
10 Mr. Pattis.

11 A. I don't know that any of us are.

12 Q. One of the saving graces, maybe.

13 I'm sorry, but I missed your response.

14 A. I said I don't know that any of us are.

15 Q. So, good afternoon. I know it's been a long -- this is the  
16 second day?

17 A. Yes.

18 Q. Thank you for being here. And for your service.

19 A. Appreciate it.

20 Q. I represent Zachary Rehl.

21 MS. HERNANDEZ: Zach, get up.

22 BY MS. HERNANDEZ:

23 Q. You've never met him before today?

24 A. No.

25 Q. Okay. So would it be --

1 MS. HERNANDEZ: I'm sorry. Could you pull up 600B?  
2 I'm sorry. 600B.

3 THE COURTROOM DEPUTY: Talk into the microphone.

4 MS. HERNANDEZ: Government 600B. I believe it's in.  
5 And could we show it to...

6 BY MS. HERNANDEZ:

7 Q. And this -- did you prepare this slide? Do you know?

8 A. I did not.

9 Q. Someone on the government team did?

10 A. Yes.

11 Q. Okay. And this is supposed to be sort of a summary of  
12 information regarding Zachary Rehl's Parler posts?

13 A. It was the biography and the name -- the display name that  
14 Defendant Rehl provided.

15 Q. So on Parler itself, that section that says "Bio," that's  
16 what was on there when you got the records from Parler?

17 A. Yes.

18 Q. And so we're assuming it was Mr. Rehl who created that bio.

19 A. Yes.

20 Q. Okay. And down here on the right -- on my right, it says  
21 that he is following 198 persons?

22 A. Yes.

23 Q. And the persons he followed, among others, you only  
24 selected out names -- or, someone selected out names that were  
25 related to this particular case; is that correct?



1 A. That's correct.

2 Q. So, there are three names listed there, which would  
3 indicate that 195 other people -- Mr. Rehl followed 195 other  
4 people not listed there, correct?

5 A. Yes.

6 Q. And the three people listed there are Mr. Tarrio,  
7 Mr. Nordean, and Mr. Biggs?

8 A. Yes.

9 Q. He does not follow Mr. Pezzola?

10 A. That's correct.

11 Q. Okay. And on the people who are following Mr. Rehl, the  
12 only one of the defendants who followed Mr. Rehl was Enrique  
13 Tarrio?

14 A. Yes.

15 Q. Mr. Biggs did not follow Mr. Rehl?

16 A. No.

17 Q. Mr. Nordean did not follow Mr. Rehl?

18 A. No.

19 Q. And Mr. Pezzola did not follow Mr. Rehl?

20 A. No.

21 Q. And does that indicate to you that he's -- may not be as  
22 important as some of the others?

23 A. It just indicates to me that they weren't following him.

24 Q. No other indication?

25 A. They weren't following him.

1 Q. Okay. Maybe he was not as well-read as Mr. Pattis.

2 MS. HERNANDEZ: Sorry.

3 BY MS. HERNANDEZ:

4 Q. The profile picture on there, is that something he -- that  
5 was on there when you received the information from Parler?

6 A. No.

7 Q. Was there a different profile picture that you received?

8 A. Yes.

9 Q. And do you know where that is?

10 A. I don't -- what do you mean?

11 Q. Well, it's not on here.

12 A. Yes.

13 Q. Correct?

14 A. That's correct.

15 Q. So -- and, again, you were not the person who chose to put  
16 this information together on this piece of paper?

17 A. That's right.

18 Q. Do you know who did?

19 A. No.

20 Q. Do you know who selected, in particular, this Parler  
21 picture?

22 A. No.

23 Q. Okay. And this Parler picture --

24 A. This is not a Parler picture, ma'am.

25 Q. I'm sorry. This little icon or whatever image.

1 A. It didn't come from Parler, is what I'm saying.

2 Q. It did not come from Parler?

3 A. That's correct.

4 Q. And, therefore, it did not come from Mr. Rehl?

5 A. That's correct.

6 Q. It came from someone on the prosecution team?

7 A. I would assume so, yes.

8 Q. Okay. And just in the background of this picture, there's  
9 a photograph of a man who appears to have a Confederate hat on,  
10 correct?

11 A. It appears so.

12 Q. And you were -- I think you said you're from Alabama?

13 A. Yes.

14 Q. So you have some particular familiarity with the  
15 Confederate flag?

16 A. I have seen the Confederate flag before, yes.

17 Q. And it's -- would you agree with me that for many or most  
18 Americans, it's a sign of a hateful period of American history?

19 A. Yes.

20 Q. So, the fact that it's in the background is -- would you  
21 say it's troubling?

22 A. I'm not a fan of the Confederate flag, no.

23 Q. Correct. And I...

24 If you had had the choice, if you were the one picking  
25 the picture, would you have picked the Confederate flag as a

1 background?

2 A. I wouldn't have been picking the picture because I didn't  
3 prepare the exhibits.

4 Q. But, if you had?

5 MR. McCULLOUGH: Objection. Calls for speculation.

6 THE COURT: Sustained.

7 BY MS. HERNANDEZ:

8 Q. And just one last question on this.

9 You tell me, you don't know who picked this picture or  
10 who put this slide together, correct?

11 A. That's right.

12 Q. But it is someone from the prosecution team?

13 A. I believe so, yes.

14 Q. Okay. Thank you.

15 Could we -- let me ask you something about the Parler  
16 messages as a whole that you brought to court today that were  
17 introduced through you.

18 Do you know whether Mr. Rehl read any of the Parler  
19 posts on the other persons -- the Parler posts that are  
20 attributed to Mr. Biggs or Mr. Nordean or Mr. Tarrío?

21 A. He uploaded many of the posts, which would indicate that he  
22 had seen them.

23 Q. But -- and -- but the exhibits that you introduced today  
24 don't show which he did or didn't do, or do they show that?

25 A. No, they don't show that.

1 Q. They don't show that. So, the exhibits that were  
2 introduced, we don't know what he read or didn't read?

3 A. That's correct, based on what was presented.

4 Q. Okay. And do you have any idea as you sit there whether he  
5 read a lot or a few or most or anything like that?

6 A. He uploaded many of Defendant Tarrio's posts.

7 Q. I'm sorry. And when you said "he uploaded," is it, like, a  
8 heart thing or a checkmark or something?

9 A. It's an arrow.

10 Q. And that would mean that he -- it might mean that he either  
11 read it or agreed to it or something?

12 A. Yes. I take it that he engaged with the content.

13 Q. Okay. Oh, he engaged with the content. So, he may have  
14 looked at it.

15 Does that come up automatically or does he have to do  
16 something?

17 A. To upload it?

18 Q. The checkmark or whatever you said.

19 A. It takes action by the user.

20 Q. Okay. And -- but a number of them were not upload by him?

21 A. Yes. There were hundreds of messages that Defendant Tarrio  
22 posted. He did not upload all of them.

23 Q. There were hundreds of messages that Defendant Tarrio  
24 posted?

25 A. Yes.

1 Q. And the same goes for the other persons?

2 A. Yes. Except for Defendant Pezzola. He had much less  
3 content.

4 Q. And, for example, this book, Government Exhibit 97, which  
5 you had read before you were ever in this case, correct?

6 A. Yes.

7 Q. And which Mr. Pattis, apparently, had also read before he  
8 came to appear before us.

9 You don't know, or do you know whether Mr. Rehl uploaded  
10 that post?

11 A. I don't recall. I would have to review the data.

12 Q. You don't recall one way or the other?

13 A. Yes, that's correct.

14 Q. And is this book sort of, like, the Chinese -- what's the  
15 book I'm looking for?

16 MR. JAUREGUI: *The Art of War*?

17 BY MS. HERNANDEZ:

18 Q. *The Art of War*. Is it that type of thing?

19 A. It draws on a lot of historical instances when it talks  
20 about the different laws of power.

21 Q. And is this more a philosophical book than anything else?

22 A. Yes.

23 Q. Is it sort of, like, a self-help book? If you want to be a  
24 powerful person, read this?

25 A. Yes.

1 Q. And from what you know of Mr. Tarrio, do you think he's  
2 read this book, or did he read the Cliff notes version of this  
3 book?

4 A. I have no way to know for sure, but after reviewing his  
5 Parler content, he seems to be well-read. So, I would think  
6 that he had read it.

7 Q. Okay. And he -- would you agree with me, he is a person  
8 who is pretty capable of drawing media to himself?

9 A. Yes.

10 Q. He's rather well-known in some areas of this country?

11 A. Yes.

12 Q. Okay. And he seems to relish that, correct?

13 A. Yes, it would seem so.

14 Q. Okay. Thank you.

15 Now, Mr. Rehl only has 1800 followers. He's not as well  
16 known, would you agree with me, in the Proud Boys hierarchy or  
17 otherwise?

18 A. Yes, I would agree.

19 Q. Okay. And would you say he's not the top leadership?

20 A. He was the leader of the Philadelphia Proud Boys chapter.

21 Q. And there are many chapters in the United States for the  
22 Proud Boys?

23 A. Yes.

24 Q. And is it my -- it's my understanding that each of the  
25 chapters, to some extent -- or, let me back up.

1           Each of the chapters is its own individual chapter,  
2       correct?

3           MR. McCULLOUGH:   Objection.   Scope.   Foundation.

4           MS. HERNANDEZ:   She seemed to be familiar with the  
5       concept.

6           THE COURT:   Sustained.   Sustained.

7       BY MS. HERNANDEZ:

8       Q.   So, I'm not sure what -- I'll ask another question.

9           So, the Philadelphia Proud Boys is its own entity?  
10       Would you agree with me on that?

11       A.   Yes.

12       Q.   And, for example, Mr. Biggs belonged to a different  
13       chapter?

14       A.   Yes.

15       Q.   And Mr. Nordean, also a different chapter?

16       A.   Yes.

17       Q.   And Mr. Pezzola to a different chapter?

18       A.   Yes.

19       Q.   And is Mr. Tarrio -- does he also belong to his own chapter  
20       or is he just the president or the chairman of the entire  
21       thing?

22       A.   My understanding is that he has -- he's in a chapter, but  
23       also is the chairman of the entire group.

24       Q.   Okay.   And if you know, how -- each of the chapters is  
25       somewhat autonomous?



1 A. That's my understanding, yes.

2 Q. So, some of them attend some rallies and not others; would  
3 you agree?

4 A. Yes.

5 Q. Okay. So, let me ask you some questions about the -- the  
6 government played a number of videos from November, and also  
7 introduced a number of posts from November, correct?

8 A. Yes.

9 Q. All of those, obviously, precede the conspire -- the  
10 charged conspiracy in this case, correct? The November ones.

11 A. Yes.

12 MR. McCULLOUGH: Objection.

13 THE COURT: Sustained.

14 MS. HERNANDEZ: I'm not sure of the basis, Your  
15 Honor. I don't want to -- I mean, I don't want to cross over  
16 the line. I'm just not sure.

17 THE COURT: If you would like a side bar.

18 (Bench discussion:)

19 MS. HERNANDEZ: I'm not sure what the limitation on  
20 this line of questioning is.

21 THE COURT: Well, I mean, again we've drawn a line  
22 here between the Parler posts and, kind of, reasonable jumping  
23 off points from those, and sort of having the witness just give  
24 freestanding testimony about whatever she might have picked up  
25 here and there, or even as part of her own investigation.

1           So, when we get into what is the charged conspiracy,  
2           I mean, we're talking about -- we're starting to talk about  
3           sort of the -- it seems to me, legal conclusions, rather than  
4           just the Parler posts, and its the scope of her direct.

5           MS. HERNANDEZ: I'll reframe the question. But it  
6           was just a statement of fact that the November posts come  
7           before the December conspiracy. I don't think there's any sort  
8           of deep legal concept about when the conspiracy started. It's  
9           a date certain.

10          THE COURT: Well, it is -- the date certain, that's  
11          interesting. It certainly -- as I recall the indictment, you  
12          are correct, that I think there's no reading of the indictment  
13          that it was going on in November, let's put it that way.

14          Mr. McCullough, if that's the only question, do you  
15          object to that question?

16          MR. McCULLOUGH: I just don't -- I mean, the idea  
17          that these are posts that happened before the January 6th rally  
18          was announced, fine. I think kind of bringing in conspiracy  
19          issues, kind of asking for this witness to kind of weigh in on  
20          a legal conclusion, which I think is not appropriate.

21          THE COURT: I think it gets murky after that,  
22          Ms. Hernandez. So, I'll allow that question about the November  
23          thing, but I think once we get to December, it's far more murky  
24          about when exactly the -- so, I think if you want to move on  
25          after that, that's fine.

1 MS. HERNANDEZ: I'll take the Court's observation.  
2 Although, I thought it was pretty clear the government was  
3 dating it to December 19th, when the President sent out the  
4 post about be here and be wild, or whatever, but -- okay.  
5 Thank you.

6 THE COURT: All right.

7 (Open court:)

8 BY MS. HERNANDEZ:

9 Q. So, I just -- I'm asking you about the November Parler  
10 posts and videos that were introduced through your testimony,  
11 and just to distinguish them from, for example, January 6,  
12 which is the, sort of, the thrust of the charges in this case,  
13 correct?

14 A. The conspiracy is the thrust, but, yes.

15 Q. And, so, the only thing I wanted to ask -- the only thing I  
16 wanted to pursue with respect to the November -- a number of  
17 the posts -- the Parler posts that you were asked about and  
18 were introduced through you involved posts that were made in  
19 November, correct?

20 A. Yes.

21 Q. And maybe some of them were even before November?

22 A. No, I don't think any of them were before November.

23 Q. Okay. So there's some in November and, I believe, some in  
24 December?

25 A. Yes.

1 Q. I don't believe any Parler posts from January were  
2 introduced through you; is that correct?

3 A. No. There were posts in January.

4 Q. There were some?

5 A. Yes. Up until January 4th.

6 Q. Okay. Up until January 4th. That was the dividing line of  
7 the evidence that came in through you earlier?

8 A. Yes.

9 Q. Okay. So, just what I'm trying to establish is the  
10 November ones were, under any view of the charges, before the  
11 conspiracy is alleged?

12 A. So, as I said before, a crime is not viewed in a vacuum.  
13 So, we look at state of mind as evidence of a crime.

14 Q. Right. But the charge in this case is a conspiracy  
15 starting sometime in December. Would you --

16 MR. McCULLOUGH: Objection, Your Honor.

17 BY MS. HERNANDEZ:

18 Q. Would you agree with me on that?

19 THE COURT: The witness can answer.

20 A. Yes.

21 BY MS. HERNANDEZ:

22 Q. Okay. So, a number of the -- so, the November posts are --  
23 may be what you just described, state of mind, correct?

24 A. Yes. I viewed it as evidence, and that's why it was  
25 seized.

1 Q. Okay. And it could -- well, did you only -- you say, "it  
2 was seized." And we're talking about the warrant that was  
3 issued for Parler posts?

4 A. Yes.

5 Q. And what was the starting date for the Parler posts that  
6 you requested?

7 A. I believe it was November 3rd.

8 Q. Okay. And, so, you also went through a number of Parler  
9 posts with Mr. Pattis which you indicated was First  
10 Amendment-protected statements? Would you --

11 A. They were First Amendment speech, yes.

12 Q. Okay. So those November posts were either First  
13 Amendment-protected speech and/or what you described as  
14 evidence of intent?

15 A. State of mind. Intent. Motivation.

16 Q. Maybe they were both?

17 A. They could be both, yes.

18 Q. Okay. So, let me --

19 MS. HERNANDEZ: If I could -- if I could ask Ms.  
20 Rohde, 602-1.

21 I believe, Your Honor, the government introduced this  
22 video -- I mean, this Parler post, 602-1.

23 BY MS. HERNANDEZ:

24 Q. And the government introduced this Parler post, but they  
25 didn't play the video embedded in that post.

1 A. That's right.

2 MS. HERNANDEZ: I would ask that to be played for the  
3 jury, Your Honor, since it's been admitted.

4 THE COURT: All right. Very well.

5 Ms. Rohde, if you would do the honors.

6 (Video played.)

7 MS. HERNANDEZ: Thank you.

8 BY MS. HERNANDEZ:

9 Q. And as far as you know, this is a post that Mr. Rehl  
10 posted -- this video is something that Mr. Rehl posted on his  
11 Parler?

12 A. Yes.

13 Q. On November 6, 2020?

14 A. Yes.

15 Q. And would you -- since you went through this exercise,  
16 would you agree that his posting of that is a First  
17 Amendment-protected posting?

18 A. Yes.

19 Q. Okay. And I know you talked -- you seem to be quite aware  
20 of a lot of things that were going on during that period of  
21 time in America. You were asked about the Kraken and other  
22 things that were going on around the election in 2020?

23 A. Yes.

24 Q. Would you agree with me that Philadelphia and Pennsylvania  
25 was a big, sort of, location where there was a lot of

1 contention over the outcome of the election?

2 A. Yes.

3 Q. Because Pennsylvania is one of those swing states?

4 A. Yes.

5 Q. And usually when it -- not usually.

6 It can determine the president -- the presidency,  
7 depending on whether it goes Democrat or Republican?

8 A. It could.

9 Q. It could. And, in fact, I think there was lawsuits filed  
10 in the state of Pennsylvania?

11 A. I believe that's correct, yes.

12 Q. And there were hearings held by legislators -- let me put  
13 "hearings" in quotations.

14 There were events held in -- I believe in Gettysburg,  
15 run by state legislators in Pennsylvania. Do you recall that?

16 A. I don't know.

17 Q. And do you recall that Rudy Giuliani had a infamous press  
18 conference at the, quote/unquote, "Four Seasons," which turned  
19 out to be a garden center rather than the big hotel, the Four  
20 Seasons?

21 A. Yes.

22 Q. And that was in Philadelphia?

23 A. I believe so, yes.

24 Q. And that was all around this notion that -- what this  
25 gentleman claims, which was that there was fraud in

1 Philadelphia and Pennsylvania, and that the election was being  
2 stolen?

3 A. Yes.

4 Q. Okay. So, can you go down to read the -- so, in the top  
5 section of that, Mr. Rehl is calling all Trump supporters  
6 tomorrow for --

7 Would you say that was for some sort of event?

8 A. I don't have any basis or knowledge of that. I just see  
9 that it was on Parler.

10 Q. Okay. And then the -- underneath that video we just  
11 watched, that's his -- that's Mr. Rehl's posting. And he says,  
12 "When democrats are calling out the fraud going on in  
13 Philadelphia."

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. And he's referring to that gentleman who claims to have  
18 been a Democrat who was voting -- who was a poll watcher of  
19 some sort.

20 A. It appears to be referencing that, yes.

21 Q. Okay.

22 MS. HERNANDEZ: Could we go to -- I'm sorry. Ms.  
23 Rohde, sorry, 602-9?

24 BY MS. HERNANDEZ:

25 Q. Let me back up. You can put that down.



1           Let me ask you a question. You testified -- a number of  
2       videos were shown to you during your direct examination.

3       A. Yes.

4       Q. And I'm going to ask you some questions about the rallies  
5       and other things that the Proud Boys did, if you know the  
6       answer. If you don't, you don't, obviously.

7           Did you ever attend any of the Proud Boy rallies in  
8       D.C.?

9           MR. McCULLOUGH: Objection. Relevance. Scope.

10          THE COURT: Sustained.

11          MS. HERNANDEZ: Your Honor, I'm just trying to  
12       establish her personal knowledge of these things. She's  
13       testified to a rally in November. She -- or, she testified to  
14       videos of things that took place after a rally on the 14th, and  
15       again on the 12th. So I'm just trying to establish her  
16       personal knowledge.

17          THE COURT: But it's still beyond the scope of her  
18       testimony, which was limited to the Parler posts.

19          MS. HERNANDEZ: Okay.

20       BY MS. HERNANDEZ:

21       Q. So, you played a number of video -- or, a number of videos  
22       were played for you relating to the November 14th rally and  
23       events in D.C.?

24       A. Yes.

25       Q. The videos were things that were happening in the evening,

1 or at night, in the streets of D.C.?

2 A. I believe most of them were, yes.

3 Q. That's not the -- that is not the Proud Boys rally; is that  
4 correct?

5 A. I don't know what time the rally ended. I know on the  
6 fliers it was advertised as starting at 12 p.m.

7 Q. So "12 p.m." being noon?

8 A. Yes.

9 Q. So as far as you know from the information you've reviewed,  
10 the rally was usually daytime?

11 MR. McCULLOUGH: Objection.

12 BY MS. HERNANDEZ:

13 Q. Or at least on the 14th, was a daytime rally?

14 MR. McCULLOUGH: Objection. Foundation.

15 MS. HERNANDEZ: She just said, Your Honor.

16 THE COURT: Well, she can ask based -- she can answer  
17 the question based on her review of the Parler posts.

18 A. Based on my review of Parler, the rally started at 12 p.m.

19 BY MS. HERNANDEZ;

20 Q. And, again -- and I'm sorry to keep correcting -- noon --  
21 just because I want to make sure we understand, 12 p.m. is  
22 noon?

23 A. Yes.

24 Q. Okay. So that's daytime?

25 A. Yes.

1 Q. And the videos you were played and showed were happening at  
2 night -- either in the evening or at night. You could see in  
3 the background that it was dark?

4 A. Yes.

5 Q. And the question I'm asking is if you know whether the  
6 events in those videos are things that happened after the  
7 rallies are over?

8 A. I can't tell based on my knowledge from Parler.

9 Q. You can't tell?

10 A. No.

11 Q. Or your knowledge of the investigation in this case?

12 A. Based on my review of Parler, I don't know.

13 Q. So, the alternative -- the other question is, or based on  
14 your knowledge of the investigation in this case?

15 MR. McCULLOUGH: Objection.

16 THE COURT: Sustained.

17 MS. HERNANDEZ: And Your Honor's ruling on a beyond  
18 the scope?

19 THE COURT: Yes, ma'am.

20 BY MS. HERNANDEZ:

21 Q. So let me ask you --

22 MS. HERNANDEZ: Could you please pull up 603-46?

23 THE COURTROOM DEPUTY: What number?

24 MS. HERNANDEZ: I'm sorry, Government Exhibit 603-46.  
25 603-46. And I believe that's been admitted.

1 BY MS. HERNANDEZ:

2 Q. Do you know whether Mr. Rehl saw that picture?

3 A. I don't know.

4 Q. And can you tell from this whether he upload it or anything  
5 like that?

6 A. I don't know that he upload Defendant Biggs, but I believe  
7 that he did upload Defendant Tarrio's posting of this picture,  
8 but I would have to review that data to make sure.

9 Q. And do you have that data available to you?

10 A. The prosecution might, but I don't have it on me right now.

11 Q. You don't have it on you, but the prosecution would have  
12 it?

13 A. Potentially. I'd have to ask them.

14 Q. Okay.

15 MS. HERNANDEZ: I may get back to that, Your Honor.

16 Now, if you could pull up 601-39, please.

17 BY MS. HERNANDEZ:

18 Q. And this is a Mr. Nordean post where he refers to antifa?

19 MS. HERNANDEZ: I'm sorry. That's the wrong one.

20 601-39.

21 BY MS. HERNANDEZ:

22 Q. And this is a post where he refers to antifa?

23 A. Yes.

24 Q. And a lot of the videos you -- that were introduced through  
25 you, there were a lot of references to antifa?

1 A. Yes.

2 Q. And there seems to be a focus, or preoccupation, by some of  
3 the Proud Boys with antifa?

4 A. They spoke about them often, yes.

5 MS. HERNANDEZ: And you can take that down. Thank  
6 you.

7 BY MS. HERNANDEZ:

8 Q. And they referred to antifa as some sort of terrorist  
9 organization? Is that what you understood from the Parler  
10 posts?

11 A. If we could pull that post back up again. I would like to  
12 be accurate.

13 Q. Okay. I'm not sure if that -- well, yes, please.

14 A. Defendant Nordean seems to imply that they are terrorists,  
15 yes.

16 Q. Terrorists. Okay. Thank you.

17 MS. HERNANDEZ: You can take it down.

18 BY MS. HERNANDEZ:

19 Q. Now, you are an FBI special agent, correct?

20 A. Yes.

21 Q. And we've already established that FBI -- the FBI ranks  
22 is -- the agents are special, correct?

23 A. My mom thinks I am, yes.

24 Q. I agree, I'm sure she does. As your husband and everybody  
25 else who knows you.

1           And as an FBI agent, you are -- the FBI is part of the  
2     Department of Justice?

3     A.   Yes.

4     Q.   So the Attorney General of the United States is essentially  
5     your boss?

6     A.   Yes.

7     Q.   And back in 2020, the Attorney General was Mr. Barr?

8     A.   Yes.

9     Q.   You were aware that Mr. Barr referred to antifa as a  
10    terrorist --

11           MR. McCULLOUGH:  Objection.  Relevance.  Scope.

12           THE COURT:  Sustained.

13           MS. HERNANDEZ:  Your Honor, I think I'm -- I can --

14           THE COURT:  I mean -- okay.

15           (Bench discussion:)

16           You can proceed.

17           MS. HERNANDEZ:  Your Honor, the witness, just during  
18    my cross, and also during direct, read the terms of a number of  
19    these posts where some of the Proud Boys refer to antifa as a  
20    terrorist organization.  The attorney general, at around that  
21    time, issued a press release and went to -- before the cameras  
22    and referred to antifa as a terrorist organization.  I'm just  
23    trying to establish that link.

24           THE COURT:  You know, I'm going to allow that  
25    question.  I'm going to allow that question.

1 (Open court:)

2 MS. HERNANDEZ: Thank you.

3 BY MS. HERNANDEZ:

4 Q. So, we were talking about this notion that antifa is a  
5 terrorist organization. And we also -- I believe you indicated  
6 that as a special agent of the FBI, your ultimate boss is the  
7 Attorney General of the United States?

8 A. Yes.

9 Q. And are you aware -- or, are you familiar with the fact  
10 that in the summer -- the spring and summer of 2020,  
11 then-Attorney General Barr referred to antifa as a terrorist  
12 organization?

13 A. I am not. But, based on my training and experience in  
14 investigations relating to terrorism, I know they are not a  
15 designated terrorist organization.

16 Q. But, that's not the question I asked.

17 Do you know whether the Attorney General, your boss at  
18 the time -- let me back up.

19 To designate a terrorist organization, there's a whole  
20 process by which the United States of America designates  
21 entities or groups as terrorist organizations, correct?

22 A. Yes.

23 Q. That's what you're referring to?

24 A. Yes.

25 Q. But the question I asked is whether you're aware that, for

1 example, in May of 2020, the Attorney General issued a  
2 statement posted on the Department of Justice website that  
3 referred to antifa as domestic terrorists?

4 A. No, I was not aware of that.

5 Q. Okay. You're not aware of that?

6 A. No.

7 Q. So it's not a question of refreshing your recollection  
8 because you're not aware of it.

9 A. Correct.

10 MS. HERNANDEZ: Your Honor, I would move this  
11 document in. It's a statement of a party opponent.

12 MR. McCULLOUGH: We object to this, Your Honor.

13 THE COURTROOM DEPUTY: Exhibit number, Ms. Hernandez?

14 MS. HERNANDEZ: 39.

15 MR. McCULLOUGH: You have another copy?

16 MS. HERNANDEZ: I have a copy for myself.

17 THE COURT: What's the objection?

18 MR. McCULLOUGH: Relevance. Scope. Hearsay.

19 THE COURT: All right. All right.

20 MS. HERNANDEZ: The last line, Your Honor.

21 THE COURT: The witness -- based on the -- I'm going  
22 to sustain the objection based on the witness's testimony.

23 MS. HERNANDEZ: So it will be marked -- the document  
24 is dated Sunday, May 31st, 2020. It will be marked for  
25 identification as Defense Exhibit --



1 THE COURT: Just mark for --

2 MS. HERNANDEZ: -- Rehl Exhibit 39.

3 THE COURT: Very well. Marked for identification.

4 THE COURTROOM DEPUTY: What is this document? Can I  
5 have a description?

6 MS. HERNANDEZ: The document is Attorney General  
7 William P. Barr's Statement on Riots and Domestic Terrorists.

8 THE COURT: Okay.

9 BY MS. HERNANDEZ:

10 Q. And during the summer of 2020, there were big  
11 demonstrations in Portland, Oregon, that attacked the federal  
12 courthouse. Are you familiar with those demonstrations?

13 MR. McCULLOUGH: Objection. Scope.

14 THE COURT: Sustained.

15 MS. HERNANDEZ: And, again, Your Honor, we're talking  
16 about scope.

17 THE COURT: Yes. Yes, ma'am.

18 BY MS. HERNANDEZ:

19 Q. The podcast that you played -- that the government -- that  
20 the prosecutors played for you, there were several podcasts; is  
21 that correct?

22 A. Yes.

23 Q. And the podcasts were -- well, why don't you describe for  
24 the jury what a podcast is, please.

25 A. I mean, so, a podcast typically comes in audio form, but in

1 this case it was audio and visual on Rumble.

2 Q. And the podcasts are -- because we live in the 21st  
3 Century, anyone who wants to publish himself or herself and put  
4 themselves onto the stream of commerce can videotape or  
5 audiotape themselves and post that on the net; is that  
6 accurate?

7 A. Yes.

8 Q. So these podcasts are sort of shows, would you describe  
9 them as?

10 A. Yes.

11 Q. And this is people -- and this -- there's all sorts of  
12 people, not just some of the Proud Boys. But, you know, there  
13 are people who talk about cooking or their favorite TV show or  
14 whatever; is that correct?

15 A. Yes.

16 Q. And they go online, they videotape themselves and say  
17 whatever they want to say.

18 A. Yes.

19 Q. And, again, that's likely First Amendment-protected  
20 activity?

21 A. Yes.

22 Q. And do you know whether the particular podcasts you were  
23 played -- and I believe one of them was Rebel Talk?

24 A. Both of them Rebel Talk with Rufio in the first episode and  
25 the second episode.

1 Q. Do you know whether Mr. Rehl listened in on those?

2 A. I don't know.

3 Q. And that's because you can't tell from the information you  
4 received from Parler?

5 A. Yes, that's correct.

6 Q. And did you do any investigation as to that?

7 A. No.

8 Q. Okay. And then the last question on that topic is, you  
9 don't know, but if he had watched or signed onto it, would you  
10 have been able to get that information?

11 A. I don't know. I don't think so.

12 Q. You don't know the answer?

13 A. I don't know the answer.

14 Q. Okay. I'm sorry, and the Rebel Talk podcasts, were they  
15 on -- you said -- it wasn't on Parler.

16 What was the platform there were on?

17 A. So, the links were posted on Parler, but it was on Rumble.

18 Q. I see. So, the links were on Parler, but it was on Rumble.

19 Again, because the links were on Parler, would you be  
20 able to tale from the Parler data that you received whether  
21 Mr. Rehl accessed it?

22 A. No.

23 Q. You would not?

24 A. No.

25 Q. So there was -- the government introduced a Parler post

1 from Mr. Rehl?

2 MS. HERNANDEZ: 602-41, please.

3 BY MS. HERNANDEZ:

4 Q. And it had a link to an *American Thinker* article?

5 A. Yes.

6 Q. Are you familiar with that article?

7 A. Yes.

8 Q. And the government introduced the article at 602-41A. And  
9 there's the *American Thinker* letterhead.

10 And *American Thinker* is an online publication; is that  
11 correct?

12 A. Yes.

13 Q. Is it conservative, liberal? Do you know?

14 MR. McCULLOUGH: Objection. Relevance.

15 A. No.

16 MS. HERNANDEZ: Just a simple question, Your Honor.

17 THE COURT: She can answer the question, if she  
18 knows.

19 MS. HERNANDEZ: She said no, Your Honor.

20 THE COURT: All right.

21 And is this -- is this in evidence right now?

22 MS. HERNANDEZ: This is the document the  
23 government -- this is a Rule 106 document the government  
24 introduced.

25 THE COURT: Oh, they did introduce. All right. Very

1 well.

2 MR. McCULLOUGH: We did move this into evidence, yes.

3 THE COURT: Very well.

4 BY MS. HERNANDEZ:

5 Q. So, again, that was in relation to a Parler post that  
6 Mr. Rehl posted on December 26, 2020?

7 A. I believe that's correct. I would need to look at the  
8 Parler post.

9 Yes.

10 Q. Okay. And you've read the article, correct?

11 A. Yes.

12 Q. And it's an article, again, talking about the election and  
13 whether it was stolen or not stolen?

14 A. Essentially, yes.

15 Q. And remedies proposed in this article --

16 A. Yes.

17 Q. -- by whoever wrote it, correct?

18 A. Yes.

19 Q. And the person who wrote it was of the opinion that the  
20 Vice President of the United States, Mike Pence, had the  
21 ability to prevent -- I believe what -- the -- the way they  
22 describe it is to prevent the counting of votes that were  
23 illegal, or something to that effect?

24 A. Something to that effect, yes.

25 Q. And the whole -- the document -- and it's a two-page

1 document, correct?

2 A. Yes, I believe that's correct.

3 Q. And, again, the document does not promote or propose  
4 violence of any kind, does it?

5 A. No.

6 Q. It suggests that there is a legal process by which the Vice  
7 President and the Congress could maintain then-President Trump  
8 in office?

9 A. Yes.

10 Q. It's a whole -- and it cites -- for example, it cites  
11 Article II, Section 1, and a section of the U.S. Code, the 12th  
12 Amendment, and all sorts of, sort of, legal basis for taking  
13 this particular action?

14 A. Yes.

15 Q. And, again, this would be First Amendment-protected speech?

16 A. Yes.

17 MS. HERNANDEZ: And this is in evidence under the  
18 government's number.

19 THE COURT: Ms. Hernandez, is now a decent time to  
20 pause?

21 MS. HERNANDEZ: Yes, Your Honor.

22 THE COURT: All right. So we'll take a quick ten-  
23 minute break for the court reporter.

24 Ladies and gentlemen, we'll see you in ten minutes.

25 (Whereupon the jurors leave the courtroom.)

1 THE COURT: All right. So we'll take -- you all may  
2 be seated.

3 And you can remain or step down, whatever you would  
4 like.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: And we'll be back in ten minutes.

7 (Recess.)

8 THE COURT: Everyone may be seated.

9 MR. McCULLOUGH: We can recall the witness?

10 THE COURT: You may.

11 THE COURTROOM DEPUTY: Waiting for the defendants.

12 THE COURT: I understand we can't bring the jury back  
13 in, but I think we can bring the witness back in.

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

17 THE COURT: Ms. Harris, if you could retrieve the  
18 jury, please.

19 MS. HERNANDEZ: Your Honor, if we can go --

20 THE COURT: All right.

21 (Bench discussion:)

22 MS. HERNANDEZ: I think the witness is fine. I'm  
23 just -- you know, she's -- the witness is taking chemotherapy.  
24 It's been a long day. I don't know if the Court could ask her  
25 how she's feeling. I just feel a little personal concern for

1 her health.

2 THE COURT: I'll do that. I'll do that.

3 (Open court:)

4 THE COURT: How we doing?

5 THE WITNESS: I'm good. Thank you.

6 THE COURT: You feeling okay?

7 THE WITNESS: Yes, Your Honor. Thank you for that.

8 (Whereupon the jurors enter the courtroom.)

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

10 Welcome back, ladies and gentlemen.

11 And Ms. Hernandez will -- you may continue your  
12 cross-examination.

13 Let me just -- for the record, also, reiterate, for  
14 all counsel, to speak directly into the microphone and keep  
15 your voice up.

16 Mr. Hull, I beat you to it this afternoon.

17 All right. You may proceed.

18 BY MS. HERNANDEZ:

19 Q. I want to thank you for coming back.

20 A. Sure.

21 Q. I would like to ask you a few more questions about that  
22 article that we were discussing, which is Government Exhibit  
23 602-41A. And I just wanted to set up the posts -- Mr. Rehl's  
24 posts around that article.

25 MS. HERNANDEZ: So, 602-41, and I believe this has



1       been admitted already.

2               MR. McCULLOUGH:   Yes.

3               MS. HERNANDEZ:   So this has been admitted.   The  
4       government admitted it.

5       BY MS. HERNANDEZ:

6       Q.   602-41, he posts this on December 26, 2020.   And that's the  
7       link to this article that we spoke about a few minutes ago,  
8       correct?

9       A.   Correct.

10      Q.   And then --

11             MS. HERNANDEZ:   Is 602-42 admitted?

12             MR. McCULLOUGH:   No.

13             THE COURTROOM DEPUTY:   No.

14             MS. HERNANDEZ:   Does the government have any  
15       objections to using 602-42?

16             So, by stipulation, they're coming in?   Or do you  
17       want me to ask the witness?   I'll ask the witness.

18             So, can you show, just for the witness, 602-42?

19             And that's the -- I'm sorry, 602-42 is the government  
20       numeration, but it has not been introduced.

21       BY MS. HERNANDEZ:

22       Q.   And that's on the same date; is that correct?

23       A.   I think it's the day after.

24       Q.   It is.   That's the day after that article -- that link to  
25       that article was posted?

1 A. Yes.

2 Q. And do you recognize this Parler exhibit?

3 A. It looks to be fair and accurate, yes.

4 Q. And this is from Mr. Rehl's Parler postings, correct?

5 A. Yes.

6 MS. HERNANDEZ: Your Honor, I will introduce this as  
7 Defense Exhibit 40 -- Rehl Exhibit 40.

8 Or do you want to leave it as your number? You'll  
9 leave it as your number?

10 MR. McCULLOUGH: Yeah, we would like to --

11 MS. HERNANDEZ: So, we'll leave it as the  
12 government's number 602-42.

13 THE COURT: And it will be admitted, and permission  
14 to publish.

15 MR. McCULLOUGH: And, Your Honor, no objection to 42  
16 or 43, just for the record.

17 THE COURT: All right.

18 BY MS. HERNANDEZ:

19 Q. So that's the day after he posted that link. He posted  
20 this -- what appears to be some sort of poster or invitation to  
21 the January 6 rally at the -- in D.C.?

22 A. Yes. It was posted approximately 24 hours after the last  
23 one.

24 Q. And do you know, is this a poster or some flyer or  
25 something that was going around?

1 A. It appears to be a flyer.

2 Q. Okay. And then 602-43, which is posted on December 27th,  
3 the same time as the 602-42, which the government indicates  
4 they have no objection to its introduction, that says, "Good  
5 article that explains the January 6 possibilities."

6 A. It looks like it's 12 hours or so after the flyer was  
7 posted. But, yes, it's posted on December 27th.

8 Q. And it's about a day after -- well, the link -- the link  
9 was posted 602-41 -- I'm sorry, 602-41 is the government  
10 exhibit.

11 The link was posted at 4:40 in the morning?

12 A. Yes.

13 Q. That's Eastern Time?

14 A. Yes.

15 Q. So, 4:40 in the morning he posts the link. The next  
16 exhibit is 24 hours later, it looks like, at 4:20 a.m.?

17 A. Yes.

18 Q. And had then the notation, "Good article that explains the  
19 January 6 possibilities," is posted -- I don't know, 10 hours  
20 or 12 hours later?

21 A. I think it was around 8 p.m. or so the following day.

22 Q. So the good -- the -- 602-43 seems to refer back to that  
23 *American Thinker* article. Would you agree with me?

24 A. Yes.

25 Q. And, so, I just want to, again, go back to the *American*

1       *Thinker* article. And I have to do that, I believe, with -- on  
2       ELMO. This is 602-41A, which has been admitted.

3               So, can you just -- can you read this?

4       A. Yes. Part of it is blocked by --

5       Q. By the little icon thingies.

6       A. I can read it from there.

7       Q. Okay. So can you just read, like, the first three  
8       paragraphs, please, out loud for the jury?

9       A. Sure. "On January 6, a joint session of Congress will open  
10      with Vice President Pence presiding as president of the Senate.  
11      His power will be" -- I don't know how to pronounce it --  
12      "plenary and unappealable. You heard that right. As president  
13      of the Senate every objection comes directly to him, and he can  
14      rule any objection out of order or denied.

15             "His task will be to fulfil his oath of office, to  
16      protect and defend the Constitution of the United States, and  
17      to ensure that the laws be faithfully executed. This is a high  
18      standard of performance, and V.P. Pence will have two choices:  
19      He can roll over on certified electors, or he can uphold the  
20      law.

21             "Article II, Section 1 of the Constitution gives  
22      state legislators plenary authority, as enunciated in *Bush v.*  
23      *Gore*. This is key since the counting of votes is discussed in  
24      Article II of the Twelfth Amendment and 3 U.S.C. 15. To this  
25      we must add the history of counting and objections recounted by

1 Alexander Macris, here and here. Put bluntly, 'it's clear as  
2 mud.' Add to that the fact that the contested states of  
3 Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania,  
4 and Wisconsin have sent dueling slates of electors to D.C.  
5 This means that the VP has to decide how he will handle the  
6 situation when two sealed envelopes are handed to him from any  
7 of those states.

8 "Macris points out that in 1800, even with  
9 constitutional deficiencies in Georgia, Thomas Jefferson  
10 blithely counted defective Electoral votes from Georgia,  
11 effectively voting himself into the presidency. This  
12 demonstrates that the president of the Senate is the final  
13 authority on any motions or objections during the vote  
14 counting. There is no appeal. That doesn't mean there won't  
15 be any outrage. Whatever Pence does, people will be angry.  
16 But what does the law demand?"

17 Q. And I won't make you continue to read it. Thank you.

18 And do you know, Thomas Jefferson -- the reference to  
19 Thomas Jefferson in 1900 (sic), Thomas Jefferson, at the time,  
20 was the Vice President of the United States?

21 A. I believe that's true, yes.

22 Q. And, so, this whole document -- which, by the way, appears  
23 to be have been posted on December 26, 2020, the same date that  
24 Mr. Rehl posted on Parler -- this whole document, the theory of  
25 this document is that there is a legal process through which

1       these supposed fraudulent votes from the various states could  
2       be rejected by the vice president; is that correct?

3       A.   Yes.

4       Q.   And the whole thesis of this article is that there is a  
5       legal process.  You don't have to attack the Capitol.  You  
6       don't have to do anything outside the law.  Just the vice  
7       president has this power.

