

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA CR Nos. 1:21-cr-00175-TJK-1  
1:21-cr-00175-TJK-2  
v. 1:21-cr-00175-TJK-3  
1:21-cr-00175-TJK-5  
1:21-cr-00175-TJK-6  
1-ETHAN NORDEAN  
2-JOSEPH R. BIGGS  
3-ZACHARY REHL Washington, D.C.  
5-ENRIQUE TARRIO Wednesday, March 1, 2023  
6-DOMINIC J. PEZZOLA, 9:00 a.m.  
Defendants.  
- - - - - x

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TRANSCRIPT OF JURY TRIAL - DAY 41  
\*\*\* MORNING SESSION \*\*\*  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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## C O N T E N T S

**WITNESS:****PAGE:**JASON MCINTYRE

Direct Examination by Mr. Mulroe.....11415

Cross-Examination by Mr. Smith.....11487

Cross-Examination by Mr. Hull.....11503

P R O C E E D I N G S

THE DEPUTY CLERK: This is Criminal Matter 21-175, United States of America v. Defendant 1, Ethan Nordean; Defendant 2, Joseph R. Biggs; Defendant 3, Zachary Rehl; Defendant 5, Enrique Tarrío; and Defendant 6, Dominic J. Pezzola.

Present for the Government are Jason McCullough, Erik Kenerson, Conor Mulroe, and Nadia Moore; present for Defendant 1 is Nicholas Smith; present for Defendant 2 are John Hull and Norman Pattis; present for Defendant 3 is Carmen Hernandez; present for Defendant 5 are Nayib Hassan and Sabino Jauregui; present for Defendant 6 are Steven Metcalf and Roger Roots. Also present are Defendant 1, Mr. Nordean; Defendant 2, Mr. Biggs; Defendant 3, Mr. Rehl; Defendant 5, Mr. Tarrío; and Defendant 6, Mr. Pezzola.

THE COURT: All right. Good morning to everyone.

A couple of preliminary matters, some of which, I think -- all -- most of which you all have already -- we've already discussed. The first one, we have not. It's come to my attention that there is, at counsel table, a large red mark on the table that's been made by pen, apparently, I was told by the folks who maintain our courtroom. So I'm going to ask if folks would not deface the tables, whether that's counsel or the defendants. I need you all to just make sure that none of that happens. Is that -- was there not

1 anything defacing the table?

2 MR. SMITH: No, Your Honor. There's a sticker  
3 that's on the table that I can -- it's --

4 THE COURT: No, I -- there's a sticker, but then  
5 my -- what I was informed of, that there's some other  
6 defacing --

7 MR. HULL: Your Honor, there is a stain --

8 THE COURT: Okay.

9 MR. HULL: -- of some type. It appeared in the  
10 last 48 hours.

11 THE COURT: Well --

12 MR. HULL: I'm not sure where it came from, but  
13 it's there. You're right.

14 THE COURT: Well, it appeared somehow at counsel  
15 table. So I'd ask you all not to deface the court's  
16 property and we'll -- and, hopefully, it will be easily  
17 removed, and if it's not, I'm sure we'll be in touch, but  
18 this is public property, and I'd appreciate there no --  
19 there not be any destruction of that property. So that's  
20 number one.

21 Number two, we -- have the parties made any  
22 further -- or really, there -- I guess the only -- the place  
23 we left off on this instruction was whether Ms. Hernandez  
24 had any comments or objections.

25 Ms. Hernandez, do you have anything to add as to

1 the instruction?

2 MS. HERNANDEZ: Correct. Your Honor, I object to  
3 the instruction because of the language that states that it  
4 can be used to show Mr. Bertino's role in the offense. I  
5 don't believe the Government has proved the offense of  
6 seditious conspiracy at this point. And, therefore, I  
7 think -- I don't want the Court -- I don't want those words  
8 coming from the Court's mouth to the jury, because to me it  
9 sounds like -- I understand that's not what the Court is  
10 saying, but I think it can be taken to sound as if the Court  
11 is making a finding that there was, you know -- the  
12 offense -- the only offense he pled guilty to, other than  
13 the felon in possession which has nothing to do with our  
14 clients, is seditious conspiracy. So I object. I think  
15 it's prejudicial to my client to give that instruction at  
16 this time. And I would ask the Court not to -- I would  
17 object to the Court giving that instruction. I understand  
18 that's the language in Tarantino.

19 THE COURT: Even though we -- as Mr. Roots, I  
20 think, had suggested, and the Government had agreed, that it  
21 would be the role in the alleged offense?

22 MS. HERNANDEZ: So you're changing it from "the  
23 offense" to "the alleged offense"?

24 THE COURT: I'm not changing it from what we  
25 discussed yesterday, and that's what I articulated

1 yesterday.

2 MS. HERNANDEZ: Okay. I know -- I looked at the  
3 written document, and I would prefer that -- with "the  
4 alleged offense," it's not as prejudicial, I agree, and so  
5 if the Court's going to give "the alleged offense" -- I  
6 would still object to the language, but I will not object to  
7 the Court -- I object to the language. I don't want to  
8 waive the objection to the language, but I'm not going to  
9 stand here and say don't -- if the other -- if the others  
10 want to give it, I'll let the Court decide.

11 THE COURT: All right. And, Mr. Roots, then, are  
12 you -- given all of that, you're fine with me giving the  
13 language as we discussed yesterday?

14 MR. ROOTS: Yeah, I --

15 THE COURT: Again --

16 MR. ROOTS: Yeah, I moved for mistrial over this,  
17 and I think mistrial is the only appropriate remedy, but  
18 Your Honor has denied that. So yes, I do want a limiting  
19 instruction. And I agree with Ms. Hernandez. That language  
20 shouldn't really be in it because this is such a weak case  
21 compared to those other cases that, sort of, crafted that  
22 type of language. So with that objection, yeah, I would  
23 like a -- the limiting instruction.

24 THE COURT: All right. So I'll give it as we  
25 discussed yesterday and we'll go from there.

1 MS. HERNANDEZ: Your Honor, and Tarantino made  
2 clear, I think, including the cases that it cites, that the  
3 reason it found no plain error was because the Government  
4 did not use the fact of the plea as evidence -- in arguing  
5 to the jury that it was evidence of the defendant's guilt.  
6 So to the extent that that doesn't happen in this case,  
7 also.

8 THE COURT: Right. Obviously, the whole reason  
9 we're giving this instruction is so that the jury  
10 understands they can use it for A but not B. And,  
11 obviously, if the Government strays from that in the future,  
12 you may object, number one. And, number two, I understand,  
13 as I had discussed with Mr. Roots yesterday, that he  
14 disagrees with Tarantino and, as I said, that's above my pay  
15 grade and we'll -- you all have that objection preserved.

16 All right. So the first thing I'll do when they  
17 come out is give, as we have discussed, as amended, the  
18 instruction that Mr. Roots and the Government had suggested.

19 The third thing is what the parties have teed up  
20 here regarding this five minutes of video from the crypt.  
21 As I understand it -- let me just make sure I understand  
22 it -- Mr. Smith, your -- it's really a 403 objection. In  
23 other words, conceptually, you think it's fine for the  
24 witness to say "here's what I experienced and here's how" --  
25 I am -- I haven't heard the Government on this yet, but I'm



1 anticipating that the whole point of this is to say "and  
2 this explains my actions later on at the door" or in other  
3 circumstances. And you're -- you don't object, as I  
4 understand it, to the officer, sort of, describing this, but  
5 five minutes of video is -- or any video, maybe -- but five  
6 minutes of video is -- kind of, pushes 403?

7 MR. SMITH: Yes, Your Honor. And we're also  
8 making an objection on relevance grounds. We don't  
9 understand why the officer's position later in time at the  
10 upper west terrace door would need to be explained by his  
11 position later in the crypt. And if it needs to be  
12 explained, even though it's not challenged by the defense,  
13 then it could be simply described without showing a violent  
14 scene that doesn't involve the defendants at really loud  
15 decibels, and we think that the risk of jury confusion and  
16 unfair prejudice lies in the apparent suggestion that these  
17 two events are connected, Mr. Nordean's entry into the  
18 building and this scene in the crypt, and we think it's  
19 consistent with the Court's prior rulings. The Court said  
20 it would give the Government some leeway to prove a civil  
21 disorder offense. We've seen a lot of that in this trial.  
22 And I just -- I think it's cumulative. I think it's  
23 irrelevant and it causes jury confusion.