8       A.   Yes.

9       Q.   Okay.  And you would agree with me, at least the posting  
10      this, is First Amendment-protected activity?

11      A.   Yes.

12      Q.   Thank you.

13               Now, there's another article that Mr. Rehl references, I  
14      believe, where there was a document introduced where he talks  
15      about the firing squads.  Do you remember that Parler post?

16      A.   Yes.

17      Q.   And, again, that Parler post, there was a link to a  
18      different article?

19      A.   Yes.

20      Q.   And did you read the link that that article seemed to refer  
21      to?

22      A.   I did.

23      Q.   And that link was to a Trump administration's --

24               MS. HERNANDEZ:  I'm sorry, this is not been  
25      introduced.

1 BY MS. HERNANDEZ:

2 Q. But, there's a link -- there's a link in Mr. Rehl's Parler  
3 post, correct?

4 A. Yes.

5 Q. And that -- and you followed the link and found the  
6 article?

7 A. Yes.

8 MS. HERNANDEZ: And let me -- just for the witness.

9 BY MS. HERNANDEZ:

10 Q. Do you recall if that's the article that we're talking  
11 about?

12 A. It looks -- yes, it looks to be the same article.

13 MS. HERNANDEZ: And I will move to introduce this,  
14 Your Honor. I'm trying to find the government Parler post that  
15 makes reference to this link.

16 MR. McCULLOUGH: The Court's indulgence, I'll supply  
17 a number for Ms. Hernandez, if she wants to continue.

18 MS. HERNANDEZ: Excuse me?

19 MR. McCULLOUGH: I'll find a number for you, if you  
20 would like to continue.

21 MS. HERNANDEZ: Thank you. Thank you.

22 BY MS. HERNANDEZ:

23 Q. So the Parler post that was introduced through you is a  
24 Parler post where Mr. Rehl says, Hope the firing squads are for  
25 the legislators who are committing fraud, or something to that

1 effect?

2 A. I think he said "traitors." But, yes, to that effect.

3 Q. Traitors. And it appears -- and you were able to find this  
4 article which referred to the adoption by the then-Attorney  
5 General Barr --

6 A. Yes.

7 Q. -- to expanding the manners in which federal executions  
8 could be carried out, correct?

9 A. Yes.

10 Q. And that article referred to the use of firing squads in  
11 addition to electrocution and the drugs that are used for  
12 executions, correct?

13 A. Yes.

14 Q. And, again, that article was all about a legal process that  
15 was adopted by the Attorney General of the United States.

16 A. Yes. I don't know that it was actually adopted, but they  
17 were attempting to adopt it.

18 Q. They were attempting to adopt it. And it was an initiative  
19 from the Attorney General, who, again, is the head of the  
20 Department of Justice.

21 A. Yes.

22 Q. Okay. And there was no indication in that article that  
23 we're talking about some illegal use of firing squads --

24 (McCullough hands document to Ms. Hernandez.)

25 MS. HERNANDEZ: Thank you.



1 BY MS. HERNANDEZ:

2 Q. -- firing squads to kill legislators or anything like that,  
3 correct?

4 A. Correct.

5 MS. HERNANDEZ: And, Your Honor, I would mark this  
6 article -- this article as 602-27A, which refers back to the  
7 government's exhibit.

8 THE COURT: All right. Very well.

9 MS. HERNANDEZ: And I would move to introduce it.

10 MR. McCULLOUGH: No objection.

11 THE COURT: All right. Without objection it will be  
12 admitted, and permission to publish.

13 MS. HERNANDEZ: And I'm just publishing the caption  
14 of the document, but it's being introduced and the jury will  
15 have it.

16 And just to bring up, the 602-27 is the government  
17 exhibit that relates to this.

18 BY MS. HERNANDEZ:

19 Q. So that's the link to this article that we just spoke  
20 about, correct?

21 A. Yes.

22 Q. Okay. Thank you.

23 Let me ask you, again, about Mr. Rehl's attendance at  
24 rallies in D.C., if you know. He was in attendance on  
25 December 12th?

1 A. Yes.

2 Q. He was not in attendance on November 14th?

3 A. That's correct.

4 Q. Do you know if he was in attendance on July 4th?

5 A. I don't know.

6 Q. Okay. Now, you introduced -- or, a video was introduced  
7 through you of some rally that had taken place in September of  
8 2020 in Portland. Do you remember that?

9 A. Yes. The Bad Company video?

10 Q. Yep. Do you -- again, do you know -- obviously, you may or  
11 may not know -- Mr. Rehl was not at that rally, correct?

12 A. I don't know.

13 Q. And do you know whether Mr. Rehl was, in fact, in  
14 Philadelphia, at his own rally?

15 A. I don't know.

16 MR. McCULLOUGH: Objection. Foundation.

17 MS. HERNANDEZ: She said she doesn't know.

18 BY MS. HERNANDEZ:

19 Q. There's been reference to 1776 and how that may play into  
20 all of this, correct?

21 A. Yes.

22 Q. Now, if you know from your history, 1776 refers to the 4th  
23 of July in 1776, when the Declaration of Independence was  
24 adopted by the -- by the -- by whatever -- by Thomas Jefferson  
25 and the founding fathers?

1 A. It's when the American colonies declared independence from  
2 the British Empire.

3 Q. Thank you.

4 So it is a historical date in American history?

5 A. Yes.

6 Q. It is not -- again, First Amendment-protected statement?

7 A. To say "1776"? Yes.

8 Q. Yes. And at least when I -- it was a long time ago -- when  
9 I was in school, we learned what -- you know, "Give me liberty  
10 or give me death" and "Two if by land" (sic) -- whatever all  
11 those things were said when I was taking American history in  
12 elementary school, correct?

13 A. I'm sorry, I'm not familiar with what you learned in  
14 elementary school.

15 Q. That's true. Very few people are.

16 But, in your -- I assume you took some history classes  
17 at West Point and -- correct?

18 A. Yes.

19 Q. And there are a number of significant dates and people from  
20 the American Revolutionary period, correct?

21 A. Yes.

22 Q. And at least until a few years ago, mentioning those  
23 founders of the American -- of the American Experiment was  
24 viewed as a patriotic activity, correct?

25 A. I couldn't speak to that one way or the other.

1 Q. But it was not controversial to quote Thomas Jefferson or  
2 1776 or the Declaration of Independence. Would you agree with  
3 me?

4 A. Yes.

5 Q. Would you say that has become somewhat controversial these  
6 days?

7 A. Saying "1776" has, yes.

8 Q. And other -- the founding fathers and other basics of  
9 American history?

10 A. I would need more specifics.

11 Q. Okay. I want to go through some of the Parler exhibits  
12 that the government did not introduce --

13 THE COURT: Ms. Hernandez, can I -- just, again,  
14 because I had this request, if you could speak into the  
15 microphone.

16 MS. HERNANDEZ: Sorry, Your Honor.

17 THE COURT: It's all right.

18 BY MS. HERNANDEZ:

19 Q. I am not asserting that the government is hiding anything.  
20 I would like to introduce additional exhibits of the kind that  
21 the government introduced. And I believe you've reviewed them  
22 all, but I will show them to you first?

23 So, the government introduced 602-1, and that's the  
24 video that we played of the young man supposedly at the ballot  
25 counting in Philadelphia, correct?

1 A. Yes.

2 MS. HERNANDEZ: 602-3, was that introduced?

3 THE COURTROOM DEPUTY: Yes.

4 MS. HERNANDEZ: So, 603-2 was introduced, and that  
5 was from November 8th, 2020. 602-4 has not been introduced,  
6 Your Honor.

7 Could you pull 602-4, please?

8 BY MS. HERNANDEZ:

9 Q. Does that look like an accurate representation of the  
10 Parler post from that day?

11 A. Yes.

12 Q. And that --

13 MS. HERNANDEZ: And I would move 602-4 into evidence,  
14 Your Honor. And, again, these are numbered under the  
15 government's numbering system.

16 THE COURT: All right.

17 MS. HERNANDEZ: And publish to the jury.

18 THE COURT: I assume without objection.

19 MR. McCULLOUGH: No objection, Your Honor. I would  
20 just note, kind of continuing caution, potential relevance  
21 objections here.

22 THE COURT: All right. Very well.

23 You may proceed. It's admitted and permission to  
24 publish.

25 BY MS. HERNANDEZ:

1 Q. And 602-4, again, this is more postings by Mr. Rehl. He  
2 appears to be following the counting of votes for the 2020  
3 election. Would you agree with me?

4 A. Yes.

5 MS. HERNANDEZ: And if you screen -- scroll down,  
6 please.

7 BY MS. HERNANDEZ:

8 Q. And, again, he is -- RealClearPolitics is a website that  
9 sort of runs the numbers for the election?

10 A. It appears to be, based on the Parler post, yes.

11 Q. On this particular post, it shows Biden at 259 and  
12 Trump-Pence at 214.

13 And 259 is not enough to elect a president; is that  
14 correct?

15 A. That's correct.

16 Q. Okay. So, at least on this website, as of November 9th,  
17 2020, they're still showing a contested -- or, an election that  
18 had not yet been called for one of the two presidents.

19 MR. McCULLOUGH: Objection, Your Honor. Hearsay.

20 THE COURT: The witness can answer based on what the  
21 posting reflects.

22 A. That is what the posting reflects, but I don't know the  
23 date of the image that was taken.

24 BY MS. HERNANDEZ:

25 Q. Okay. But it was posted on November 9th?

1 A. Defendant Rehl posted it on November 9th, yes.

2 Q. Correct. And the last entry there appears to be a post  
3 that Mr. Rehl himself posted -- a message?

4 A. Yes.

5 Q. And what that says -- if you could read it, please.

6 A. "PA is back in play before the court challenge even came  
7 about, and two idiots gave a victory speech already."

8 Q. And "PA" refers to Pennsylvania?

9 A. Yes.

10 Q. And "the court challenge," if you know, is -- refers to a  
11 lawsuit that was filed in Pennsylvania?

12 A. I believe that's the case, yes.

13 Q. Okay. And, again, we're talking about lawsuits and  
14 counting of votes. Completely First Amendment-protected  
15 activity?

16 A. Yes.

17 MS. HERNANDEZ: And 602-5, please. Again, this has  
18 not been introduced, so, please just show it to the witness.

19 BY MS. HERNANDEZ:

20 Q. Does that appear to be an accurate reflection --  
21 representation of the Parler post for Mr. Rehl?

22 A. Yes.

23 MS. HERNANDEZ: So I would move 602-5 into evidence,  
24 Your Honor.

25 THE COURT: All right. It will be admitted, and

1 permission to publish.

2 MS. HERNANDEZ: Thank you.

3 BY MS. HERNANDEZ:

4 Q. Again, this is posted on November 10th, 2020, and it's more  
5 of the same vote counting and -- correct? The map appears to  
6 show -- I mean, the map says, "as of Sunday, November 8th,  
7 2020"?

8 A. Yes.

9 Q. And, again, we're still -- according to this particular  
10 map, it's still showing an election that has not been called  
11 for either president because there are not enough Electoral  
12 votes?

13 A. According to this map, yes.

14 Q. Correct. And in the middle of the map there, sort of right  
15 above Florida, if you could see, it says, "270 to win"?

16 A. Yes.

17 Q. And do you understand that to mean that's the number of  
18 Electoral College votes that are necessary to declare a winner  
19 in a presidential election?

20 A. Yes.

21 Q. Thank you.

22 MS. HERNANDEZ: And 602-6. Thank you. This has not  
23 been admitted, I don't believe.

24 BY MS. HERNANDEZ:

25 Q. And, again, we're talking about the same references to the



1 continuing disputes over Electoral College votes?

2 A. Yes.

3 Q. And it appears that there is some postings by Rudy G.?

4 A. Yes.

5 Q. Do you know, if you know, whether that's Rudy Giuliani?

6 A. I didn't investigate it, so, no.

7 Q. Okay.

8 MS. HERNANDEZ: Your Honor, I would move 602-6 into  
9 evidence.

10 MR. McCULLOUGH: No objection.

11 Objection, relevance, on this continuing line of  
12 questioning, I think. And objection, cumulative, to this line  
13 of questioning.

14 THE COURT: All right. It will be admitted, and  
15 permission to publish.

16 MS. HERNANDEZ: Thank you.

17 And I believe 602-7 was introduced; is that correct?  
18 Which is the following post two days -- the same day, 602-6. I  
19 believe 602-7 was introduced by the government.

20 So, can you pull up 602-8 for the witness, please?

21 BY MS. HERNANDEZ:

22 Q. And does that appear to be an accurate representation of  
23 the Parler post from Mr. Rehl's Parler account for  
24 November 14th, 2020?

25 A. Yes.

1 Q. And, again, we're continuing to this -- these postings  
2 about the stolen election and fraud and that type of thing?

3 A. Yes.

4 Q. And no mention of attacking anybody or anything -- any  
5 criminal activity, correct?

6 A. No.

7 Q. Thank you.

8 MS. HERNANDEZ: So, I would move 602-8, Your Honor,  
9 into evidence, and move to publish.

10 THE COURT: It will be admitted, and permission to  
11 publish.

12 A number of the next ones have been introduced, or  
13 not?

14 MR. McCULLOUGH: I think 602-9 and 10 were also  
15 admitted.

16 THE COURTROOM DEPUTY: Not 10.

17 MS. HERNANDEZ: Yeah. I'm trying to go through the  
18 ones that have not been admitted.

19 So, 602-23, I don't believe has been admitted.

20 THE COURTROOM DEPUTY: That's been admitted.

21 THE COURT: That is admitted.

22 MS. HERNANDEZ: Okay.

23 BY MS. HERNANDEZ:

24 Q. So -- and, again, there's this continuing sequence of posts  
25 in November about the stolen election and that type of thing,

1 correct?

2 A. Yes.

3 MS. HERNANDEZ: And 602-28, from November 27th, 2020,  
4 I don't believe that's been admitted.

5 THE COURTROOM DEPUTY: No, 602-28 has not been  
6 admitted.

7 MR. McCULLOUGH: No objection to its admission.

8 THE COURT: All right. It will be admitted, and  
9 permission to publish.

10 MS. HERNANDEZ: Thank you.

11 BY MS. HERNANDEZ:

12 Q. And, again, this is more posts. Whether they're accurate  
13 or not, these appear to be posts. Like, the first frame on  
14 602-28, would you agree with me, that appears to be a post from  
15 some other website of some kind that he's screenshot into his  
16 Parler post?

17 A. It appears to be, yes.

18 Q. And, again, it's this allegation that there's fraud and the  
19 votes don't jibe and that type of thing, correct?

20 A. Yes.

21 Q. And would you agree with me, a lot of this messaging was  
22 being fed to the American people by a number of -- by a number  
23 of persons, be it politicians, non-politicians, like Rudy  
24 Giuliani, and others in the public arena?

25 A. Yes.

1 MS. HERNANDEZ: I think I've made my point.

2 THE COURT: I think so.

3 MS. HERNANDEZ: Just a moment, Your Honor.

4 BY MS. HERNANDEZ:

5 Q. I just -- I believe you mentioned a U.S. senator named Josh  
6 Hawley --

7 THE COURT: Ms. Hernandez, the microphone, please.

8 BY MS. HERNANDEZ:

9 Q. I believe you mentioned a U.S. senator named Josh Hawley  
10 during your direct examination.

11 A. Yes. I believe it was a post from Defendant Biggs.

12 Q. Okay. So, let me show you --

13 MR. McCULLOUGH: Object to foundation.

14 MS. HERNANDEZ: This would be just to show it to the  
15 witness, Your Honor.

16 THE COURT: I don't know what it is, but, okay. What  
17 are we showing to the witness?

18 MS. HERNANDEZ: This is a photograph of Senator  
19 Hawley, if she can identify him, on January 6.

20 MR. McCULLOUGH: Object to scope. Foundation. 403.  
21 Relevance.

22 THE COURT: Sustained as to scope.

23 MS. HERNANDEZ: I think she was asked about Senator  
24 Hawley, by Mr. Biggs -- by Mr. Pattis.

25 THE COURT: Right. I don't -- sustained as to scope.

1 MS. HERNANDEZ: Okay. With the Court's indulgence.  
2 Thank you, Your Honor.  
3 Thank you very much for your time.

4 THE WITNESS: Thank you.

5 THE COURT: Very well.

6 Cross-examination for counsel for Mr. Tarrío.

7 MR. McCULLOUGH: Your Honor, Court's indulgence. We  
8 were just trying to remind ourselves what your timing was for  
9 today.

10 THE COURT: We will release the jury at 5 o'clock  
11 today.

12 MR. McCULLOUGH: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JAUREGUI:

15 Q. Good to see you again, Agent.

16 A. You as well.

17 Q. You remember me and my colleague, Nayib Hassan?

18 A. Yes.

19 Q. You also met -- if you could stand -- you also remember my  
20 client, Enrique Tarrío?

21 A. Yes.

22 Q. When you met my client, did he treat you with respect and  
23 dignity?

24 A. Yes.

25 Q. Now, Agent, you are not the lead agent in this case, are

1       you?

2       A.   No.

3       Q.   The lead agent in this case is Special Agent Hanak, who is  
4       seated here at the table?

5       A.   Yes.

6       Q.   When were you first involved in this case, Agent?

7       A.   Early in January.

8       Q.   Of what year?

9       A.   2021.

10      Q.   Thank you.

11               Now, is the lead case agent the agent with the most  
12      knowledge on a case?

13      A.   Generally, yes, that would be true.

14      Q.   And that would be Agent Hanak?

15      A.   Yes.

16      Q.   Thank you.

17               Let me ask you about the government's demonstrative  
18      Exhibit 600A.

19               MR. JAUREGUI:   You please publish it again?

20      BY MR. JAUREGUI:

21      Q.   Okay.  Agent, you see that demonstrative aid that was  
22      introduced -- or, shown by the government before?

23      A.   Yes.

24      Q.   Okay.  This demonstrative aid, it's a fantasy, correct?

25      This page actually doesn't exist on Parler, correct?

1 A. Not in this form, no.

2 Q. Okay. So, basically, somebody took different data points  
3 from the return and then manufactured this A, correct?

4 A. Yes.

5 Q. So these rectangular boxes on the bottom, they don't  
6 actually exist on Parler, correct?

7 A. No. Just the content.

8 Q. Okay. And the bio and the other information also does not  
9 exist in that format on Parler, correct?

10 A. To my understanding, it does display very similar to that  
11 manner.

12 Q. Okay. It's your understanding.

13 Who gave you that understanding?

14 A. Just having seen Parler before.

15 Q. Okay. And the photo, like other examples that we've heard  
16 today, that photo is not my client's profile photo, correct?

17 A. It was not his profile photo.

18 Q. Did you pick that photo?

19 A. No.

20 Q. Who picked that photo?

21 A. I don't know.

22 Q. You don't know?

23 A. No.

24 Q. Okay. Do you know any other photos that exist of my client  
25 that is, perhaps, more intimidating than this one, or is this

1 the most intimidating one?

2 A. I can't say whether it's intimidating or not, but he did  
3 post this to his account.

4 Q. I gotcha.

5 And -- but you picked that photo -- that specific photo  
6 for a purpose, correct?

7 MR. McCULLOUGH: Objection.

8 THE COURT: Sustained. Sustained.

9 MR. JAUREGUI: Okay.

10 BY MR. JAUREGUI:

11 Q. Even in the Parler posts that were introduced today, there  
12 were a bunch of photos of my client, correct?

13 A. Yes.

14 Q. And you guys did not use any of those photos for his  
15 profile photo, correct?

16 MR. McCULLOUGH: Objection.

17 THE COURT: Sustained.

18 BY MR. JAUREGUI:

19 Q. Now, here it says that -- how many followers does my client  
20 have?

21 A. 102,802.

22 Q. 102,000. Would it be fair to say that Trump has about  
23 88 million followers?

24 A. I don't know.

25 Q. What do you mean, you don't know?



1 A. I don't know if he has 88 million followers.

2 Q. You didn't research that? You didn't look at Parler to see  
3 how many followers Trump has?

4 A. I'm not investigating President Trump.

5 Q. Oh, not investigating President Trump. Got it.

6 So, the investigating is not investigating President  
7 Trump; is that what you're saying?

8 MR. McCULLOUGH: Objection.

9 THE COURT: Sustained.

10 MR. JAUREGUI: Okay. My apologies.

11 BY MR. JAUREGUI:

12 Q. I only ask because the government introduced 1102, which  
13 was a Tweet by President Trump, correct?

14 A. I believe so.

15 Q. Okay. And in that Tweet by President Trump, he says, Come  
16 over. It's going to be wild. Right? I'm paraphrasing, of  
17 course. Correct?

18 A. "Be there. It will be wild."

19 Q. And he did that on Twitter, it's a Tweet, correct?

20 A. Yes.

21 Q. And you didn't even bother to find out how many users he  
22 had on Twitter?

23 A. It wasn't relevant to me.

24 Q. It wasn't relevant to you that the President of the  
25 United States tells his 90 million followers to go on

1 January 6, it's going to be wild?

2 MR. McCULLOUGH: Objection. Relevance.

3 THE COURT: Sustained.

4 MR. JAUREGUI: I'll move on.

5 If we can pull that down, Ms. Harris. I'm going to  
6 go to this one now. Thank you.

7 BY MR. JAUREGUI:

8 Q. And I'm going to go in order of your testimony on direct,  
9 if that's all right.

10 A. That's fine.

11 Q. Thank you.

12 I'm going to show you what's already been introduced.  
13 It's Government's Exhibit 600-59.

14 Ms. Harris, if we could publish that to the jury real  
15 quick.

16 THE COURTROOM DEPUTY: 659 or 600-59?

17 MR. JAUREGUI: I'm sorry, 600-59. You're right.

18 BY MR. JAUREGUI:

19 Q. Do you see that exhibit, agent?

20 A. Yes.

21 Q. Okay. And in that exhibit, it's a post by my client,  
22 correct?

23 A. Yes.

24 Q. Right. He says, "Don't F'ing leave. Proud of my boys and  
25 my country."

1 Correct?

2 A. Yes.

3 Q. Would it be fair to say that there were millions upon  
4 millions of Americans throughout the country that thought the  
5 same way?

6 MR. McCULLOUGH: Objection. Calls for speculation.

7 THE COURT: Sustained.

8 BY MR. JAUREGUI:

9 Q. And he posts that on Parler at 2:38, correct?

10 A. Yes.

11 Q. Are you 100 percent sure of that time?

12 A. That is the time that was given to us by Parler.

13 Q. Okay. And you said it was a search warrant that you guys  
14 sent to Parler?

15 A. Yes.

16 Q. Okay. And Parler gave you returns of, I don't know,  
17 millions of lines of code. Would that be correct?

18 A. Not millions, but thousands, yes.

19 Q. Okay. Hundreds of thousands?

20 A. I don't know the exact number, but thousands.

21 Q. Okay. You didn't count them, did you?

22 A. No.

23 Q. Okay. Would it be fair to say that you're not a computer  
24 forensic expert, Agent?

25 A. I am not.

1 Q. Okay. You don't have any background in computer science or  
2 programming?

3 A. No.

4 Q. Okay. Now, the Bureau does have such computer experts,  
5 correct?

6 A. Yes.

7 Q. Now, the post at 2:38, the riot was still ongoing at that  
8 time, correct?

9 A. Yes.

10 Q. Okay. Actually, the last person wasn't cleared out of the  
11 Capitol until about 5:40 that day, correct?

12 MR. McCULLOUGH: Objection. Scope. Foundation.

13 THE COURT: Sustained.

14 MR. JAUREGUI: Okay.

15 BY MR. JAUREGUI:

16 Q. And you did not create any of these exhibits, correct?

17 A. Correct.

18 Q. Okay. This thing that we're showing the jury is another  
19 fabrication, another fantasy, correct?

20 MR. McCULLOUGH: Objection.

21 THE COURT: Sustained.

22 MR. JAUREGUI: Okay.

23 BY MR. JAUREGUI:

24 Q. It's a creation, is it not?

25 A. Off of data that we received back.

1 Q. Understood. But when you go to Parler and you go to see  
2 his account, it looks nothing like this, correct?

3 A. The content looks the same, but the format does not.

4 Q. Okay. I think we're splitting hairs here. But it doesn't  
5 look like this, does it?

6 A. The content, again, is the same, the words are the same.  
7 But, no, the page does not appear like that.

8 Q. Okay. Would it be fair to say that what you received from  
9 Parler were basically lines of data? Yes or no?

10 A. Yes.

11 Q. So this was created, this was manufactured, I guess, to  
12 make it easy for the jury. Is that the point, supposedly?

13 A. Yes.

14 Q. Okay. And who gets to decide how it looks?

15 A. Not me.

16 Q. Not you.

17 Who does?

18 A. Members of the prosecution team.

19 Q. Oh.

20 MR. JAUREGUI: Okay. If I can move on. Ms. Harris,  
21 you can bring that down a second. Thank you.

22 BY MR. JAUREGUI:

23 Q. I'm going to show you another one. Already been  
24 introduced.

25 Okay. Now, I'm showing you what's already been

1 introduced and marked 600-2.

2 You see that, Agent?

3 A. I do.

4 Q. Okay. And in that one, that's another post from my client,  
5 correct?

6 A. Yes.

7 Q. And here he's saying, "I just got off the plane from D.C.,  
8 came to my home city. The passion of the Cuban people is  
9 immense."

10 Correct?

11 A. Yes, to that effect.

12 Q. Okay. And do you know why the passion of we Cuban people  
13 is so immense?

14 MR. McCULLOUGH: Objection. Speculation.

15 MR. JAUREGUI: If she knows.

16 THE COURT: Overruled.

17 A. I don't know specifically what you're referring to.

18 BY MR. JAUREGUI:

19 Q. Okay. Why would Cuban refugees love this country so much  
20 and have such great passions?

21 MR. McCULLOUGH: Objection. Speculation.

22 THE COURT: If the witness knows, she can answer.

23 A. I believe what you're referring is a hatred for communism.

24 BY MR. JAUREGUI:

25 Q. Okay. Thank you. I appreciate that, Agent.

1           Now, will you agree with me that my client, Enrique  
2       Tarrio, he's an Afro-Cuban, correct?

3       A.   That's my understanding, yes.

4       Q.   In this post, he's referencing the passion of the Cuban  
5       people in Miami, where we all met, correct?

6       A.   Yes.

7       Q.   Thank you.

8           Now, I'm going to show you Exhibit 604.

9           MR. JAUREGUI:  If we could put that up for a second,  
10       Ms. Harris.  Thank you.

11           Okay.  Now, if we could please publish that 600-4.

12       BY MR. JAUREGUI:

13       Q.   Here, my client is talking about if you're in a swing  
14       state, you know, go get out there, correct?

15       A.   Yes.

16       Q.   Okay.  This post isn't illegal in any way, shape, or form,  
17       right?

18       A.   No.

19       Q.   Protected First Amendment?

20       A.   Yes.

21       Q.   Thank you.

22           MR. JAUREGUI:  Ms. Harris, if we could take that down.  
23       I'm going to show you 600-6.

24           You can publish that.  Thank you.

25       BY MR. JAUREGUI:

1 Q. Again, my client makes this post talking about the Cuban  
2 people, correct?

3 A. Yes.

4 Q. Okay. And if we go down to 952 -- actually, strike that.

5 I'm going to start at the beginning, 951-47. And  
6 there's a blocked-off video there, correct?

7 A. Yes.

8 Q. And then at 9:52:30, there's quotations, and it seems like  
9 he's quoting somebody, correct?

10 A. Yes.

11 Q. That's not my client's statement, right? That's somebody  
12 else's statement?

13 A. Like I said, I don't speak Spanish. But I agree, that is  
14 what it seems like.

15 Q. Okay. Now, in the video here, the video is in Spanish,  
16 right?

17 A. Yes.

18 Q. But you don't speak Spanish?

19 A. No.

20 Q. Okay. Did you verify if what he said was correct?

21 A. No.

22 Q. You didn't decide to investigate that, follow any leads,  
23 anything like that?

24 A. I didn't see a need to. He posted underneath it.

25 Q. Oh, okay.



1 MR. JAUREGUI: Let me go to -- please, Ms. Harris,  
2 can we bring that down? Thank you.

3 Let's go to 600-8. If we could publish that, please.

4 BY MR. JAUREGUI:

5 Q. Again, in this post, my client says, "This isn't over.  
6 Read the President's legal argument."

7 Nothing illegal. First Amendment, right?

8 A. Yes.

9 MR. JAUREGUI: If we can go down one more. Just go  
10 down to 600-9.

11 BY MR. JAUREGUI:

12 Q. This seems to be a flyer for a Million MAGA March, correct?

13 A. Yes.

14 Q. And it says, "Echo. Echo. Echo."

15 That means that it was reposted, right?

16 A. It means he's asking for it to be reposted.

17 Q. Got it. Again, nothing wrong with this. First Amendment.  
18 All good, right?

19 A. Yes.

20 Q. Thank you.

21 MR. JAUREGUI: Now, I'm going to go -- you can bring  
22 that down, Ms. Harris -- 600-15. If we can post -- show that  
23 to the jury.

24 BY MR. JAUREGUI:

25 Q. This is my client, looks like, on a private plane. It's

1       like a -- I see this on Instagram all the time, somebody on a  
2       private plane, correct?

3       A.   It appears to be your client on a private plane, yes.

4       Q.   Okay. And he says, "Can of whoopass en route to D.C."

5               Correct?

6       A.   Yes.

7       Q.   You don't know if that's just hyperbole or if he's just  
8       exaggerating, if he's just going to go and fight politically?  
9       You don't know what that means, do you?

10      A.   Based on the posts that come after it, it doesn't seem like  
11      hyperbole, but it could be.

12      Q.   Okay. So there's posts after this that doesn't seem like  
13      hyperbole, right?

14      A.   Yes.

15      Q.   Okay. Nothing illegal about this post?

16      A.   No.

17      Q.   First Amendment?

18      A.   Yes.

19      Q.   Thank you.

20               MR. JAUREGUI: Now, let's go to 600, Ms. Harris.

21      Thank you. Let's go down to 600-16. If you could publish that  
22      for the jury.

23      BY MR. JAUREGUI:

24      Q.   Again, on this one it says, "Proud Boys will be on the  
25      streets of D.C. all night. D.C. antifa ends tonight."

1 Correct?

2 A. Yes.

3 Q. Okay. First Amendment?

4 A. Yes.

5 Q. Protected?

6 A. Yes.

7 Q. Not illegal?

8 A. Not illegal.

9 Q. Thank you.

10 MR. JAUREGUI: Let's go to -- please, Ms. Harris, I'm  
11 going to go now to 600-18. If you could publish that for the  
12 jury.

13 BY MR. JAUREGUI:

14 Q. Now, here he writes, "Terrorist eating ice cream right  
15 now."

16 Correct?

17 A. Yes, something to that effect.

18 Q. And that, "They shouldn't be attacking women and children."

19 Correct?

20 A. Yes.

21 Q. Was antifa attacking women and children?

22 A. I don't know.

23 Q. You don't know?

24 A. Based on the Parler post, I don't know.

25 Q. Okay. Have you seen videos of antifa attacking women and

1 children?

2 A. Yes.

3 Q. Okay. So you do know that they attacked women and  
4 children?

5 A. I have seen videos of it.

6 Q. Okay. Thank you, Agent.

7 Any evidence that Enrique broke somebody's jaw -- any  
8 antifa member's jaw, like you said on direct?

9 A. I didn't say that he broke anyone's jaw on direct.

10 Q. Oh, I'm sorry. Who broke somebody's jaw on direct?

11 A. I said that this is a reference to breaking someone's jaw.

12 Q. And you got all of that from the eating ice cream and  
13 drinking soup?

14 A. Yes.

15 Q. Okay.

16 MR. JAUREGUI: If we can go, please, now, to 600-24,  
17 please. If we could publish that.

18 BY MR. HULL:

19 Q. Now, on this one, this is my client basically having a fake  
20 conversation with Joe Biden, correct?

21 A. Yes, something to that effect.

22 Q. He basically got, I guess, a Twitter screenshot and then  
23 starts speaking to the empty chair of Joe Biden, correct?

24 A. He responds to the Twitter screenshot.

25 Q. Right. But this response doesn't go to Twitter, correct?

1 A. That's correct.

2 Q. There's no way somebody on Twitter can see his response.

3 A. That's not necessarily true.

4 Q. Okay. How can somebody on Twitter see the Parler response?

5 A. If they have a Parler account.

6 Q. Okay. So the person would have to leave -- let me  
7 backtrack.

8 Twitter is one application, correct?

9 A. Yes.

10 Q. Parler is another application, correct?

11 A. Yes.

12 Q. Parler is more like Facebook than it is to Twitter,  
13 correct?

14 A. No. I would say it's actually more like Twitter.

15 Q. You think it's more like Twitter?

16 A. Yes.

17 Q. Okay. So he gets a screenshot from Twitter and he uploads  
18 it to Parler, correct?

19 A. Yes.

20 Q. Then he has this imaginary conversation with Joe Biden,  
21 correct?

22 A. He makes the statements, yes.

23 Q. Okay. So, for a person to see this imaginary conversation  
24 they would have to get out of Twitter, log into Parler, and  
25 then look for my client, correct?

1 A. That's not the order of events, but, yes, they would need  
2 to have a Parler account to see it.

3 Q. Okay. Well, what is the order of events, if it's not what  
4 I just said?

5 A. They don't have to log out of Twitter to do it. They can  
6 simply go to the Parler application or website and view it.

7 Q. Okay. So let's say they're multitasking. They have one  
8 window open on Twitter, correct?

9 A. Yes.

10 Q. Then they have to open up another window to go on Parler,  
11 correct?

12 MR. McCULLOUGH: Objection to relevance on this.

13 THE COURT: Overruled. But, let's get to the point.

14 MR. JAUREGUI: I'll wrap it up, Judge.

15 BY MR. JAUREGUI:

16 Q. They would then have to then go to Parler, correct?

17 A. Yes.

18 Q. And then they would have to search for posts by my client;  
19 isn't that true?

20 A. Yes.

21 Q. Okay. And then after they find my client, they would have  
22 to scroll and find this imaginary conversation; isn't that  
23 true?

24 A. They would have to scroll and find his statements, yes.

25 Q. Okay. Thank you.

1 MR. JAUREGUI: We can go now, please, to -- you can  
2 take that off -- 600-21. Publish.

3 BY MR. JAUREGUI:

4 Q. Here, people seem to be complaining on Parler that my  
5 client is not fighting back, correct?

6 A. Yes.

7 Q. Thank you.

8 MR. JAUREGUI: We can go -- Ms. Harris, we can take  
9 that off.

10 We're going to -- if we can publish 600-23, please.

11 BY MR. JAUREGUI:

12 Q. And in this post, my client is saying that they're slowing  
13 down the vetting process of who gets into the Proud Boys,  
14 correct?

15 A. Something to that effect, yes.

16 Q. Yeah. They were trying to make sure that nonviolent people  
17 were accepted into the Proud Boys, correct?

18 A. That's not what it said.

19 MR. McCULLOUGH: Objection.

20 BY MR. JAUREGUI:

21 Q. Okay. What does it say? Does it say, We're looking for  
22 really violent guys that we want to come into the Proud Boys?

23 A. I can read it to you verbatim, if you would like.

24 Q. Well, we don't have all day.

25 But, does it say anything like that there in that

1 post --

2 A. No, it --

3 Q. -- that they're looking for violent people to join the  
4 Proud Boys?

5 A. No, it does not say they're looking for violent people to  
6 join the Proud Boys.

7 Q. Thank you.

8 MR. JAUREGUI: And if we can take that off a second,  
9 Ms. Harris.

10 I'm going to go to 604-10. If we could publish that  
11 for the jury, please.

12 BY MR. JAUREGUI:

13 Q. Now, this seems to be a post, but from Dominic Pezzola,  
14 correct?

15 A. The bottom one is.

16 Q. Okay.

17 A. It's a reply.

18 Q. Okay. Thank you.

19 Now, on the top, NobleLead, that's my client Enrique,  
20 correct?

21 A. Yes.

22 Q. So, he sends this post out into the public. It's a public  
23 post on Parler, correct?

24 A. Yes.

25 Q. Okay. And then Dominic Pezzola, Spazzolini, also posts out



1 in the public, "Glad I got through. First-Degree Proud Boy  
2 here."

3 Correct?

4 A. Yes. He responded in a comment.

5 Q. Okay. This is not private messages between Dominic Pezzola  
6 and Enrique, is it?

7 A. No.

8 Q. Okay. Do you have any evidence whatsoever that my client  
9 actually read this post by Dominic Pezzola?

10 A. No.

11 Q. And, actually, if -- you can tell the ladies and gentlemen  
12 of the jury is that you have no evidence whatsoever of any  
13 post, whether or not they actually read each other's post,  
14 correct?

15 Do you understand that question? I said that kind of  
16 convoluted.

17 A. No, that's actually not true. So, you can see if Defendant  
18 Pezzola uploaded some of Defendant Tarrio's comments.

19 Q. Right.

20 A. So he would engage with the content in that manner.

21 Q. Okay. I understand that.

22 You can tell whether somebody uploaded something,  
23 correct?

24 A. Yes.

25 Q. Okay. That's not the question I'm asking you, though. Let

1 me try and say it in a simpler fashion.

2 Let's say Enrique puts a post up on Parler, correct?

3 A. Sure.

4 Q. Okay. From the returns, from all those hundreds of  
5 thousands of lines of data that you saw, can you ascertain  
6 whether or not somebody actually saw and read that post?

7 A. Unless Defendant Pezzola blinded himself and then clicked  
8 the upload --

9 Q. Right.

10 A. -- yes. I mean, that is -- he would have engaged with it.  
11 He uploaded it.

12 Q. Okay. So the answer is, no, you can't tell whether  
13 somebody read or saw a post?

14 MR. McCULLOUGH: Objection. Misstates.

15 THE COURT: Sustained.

16 MR. McCULLOUGH: Perhaps the witness could explain  
17 it.

18 MR. SMITH: Objection.

19 MR. JAUREGUI: Judge, let me try one more time.

20 Okay?

21 BY MR. JAUREGUI:

22 Q. I post something on Parler. You with me so far, Agent?

23 A. I am.

24 Q. Okay. You see my post, correct?

25 A. Yes.

1 Q. Okay. You then execute a search warrant for all those  
2 lines of data, correct?

3 A. I'm not following the track that you're going. But, we  
4 execute a search warrant, yes.

5 Q. Okay. When you get all those lines of data, does it tell  
6 you whether or not you saw my post?

7 A. Unless Defendant Pezzola put a blindfold on and threw an  
8 imaginary dart at the post and upload it, he would have seen  
9 the post. It's like re-Tweeting.

10 Q. It's like re-Tweeting?

11 A. Or commenting, yes.

12 Q. Right. So if you don't re-Tweet and you don't comment, we  
13 don't know whether somebody actually saw the post or not?

14 A. Yes. But, he upload it.

15 Q. Who uploaded it?

16 A. Defendant Pezzola.

17 Q. Okay. Uploaded what?

18 A. Different posts by Defendant Tarrío.

19 Q. But I'm not talking about different posts. I'm talking  
20 about 604-10.

21 A. You asked me specifically about Defendant Pezzola.

22 Q. Right. Okay. Let me backtrack again. I'm sorry. It's  
23 probably my fault. Okay.

24 604-10, when Pezzola responds to Tarrío -- I mean, we're  
25 looking at it on the screen here, yes? You following me so

1 far?

2 A. Yes.

3 Q. Okay. Did Enrique read Pezzola's post?

4 A. No. But you originally asked me whether they engaged with  
5 one another.

6 Q. Okay. So we can agree that on this one, Enrique never  
7 engaged with Pezzola and never saw his post.

8 A. Not based on the Parler data.

9 Q. Okay.

10 MR. JAUREGUI: Now I'm going to go to 604-12. You  
11 can take that off. Okay. If we could publish that one,  
12 please.

13 Thank you.

14 BY MR. JAUREGUI:

15 Q. Now, on this one, the top portion in green, NobleLead,  
16 that's my client posting something, correct?

17 A. Correct.

18 Q. And that is a public post, correct?

19 A. Yes.

20 Q. He says, "AMA session at 35,000 feet."

21 "AMA session" stands for "ask me anything," correct?

22 A. Yes.

23 Q. So he's posting this in Parler, asking his hundreds of  
24 thousands of followers to ask him anything, correct?

25 A. Yes.

1 Q. Okay. And there were thousands of responses to that,  
2 correct?

3 A. I don't recall how many responses there were.

4 Q. You don't recall?

5 A. As we talked about, there were thousands of lines of data.

6 Q. So, the only things you recall are things that don't help  
7 the defense; is that what you're saying?

8 MR. McCULLOUGH: Objection. Argumentative.

9 THE COURT: Sustained. Sustained.

10 MR. JAUREGUI: Understood.

11 BY MR. JAUREGUI:

12 Q. So, right now, you can answer that it's thousands of  
13 responses, but you don't know how many, right?

14 A. I don't know how many.

15 Q. Do you know how many responses Enrique had before Dominic  
16 Pezzola responded?

17 A. No.

18 Q. Okay. Do you have any information or evidence whether or  
19 not Enrique actually saw and read Pezzola's post?

20 A. No, not based on the Parler returns.

21 Q. Thank you.

22 And just to be clear, my client was not following  
23 Pezzola, correct?

24 A. That's correct.

25 Q. And my client had no private messages with Pezzola,

1 correct?

2 A. I don't recall. I don't think so.

3 Q. Now, everything that you've testified here today is just  
4 public Parler posts, correct?

5 A. Yes.

6 Q. You're not testifying as to any private messages between  
7 anybody, correct?

8 A. Correct.

9 Q. Okay. Does Parler, in the returns, send you the private  
10 messages?

11 A. Yes.

12 Q. Did you review thousands of private messages?

13 A. Yes.

14 MR. JAUREGUI: Please, Ms. Harris, I'm going to go  
15 next to -- I hate to bring this one up, but I have to: 600-36.  
16 And if we could publish it for the jury.