24 THE COURT: Okay. I mean, I actually don't think  
25 we've seen -- we -- the vast majority of what -- I don't

1 think the Government's offering it for that purpose, but  
2 we'll find out, but --

3 MR. HULL: (Indicating.)

4 THE COURT: I see you, Mr. Hull.

5 -- but I don't think we've seen, you know -- short  
6 of excising, you know, your clients from the rest of the  
7 people that were around them, I actually don't think we've  
8 seen that much that isn't somewhat tangential to your --  
9 where your client -- basically, the -- that -- the Peace  
10 Circle and west front.

11 Before I hear from Mr. Hull, let me just have the  
12 Government at least articulate why they -- what they --  
13 what their -- the basis -- the relevance basis and then, in  
14 particular, you know, five minutes is a long time. So let  
15 me hear from the Government on that.

16 MR. MCCULLOUGH: Thank you, Your Honor.

17 The -- so there are -- in terms of the relevance,  
18 Mr. Smith has indicated both in, kind of, pretrial filings  
19 that officers at the upper west terrace door had let  
20 protesters in and that they effectively stood aside as  
21 protesters made their way into the building and that, you  
22 know, kind of, all of this was, you know, kind of,  
23 non-violent, et cetera. We've also heard other openings  
24 with respect to the idea that officers were ill-prepared;  
25 poorly trained; kind of, that litany of items. And so, Your

1 Honor, this -- I mean, this testimony from this officer, he  
2 will explain the series of events that brought him to that  
3 upper west terrace door at 2:36 p.m., approximately, when  
4 Mr. Nordean entered. And this officer's ability to testify  
5 to that through his experience and explain what his  
6 experience was outside when he was assaulted, what his  
7 experience was inside the crypt, and then what brought him  
8 to the upper west terrace door, is, frankly, powerful  
9 evidence to allow the jury to understand, you know, kind of,  
10 how, you know, these two people end up meeting at the upper  
11 west terrace door, if you will. And so it -- I mean, just  
12 the relevance is -- frankly, I think it's just evident on  
13 its face.

14 In terms of the --

15 THE COURT: Just to -- and to put a finer point on  
16 it, to explain why the -- regardless of -- I'm not sure it's  
17 relevant one way or the other what positions Mr. Smith has  
18 taken in pretrial filings one way or the other, but I agree,  
19 from what I can recall has been admitted, there has been --  
20 I mean, the jury might well look at the scene of Mr. Nordean  
21 entering and wonder -- and it appears as though -- I --  
22 let's put it this way. The -- this particular officer does  
23 not step in front of him and attempt to stop him from  
24 entering for whatever reason. And your point is this  
25 explains at least what was going on in his mind at that

1 time?

2 MR. MCCULLOUGH: Exactly. And he -- I mean, and  
3 his ability to communicate that to the jurors is very  
4 important. And, Your Honor, the -- so with respect to the  
5 evidence of what happens in the crypt, there are a number of  
6 competing factors, but let's just stay right with the  
7 officer for the moment. The officer can, of course,  
8 describe -- and he will describe -- how loud it was in the  
9 crypt, and he will describe the fact that protesters were  
10 yelling at him as he was there, and what the video shows is  
11 really the sheer volume of the crowd as compared to the  
12 officers, which is an important factor that day; right? The  
13 number of individuals that were there, it really gives a  
14 sense of that. It gives a sense of the level of agitation  
15 of the protesters and the fear that these officers had.  
16 And, in fact, if Your Honor's had an opportunity to watch  
17 the video, it has very -- it actually shows, in a very close  
18 image, one of the officers who's there who, quite frankly,  
19 Your Honor, it -- this is one of those situations where a  
20 picture is worth a thousand words. The fear in his eyes is  
21 clear -- or at least apprehension. I'm not going to put my  
22 spin on it, but I'll tell you it allows you to really  
23 humanize the officer, and that is important because that --  
24 not only that officer, but that officer who is, kind of,  
25 depicted very closely is also at the upper west terrace

1 door. So he's two of the five officers who are up there.  
2 It's a very important way to, kind of, demonstrate what they  
3 went through that day.

4 Beyond that, the sound, the noise, and then the  
5 sudden rush of the rioters, it's actually -- it's important  
6 because it also explains the actions of the five officers  
7 who were at the upper west terrace door. The idea that you  
8 can be standing there with a large crowd on the opposite  
9 side of you and then it breaks and it becomes a -- frankly,  
10 Your Honor, a life-threatening situation. And so it is that  
11 video evidence that -- frankly, he can say that, but the  
12 video is going to show that and it will -- it's powerful  
13 evidence that really allows the jury to understand what's  
14 happening in that crypt, what this officer experienced prior  
15 to arriving at the upper west terrace door.

16 With respect to the -- Mr. Nordean's view of, you  
17 know, the potential risk of confusion, Your Honor, there  
18 is -- Mr. Smith has very artfully, throughout this trial,  
19 explained when things happened before and after, before and  
20 after. I have no doubt that we'll see that again with this;  
21 that what happened in the crypt happened before we got to  
22 the upper west terrace door.

23 THE COURT: Well, not just --

24 MR. MCCULLOUGH: And --

25 THE COURT: -- not -- to be fair, not just before,

1 not just temporally, but that none of these defendants were  
2 there.

3 MR. MCCULLOUGH: Right.

4 THE COURT: Right.

5 MR. MCCULLOUGH: And so it will be very evident  
6 that none of these defendants were there because, you know,  
7 we're going to go from that experience to the upper west  
8 terrace door where we, then, see Mr. Nordean. So you  
9 know -- and he'll explain, Yeah, I, you know -- this  
10 happened and then, several minutes later, I end up at the  
11 upper west terrace door. And there, in comes Nordean. And  
12 we'll identify Nordean. He, of course, doesn't know who he  
13 is, but we'll make that very clear in the description. So  
14 that's the officer's experience.

15 Beyond that, Your Honor, in terms of, kind of,  
16 demonstrating the riot -- I mean, I -- this is not, kind of,  
17 our primary purpose of it, but it is incredibly relevant,  
18 and in terms of the position of the crypt vis-à-vis the  
19 first access to the building -- so the Senate wing door, as  
20 Your Honor knows has been a focus of the testimony, which is  
21 cracked at 2:11; breached at 2:13. Now, Mr. Pezzola goes  
22 left with members of the crowd; other people go right.  
23 Turning right takes you into the crypt. And so the people  
24 that are, you know -- the people that enter the building and  
25 this line of officers holds off, this is that, you know,

1 kind of, second group. And, you know, in terms of, you  
2 know, risk of confusion, again, the person who enters the  
3 building at 2:13, we know where he went. We've described  
4 that -- Inspector Loyd described where he went, up into the  
5 Ohio Clock Corridor. So there's no risk of confusion in  
6 terms of, were any of these individuals involved in that?  
7 But the idea that, yeah, this is what happened when those  
8 floodgates opened -- this group went right; this group went  
9 left -- he's not going to testify to any of that, but, Your  
10 Honor, we have the ability to put that evidence in right now  
11 with an officer who has first-hand knowledge of that  
12 experience and then, you know, we get to argue that in terms  
13 of the way that -- what happened there that day. And it's  
14 an important component of it in terms of demonstrating the  
15 civil disorder and the amount of -- the numbers that were  
16 there that day.

17 THE COURT: Is -- the officer will say, "This five  
18 minutes reflects, you know -- I was there during this five  
19 minutes and this reflects what I experienced"?

20 MR. MCCULLOUGH: Oh, yes, Your Honor. Yes. The  
21 officer was there. The officer will describe being to the  
22 right side of the screen as this happened. He will describe  
23 attempting to hold the line. He will describe the way that  
24 the crowd let loose on him and how his body became pinned up  
25 against a wall and he was unable to move until the crowd

1 gave way and he was able to move. And then he will describe  
2 how he saw an officer who appeared to be by himself and went  
3 to help that officer and that's what ultimately led him to  
4 the upper west terrace doors.