17 BY MR. JAUREGUI:

18 Q. Now, in this one my client is saying that, "Silent big dick  
19 ninjas are roaming the streets of D.C.," correct?

20 A. Yes.

21 Q. There weren't really silent big dick ninjas roaming the  
22 streets of D.C., were there, Agent?

23 A. I don't know. I wasn't there.

24 Q. You don't know?

25 A. I wasn't present.

1 Q. Okay. Is this First Amendment protected?

2 A. Yes.

3 Q. Illegal in any way?

4 A. No.

5 Q. Is this hyperbole, or no?

6 A. Probably, yes.

7 Q. Probably.

8 MR. JAUREGUI: Okay. Ms. Harris, bring that down.  
9 Show you another one.

10 Okay. If we could publish that one, please,  
11 Ms. Harris.

12 BY MR. JAUREGUI:

13 Q. Now, this one is 603-29. And I'm just going to Zoom in  
14 with my finger here.

15 Okay. Is -- of course, that's Enrique Tarrío right  
16 there?

17 A. On the left, yes.

18 Q. Yeah. And do you know what those two drinks are in his  
19 vest?

20 A. I don't know.

21 Q. Okay. Do you think they're White Claws or Red Bull or --

22 MR. McCULLOUGH: Objection. Foundation.

23 MR. JAUREGUI: If she knows.

24 THE COURT: Sustained. Sustained.

25 MR. JAUREGUI: Thank you. If we can put that down,

1 Ms. Harris.

2 BY MR. JAUREGUI:

3 Q. How many Parler posts do you think you reviewed in the  
4 entire case?

5 A. Thousands.

6 Q. Thousands. And do you know how many Parler posts Enrique  
7 did in total?

8 A. I don't know.

9 Q. Is it hundreds or thousands?

10 A. Thousands.

11 Q. Thousands. Okay.

12 Did you decide which ones made the cut for the case?

13 A. No.

14 Q. Who decided that?

15 A. The prosecution team.

16 Q. Thank you. Now, you were involved substantially in this  
17 case, correct?

18 A. Yes.

19 Q. Okay. You're not just a Parler agent, are you?

20 A. No.

21 Q. Okay. You're actually part of the investigative team.  
22 Would that be fair?

23 A. Yes.

24 Q. Okay. So your knowledge encompasses much more than this,  
25 correct?



1 MR. McCULLOUGH: Objection.

2 THE COURT: Sustained. Sustained.

3 BY MR. JAUREGUI:

4 Q. Now, you are aware of a video on December 30th, correct?

5 A. You would have to refresh my memory about which one you're  
6 talking about.

7 Q. Well, it's a video -- it's a briefing video for MOSD,  
8 correct?

9 MR. McCULLOUGH: Objection.

10 THE COURT: Sustained.

11 BY MR. JAUREGUI:

12 Q. Do you know what MOSD is?

13 A. Yes.

14 Q. Can you please tell us what that is?

15 MR. McCULLOUGH: Objection.

16 THE COURT: Sustained.

17 BY MR. JAUREGUI:

18 Q. Did you know that the purpose of MOSD --

19 MR. McCULLOUGH: Objection.

20 THE COURT: Sustained. Sustained.

21 MR. JAUREGUI: Okay. Ms. Harris, I'm going to go  
22 somewhere else now.

23 Okay. If we could publish that, please.

24 Thank you.

25 BY MR. JAUREGUI:

1 Q. Now, this is a video that was played during direct. It's a  
2 song named "Bad Company," correct?

3 A. Yes.

4 Q. And you know that song from your time in Afghanistan, I  
5 think you said, on direct?

6 A. Yes.

7 Q. That's because the band would go and play over there?

8 A. That was not -- no, that's not my experience with it.

9 Q. Oh, okay. But it's a song that's -- I mean, played a lot.  
10 It's celebrated in the military, is it not?

11 A. Yes. But the context that I saw it in was military videos  
12 showing combat.

13 Q. Right. And that's what this video kind of looks like for  
14 the Proud Boys. It's like a recruitment video, correct?

15 A. Recruitment or hype video, yes.

16 Q. Yeah -- wait. You said "hate"?

17 A. Hype.

18 Q. Oh, hype. Thank you. You scared me for a second.

19 So it's a recruitment/hype video, correct?

20 A. Yes.

21 Q. And its purpose is to try and get other like-minded men to  
22 try and join the Proud Boys, right?

23 A. Yes, I would agree.

24 Q. Okay. And that video shows a lot of chaos and fighting in  
25 Portland and other places, correct?

1 A. Yes.

2 Q. Okay. In that video, is Enrique depicted fighting in any  
3 way, shape, or form?

4 A. Not that I saw.

5 Q. Okay. And in those scenes of chaos, there's no police  
6 there, correct, in Portland?

7 A. I don't know. I would have to re-watch the video.

8 Q. Okay. When you saw it the first time, did you see any  
9 police?

10 A. I don't recall police, no.

11 Q. Okay. And would it be fair to say that during those times  
12 depicted in that video in Portland, it was absolute chaos?

13 A. Yes.

14 Q. Okay. The police department had been overrun, correct?

15 MR. McCULLOUGH: Objection. Foundation.

16 THE COURT: She can answer based on her review of the  
17 videos.

18 A. I didn't see police, so I don't know the answer to that.

19 BY MR. JAUREGUI:

20 Q. Okay. But the question I asked you is: Back during that  
21 chaos, the police department had been overrun. They had  
22 established autonomous zones, all kinds of crazy stuff,  
23 correct?

24 A. Based on my review of the Parler data, I don't know.

25 Q. I'm not asking about the Parler data. I'm asking about

1 your personal knowledge of what happened in Portland.

2 MR. McCULLOUGH: Objection. Scope.

3 THE COURT: Sustained.

4 BY MR. JAUREGUI:

5 Q. Did you see any FBI in that video?

6 A. No.

7 Q. Okay. Would it be fair to say that antifa, in a lot of  
8 these videos that you showed in Parler, were armed and ready  
9 for combat?

10 A. There were some with, I believe, sticks and bear spray or  
11 something of that nature.

12 Q. Okay. But you also saw plenty of knives, correct?

13 A. In this particular video?

14 Q. No, not in this video. In the other Parler posts that the  
15 government had played for you.

16 A. Yes. I saw videos with knives, yes.

17 Q. Okay. Does antifa usually carry weapons and knives?

18 A. I have no basis of knowledge for that.

19 Q. You haven't investigated antifa at all?

20 MR. McCULLOUGH: Objection.

21 THE COURT: Sustained.

22 BY MR. JAUREGUI:

23 Q. Now, based on the Parler posts that you've reviewed for  
24 this case, Agent, when did this conspiracy start?

25 MR. McCULLOUGH: Objection.

1 THE COURT: Sustained.

2 BY MR. JAUREGUI:

3 Q. When is the first evidence of a conspiracy?

4 MR. McCULLOUGH: Objection.

5 MR. JAUREGUI: Based on the Parler post and her  
6 personal knowledge.

7 MR. McCULLOUGH: Objection.

8 THE COURT: Sustained.

9 BY MR. JAUREGUI:

10 Q. The truth is, Agent, that these posts are --

11 MR. McCULLOUGH: Objection.

12 THE COURT: Let's wait until -- let's --

13 MR. McCULLOUGH: Anything that begins with "The truth  
14 is" is --

15 THE COURT: Not enough. Not enough. No. No.

16 MR. McCULLOUGH: No?

17 THE COURT: No. No.

18 MR. JAUREGUI: No.

19 THE COURT: Sir, you can finish your question, then  
20 we'll have an objection, if appropriate, and the witness will  
21 give me a chance to rule on the objection.

22 Mr. Jauregui.

23 MR. JAUREGUI: Thank you, Judge.

24 THE COURT: Maybe you're going to move on from that  
25 question anyway.

1 MR. JAUREGUI: No, I'm not going to move on, Judge.  
2 Okay? I'll figure it out.

3 BY MR. JAUREGUI:

4 Q. Would it be fair to say, Agent, that none of these Parler  
5 posts prove a conspiracy?

6 A. No. They're just a part of the puzzle.

7 Q. Thank you.

8 And that puzzle is yet to be determined at some future  
9 date, correct?

10 A. During this trial, yes.

11 Q. Okay. If you can put the puzzle together, correct?

12 A. That's for the jury to decide.

13 Q. Thank you.

14 Now, do you know what War Boys, LLC is?

15 A. I know it's a company.

16 Q. All right. You saw it on the Parler posts, my client  
17 wearing a hat that says, "War Boys"?

18 A. Yes.

19 Q. And you just testified it is a company that's owned by my  
20 client, correct?

21 A. I didn't testify to that. But, yes, it is.

22 Q. Well, I appreciate. Thank you.

23 And would you also agree that *Lords of War* is a podcast  
24 that my client has?

25 A. I actually don't know.

1 Q. You don't know?

2 A. No.

3 Q. Okay. Did you -- in these thousands of lines of data of  
4 Parler, did you see any connection between posts on Parler and  
5 Tweets by President Trump?

6 A. Not that I recall, no.

7 Q. Did you investigate whether there was a link?

8 A. No. I wasn't investigating President Trump.

9 Q. I got it. Thank you.

10 Who do you think is more influential to their followers,  
11 President Trump or Enrique Tarrio?

12 MR. McCULLOUGH: Objection. Calls for speculation.

13 THE COURT: Sustained.

14 BY MR. JAUREGUI:

15 Q. Would it be fair to say that Enrique Tarrio did not do a  
16 single post about January 6?

17 A. No, that would not be accurate.

18 Q. Okay. Which one did he do?

19 A. We showed it in our -- I believe it was our very first  
20 slide. "Don't fucking leave," or something else.

21 Q. Okay. Got it.

22 But that was after the fact.

23 A. It was on January 6.

24 Q. Got it. Got it. I'm talking about -- my fault. Strike.

25 I'm going to go back.

1           Did he do any posts about going to the Capitol on  
2           January 6?

3           A.   He, himself, going to the Capitol?  Is that what you're  
4           asking?

5           Q.   No.  No.  Did he -- okay.  My bad, again.

6                   Did Enrique do any posts before January 6 on Parler  
7           calling for people to go to January 6 -- to go to the Capitol?

8           A.   No, not before January 6.

9           Q.   Okay.  He had done posts about people going to a rally in  
10          November, correct?

11          A.   Yes.

12          Q.   He also did a post about people going to a rally in  
13          December, correct?

14          A.   Yes.

15          Q.   But he never, ever called for anybody to go on January 6,  
16          correct?

17          A.   I believe he called for people to go to a rally.  He didn't  
18          call for them to go into the Capitol.

19          Q.   Okay.  Do you remember what Parler post that was?

20          A.   I would need to review the data.

21          Q.   Okay.  Now, I would like to play you, Agent, a video that's  
22          already been introduced as evidence by the government, 620.

23                   MR. JAUREGUI:  Let me get there first, Ms. Harris,  
24          please.

25                   THE COURT:  600-20?



1 MR. JAUREGUI: 600-20.

2 THE COURT: 600-20. All right.

3 MR. JAUREGUI: 6-2-0? I guess because there's a  
4 620B, 620C? Is that right?

5 THE COURTROOM DEPUTY: Which one?

6 MR. JAUREGUI: Well, I was going to -- under Rule  
7 106, I was going to bring in the whole video and just put in --

8 THE COURT: Well, let me hear -- let me hear counsel  
9 at side bar.

10 (Bench discussion:)

11 THE COURT: All right. Mr. McCullough?

12 MR. McCULLOUGH: I mean, this is not the way to, kind  
13 of, proceed with Rule 106. If there are clips that counsel  
14 believes need to be included for fairness to the jury, we'd  
15 just like counsel to identify them so that we can confirm that  
16 we're not, kind of, end-running the hearsay rules on the motion  
17 in limine that we filed.

18 THE COURT: All right.

19 MR. McCULLOUGH: I know that we proceeded  
20 expeditiously yesterday, and so we don't have a fundamental  
21 objection to it. But, we would like to know what it is that  
22 counsel proposes to play, just in, kind of, fairness to the  
23 parties.

24 THE COURT: All right.

25 MR. JAUREGUI: Sure. Judge, as you see, I'm trying

1 to move it along quickly.

2 THE COURT: No, I haven't seen that at all. But, go  
3 ahead.

4 MR. JAUREGUI: A lot of the videos I'm going to play  
5 are going to have no sound, so I don't get into the whole  
6 hearsay problem. The only video with sound that I'm going to  
7 play are -- is a video of my client -- the same video, okay,  
8 the same C-20 video, where my client says the Proud Boys are a  
9 drinking club.

10 THE COURT: All right. Look, it's 4:56, so we have  
11 to stop at 5 for them today anyway. So we're going to pause  
12 right now and you all can talk about it. Let me -- look,  
13 Mr. McCullough is right, that Rule 106 is not -- we proceeded  
14 in the way we did yesterday because the government did not have  
15 the objection. But Rule 106 -- and under Rule 106 they come in  
16 together. Now, it may be that they won't have any objection  
17 here, again.

18 But, again if you really want to preserve your right  
19 to have something introduced through 106, they've got to know  
20 in advance that that's the way the rule works.

21 MR. JAUREGUI: I can take care of it tonight. That's  
22 no problem, Judge.

23 THE COURT: All right. Very well.

24 (Open court:)

25 THE COURT: Ladies and gentlemen, it's 4:57, so we're

1 going to excuse you for the day. Thank you for your patience  
2 and your attention today. We'll see you tomorrow morning.

3 (Whereupon the jurors leave the courtroom.)

4 THE COURT: Agent, you may step down.

5 All right. You all may be seated, and we'll just  
6 wait for Ms. Harris to return.

7 (Pause.)

8 THE COURT: All right. So, let's talk about -- I --  
9 just before we break for the day, have the parties talked  
10 further about the limiting instruction? Where are we on that?  
11 Whoever would like to address it.

12 Mr. McCullough, you look poised to say something, or  
13 Mr. Pattis?

14 MR. McCULLOUGH: I think it's going to be the exact  
15 same thing -- well, he'll say it more eloquently.

16 Go ahead.

17 MR. PATTIS: Blabababla. Judge, I think we've come  
18 to the conclusion that the format the government proposed was  
19 superior. Mr. Hull raised a question about the placement of  
20 the *Brandenburg* factors, and the Court hadn't -- and that's the  
21 last we talked about it. I don't think -- Mr. McCullough and I  
22 did. But, we can -- why don't you let us talk about that this  
23 evening. We're so close.

24 THE COURT: Yeah, I think this is largely -- so,  
25 again, I think the two issues are whether it's two sentences or

1 one or whether you flip the order of --

2 MR. PATTIS: I think it's stylistic, and we can  
3 probably agree.

4 THE COURT: All right. So take that up.

5 There's a scheduling thing that Ms. Harris reminded  
6 me I needed to tell you all that I'd forgotten about.

7 Because of a juror -- an unusual juror commitment, we  
8 have to stop a little bit early tomorrow, at 3 o'clock. It's  
9 not my -- you know, it's a commitment that we have to work  
10 around.

11 So, my thought is, if we can be -- if the government  
12 can have a witness -- I don't know what -- when you all thought  
13 the Telegram issue was going to be teed up? But if you can  
14 have a witness to put on after this witness, if we get to that  
15 person, which I assume we would, and if the defense is prepared  
16 at that point to talk about -- either file something in  
17 response or at least address orally the government's filing  
18 that came in at some point over the weekend about Telegram,  
19 maybe we could make good use of that time at 3 o'clock to talk  
20 about that topic.

21 Now, I don't want to -- you know, again, the  
22 government filed it over the weekend. I know you all had a  
23 million things you're trying to do. But, that just struck me  
24 as a thing that we could at least make some use of that dead  
25 time during the day.

1 Yes, Mr. Pattis.

2 MR. PATTIS: Mr. Hull raised this morning the  
3 possibility the Court may have other commitments Thursday, and  
4 the Court didn't address that.

5 THE COURT: No. I think he was -- he raised it. If  
6 I wasn't clear, I do not have any other commitments that day.  
7 Friday, at least at this point, unless I can move things  
8 around -- again, we're going to see if -- if between parties  
9 coming to me and saying we want to continue something or  
10 adjusting the schedule, if I can, try to bump everything to the  
11 afternoon, I will do that and give you the morning. If I  
12 can't, I can't. But I'll let you know as soon as I know.

13 But, no, Thursday -- let me, just before I tell you  
14 this and then -- no, Thursday we'll have a full day.

15 Yes, Mr. Smith?

16 MR. SMITH: Your Honor, I just wanted to make one  
17 request for cross-examination and direct going forward. There  
18 have been occasions, perhaps on both sides, where objections  
19 have been made to questions before the attorneys have an  
20 opportunity to finish a sentence or get a word out. And I --  
21 there's probably occasions where I might have done the same  
22 thing.

23 But I would just make a request that the Court sort  
24 of indicate to the parties that the lawyer should have an  
25 opportunity to complete a question before an objection is

1 raised.

2 THE COURT: I hope the last time I addressed that I  
3 indicated the order in which that should proceed. So, I think  
4 that is clear, correct?

5 MR. McCULLOUGH: Your Honor, I -- we very much honor  
6 and want to respect Your Honor's direction and the decorum of  
7 this courtroom. There are -- there are moments where a line of  
8 questioning is -- it becomes apparent that a -- question 1 has  
9 been objected and sustained, we know question 2 and 3 are, in  
10 the view of the objector -- the neutral, disembodied  
11 objector -- that the next -- that questions 2, 3, 4 are going  
12 to kind of attempt to put this additional concept before the  
13 jury.

14 That's where that's coming from. And, so, Your  
15 Honor, I do -- I apologize for those incidents.

16 THE COURT: Look, as I always do, apology accepted.

17 And why don't you -- let's put it this way: That --  
18 the -- why don't you leave the running of the railroad along  
19 the lines you're describing to me. And I do think, obviously,  
20 counsel does need to be able to -- whichever side it's happened  
21 on, counsel should be able to finish the question.

22 If I think a whole line is going down a -- I mean,  
23 one way to do it is we could have a sidebar, although I would  
24 rather not do that. But, if I think -- if I sense what you are  
25 thinking is going to happen, I'll jump in and say something.

1 MR. McCULLOUGH: And, Your Honor, if it would be  
2 permissible to you, I'm happy to just merely stand and remain  
3 silent, if that is -- if that is an appropriate signal.

4 MR. PATTIS: I love that idea, Judge, just as a  
5 general matter.

6 THE COURT: I think that would -- well --

7 MR. McCULLOUGH: Well done.

8 THE COURT: Mr. McCullough, you see how they fear  
9 you -- they want you to remain silent.

10 MR. McCULLOUGH: I know. He's --

11 THE COURT: No. No. No. Look, it's a tricky thing  
12 because I think -- I think in a specific instance you're  
13 describing, Mr. McCullough, where you've objected twice, it's  
14 obvious you're about to object again, standing is a good way to  
15 proceed.

16 In general, though, I know, you know, you all want to  
17 object, but not really object in front of the jury. And I  
18 think, in general, I shouldn't let you get away with that, and  
19 you really have to object and state your objection. But I  
20 think, in the scenario you're laying out, where you've objected  
21 already a number of times, it's obvious, a way to let things  
22 proceed, but to let me know that's what you're doing, is to  
23 stand.

24 So is that a reasonable -- does the defense think you  
25 will be prepared to address the Telegram issue tomorrow, in the

1       afternoon, after we have to release the jury? Is that fair?

2               I mean, we've been around it once, so this is, like,  
3       the government sort of -- I think more or less saying, as I  
4       read the -- and I didn't read it deeply because it wasn't quite  
5       teed up. They're sort of seeking to admit certain things on  
6       certain Telegram evidence on theories, some theories that I  
7       have accepted. And, you know, we don't have to retread that  
8       ground too much.

9               And I think at least on one theory that I had  
10       rejected before, but I had said, look -- and I had sort of  
11       expressed certain reasons why I thought it didn't fly, I think  
12       they've attempted to come back with arguments that addressed  
13       those concerns. So, in any event, we'll hear what they have to  
14       say and I'll read up and decide what I think.

15              But, is that -- does the -- do the defendants think  
16       they'll be prepared by then?

17              MR. SMITH: When would the Court like a submission in  
18       response by?

19              THE COURT: Let's -- I'll put it this way: I know  
20       we're all -- I'm not going to require -- I'm not going to  
21       require you to file something, if you don't think you -- if you  
22       don't have -- you know, if you think you don't need to. But,  
23       if I had enough time to read it, you know -- actually, pretty  
24       much -- let's put it this way, by 6 in the morning.

25              I mean, I come in early to try to read what has been



1 filed overnight. So, I would say anything you file by then  
2 I'll be able to read, and it's -- I'll be able to read and be  
3 prepared by the afternoon.

4 MR. SMITH: So the defense wouldn't want to be seen  
5 as forfeiting any objection to any kind of hearsay ground basis  
6 for admission the government might be proposing generally in  
7 its submission.

8 Should we understand the Court to be saying that if  
9 the defense does not provide a response to every piece of  
10 Telegram evidence, that we would be relinquishing any  
11 objections during trial to that? Or --

12 THE COURT: Mr. Smith, you know I have never run this  
13 operation that way.

14 MR. SMITH: The Court hasn't. But, sometimes the  
15 government will approach and say, Well, Your Honor, you know,  
16 we filed this submission saying we might make these arguments,  
17 and the defense didn't file a response.

18 So, I just want to know whether the Court is taking  
19 the position that the defendants can preserve a right to object  
20 on an exhibit-by-exhibit basis, even if they don't submit a  
21 lengthy memorandum by 6 a.m. tomorrow.

22 THE COURT: I mean, you know, I think that's right in  
23 the sense that I think what the government is doing is  
24 proffering -- and I'll hear from the government if you agree --  
25 proffering various theories of admissibility of certain

1 documents. And, you know, again, some theories that, as I  
2 recall, I've agreed with. At least one, I can recall, at least  
3 at the time, I did not agree with.

4 So, look, I think it's fair for you to be able to  
5 preserve an objection to a particular document, if we litigate  
6 the theory and you have another -- you have some sort of other  
7 reason that is apart from that theory to think -- let's just  
8 say the classic example of, like, for whatever reason, it's  
9 403, right?

10 We're going to -- right. We're going to discuss the  
11 theories of admissibility, like a motion in limine, and if --  
12 again, if there's a particular document, yes, I think that  
13 would be preserved.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Is that --

16 MR. SMITH: Yes.

17 THE COURT: I mean, what is the government -- again,  
18 I haven't looked at this closely.

19 Is that a workable way to proceed, at least from the  
20 government's perspective?

21 MS. HERNANDEZ: I'm sorry, Your Honor. Are you  
22 asking for us to respond to the lengthy list of Telegram  
23 messages by tomorrow at 6 a.m.?

24 THE COURT: Here's what I'm trying --

25 MS. HERNANDEZ: Because I can't do it.

1 THE COURT: Okay. What I'm trying to do is figure  
2 out a way that we can best use the time that we have starting  
3 at 3 o'clock tomorrow, when I have to excuse the jury. That's  
4 the starting point.

5 The government had filed something over the  
6 weekend -- couple of different things, so did the defense --  
7 teeing up, okay, Here's this issue with these -- the Telegram  
8 stuff. And I'm trying to see if there's a way we can fill that  
9 two-hour time slot productively to deal with this issue.

10 Yes, Mr. Pattis.

11 MR. PATTIS: Your Honor, it seems to me that  
12 Mr. Biggs would be prepared to argue without briefing. But, it  
13 would be our hope that if the government is looking to simplify  
14 and streamline the proceedings, it would just offer its various  
15 theories. We could comment on those.

16 And you're telling us that we have the right to  
17 reserve on a individual basis if, for whatever reason, it  
18 wasn't fully captured by the general theories we argued?

19 THE COURT: Right. Or there's some other basis that  
20 has nothing to do with the particular theory that you think the  
21 document shouldn't come in.

22 MR. PATTIS: Would the Court be open to the  
23 possibility that if something extraordinary occurred during the  
24 course of these presentations, we could reserve for a brief,  
25 brief a overnight on an issue?

1 I realize that, you know, that's two bites at one  
2 apple. But, I hear the Court's concern about using the time.

3 It's always valuable for me to hear from somebody  
4 other than Mr. McCullough, like, you know, Conor Mulroe, who  
5 raises great evidentiary arguments. And so we would be open to  
6 hear what he has to say tomorrow.

7 THE COURT: All right. Let me just hear, Mr. Mulroe,  
8 just as a practical matter, in terms of how the government  
9 plans to proceed.

10 Do you all plan to move in these documents en masse  
11 so that it wouldn't -- again, is it practical for us to say,  
12 Well the defense can preserve a document-by-document objection,  
13 or the way you were going to proceed, it really doesn't make  
14 sense for them to do that and we should slog through each of  
15 these things tomorrow afternoon, if we have the time?

16 MR. MULROE: Your Honor, I think, especially given  
17 that we've got this block of time tomorrow, the government's  
18 preference would be to just admit them wholesale, rather  
19 than --

20 THE COURT: Well, I'm sure that's always the  
21 government's preference.

22 MR. MULROE: Well, let me provide a little bit of  
23 relevant context.

24 So we have provided to the Court and to counsel a  
25 combined PDF that includes all the exhibits we're going to

1 offer through this case agent in the order in which we're going  
2 to offer them. And it comes in just shy of 200. So it's a  
3 substantial volume of exhibits.

4 I think that for the sake of the jury and the  
5 efficiency of the proceeding, we prefer not to, on every single  
6 one of those, say, Is this fair and accurate, and what is it,  
7 and move to admit it.

8 I think that what we tried to capture in the file we  
9 submitted on Saturday evening, was that there are a small  
10 number of basic theories that we expect would resolve the  
11 admissibility of all of these various exhibits.

12 And, so, I think that the time tomorrow afternoon  
13 could productively be spent discussing any particular exhibits  
14 that the defense might disagree, whether they fall into a  
15 theory, or to revisit the theory that Your Honor alluded to,  
16 that you found did not yet have a sufficient factual  
17 predication at the time we argued the motions in limine.

18 I just think that given that we've got this two hours  
19 to work with, it's better to spend two hours doing that  
20 tomorrow afternoon, rather than spend two hours in sidebars on  
21 Thursday with the jury present.

22 THE COURT: There's no question about that. It  
23 strikes me, then, what we should just do is -- again, if -- no  
24 one is forfeiting anything, so, just to be clear. I think if  
25 the defendants want to file something overnight on this issue,

1       you are free to do it, and I will look at it in the morning.

2               And we'll just -- I'll just hear from the government,  
3       and then, of course, from the defense, and we'll get as far as  
4       we can on this. I think that's the easiest thing to do. I'll  
5       hear from both sides about whether there are -- I mean, I think  
6       the defense should be as prepared as you can be to talk about  
7       not only the theories, but whether there are any particular  
8       documents here that you think are -- the admissibility turns on  
9       something other than the theory -- let's put it that way -- and  
10      we'll get as far as we can.

11              And the government should have witnesses lined up to  
12      put on, you know, depending -- we'll see where we get at the  
13      end of the two hours, and the government should have witnesses  
14      that they can put on that don't necessarily -- we don't need to  
15      resolve the Parler posts for the trial to continue the next day  
16      if, indeed, we don't resolve everything definitively, and we'll  
17      get as far as we can and see where we are.

18              MR. MULROE: And, Your Honor, I would just add that I  
19      think the way the theories apply to categories exhibits, we  
20      would hope would be kind of apparent from the exhibit  
21      numbering.

22              So, for example, all the exhibits in the 501 series  
23      are the small group MOSD leaders chat. So, those are almost  
24      going to be entirely statements of the defendants or of what  
25      Your Honor has called admitted coconspirators, all of which

1 would be, our position is, admissible to circumstantially show  
2 their relevant state of mind.

3 All the exhibits in the 503 series are the somewhat  
4 larger MOSD membership group. So that gets into the mind state  
5 of the tools and the effect of the listener. But it's all  
6 going to be apparent from the exhibit number kind of what the  
7 chat setting for each one is.

8 THE COURT: Okay. Look, again, I haven't -- I really  
9 didn't look at it extensively, so we'll just see how far we get  
10 in resolving all this.

11 MS. HERNANDEZ: Your Honor, it's impossible to --  
12 there are 100 and --

13 THE COURT: Ms. Hernandez, your microphone is not on.  
14 The court reporter is telling me that.

15 MS. HERNANDEZ: There's 198 exhibits with multiple  
16 items on each. The first exhibit dates to September 29th,  
17 2020, and involves Johnny Blackbeard. And these exhibits are  
18 going to require a lot of Rule 106 submissions.

19 I understand the government sent them out on Saturday  
20 night, and I think most of us worked every weekend and through  
21 the night, but I don't think -- I love Mr. Pattis, but his --  
22 his cross-examination and his theory, which is great, it's  
23 great, but those of us who get into the weeds need time to  
24 respond to this stuff.

25 And the government's theories of -- I believe some of

1       these are going to involve tools and everything else. I may be  
2       wrong, but I'm -- I can tell the Court I will not be able to  
3       respond by 6 a.m. tomorrow and have any kind of sleep.

4               THE COURT: Well, that's why I'm --

5               MS. HERNANDEZ: Makes my cranky.

6               THE COURT: Ms. Hernandez, just to be clear, again,  
7       I'm not -- I'm going to hear from both sides and we're going to  
8       get as far as we can using the time productively tomorrow. I'm  
9       not -- if you -- consistent with your ability to continue to  
10      function in trial, if you can file something and you want to,  
11      that's fine. If you feel you cannot, I mean, again, I'm going  
12      to hear you tomorrow. And the question of 106 is a separate --  
13      is a separate issue we can discuss tomorrow.

14              MS. HERNANDEZ: I don't think they come in unless --  
15      I mean, we're going to be in the same shoes, again, and  
16      these -- that's a lot of -- these -- the Telegram chats, unlike  
17      the Parler chats -- and they can correct me if I'm wrong --  
18      there are multiple different chat groups, so it's not easy to  
19      access all the chats. They're not in one file. They're in  
20      multiple files because they're the Boots on the Ground, there's  
21      the President's, this or that.

22              So, it's not easy, number one.

23              Number two, I continue to -- I know the Court  
24      believes and has excused the government's productions. They  
25      just -- I think two days ago, or yesterday -- said, Oh, here's



1 a chart or a summary for the expert. And then I said, Wait a  
2 minute. A summary chart? That should have been produced weeks  
3 ago.

4 So, I'm just saying that there are ongoing -- I'm  
5 not -- Mr. -- I'm not -- we're all trying to try a case, and  
6 there are -- I'm not accusing anybody of doing anything wrong.

7 I'm just explaining to the Court that the volume of  
8 materials that are coming our way is substantial. Perhaps I  
9 am -- I'm -- I look at the stuff and I feel I have an  
10 obligation to look at each piece of paper, and others look at  
11 it differently. But, I'm just telling the Court that the  
12 volume of materials that continue to be produced is  
13 substantial.

14 We're in court every day. We're preparing for  
15 witnesses every day. It's just -- I'm not able to keep up, and  
16 I have a lot of -- I mean, I'm up all the time, as the  
17 government will attest to because I'm sending them emails at  
18 all hours of the day and night. It's just not possible to  
19 adequately respond, in my opinion. That's my take.

20 THE COURT: Ms. Hernandez, just let me say, I don't  
21 know, the chart -- the chart issue that you just mentioned  
22 aside for the moment -- that these Telegram -- the Telegram  
23 issue has been one that we've been litigating. I know it's 200  
24 exhibits. I get that. But, this is not -- the Telegram issue  
25 is not a new issue, but it was the subject of a motion in

1       limine. We argued it.

2               MS. HERNANDEZ: Let me just -- I just opened -- okay.  
3       So, on this page, there's a text -- a Telegram from TyWeb, from  
4       MeadowCow, from GregNorthSoundPres, from NebraskaRed, from  
5       JohnnyBlackbeard, and from TravisBroadway.

6               The only one whose name -- you know, JohnnyBlackbeard  
7       is, I believe, Stewart, but the others, who are these people?  
8       These are tools, I think. Most of these people are tools.  
9       This is September 29th, 2020. This is the type -- I'm just  
10      telling the Court this is not -- we're not looking at what  
11      happened. We're not looking about messages between these  
12      gentlemen and the issues are narrow.

13              I'm just telling the Court from what I'm looking at  
14      this, this is a complicated thing. I'm happy to argue  
15      whatever -- I mean, I'm happy to argue any time of day or night  
16      based on my background, but I just think this is not an easy  
17      process that we're facing.

18              THE COURT: Understood. And, so, look, again, the  
19      fact that we're in trial kind of cuts both ways in the sense  
20      that I understand that you alls' time is being pulled in every  
21      different direction. On the other hand -- and I do recognize  
22      that this is tricky, and that's why I'm trying to make use of  
23      this time we have to try to flesh out the issue.

24              So, Ms. Hernandez, it may be that you can -- that,  
25      you know, we'll put the government on the -- on the hot seat to

1 explain the kinds of things you're talking about, and that may  
2 help you flesh out whatever arguments you would like to make,  
3 that they're not admissible.

4 Look, we'll use the time for that -- oh, the other  
5 thing I want to mention is, again, because of that time, I will  
6 not take any preliminary matters tomorrow morning. I will just  
7 take the bench at 9 o'clock, we'll bring in the jury, and just  
8 continue on with this witness. Again, maybe with the exception  
9 of whether you all worked out a limiting instruction.

10 But, I think, again, to preserve the time that we  
11 have with the jury, I would like to just bring them in and just  
12 go and continue with the cross-examination -- again, unless  
13 there's a true emergency.

14 Yes, Mr. Hull?

15 MR. HULL: Your Honor, a note about one of the  
16 jurors. Good time to bring it up. One of the jurors -- and I  
17 don't need to mention, you know, which seat it is -- seems to  
18 be very comfortable being here, and this becomes your living  
19 room after a while, and he's starting to make supportive  
20 gestures -- apparently for the government -- but he's making  
21 gestures for somebody.

22 And it's not just, like, Let's move this along. It's  
23 not, like, a quirk or a twitch. And, you know, Mr. Biggs and I  
24 have -- while Mr. Pattis has taken a laboring-the-war on some  
25 of these cross-examinations, I've been able to see that. And I

1 think it's obvious to others in the courtroom. But it's  
2 certainly obvious to us that the one juror who is -- seems to  
3 be assuming a "go, team, go" kind of attitude. And if you  
4 could make some kind of admonition or comment about that.

5 I can see how that can happen after some passage of  
6 time.

7 THE COURT: I'm going to take a watch for what you  
8 are saying and we'll go from there. I mean, I'll just take a  
9 watch for what you're saying and we'll go from there.

10 I'm not sure, to be quite honest, what would be  
11 appropriate if I did observe what you were saying. It wouldn't  
12 surprise me if a juror was trying to move lawyers along. Let's  
13 just put it that way. That would -- that might just reflect  
14 that they're paying attention.

15 But -- you know, but I'll keep an eye out for what  
16 you are --

17 MR. HULL: I tried to specifically rule that out.  
18 It's a little bit more --

19 THE COURT: Well, you know --

20 MR. HULL: -- partisan than that.

21 THE COURT: It would be very difficult for me to rule  
22 that out. Let's put it that way.

23 Mr. McCullough, I see you have a phone in your hand.

24 MR. McCULLOUGH: And it -- may we just have Mr. Hull  
25 put the seat number under seal into the record via the phone?

1 Just a number. No further discussion of it.

2 THE COURT: All right. If he can -- if he knows.

3 (Bench discussion:)

4 MR. McCULLOUGH: And we move to seal this from the  
5 public record.

6 THE COURT: All right. That motion will be granted.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 (Open court:)

14 MR. McCULLOUGH: Your Honor, we move to unseal it for  
15 the limited purpose of providing to the parties.

16 THE COURT: That motion will be granted as well.

17 So, Mr. Hull, I will look at that closely.

18 All right. So, again, tomorrow, 9 o'clock. Other  
19 than the instruction, we will go right -- to try to best use  
20 the time for witnesses that we have, we'll go right into the  
21 witness. Everyone have a good evening.