5 THE COURT: Okay.

6 MR. MCCULLOUGH: And, Your Honor -- and I also  
7 just -- I'll just note, we do not intend to play -- we will  
8 play a significant part of the five-minute video, but we do  
9 not intend to play five minutes straight through. It's --  
10 it is the entire video. We do intend to play, I believe,  
11 from the starting point to 2:36, thereabout. Ms. Rhode's  
12 got my notes, as well. And then we'll pick up again towards  
13 the end. So we're not playing the full five-and-a-half  
14 minutes. It's probably closer to about 3 or 3:15. But, you  
15 know, I realize that that's, kind of, a distraction, you  
16 know? I think the, you know -- the focus of this argument  
17 is, is it relevant? Is it prejudicial? And, Your Honor, I  
18 think, you know -- kind of, going away, on all fronts, I  
19 think this is just evidence that the jury deserves to see.

20 THE COURT: Mr. Smith?

21 MR. SMITH: Thank you, Your Honor.

22 There was a Government witness who testified about  
23 this exact moment when Mr. Nordean entered the upper west  
24 terrace doors. It was Officer Loyd. And the Court will  
25 recall that we did not cross-examine Officer Loyd in a



1 manner to suggest that the officers had allowed Mr. Nordean  
2 to enter the building. The cross-examination was about  
3 whether Mr. Nordean used force or physically interfered with  
4 those officers. Now, Officer Loyd responded, That's the  
5 sign of a defeated police force. But I commented at the  
6 time, Those are your words; those are not ours. And we did  
7 not, at any point, suggest that those officers were derelict  
8 in their duty. So what you heard from Mr. McCullough was an  
9 explanation for -- a preemptive defense of a suggestion that  
10 hasn't been made. That might be appropriate for redirect,  
11 if Mr. Nordean were to cross this witness and Mr. -- Officer  
12 Riggleman and say, Well, didn't those officers allow the  
13 defendant to enter the building? Weren't they consenting to  
14 that? Then perhaps what Mr. McCullough said to explain the  
15 terror in the officer's mind [sic] would be appropriate, but  
16 we're not -- we haven't done that.

17 THE COURT: But isn't that -- I mean, it -- some  
18 of the offenses here are trespassory. And isn't it a fair  
19 thing for the jury to wonder -- to look at that video and  
20 think, Well, why -- if -- why wasn't -- why didn't the  
21 officer do that? I mean, isn't it a fair -- just from the  
22 video of what happened, isn't it a fair thing for the  
23 Government to be able to put on evidence to explain what was  
24 going on in that officer's mind when he -- I can't remember  
25 what it showed exactly, but when he more or less did not

1 stop Mr. Nordean?

2 MR. SMITH: Well, Your Honor, that could be fair,  
3 but we think the length of the video that's being shown and  
4 its, kind of, dramatic and inflammatory nature is --  
5 outweighs -- substantially outweighs whatever probative  
6 value that has when it's not being attacked by the defense.

7 THE COURT: All right.

8 MR. SMITH: We're --

9 THE COURT: All right. Fair enough.

10 Mr. Hull, and then Ms. Hernandez.

11 MR. HULL: Thank you, Your Honor. Dan Hull for  
12 Joe Biggs.

13 I would agree with Mr. Smith that this is highly  
14 prejudicial and confusing. Under 403, I don't think you  
15 need to get there. When I first saw this, I was wondering  
16 how we ever got to a point where something in the crypt like  
17 this video could appear anywhere in this case. We've lost  
18 the plot if this comes in. These gentlemen, all of them,  
19 are here because they were leaders. That has been the north  
20 star of this case since the very beginning, since  
21 detention-land we were in two years ago. It's what's kept  
22 them where they are right now. And I think to -- at this  
23 point, to suggest to the jury that -- and they would take it  
24 this way, as smart as I think they are -- that somehow we  
25 were part of the violence there or the -- our individual

1 defendants were is pushing this a little far --

2 THE COURT: Well --

3 MR. HULL: -- even under tool theory.

4 THE COURT: Mr. Hull, let me just stop you right  
5 there, though.

6 MR. HULL: Yeah.

7 THE COURT: We have spent a lot of time on the  
8 conspiracy aspects of this case, no question, but if you  
9 look at the indictment, there are many charges that are  
10 not -- that don't link up with the conspiracy at all, some  
11 that are, you know -- the evidence of some may be stronger  
12 than others, but the -- and for you to say, Well, none of  
13 our clients -- I mean, one of your clients, you know, is  
14 charged with breaking the window that let in a heck of a lot  
15 of people or at least being one of a couple of people who  
16 did. I guess my point is just the case isn't -- I know  
17 we've spent a lot of time -- all of us have spent a lot of  
18 time and effort on the conspiracy aspect of this, but there  
19 are charges beyond the conspiracy that the Government still  
20 has to prove up or has to try to prove up. I have to allow  
21 them to try to prove up. Isn't that fair?