22 \* \* \*

23

24

25

## 1 CERTIFICATE OF OFFICIAL COURT REPORTER

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 1st day of February, 2023  
8  
9

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23  
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## INDEX

## WITNESS:

Kathryn Camiliere

Cross-Examination by Mr. Pattis (Cont.)..... 6593

Cross-Examination by Ms. Hernandez..... 6626

Cross-Examination by Mr. Jauregui..... 6680

## EXHIBITS:

Exhibit 602-4..... 6672

Exhibit 602-5..... 6674

Exhibit 602-6..... 6676

Exhibit 602-8..... 6677

Exhibit 602-27A..... 6668

Exhibit 602-28..... 6678

Exhibit 602-42..... 6661

Exhibit 603-9..... 6607

\* \* \*

<b>0</b>	<b>2</b>	<b>31st</b> [1] - 6651:24 <b>33012</b> [1] - 6589:13 <b>33014</b> [1] - 6589:11 <b>333</b> [1] - 6737:12 <b>35,000</b> [1] - 6703:20 <b>383</b> [1] - 6589:4 <b>39</b> [2] - 6651:14, 6652:2 <b>3:28:19</b> [1] - 6616:9 <b>3:56:35</b> [1] - 6612:6 <b>3rd</b> [1] - 6640:7	<b>600-20</b> [3] - 6715:25, 6716:1, 6716:2 <b>600-21</b> [1] - 6698:2 <b>600-23</b> [1] - 6698:10 <b>600-24</b> [1] - 6695:16 <b>600-36</b> [1] - 6705:15 <b>600-4</b> [1] - 6690:11 <b>600-59</b> [3] - 6685:13, 6685:16, 6685:17 <b>600-6</b> [1] - 6690:23 <b>600-8</b> [1] - 6692:3 <b>600-9</b> [1] - 6692:10 <b>600A</b> [1] - 6681:18 <b>600B</b> [3] - 6627:1, 6627:2, 6627:4 <b>601</b> [1] - 6588:15 <b>601-39</b> [2] - 6647:16, 6647:20 <b>602-1</b> [3] - 6640:20, 6640:22, 6671:23 <b>602-23</b> [1] - 6677:19 <b>602-27</b> [1] - 6668:16 <b>602-27A</b> [1] - 6668:6 <b>602-27A</b> ..... ..... [1] - 6738:10 <b>602-28</b> [3] - 6678:3, 6678:5, 6678:14 <b>602-28</b> ..... ..... [1] - 6738:10 <b>602-3</b> [1] - 6672:2 <b>602-4</b> [4] - 6672:5, 6672:7, 6672:13, 6673:1 <b>602-4</b> ..... ..... [1] - 6738:8 <b>602-41</b> [5] - 6655:2, 6659:25, 6660:6, 6662:9 <b>602-41A</b> [3] - 6655:8, 6659:23, 6663:2 <b>602-42</b> [6] - 6660:11, 6660:15, 6660:18, 6660:19, 6661:12, 6662:3 <b>602-42</b> ..... ..... [1] - 6738:11 <b>602-43</b> [2] - 6662:2, 6662:22 <b>602-5</b> [2] - 6674:17, 6674:23 <b>602-5</b> ..... ..... [1] - 6738:8 <b>602-6</b> [3] - 6675:22, 6676:8, 6676:18 <b>602-6</b> ..... ..... [1] - 6738:9 <b>602-7</b> [2] - 6676:17, 6676:19 <b>602-8</b> [2] - 6676:20,
<b>1</b>		<b>4</b>	
<b>1</b> [3] - 6657:11, 6663:21, 6721:8 <b>10</b> [3] - 6662:19, 6677:14, 6677:16 <b>100</b> [2] - 6686:11, 6730:12 <b>10010</b> [1] - 6588:25 <b>10016</b> [1] - 6589:16 <b>1014</b> [1] - 6589:13 <b>102,000</b> [1] - 6683:22 <b>102,802</b> [1] - 6683:21 <b>106</b> [9] - 6655:23, 6716:7, 6716:13, 6717:13, 6717:15, 6717:19, 6730:18, 6731:12 <b>10:53:34</b> [1] - 6600:19 <b>10th</b> [1] - 6675:4 <b>1102</b> [1] - 6684:12 <b>11201</b> [1] - 6588:21 <b>1123</b> [1] - 6588:24 <b>113</b> [1] - 6589:18 <b>12</b> [6] - 6645:6, 6645:7, 6645:18, 6645:21, 6662:6, 6662:20 <b>12th</b> [4] - 6609:23, 6644:15, 6657:11, 6668:25 <b>1301</b> [1] - 6588:18 <b>14</b> [1] - 6625:25 <b>1420</b> [1] - 6589:2 <b>14th</b> [6] - 6616:9, 6644:14, 6644:22, 6645:13, 6669:2, 6676:24 <b>15</b> [2] - 6591:10, 6663:24 <b>153</b> [1] - 6589:10 <b>15th</b> [1] - 6594:20 <b>1776</b> [6] - 6669:19, 6669:22, 6669:23, 6670:7, 6671:2, 6671:7 <b>1800</b> [2] - 6634:15, 6664:8 <b>1900</b> [1] - 6664:19 <b>195</b> [2] - 6628:3 <b>198</b> [2] - 6627:21, 6730:15 <b>19th</b> [1] - 6638:3 <b>1:45</b> [1] - 6588:8 <b>1st</b> [1] - 6737:7	<b>2</b> [2] - 6721:9, 6721:11 <b>200</b> [2] - 6728:2, 6732:23 <b>20001</b> [1] - 6737:13 <b>20005</b> [2] - 6588:19, 6589:2 <b>2020</b> [22] - 6594:21, 6616:9, 6641:13, 6641:22, 6649:7, 6650:10, 6651:1, 6651:24, 6652:10, 6656:6, 6660:6, 6664:23, 6669:8, 6672:5, 6673:2, 6673:17, 6675:4, 6675:7, 6676:24, 6678:3, 6730:17, 6733:9 <b>2021</b> [4] - 6595:18, 6615:4, 6615:10, 6681:9 <b>2022</b> [1] - 6593:22 <b>2023</b> [2] - 6588:7, 6737:7 <b>20530</b> [1] - 6588:16 <b>20777</b> [1] - 6589:8 <b>209</b> [2] - 6589:10, 6607:10 <b>21-175</b> [2] - 6590:3, 6658:15 <b>21-cr-175</b> [1] - 6588:4 <b>214</b> [1] - 6673:12 <b>21st</b> [1] - 6653:2 <b>23</b> [1] - 6588:6 <b>24</b> [2] - 6661:22, 6662:16 <b>259</b> [2] - 6673:11, 6673:13 <b>26</b> [3] - 6656:6, 6660:6, 6664:23 <b>270</b> [1] - 6675:15 <b>271</b> [1] - 6588:21 <b>27th</b> [3] - 6662:2, 6662:7, 6678:3 <b>28th</b> [1] - 6593:21 <b>29th</b> [2] - 6730:16, 6733:9 <b>2:38</b> [2] - 6686:9, 6687:7	<b>5</b>	
		<b>4</b> [1] - 6721:11 <b>40</b> [2] - 6661:7 <b>403</b> [3] - 6598:24, 6679:20, 6725:9 <b>42</b> [1] - 6661:15 <b>43</b> [1] - 6661:16 <b>49</b> [1] - 6589:13 <b>4:20</b> [1] - 6662:16 <b>4:40</b> [2] - 6662:11, 6662:15 <b>4:56</b> [1] - 6717:10 <b>4:57</b> [1] - 6717:25 <b>4th</b> [5] - 6612:19, 6639:5, 6639:6, 6669:4, 6669:22	
		<b>6</b>	
		<b>5</b> [2] - 6680:10, 6717:11 <b>501</b> [1] - 6729:22 <b>503</b> [1] - 6730:3 <b>59047</b> [1] - 6589:19 <b>5:20:50</b> [1] - 6601:9 <b>5:25:17</b> [1] - 6609:18 <b>5:25:31</b> [1] - 6609:22 <b>5:40</b> [1] - 6687:11	
		<b>3</b>	
	<b>3</b> [6] - 6663:24, 6719:8, 6719:19, 6721:9, 6721:11, 6726:3 <b>30th</b> [1] - 6708:4 <b>31</b> [1] - 6588:7		<b>6</b> [19] - 6638:11, 6641:13, 6661:21, 6662:5, 6662:19, 6663:9, 6679:19, 6685:1, 6714:16, 6714:23, 6715:2, 6715:6, 6715:7, 6715:8, 6715:15, 6723:24, 6724:21, 6725:23, 6731:3 <b>6-2-0</b> [1] - 6716:3 <b>600</b> [1] - 6693:20 <b>600-15</b> [1] - 6692:22 <b>600-16</b> [1] - 6693:21 <b>600-18</b> [1] - 6694:11 <b>600-2</b> [1] - 6689:1



6677:8 <b>602-8</b> ..... ..... [1] - 6738:9 <b>602-9</b> [2] - 6643:23, 6677:14 <b>603</b> [1] - 6591:9 <b>603-15</b> [1] - 6608:7 <b>603-19</b> [1] - 6609:15 <b>603-2</b> [3] - 6601:2, 6601:9, 6672:4 <b>603-22</b> [1] - 6610:15 <b>603-26</b> [1] - 6612:5 <b>603-27</b> [1] - 6613:10 <b>603-29</b> [1] - 6706:13 <b>603-3</b> [1] - 6602:11 <b>603-30</b> [1] - 6614:10 <b>603-33</b> [1] - 6616:7 <b>603-46</b> [4] - 6618:12, 6646:22, 6646:24, 6646:25 <b>603-50</b> [1] - 6620:1 <b>603-55</b> [1] - 6622:1 <b>603-9</b> [4] - 6606:21, 6607:5, 6607:10, 6608:2 <b>603-9</b> ..... ..... [1] - 6738:11 <b>603.1</b> [1] - 6600:13 <b>604</b> [1] - 6690:8 <b>604-10</b> [3] - 6699:10, 6702:20, 6702:24 <b>604-12</b> [1] - 6703:10 <b>6175</b> [1] - 6589:10 <b>620</b> [1] - 6715:22 <b>620B</b> [1] - 6716:4 <b>620C</b> [1] - 6716:4 <b>6523</b> [1] - 6737:12 <b>659</b> [1] - 6685:16 <b>6593</b> [1] - 6738:4 <b>6607</b> [1] - 6738:11 <b>6626</b> [1] - 6738:4 <b>6661</b> [1] - 6738:11 <b>6668</b> [1] - 6738:10 <b>6672</b> [1] - 6738:8 <b>6674</b> [1] - 6738:8 <b>6676</b> [1] - 6738:9 <b>6677</b> [1] - 6738:9 <b>6678</b> [1] - 6738:10 <b>6680</b> [1] - 6738:5 <b>6th</b> [1] - 6637:17	6684:1 <b>8:47:39</b> [1] - 6614:15 <b>8th</b> [2] - 6672:5, 6675:6  <b>9</b>  <b>9</b> [2] - 6734:7, 6736:18 <b>90</b> [1] - 6684:25 <b>909</b> [1] - 6588:24 <b>951-47</b> [1] - 6691:5 <b>952</b> [1] - 6691:4 <b>97</b> [1] - 6633:4 <b>99</b> [1] - 6589:16 <b>9:52:30</b> [1] - 6691:8 <b>9th</b> [3] - 6673:16, 6673:25, 6674:1  <b>A</b>  <b>a.m</b> [4] - 6662:16, 6724:21, 6725:23, 6731:3 <b>ability</b> [3] - 6656:21, 6731:9, 6737:6 <b>able</b> [13] - 6599:14, 6624:7, 6654:10, 6654:20, 6667:3, 6721:20, 6721:21, 6724:2, 6725:4, 6731:2, 6732:15, 6734:25 <b>absent</b> [2] - 6605:12, 6612:2 <b>absolute</b> [1] - 6710:12 <b>absolutely</b> [1] - 6624:23 <b>abstract</b> [2] - 6601:25, 6602:3 <b>Academy</b> [1] - 6596:17 <b>academy</b> [1] - 6601:24 <b>accepted</b> [3] - 6698:17, 6721:16, 6723:7 <b>access</b> [1] - 6731:19 <b>accessed</b> [1] - 6654:21 <b>according</b> [2] - 6675:9, 6675:13 <b>account</b> [6] - 6611:20, 6676:23, 6683:3, 6688:2, 6696:5, 6697:2 <b>accurate</b> [12] - 6606:19, 6620:15, 6648:12, 6653:6, 6661:3, 6672:9, 6674:20, 6676:22, 6678:12, 6714:17, 6728:6, 6737:4	<b>accurately</b> [2] - 6599:14, 6624:7 <b>accusing</b> [1] - 6732:6 <b>acknowledge</b> [1] - 6603:3 <b>acknowledged</b> [1] - 6591:17 <b>action</b> [5] - 6602:15, 6609:22, 6613:6, 6632:19, 6657:13 <b>Action</b> [1] - 6588:4 <b>activity</b> [5] - 6653:20, 6665:10, 6670:24, 6674:15, 6677:5 <b>actual</b> [1] - 6614:1 <b>add</b> [4] - 6598:17, 6663:25, 6664:2, 6729:18 <b>addition</b> [1] - 6667:11 <b>additional</b> [2] - 6671:20, 6721:12 <b>address</b> [4] - 6718:11, 6719:17, 6720:4, 6722:25 <b>addressed</b> [2] - 6721:2, 6723:12 <b>adequately</b> [1] - 6732:19 <b>adjusting</b> [1] - 6720:10 <b>administration's</b> [1] - 6665:23 <b>admissibility</b> [4] - 6724:25, 6725:11, 6728:11, 6729:8 <b>admissible</b> [2] - 6730:1, 6734:3 <b>admission</b> [2] - 6678:7, 6724:6 <b>admit</b> [3] - 6723:5, 6727:18, 6728:7 <b>admitted</b> [25] - 6600:16, 6607:13, 6641:3, 6646:25, 6660:1, 6660:3, 6660:4, 6660:11, 6661:13, 6663:2, 6668:12, 6672:23, 6674:25, 6675:23, 6676:14, 6677:10, 6677:15, 6677:18, 6677:19, 6677:20, 6677:21, 6678:4, 6678:6, 6678:8, 6729:25 <b>admonition</b> [1] - 6735:4 <b>adopt</b> [2] - 6667:17, 6667:18 <b>adopted</b> [4] - 6590:16,	6667:15, 6667:16, 6669:24 <b>adoption</b> [1] - 6667:4 <b>advance</b> [1] - 6717:20 <b>advertised</b> [1] - 6645:6 <b>affairs</b> [1] - 6621:20 <b>Afghanistan</b> [1] - 6709:4 <b>Afro</b> [1] - 6690:2 <b>Afro-Cuban</b> [1] - 6690:2 <b>AFTERNOON</b> [1] - 6590:1 <b>afternoon</b> [8] - 6626:15, 6659:16, 6720:11, 6723:1, 6724:3, 6727:15, 6728:12, 6728:20 <b>agent</b> [14] - 6593:11, 6610:2, 6648:19, 6649:1, 6650:6, 6680:25, 6681:3, 6681:11, 6681:21, 6685:19, 6707:19, 6718:4, 6728:1 <b>Agent</b> [16] - 6592:2, 6680:15, 6680:25, 6681:3, 6681:6, 6681:14, 6686:24, 6689:2, 6689:25, 6695:6, 6701:22, 6705:22, 6711:24, 6712:10, 6713:4, 6715:21 <b>agents</b> [1] - 6648:22 <b>ago</b> [6] - 6603:21, 6660:7, 6670:8, 6670:22, 6731:25, 6732:3 <b>agree</b> [26] - 6610:23, 6621:24, 6630:17, 6634:7, 6634:16, 6634:18, 6635:10, 6636:3, 6639:18, 6641:16, 6641:24, 6648:24, 6662:23, 6665:9, 6671:2, 6673:3, 6678:14, 6678:21, 6690:1, 6691:13, 6703:6, 6709:23, 6713:23, 6719:3, 6724:24, 6725:3 <b>agreed</b> [2] - 6632:11, 6725:2 <b>ahead</b> [2] - 6717:3, 6718:16 <b>aid</b> [2] - 6681:21, 6681:24
<b>7</b>			
<b>700</b> [1] - 6588:18 <b>7166</b> [1] - 6589:7			
<b>8</b>			
<b>8</b> [1] - 6662:21 <b>88</b> [2] - 6683:23,			

<p><b>Al</b> [1] - 6619:17  <b>al</b> [4] - 6590:4,  6619:10, 6619:11,  6658:16  <b>al-Qaeda</b> [2] -  6619:10, 6619:11  <b>Al-Qaeda</b> [1] - 6619:17  <b>Alabama</b> [1] - 6630:12  <b>Alan</b> [1] - 6589:15  <b>alerted</b> [1] - 6591:8  <b>Alexander</b> [1] - 6664:1  <b>allegation</b> [1] -  6678:18  <b>alleged</b> [1] - 6639:11  <b>allow</b> [3] - 6637:22,  6649:24, 6649:25  <b>alls</b> [1] - 6733:20  <b>alluded</b> [1] - 6728:15  <b>almost</b> [1] - 6729:23  <b>alternative</b> [1] -  6646:13  <b>Alyssa</b> [1] - 6610:19  <b>AMA</b> [2] - 6703:20,  6703:21  <b>Amendment</b> [20] -  6606:24, 6607:17,  6613:4, 6640:10,  6640:11, 6640:13,  6641:17, 6653:19,  6657:12, 6657:15,  6663:24, 6665:10,  6670:6, 6674:14,  6690:19, 6692:7,  6692:17, 6693:17,  6694:3, 6706:1  <b>Amendment-</b>  <b>protected</b> [8] - 6640:10,  6640:13, 6641:17,  6653:19, 6657:15,  6665:10, 6670:6,  6674:14  <b>America</b> [5] - 6588:3,  6590:3, 6641:21,  6650:20, 6658:15  <b>American</b> [19] -  6595:9, 6601:10,  6621:17, 6621:18,  6630:18, 6655:4,  6655:9, 6655:10,  6662:23, 6662:25,  6670:1, 6670:4,  6670:11, 6670:20,  6670:23, 6671:9,  6678:22  <b>Americans</b> [2] -  6630:18, 6686:4  <b>angry</b> [1] - 6664:15  <b>announced</b> [1] -  6637:18  <b>announcing</b> [1] -</p>	<p>6619:9  <b>answer</b> [16] - 6598:12,  6599:14, 6606:14,  6621:15, 6639:19,  6644:6, 6645:16,  6654:12, 6654:13,  6655:17, 6673:20,  6689:22, 6701:12,  6704:12, 6710:16,  6710:18  <b>answered</b> [4] -  6591:22, 6592:1,  6592:12, 6592:14  <b>anticipation</b> [2] -  6594:7, 6594:12  <b>antifa</b> [23] - 6614:19,  6615:15, 6616:1,  6616:5, 6617:2,  6647:18, 6647:22,  6647:25, 6648:3,  6648:8, 6649:9,  6649:19, 6649:22,  6650:4, 6650:11,  6651:3, 6693:25,  6694:21, 6694:25,  6695:8, 6711:7,  6711:17, 6711:19  <b>anyway</b> [2] - 6712:25,  6717:11  <b>apart</b> [1] - 6725:7  <b>apologies</b> [2] -  6590:5, 6684:10  <b>apologize</b> [3] -  6621:12, 6621:15,  6721:15  <b>apology</b> [1] - 6721:16  <b>apparent</b> [3] - 6721:8,  6729:20, 6730:6  <b>appeal</b> [2] - 6610:21,  6664:14  <b>appear</b> [5] - 6633:8,  6674:20, 6676:22,  6678:13, 6688:7  <b>appeared</b> [1] - 6609:2  <b>apple</b> [1] - 6727:2  <b>application</b> [3] -  6696:8, 6696:10,  6697:6  <b>apply</b> [1] - 6729:19  <b>appreciate</b> [3] -  6626:19, 6689:25,  6713:22  <b>approach</b> [1] -  6724:15  <b>appropriate</b> [5] -  6591:17, 6637:20,  6712:20, 6722:3,  6735:11  <b>area</b> [2] - 6598:21,  6598:22</p>	<p><b>areas</b> [2] - 6602:12,  6634:10  <b>arena</b> [1] - 6678:24  <b>argue</b> [3] - 6726:12,  6733:14, 6733:15  <b>argued</b> [4] - 6606:17,  6726:18, 6728:17,  6733:1  <b>argument</b> [1] - 6692:6  <b>argumentative</b> [5] -  6599:25, 6605:20,  6605:22, 6618:25,  6704:8  <b>arguments</b> [4] -  6723:12, 6724:16,  6727:5, 6734:2  <b>Arizona</b> [1] - 6664:3  <b>armed</b> [1] - 6711:8  <b>arrow</b> [1] - 6632:9  <b>Art</b> [2] - 6633:16,  6633:18  <b>article</b> [32] - 6614:14,  6616:14, 6655:4,  6655:6, 6655:8,  6656:10, 6656:12,  6656:15, 6659:22,  6659:24, 6660:7,  6660:24, 6660:25,  6662:5, 6662:18,  6662:23, 6663:1,  6663:21, 6665:4,  6665:13, 6665:18,  6665:20, 6666:6,  6666:10, 6666:12,  6667:4, 6667:10,  6667:14, 6667:22,  6668:6, 6668:19  <b>Article</b> [2] - 6657:11,  6663:24  <b>ascertain</b> [1] - 6701:5  <b>ashamed</b> [1] - 6600:22  <b>aside</b> [1] - 6732:22  <b>ass</b> [1] - 6609:22  <b>assemble</b> [1] -  6610:13  <b>asserting</b> [1] -  6671:19  <b>asses</b> [1] - 6617:4  <b>assistance</b> [2] -  6591:9, 6600:10  <b>association</b> [1] -  6599:21  <b>assume</b> [5] - 6606:18,  6630:7, 6670:16,  6672:18, 6719:15  <b>assuming</b> [2] -  6627:18, 6735:3  <b>attack</b> [2] - 6604:13,  6665:5  <b>attacked</b> [2] - 6652:11,</p>	<p>6695:3  <b>attacking</b> [4] - 6677:4,  6694:18, 6694:21,  6694:25  <b>attempt</b> [1] - 6721:12  <b>attempted</b> [1] -  6723:12  <b>attempting</b> [2] -  6667:17, 6667:18  <b>attend</b> [2] - 6636:2,  6644:7  <b>attendance</b> [4] -  6668:23, 6668:24,  6669:2, 6669:4  <b>attention</b> [2] - 6718:2,  6735:14  <b>attest</b> [1] - 6732:17  <b>attitude</b> [1] - 6735:3  <b>Attorney</b> [11] -  6589:18, 6649:4,  6649:7, 6650:7,  6650:11, 6650:17,  6651:1, 6652:6,  6667:4, 6667:15,  6667:19  <b>attorney</b> [1] - 6649:20  <b>Attorney's</b> [1] -  6588:20  <b>attorneys</b> [1] -  6720:19  <b>attributed</b> [1] -  6631:20  <b>audio</b> [2] - 6652:25,  6653:1  <b>audiotape</b> [1] - 6653:5  <b>authority</b> [2] -  6663:22, 6664:13  <b>automatically</b> [1] -  6632:15  <b>autonomous</b> [2] -  6635:25, 6710:22  <b>available</b> [1] - 6647:9  <b>Avenue</b> [5] - 6588:18,  6589:16, 6619:22,  6619:23, 6737:12  <b>aware</b> [10] - 6602:2,  6612:9, 6641:19,  6649:9, 6650:9,  6650:25, 6651:4,  6651:5, 6651:8, 6708:4</p>
<b>B</b>			
<p><b>background</b> [6] -  6630:8, 6630:20,  6631:1, 6646:3,  6687:1, 6733:16  <b>backtrack</b> [2] - 6696:7,  6702:22  <b>bad</b> [1] - 6715:5</p>			

<p><b>Bad</b> [2] - 6669:9, 6709:2</p> <p><b>ballot</b> [1] - 6671:24</p> <p><b>ballots</b> [1] - 6602:12</p> <p><b>Baltimore</b> [1] - 6595:11</p> <p><b>band</b> [1] - 6709:7</p> <p><b>Bankruptcy</b> [1] - 6589:21</p> <p><b>bar</b> [2] - 6636:17, 6716:9</p> <p><b>Barr</b> [3] - 6649:7, 6650:11, 6667:5</p> <p><b>barr</b> [1] - 6649:9</p> <p><b>barr's</b> [1] - 6652:7</p> <p><b>based</b> [23] - 6614:5, 6622:16, 6632:3, 6645:16, 6645:17, 6645:18, 6646:8, 6646:12, 6646:13, 6650:13, 6651:21, 6651:22, 6673:10, 6673:20, 6693:10, 6694:24, 6703:8, 6704:20, 6710:16, 6710:24, 6711:23, 6712:5, 6733:16</p> <p><b>basic</b> [1] - 6728:10</p> <p><b>basics</b> [1] - 6671:8</p> <p><b>basis</b> [8] - 6636:14, 6643:8, 6657:12, 6711:18, 6724:5, 6724:20, 6726:17, 6726:19</p> <p><b>battle</b> [1] - 6611:10</p> <p><b>battleground</b> [1] - 6612:7</p> <p><b>bear</b> [1] - 6711:10</p> <p><b>bearing</b> [1] - 6609:19</p> <p><b>beat</b> [2] - 6611:11, 6659:16</p> <p><b>beaten</b> [4] - 6611:19, 6611:20, 6611:21, 6612:3</p> <p><b>beating</b> [1] - 6612:7</p> <p><b>become</b> [4] - 6597:19, 6600:5, 6617:12, 6671:5</p> <p><b>becomes</b> [2] - 6721:8, 6734:18</p> <p><b>BEFORE</b> [1] - 6588:11</p> <p><b>beforehand</b> [1] - 6605:5</p> <p><b>begin</b> [1] - 6594:18</p> <p><b>beginning</b> [1] - 6691:5</p> <p><b>begins</b> [1] - 6712:13</p> <p><b>belabor</b> [1] - 6592:15</p> <p><b>believes</b> [2] - 6716:14, 6731:24</p> <p><b>belong</b> [1] - 6635:19</p>	<p><b>belonged</b> [1] - 6635:12</p> <p><b>bench</b> [6] - 6636:18, 6649:15, 6658:21, 6716:10, 6734:7, 6736:3</p> <p><b>beneath</b> [2] - 6609:7, 6619:3</p> <p><b>best</b> [4] - 6624:24, 6726:2, 6736:19, 6737:6</p> <p><b>betray</b> [1] - 6620:3</p> <p><b>betrayed</b> [1] - 6620:25</p> <p><b>better</b> [1] - 6728:19</p> <p><b>between</b> [13] - 6591:1, 6592:3, 6598:21, 6601:15, 6601:20, 6611:10, 6611:20, 6636:22, 6700:5, 6705:6, 6714:4, 6720:8, 6733:11</p> <p><b>beyond</b> [3] - 6612:21, 6644:17, 6646:17</p> <p><b>Biden</b> [5] - 6612:7, 6673:11, 6695:20, 6695:23, 6696:20</p> <p><b>big</b> [5] - 6641:25, 6642:19, 6652:10, 6705:18, 6705:21</p> <p><b>bigger</b> [1] - 6616:16</p> <p><b>biggest</b> [1] - 6601:9</p> <p><b>Biggs</b> [20] - 6588:6, 6589:1, 6593:6, 6600:19, 6610:24, 6612:5, 6613:10, 6615:15, 6615:23, 6616:9, 6616:15, 6628:7, 6628:15, 6631:20, 6635:12, 6647:6, 6679:11, 6679:24, 6726:12, 6734:23</p> <p><b>Biggs'</b> [3] - 6590:22, 6591:22, 6610:17</p> <p><b>Bio</b> [1] - 6627:15</p> <p><b>bio</b> [2] - 6627:18, 6682:8</p> <p><b>biography</b> [1] - 6627:13</p> <p><b>bit</b> [5] - 6590:25, 6616:22, 6719:8, 6727:22, 6735:18</p> <p><b>bitch</b> [1] - 6610:25</p> <p><b>bitches</b> [2] - 6615:16, 6615:21</p> <p><b>bites</b> [1] - 6727:1</p> <p><b>blabababla</b> [1] - 6718:17</p> <p><b>black</b> [1] - 6594:18</p> <p><b>Blackbeard</b> [1] -</p>	<p>6730:17</p> <p><b>blade</b> [2] - 6608:23, 6608:24</p> <p><b>blinded</b> [1] - 6701:7</p> <p><b>blindfold</b> [1] - 6702:7</p> <p><b>blithely</b> [1] - 6664:10</p> <p><b>block</b> [3] - 6616:10, 6616:25, 6727:17</p> <p><b>blocked</b> [2] - 6663:4, 6691:6</p> <p><b>blocked-off</b> [1] - 6691:6</p> <p><b>blowout</b> [1] - 6600:20</p> <p><b>blue</b> [1] - 6617:2</p> <p><b>bluntly</b> [1] - 6664:1</p> <p><b>bobbing</b> [1] - 6595:23</p> <p><b>book</b> [8] - 6619:16, 6633:4, 6633:14, 6633:15, 6633:21, 6633:23, 6634:2, 6634:3</p> <p><b>books</b> [1] - 6621:18</p> <p><b>Boots</b> [1] - 6731:20</p> <p><b>boss</b> [3] - 6649:5, 6650:6, 6650:17</p> <p><b>bother</b> [1] - 6684:21</p> <p><b>bottom</b> [2] - 6682:5, 6699:15</p> <p><b>boxes</b> [1] - 6682:5</p> <p><b>Boy</b> [2] - 6644:7, 6700:1</p> <p><b>Boys</b> [28] - 6599:5, 6599:6, 6599:7, 6599:16, 6599:19, 6603:3, 6609:19, 6614:20, 6634:16, 6634:20, 6634:22, 6635:9, 6644:5, 6645:3, 6648:3, 6649:19, 6653:12, 6693:24, 6698:13, 6698:17, 6698:22, 6699:4, 6699:6, 6709:14, 6709:22, 6713:14, 6713:17, 6717:8</p> <p><b>boys</b> [1] - 6685:24</p> <p><b>Brandenburg</b> [1] - 6718:20</p> <p><b>break</b> [4] - 6593:11, 6600:9, 6657:23, 6718:9</p> <p><b>breaking</b> [2] - 6616:10, 6695:11</p> <p><b>breaks</b> [1] - 6622:3</p> <p><b>brief</b> [2] - 6726:24, 6726:25</p> <p><b>briefing</b> [2] - 6708:7, 6726:12</p> <p><b>briefly</b> [1] - 6592:6</p>	<p><b>bring</b> [16] - 6592:25, 6613:6, 6613:8, 6625:8, 6658:12, 6658:13, 6668:16, 6688:21, 6692:2, 6692:21, 6705:15, 6706:8, 6716:7, 6734:7, 6734:11, 6734:16</p> <p><b>bringing</b> [1] - 6637:18</p> <p><b>Britannica</b> [1] - 6624:13</p> <p><b>British</b> [1] - 6670:2</p> <p><b>Broadway</b> [1] - 6588:24</p> <p><b>broke</b> [3] - 6695:7, 6695:9, 6695:10</p> <p><b>Brooklyn</b> [1] - 6588:21</p> <p><b>brought</b> [2] - 6624:11, 6631:16</p> <p><b>Building</b> [1] - 6588:24</p> <p><b>building</b> [1] - 6616:25</p> <p><b>Bull</b> [1] - 6706:21</p> <p><b>bump</b> [1] - 6720:10</p> <p><b>bunch</b> [1] - 6683:12</p> <p><b>Bureau</b> [2] - 6610:2, 6687:4</p> <p><b>Bush</b> [1] - 6663:22</p> <p><b>BY</b> [127] - 6593:10, 6594:11, 6595:14, 6598:1, 6598:15, 6599:3, 6600:2, 6600:18, 6601:3, 6603:13, 6603:16, 6603:24, 6605:23, 6606:2, 6606:12, 6606:16, 6606:22, 6607:15, 6608:9, 6608:14, 6609:16, 6614:11, 6616:8, 6616:23, 6618:7, 6618:13, 6619:2, 6620:2, 6621:14, 6622:23, 6623:12, 6624:3, 6625:4, 6625:20, 6626:8, 6626:22, 6627:6, 6629:3, 6631:7, 6633:17, 6635:7, 6638:8, 6639:17, 6639:21, 6640:23, 6641:8, 6643:24, 6644:20, 6645:12, 6645:19, 6646:20, 6647:1, 6647:17, 6647:21, 6648:7, 6648:18, 6650:3, 6652:9, 6652:18, 6655:3, 6656:4, 6659:18, 6660:5,</p>
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6660:21, 6661:18, 6666:1, 6666:9, 6666:22, 6668:1, 6668:18, 6669:18, 6671:18, 6672:8, 6672:25, 6673:7, 6673:24, 6674:19, 6675:3, 6675:24, 6676:21, 6677:23, 6678:11, 6679:4, 6679:8, 6680:14, 6681:20, 6683:10, 6683:18, 6684:11, 6685:7, 6685:18, 6686:8, 6687:15, 6687:23, 6688:22, 6689:18, 6689:24, 6690:12, 6690:25, 6692:4, 6692:11, 6692:24, 6693:23, 6694:13, 6695:18, 6697:15, 6698:3, 6698:11, 6698:20, 6699:12, 6701:21, 6703:14, 6704:11, 6705:17, 6706:12, 6707:2, 6708:3, 6708:11, 6708:17, 6708:25, 6710:19, 6711:4, 6711:22, 6712:2, 6712:9, 6713:3, 6714:14 <b>bypass</b> [1] - 6617:3	6627:25, 6633:5, 6636:10, 6638:12, 6639:14, 6646:11, 6646:14, 6653:1, 6674:12, 6680:25, 6681:3, 6681:6, 6681:11, 6681:12, 6707:4, 6707:12, 6707:17, 6711:24, 6728:1, 6732:5 <b>cases</b> [1] - 6605:8 <b>cast</b> [2] - 6616:11, 6617:1 <b>categories</b> [1] - 6729:19 <b>causation</b> [4] - 6604:22, 6604:24, 6605:2, 6605:3 <b>caused</b> [4] - 6605:5, 6605:11, 6605:15, 6605:18 <b>caution</b> [1] - 6672:20 <b>CCR</b> [1] - 6737:11 <b>celebrated</b> [2] - 6599:7, 6709:10 <b>celebrating</b> [1] - 6599:18 <b>center</b> [2] - 6608:12, 6642:19 <b>Century</b> [1] - 6653:3 <b>certain</b> [7] - 6598:8, 6637:9, 6637:10, 6723:5, 6723:6, 6723:11, 6724:25 <b>certainly</b> [3] - 6590:21, 6637:11, 6735:2 <b>CERTIFICATE</b> [1] - 6737:1 <b>certified</b> [1] - 6663:19 <b>certify</b> [1] - 6737:3 <b>chair</b> [1] - 6695:23 <b>chairman</b> [2] - 6635:20, 6635:23 <b>challenge</b> [2] - 6674:6, 6674:10 <b>chance</b> [2] - 6617:14, 6712:21 <b>chaos</b> [4] - 6709:24, 6710:5, 6710:12, 6710:21 <b>Chapter</b> [1] - 6625:25 <b>chapter</b> [7] - 6634:20, 6635:1, 6635:13, 6635:15, 6635:17, 6635:19, 6635:22 <b>chapters</b> [4] - 6634:21, 6634:25, 6635:1, 6635:24 <b>characterize</b> [3] - 6608:2, 6610:21,	6610:22 <b>charge</b> [1] - 6639:14 <b>charged</b> [2] - 6636:10, 6637:1 <b>charges</b> [2] - 6638:12, 6639:10 <b>chart</b> [4] - 6732:1, 6732:2, 6732:21 <b>chat</b> [3] - 6729:23, 6730:7, 6731:18 <b>chats</b> [3] - 6731:16, 6731:17, 6731:19 <b>checkmark</b> [2] - 6632:8, 6632:18 <b>chemotherapy</b> [1] - 6658:23 <b>chernan7@aol.com</b> [1] - 6589:8 <b>children</b> [4] - 6694:18, 6694:21, 6695:1, 6695:4 <b>Chinese</b> [1] - 6633:14 <b>choice</b> [1] - 6630:24 <b>choices</b> [1] - 6663:18 <b>chose</b> [1] - 6629:15 <b>circumstantial</b> [2] - 6597:1, 6597:6 <b>circumstantially</b> [1] - 6730:1 <b>cites</b> [2] - 6657:10 <b>city</b> [2] - 6598:21, 6689:8 <b>civil</b> [1] - 6624:15 <b>claims</b> [2] - 6642:25, 6643:17 <b>class</b> [1] - 6592:12 <b>classes</b> [1] - 6670:16 <b>classic</b> [1] - 6725:8 <b>classify</b> [1] - 6597:8 <b>Claws</b> [1] - 6706:21 <b>clear</b> [7] - 6638:2, 6664:1, 6704:22, 6720:6, 6721:4, 6728:24, 6731:6 <b>cleared</b> [1] - 6687:10 <b>clicked</b> [1] - 6701:7 <b>client</b> [30] - 6680:20, 6680:22, 6682:24, 6683:12, 6683:19, 6685:21, 6689:4, 6690:1, 6690:13, 6691:1, 6692:5, 6692:25, 6693:3, 6695:19, 6696:25, 6697:18, 6697:21, 6698:5, 6698:12, 6699:19, 6700:8, 6703:16, 6704:22, 6704:25, 6705:18, 6713:16, 6713:20,	6713:24, 6717:7, 6717:8 <b>client's</b> [2] - 6682:16, 6691:11 <b>Cliff</b> [1] - 6634:2 <b>Clint</b> [1] - 6619:12 <b>clips</b> [1] - 6716:13 <b>close</b> [1] - 6718:23 <b>closely</b> [2] - 6725:18, 6736:17 <b>closer</b> [1] - 6602:10 <b>club</b> [1] - 6717:9 <b>CMR</b> [1] - 6737:11 <b>coconspirators</b> [1] - 6729:25 <b>code</b> [3] - 6604:8, 6604:13, 6686:17 <b>Code</b> [1] - 6657:11 <b>coin</b> [1] - 6620:5 <b>colleague</b> [1] - 6680:17 <b>colleagues</b> [1] - 6625:2 <b>College</b> [3] - 6619:19, 6675:18, 6676:1 <b>colonies</b> [1] - 6670:1 <b>COLUMBIA</b> [1] - 6588:1 <b>combat</b> [2] - 6709:12, 6711:9 <b>combined</b> [1] - 6727:25 <b>comfortable</b> [1] - 6734:18 <b>coming</b> [5] - 6659:19, 6660:16, 6720:9, 6721:14, 6732:8 <b>commands</b> [1] - 6624:16 <b>comment</b> [4] - 6700:4, 6702:12, 6726:15, 6735:4 <b>commenting</b> [1] - 6702:11 <b>comments</b> [2] - 6592:6, 6700:18 <b>commerce</b> [1] - 6653:4 <b>commie</b> [1] - 6601:11 <b>commitment</b> [2] - 6719:7, 6719:9 <b>commitments</b> [2] - 6720:3, 6720:6 <b>committing</b> [1] - 6666:25 <b>common</b> [1] - 6622:20 <b>communism</b> [1] - 6689:23 <b>company</b> [2] - 6713:15, 6713:19
<b>C</b>			
<b>C-20</b> [1] - 6717:8 <b>Cadman</b> [1] - 6588:21 <b>cameras</b> [1] - 6649:21 <b>Camiliere</b> [2] - 6592:2, 6738:3 <b>CAMILIERE</b> [1] - 6593:8 <b>cannot</b> [1] - 6731:11 <b>capable</b> [1] - 6634:8 <b>Capitol</b> [7] - 6616:11, 6665:5, 6687:11, 6715:1, 6715:3, 6715:7, 6715:18 <b>caption</b> [1] - 6668:13 <b>capture</b> [1] - 6728:8 <b>captured</b> [1] - 6726:18 <b>care</b> [1] - 6717:21 <b>carefully</b> [1] - 6623:10 <b>Carmen</b> [2] - 6589:6, 6589:7 <b>carried</b> [1] - 6667:8 <b>carry</b> [1] - 6711:17 <b>case</b> [23] - 6613:8, 6623:23, 6625:6,			

<p><b>Company</b> [2] - 6669:9, 6709:2</p> <p><b>complaining</b> [1] - 6698:4</p> <p><b>complete</b> [2] - 6720:25, 6737:5</p> <p><b>completely</b> [1] - 6674:14</p> <p><b>complicated</b> [1] - 6733:14</p> <p><b>computer</b> [3] - 6686:23, 6687:1, 6687:4</p> <p><b>concept</b> [3] - 6635:5, 6637:8, 6721:12</p> <p><b>concern</b> [2] - 6658:25, 6727:2</p> <p><b>concerns</b> [1] - 6723:13</p> <p><b>conclude</b> [1] - 6612:3</p> <p><b>conclusion</b> [5] - 6590:18, 6620:9, 6620:11, 6637:20, 6718:18</p> <p><b>conclusions</b> [1] - 6637:3</p> <p><b>conclusively</b> [1] - 6605:18</p> <p><b>Confederate</b> [5] - 6630:9, 6630:15, 6630:16, 6630:22, 6630:25</p> <p><b>conference</b> [1] - 6642:18</p> <p><b>confirm</b> [1] - 6716:15</p> <p><b>confrontation</b> [1] - 6592:15</p> <p><b>confused</b> [1] - 6592:11</p> <p><b>Congress</b> [2] - 6657:7, 6663:9</p> <p><b>Connecticut</b> [1] - 6619:23</p> <p><b>connection</b> [1] - 6714:4</p> <p><b>Conor</b> [2] - 6588:17, 6727:4</p> <p><b>Conor.mulroe@usdoj.gov</b> [1] - 6588:19</p> <p><b>consent</b> [2] - 6623:4, 6623:6</p> <p><b>conservative</b> [1] - 6655:13</p> <p><b>consistent</b> [1] - 6731:9</p> <p><b>conspiracy</b> [1] - 6636:10, 6637:1, 6637:7, 6637:8, 6637:18, 6638:14, 6639:11, 6639:14,</p>	<p>6711:24, 6712:3, 6713:5</p> <p><b>conspire</b> [1] - 6636:9</p> <p><b>constitutes</b> [1] - 6737:4</p> <p><b>Constitution</b> [6] - 6610:7, 6619:22, 6619:23, 6663:16, 6663:21, 6737:12</p> <p><b>constitutional</b> [2] - 6610:3, 6664:9</p> <p><b>Cont</b> [1] - 6593:9</p> <p><b>Cont.)</b>..... [1] - 6738:4</p> <p><b>content</b> [8] - 6632:12, 6632:13, 6633:3, 6634:5, 6682:7, 6688:3, 6688:6, 6700:20</p> <p><b>contention</b> [1] - 6642:1</p> <p><b>contested</b> [2] - 6664:2, 6673:17</p> <p><b>context</b> [6] - 6596:7, 6604:12, 6709:11, 6727:23</p> <p><b>continue</b> [13] - 6593:5, 6617:5, 6659:11, 6664:17, 6666:17, 6666:20, 6720:9, 6729:15, 6731:9, 6731:23, 6732:12, 6734:8, 6734:12</p> <p><b>continuing</b> [5] - 6672:20, 6676:1, 6676:11, 6677:1, 6677:24</p> <p><b>contrast</b> [1] - 6621:23</p> <p><b>controversial</b> [3] - 6608:5, 6671:1, 6671:5</p> <p><b>conversation</b> [4] - 6695:20, 6696:20, 6696:23, 6697:22</p> <p><b>convoluted</b> [1] - 6700:16</p> <p><b>cooking</b> [1] - 6653:13</p> <p><b>copy</b> [3] - 6620:15, 6651:15, 6651:16</p> <p><b>correct</b> [254] - 6593:20, 6593:22, 6593:25, 6594:4, 6594:5, 6594:13, 6594:15, 6594:23, 6594:24, 6594:25, 6595:18, 6595:21, 6596:2, 6596:5, 6596:6, 6596:12, 6596:15, 6596:19, 6596:23, 6597:1,</p>	<p>6597:4, 6597:7, 6597:15, 6597:20, 6598:5, 6598:9, 6598:13, 6598:17, 6598:22, 6600:6, 6601:16, 6601:18, 6603:1, 6603:4, 6604:2, 6604:16, 6604:19, 6605:6, 6605:9, 6605:12, 6608:5, 6608:10, 6608:11, 6608:21, 6609:10, 6609:20, 6610:4, 6610:7, 6610:11, 6610:13, 6610:17, 6610:19, 6611:8, 6611:22, 6611:25, 6612:10, 6612:12, 6612:17, 6612:19, 6612:21, 6612:23, 6613:8, 6613:14, 6613:23, 6614:4, 6614:12, 6614:15, 6614:16, 6614:21, 6614:22, 6615:13, 6615:14, 6616:13, 6616:17, 6617:16, 6617:19, 6617:20, 6617:21, 6618:8, 6618:10, 6620:6, 6620:14, 6620:18, 6621:4, 6623:4, 6624:6, 6624:18, 6625:6, 6625:13, 6625:17, 6625:23, 6627:25, 6628:1, 6628:4, 6628:10, 6629:13, 6629:14, 6630:3, 6630:5, 6630:10, 6630:23, 6631:10, 6632:3, 6633:5, 6633:13, 6634:12, 6635:2, 6636:7, 6636:10, 6637:12, 6638:13, 6638:19, 6639:2, 6639:23, 6642:11, 6643:15, 6645:4, 6648:19, 6648:22, 6650:21, 6651:9, 6652:21, 6653:14, 6654:5, 6655:11, 6656:7, 6656:10, 6656:17, 6657:1, 6657:2, 6660:8, 6660:9, 6660:22, 6661:4, 6665:2, 6666:3, 6667:8, 6667:12, 6668:3, 6668:4, 6668:20, 6669:3,</p>	<p>6669:11, 6669:20, 6670:12, 6670:17, 6670:20, 6670:24, 6671:25, 6673:14, 6673:15, 6674:2, 6675:5, 6675:14, 6676:17, 6677:5, 6678:1, 6678:19, 6681:24, 6681:25, 6682:3, 6682:6, 6682:9, 6682:16, 6683:6, 6683:12, 6683:15, 6684:13, 6684:17, 6684:19, 6685:22, 6686:1, 6686:9, 6686:17, 6687:5, 6687:8, 6687:11, 6687:16, 6687:17, 6687:19, 6688:2, 6689:5, 6689:10, 6690:2, 6690:5, 6690:14, 6691:2, 6691:6, 6691:9, 6691:20, 6692:12, 6693:2, 6693:5, 6694:1, 6694:16, 6694:19, 6695:20, 6695:23, 6695:25, 6696:1, 6696:8, 6696:10, 6696:13, 6696:18, 6696:21, 6696:25, 6697:8, 6697:11, 6697:16, 6698:5, 6698:14, 6698:17, 6699:14, 6699:20, 6699:23, 6700:3, 6700:14, 6700:23, 6701:2, 6701:24, 6702:2, 6703:16, 6703:17, 6703:18, 6703:21, 6703:24, 6704:2, 6704:23, 6704:24, 6705:1, 6705:4, 6705:7, 6705:8, 6705:19, 6707:17, 6707:25, 6708:4, 6708:8, 6709:2, 6709:14, 6709:19, 6709:25, 6710:6, 6710:14, 6710:23, 6711:12, 6713:9, 6713:11, 6713:20, 6715:10, 6715:13, 6715:16, 6721:4, 6731:17</p> <p><b>correcting</b> [1] - 6645:20</p> <p><b>correlation</b> [4] - 6604:22, 6604:24, 6605:2, 6605:4</p>
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<p><b>corroborating</b> [2] - 6604:15, 6604:18</p> <p><b>counsel</b> [12] - 6593:6, 6604:22, 6626:6, 6659:14, 6680:6, 6716:8, 6716:13, 6716:15, 6716:22, 6721:20, 6721:21, 6727:24</p> <p><b>count</b> [1] - 6686:21</p> <p><b>counted</b> [1] - 6664:10</p> <p><b>counting</b> [10] - 6600:21, 6602:12, 6656:22, 6663:23, 6663:25, 6664:14, 6671:25, 6673:2, 6674:14, 6675:5</p> <p><b>country</b> [9] - 6600:19, 6606:23, 6607:16, 6622:18, 6623:4, 6634:10, 6685:25, 6686:4, 6689:19</p> <p><b>couple</b> [2] - 6595:21, 6726:6</p> <p><b>course</b> [5] - 6592:18, 6684:17, 6706:15, 6726:24, 6729:3</p> <p><b>court</b> [16] - 6589:21, 6602:13, 6613:5, 6613:6, 6613:11, 6631:16, 6638:7, 6650:1, 6657:23, 6659:3, 6674:6, 6674:10, 6717:24, 6730:14, 6732:14, 6736:13</p> <p><b>Court</b> [20] - 6612:6, 6614:1, 6658:24, 6718:20, 6720:3, 6720:4, 6720:23, 6723:17, 6724:8, 6724:14, 6724:18, 6726:22, 6727:24, 6731:2, 6731:23, 6732:7, 6732:11, 6733:10, 6733:13, 6737:11</p> <p><b>COURT</b> [168] - 6588:1, 6590:5, 6590:20, 6591:3, 6591:11, 6592:7, 6592:20, 6592:24, 6593:4, 6594:10, 6595:13, 6597:25, 6599:2, 6600:1, 6600:12, 6603:15, 6603:22, 6605:25, 6606:14, 6607:8, 6607:11, 6607:13, 6618:6, 6618:24, 6619:1,</p>	<p>6622:22, 6624:2, 6624:22, 6625:19, 6626:3, 6626:5, 6631:6, 6635:6, 6636:13, 6636:17, 6636:21, 6637:10, 6637:21, 6638:6, 6639:19, 6641:4, 6644:10, 6644:17, 6645:16, 6646:16, 6646:19, 6649:12, 6649:14, 6649:24, 6651:17, 6651:19, 6651:21, 6652:1, 6652:3, 6652:8, 6652:14, 6652:17, 6655:17, 6655:20, 6655:25, 6656:3, 6657:19, 6657:22, 6658:1, 6658:6, 6658:8, 6658:10, 6658:12, 6658:17, 6658:20, 6659:2, 6659:4, 6659:6, 6659:9, 6661:13, 6661:17, 6668:8, 6668:11, 6671:13, 6671:17, 6672:16, 6672:18, 6672:22, 6673:20, 6674:25, 6676:14, 6677:10, 6677:21, 6678:8, 6679:2, 6679:7, 6679:16, 6679:22, 6679:25, 6680:5, 6680:10, 6683:8, 6683:17, 6684:9, 6685:3, 6686:7, 6687:13, 6687:21, 6689:16, 6689:22, 6697:13, 6701:15, 6704:9, 6706:24, 6708:2, 6708:10, 6708:16, 6708:20, 6710:16, 6711:3, 6711:21, 6712:1, 6712:8, 6712:12, 6712:15, 6712:17, 6712:19, 6712:24, 6714:13, 6715:25, 6716:2, 6716:8, 6716:11, 6716:18, 6716:24, 6717:2, 6717:10, 6717:23, 6717:25, 6718:4, 6718:8, 6718:24, 6719:4, 6720:5, 6721:2, 6721:16, 6722:6, 6722:8, 6722:11, 6723:19, 6724:12, 6724:22,</p>	<p>6725:15, 6725:17, 6725:24, 6726:1, 6726:19, 6727:7, 6727:20, 6728:22, 6730:8, 6730:13, 6731:4, 6731:6, 6732:20, 6733:18, 6735:7, 6735:19, 6735:21, 6736:2, 6736:6, 6736:16, 6737:1</p> <p><b>Court's</b> [5] - 6638:1, 6666:16, 6680:1, 6680:7, 6727:2</p> <p><b>courthouse</b> [1] - 6652:12</p> <p><b>courtroom</b> [7] - 6593:3, 6613:8, 6657:25, 6659:8, 6718:3, 6721:7, 6735:1</p> <p><b>COURTROOM</b> [15] - 6590:2, 6607:2, 6627:3, 6646:23, 6651:13, 6652:4, 6658:11, 6658:14, 6660:13, 6672:3, 6677:16, 6677:20, 6678:5, 6685:16, 6716:5</p> <p><b>Courts</b> [1] - 6589:21</p> <p><b>cow</b> [1] - 6604:1</p> <p><b>cranky</b> [1] - 6731:5</p> <p><b>crazy</b> [1] - 6710:22</p> <p><b>CRC</b> [1] - 6589:21</p> <p><b>cream</b> [2] - 6694:14, 6695:12</p> <p><b>create</b> [2] - 6602:5, 6687:16</p> <p><b>created</b> [2] - 6627:18, 6688:11</p> <p><b>creation</b> [1] - 6687:24</p> <p><b>credible</b> [1] - 6615:9</p> <p><b>Crime</b> [3] - 6617:25, 6618:4, 6618:10</p> <p><b>crime</b> [8] - 6595:15, 6596:5, 6596:7, 6597:18, 6600:5, 6619:24, 6639:12, 6639:13</p> <p><b>Criminal</b> [1] - 6588:4</p> <p><b>criminal</b> [4] - 6590:3, 6597:19, 6658:15, 6677:5</p> <p><b>criminals</b> [1] - 6596:12</p> <p><b>CRM</b> [1] - 6588:18</p> <p><b>cross</b> [10] - 6593:6, 6624:6, 6636:15, 6649:18, 6659:12, 6680:6, 6720:17,</p>	<p>6730:22, 6734:12, 6734:25</p> <p><b>Cross</b> [3] - 6738:4, 6738:4, 6738:5</p> <p><b>CROSS</b> [3] - 6593:9, 6626:7, 6680:13</p> <p><b>Cross-Examination</b> [3] - 6738:4, 6738:4, 6738:5</p> <p><b>cross-examination</b> [7] - 6593:6, 6624:6, 6659:12, 6680:6, 6720:17, 6730:22, 6734:12</p> <p><b>CROSS-EXAMINATION</b> [3] - 6593:9, 6626:7, 6680:13</p> <p><b>cross-examinations</b> [1] - 6734:25</p> <p><b>CRR</b> [2] - 6589:21, 6737:11</p> <p><b>crying</b> [2] - 6615:16, 6615:21</p> <p><b>CT</b> [1] - 6589:5</p> <p><b>Cuban</b> [6] - 6689:8, 6689:12, 6689:19, 6690:2, 6690:4, 6691:1</p> <p><b>culling</b> [1] - 6590:23</p> <p><b>culture</b> [59] - 6591:1, 6598:5, 6598:7, 6598:19, 6598:20, 6598:21, 6598:25, 6599:8, 6599:12, 6599:15, 6599:17, 6600:3, 6600:23, 6601:7, 6601:13, 6601:18, 6601:21, 6602:7, 6602:18, 6603:6, 6603:7, 6603:9, 6603:11, 6603:14, 6603:17, 6603:20, 6603:25, 6606:25, 6607:18, 6607:20, 6607:22, 6607:24, 6609:9, 6609:12, 6609:24, 6611:1, 6611:3, 6612:25, 6613:16, 6613:20, 6615:17, 6616:2, 6616:5, 6616:19, 6617:6, 6617:8, 6617:21, 6617:22, 6619:4, 6620:20, 6620:22, 6621:19, 6622:13, 6623:1, 6623:18</p> <p><b>cumulative</b> [1] - 6676:12</p> <p><b>cut</b> [1] - 6707:12</p>
--	--	--	---

cuts [1] - 6733:19	decent [1] - 6657:19 decide [6] - 6664:5, 6688:14, 6691:22, 6707:12, 6713:12, 6723:14	6643:18 democrats [1] - 6643:12	6592:17, 6619:8, 6629:7, 6633:20, 6635:12, 6635:15, 6635:17, 6665:18, 6682:2, 6702:18, 6702:19, 6726:6, 6731:18, 6733:21
<b>D</b>		Democrats [2] - 6600:22, 6601:10	differentiation [1] - 6601:23
<b>D.C</b> [17] - 6614:19, 6616:16, 6618:1, 6620:4, 6644:8, 6644:23, 6645:1, 6661:21, 6664:4, 6668:24, 6689:7, 6693:4, 6693:25, 6705:19, 6705:22, 6737:13 <b>Daniel</b> [1] - 6589:1 <b>dark</b> [1] - 6646:3 <b>dart</b> [3] - 6608:23, 6608:24, 6702:8 <b>data</b> [19] - 6620:8, 6620:9, 6620:15, 6633:11, 6647:8, 6647:9, 6654:20, 6682:2, 6687:25, 6688:9, 6701:5, 6702:2, 6702:5, 6703:8, 6704:5, 6710:24, 6710:25, 6714:3, 6715:20 <b>date</b> [9] - 6602:1, 6637:9, 6637:10, 6640:5, 6660:22, 6664:23, 6670:4, 6673:23, 6713:9 <b>dated</b> [1] - 6651:24 <b>Dated</b> [1] - 6737:7 <b>dates</b> [2] - 6670:19, 6730:16 <b>dating</b> [1] - 6638:3 <b>David</b> [2] - 6588:23, 6606:17 <b>days</b> [3] - 6671:6, 6676:18, 6731:25 <b>daytime</b> [3] - 6645:10, 6645:13, 6645:24 <b>DC</b> [4] - 6588:7, 6588:16, 6588:19, 6589:2 <b>dead</b> [1] - 6719:24 <b>deal</b> [1] - 6726:9 <b>death</b> [4] - 6613:13, 6614:1, 6614:5, 6670:10 <b>Death</b> [1] - 6613:25 <b>December</b> [14] - 6616:9, 6637:7, 6637:23, 6638:3, 6638:24, 6639:15, 6656:6, 6660:6, 6662:2, 6662:7, 6664:23, 6668:25, 6708:4, 6715:13	<b>decided</b> [1] - 6707:14 <b>decision</b> [1] - 6596:14 <b>Declaration</b> [2] - 6669:23, 6671:2 <b>declare</b> [1] - 6675:18 <b>declared</b> [2] - 6617:25, 6670:1 <b>decorum</b> [1] - 6721:6 <b>deep</b> [1] - 6637:8 <b>deeply</b> [2] - 6621:17, 6723:4 <b>defective</b> [1] - 6664:10 <b>defend</b> [1] - 6663:16 <b>Defendant</b> [18] - 6618:15, 6618:16, 6627:14, 6632:6, 6632:21, 6632:23, 6633:2, 6647:6, 6647:7, 6679:11, 6700:17, 6700:18, 6701:7, 6702:7, 6702:16, 6702:18, 6702:21 <b>defendant</b> [5] - 6592:14, 6618:18, 6618:20, 6648:14, 6674:1 <b>Defendants</b> [2] - 6588:9, 6588:22 <b>defendants</b> [8] - 6599:6, 6599:18, 6628:12, 6658:11, 6723:15, 6724:19, 6728:25, 6729:24 <b>defense</b> [11] - 6704:7, 6719:15, 6722:24, 6724:4, 6724:9, 6724:17, 6726:6, 6727:12, 6728:14, 6729:3, 6729:6 <b>Defense</b> [2] - 6651:25, 6661:7 <b>deficiencies</b> [1] - 6664:9 <b>definitively</b> [1] - 6729:16 <b>Degree</b> [1] - 6700:1 <b>deleted</b> [2] - 6620:10, 6620:11 <b>demand</b> [1] - 6664:16 <b>demands</b> [1] - 6624:16 <b>democracy</b> [1] - 6601:6 <b>Democrat</b> [2] - 6642:7,	<b>demonstrates</b> [1] - 6664:12 <b>demonstrations</b> [2] - 6652:11, 6652:12 <b>demonstrative</b> [3] - 6681:17, 6681:21, 6681:24 <b>Dems</b> [1] - 6600:20 <b>denied</b> [1] - 6663:14 <b>department</b> [2] - 6710:14, 6710:21 <b>Department</b> [3] - 6649:2, 6651:2, 6667:20 <b>depicted</b> [2] - 6710:2, 6710:12 <b>DEPUTY</b> [15] - 6590:2, 6607:2, 6627:3, 6646:23, 6651:13, 6652:4, 6658:11, 6658:14, 6660:13, 6672:3, 6677:16, 6677:20, 6678:5, 6685:16, 6716:5 <b>describe</b> [3] - 6652:23, 6653:8, 6656:22 <b>described</b> [3] - 6595:2, 6639:23, 6640:13 <b>describing</b> [2] - 6721:19, 6722:13 <b>description</b> [1] - 6652:5 <b>designate</b> [1] - 6650:19 <b>designated</b> [1] - 6650:15 <b>designates</b> [1] - 6650:20 <b>desire</b> [1] - 6622:15 <b>desires</b> [1] - 6601:25 <b>determine</b> [2] - 6597:22, 6642:6 <b>determined</b> [1] - 6713:8 <b>dick</b> [2] - 6705:18, 6705:21 <b>Dickman</b> [2] - 6589:21, 6737:11 <b>DICKMAN</b> [1] - 6737:3 <b>difference</b> [4] - 6597:17, 6598:21, 6601:15, 6601:20 <b>different</b> [14] -	<b>difficult</b> [1] - 6735:21 <b>dignity</b> [1] - 6680:23 <b>direct</b> [13] - 6596:25, 6597:3, 6637:4, 6644:2, 6649:18, 6679:10, 6685:8, 6695:8, 6695:9, 6695:10, 6709:1, 6709:5, 6720:17 <b>direction</b> [3] - 6597:18, 6721:6, 6733:21 <b>directly</b> [2] - 6659:14, 6663:13 <b>disagree</b> [1] - 6728:14 <b>disappointed</b> [1] - 6613:10 <b>discovery</b> [3] - 6591:15, 6591:16, 6591:18 <b>discuss</b> [2] - 6725:10, 6731:13 <b>discussed</b> [2] - 6625:11, 6663:23 <b>discussing</b> [2] - 6659:22, 6728:13 <b>discussion</b> [6] - 6636:18, 6649:15, 6658:21, 6716:10, 6736:1, 6736:3 <b>disembodied</b> [1] - 6721:10 <b>disgrace</b> [1] - 6600:20 <b>disobedience</b> [1] - 6624:15 <b>display</b> [2] - 6627:13, 6682:10 <b>disputes</b> [1] - 6676:1 <b>distasteful</b> [2] - 6601:14, 6601:16 <b>distinguish</b> [1] - 6638:11 <b>District</b> [1] - 6589:21 <b>DISTRICT</b> [3] - 6588:1, 6588:1, 6588:12 <b>dividing</b> [1] - 6639:6 <b>divisions</b> [1] - 6621:24 <b>document</b> [20] - 6651:11, 6651:23,

6652:4, 6652:6, 6655:22, 6655:23, 6656:25, 6657:1, 6657:3, 6664:22, 6664:24, 6664:25, 6665:14, 6667:24, 6668:14, 6725:5, 6725:12, 6726:21, 6727:12 <b>document-by-</b> <b>document</b> [1] - 6727:12 <b>documents</b> [3] - 6725:1, 6727:10, 6729:8 <b>doest</b> [1] - 6621:3 <b>DOJ</b> [1] - 6588:18 <b>DOJ-CRM</b> [1] - 6588:18 <b>domestic</b> [1] - 6651:3 <b>Domestic</b> [1] - 6652:7 <b>Dominic</b> [7] - 6588:8, 6618:16, 6699:13, 6699:25, 6700:5, 6700:9, 6704:15 <b>done</b> [3] - 6715:9, 6720:21, 6722:7 <b>down</b> [24] - 6607:6, 6609:3, 6624:12, 6627:20, 6643:4, 6643:25, 6648:5, 6648:17, 6658:3, 6673:5, 6685:5, 6688:21, 6690:22, 6691:4, 6692:2, 6692:9, 6692:10, 6692:22, 6693:21, 6698:13, 6706:8, 6706:25, 6718:4, 6721:22 <b>downtown</b> [1] - 6617:25 <b>drafted</b> [1] - 6594:2 <b>dragged</b> [1] - 6622:4 <b>draw</b> [1] - 6620:11 <b>drawing</b> [1] - 6634:8 <b>drawn</b> [1] - 6636:21 <b>draws</b> [1] - 6633:19 <b>drew</b> [1] - 6620:9 <b>drinking</b> [2] - 6695:13, 6717:9 <b>drinks</b> [1] - 6706:18 <b>Drive</b> [1] - 6589:18 <b>drugs</b> [1] - 6667:11 <b>dueling</b> [1] - 6664:4 <b>during</b> [14] - 6641:20, 6644:2, 6649:17, 6649:18, 6652:10, 6664:13, 6679:10, 6709:1, 6710:11, 6710:20, 6713:10,	6719:25, 6724:11, 6726:23  <b>E</b>  <b>early</b> [3] - 6681:7, 6719:8, 6723:25 <b>easiest</b> [1] - 6729:4 <b>East</b> [2] - 6588:21, 6589:18 <b>Eastern</b> [1] - 6662:13 <b>easy</b> [4] - 6688:12, 6731:18, 6731:22, 6733:16 <b>eating</b> [2] - 6694:14, 6695:12 <b>Echo</b> [2] - 6692:14 <b>echo</b> [1] - 6692:14 <b>edit</b> [1] - 6622:1 <b>editor</b> [1] - 6595:8 <b>effect</b> [9] - 6656:23, 6656:24, 6667:1, 6667:2, 6689:11, 6694:17, 6695:21, 6698:15, 6730:5 <b>effectively</b> [1] - 6664:11 <b>efficiency</b> [1] - 6728:5 <b>either</b> [5] - 6632:10, 6640:12, 6646:2, 6675:11, 6719:16 <b>elect</b> [1] - 6673:13 <b>election</b> [15] - 6601:4, 6602:5, 6602:12, 6612:10, 6641:22, 6642:1, 6643:1, 6656:12, 6673:3, 6673:9, 6673:17, 6675:10, 6675:19, 6677:2, 6677:25 <b>Electoral</b> [4] - 6664:10, 6675:11, 6675:18, 6676:1 <b>electors</b> [4] - 6616:11, 6616:25, 6663:19, 6664:4 <b>electrocution</b> [1] - 6667:11 <b>elementary</b> [2] - 6670:12, 6670:14 <b>ELMO</b> [1] - 6663:2 <b>eloquently</b> [1] - 6718:15 <b>Email</b> [13] - 6588:16, 6588:17, 6588:19, 6588:22, 6588:25, 6589:3, 6589:5, 6589:8, 6589:11, 6589:14, 6589:17, 6589:19, 6589:22	<b>emails</b> [1] - 6732:17 <b>embedded</b> [1] - 6640:25 <b>emergency</b> [1] - 6734:13 <b>emotionally</b> [1] - 6611:17 <b>Empire</b> [1] - 6670:2 <b>empty</b> [1] - 6695:23 <b>en</b> [2] - 6693:4, 6727:10 <b>encompasses</b> [1] - 6707:24 <b>Encyclopedia</b> [1] - 6624:13 <b>end</b> [2] - 6716:16, 6729:13 <b>end-running</b> [1] - 6716:16 <b>ended</b> [1] - 6645:5 <b>ends</b> [1] - 6693:25 <b>enemy</b> [2] - 6602:6, 6617:13 <b>engage</b> [2] - 6617:19, 6700:20 <b>engaged</b> [5] - 6632:12, 6632:13, 6701:10, 6703:4, 6703:7 <b>engaging</b> [1] - 6614:7 <b>Enrique</b> [18] - 6588:7, 6628:12, 6680:20, 6690:1, 6695:7, 6699:19, 6700:6, 6701:2, 6703:3, 6703:6, 6704:15, 6704:19, 6706:15, 6707:6, 6710:2, 6714:11, 6714:15, 6715:6 <b>ensure</b> [1] - 6663:17 <b>enter</b> [2] - 6593:3, 6659:8 <b>entering</b> [2] - 6616:11, 6616:25 <b>entire</b> [3] - 6635:20, 6635:23, 6707:4 <b>entirely</b> [2] - 6590:12, 6729:24 <b>entities</b> [1] - 6650:21 <b>entity</b> [1] - 6635:9 <b>entries</b> [1] - 6609:17 <b>entry</b> [1] - 6674:2 <b>enuniated</b> [1] - 6663:22 <b>envelopes</b> [1] - 6664:6 <b>epic</b> [2] - 6619:3, 6619:5 <b>episode</b> [2] - 6653:24, 6653:25	<b>eras</b> [1] - 6621:23 <b>Erik</b> [1] - 6588:15 <b>erik.kenerson@</b> <b>usdoj.gov</b> [1] - 6588:17 <b>especially</b> [1] - 6727:16 <b>essentially</b> [2] - 6649:4, 6656:14 <b>establish</b> [4] - 6639:9, 6644:12, 6644:15, 6649:23 <b>established</b> [2] - 6648:21, 6710:22 <b>et</b> [2] - 6590:4, 6658:16 <b>Ethan</b> [3] - 6588:6, 6590:3, 6658:15 <b>evening</b> [5] - 6644:25, 6646:2, 6718:23, 6728:9, 6736:21 <b>event</b> [3] - 6611:24, 6643:7, 6723:13 <b>events</b> [5] - 6642:14, 6644:23, 6646:6, 6697:1, 6697:3 <b>evidence</b> [40] - 6596:4, 6596:7, 6596:18, 6596:23, 6596:25, 6597:3, 6597:6, 6597:9, 6600:5, 6604:15, 6604:18, 6605:9, 6606:23, 6607:3, 6607:16, 6607:18, 6607:20, 6609:9, 6609:12, 6612:2, 6639:7, 6639:13, 6639:24, 6640:14, 6655:21, 6656:2, 6657:17, 6672:13, 6674:23, 6676:9, 6677:9, 6695:7, 6700:8, 6700:12, 6704:18, 6712:3, 6715:22, 6723:6, 6724:10 <b>evidentiary</b> [3] - 6598:9, 6615:2, 6727:5 <b>evolutionary</b> [1] - 6598:4 <b>exact</b> [2] - 6686:20, 6718:14 <b>exactly</b> [1] - 6637:24 <b>exaggerating</b> [1] - 6693:8 <b>exaggeration</b> [1] - 6613:24 <b>Examination</b> [3] - 6738:4, 6738:4, 6738:5 <b>examination</b> [9] -
---	--	--	---



6593:6, 6624:6,  
6644:2, 6659:12,  
6679:10, 6680:6,  
6720:17, 6730:22,  
6734:12  
**EXAMINATION**<sup>[3]</sup> -  
6593:9, 6626:7,  
6680:13  
**examinations**<sup>[1]</sup> -  
6734:25  
**example**<sup>[9]</sup> - 6598:20,  
6605:18, 6633:4,  
6635:12, 6638:11,  
6651:1, 6657:10,  
6725:8, 6729:22  
**examples**<sup>[1]</sup> -  
6682:15  
**except**<sup>[1]</sup> - 6633:2  
**exception**<sup>[1]</sup> - 6734:8  
**exclude**<sup>[1]</sup> - 6596:15  
**excuse**<sup>[4]</sup> - 6623:17,  
6666:18, 6718:1,  
6726:3  
**excused**<sup>[1]</sup> - 6731:24  
**execute**<sup>[2]</sup> - 6702:1,  
6702:4  
**executed**<sup>[1]</sup> - 6663:17  
**executions**<sup>[2]</sup> -  
6667:7, 6667:12  
**exercise**<sup>[2]</sup> - 6610:3,  
6641:15  
**exhibit**<sup>[14]</sup> - 6600:25,  
6607:2, 6661:2,  
6662:10, 6662:16,  
6668:7, 6668:17,  
6685:19, 6685:21,  
6724:20, 6729:20,  
6730:6, 6730:16  
**Exhibit**<sup>[19]</sup> - 6633:4,  
6646:24, 6651:13,  
6651:25, 6652:2,  
6659:22, 6661:7,  
6681:18, 6685:13,  
6690:8, 6738:8,  
6738:8, 6738:9,  
6738:9, 6738:10,  
6738:10, 6738:11,  
6738:11  
**exhibit-by-exhibit**<sup>[1]</sup>  
- 6724:20  
**EXHIBITS**<sup>[1]</sup> - 6738:7  
**exhibits**<sup>[17]</sup> -  
6600:15, 6631:3,  
6631:23, 6632:1,  
6671:11, 6671:20,  
6687:16, 6727:25,  
6728:3, 6728:11,  
6728:13, 6729:19,  
6729:22, 6730:3,  
6730:15, 6730:17,

6732:24  
**exist**<sup>[6]</sup> - 6599:12,  
6599:17, 6681:25,  
6682:6, 6682:9,  
6682:24  
**expand**<sup>[1]</sup> - 6592:5  
**expanding**<sup>[1]</sup> -  
6667:7  
**expect**<sup>[3]</sup> - 6591:10,  
6611:10, 6728:10  
**expectation**<sup>[1]</sup> -  
6592:2  
**expected**<sup>[1]</sup> - 6625:6  
**expecting**<sup>[1]</sup> -  
6590:12  
**expeditiously**<sup>[1]</sup> -  
6716:20  
**experience**<sup>[2]</sup> -  
6650:13, 6709:8  
**Experiment**<sup>[1]</sup> -  
6670:23  
**expert**<sup>[2]</sup> - 6686:24,  
6732:1  
**experts**<sup>[1]</sup> - 6687:4  
**explain**<sup>[2]</sup> - 6701:16,  
6734:1  
**explained**<sup>[1]</sup> - 6592:3  
**explaining**<sup>[2]</sup> -  
6611:21, 6732:7  
**explains**<sup>[2]</sup> - 6662:5,  
6662:18  
**expletive**<sup>[1]</sup> - 6611:6  
**explored**<sup>[1]</sup> - 6591:14  
**exploring**<sup>[2]</sup> -  
6591:15, 6598:25  
**expressed**<sup>[1]</sup> -  
6723:11  
**expression**<sup>[3]</sup> -  
6599:21, 6613:2,  
6617:18  
**expressions**<sup>[1]</sup> -  
6601:25  
**extensively**<sup>[1]</sup> -  
6730:9  
**extent**<sup>[1]</sup> - 6634:25  
**extraordinary**<sup>[1]</sup> -  
6726:23  
**eye**<sup>[1]</sup> - 6735:15

## F

**F'ing**<sup>[1]</sup> - 6685:24  
**fabrication**<sup>[1]</sup> -  
6687:19  
**face**<sup>[1]</sup> - 6620:13  
**Facebook**<sup>[1]</sup> -  
6696:12  
**facing**<sup>[1]</sup> - 6733:17  
**fact**<sup>[14]</sup> - 6596:21,  
6602:23, 6602:25,

6605:4, 6605:11,  
6610:1, 6630:20,  
6637:6, 6642:9,  
6650:9, 6664:2,  
6669:13, 6714:22,  
6733:19  
**factors**<sup>[1]</sup> - 6718:20  
**factual**<sup>[1]</sup> - 6728:16  
**failed**<sup>[1]</sup> - 6590:11  
**fair**<sup>[16]</sup> - 6618:3,  
6620:15, 6624:4,  
6661:3, 6683:22,  
6686:3, 6686:23,  
6688:8, 6707:22,  
6710:11, 6711:7,  
6713:4, 6714:15,  
6723:1, 6725:4, 6728:6  
**fairly**<sup>[1]</sup> - 6592:16  
**fairness**<sup>[2]</sup> - 6716:14,  
6716:22  
**faithfully**<sup>[1]</sup> - 6663:17  
**fake**<sup>[1]</sup> - 6695:19  
**fall**<sup>[1]</sup> - 6728:14  
**familiar**<sup>[5]</sup> - 6635:4,  
6650:9, 6652:12,  
6655:6, 6670:13  
**familiarity**<sup>[1]</sup> -  
6630:14  
**fan**<sup>[1]</sup> - 6630:22  
**fantasy**<sup>[2]</sup> - 6681:24,  
6687:19  
**far**<sup>[10]</sup> - 6637:23,  
6641:9, 6645:9,  
6701:22, 6703:1,  
6729:3, 6729:10,  
6729:17, 6730:9,  
6731:8  
**fashion**<sup>[2]</sup> - 6603:4,  
6701:1  
**fathers**<sup>[2]</sup> - 6669:25,  
6671:8  
**fault**<sup>[2]</sup> - 6702:23,  
6714:24  
**favorite**<sup>[1]</sup> - 6653:13  
**FBI**<sup>[8]</sup> - 6596:17,  
6648:19, 6648:21,  
6649:1, 6650:6, 6711:5  
**fear**<sup>[3]</sup> - 6622:24,  
6623:13, 6722:8  
**feathered**<sup>[1]</sup> -  
6622:18  
**February**<sup>[4]</sup> -  
6595:18, 6615:4,  
6615:10, 6737:7  
**fed**<sup>[1]</sup> - 6678:22  
**fedcases@metcalflawnyc.com**<sup>[1]</sup>  
- 6589:17  
**Federal**<sup>[1]</sup> - 6610:2  
**federal**<sup>[2]</sup> - 6652:11,

6667:7  
**feed**<sup>[2]</sup> - 6599:20,  
6610:17  
**feelings**<sup>[1]</sup> - 6621:9  
**feet**<sup>[1]</sup> - 6703:20  
**few**<sup>[5]</sup> - 6632:5,  
6659:21, 6660:7,  
6670:15, 6670:22  
**fight**<sup>[1]</sup> - 6693:8  
**fighting**<sup>[3]</sup> - 6698:5,  
6709:24, 6710:2  
**figure**<sup>[2]</sup> - 6713:2,  
6726:1  
**file**<sup>[8]</sup> - 6719:16,  
6723:21, 6724:1,  
6724:17, 6728:8,  
6728:25, 6731:10,  
6731:19  
**filed**<sup>[7]</sup> - 6642:9,  
6674:11, 6716:17,  
6719:22, 6724:1,  
6724:16, 6726:5  
**files**<sup>[1]</sup> - 6731:20  
**filing**<sup>[1]</sup> - 6719:17  
**fill**<sup>[1]</sup> - 6726:8  
**film**<sup>[1]</sup> - 6619:9  
**filmmaker**<sup>[1]</sup> -  
6619:21  
**final**<sup>[1]</sup> - 6664:12  
**finally**<sup>[1]</sup> - 6591:25  
**fine**<sup>[6]</sup> - 6595:24,  
6637:18, 6637:25,  
6658:22, 6685:10,  
6731:11  
**finger**<sup>[1]</sup> - 6706:14  
**finish**<sup>[4]</sup> - 6621:15,  
6712:19, 6720:20,  
6721:21  
**firing**<sup>[5]</sup> - 6665:15,  
6666:24, 6667:10,  
6667:23, 6668:2  
**first**<sup>[11]</sup> - 6609:17,  
6653:24, 6663:7,  
6671:22, 6678:13,  
6681:6, 6710:8,  
6712:3, 6714:19,  
6715:23, 6730:16  
**First**<sup>[19]</sup> - 6589:4,  
6592:8, 6613:4,  
6640:9, 6640:11,  
6640:12, 6641:16,  
6653:19, 6657:15,  
6665:10, 6670:6,  
6674:14, 6690:19,  
6692:7, 6692:17,  
6693:17, 6694:3,  
6700:1, 6706:1  
**First-Degree**<sup>[1]</sup> -  
6700:1  
**FL**<sup>[2]</sup> - 6589:11,

<p>6589:13  <b>flag</b> [5] - 6594:18,  6630:15, 6630:16,  6630:22, 6630:25  <b>flesh</b> [2] - 6733:23,  6734:2  <b>fliers</b> [1] - 6645:6  <b>flip</b> [1] - 6719:1  <b>Floor</b> [2] - 6589:4,  6589:16  <b>Florida</b> [1] - 6675:15  <b>fluency</b> [1] - 6622:2  <b>fly</b> [1] - 6723:11  <b>flyer</b> [4] - 6661:24,  6662:1, 6662:6,  6692:12  <b>focus</b> [1] - 6648:2  <b>follow</b> [5] - 6628:9,  6628:15, 6628:17,  6628:19, 6691:22  <b>followed</b> [4] - 6627:23,  6628:3, 6628:12,  6666:5  <b>followers</b> [8] -  6634:15, 6683:19,  6683:23, 6684:1,  6684:3, 6684:25,  6703:24, 6714:10  <b>following</b> [11] -  6599:19, 6627:21,  6628:11, 6628:23,  6628:25, 6662:21,  6673:2, 6676:18,  6702:3, 6702:25,  6704:22  <b>FOR</b> [1] - 6588:1  <b>forced</b> [1] - 6600:21  <b>foregoing</b> [1] - 6737:4  <b>forensic</b> [1] - 6686:24  <b>forfeiting</b> [2] - 6724:5,  6728:24  <b>forgotten</b> [1] - 6719:6  <b>form</b> [5] - 6602:3,  6652:25, 6682:1,  6690:16, 6710:3  <b>format</b> [3] - 6682:9,  6688:3, 6718:18  <b>forward</b> [2] - 6590:9,  6720:17  <b>foundation</b> [14] -  6595:12, 6598:23,  6603:19, 6606:11,  6618:5, 6622:21,  6635:3, 6645:14,  6669:16, 6679:13,  6679:20, 6687:12,  6706:22, 6710:15  <b>founders</b> [1] - 6670:23  <b>founding</b> [2] -  6669:25, 6671:8</p>	<p><b>Four</b> [2] - 6642:18,  6642:19  <b>four</b> [2] - 6591:23,  6612:7  <b>fourth</b> [1] - 6612:8  <b>frame</b> [1] - 6678:13  <b>fraud</b> [5] - 6642:25,  6643:12, 6666:25,  6677:2, 6678:18  <b>fraudulent</b> [1] - 6665:1  <b>free</b> [6] - 6608:3,  6608:5, 6621:6,  6623:2, 6623:20,  6729:1  <b>freedom</b> [2] - 6610:9,  6613:2  <b>freestanding</b> [1] -  6636:24  <b>Friday</b> [1] - 6720:7  <b>friend</b> [1] - 6624:20  <b>friends</b> [1] - 6626:1  <b>front</b> [1] - 6722:17  <b>fuck</b> [3] - 6617:14,  6623:15, 6623:16  <b>fucking</b> [4] - 6601:11,  6609:22, 6622:3,  6714:20  <b>fulfil</b> [1] - 6663:15  <b>full</b> [2] - 6720:14,  6737:5  <b>fully</b> [2] - 6624:7,  6726:18  <b>function</b> [1] - 6731:10  <b>fundamental</b> [1] -  6716:20  <b>future</b> [2] - 6601:25,  6713:8</p>	<p>6593:5, 6657:24,  6659:10, 6700:11,  6717:25, 6733:12  <b>Georgia</b> [3] - 6664:3,  6664:9, 6664:10  <b>gestures</b> [2] -  6734:20, 6734:21  <b>Gettysburg</b> [1] -  6642:14  <b>Giuliani</b> [3] - 6642:17,  6676:5, 6678:24  <b>given</b> [6] - 6592:5,  6602:13, 6616:12,  6686:12, 6727:16,  6728:18  <b>Glad</b> [1] - 6700:1  <b>GOP</b> [1] - 6616:10  <b>Gore</b> [1] - 6663:23  <b>gotcha</b> [1] - 6683:4  <b>governed</b> [1] - 6623:4  <b>Government</b> [3] -  6633:4, 6646:24,  6659:22  <b>government</b> [62] -  6590:10, 6591:6,  6593:18, 6594:5,  6603:1, 6607:7,  6613:7, 6621:9,  6622:24, 6623:6,  6623:13, 6623:23,  6624:12, 6624:17,  6625:8, 6627:4,  6627:9, 6636:6,  6638:2, 6640:21,  6640:24, 6652:19,  6654:25, 6655:8,  6655:23, 6660:4,  6660:14, 6660:19,  6662:3, 6662:9,  6666:14, 6668:16,  6671:12, 6671:19,  6671:21, 6671:23,  6676:19, 6681:22,  6684:12, 6711:15,  6715:22, 6717:14,  6718:18, 6719:11,  6719:22, 6723:3,  6724:6, 6724:15,  6724:23, 6724:24,  6725:17, 6726:5,  6726:13, 6727:8,  6729:2, 6729:11,  6729:13, 6730:19,  6732:17, 6733:25,  6734:20  <b>Government's</b> [1] -  6685:13  <b>government's</b> [11] -  6657:18, 6661:12,  6668:7, 6672:15,</p>	<p>6681:17, 6719:17,  6725:20, 6727:17,  6727:21, 6730:25,  6731:24  <b>grace</b> [1] - 6626:9  <b>graces</b> [1] - 6626:12  <b>granted</b> [2] - 6736:6,  6736:16  <b>great</b> [4] - 6689:20,  6727:5, 6730:22,  6730:23  <b>green</b> [1] - 6703:15  <b>GregNorthSoundPre</b>  <b>s</b> [1] - 6733:4  <b>grievances</b> [2] -  6610:10  <b>Ground</b> [1] - 6731:20  <b>ground</b> [2] - 6723:8,  6724:5  <b>group</b> [3] - 6635:23,  6729:23, 6730:4  <b>groups</b> [2] - 6650:21,  6731:18  <b>guarantee</b> [1] - 6613:6  <b>guarantees</b> [1] -  6613:5  <b>guess</b> [4] - 6598:20,  6688:11, 6695:22,  6716:3  <b>guidance</b> [1] -  6597:19  <b>guilt</b> [1] - 6599:21  <b>guilty</b> [2] - 6599:23,  6619:24  <b>gun</b> [2] - 6607:22,  6607:24  <b>guys</b> [3] - 6683:14,  6686:13, 6698:22</p>
		<b>G</b>	<b>H</b>
		<p><b>games</b> [1] - 6617:15  <b>garden</b> [1] - 6642:19  <b>Gateway</b> [3] - 6614:17,  6615:6, 6616:9  <b>gather</b> [1] - 6609:9  <b>general</b> [6] - 6592:12,  6649:20, 6722:5,  6722:16, 6722:18,  6726:18  <b>General</b> [10] - 6649:4,  6649:7, 6650:7,  6650:11, 6650:17,  6651:1, 6652:6,  6667:5, 6667:15,  6667:19  <b>generally</b> [2] -  6681:13, 6724:6  <b>gentleman</b> [2] -  6642:25, 6643:17  <b>gentlemen</b> [6] -</p>	<p><b>H.L</b> [4] - 6594:22,  6595:8, 6595:15  <b>hairs</b> [1] - 6688:4  <b>Hanak</b> [2] - 6681:3,  6681:14  <b>hand</b> [3] - 6608:17,  6733:21, 6735:23  <b>handed</b> [1] - 6664:6  <b>handle</b> [1] - 6664:5  <b>hands</b> [2] - 6594:18,  6667:24  <b>handsome</b> [1] -  6618:14  <b>happy</b> [3] - 6722:2,  6733:14, 6733:15  <b>hard</b> [1] - 6617:7  <b>Harris</b> [21] - 6592:25,  6600:15, 6658:17,  6685:5, 6685:14,</p>

6688:20, 6690:22,  
6692:1, 6692:22,  
6693:20, 6694:10,  
6698:8, 6699:9,  
6705:14, 6706:8,  
6706:11, 6707:1,  
6708:21, 6715:23,  
6718:6, 6719:5  
**harris** [1] - 6690:10  
**Hassan** [3] - 6589:9,  
6589:10, 6680:17  
**hassan@**  
**nhassanlaw.com** [1] -  
6589:11  
**hat** [2] - 6630:9,  
6713:17  
**hate** [2] - 6705:15,  
6709:16  
**hateful** [1] - 6630:18  
**hatred** [1] - 6689:23  
**Haven** [1] - 6589:5  
**Hawley** [4] - 6679:6,  
6679:9, 6679:19,  
6679:24  
**head** [1] - 6667:19  
**health** [1] - 6659:1  
**hear** [15] - 6590:6,  
6606:15, 6625:1,  
6716:8, 6723:13,  
6724:24, 6727:2,  
6727:3, 6727:6,  
6727:7, 6729:2,  
6729:5, 6731:7,  
6731:12  
**heard** [3] - 6599:21,  
6663:12, 6682:15  
**hearings** [2] -  
6642:12, 6642:13  
**hearsay** [5] - 6651:18,  
6673:19, 6716:16,  
6717:6, 6724:5  
**heart** [1] - 6632:8  
**HELD** [1] - 6588:11  
**held** [2] - 6642:12,  
6642:14  
**helmet** [1] - 6608:15  
**help** [3] - 6633:23,  
6704:6, 6734:2  
**hereby** [1] - 6737:3  
**hernandez** [1] -  
6730:13  
**HERNANDEZ** [138] -  
6626:8, 6626:21,  
6626:22, 6627:1,  
6627:4, 6627:6,  
6629:2, 6629:3,  
6631:7, 6633:17,  
6635:4, 6635:7,  
6636:14, 6636:19,  
6637:5, 6638:1,

6638:8, 6639:17,  
6639:21, 6640:19,  
6640:23, 6641:2,  
6641:7, 6641:8,  
6643:22, 6643:24,  
6644:11, 6644:19,  
6644:20, 6645:12,  
6645:15, 6645:19,  
6646:17, 6646:20,  
6646:22, 6646:24,  
6647:1, 6647:15,  
6647:17, 6647:19,  
6647:21, 6648:5,  
6648:7, 6648:17,  
6648:18, 6649:13,  
6649:17, 6650:2,  
6650:3, 6651:10,  
6651:14, 6651:16,  
6651:20, 6651:23,  
6652:2, 6652:6,  
6652:9, 6652:15,  
6652:18, 6655:2,  
6655:3, 6655:16,  
6655:19, 6655:22,  
6656:4, 6657:17,  
6657:21, 6658:19,  
6658:22, 6659:18,  
6659:25, 6660:3,  
6660:5, 6660:11,  
6660:14, 6660:21,  
6661:6, 6661:11,  
6661:18, 6665:24,  
6666:1, 6666:8,  
6666:9, 6666:13,  
6666:18, 6666:21,  
6666:22, 6667:25,  
6668:1, 6668:5,  
6668:9, 6668:13,  
6668:18, 6669:17,  
6669:18, 6671:16,  
6671:18, 6672:2,  
6672:4, 6672:8,  
6672:13, 6672:17,  
6672:25, 6673:5,  
6673:7, 6673:24,  
6674:17, 6674:19,  
6674:23, 6675:2,  
6675:3, 6675:22,  
6675:24, 6676:8,  
6676:16, 6676:21,  
6677:8, 6677:17,  
6677:22, 6677:23,  
6678:3, 6678:10,  
6678:11, 6679:1,  
6679:3, 6679:4,  
6679:8, 6679:14,  
6679:18, 6679:23,  
6680:1, 6725:21,  
6725:25, 6730:11,  
6730:15, 6731:5,  
6731:14, 6733:2