22 MR. HULL: Your Honor, I disagree. Breaking the  
23 window is the -- that's alleged in the indictment is the  
24 most violent thing alleged with respect to these defendants  
25 once they get into the Capitol. And I really think that,

1 you know, the jury has every reason to think at this point  
2 that, you know -- they come -- let's face it, they all came  
3 in with certain ideas about the Proud Boys -- most of us did  
4 before we knew anything about the case -- certain kinds of  
5 stereotypes. They are likely to think that, from looking at  
6 this -- even a more-than-intelligent D.C. juror -- that, in  
7 fact, these gentlemen were part of the kind of melee inside  
8 the Capitol that you see here, and that's just not correct,  
9 and not only that, as, I think, Mr. Smith has pointed out,  
10 we are -- in terms of my client, Joe Biggs, I think we're at  
11 least two or three floors away from this activity depicted,  
12 and in the case of everyone else, probably one or two. I  
13 don't see how it could come in, again, and I think it, sort  
14 of, shows how we have strayed away from, you know, the story  
15 we're all trying to tell from, you know, different points of  
16 view here. This should not come in. It has nothing to do  
17 with our clients. I'm not sure that there -- it has  
18 anything to do with even Proud Boys, but it's -- even under  
19 the wildest extrapolation of tool theory, I just don't think  
20 it's appropriate.

21 THE COURT: All right. Ms. Hernandez? You had  
22 your hand up.

23 MS. HERNANDEZ: So Your Honor, I -- obviously, I  
24 agree with all the arguments made by Mr. Smith and Mr. Hull,  
25 but I additionally said this item is not relevant and, as

1 described by Mr. McCullough, it's not relevant at all to  
2 Mr. Rehl. I mean, he's linking Officer Riggleman's  
3 testimony to whatever happened when Mr. Nordean entered the  
4 Capitol. My -- Mr. Rehl is not entering the Capitol through  
5 there. So I'm making a 401 argument -- a separate 401  
6 argument. It's not relevant to Mr. Rehl at all. The  
7 description, as described by Mr. McCullough -- I mean, he,  
8 kind of, proves the 403 point. He's talking about the  
9 officer -- the fear in the officer's eyes and all of that.  
10 That sounds pretty unduly prejudicial, particularly when  
11 none of the defendants were involved in the violent or  
12 hand-to-hand clash that led to the officer having fear in  
13 his eyes. So I would object on 401 and 403 grounds.

14 With respect to the civil disorder argument -- I  
15 mean, I think there's been more than enough evidence to  
16 support a civil disorder. I mean, we have watched multiple  
17 videos of the events in the stealing of the -- or the taking  
18 of the officer's shield and all of that. I mean, there were  
19 multiple videos of what --

20 THE COURT: But that's --

21 MS. HERNANDEZ: -- happened, the --

22 THE COURT: But --

23 MS. HERNANDEZ: -- confrontation there, the --

24 THE COURT: Let me just -- just, though, to make  
25 this point, that was relevant to another charge. That's

1 not -- I mean --

2 MS. HERNANDEZ: Well --

3 THE COURT: -- right? So --

4 MS. HERNANDEZ: Well, but the civil disorder, it  
5 seems to me, it's -- that particular series of videos where  
6 they are showing Mr. Pezzola supposedly and I think  
7 Mr. Greene was in that, that's much more relevant -- because  
8 some of the defendants were involved -- to any kind of  
9 charge, including civil disorder, than this one would be.  
10 So in terms of the 403, you know, one of the 403 factors is,  
11 you know, the necessity for that evidence. I think -- I  
12 mean, I -- my argument would be, obviously, on the civil  
13 disorder -- is my client's participation in that, but I  
14 don't -- I think the Government has proved there was civil  
15 disorder that day. I don't --

16 THE COURT: All right.

17 MS. HERNANDEZ: I mean, I --

18 THE COURT: All right.

19 MS. HERNANDEZ: Allegedly, but I'm just saying I  
20 don't -- so I'm objecting, 401, 403. And then, I guess, if  
21 the Court rejects it, I'd move for severance.