**Hernandez** [13] -  
6589:6, 6589:7,  
6637:22, 6651:13,  
6657:19, 6659:11,  
6666:17, 6667:24,  
6671:13, 6679:7,  
6731:6, 6732:20,  
6733:24  
**Hernandez**..... [1]  
- 6738:4  
**herself** [1] - 6653:3  
**Hialeah** [1] - 6589:13  
**hide** [2] - 6601:5,  
6603:5  
**hiding** [1] - 6671:19  
**hierarchy** [1] -  
6634:16  
**high** [1] - 6663:17  
**Highland** [1] - 6589:8  
**himself** [6] - 6634:8,  
6653:3, 6664:11,  
6674:3, 6701:7, 6715:3  
**historic** [1] - 6620:4  
**historical** [2] -  
6633:19, 6670:4  
**historically** [1] -  
6621:22  
**history** [11] - 6601:10,  
6621:17, 6621:18,  
6621:23, 6630:18,  
6663:25, 6669:22,  
6670:4, 6670:11,  
6670:16, 6671:9  
**hoist** [1] - 6594:18  
**holler** [1] - 6625:2  
**Hollow** [1] - 6589:7  
**home** [4] - 6611:11,  
6611:19, 6625:21,  
6689:8  
**honest** [1] - 6735:10  
**Honor** [56] - 6591:14,  
6594:9, 6605:21,  
6624:20, 6625:18,  
6636:15, 6639:16,  
6640:21, 6641:3,  
6644:11, 6645:15,  
6647:15, 6649:13,  
6649:17, 6651:10,  
6651:12, 6651:20,  
6652:15, 6655:16,  
6655:19, 6657:21,  
6658:5, 6658:19,  
6659:7, 6661:6,  
6661:15, 6666:14,  
6668:5, 6671:16,  
6672:6, 6672:14,  
6672:19, 6673:19,  
6674:24, 6676:8,  
6677:8, 6679:3,  
6679:15, 6680:2,

6680:7, 6680:12,  
6720:16, 6721:5,  
6721:15, 6722:1,  
6724:15, 6725:14,  
6725:21, 6726:11,  
6727:16, 6728:15,  
6729:18, 6729:25,  
6730:11, 6734:15,  
6736:14  
**honor** [1] - 6721:5  
**Honor's** [2] - 6646:17,  
6721:6  
**HONORABLE** [1] -  
6588:11  
**honors** [1] - 6641:5  
**hope** [5] - 6601:11,  
6625:3, 6721:2,  
6726:13, 6729:20  
**Hope** [1] - 6666:24  
**hot** [1] - 6733:25  
**hotel** [1] - 6642:19  
**hour** [2] - 6616:15,  
6726:9  
**hours** [10] - 6661:22,  
6662:6, 6662:16,  
6662:19, 6662:20,  
6728:18, 6728:19,  
6728:20, 6729:13,  
6732:18  
**Hull** [6] - 6589:1,  
6589:1, 6720:2,  
6734:14, 6735:24,  
6736:17  
**hull** [2] - 6659:16,  
6718:19  
**HULL** [5] - 6624:20,  
6695:18, 6734:15,  
6735:17, 6735:20  
**Human** [1] - 6606:5  
**Hume** [1] - 6606:17  
**Hume's** [1] - 6606:5  
**hundreds** [6] -  
6632:21, 6632:23,  
6686:19, 6701:4,  
6703:23, 6707:9  
**hung** [2] - 6622:4,  
6622:15  
**husband** [1] - 6648:24  
**hype** [3] - 6709:15,  
6709:17, 6709:18  
**hyperbole** [10] -  
6613:18, 6613:22,  
6614:8, 6615:19,  
6617:18, 6693:7,  
6693:11, 6693:13,  
6706:5  
**hyperbolically** [1] -  
6611:15

<p><b>I</b></p> <p><b>I..</b> [1] - 6630:23</p> <p><b>ice</b> [2] - 6694:14, 6695:12</p> <p><b>icon</b> [2] - 6629:25, 6663:5</p> <p><b>idea</b> [10] - 6603:6, 6614:4, 6614:7, 6615:13, 6617:18, 6617:21, 6622:17, 6632:4, 6637:16, 6722:4</p> <p><b>identification</b> [2] - 6651:25, 6652:3</p> <p><b>identified</b> [1] - 6591:2</p> <p><b>identify</b> [2] - 6679:19, 6716:15</p> <p><b>idiots</b> [1] - 6674:7</p> <p><b>ignoring</b> [1] - 6602:14</p> <p><b>II</b> [4] - 6589:15, 6657:11, 6663:21, 6663:24</p> <p><b>illegal</b> [9] - 6601:22, 6656:23, 6667:23, 6690:16, 6692:7, 6693:15, 6694:7, 6694:8, 6706:3</p> <p><b>image</b> [2] - 6629:25, 6673:23</p> <p><b>imaginary</b> [4] - 6696:20, 6696:23, 6697:22, 6702:8</p> <p><b>imagine</b> [1] - 6604:12</p> <p><b>immense</b> [2] - 6689:9, 6689:13</p> <p><b>impeach</b> [1] - 6590:18</p> <p><b>imply</b> [1] - 6648:14</p> <p><b>important</b> [2] - 6618:21, 6628:22</p> <p><b>impossible</b> [1] - 6730:11</p> <p><b>IN</b> [1] - 6588:1</p> <p><b>inapplicable</b> [1] - 6592:13</p> <p><b>inauguration</b> [1] - 6616:16</p> <p><b>incidents</b> [1] - 6721:15</p> <p><b>include</b> [1] - 6596:14</p> <p><b>included</b> [1] - 6716:14</p> <p><b>includes</b> [1] - 6727:25</p> <p><b>indeed</b> [2] - 6621:23, 6729:16</p> <p><b>Independence</b> [2] - 6669:23, 6671:2</p> <p><b>independence</b> [1] - 6670:1</p> <p><b>independent</b> [1] - 6592:14</p>	<p><b>INDEX</b> [1] - 6738:1</p> <p><b>indicate</b> [6] - 6599:8, 6601:8, 6628:3, 6628:21, 6631:21, 6720:24</p> <p><b>indicated</b> [3] - 6640:9, 6650:5, 6721:3</p> <p><b>indicates</b> [2] - 6628:23, 6662:3</p> <p><b>indication</b> [2] - 6628:24, 6667:22</p> <p><b>indicative</b> [1] - 6600:24</p> <p><b>indicia</b> [1] - 6609:19</p> <p><b>indictment</b> [2] - 6637:11, 6637:12</p> <p><b>individual</b> [2] - 6635:1, 6726:17</p> <p><b>indulgence</b> [3] - 6666:16, 6680:1, 6680:7</p> <p><b>infamous</b> [1] - 6642:17</p> <p><b>influential</b> [1] - 6714:10</p> <p><b>information</b> [10] - 6595:18, 6596:22, 6627:12, 6629:5, 6629:16, 6645:9, 6654:3, 6654:10, 6682:8, 6704:18</p> <p><b>initiative</b> [1] - 6667:18</p> <p><b>inner</b> [1] - 6598:21</p> <p><b>innocent</b> [1] - 6618:19</p> <p><b>Instagram</b> [1] - 6693:1</p> <p><b>instance</b> [3] - 6605:14, 6605:17, 6722:12</p> <p><b>instances</b> [1] - 6633:19</p> <p><b>instruction</b> [3] - 6718:10, 6734:9, 6736:19</p> <p><b>intend</b> [3] - 6592:15, 6592:18</p> <p><b>intends</b> [1] - 6591:6</p> <p><b>intent</b> [4] - 6597:12, 6617:18, 6640:14, 6640:15</p> <p><b>intention</b> [2] - 6591:8, 6604:15</p> <p><b>intentions</b> [1] - 6603:5</p> <p><b>interest</b> [2] - 6590:24, 6592:10</p> <p><b>interesting</b> [1] - 6637:11</p> <p><b>intimidating</b> [3] - 6682:25, 6683:1, 6683:2</p> <p><b>introduce</b> [6] - 6655:25, 6661:6,</p>	<p>6666:13, 6668:9, 6671:12, 6671:20</p> <p><b>introduced</b> [38] - 6590:15, 6631:17, 6631:23, 6632:2, 6636:7, 6638:10, 6638:18, 6639:2, 6640:21, 6640:24, 6647:24, 6654:25, 6655:8, 6655:24, 6660:20, 6665:14, 6665:25, 6666:23, 6668:14, 6669:6, 6671:21, 6671:23, 6672:2, 6672:4, 6672:5, 6674:18, 6676:17, 6676:19, 6677:12, 6681:22, 6683:11, 6684:12, 6685:12, 6688:24, 6689:1, 6715:22, 6717:19</p> <p><b>introduction</b> [1] - 6662:4</p> <p><b>investigate</b> [3] - 6676:6, 6691:22, 6714:7</p> <p><b>investigated</b> [2] - 6596:12, 6711:19</p> <p><b>investigating</b> [6] - 6601:21, 6684:4, 6684:5, 6684:6, 6714:8</p> <p><b>Investigation</b> [1] - 6610:2</p> <p><b>investigation</b> [4] - 6636:25, 6646:11, 6646:14, 6654:6</p> <p><b>investigations</b> [2] - 6596:18, 6650:14</p> <p><b>investigative</b> [1] - 6707:21</p> <p><b>investigator</b> [1] - 6590:23</p> <p><b>invitation</b> [1] - 6661:20</p> <p><b>involve</b> [1] - 6731:1</p> <p><b>involved</b> [3] - 6638:18, 6681:6, 6707:16</p> <p><b>involves</b> [1] - 6730:17</p> <p><b>ironic</b> [4] - 6603:4, 6604:6, 6614:7, 6622:5</p> <p><b>ironically</b> [1] - 6602:22</p> <p><b>irony</b> [16] - 6602:25, 6603:6, 6603:8, 6603:10, 6603:17, 6603:20, 6603:25, 6607:20, 6609:9, 6611:1, 6612:25, 6613:16, 6615:17, 6617:6, 6620:20,</p>	<p>6623:18</p> <p><b>irrelevant</b> [2] - 6592:9</p> <p><b>Iscariot</b> [1] - 6620:24</p> <p><b>Isis</b> [1] - 6619:10</p> <p><b>ISIS</b> [2] - 6619:11, 6619:17</p> <p><b>issue</b> [13] - 6591:14, 6719:13, 6722:25, 6726:7, 6726:9, 6726:25, 6728:25, 6731:13, 6732:21, 6732:23, 6732:24, 6732:25, 6733:23</p> <p><b>issued</b> [3] - 6640:3, 6649:21, 6651:1</p> <p><b>issues</b> [6] - 6591:16, 6591:18, 6591:23, 6637:19, 6718:25, 6733:12</p> <p><b>items</b> [1] - 6730:16</p> <p><b>itself</b> [2] - 6602:1, 6627:15</p> <p><b>IV</b> [1] - 6589:1</p> <p><b>J</b></p> <p><b>JANICE</b> [1] - 6737:3</p> <p><b>Janice</b> [2] - 6589:21, 6737:11</p> <p><b>Janicedickmandcd@gmail.com</b> [1] - 6589:22</p> <p><b>January</b> [25] - 6588:7, 6595:17, 6612:19, 6615:4, 6615:10, 6637:17, 6638:11, 6639:1, 6639:3, 6639:5, 6639:6, 6661:21, 6662:5, 6662:19, 6663:9, 6679:19, 6681:7, 6685:1, 6714:16, 6714:23, 6715:2, 6715:6, 6715:7, 6715:8, 6715:15</p> <p><b>Jason</b> [1] - 6588:14</p> <p><b>jason.mccullough2@usdoj.gov</b> [1] - 6588:16</p> <p><b>Jauregui</b> [3] - 6589:12, 6589:12, 6712:22</p> <p><b>JAUREGUI</b> [85] - 6594:9, 6595:12, 6633:16, 6680:14, 6681:19, 6681:20, 6683:9, 6683:10, 6683:18, 6684:10, 6684:11, 6685:4, 6685:7, 6685:17,</p>
---	--	--	--

<p>6685:18, 6686:8, 6687:14, 6687:15, 6687:22, 6687:23, 6688:20, 6688:22, 6689:15, 6689:18, 6689:24, 6690:9, 6690:12, 6690:22, 6690:25, 6692:1, 6692:4, 6692:9, 6692:11, 6692:21, 6692:24, 6693:20, 6693:23, 6694:10, 6694:13, 6695:16, 6697:14, 6697:15, 6698:1, 6698:3, 6698:8, 6698:11, 6698:20, 6699:8, 6699:12, 6701:19, 6701:21, 6703:10, 6703:14, 6704:10, 6704:11, 6705:14, 6705:17, 6706:8, 6706:12, 6706:23, 6706:25, 6707:2, 6708:3, 6708:11, 6708:17, 6708:21, 6708:25, 6710:19, 6711:4, 6711:22, 6712:2, 6712:5, 6712:9, 6712:18, 6712:23, 6713:1, 6713:3, 6714:14, 6715:23, 6716:1, 6716:3, 6716:6, 6716:25, 6717:4, 6717:21</p> <p><b>Jauregui</b>..... [1] - 6738:5</p> <p><b>jaw</b> [5] - 6695:7, 6695:8, 6695:9, 6695:10, 6695:11</p> <p><b>jd hull@hullmcguire.com</b> [1] - 6589:3</p> <p><b>Jefferson</b> [6] - 6664:9, 6664:18, 6664:19, 6669:24, 6671:1</p> <p><b>Jencks</b> [6] - 6590:16, 6591:12, 6592:8, 6592:21, 6593:12, 6593:16</p> <p><b>Jesus</b> [2] - 6620:25, 6621:2</p> <p><b>jibe</b> [1] - 6678:19</p> <p><b>jobs</b> [1] - 6610:2</p> <p><b>Joe</b> [6] - 6610:16, 6610:24, 6616:9, 6695:20, 6695:23, 6696:20</p> <p><b>John</b> [1] - 6589:1</p> <p><b>Johnny</b> [1] - 6730:17</p>	<p><b>JohnnyBlackbeard</b> [2] - 6733:5, 6733:6</p> <p><b>join</b> [3] - 6699:3, 6699:6, 6709:22</p> <p><b>joint</b> [1] - 6663:9</p> <p><b>joking</b> [2] - 6603:4, 6604:4</p> <p><b>Joseph</b> [1] - 6588:6</p> <p><b>Josh</b> [2] - 6679:5, 6679:9</p> <p><b>Judas</b> [3] - 6620:4, 6620:24</p> <p><b>Judge</b> [12] - 6593:7, 6600:9, 6607:7, 6607:10, 6621:13, 6624:1, 6626:4, 6697:14, 6712:23, 6713:1, 6717:22, 6722:4</p> <p><b>JUDGE</b> [2] - 6588:11, 6588:12</p> <p><b>judge</b> [3] - 6701:19, 6716:25, 6718:17</p> <p><b>July</b> [2] - 6669:4, 6669:23</p> <p><b>jump</b> [1] - 6721:25</p> <p><b>jumped</b> [1] - 6604:1</p> <p><b>jumping</b> [1] - 6636:22</p> <p><b>juror</b> [4] - 6719:7, 6735:2, 6735:12</p> <p><b>jurors</b> [6] - 6593:3, 6657:25, 6659:8, 6718:3, 6734:16</p> <p><b>jury</b> [33] - 6591:17, 6591:19, 6592:11, 6592:25, 6597:22, 6625:3, 6641:3, 6652:24, 6658:12, 6658:18, 6663:8, 6668:14, 6672:17, 6680:10, 6685:14, 6687:18, 6688:12, 6692:23, 6693:22, 6694:12, 6699:11, 6700:12, 6705:16, 6713:12, 6716:14, 6721:13, 6722:17, 6723:1, 6726:3, 6728:4, 6728:21, 6734:7, 6734:11</p> <p><b>JURY</b> [2] - 6588:5, 6588:10</p> <p><b>Justice</b> [3] - 6649:2, 6651:2, 6667:20</p> <p><b>justice</b> [1] - 6601:5</p>	<p><b>keep</b> [6] - 6624:21, 6624:25, 6645:20, 6659:14, 6732:15, 6735:15</p> <p><b>KELLY</b> [1] - 6588:11</p> <p><b>Kenerson</b> [1] - 6588:15</p> <p><b>key</b> [2] - 6612:7, 6663:23</p> <p><b>kill</b> [1] - 6668:2</p> <p><b>kind</b> [27] - 6591:15, 6591:23, 6592:1, 6608:22, 6613:8, 6615:5, 6636:22, 6637:18, 6637:19, 6657:4, 6671:20, 6672:20, 6678:15, 6700:15, 6709:13, 6716:12, 6716:16, 6716:22, 6721:12, 6724:5, 6729:20, 6730:6, 6731:3, 6733:19, 6735:3, 6735:4</p> <p><b>kinds</b> [2] - 6710:22, 6734:1</p> <p><b>King</b> [1] - 6623:23</p> <p><b>knife</b> [3] - 6608:20, 6608:22</p> <p><b>knives</b> [3] - 6711:12, 6711:16, 6711:17</p> <p><b>knock</b> [1] - 6617:3</p> <p><b>knocked</b> [3] - 6609:3, 6609:5, 6609:8</p> <p><b>knowledge</b> [11] - 6643:8, 6644:12, 6644:16, 6646:8, 6646:11, 6646:14, 6681:12, 6707:24, 6711:1, 6711:18, 6712:6</p> <p><b>known</b> [2] - 6634:10, 6634:16</p> <p><b>knows</b> [6] - 6648:25, 6655:18, 6689:15, 6689:22, 6706:23, 6736:2</p> <p><b>Kraken</b> [1] - 6641:21</p>	<p><b>language</b> [1] - 6603:4</p> <p><b>largely</b> [1] - 6718:24</p> <p><b>larger</b> [1] - 6730:4</p> <p><b>Last</b> [1] - 6621:2</p> <p><b>last</b> [14] - 6591:25, 6603:1, 6611:20, 6614:19, 6616:21, 6622:17, 6631:8, 6651:20, 6654:8, 6661:22, 6674:2, 6687:10, 6718:21, 6721:2</p> <p><b>Law</b> [4] - 6589:7, 6589:10, 6589:12, 6589:18</p> <p><b>law</b> [5] - 6601:5, 6602:1, 6663:20, 6664:16, 6665:6</p> <p><b>lawmaker</b> [2] - 6622:1, 6622:3</p> <p><b>Laws</b> [1] - 6625:23</p> <p><b>laws</b> [3] - 6622:3, 6633:20, 6663:17</p> <p><b>lawsuit</b> [2] - 6612:6, 6674:11</p> <p><b>lawsuits</b> [3] - 6612:12, 6642:9, 6674:13</p> <p><b>lawyer</b> [1] - 6720:24</p> <p><b>lawyers</b> [1] - 6735:12</p> <p><b>laying</b> [1] - 6722:20</p> <p><b>lead</b> [3] - 6680:25, 6681:3, 6681:11</p> <p><b>leader</b> [1] - 6634:20</p> <p><b>leaders</b> [1] - 6729:23</p> <p><b>leadership</b> [1] - 6634:19</p> <p><b>leads</b> [1] - 6691:22</p> <p><b>learned</b> [2] - 6670:9, 6670:13</p> <p><b>least</b> [12] - 6645:13, 6665:9, 6670:8, 6670:22, 6673:16, 6719:17, 6719:24, 6720:7, 6723:9, 6725:2, 6725:19</p> <p><b>leave</b> [9] - 6657:25, 6661:8, 6661:9, 6661:11, 6685:24, 6696:6, 6714:20, 6718:3, 6721:18</p> <p><b>left</b> [7] - 6590:7, 6601:4, 6602:4, 6608:17, 6615:9, 6706:17</p> <p><b>legal</b> [10] - 6590:18, 6637:3, 6637:8, 6637:20, 6657:6, 6657:12, 6664:25, 6665:5, 6667:14, 6692:6</p>
		<p><b>L</b></p>	
		<p><b>laboring</b> [1] - 6734:24</p> <p><b>laboring-the-war</b> [1] - 6734:24</p> <p><b>ladies</b> [5] - 6593:5, 6657:24, 6659:10, 6700:11, 6717:25</p> <p><b>Lake</b> [1] - 6589:18</p> <p><b>Lakes</b> [1] - 6589:11</p> <p><b>land</b> [1] - 6670:10</p>	
	<p><b>K</b></p>		
	<p><b>Kathryn</b> [1] - 6738:3</p> <p><b>KATHRYN</b> [1] - 6593:8</p>		



<p><b>legislators</b> [5] - 6642:12, 6642:15, 6663:22, 6666:25, 6668:2</p> <p><b>lengthy</b> [2] - 6724:21, 6725:22</p> <p><b>Leonidas</b> [1] - 6623:24</p> <p><b>less</b> [3] - 6612:8, 6633:2, 6723:3</p> <p><b>letterhead</b> [1] - 6655:9</p> <p><b>letting</b> [1] - 6602:14</p> <p><b>liberal</b> [1] - 6655:13</p> <p><b>liberty</b> [1] - 6670:9</p> <p><b>library</b> [1] - 6625:21</p> <p><b>life</b> [1] - 6595:6</p> <p><b>like-minded</b> [1] - 6709:21</p> <p><b>likely</b> [2] - 6625:17, 6653:19</p> <p><b>limine</b> [4] - 6716:17, 6725:11, 6728:17, 6733:1</p> <p><b>limitation</b> [1] - 6636:19</p> <p><b>limited</b> [2] - 6644:18, 6736:15</p> <p><b>limiting</b> [2] - 6718:10, 6734:9</p> <p><b>line</b> [13] - 6597:19, 6597:23, 6600:4, 6617:2, 6636:16, 6636:20, 6636:21, 6639:6, 6651:20, 6676:11, 6676:12, 6721:7, 6721:22</p> <p><b>lined</b> [1] - 6729:11</p> <p><b>lines</b> [8] - 6686:17, 6688:9, 6701:5, 6702:2, 6702:5, 6704:5, 6714:3, 6721:19</p> <p><b>link</b> [23] - 6598:3, 6598:7, 6598:12, 6598:16, 6616:10, 6649:23, 6655:4, 6660:7, 6660:24, 6661:19, 6662:8, 6662:11, 6662:15, 6665:17, 6665:20, 6665:23, 6666:2, 6666:5, 6666:15, 6668:19, 6714:7</p> <p><b>linkage</b> [2] - 6590:25, 6592:1</p> <p><b>linked</b> [1] - 6614:15</p> <p><b>links</b> [3] - 6654:17, 6654:18, 6654:19</p> <p><b>list</b> [1] - 6725:22</p> <p><b>listed</b> [3] - 6628:2,</p>	<p>6628:4, 6628:6</p> <p><b>listened</b> [1] - 6654:1</p> <p><b>listener</b> [1] - 6730:5</p> <p><b>literally</b> [1] - 6601:4</p> <p><b>litigate</b> [1] - 6725:5</p> <p><b>litigating</b> [1] - 6732:23</p> <p><b>litigation</b> [1] - 6612:9</p> <p><b>live</b> [1] - 6653:2</p> <p><b>lived</b> [1] - 6595:5</p> <p><b>lives</b> [1] - 6601:12</p> <p><b>living</b> [1] - 6734:18</p> <p><b>Livingston</b> [1] - 6589:19</p> <p><b>LLC</b> [2] - 6589:4, 6713:14</p> <p><b>local</b> [1] - 6619:9</p> <p><b>location</b> [1] - 6641:25</p> <p><b>log</b> [2] - 6696:24, 6697:5</p> <p><b>logical</b> [1] - 6606:18</p> <p><b>look</b> [23] - 6623:25, 6639:13, 6656:7, 6672:9, 6684:2, 6688:5, 6696:25, 6717:10, 6717:12, 6718:12, 6721:16, 6722:11, 6723:10, 6725:4, 6729:1, 6730:8, 6730:9, 6732:9, 6732:10, 6733:18, 6734:4, 6736:17</p> <p><b>looked</b> [3] - 6624:12, 6632:14, 6725:18</p> <p><b>looking</b> [12] - 6596:4, 6596:22, 6597:9, 6633:15, 6698:21, 6699:3, 6699:5, 6702:25, 6726:13, 6733:10, 6733:11, 6733:13</p> <p><b>looks</b> [11] - 6608:3, 6661:3, 6662:6, 6662:16, 6666:12, 6688:2, 6688:3, 6688:14, 6692:25, 6709:13</p> <p><b>Lords</b> [1] - 6713:23</p> <p><b>losing</b> [1] - 6600:22</p> <p><b>lost</b> [1] - 6612:14</p> <p><b>loud</b> [1] - 6663:8</p> <p><b>love</b> [3] - 6689:19, 6722:4, 6730:21</p> <p><b>loves</b> [1] - 6595:3</p> <p><b>lunch</b> [1] - 6593:11</p>	<p>6625:21, 6629:24, 6646:19, 6652:17</p> <p><b>Macris</b> [2] - 6664:1, 6664:8</p> <p><b>MAGA</b> [1] - 6692:12</p> <p><b>maintain</b> [1] - 6657:7</p> <p><b>man</b> [5] - 6594:17, 6618:14, 6620:25, 6630:9, 6671:24</p> <p><b>manner</b> [2] - 6682:11, 6700:20</p> <p><b>manners</b> [1] - 6667:7</p> <p><b>manufactured</b> [2] - 6682:3, 6688:11</p> <p><b>map</b> [5] - 6675:5, 6675:6, 6675:10, 6675:13, 6675:14</p> <p><b>March</b> [2] - 6609:18, 6692:12</p> <p><b>mark</b> [2] - 6652:1, 6668:5</p> <p><b>marked</b> [4] - 6651:23, 6651:24, 6652:3, 6689:1</p> <p><b>masse</b> [1] - 6727:10</p> <p><b>material</b> [3] - 6590:17, 6593:12, 6593:16</p> <p><b>materials</b> [2] - 6732:8, 6732:12</p> <p><b>matter</b> [5] - 6590:3, 6598:19, 6658:15, 6722:5, 6727:8</p> <p><b>matters</b> [1] - 6734:6</p> <p><b>McCullough</b> [104] - 6588:14, 6590:11, 6591:8, 6591:11, 6591:13, 6597:24, 6598:14, 6598:23, 6599:25, 6603:12, 6603:18, 6605:20, 6606:11, 6607:12, 6608:13, 6618:5, 6618:23, 6618:25, 6622:21, 6623:9, 6625:18, 6626:2, 6631:5, 6635:3, 6636:12, 6637:14, 6637:16, 6639:16, 6644:9, 6645:11, 6645:14, 6646:15, 6649:11, 6651:12, 6651:15, 6651:18, 6652:13, 6655:14, 6656:2, 6658:9, 6660:2, 6660:12, 6661:10, 6661:15, 6666:16, 6666:19, 6667:24, 6668:10, 6669:16, 6672:19, 6673:19, 6676:10,</p>	<p>6677:14, 6678:7, 6679:13, 6679:20, 6680:7, 6680:12, 6683:7, 6683:16, 6684:8, 6685:2, 6686:6, 6687:12, 6687:20, 6689:14, 6689:21, 6697:12, 6698:19, 6701:14, 6701:16, 6704:8, 6706:22, 6708:1, 6708:9, 6708:15, 6708:19, 6710:15, 6711:2, 6711:20, 6711:25, 6712:4, 6712:7, 6712:11, 6712:13, 6712:16, 6714:12, 6716:11, 6716:12, 6716:19, 6717:13, 6718:12, 6718:14, 6718:21, 6721:5, 6722:1, 6722:7, 6722:8, 6722:10, 6722:13, 6735:23, 6735:24, 6736:4, 6736:14</p> <p><b>McCullough</b> [2] - 6623:11, 6727:4</p> <p><b>McGuire</b> [1] - 6589:1</p> <p><b>MD</b> [1] - 6589:8</p> <p><b>MeadowCow</b> [1] - 6733:4</p> <p><b>mean</b> [38] - 6591:3, 6598:20, 6599:4, 6602:21, 6615:22, 6620:24, 6625:15, 6629:10, 6632:10, 6636:15, 6636:21, 6637:2, 6637:16, 6640:22, 6649:14, 6652:25, 6664:14, 6675:6, 6675:17, 6683:25, 6701:10, 6702:24, 6709:9, 6716:12, 6721:22, 6723:2, 6723:25, 6724:22, 6725:17, 6729:5, 6731:11, 6731:15, 6732:16, 6733:15, 6735:8</p> <p><b>means</b> [7] - 6590:17, 6605:2, 6605:5, 6664:5, 6692:15, 6692:16, 6693:9</p> <p><b>mechanism</b> [1] - 6605:8</p> <p><b>media</b> [2] - 6619:16, 6634:8</p> <p><b>meeting</b> [1] - 6624:11</p> <p><b>member's</b> [1] - 6695:8</p>
<b>M</b>			
<p><b>ma'am</b> [7] - 6604:21, 6618:19, 6621:15,</p>			

<p><b>members</b> [4] - 6599:6, 6599:19, 6688:18</p> <p><b>membership</b> [1] - 6730:4</p> <p><b>memorandum</b> [1] - 6724:21</p> <p><b>memory</b> [1] - 6708:5</p> <p><b>men</b> [1] - 6709:21</p> <p><b>Mencken</b> [3] - 6594:23, 6595:8, 6595:15</p> <p><b>Mencken's</b> [2] - 6594:22, 6600:4</p> <p><b>mention</b> [3] - 6677:4, 6734:5, 6734:17</p> <p><b>mentioned</b> [4] - 6604:24, 6679:5, 6679:9, 6732:21</p> <p><b>mentioning</b> [1] - 6670:22</p> <p><b>Mercury</b> [1] - 6595:9</p> <p><b>mere</b> [3] - 6601:24, 6605:11, 6620:5</p> <p><b>merely</b> [1] - 6722:2</p> <p><b>message</b> [5] - 6610:16, 6614:24, 6615:1, 6615:12, 6674:3</p> <p><b>messages</b> [10] - 6631:16, 6632:21, 6632:23, 6700:5, 6704:25, 6705:6, 6705:10, 6705:12, 6725:23, 6733:11</p> <p><b>messaging</b> [1] - 6678:21</p> <p><b>met</b> [5] - 6619:19, 6626:23, 6680:19, 6680:22, 6690:5</p> <p><b>metaphor</b> [1] - 6618:10</p> <p><b>metaphorically</b> [1] - 6611:13</p> <p><b>Metcalf</b> [3] - 6589:15, 6589:15</p> <p><b>meteorite</b> [1] - 6625:16</p> <p><b>Mexico</b> [1] - 6664:3</p> <p><b>Miami</b> [2] - 6589:11, 6690:5</p> <p><b>Michigan</b> [2] - 6616:11, 6664:3</p> <p><b>microphone</b> [6] - 6624:23, 6627:3, 6659:14, 6671:15, 6679:7, 6730:13</p> <p><b>mid</b> [1] - 6625:16</p> <p><b>mid-sentence</b> [1] - 6625:16</p> <p><b>middle</b> [3] - 6598:11,</p>	<p>6618:14, 6675:14</p> <p><b>might</b> [18] - 6597:18, 6600:3, 6604:4, 6604:6, 6604:7, 6604:12, 6611:21, 6611:24, 6619:8, 6624:5, 6632:10, 6636:24, 6647:10, 6720:21, 6724:6, 6724:16, 6728:14, 6735:13</p> <p><b>Mike</b> [2] - 6620:3, 6656:20</p> <p><b>Milano</b> [1] - 6610:19</p> <p><b>military</b> [2] - 6709:10, 6709:11</p> <p><b>million</b> [4] - 6683:23, 6684:1, 6684:25, 6719:23</p> <p><b>Million</b> [1] - 6692:12</p> <p><b>millions</b> [4] - 6686:3, 6686:4, 6686:17, 6686:18</p> <p><b>mind</b> [12] - 6597:6, 6597:7, 6597:10, 6599:13, 6601:1, 6601:20, 6625:3, 6639:13, 6639:23, 6640:15, 6730:2, 6730:4</p> <p><b>minded</b> [1] - 6709:21</p> <p><b>mine</b> [1] - 6607:25</p> <p><b>Mink</b> [1] - 6589:7</p> <p><b>minute</b> [3] - 6593:24, 6657:23, 6732:2</p> <p><b>minutes</b> [4] - 6591:10, 6657:24, 6658:6, 6660:7</p> <p><b>missed</b> [1] - 6626:13</p> <p><b>missing</b> [2] - 6598:3, 6598:11</p> <p><b>misstates</b> [5] - 6598:14, 6603:12, 6603:18, 6623:9, 6701:14</p> <p><b>mistake</b> [1] - 6607:4</p> <p><b>mom</b> [1] - 6648:23</p> <p><b>moment</b> [10] - 6603:21, 6606:1, 6608:18, 6616:24, 6617:5, 6620:5, 6624:1, 6624:10, 6679:3, 6732:22</p> <p><b>moments</b> [1] - 6721:7</p> <p><b>months</b> [2] - 6595:21, 6615:5</p> <p><b>moon</b> [1] - 6604:1</p> <p><b>Moore</b> [1] - 6588:20</p> <p><b>morning</b> [8] - 6662:11, 6662:15, 6718:2,</p>	<p>6720:2, 6720:11, 6723:24, 6729:1, 6734:6</p> <p><b>MOSD</b> [5] - 6708:7, 6708:12, 6708:18, 6729:23, 6730:4</p> <p><b>most</b> [7] - 6630:17, 6632:5, 6645:2, 6681:11, 6683:1, 6730:20, 6733:8</p> <p><b>motion</b> [5] - 6716:16, 6725:11, 6732:25, 6736:6, 6736:16</p> <p><b>motions</b> [2] - 6664:13, 6728:17</p> <p><b>motivate</b> [1] - 6618:8</p> <p><b>motivation</b> [1] - 6640:15</p> <p><b>move</b> [26] - 6590:8, 6592:16, 6592:21, 6607:4, 6637:24, 6651:10, 6656:2, 6666:13, 6668:9, 6672:13, 6674:23, 6676:8, 6677:8, 6677:9, 6685:4, 6688:20, 6712:24, 6713:1, 6717:1, 6720:7, 6727:10, 6728:7, 6734:22, 6735:12, 6736:4, 6736:14</p> <p><b>MR</b> [259] - 6590:10, 6590:21, 6591:5, 6591:13, 6592:6, 6592:8, 6592:23, 6593:7, 6593:10, 6594:9, 6594:11, 6595:12, 6595:14, 6597:24, 6598:1, 6598:14, 6598:15, 6598:23, 6598:25, 6599:3, 6599:25, 6600:2, 6600:9, 6600:13, 6600:18, 6601:2, 6601:3, 6603:12, 6603:13, 6603:16, 6603:18, 6603:20, 6603:24, 6605:20, 6605:22, 6605:23, 6606:2, 6606:11, 6606:12, 6606:16, 6606:21, 6606:22, 6607:4, 6607:10, 6607:12, 6607:15, 6608:7, 6608:9, 6608:13, 6608:14, 6609:15, 6609:16, 6614:10, 6614:11, 6616:7,</p>	<p>6616:8, 6616:21, 6616:23, 6618:5, 6618:7, 6618:12, 6618:13, 6618:23, 6618:25, 6619:2, 6620:1, 6620:2, 6621:12, 6621:14, 6622:21, 6622:23, 6623:9, 6623:10, 6623:12, 6624:1, 6624:3, 6624:20, 6625:1, 6625:4, 6625:18, 6625:20, 6626:2, 6626:4, 6631:5, 6633:16, 6635:3, 6636:12, 6637:16, 6639:16, 6644:9, 6645:11, 6645:14, 6646:15, 6649:11, 6651:12, 6651:15, 6651:18, 6652:13, 6655:14, 6656:2, 6658:9, 6660:2, 6660:12, 6661:10, 6661:15, 6666:16, 6666:19, 6668:10, 6669:16, 6672:19, 6673:19, 6676:10, 6677:14, 6678:7, 6679:13, 6679:20, 6680:7, 6680:12, 6680:14, 6681:19, 6681:20, 6683:7, 6683:9, 6683:10, 6683:16, 6683:18, 6684:8, 6684:10, 6684:11, 6685:2, 6685:4, 6685:7, 6685:17, 6685:18, 6686:6, 6686:8, 6687:12, 6687:14, 6687:15, 6687:20, 6687:22, 6687:23, 6688:20, 6688:22, 6689:14, 6689:15, 6689:18, 6689:21, 6689:24, 6690:9, 6690:12, 6690:22, 6690:25, 6692:1, 6692:4, 6692:9, 6692:11, 6692:21, 6692:24, 6693:20, 6693:23, 6694:10, 6694:13, 6695:16, 6695:18, 6697:12, 6697:14, 6697:15, 6698:1, 6698:3, 6698:8, 6698:11, 6698:19, 6698:20, 6699:8, 6699:12, 6701:14,</p>
--	---	---	---