22 THE COURT: All right. So let me just --

23 MR. MCCULLOUGH: Your Honor --

24 THE COURT: I'll just -- did -- I'm sorry. Who  
25 just spoke?

1 MR. MCCULLOUGH: (Indicating.)

2 THE COURT: Mr. McCullough?

3 MR. MCCULLOUGH: Yes. Just to -- one item on the  
4 record. Mr. Smith represented that he did not ask about the  
5 officers themselves and their duties. He did -- I can point  
6 to the transcript. I can cite a number of lines, Page 3795,  
7 where he asked a number of questions of Inspector Loyd about  
8 the officer's performance that day: How would you  
9 characterize their attitude towards the protesters at this  
10 point? Do you witness any of these officers attempting to  
11 arrest any of those individuals -- arrest any of these  
12 individuals? Instruct them to leave the Rotunda? So --

13 THE COURT: But was that -- that's the -- but  
14 that's -- okay. Fair enough.

15 MR. MCCULLOUGH: This is this upper west terrace  
16 door event. This was speaking about this officer, Officer  
17 Rigglesman; Officer Lopez; Millard. This is this group that  
18 he is questioning their conduct in terms of what they were  
19 doing. It is -- multiple pages which I could cite for Your  
20 Honor, but that was absolutely put at issue by Mr. Smith in  
21 terms of his questioning of Inspector Loyd. He is  
22 absolutely correct -- Mr. Smith, as he often is -- that with  
23 respect to the question about Mr. Nordean specifically,  
24 sure. Was Mr. Nordean acting violently? But with respect  
25 to the questioning as to the officer's performance at that

1 door, it was very much a series of questions about their  
2 non-performance.

3 THE COURT: All right. I'll give Mr. Smith an  
4 opportunity to respond.

5 MR. SMITH: Your Honor, I think our response is  
6 that that's not what we said. We said that we didn't  
7 question the -- whether the officers had been derelict. We  
8 were trying to establish that Mr. Nordean had not used force  
9 or had, you know, physically interfered with the officers.  
10 There's a difference between that line -- that logic and the  
11 logic that the officers had not complied with their duties  
12 or had consented. So that's what we meant, Your Honor.

13 THE COURT: And what are the questions you were  
14 reading off, Mr. McCullough, from the transcript? I can see  
15 you looking at something. So I assume it's a transcript.

16 MR. MCCULLOUGH: It is a transcript, Your Honor.  
17 Yeah. I mean, I think these -- I think they absolutely go  
18 to the officer's performance. I -- Mr. Smith: And so I'm  
19 going to draw a circle around some of these law enforcement  
20 officers on the left side of the screen. Do you see them?  
21 And he's pointing to Millard, Officer Junior [ph], Officer  
22 Seresa [ph], who are on the left side as opposed to Mr. --  
23 Officer Riggleman who's on the right side. I'm going to  
24 draw a circle around some of these law enforcement. How  
25 would you characterize their attitude toward the protesters



1 at this point? This is as the rioters are streaming inside.  
2 Do you witness any of these officers attempting to arrest  
3 any of these individuals or -- arrest any of these  
4 individuals? Instruct them to leave?

5 I mean --

6 THE COURT: All right. I think, look, regardless  
7 of -- I don't want to pin this all on those questions, to be  
8 honest. I mean, I think -- look, I think -- a couple of  
9 things. As far as the relevance goes, I do think the  
10 Government gets a little leeway to be able to have an  
11 officer who was -- who, at least as to Mr. Nordean, was  
12 present and has been, kind of, part -- present when he  
13 entered and allow that officer to explain why he took the  
14 actions he took or why he did not take the actions he did  
15 not take and -- so that's number one. And, frankly, it  
16 sounds like the door was cracked a bit to this, but even if  
17 it hadn't been, I think explaining -- the officers  
18 explaining why they acted the way they did, particularly  
19 given the panoply of types of offenses that are charged  
20 here, including trespassory offenses, it -- the Government  
21 gets some leeway to -- for them to explain that. Number  
22 one. Number two, then the question is -- and I think even,  
23 on some level -- I think most of the defendants, sort of,  
24 concede that on some level.