6701:16, 6701:18, 6701:19, 6701:21, 6703:10, 6703:14, 6704:8, 6704:10, 6704:11, 6705:14, 6705:17, 6706:8, 6706:12, 6706:22, 6706:23, 6706:25, 6707:2, 6708:1, 6708:3, 6708:9, 6708:11, 6708:15, 6708:17, 6708:19, 6708:21, 6708:25, 6710:15, 6710:19, 6711:2, 6711:4, 6711:20, 6711:22, 6711:25, 6712:2, 6712:4, 6712:5, 6712:7, 6712:9, 6712:11, 6712:13, 6712:16, 6712:18, 6712:23, 6713:1, 6713:3, 6714:12, 6714:14, 6715:23, 6716:1, 6716:3, 6716:6, 6716:12, 6716:19, 6716:25, 6717:4, 6717:21, 6718:14, 6718:17, 6719:2, 6720:2, 6720:16, 6721:5, 6722:1, 6722:4, 6722:7, 6722:10, 6723:17, 6724:4, 6724:14, 6725:14, 6725:16, 6726:11, 6726:22, 6727:16, 6727:22, 6729:18, 6734:15, 6735:17, 6735:20, 6735:24, 6736:4, 6736:14 <b>MS</b> [138] - 6626:8, 6626:21, 6626:22, 6627:1, 6627:4, 6627:6, 6629:2, 6629:3, 6631:7, 6633:17, 6635:4, 6635:7, 6636:14, 6636:19, 6637:5, 6638:1, 6638:8, 6639:17, 6639:21, 6640:19, 6640:23, 6641:2, 6641:7, 6641:8, 6643:22, 6643:24, 6644:11, 6644:19, 6644:20, 6645:12, 6645:15, 6645:19, 6646:17, 6646:20, 6646:22, 6646:24, 6647:1, 6647:15, 6647:17,	6647:19, 6647:21, 6648:5, 6648:7, 6648:17, 6648:18, 6649:13, 6649:17, 6650:2, 6650:3, 6651:10, 6651:14, 6651:16, 6651:20, 6651:23, 6652:2, 6652:6, 6652:9, 6652:15, 6652:18, 6655:2, 6655:3, 6655:16, 6655:19, 6655:22, 6656:4, 6657:17, 6657:21, 6658:19, 6658:22, 6659:18, 6659:25, 6660:3, 6660:5, 6660:11, 6660:14, 6660:21, 6661:6, 6661:11, 6661:18, 6665:24, 6666:1, 6666:8, 6666:9, 6666:13, 6666:18, 6666:21, 6666:22, 6667:25, 6668:1, 6668:5, 6668:9, 6668:13, 6668:18, 6669:17, 6669:18, 6671:16, 6671:18, 6672:2, 6672:4, 6672:8, 6672:13, 6672:17, 6672:25, 6673:5, 6673:7, 6673:24, 6674:17, 6674:19, 6674:23, 6675:2, 6675:3, 6675:22, 6675:24, 6676:8, 6676:16, 6676:21, 6677:8, 6677:17, 6677:22, 6677:23, 6678:3, 6678:10, 6678:11, 6679:1, 6679:3, 6679:4, 6679:8, 6679:14, 6679:18, 6679:23, 6680:1, 6725:21, 6725:25, 6730:11, 6730:15, 6731:5, 6731:14, 6733:2 <b>MT</b> [1] - 6589:19 <b>mud</b> [1] - 6664:2 <b>mulroe</b> [1] - 6727:7 <b>Mulroe</b> [2] - 6588:17, 6727:4 <b>MULROE</b> [3] - 6727:16, 6727:22, 6729:18 <b>multiple</b> [3] - 6730:15, 6731:18, 6731:20	<b>multitasking</b> [1] - 6697:7 <b>murky</b> [2] - 6637:21, 6637:23 <b>must</b> [2] - 6594:17, 6663:25 <b>mythology</b> [1] - 6623:3 <b>N</b> <b>N.W</b> [1] - 6737:12 <b>Nadia</b> [1] - 6588:20 <b>nadia.moore@usdoj.</b> <b>gov</b> [1] - 6588:22 <b>name</b> [3] - 6627:13, 6733:6 <b>named</b> [4] - 6610:19, 6679:5, 6679:9, 6709:2 <b>names</b> [3] - 6627:24, 6628:2 <b>narrow</b> [1] - 6733:12 <b>Nature</b> [1] - 6606:5 <b>nature</b> [1] - 6711:11 <b>Nayib</b> [3] - 6589:9, 6589:10, 6680:17 <b>nds@</b> <b>davidbsmithpllc.com</b> [1] - 6588:25 <b>NebraskaRed</b> [1] - 6733:4 <b>necessarily</b> [10] - 6602:8, 6604:20, 6605:13, 6605:15, 6607:1, 6609:11, 6609:12, 6609:13, 6696:3, 6729:14 <b>necessary</b> [1] - 6675:18 <b>need</b> [16] - 6605:8, 6606:23, 6607:16, 6612:2, 6624:24, 6656:7, 6671:10, 6691:24, 6697:1, 6715:20, 6716:14, 6721:20, 6723:22, 6729:14, 6730:23, 6734:17 <b>needed</b> [2] - 6596:1, 6719:6 <b>net</b> [1] - 6653:5 <b>neutral</b> [1] - 6721:10 <b>Nevada</b> [1] - 6664:3 <b>never</b> [8] - 6601:1, 6615:24, 6619:19, 6626:23, 6703:6, 6703:7, 6715:15, 6724:12 <b>new</b> [5] - 6590:19, 6590:20, 6603:10,	6619:9, 6732:25 <b>New</b> [6] - 6588:18, 6588:25, 6589:5, 6589:16, 6615:9, 6664:3 <b>newspaper</b> [1] - 6595:11 <b>next</b> [5] - 6662:15, 6677:12, 6705:15, 6721:11, 6729:15 <b>Nicholas</b> [1] - 6588:23 <b>night</b> [12] - 6614:19, 6615:15, 6616:1, 6616:3, 6645:1, 6646:2, 6693:25, 6730:20, 6730:21, 6732:18, 6733:15 <b>ninjas</b> [2] - 6705:19, 6705:21 <b>Nixon</b> [1] - 6617:24 <b>NobleLead</b> [2] - 6699:19, 6703:15 <b>non</b> [2] - 6592:11, 6678:23 <b>non-confused</b> [1] - 6592:11 <b>non-politicians</b> [1] - 6678:23 <b>none</b> [2] - 6618:3, 6713:4 <b>nonetheless</b> [1] - 6612:16 <b>nonviolent</b> [1] - 6698:16 <b>noon</b> [3] - 6645:7, 6645:20, 6645:22 <b>Nordean</b> [10] - 6588:6, 6588:23, 6590:4, 6628:7, 6628:17, 6631:20, 6635:15, 6647:18, 6648:14, 6658:16 <b>Nordean's</b> [1] - 6604:22 <b>normal</b> [1] - 6594:17 <b>Norman</b> [1] - 6589:3 <b>northeast</b> [1] - 6595:5 <b>notation</b> [1] - 6662:18 <b>note</b> [2] - 6672:20, 6734:15 <b>noted</b> [1] - 6594:25 <b>notes</b> [11] - 6591:18, 6594:14, 6594:16, 6594:25, 6623:23, 6623:25, 6624:4, 6624:11, 6634:2, 6737:5 <b>nothing</b> [10] - 6598:17, 6621:8, 6621:10, 6621:16,
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<p>6626:4, 6688:2, 6692:7, 6692:17, 6693:15, 6726:20 <b>notion</b> [2] - 6642:24, 6650:4 <b>November</b> [32] - 6592:4, 6593:21, 6636:6, 6636:7, 6636:10, 6637:6, 6637:13, 6637:22, 6638:9, 6638:16, 6638:19, 6638:21, 6638:22, 6638:23, 6639:10, 6639:22, 6640:7, 6640:12, 6641:13, 6644:13, 6644:22, 6669:2, 6672:5, 6673:16, 6673:25, 6674:1, 6675:4, 6675:6, 6676:24, 6677:25, 6678:3, 6715:10 <b>npattis@</b> <b>pattisandsmith.com</b> [1] - 6589:5 <b>number</b> [31] - 6632:20, 6636:6, 6636:7, 6638:16, 6639:22, 6640:8, 6644:1, 6644:21, 6646:23, 6649:18, 6651:13, 6657:18, 6661:8, 6661:9, 6661:12, 6666:17, 6666:19, 6670:19, 6675:17, 6677:12, 6678:22, 6686:20, 6722:21, 6728:10, 6730:6, 6731:22, 6731:23, 6735:25, 6736:1 <b>numbered</b> [1] - 6672:14 <b>numbering</b> [2] - 6672:15, 6729:21 <b>numbers</b> [1] - 6673:9 <b>numeration</b> [1] - 6660:20 <b>NW</b> [4] - 6588:15, 6588:18, 6589:2, 6589:10 <b>NY</b> [3] - 6588:21, 6588:25, 6589:16</p>	<p>6663:15 <b>obey</b> [1] - 6624:16 <b>object</b> [10] - 6591:13, 6637:15, 6651:12, 6679:13, 6679:20, 6722:14, 6722:17, 6722:19, 6724:19 <b>objected</b> [3] - 6721:9, 6722:13, 6722:20 <b>objection</b> [87] - 6590:7, 6591:12, 6591:22, 6591:23, 6592:1, 6594:9, 6595:12, 6597:24, 6598:14, 6598:23, 6599:25, 6603:12, 6603:18, 6605:20, 6606:11, 6607:11, 6607:12, 6618:5, 6618:23, 6622:21, 6623:9, 6625:18, 6626:2, 6631:5, 6635:3, 6636:12, 6639:16, 6644:9, 6645:11, 6645:14, 6646:15, 6649:11, 6651:17, 6651:22, 6652:13, 6655:14, 6661:15, 6662:4, 6663:13, 6663:14, 6668:10, 6668:11, 6669:16, 6672:18, 6672:19, 6673:19, 6676:10, 6676:11, 6676:12, 6678:7, 6683:7, 6683:16, 6684:8, 6685:2, 6686:6, 6687:12, 6687:20, 6689:14, 6689:21, 6697:12, 6698:19, 6701:14, 6701:18, 6704:8, 6706:22, 6708:1, 6708:9, 6708:15, 6708:19, 6710:15, 6711:2, 6711:20, 6711:25, 6712:4, 6712:7, 6712:11, 6712:20, 6712:21, 6714:12, 6716:21, 6717:15, 6717:16, 6720:25, 6722:19, 6724:5, 6725:5, 6727:12 <b>objections</b> [8] - 6591:21, 6592:13, 6660:15, 6663:25, 6664:13, 6672:21, 6720:18, 6724:11 <b>objector</b> [2] - 6721:10,</p>	<p>6721:11 <b>obligation</b> [2] - 6593:20, 6732:10 <b>obligations</b> [1] - 6591:15 <b>observation</b> [1] - 6638:1 <b>observe</b> [1] - 6735:11 <b>obvious</b> [5] - 6602:16, 6722:14, 6722:21, 6735:1, 6735:2 <b>obviously</b> [4] - 6636:9, 6644:6, 6669:10, 6721:19 <b>occasions</b> [3] - 6611:24, 6720:18, 6720:21 <b>occupying</b> [1] - 6624:17 <b>occurred</b> [2] - 6605:4, 6726:23 <b>occurring</b> [1] - 6604:18 <b>occurs</b> [1] - 6605:17 <b>October</b> [1] - 6594:20 <b>odds</b> [1] - 6612:7 <b>OF</b> [3] - 6588:1, 6588:10, 6737:1 <b>offer</b> [4] - 6607:10, 6726:14, 6728:1, 6728:2 <b>Office</b> [2] - 6588:20, 6589:7 <b>office</b> [3] - 6622:4, 6657:8, 6663:15 <b>officer</b> [1] - 6601:21 <b>Offices</b> [1] - 6589:10 <b>Official</b> [1] - 6737:11 <b>OFFICIAL</b> [1] - 6737:1 <b>often</b> [1] - 6648:4 <b>once</b> [2] - 6637:23, 6723:2 <b>one</b> [59] - 6605:24, 6606:1, 6609:17, 6610:1, 6610:15, 6611:24, 6612:14, 6621:20, 6626:12, 6628:12, 6630:24, 6631:8, 6633:12, 6642:3, 6647:19, 6653:23, 6661:23, 6670:25, 6673:18, 6682:25, 6683:1, 6685:6, 6688:23, 6689:4, 6692:9, 6693:24, 6695:19, 6696:8, 6697:7, 6699:15, 6701:19, 6703:5, 6703:6, 6703:11, 6703:15,</p>	<p>6705:15, 6705:18, 6706:9, 6706:10, 6706:13, 6708:5, 6714:18, 6716:5, 6719:1, 6720:16, 6721:23, 6723:9, 6725:2, 6727:1, 6728:6, 6728:24, 6730:7, 6731:19, 6731:22, 6732:23, 6733:6, 6734:15, 6734:16, 6735:2 <b>ones</b> [5] - 6636:10, 6639:10, 6677:12, 6677:18, 6707:12 <b>ongoing</b> [2] - 6687:7, 6732:4 <b>online</b> [2] - 6653:16, 6655:10 <b>Open</b> [1] - 6717:24 <b>open</b> [10] - 6601:5, 6638:7, 6650:1, 6659:3, 6663:9, 6697:8, 6697:10, 6726:22, 6727:5, 6736:13 <b>opened</b> [1] - 6733:2 <b>operation</b> [1] - 6724:13 <b>opinion</b> [2] - 6656:19, 6732:19 <b>opponent</b> [1] - 6651:11 <b>opportunity</b> [3] - 6592:5, 6720:20, 6720:25 <b>orally</b> [1] - 6719:17 <b>Orange</b> [1] - 6589:4 <b>order</b> [10] - 6601:6, 6602:13, 6602:14, 6663:14, 6685:8, 6697:1, 6697:3, 6719:1, 6721:3, 6728:1 <b>Oregon</b> [1] - 6652:11 <b>organization</b> [8] - 6615:8, 6648:9, 6649:20, 6649:22, 6650:5, 6650:12, 6650:15, 6650:19 <b>organizations</b> [1] - 6650:21 <b>originally</b> [1] - 6703:4 <b>otherwise</b> [2] - 6600:4, 6634:17 <b>ourselves</b> [1] - 6680:8 <b>outcome</b> [2] - 6613:7, 6642:1 <b>outrage</b> [1] - 6664:15 <b>outside</b> [2] - 6590:8, 6665:6</p>
<b>O</b>			
<p><b>o'clock</b> [6] - 6680:10, 6719:8, 6719:19, 6726:3, 6734:7, 6736:18 <b>oath</b> [2] - 6610:6,</p>			

<p><b>overnight</b> [3] - 6724:1, 6726:25, 6728:25</p> <p><b>overruled</b> [5] - 6594:10, 6599:2, 6605:25, 6689:16, 6697:13</p> <p><b>overrun</b> [2] - 6710:14, 6710:21</p> <p><b>overstatement</b> [1] - 6613:22</p> <p><b>own</b> [7] - 6602:5, 6622:3, 6635:1, 6635:9, 6635:19, 6636:25, 6669:14</p> <p><b>owned</b> [1] - 6713:19</p>	<p>6654:4, 6654:15, 6654:17, 6654:18, 6654:19, 6654:20, 6654:25, 6656:5, 6656:8, 6661:2, 6661:4, 6664:24, 6665:15, 6665:17, 6666:2, 6666:14, 6666:23, 6666:24, 6671:11, 6672:10, 6673:10, 6674:21, 6676:23, 6678:16, 6681:25, 6682:6, 6682:9, 6682:14, 6683:11, 6684:2, 6686:9, 6686:12, 6686:14, 6686:16, 6688:1, 6688:9, 6694:24, 6696:4, 6696:5, 6696:10, 6696:12, 6696:18, 6696:24, 6697:2, 6697:6, 6697:10, 6697:16, 6698:4, 6699:23, 6701:2, 6701:22, 6703:8, 6703:23, 6704:20, 6705:4, 6705:9, 6707:3, 6707:6, 6707:19, 6710:24, 6710:25, 6711:8, 6711:14, 6711:23, 6712:5, 6713:4, 6713:16, 6714:4, 6715:6, 6715:19, 6729:15, 6731:17</p> <p><b>part</b> [6] - 6595:5, 6636:25, 6649:1, 6663:4, 6707:21, 6713:6</p> <p><b>particular</b> [13] - 6627:25, 6629:20, 6630:14, 6653:22, 6657:13, 6673:11, 6675:9, 6711:13, 6725:5, 6725:12, 6726:20, 6728:13, 6729:7</p> <p><b>parties</b> [6] - 6590:5, 6716:23, 6718:9, 6720:8, 6720:24, 6736:15</p> <p><b>partisan</b> [1] - 6735:20</p> <p><b>party</b> [1] - 6651:11</p> <p><b>passage</b> [1] - 6735:5</p> <p><b>passed</b> [2] - 6615:1, 6615:12</p> <p><b>passion</b> [3] - 6689:8, 6689:12, 6690:4</p> <p><b>passionate</b> [1] -</p>	<p>6621:9</p> <p><b>passions</b> [1] - 6689:20</p> <p><b>passive</b> [1] - 6624:15</p> <p><b>pasted</b> [1] - 6610:16</p> <p><b>pathetic</b> [1] - 6600:22</p> <p><b>patience</b> [1] - 6718:1</p> <p><b>patriotic</b> [1] - 6670:24</p> <p><b>PATTIS</b> [68] - 6590:10, 6590:21, 6591:5, 6592:6, 6592:8, 6592:23, 6593:7, 6593:10, 6594:11, 6595:14, 6598:1, 6598:15, 6598:25, 6599:3, 6600:2, 6600:9, 6600:13, 6600:18, 6601:2, 6601:3, 6603:13, 6603:16, 6603:20, 6603:24, 6605:22, 6605:23, 6606:2, 6606:12, 6606:16, 6606:21, 6606:22, 6607:4, 6607:10, 6607:15, 6608:7, 6608:9, 6608:14, 6609:15, 6609:16, 6614:10, 6614:11, 6616:7, 6616:8, 6616:21, 6616:23, 6618:7, 6618:12, 6618:13, 6619:2, 6620:1, 6620:2, 6621:12, 6621:14, 6622:23, 6623:10, 6623:12, 6624:1, 6624:3, 6625:1, 6625:4, 6625:20, 6626:4, 6718:17, 6719:2, 6720:2, 6722:4, 6726:11, 6726:22</p> <p><b>Pattis</b> [16] - 6589:3, 6589:4, 6590:6, 6603:22, 6624:21, 6624:24, 6629:1, 6633:7, 6640:9, 6679:24, 6718:13, 6720:1, 6726:10, 6730:21, 6734:24, 6738:4</p> <p><b>pattis</b> [1] - 6626:10</p> <p><b>pause</b> [6] - 6593:2, 6607:9, 6617:5, 6657:20, 6717:11, 6718:7</p> <p><b>paying</b> [1] - 6735:14</p> <p><b>PC</b> [1] - 6589:1</p> <p><b>PDF</b> [1] - 6727:25</p> <p><b>peace</b> [1] - 6610:21</p>	<p><b>Peace</b> [1] - 6611:7</p> <p><b>peaceably</b> [1] - 6610:13</p> <p><b>peaceful</b> [1] - 6621:24</p> <p><b>peacefully</b> [3] - 6602:15, 6602:19, 6610:13</p> <p><b>Pence</b> [6] - 6620:3, 6656:20, 6663:10, 6663:18, 6664:15, 6673:12</p> <p><b>Pennsylvania</b> [8] - 6641:24, 6642:3, 6642:10, 6642:15, 6643:1, 6664:3, 6674:8, 6674:11</p> <p><b>People</b> [1] - 6617:1</p> <p><b>people</b> [38] - 6596:11, 6602:4, 6602:21, 6610:3, 6610:9, 6612:16, 6617:22, 6617:25, 6618:8, 6621:19, 6622:24, 6623:13, 6625:1, 6628:3, 6628:4, 6628:6, 6628:11, 6653:11, 6653:12, 6653:13, 6664:15, 6670:15, 6670:19, 6678:22, 6689:8, 6689:12, 6690:5, 6691:2, 6698:4, 6698:16, 6699:3, 6699:5, 6715:7, 6715:9, 6715:12, 6715:17, 6733:7, 6733:8</p> <p><b>percent</b> [1] - 6686:11</p> <p><b>performance</b> [1] - 6663:18</p> <p><b>perhaps</b> [5] - 6612:23, 6682:25, 6701:16, 6720:18, 6732:8</p> <p><b>period</b> [4] - 6595:20, 6630:18, 6641:20, 6670:20</p> <p><b>permissible</b> [1] - 6722:2</p> <p><b>permission</b> [10] - 6592:18, 6600:11, 6607:14, 6661:13, 6668:12, 6672:23, 6675:1, 6676:15, 6677:10, 6678:9</p> <p><b>persisted</b> [1] - 6612:16</p> <p><b>person</b> [9] - 6595:2, 6629:15, 6633:24, 6634:7, 6656:19, 6687:10, 6696:6,</p>
<b>P</b>			
<p><b>P.A</b> [2] - 6589:10, 6589:12</p> <p><b>P.C</b> [1] - 6589:15</p> <p><b>p.m</b> [6] - 6588:8, 6645:6, 6645:7, 6645:18, 6645:21, 6662:21</p> <p><b>PA</b> [2] - 6674:6, 6674:8</p> <p><b>page</b> [5] - 6616:21, 6656:25, 6681:25, 6688:7, 6733:3</p> <p><b>paper</b> [2] - 6629:16, 6732:10</p> <p><b>paragraphs</b> [1] - 6663:8</p> <p><b>paraphrasing</b> [1] - 6684:16</p> <p><b>Park</b> [1] - 6589:16</p> <p><b>Parler</b> [119] - 6591:4, 6591:8, 6591:22, 6595:18, 6596:8, 6597:14, 6599:10, 6599:18, 6602:24, 6610:17, 6614:3, 6620:9, 6620:15, 6620:17, 6627:12, 6627:15, 6627:16, 6629:5, 6629:20, 6629:23, 6629:24, 6630:1, 6630:2, 6631:15, 6631:18, 6631:19, 6634:5, 6636:22, 6637:4, 6638:9, 6638:17, 6639:1, 6640:3, 6640:5, 6640:8, 6640:22, 6640:24, 6641:11, 6643:9, 6644:18, 6645:17, 6645:18, 6646:8, 6646:12, 6648:9,</p>			

6696:23, 6719:15  
**person's** [2] - 6597:3, 6597:10  
**personal** [5] - 6644:12, 6644:16, 6658:25, 6711:1, 6712:6  
**persons** [5] - 6627:21, 6627:23, 6631:19, 6633:1, 6678:23  
**perspective** [1] - 6725:20  
**petition** [2] - 6610:9, 6610:10  
**Pezzola** [24] - 6588:8, 6589:15, 6618:15, 6618:16, 6618:17, 6628:9, 6628:19, 6633:2, 6635:17, 6699:13, 6699:25, 6700:5, 6700:9, 6700:18, 6701:7, 6702:7, 6702:16, 6702:21, 6702:24, 6703:7, 6704:16, 6704:23, 6704:25  
**Pezzola's** [2] - 6703:3, 6704:19  
**Philadelphia** [8] - 6634:20, 6635:9, 6641:24, 6642:22, 6643:1, 6643:13, 6669:14, 6671:25  
**philosophical** [1] - 6633:21  
**phone** [2] - 6735:23, 6735:25  
**photo** [10] - 6618:14, 6682:15, 6682:16, 6682:17, 6682:18, 6682:20, 6683:5, 6683:15  
**photograph** [3] - 6619:6, 6630:9, 6679:18  
**photos** [3] - 6682:24, 6683:12, 6683:14  
**pick** [2] - 6590:7, 6682:18  
**picked** [5] - 6630:25, 6631:9, 6636:24, 6682:20, 6683:5  
**picking** [2] - 6630:24, 6631:2  
**picture** [11] - 6629:4, 6629:7, 6629:21, 6629:23, 6629:24, 6630:8, 6630:25, 6631:2, 6631:9, 6647:2, 6647:7

**piece** [3] - 6629:16, 6724:9, 6732:10  
**pieces** [1] - 6601:11  
**place** [2] - 6644:14, 6669:7  
**placement** [1] - 6718:19  
**places** [1] - 6709:25  
**Plaintiff** [2] - 6588:4, 6588:14  
**plan** [1] - 6727:10  
**plane** [4] - 6689:7, 6692:25, 6693:2, 6693:3  
**plans** [1] - 6727:9  
**platform** [1] - 6654:16  
**play** [9] - 6617:15, 6640:25, 6669:19, 6674:6, 6709:7, 6715:21, 6716:22, 6717:4, 6717:7  
**played** [13] - 6636:6, 6641:2, 6641:6, 6644:21, 6644:22, 6646:1, 6652:19, 6652:20, 6653:23, 6671:24, 6709:1, 6709:9, 6711:15  
**Plaza** [1] - 6588:21  
**plenary** [2] - 6663:12, 6663:22  
**plenty** [1] - 6711:12  
**Plexiglass** [1] - 6595:25  
**PLLC** [1] - 6588:23  
**plodding** [1] - 6591:21  
**podcast** [4] - 6652:19, 6652:24, 6652:25, 6713:23  
**podcasts** [6] - 6652:20, 6652:23, 6653:2, 6653:8, 6653:22, 6654:14  
**Point** [1] - 6670:17  
**point** [10] - 6591:7, 6602:20, 6679:1, 6688:12, 6697:13, 6719:16, 6719:18, 6720:7, 6726:4  
**points** [3] - 6636:23, 6664:8, 6682:2  
**poised** [1] - 6718:12  
**police** [9] - 6614:19, 6616:10, 6616:25, 6710:5, 6710:9, 6710:10, 6710:14, 6710:18, 6710:21  
**political** [2] - 6601:9, 6621:20  
**politically** [1] - 6693:8

**politician** [1] - 6622:17  
**politicians** [2] - 6678:23  
**politics** [1] - 6617:24  
**poll** [1] - 6643:18  
**portion** [1] - 6703:15  
**Portland** [6] - 6652:11, 6669:8, 6709:25, 6710:6, 6710:12, 6711:1  
**pose** [1] - 6603:22  
**posing** [2] - 6626:1  
**position** [2] - 6724:19, 6730:1  
**possibilities** [2] - 6662:5, 6662:19  
**possibility** [2] - 6720:3, 6726:23  
**possible** [7] - 6599:14, 6624:8, 6624:20, 6625:13, 6625:14, 6625:15, 6732:18  
**post** [68] - 6609:7, 6612:6, 6620:10, 6633:10, 6638:4, 6640:22, 6640:24, 6640:25, 6641:9, 6647:18, 6647:22, 6648:11, 6653:5, 6654:25, 6656:5, 6656:8, 6665:15, 6665:17, 6666:3, 6666:14, 6666:23, 6666:24, 6672:10, 6673:10, 6673:11, 6674:2, 6674:21, 6676:18, 6676:23, 6678:14, 6678:16, 6679:11, 6683:3, 6685:21, 6687:7, 6689:4, 6690:4, 6690:16, 6691:1, 6692:5, 6692:22, 6693:15, 6694:24, 6698:12, 6699:1, 6699:13, 6699:22, 6699:23, 6700:9, 6700:13, 6701:2, 6701:6, 6701:13, 6701:22, 6701:24, 6702:6, 6702:8, 6702:9, 6702:13, 6703:3, 6703:7, 6703:18, 6704:19, 6712:5, 6714:16, 6715:12, 6715:19  
**posted** [27] - 6599:7, 6610:16, 6619:21, 6632:22, 6632:24,

6641:10, 6651:2, 6654:17, 6656:6, 6660:25, 6661:19, 6661:22, 6662:2, 6662:7, 6662:9, 6662:11, 6662:19, 6664:23, 6664:24, 6673:25, 6674:1, 6674:3, 6675:4, 6691:24  
**poster** [3] - 6619:8, 6661:20, 6661:24  
**posters** [1] - 6619:10  
**posting** [10] - 6614:15, 6641:16, 6641:17, 6643:11, 6647:7, 6665:9, 6673:21, 6673:22, 6703:16, 6703:23  
**postings** [4] - 6661:4, 6673:1, 6676:3, 6677:1  
**posts** [58] - 6591:4, 6591:22, 6596:8, 6597:15, 6614:12, 6627:12, 6631:19, 6631:21, 6632:6, 6636:7, 6636:22, 6637:4, 6637:6, 6637:17, 6638:10, 6638:17, 6638:18, 6639:1, 6639:3, 6639:22, 6640:3, 6640:5, 6640:9, 6640:12, 6644:18, 6645:17, 6648:10, 6649:19, 6659:23, 6659:24, 6660:6, 6662:15, 6677:24, 6678:12, 6678:13, 6683:11, 6686:9, 6693:10, 6693:12, 6697:18, 6699:25, 6702:18, 6702:19, 6705:4, 6707:3, 6707:6, 6711:14, 6711:23, 6712:10, 6713:5, 6713:16, 6714:4, 6715:1, 6715:6, 6715:9, 6729:15  
**potential** [5] - 6596:4, 6596:7, 6596:12, 6615:2, 6672:20  
**potentially** [7] - 6590:24, 6596:12, 6598:8, 6604:14, 6617:9, 6619:7, 6647:13  
**Power** [1] - 6625:23  
**power** [7] - 6612:8,

<p>6623:7, 6623:14, 6624:17, 6633:20, 6663:11, 6665:7 <b>powerful</b> [1] - 6633:24 <b>practical</b> [2] - 6727:8, 6727:11 <b>precede</b> [1] - 6636:9 <b>precedes</b> [1] - 6605:11 <b>predication</b> [1] - 6728:17 <b>prediction</b> [1] - 6620:4 <b>prefer</b> [1] - 6728:5 <b>preference</b> [2] - 6727:18, 6727:21 <b>preliminary</b> [1] - 6734:6 <b>preoccupation</b> [1] - 6648:2 <b>prepare</b> [2] - 6627:7, 6631:3 <b>prepared</b> [9] - 6594:7, 6594:12, 6624:5, 6719:15, 6722:25, 6723:16, 6724:3, 6726:12, 6729:6 <b>preparing</b> [2] - 6623:22, 6732:14 <b>presence</b> [1] - 6590:8 <b>present</b> [2] - 6705:25, 6728:21 <b>presentations</b> [1] - 6726:24 <b>presented</b> [2] - 6591:19, 6632:3 <b>preserve</b> [5] - 6717:18, 6724:19, 6725:5, 6727:12, 6734:10 <b>preserved</b> [1] - 6725:13 <b>presidency</b> [2] - 6642:6, 6664:11 <b>president</b> [9] - 6635:20, 6642:6, 6663:10, 6663:12, 6664:12, 6665:2, 6665:7, 6673:13, 6675:11 <b>President</b> [17] - 6616:11, 6620:3, 6638:3, 6656:20, 6657:7, 6663:10, 6664:20, 6684:4, 6684:5, 6684:6, 6684:13, 6684:15, 6684:24, 6714:5, 6714:8, 6714:11 <b>President's</b> [2] - 6692:6, 6731:21 <b>presidential</b> [1] -</p>	<p>6675:19 <b>presidents</b> [1] - 6673:18 <b>presiding</b> [1] - 6663:10 <b>press</b> [2] - 6642:17, 6649:21 <b>presumed</b> [1] - 6618:19 <b>pretty</b> [4] - 6611:25, 6634:8, 6638:2, 6723:23 <b>prevent</b> [2] - 6656:21, 6656:22 <b>previously</b> [1] - 6600:16 <b>private</b> [8] - 6692:25, 6693:2, 6693:3, 6700:5, 6704:25, 6705:6, 6705:9, 6705:12 <b>privilege</b> [2] - 6623:8, 6623:15 <b>problem</b> [2] - 6717:6, 6717:22 <b>proceed</b> [10] - 6649:16, 6659:17, 6672:23, 6716:13, 6721:3, 6722:15, 6722:22, 6725:19, 6727:9, 6727:13 <b>proceeded</b> [2] - 6716:19, 6717:13 <b>proceeding</b> [1] - 6728:5 <b>proceedings</b> [2] - 6726:14, 6737:6 <b>process</b> [7] - 6650:20, 6657:6, 6664:25, 6665:5, 6667:14, 6698:13, 6733:17 <b>produced</b> [2] - 6732:2, 6732:12 <b>productions</b> [1] - 6731:24 <b>productively</b> [3] - 6726:9, 6728:13, 6731:8 <b>proffering</b> [2] - 6724:24, 6724:25 <b>profile</b> [5] - 6629:4, 6629:7, 6682:16, 6682:17, 6683:15 <b>programming</b> [1] - 6687:2 <b>promote</b> [1] - 6657:3 <b>pronounce</b> [1] - 6663:11 <b>propose</b> [1] - 6657:3 <b>proposed</b> [2] -</p>	<p>6656:15, 6718:18 <b>proposes</b> [1] - 6716:22 <b>proposing</b> [1] - 6724:6 <b>proposition</b> [1] - 6606:9 <b>prosecution</b> [6] - 6630:6, 6631:12, 6647:10, 6647:11, 6688:18, 6707:15 <b>prosecutors</b> [1] - 6652:20 <b>protect</b> [3] - 6610:3, 6610:6, 6663:16 <b>protected</b> [11] - 6640:10, 6640:13, 6641:17, 6653:19, 6657:15, 6665:10, 6670:6, 6674:14, 6690:19, 6694:5, 6706:1 <b>protecting</b> [1] - 6614:19 <b>proud</b> [1] - 6685:24 <b>Proud</b> [28] - 6599:5, 6599:6, 6599:7, 6599:16, 6599:19, 6603:3, 6609:19, 6614:20, 6634:16, 6634:20, 6634:22, 6635:9, 6644:5, 6644:7, 6645:3, 6648:3, 6649:19, 6653:12, 6693:24, 6698:13, 6698:17, 6698:22, 6699:4, 6699:6, 6700:1, 6709:14, 6709:22, 6717:8 <b>prove</b> [2] - 6605:11, 6713:5 <b>proved</b> [1] - 6605:15 <b>proves</b> [1] - 6605:18 <b>provide</b> [3] - 6597:18, 6724:9, 6727:22 <b>provided</b> [2] - 6627:14, 6727:24 <b>providing</b> [1] - 6736:15 <b>public</b> [7] - 6678:24, 6699:22, 6700:1, 6703:18, 6705:4, 6736:5 <b>publication</b> [2] - 6615:5, 6655:10 <b>publish</b> [26] - 6607:14, 6653:3, 6661:14, 6668:12, 6672:17, 6672:24, 6675:1, 6676:15, 6677:9,</p>	<p>6677:11, 6678:9, 6681:19, 6685:14, 6690:11, 6690:24, 6692:3, 6693:21, 6694:11, 6695:17, 6698:2, 6698:10, 6699:10, 6703:11, 6705:16, 6706:10, 6708:23 <b>publishing</b> [1] - 6668:13 <b>pull</b> [8] - 6609:7, 6627:1, 6646:22, 6647:16, 6648:11, 6672:7, 6676:20, 6685:5 <b>pulled</b> [1] - 6733:20 <b>Pundit</b> [3] - 6614:17, 6615:6, 6616:10 <b>purpose</b> [4] - 6683:6, 6708:18, 6709:21, 6736:15 <b>pursue</b> [1] - 6638:16 <b>put</b> [25] - 6619:21, 6629:15, 6631:10, 6637:13, 6642:12, 6643:25, 6653:3, 6664:1, 6690:9, 6702:7, 6706:25, 6713:11, 6716:7, 6719:14, 6721:12, 6721:17, 6723:19, 6723:24, 6729:9, 6729:12, 6729:14, 6733:25, 6735:13, 6735:22, 6735:25 <b>puts</b> [1] - 6701:2 <b>puzzle</b> [3] - 6713:6, 6713:8, 6713:11</p>
<b>Q</b>			
<p><b>Qaeda</b> [3] - 6619:10, 6619:11, 6619:17 <b>quadrillion</b> [1] - 6612:8 <b>questioned</b> [1] - 6596:21 <b>questioning</b> [4] - 6636:20, 6676:12, 6676:13, 6721:8 <b>questions</b> [8] - 6590:13, 6598:2, 6598:16, 6636:5, 6644:4, 6659:21, 6720:19, 6721:11 <b>quick</b> [2] - 6657:22, 6685:15 <b>quickly</b> [6] - 6590:6, 6592:16, 6608:23,</p>			

6608:24, 6621:3, 6717:1 <b>quirk</b> [1] - 6734:23 <b>quite</b> [3] - 6641:19, 6723:4, 6735:10 <b>quotations</b> [2] - 6642:13, 6691:8 <b>quote</b> [2] - 6595:15, 6671:1 <b>quote/unquote</b> [1] - 6642:18 <b>quoting</b> [2] - 6594:22, 6691:9	6656:10, 6663:3, 6663:6, 6663:7, 6664:17, 6665:20, 6674:5, 6692:6, 6698:23, 6700:9, 6700:13, 6701:6, 6701:13, 6703:3, 6704:19, 6723:4, 6723:14, 6723:23, 6723:25, 6724:2 <b>reader</b> [1] - 6606:3 <b>reading</b> [1] - 6637:12 <b>ready</b> [1] - 6711:8 <b>real</b> [1] - 6685:14 <b>RealClearPolitics</b> [1] - 6673:8 <b>realdonaldtrump</b> [1] - 6612:7 <b>realize</b> [5] - 6602:4, 6602:21, 6621:19, 6623:3, 6727:1 <b>really</b> [7] - 6698:22, 6705:21, 6717:18, 6722:17, 6722:19, 6727:13, 6730:8 <b>reason</b> [5] - 6606:18, 6616:12, 6725:7, 6725:8, 6726:17 <b>reasonable</b> [3] - 6590:12, 6636:22, 6722:24 <b>reasons</b> [1] - 6723:11 <b>Rebel</b> [3] - 6653:23, 6653:24, 6654:14 <b>received</b> [8] - 6595:18, 6620:8, 6629:5, 6629:7, 6654:4, 6654:20, 6687:25, 6688:8 <b>recess</b> [1] - 6658:7 <b>recognize</b> [2] - 6661:2, 6733:21 <b>recollection</b> [2] - 6606:13, 6651:7 <b>record</b> [6] - 6590:2, 6658:14, 6659:13, 6661:16, 6735:25, 6736:5 <b>records</b> [1] - 6627:16 <b>recounted</b> [1] - 6663:25 <b>recruitment</b> [2] - 6709:14, 6709:15 <b>recruitment/hype</b> [1] - 6709:19 <b>rectangular</b> [1] - 6682:5 <b>Red</b> [1] - 6706:21 <b>redress</b> [1] - 6610:10 <b>refer</b> [9] - 6590:16,	6596:8, 6598:3, 6600:10, 6609:19, 6618:21, 6649:19, 6662:22, 6665:20 <b>reference</b> [4] - 6664:18, 6666:15, 6669:19, 6695:11 <b>references</b> [3] - 6647:25, 6665:13, 6675:25 <b>referencing</b> [2] - 6643:20, 6690:4 <b>referred</b> [8] - 6593:16, 6648:8, 6649:9, 6649:22, 6650:11, 6651:3, 6667:4, 6667:10 <b>referring</b> [6] - 6593:15, 6598:4, 6643:17, 6650:23, 6689:17, 6689:23 <b>refers</b> [8] - 6611:6, 6620:24, 6647:18, 6647:22, 6668:6, 6669:22, 6674:8, 6674:10 <b>reflect</b> [1] - 6735:13 <b>reflecting</b> [2] - 6601:21, 6623:23 <b>reflection</b> [2] - 6601:18, 6674:20 <b>reflects</b> [6] - 6614:12, 6617:21, 6617:22, 6622:13, 6673:21, 6673:22 <b>reframe</b> [1] - 6637:5 <b>refresh</b> [2] - 6606:13, 6708:5 <b>refreshing</b> [1] - 6651:7 <b>refuges</b> [1] - 6689:19 <b>refusal</b> [1] - 6624:16 <b>regarding</b> [1] - 6627:12 <b>Rehl</b> [34] - 6588:7, 6589:6, 6626:6, 6626:20, 6627:14, 6627:18, 6628:3, 6628:11, 6628:12, 6628:15, 6628:17, 6628:19, 6630:4, 6631:18, 6633:9, 6634:15, 6641:9, 6643:5, 6647:2, 6652:2, 6654:1, 6654:21, 6655:1, 6656:6, 6661:7, 6664:24, 6665:13, 6666:24, 6669:11, 6669:13, 6673:1, 6674:1, 6674:3,	6674:21 <b>rehl</b> [1] - 6641:10 <b>Rehl's</b> [7] - 6627:12, 6643:11, 6659:23, 6661:4, 6666:2, 6668:23, 6676:23 <b>reiterate</b> [1] - 6659:13 <b>rejected</b> [2] - 6665:2, 6723:10 <b>related</b> [1] - 6627:25 <b>relates</b> [1] - 6668:17 <b>relating</b> [3] - 6593:12, 6644:22, 6650:14 <b>relation</b> [1] - 6656:5 <b>relationship</b> [1] - 6592:3 <b>release</b> [3] - 6649:21, 6680:10, 6723:1 <b>relevance</b> [14] - 6591:13, 6595:12, 6598:23, 6603:18, 6622:21, 6644:9, 6649:11, 6651:18, 6655:14, 6672:20, 6676:11, 6679:21, 6685:2, 6697:12 <b>relevant</b> [4] - 6684:23, 6684:24, 6727:23, 6730:2 <b>relinquishing</b> [1] - 6724:10 <b>relish</b> [1] - 6634:12 <b>remain</b> [4] - 6624:22, 6658:3, 6722:2, 6722:9 <b>remedies</b> [1] - 6656:15 <b>remember</b> [6] - 6604:23, 6665:15, 6669:8, 6680:17, 6680:19, 6715:19 <b>remind</b> [1] - 6680:8 <b>reminded</b> [1] - 6719:5 <b>repeating</b> [2] - 6620:13, 6620:17 <b>rephrase</b> [1] - 6605:16 <b>rephrasing</b> [1] - 6599:13 <b>reply</b> [1] - 6699:17 <b>report</b> [1] - 6603:1 <b>reporter</b> [3] - 6589:21, 6657:23, 6730:14 <b>REPORTER</b> [1] - 6737:1 <b>Reporter</b> [1] - 6737:11 <b>reposted</b> [2] - 6692:15, 6692:16 <b>represent</b> [1] - 6626:20 <b>representation</b> [3] - 6672:9, 6674:21, 6676:22
<b>R</b>			
<b>radicalizing</b> [1] - 6602:4 <b>railroad</b> [1] - 6721:18 <b>raised</b> [6] - 6591:24, 6612:12, 6718:19, 6720:2, 6720:5, 6721:1 <b>raises</b> [1] - 6727:5 <b>rallies</b> [6] - 6592:4, 6636:2, 6644:4, 6644:7, 6646:7, 6668:24 <b>rally</b> [16] - 6637:17, 6644:13, 6644:14, 6644:22, 6645:3, 6645:5, 6645:10, 6645:13, 6645:18, 6661:21, 6669:7, 6669:11, 6669:14, 6715:9, 6715:12, 6715:17 <b>ranks</b> [1] - 6648:21 <b>rather</b> [6] - 6634:10, 6637:3, 6642:19, 6721:24, 6727:18, 6728:20 <b>re</b> [4] - 6702:9, 6702:10, 6702:12, 6710:7 <b>re-Tweet</b> [1] - 6702:12 <b>re-Tweeting</b> [2] - 6702:9, 6702:10 <b>re-watch</b> [1] - 6710:7 <b>read</b> [47] - 6595:3, 6606:5, 6606:7, 6611:7, 6616:24, 6619:16, 6621:17, 6621:18, 6623:10, 6626:9, 6629:1, 6631:18, 6632:2, 6632:5, 6632:11, 6633:5, 6633:7, 6633:24, 6634:2, 6634:5, 6634:6, 6643:4, 6649:18,			



<p><b>reprinted</b> [1] - 6614:14</p> <p><b>Republican</b> [1] - 6642:7</p> <p><b>request</b> [3] - 6671:14, 6720:17, 6720:23</p> <p><b>requested</b> [1] - 6640:6</p> <p><b>require</b> [3] - 6723:20, 6723:21, 6730:18</p> <p><b>reread</b> [1] - 6625:25</p> <p><b>research</b> [1] - 6684:2</p> <p><b>reserve</b> [2] - 6726:17, 6726:24</p> <p><b>resistance</b> [1] - 6624:16</p> <p><b>resolve</b> [4] - 6590:8, 6728:10, 6729:15, 6729:16</p> <p><b>resolving</b> [1] - 6730:10</p> <p><b>respect</b> [5] - 6591:21, 6621:20, 6638:16, 6680:22, 6721:6</p> <p><b>respond</b> [4] - 6725:22, 6730:24, 6731:3, 6732:19</p> <p><b>responded</b> [2] - 6700:4, 6704:16</p> <p><b>responds</b> [2] - 6695:24, 6702:24</p> <p><b>response</b> [9] - 6590:13, 6626:13, 6695:25, 6696:2, 6696:4, 6719:17, 6723:18, 6724:9, 6724:17</p> <p><b>responses</b> [4] - 6704:1, 6704:3, 6704:13, 6704:15</p> <p><b>result</b> [1] - 6618:3</p> <p><b>retread</b> [1] - 6723:7</p> <p><b>retrieve</b> [1] - 6658:17</p> <p><b>retrieved</b> [1] - 6614:24</p> <p><b>return</b> [3] - 6625:25, 6682:3, 6718:6</p> <p><b>returns</b> [4] - 6686:16, 6701:4, 6704:20, 6705:9</p> <p><b>review</b> [11] - 6590:22, 6596:2, 6633:11, 6645:17, 6645:18, 6646:12, 6647:8, 6705:12, 6710:16, 6710:24, 6715:20</p> <p><b>reviewed</b> [5] - 6590:22, 6645:9, 6671:21, 6707:3, 6711:23</p> <p><b>reviewing</b> [1] - 6634:4</p> <p><b>revisit</b> [1] - 6728:15</p> <p><b>Revolutionary</b> [1] -</p>	<p>6670:20</p> <p><b>Rhode</b> [4] - 6600:10, 6600:13, 6616:22, 6618:12</p> <p><b>Rhode's</b> [1] - 6591:9</p> <p><b>Richard</b> [1] - 6617:24</p> <p><b>right-wing</b> [1] - 6615:8</p> <p><b>rights</b> [2] - 6610:3, 6610:9</p> <p><b>riot</b> [1] - 6687:7</p> <p><b>Riots</b> [1] - 6652:7</p> <p><b>risen</b> [1] - 6606:10</p> <p><b>rises</b> [1] - 6606:17</p> <p><b>RMR</b> [1] - 6589:21</p> <p><b>Road</b> [1] - 6589:7</p> <p><b>roaming</b> [2] - 6705:19, 6705:21</p> <p><b>Roger</b> [2] - 6589:17, 6589:18</p> <p><b>rogerisaacroots@outlook.com</b> [1] - 6589:19</p> <p><b>rohde</b> [1] - 6601:2</p> <p><b>Rohde</b> [7] - 6606:21, 6607:6, 6608:8, 6620:1, 6640:20, 6641:5, 6643:23</p> <p><b>roll</b> [1] - 6663:19</p> <p><b>Room</b> [1] - 6737:12</p> <p><b>room</b> [1] - 6734:19</p> <p><b>Roots</b> [2] - 6589:17, 6589:18</p> <p><b>route</b> [1] - 6693:4</p> <p><b>Rudy</b> [4] - 6642:17, 6676:3, 6676:5, 6678:23</p> <p><b>Rufio</b> [1] - 6653:24</p> <p><b>rule</b> [5] - 6663:14, 6712:21, 6717:20, 6735:17, 6735:21</p> <p><b>Rule</b> [7] - 6655:23, 6716:6, 6716:13, 6717:13, 6717:15, 6730:18</p> <p><b>rules</b> [1] - 6716:16</p> <p><b>ruling</b> [3] - 6623:7, 6623:14, 6646:17</p> <p><b>Rumble</b> [3] - 6653:1, 6654:17, 6654:18</p> <p><b>run</b> [5] - 6615:15, 6616:1, 6616:3, 6642:15, 6724:12</p> <p><b>running</b> [2] - 6716:16, 6721:18</p> <p><b>runs</b> [1] - 6673:9</p>	<p><b>.com</b> [1] - 6589:14</p> <p><b>sake</b> [1] - 6728:4</p> <p><b>Saturday</b> [2] - 6728:9, 6730:19</p> <p><b>saving</b> [2] - 6626:9, 6626:12</p> <p><b>saw</b> [15] - 6600:21, 6647:2, 6701:5, 6701:6, 6701:13, 6702:6, 6702:13, 6703:7, 6704:19, 6709:11, 6710:4, 6710:8, 6711:12, 6711:16, 6713:16</p> <p><b>scam</b> [1] - 6601:9</p> <p><b>scared</b> [2] - 6625:2, 6709:18</p> <p><b>scenario</b> [1] - 6722:20</p> <p><b>scenes</b> [1] - 6710:5</p> <p><b>schedule</b> [1] - 6720:10</p> <p><b>scheduling</b> [1] - 6719:5</p> <p><b>school</b> [3] - 6670:9, 6670:12, 6670:14</p> <p><b>science</b> [1] - 6687:1</p> <p><b>scope</b> [15] - 6598:24, 6635:3, 6637:4, 6644:9, 6644:17, 6646:18, 6649:11, 6651:18, 6652:13, 6652:16, 6679:20, 6679:22, 6679:25, 6687:12, 6711:2</p> <p><b>scores</b> [1] - 6612:12</p> <p><b>SCOTUS</b> [3] - 6613:13, 6613:25, 6614:6</p> <p><b>screen</b> [2] - 6673:5, 6702:25</p> <p><b>screenshot</b> [4] - 6678:15, 6695:22, 6695:24, 6696:17</p> <p><b>scroll</b> [5] - 6600:17, 6616:22, 6673:5, 6697:22, 6697:24</p> <p><b>scum</b> [4] - 6615:15, 6616:1, 6616:4, 6616:5</p> <p><b>seal</b> [2] - 6735:25, 6736:4</p> <p><b>sealed</b> [1] - 6664:6</p> <p><b>search</b> [4] - 6686:13, 6697:18, 6702:1, 6702:4</p> <p><b>Seasons</b> [2] - 6642:18, 6642:20</p> <p><b>seat</b> [4] - 6624:23, 6733:25, 6734:17, 6735:25</p> <p><b>seated</b> [6] - 6593:4, 6658:2, 6658:8,</p>	<p>6659:9, 6681:4, 6718:5</p> <p><b>second</b> [7] - 6591:20, 6626:16, 6653:25, 6688:21, 6690:9, 6699:8, 6709:18</p> <p><b>Second</b> [2] - 6606:24, 6607:17</p> <p><b>section</b> [3] - 6627:15, 6643:5, 6657:11</p> <p><b>Section</b> [2] - 6657:11, 6663:21</p> <p><b>see</b> [47] - 6592:20, 6599:20, 6600:13, 6600:14, 6608:7, 6608:12, 6608:23, 6609:1, 6614:2, 6619:8, 6622:15, 6623:25, 6643:8, 6646:2, 6654:18, 6657:24, 6675:15, 6680:15, 6681:21, 6684:2, 6685:19, 6688:1, 6689:2, 6691:24, 6693:1, 6696:2, 6696:4, 6696:23, 6697:2, 6700:17, 6701:24, 6710:8, 6710:18, 6711:5, 6714:4, 6716:25, 6718:2, 6720:8, 6722:8, 6726:8, 6729:12, 6729:17, 6730:9, 6734:25, 6735:5, 6735:23</p> <p><b>seeking</b> [1] - 6723:5</p> <p><b>seem</b> [7] - 6600:24, 6601:8, 6634:13, 6641:19, 6693:10, 6693:12, 6698:4</p> <p><b>seized</b> [2] - 6639:25, 6640:2</p> <p><b>selected</b> [5] - 6598:8, 6615:1, 6627:24, 6629:20</p> <p><b>self</b> [1] - 6633:23</p> <p><b>self-help</b> [1] - 6633:23</p> <p><b>Senate</b> [3] - 6663:10, 6663:13, 6664:12</p> <p><b>senator</b> [2] - 6679:5, 6679:9</p> <p><b>Senator</b> [2] - 6679:18, 6679:23</p> <p><b>send</b> [1] - 6705:9</p> <p><b>sending</b> [1] - 6732:17</p> <p><b>sends</b> [1] - 6699:22</p> <p><b>sense</b> [4] - 6721:24, 6724:23, 6727:14, 6733:19</p> <p><b>senses</b> [1] - 6617:3</p>
<b>S</b>			
<p><b>Sabino</b> [1] - 6589:12</p> <p><b>sabino@jaureguilaw</b></p>			

<p><b>sent</b> [4] - 6638:3, 6664:4, 6686:14, 6730:19</p> <p><b>sentence</b> [2] - 6625:16, 6720:20</p> <p><b>sentences</b> [1] - 6718:25</p> <p><b>separate</b> [2] - 6731:12, 6731:13</p> <p><b>September</b> [3] - 6669:7, 6730:16, 6733:9</p> <p><b>sequence</b> [1] - 6677:24</p> <p><b>series</b> [3] - 6591:10, 6729:22, 6730:3</p> <p><b>seriously</b> [1] - 6604:1</p> <p><b>serve</b> [1] - 6610:6</p> <p><b>service</b> [1] - 6626:18</p> <p><b>SESSION</b> [1] - 6590:1</p> <p><b>session</b> [3] - 6663:9, 6703:20, 6703:21</p> <p><b>set</b> [1] - 6659:23</p> <p><b>setting</b> [1] - 6730:7</p> <p><b>several</b> [2] - 6614:12, 6652:20</p> <p><b>sexes</b> [1] - 6611:10</p> <p><b>shameful</b> [1] - 6601:10</p> <p><b>shape</b> [2] - 6690:16, 6710:3</p> <p><b>shit</b> [2] - 6601:11, 6602:16</p> <p><b>shitty</b> [1] - 6601:11</p> <p><b>shoes</b> [1] - 6731:15</p> <p><b>shot</b> [1] - 6617:25</p> <p><b>show</b> [20] - 6608:17, 6627:5, 6631:24, 6631:25, 6632:1, 6653:13, 6660:18, 6671:22, 6674:18, 6675:6, 6679:12, 6679:14, 6685:12, 6688:23, 6690:8, 6690:23, 6692:22, 6706:9, 6730:1</p> <p><b>showed</b> [3] - 6646:1, 6711:8, 6714:19</p> <p><b>showing</b> [7] - 6591:9, 6673:17, 6675:10, 6679:17, 6687:18, 6688:25, 6709:12</p> <p><b>shown</b> [3] - 6619:9, 6644:2, 6681:22</p> <p><b>shows</b> [3] - 6653:8, 6673:11, 6709:24</p> <p><b>shy</b> [1] - 6728:2</p> <p><b>sic</b> [3] - 6625:23, 6664:19, 6670:10</p> <p><b>side</b> [3] - 6636:17,</p>	<p>6716:9, 6721:20</p> <p><b>sidebar</b> [1] - 6721:23</p> <p><b>sidebars</b> [1] - 6728:20</p> <p><b>sides</b> [3] - 6720:18, 6729:5, 6731:7</p> <p><b>sign</b> [2] - 6609:18, 6630:18</p> <p><b>signal</b> [1] - 6722:3</p> <p><b>signed</b> [1] - 6654:9</p> <p><b>significant</b> [1] - 6670:19</p> <p><b>Silent</b> [1] - 6705:18</p> <p><b>silent</b> [3] - 6705:21, 6722:3, 6722:9</p> <p><b>similar</b> [1] - 6682:10</p> <p><b>simple</b> [2] - 6599:15, 6655:16</p> <p><b>simpler</b> [1] - 6701:1</p> <p><b>simplify</b> [1] - 6726:13</p> <p><b>simply</b> [2] - 6591:7, 6697:6</p> <p><b>single</b> [3] - 6612:14, 6714:16, 6728:5</p> <p><b>sinister</b> [1] - 6611:25</p> <p><b>sit</b> [1] - 6632:4</p> <p><b>situation</b> [1] - 6664:6</p> <p><b>Sixth</b> [1] - 6589:16</p> <p><b>slates</b> [1] - 6664:4</p> <p><b>sleep</b> [1] - 6731:3</p> <p><b>slide</b> [3] - 6627:7, 6631:10, 6714:20</p> <p><b>slitting</b> [2] - 6594:18, 6600:4</p> <p><b>slog</b> [1] - 6727:14</p> <p><b>slot</b> [1] - 6726:9</p> <p><b>slowing</b> [1] - 6698:12</p> <p><b>small</b> [2] - 6728:9, 6729:23</p> <p><b>Smith</b> [9] - 6588:23, 6588:23, 6589:4, 6590:14, 6590:15, 6591:1, 6596:21, 6720:15, 6724:12</p> <p><b>SMITH</b> [7] - 6701:18, 6720:16, 6723:17, 6724:4, 6724:14, 6725:14, 6725:16</p> <p><b>so-called</b> [1] - 6591:1</p> <p><b>social</b> [1] - 6619:16</p> <p><b>someone</b> [5] - 6622:15, 6627:9, 6627:24, 6630:6, 6631:12</p> <p><b>sometime</b> [2] - 6602:11, 6639:15</p> <p><b>sometimes</b> [9] - 6602:22, 6603:3, 6605:3, 6605:4, 6611:13, 6611:14, 6611:15, 6611:17,</p>	<p>6724:14</p> <p><b>Sometimes</b> [1] - 6605:3</p> <p><b>somewhat</b> [3] - 6635:25, 6671:5, 6730:3</p> <p><b>somewhere</b> [1] - 6708:22</p> <p><b>song</b> [3] - 6709:2, 6709:4, 6709:9</p> <p><b>soon</b> [1] - 6720:12</p> <p><b>sorry</b> [25] - 6595:23, 6602:11, 6605:16, 6622:10, 6626:13, 6627:1, 6627:2, 6629:2, 6629:25, 6632:7, 6643:22, 6643:23, 6645:20, 6646:24, 6647:19, 6654:14, 6660:19, 6662:9, 6665:24, 6670:13, 6671:16, 6685:17, 6695:10, 6702:22, 6725:21</p> <p><b>sort</b> [21] - 6627:11, 6633:14, 6633:23, 6636:23, 6637:3, 6637:7, 6638:12, 6641:25, 6643:7, 6643:19, 6648:8, 6653:8, 6657:12, 6661:20, 6673:9, 6675:14, 6720:23, 6723:3, 6723:5, 6723:10, 6725:6</p> <p><b>sorts</b> [2] - 6653:11, 6657:12</p> <p><b>sound</b> [2] - 6717:5, 6717:6</p> <p><b>soup</b> [1] - 6695:13</p> <p><b>South</b> [1] - 6595:7</p> <p><b>Spanish</b> [3] - 6691:13, 6691:15, 6691:18</p> <p><b>Sparta</b> [1] - 6623:24</p> <p><b>Spazzolini</b> [1] - 6699:25</p> <p><b>speaking</b> [1] - 6695:23</p> <p><b>Special</b> [2] - 6592:2, 6681:3</p> <p><b>special</b> [4] - 6610:2, 6648:19, 6648:22, 6650:6</p> <p><b>specific</b> [2] - 6683:5, 6722:12</p> <p><b>specifically</b> [3] - 6689:17, 6702:21, 6735:17</p> <p><b>specifics</b> [1] - 6671:10</p> <p><b>speculation</b> [5] - 6631:5, 6686:6,</p>	<p>6689:14, 6689:21, 6714:12</p> <p><b>speech</b> [13] - 6600:3, 6608:3, 6608:5, 6618:8, 6621:6, 6622:9, 6622:11, 6623:2, 6623:20, 6640:11, 6640:13, 6657:15, 6674:7</p> <p><b>spend</b> [2] - 6728:19, 6728:20</p> <p><b>spent</b> [2] - 6595:20, 6728:13</p> <p><b>spies</b> [2] - 6626:1</p> <p><b>spit</b> [1] - 6594:18</p> <p><b>spite</b> [1] - 6621:24</p> <p><b>splitting</b> [1] - 6688:4</p> <p><b>spray</b> [1] - 6711:10</p> <p><b>spring</b> [1] - 6650:10</p> <p><b>squads</b> [5] - 6665:15, 6666:24, 6667:10, 6667:23, 6668:2</p> <p><b>stand</b> [4] - 6593:1, 6680:19, 6722:2, 6722:23</p> <p><b>standard</b> [1] - 6663:18</p> <p><b>standing</b> [1] - 6722:14</p> <p><b>stands</b> [2] - 6606:9, 6703:21</p> <p><b>start</b> [3] - 6608:13, 6691:5, 6711:24</p> <p><b>started</b> [2] - 6637:8, 6645:18</p> <p><b>starting</b> [7] - 6637:2, 6639:15, 6640:5, 6645:6, 6726:2, 6726:4, 6734:19</p> <p><b>starts</b> [1] - 6695:23</p> <p><b>state</b> [16] - 6597:7, 6597:10, 6606:23, 6607:16, 6616:10, 6617:13, 6639:13, 6639:23, 6640:15, 6642:10, 6642:15, 6663:22, 6690:14, 6722:19, 6730:2, 6730:4</p> <p><b>statement</b> [12] - 6590:14, 6593:25, 6596:15, 6597:3, 6618:3, 6622:12, 6637:6, 6651:2, 6651:11, 6670:6, 6691:11, 6691:12</p> <p><b>Statement</b> [1] - 6652:7</p> <p><b>statements</b> [12] - 6590:22, 6590:23, 6591:2, 6591:3, 6593:17, 6596:8, 6596:13, 6599:7,</p>
---	--	---	---

6640:10, 6696:22,  
6697:24, 6729:24  
**states** [6] - 6600:21,  
6612:8, 6642:3,  
6664:2, 6664:7, 6665:1  
**STATES** [2] - 6588:1,  
6588:12  
**States** [15] - 6588:3,  
6590:3, 6610:7,  
6613:7, 6614:1,  
6634:21, 6649:4,  
6650:7, 6650:20,  
6656:20, 6658:15,  
6663:16, 6664:20,  
6667:15, 6684:25  
**steal** [2] - 6602:16,  
6612:17  
**stealing** [2] - 6601:4,  
6602:5  
**steeped** [2] - 6621:19,  
6623:3  
**stenographic** [1] -  
6737:5  
**step** [2] - 6658:3,  
6718:4  
**steps** [1] - 6590:23  
**Steven** [1] - 6589:15  
**Stewart** [1] - 6733:7  
**sticks** [1] - 6711:10  
**still** [6] - 6618:20,  
6644:17, 6673:17,  
6675:9, 6675:10,  
6687:7  
**stipulation** [1] -  
6660:16  
**stolen** [5] - 6643:2,  
6656:13, 6677:2,  
6677:25  
**stop** [5] - 6600:21,  
6603:10, 6608:25,  
6717:11, 6719:8  
**Stop** [1] - 6612:16  
**storm** [1] - 6602:11  
**stream** [1] - 6653:4  
**streamline** [1] -  
6726:14  
**Street** [5] - 6588:15,  
6589:2, 6589:4,  
6589:10, 6589:13  
**streets** [4] - 6645:1,  
6693:25, 6705:19,  
6705:22  
**strike** [2] - 6691:4,  
6714:24  
**strikes** [1] - 6728:23  
**stronger** [1] - 6616:16  
**struck** [2] - 6625:16,  
6719:23  
**stuff** [5] - 6593:20,  
6710:22, 6726:8,

6730:24, 6732:9  
**stupid** [1] - 6622:3  
**stylistic** [1] - 6719:2  
**subject** [1] - 6732:25  
**submission** [3] -  
6723:17, 6724:7,  
6724:16  
**submissions** [1] -  
6730:18  
**submit** [1] - 6724:20  
**submitted** [1] - 6728:9  
**substantial** [3] -  
6728:3, 6732:8,  
6732:13  
**substantially** [1] -  
6707:16  
**suburban** [1] -  
6598:22  
**sufficient** [1] -  
6728:16  
**suggests** [1] - 6657:6  
**Suite** [3] - 6588:18,  
6588:24, 6589:10  
**summary** [3] -  
6627:11, 6732:1,  
6732:2  
**summer** [3] - 6650:10,  
6652:10  
**sun** [2] - 6606:10,  
6606:17  
**Sunday** [2] - 6651:24,  
6675:6  
**superior** [1] - 6718:19  
**Supper** [1] - 6621:2  
**supply** [1] - 6666:16  
**supporters** [1] -  
6643:5  
**supportive** [1] -  
6734:19  
**suppose** [2] -  
6603:25, 6619:24  
**supposed** [2] -  
6627:11, 6665:1  
**supposedly** [2] -  
6671:24, 6688:12  
**Supreme** [2] - 6612:6,  
6614:1  
**supreme** [1] - 6613:11  
**surprise** [2] - 6590:11,  
6735:12  
**suspect** [1] - 6591:20  
**sustain** [1] - 6651:22  
**sustained** [46] -  
6595:13, 6597:25,  
6600:1, 6603:15,  
6618:6, 6618:24,  
6619:1, 6622:22,  
6625:19, 6626:3,  
6631:6, 6635:6,  
6636:13, 6644:10,

6646:16, 6649:12,  
6652:14, 6679:22,  
6679:25, 6683:8,  
6683:17, 6684:9,  
6685:3, 6686:7,  
6687:13, 6687:21,  
6701:15, 6704:9,  
6706:24, 6708:2,  
6708:10, 6708:16,  
6708:20, 6711:3,  
6711:21, 6712:1,  
6712:8, 6714:13,  
6721:9  
**swing** [2] - 6642:3,  
6690:13  
**switchblade** [2] -  
6608:21, 6609:8  
**sworn** [1] - 6610:6  
**symbology** [1] -  
6609:20  
**system** [1] - 6672:15

## T

**table** [1] - 6681:4  
**tale** [1] - 6654:20  
**talks** [2] - 6633:19,  
6665:14  
**tall** [1] - 6625:1  
**tarred** [1] - 6622:18  
**Tarrio** [18] - 6588:7,  
6589:9, 6594:20,  
6628:6, 6628:13,  
6631:20, 6632:21,  
6632:23, 6634:1,  
6635:19, 6680:6,  
6680:20, 6690:2,  
6702:18, 6702:24,  
6706:15, 6714:11,  
6714:15  
**Tarrio's** [3] - 6632:6,  
6647:7, 6700:18  
**task** [1] - 6663:15  
**taught** [3] - 6596:18,  
6601:24, 6610:1  
**team** [8] - 6602:13,  
6627:9, 6630:6,  
6631:12, 6688:18,  
6707:15, 6707:21,  
6735:3  
**teed** [2] - 6719:13,  
6723:5  
**teeing** [1] - 6726:7  
**Telegram** [12] -  
6719:13, 6719:18,  
6722:25, 6723:6,  
6724:10, 6725:22,  
6726:7, 6731:16,  
6732:22, 6732:24,  
6733:3

**tempted** [1] - 6594:17  
**ten** [3] - 6657:22,  
6657:24, 6658:6  
**term** [6] - 6590:15,  
6592:10, 6598:12,  
6599:4, 6601:14,  
6602:25  
**terms** [2] - 6649:18,  
6727:8  
**terrorism** [1] - 6650:14  
**Terrorist** [1] - 6694:14  
**terrorist** [9] - 6648:8,  
6649:10, 6649:20,  
6649:22, 6650:5,  
6650:11, 6650:15,  
6650:19, 6650:21  
**terrorists** [4] -  
6619:17, 6648:14,  
6648:16, 6651:3  
**Terrorists** [1] - 6652:7  
**testified** [9] - 6595:17,  
6602:23, 6610:15,  
6620:8, 6644:1,  
6644:13, 6705:3,  
6713:19  
**testify** [3] - 6624:7,  
6625:6, 6713:21  
**testifying** [1] - 6705:6  
**testimony** [11] -  
6593:12, 6593:19,  
6594:8, 6594:15,  
6598:3, 6623:22,  
6636:24, 6638:10,  
6644:18, 6651:22,  
6685:8  
**Texas** [2] - 6612:5,  
6612:6  
**text** [2] - 6616:21,  
6733:3  
**THE** [188] - 6588:1,  
6588:1, 6588:11,  
6590:2, 6590:5,  
6590:20, 6591:3,  
6591:11, 6592:7,  
6592:20, 6592:24,  
6593:4, 6594:10,  
6595:13, 6597:25,  
6599:2, 6600:1,  
6600:12, 6603:15,  
6603:22, 6605:25,  
6606:14, 6607:2,  
6607:8, 6607:11,  
6607:13, 6618:6,  
6618:24, 6619:1,  
6622:22, 6624:2,  
6624:22, 6625:19,  
6626:3, 6626:5,  
6627:3, 6631:6,  
6635:6, 6636:13,  
6636:17, 6636:21,



6637:10, 6637:21,  
6638:6, 6639:19,  
6641:4, 6644:10,  
6644:17, 6645:16,  
6646:16, 6646:19,  
6646:23, 6649:12,  
6649:14, 6649:24,  
6651:13, 6651:17,  
6651:19, 6651:21,  
6652:1, 6652:3,  
6652:4, 6652:8,  
6652:14, 6652:17,  
6655:17, 6655:20,  
6655:25, 6656:3,  
6657:19, 6657:22,  
6658:1, 6658:5,  
6658:6, 6658:8,  
6658:10, 6658:11,  
6658:12, 6658:14,  
6658:17, 6658:20,  
6659:2, 6659:4,  
6659:5, 6659:6,  
6659:7, 6659:9,  
6660:13, 6661:13,  
6661:17, 6668:8,  
6668:11, 6671:13,  
6671:17, 6672:3,  
6672:16, 6672:18,  
6672:22, 6673:20,  
6674:25, 6676:14,  
6677:10, 6677:16,  
6677:20, 6677:21,  
6678:5, 6678:8,  
6679:2, 6679:7,  
6679:16, 6679:22,  
6679:25, 6680:4,  
6680:5, 6680:10,  
6683:8, 6683:17,  
6684:9, 6685:3,  
6685:16, 6686:7,  
6687:13, 6687:21,  
6689:16, 6689:22,  
6697:13, 6701:15,  
6704:9, 6706:24,  
6708:2, 6708:10,  
6708:16, 6708:20,  
6710:16, 6711:3,  
6711:21, 6712:1,  
6712:8, 6712:12,  
6712:15, 6712:17,  
6712:19, 6712:24,  
6714:13, 6715:25,  
6716:2, 6716:5,  
6716:8, 6716:11,  
6716:18, 6716:24,  
6717:2, 6717:10,  
6717:23, 6717:25,  
6718:4, 6718:8,  
6718:24, 6719:4,  
6720:5, 6721:2,  
6721:16, 6722:6,

6722:8, 6722:11,  
6723:19, 6724:12,  
6724:22, 6725:15,  
6725:17, 6725:24,  
6726:1, 6726:19,  
6727:7, 6727:20,  
6728:22, 6730:8,  
6730:13, 6731:4,  
6731:6, 6732:20,  
6733:18, 6735:7,  
6735:19, 6735:21,  
6736:2, 6736:6,  
6736:16  
**theater** [1] - 6619:9  
**theaters** [1] - 6619:23  
**themselves** [3] -  
6653:4, 6653:5,  
6653:16  
**then-Attorney** [2] -  
6650:11, 6667:4  
**then-President** [1] -  
6657:7  
**theories** [11] - 6723:6,  
6724:25, 6725:1,  
6725:11, 6726:15,  
6726:18, 6728:10,  
6729:7, 6729:19,  
6730:25  
**theory** [10] - 6598:4,  
6664:24, 6723:9,  
6725:6, 6725:7,  
6726:20, 6728:15,  
6729:9, 6730:22  
**thereafter** [3] -  
6593:25, 6594:2,  
6615:5  
**therefore** [1] - 6630:4  
**Thermopylae** [2] -  
6623:24, 6624:9  
**thesis** [1] - 6665:4  
**they've** [5] - 6590:14,  
6597:3, 6625:13,  
6717:19, 6723:12  
**thin** [1] - 6617:1  
**thingies** [1] - 6663:5  
**Thinker** [5] - 6655:4,  
6655:9, 6655:10,  
6662:23, 6663:1  
**thinking** [1] - 6721:25  
**thinks** [1] - 6648:23  
**Thomas** [6] - 6664:9,  
6664:18, 6664:19,  
6669:24, 6671:1  
**thorough** [1] - 6596:2  
**thousands** [15] -  
6686:18, 6686:19,  
6686:20, 6701:5,  
6703:24, 6704:1,  
6704:5, 6704:12,  
6705:12, 6707:5,

6707:6, 6707:9,  
6707:10, 6707:11,  
6714:3  
**three** [4] - 6591:23,  
6628:2, 6628:6, 6663:7  
**threw** [1] - 6702:7  
**throats** [2] - 6594:19,  
6600:5  
**throughout** [1] -  
6686:4  
**thrust** [2] - 6638:12,  
6638:14  
**Thursday** [4] - 6720:3,  
6720:13, 6720:14,  
6728:21  
**timing** [1] - 6680:8  
**TIMOTHY** [1] -  
6588:11  
**to..** [1] - 6627:5  
**today** [17] - 6594:8,  
6594:13, 6596:21,  
6598:2, 6599:5,  
6618:18, 6620:14,  
6626:23, 6631:16,  
6631:23, 6680:9,  
6680:11, 6682:16,  
6683:11, 6705:3,  
6717:11, 6718:2  
**together** [4] - 6629:16,  
6631:10, 6713:11,  
6717:16  
**tomorrow** [18] -  
6643:6, 6718:2,  
6719:8, 6722:25,  
6724:21, 6725:23,  
6726:3, 6727:6,  
6727:15, 6727:17,  
6728:12, 6728:20,  
6731:3, 6731:8,  
6731:12, 6731:13,  
6734:6, 6736:18  
**tonight** [2] - 6693:25,  
6717:21  
**took** [5] - 6590:23,  
6620:12, 6644:14,  
6670:16, 6682:2  
**tools** [4] - 6730:5,  
6731:1, 6733:8  
**top** [4] - 6634:19,  
6643:4, 6699:19,  
6703:15  
**topic** [6] - 6590:19,  
6590:20, 6591:20,  
6608:5, 6654:8,  
6719:20  
**total** [1] - 6707:7  
**touch** [1] - 6600:17  
**Townsend** [1] -  
6588:24  
**track** [2] - 6619:17,

6702:3  
**trained** [1] - 6596:17  
**training** [2] - 6596:25,  
6650:13  
**traitors** [2] - 6667:2,  
6667:3  
**TRANSCRIPT** [1] -  
6588:10  
**transcript** [2] - 6737:4,  
6737:5  
**transitional** [1] -  
6590:19  
**TravisBroadway** [1] -  
6733:5  
**treason** [1] - 6617:13  
**treat** [2] - 6617:1,  
6680:22  
**Treatise** [1] - 6606:5  
**trial** [7] - 6599:5,  
6599:16, 6713:10,  
6724:11, 6729:15,  
6731:10, 6733:19  
**TRIAL** [2] - 6588:5,  
6588:10  
**tricky** [2] - 6722:11,  
6733:22  
**tried** [4] - 6590:10,  
6617:13, 6728:8,  
6735:17  
**troubling** [1] - 6630:21  
**true** [11] - 6601:22,  
6664:21, 6670:15,  
6681:13, 6696:3,  
6697:19, 6697:23,  
6700:17, 6734:13,  
6737:4, 6737:5  
**Trump** [21] - 6600:20,  
6602:13, 6609:18,  
6612:12, 6616:12,  
6617:1, 6620:3,  
6643:5, 6657:7,  
6665:23, 6673:12,  
6683:22, 6684:3,  
6684:4, 6684:5,  
6684:7, 6684:13,  
6684:15, 6714:5,  
6714:8, 6714:11  
**Trump-Pence** [1] -  
6673:12  
**truth** [2] - 6712:10,  
6712:13  
**try** [9] - 6701:1,  
6701:19, 6709:21,  
6709:22, 6720:10,  
6723:25, 6732:5,  
6733:23, 6736:19  
**trying** [21] - 6590:18,  
6595:25, 6597:14,  
6601:5, 6624:4,  
6639:9, 6644:11,

<p>6644:15, 6649:23, 6666:14, 6677:17, 6680:8, 6698:16, 6716:25, 6719:23, 6725:24, 6726:1, 6726:8, 6732:5, 6733:22, 6735:12 <b>turn</b> [1] - 6593:20 <b>turned</b> [3] - 6590:14, 6621:2, 6642:18 <b>turns</b> [2] - 6620:5, 6729:8 <b>TV</b> [1] - 6653:13 <b>Tweet</b> [4] - 6684:13, 6684:15, 6684:19, 6702:12 <b>Tweeting</b> [2] - 6702:9, 6702:10 <b>Tweets</b> [1] - 6714:5 <b>Twelfth</b> [1] - 6663:24 <b>twice</b> [1] - 6722:13 <b>twitch</b> [1] - 6734:23 <b>Twitter</b> [15] - 6684:19, 6684:22, 6695:22, 6695:24, 6695:25, 6696:2, 6696:4, 6696:8, 6696:12, 6696:14, 6696:15, 6696:17, 6696:24, 6697:5, 6697:8 <b>two</b> [19] - 6592:6, 6609:17, 6656:25, 6663:18, 6664:6, 6673:18, 6674:7, 6676:18, 6706:18, 6718:25, 6726:9, 6727:1, 6728:18, 6728:19, 6728:20, 6729:13, 6731:23, 6731:25 <b>Two</b> [1] - 6670:10 <b>two-hour</b> [1] - 6726:9 <b>two-page</b> [1] - 6656:25 <b>type</b> [5] - 6633:18, 6677:2, 6677:25, 6678:19, 6733:9 <b>typically</b> [3] - 6617:22, 6617:24, 6652:25 <b>TyWeb</b> [1] - 6733:3</p>	<p><b>un-American</b> [1] - 6601:10 <b>unappealable</b> [1] - 6663:12 <b>unconstitutional</b> [1] - 6617:3 <b>under</b> [6] - 6639:10, 6657:17, 6672:14, 6716:6, 6717:15, 6735:25 <b>underneath</b> [2] - 6643:10, 6691:24 <b>understood</b> [6] - 6593:19, 6597:17, 6648:9, 6688:1, 6704:10, 6733:18 <b>unexplained</b> [1] - 6592:10 <b>UNITED</b> [2] - 6588:1, 6588:12 <b>United</b> [15] - 6588:3, 6590:3, 6610:7, 6613:7, 6614:1, 6634:21, 6649:4, 6650:7, 6650:20, 6656:20, 6658:15, 6663:16, 6664:20, 6667:15, 6684:25 <b>unlawful</b> [2] - 6621:8, 6621:16 <b>unless</b> [6] - 6592:13, 6701:7, 6702:7, 6720:7, 6731:14, 6734:12 <b>unlike</b> [1] - 6731:16 <b>unseal</b> [1] - 6736:14 <b>unusual</b> [1] - 6719:7 <b>up</b> [41] - 6590:7, 6592:8, 6592:20, 6600:17, 6611:19, 6612:19, 6616:22, 6624:5, 6624:12, 6624:21, 6624:25, 6626:21, 6627:1, 6632:15, 6634:25, 6636:24, 6639:5, 6639:6, 6643:25, 6646:22, 6647:16, 6648:11, 6650:18, 6659:15, 6659:23, 6668:16, 6676:20, 6690:9, 6697:10, 6697:14, 6701:2, 6705:15, 6719:4, 6719:13, 6723:5, 6723:14, 6726:7, 6729:11, 6732:15, 6732:16, 6734:16 <b>uphold</b> [1] - 6663:19 <b>upload</b> [9] - 6632:17,</p>	<p>6632:20, 6632:22, 6647:4, 6647:6, 6647:7, 6701:8, 6702:8, 6702:14 <b>uploaded</b> [9] - 6631:21, 6632:6, 6632:7, 6633:9, 6700:18, 6700:22, 6701:11, 6702:15, 6702:17 <b>uploads</b> [1] - 6696:17 <b>user</b> [1] - 6632:19 <b>users</b> [1] - 6684:21 <b>usual</b> [1] - 6624:24 <b>utterances</b> [3] - 6596:11, 6597:18, 6598:8</p>	<p>6636:6, 6638:10, 6644:2, 6644:14, 6644:21, 6644:25, 6646:1, 6646:6, 6647:24, 6694:25, 6695:5, 6709:11, 6710:17, 6711:8, 6711:16, 6717:4 <b>videotape</b> [2] - 6653:4, 6653:16 <b>view</b> [4] - 6609:10, 6639:10, 6697:6, 6721:10 <b>viewed</b> [3] - 6639:12, 6639:24, 6670:24 <b>viewing</b> [1] - 6599:20 <b>violence</b> [41] - 6591:1, 6598:5, 6598:7, 6598:19, 6598:25, 6599:8, 6599:12, 6599:16, 6599:17, 6600:3, 6600:23, 6601:7, 6601:13, 6601:14, 6601:18, 6601:22, 6601:25, 6602:7, 6602:18, 6603:9, 6604:8, 6606:25, 6607:18, 6609:12, 6609:24, 6611:3, 6612:25, 6613:20, 6616:2, 6616:5, 6616:19, 6617:8, 6617:19, 6617:21, 6617:23, 6619:4, 6620:22, 6621:20, 6622:13, 6623:1, 6657:4 <b>violent</b> [7] - 6622:7, 6622:9, 6622:11, 6622:12, 6698:22, 6699:3, 6699:5 <b>visual</b> [1] - 6653:1 <b>voice</b> [2] - 6624:21, 6659:15 <b>voices</b> [1] - 6624:25 <b>volume</b> [3] - 6728:3, 6732:7, 6732:12 <b>vote</b> [3] - 6617:1, 6664:13, 6675:5 <b>votes</b> [11] - 6616:11, 6656:22, 6663:23, 6664:10, 6665:1, 6673:2, 6674:14, 6675:12, 6675:18, 6676:1, 6678:19 <b>voting</b> [2] - 6643:18, 6664:11 <b>VP</b> [1] - 6664:5 <b>vs</b> [1] - 6588:5</p>
<b>V</b>			
<p><b>V.P</b> [1] - 6663:18 <b>vacuum</b> [1] - 6639:12 <b>valuable</b> [1] - 6727:3 <b>value</b> [3] - 6598:9, 6615:2, 6620:13 <b>various</b> [4] - 6665:1, 6724:25, 6726:14, 6728:11 <b>verbatim</b> [1] - 6698:23 <b>verify</b> [1] - 6691:20 <b>version</b> [1] - 6634:2 <b>versus</b> [2] - 6590:3, 6658:15 <b>vest</b> [1] - 6706:19 <b>vetting</b> [1] - 6698:13 <b>via</b> [1] - 6735:25 <b>Vice</b> [4] - 6656:20, 6657:6, 6663:10, 6664:20 <b>vice</b> [2] - 6665:2, 6665:6 <b>victory</b> [1] - 6674:7 <b>video</b> [37] - 6608:7, 6608:10, 6616:13, 6616:14, 6640:22, 6640:25, 6641:6, 6641:10, 6643:10, 6644:21, 6669:6, 6669:9, 6671:24, 6691:6, 6691:15, 6708:4, 6708:7, 6709:1, 6709:13, 6709:14, 6709:15, 6709:19, 6709:24, 6710:2, 6710:7, 6710:12, 6711:5, 6711:13, 6711:14, 6715:21, 6716:7, 6717:6, 6717:7, 6717:8 <b>videos</b> [17] - 6599:7,</p>			

W		
<p><b>Wait</b> [1] - 6732:1  <b>wait</b> [3] - 6709:16, 6712:12, 6718:6  <b>waiting</b> [1] - 6658:11  <b>walked</b> [1] - 6617:12  <b>wants</b> [2] - 6653:3, 6666:17  <b>war</b> [6] - 6610:25, 6611:6, 6617:15, 6617:16, 6617:22, 6734:24  <b>War</b> [10] - 6611:7, 6617:25, 6618:4, 6618:10, 6619:19, 6633:16, 6633:18, 6713:14, 6713:17, 6713:23  <b>warm</b> [1] - 6602:9  <b>warrant</b> [4] - 6640:2, 6686:13, 6702:1, 6702:4  <b>Washington</b> [7] - 6588:7, 6588:16, 6588:19, 6589:2, 6614:19, 6618:1, 6737:13  <b>watch</b> [4] - 6602:13, 6710:7, 6735:7, 6735:9  <b>watched</b> [2] - 6643:11, 6654:9  <b>watcher</b> [1] - 6643:18  <b>Watts</b> [1] - 6619:12  <b>ways</b> [1] - 6733:19  <b>weapons</b> [1] - 6711:17  <b>wearing</b> [1] - 6713:17  <b>weaving</b> [1] - 6595:23  <b>website</b> [5] - 6651:2, 6673:8, 6673:16, 6678:15, 6697:6  <b>weeds</b> [1] - 6730:23  <b>weekend</b> [5] - 6603:1, 6719:18, 6719:22, 6726:6, 6730:20  <b>weeks</b> [1] - 6732:2  <b>weigh</b> [1] - 6637:19  <b>welcome</b> [2] - 6593:5, 6659:10  <b>well-known</b> [1] - 6634:10  <b>well-read</b> [3] - 6626:9, 6629:1, 6634:5  <b>West</b> [2] - 6589:13, 6670:17  <b>whatsoever</b> [2] - 6700:8, 6700:12  <b>whichever</b> [1] - 6721:20  <b>White</b> [1] - 6706:21</p>	<p><b>whole</b> [10] - 6631:16, 6650:19, 6656:25, 6657:10, 6664:22, 6664:24, 6665:4, 6716:7, 6717:5, 6721:22  <b>wholesale</b> [1] - 6727:18  <b>whoopass</b> [1] - 6693:4  <b>whoops</b> [1] - 6608:12  <b>wide</b> [1] - 6601:4  <b>wife</b> [3] - 6611:11, 6611:19, 6612:3  <b>wild</b> [4] - 6638:4, 6684:16, 6684:18, 6685:1  <b>William</b> [1] - 6652:7  <b>win</b> [1] - 6675:15  <b>window</b> [2] - 6697:8, 6697:10  <b>wing</b> [2] - 6615:8, 6615:9  <b>winner</b> [1] - 6675:18  <b>Wisconsin</b> [1] - 6664:4  <b>withdraw</b> [1] - 6624:9  <b>withdrawn</b> [3] - 6614:15, 6614:23, 6614:24  <b>witness</b> [35] - 6590:8, 6590:13, 6593:1, 6602:23, 6602:25, 6603:22, 6606:14, 6620:4, 6621:12, 6636:23, 6637:19, 6639:19, 6649:17, 6651:21, 6658:9, 6658:13, 6658:22, 6658:23, 6660:17, 6660:18, 6666:8, 6673:20, 6674:18, 6676:20, 6679:15, 6679:17, 6689:22, 6701:16, 6712:20, 6719:12, 6719:14, 6734:8, 6736:21  <b>WITNESS</b> [5] - 6658:5, 6659:5, 6659:7, 6680:4, 6738:2  <b>witness's</b> [1] - 6651:22  <b>witnesses</b> [4] - 6729:11, 6729:13, 6732:15, 6736:20  <b>witnesses'</b> [1] - 6593:17  <b>woman</b> [2] - 6608:12, 6610:19  <b>women</b> [4] - 6694:18, 6694:21, 6694:25,</p>	<p>6695:3  <b>word</b> [6] - 6602:19, 6604:13, 6611:7, 6617:16, 6619:5, 6720:20  <b>words</b> [8] - 6594:20, 6594:22, 6596:11, 6604:8, 6607:25, 6611:13, 6622:16, 6688:6  <b>workable</b> [1] - 6725:19  <b>works</b> [1] - 6717:20  <b>world</b> [1] - 6623:22  <b>worst</b> [1] - 6602:6  <b>wrap</b> [1] - 6697:14  <b>writes</b> [4] - 6612:6, 6615:15, 6616:15, 6694:14  <b>writing</b> [4] - 6594:2, 6594:7, 6594:12  <b>wrote</b> [6] - 6595:11, 6614:2, 6624:12, 6624:15, 6656:17, 6656:19</p> <p><b>Y</b></p> <p><b>year</b> [1] - 6681:8  <b>years</b> [1] - 6670:22  <b>yesterday</b> [3] - 6716:20, 6717:14, 6731:25  <b>York</b> [4] - 6588:18, 6588:25, 6589:16, 6615:9  <b>young</b> [1] - 6671:24  <b>yourself</b> [1] - 6595:2</p> <p><b>Z</b></p> <p><b>Zach</b> [1] - 6626:21  <b>Zachary</b> [3] - 6588:7, 6626:20, 6627:12  <b>zones</b> [1] - 6710:22  <b>Zoom</b> [1] - 6706:13</p>