25 Then the question is, well, is this -- is the

1 video itself -- does it pass 403? And I think, look, it --  
2 what happened that day -- let's put it this way. These  
3 officers went through -- a lot of folks did -- a very  
4 traumatic experience that day and -- some of them did,  
5 anyway -- and allowing the officer to say "look, this is  
6 what I experienced and this affected how I responded later  
7 on," I think, is fair game. I think -- in other words, it's  
8 an extraordinary situation that people -- that officers were  
9 there and folks were coming into the Capitol. I think they  
10 get to put on, you know, extraordinary evidence or, kind of,  
11 evidence that captures exactly why the officers felt the way  
12 they did that day. There would be -- I, you know -- I'm  
13 glad to hear we're not going to hear all five minutes of it,  
14 but I do think it passes 403. And I think the other thing  
15 is the danger -- I think it's very -- it will be very easy,  
16 both in how the Government introduces it but then, also, as  
17 far as cross-examination goes, to make clear that none of  
18 the defendants -- this is all coming in for the officer to  
19 be able to explain how the officer acted, and the  
20 defendants -- you all are going to be able to cross the  
21 officer and make clear this had nothing to do -- at least  
22 these other incidents had nothing to do with your clients.

23 Ms. Hernandez made a separate 401 argument and a  
24 motion for severance. I mean, I've denied the motion for  
25 severance before, and I don't think this changes those --

1 that rationale. There is going to be evidence -- there has  
2 been evidence of all different stripes that is relevant to  
3 one defendant that is not relevant to the other defendants.  
4 Again, I don't think that's going to be confusing to the  
5 jury. Apparently, this is all going to focus on  
6 Mr. Nordean's entrance into the building and, obviously, it  
7 won't be relevant directly to Mr. Rehl, but that's not a  
8 reason for me to not admit it, and I don't think I have  
9 grounds to sever at this point. So I am going to allow it  
10 and we'll go from there.

11 MR. PATTIS: (Indicating.)

12 THE COURT: Yes, Mr. Pattis?

13 MR. PATTIS: Judge, lest this go unsaid, in re red  
14 mark, because this case is so widely reported and there is a  
15 suggestion that we were less than careful with the public's  
16 property, I'd invite the Court to come down and view the  
17 mark. It is perfectly symmetrical and appears in --  
18 identical in form to stickies that are over here. And it's  
19 not a mark that was made at -- from all -- from appearance's  
20 perspective -- view, deliberately or with an intent to  
21 deface public property. And a sense of alarm arose on our  
22 side of the aisle when the Court suggested we might hear  
23 from someone otherwise. I've not observed anyone be  
24 careful -- be careless with the public property or intend to  
25 defame [sic] it. So we would invite you to come to view it,

1 because we're concerned that you might think we've been  
2 disrespectful to this room or the government's property.

3 THE COURT: I will take you up on your offer, but  
4 not now, number one, or have the court staff report back to  
5 me. But let me just -- so you -- to clarify, what you're  
6 saying is you think this mark was caused by a stickie placed  
7 on the table?

8 MR. PATTIS: No. I don't know what it was --

9 THE COURT: Okay.

10 MR. PATTIS: -- caused by. Apparently -- I'm told  
11 it was here on Monday. I'm sitting here at a point -- at a  
12 place that I don't customarily sit, but as luck would have  
13 it, there is a chartreuse-colored stickie that appears to be  
14 about an inch-and-three-quarters square and it perfectly  
15 covers the area that is a chartreuse mark. There's a corner  
16 torn off, but be- -- the -- because of the fact that it's  
17 a -- because it's a perfect match and nothing that we're  
18 able to do here defaces it by applying moisture and whatnot,  
19 I don't know how to account for it, but if that's the mark  
20 it's just weird and --

21 THE COURT: All right. I'll just -- fair enough.  
22 And I'll just say for the record, no one else is using this  
23 courtroom and, obviously, no one else is sitting at that  
24 table other than the defendants and the defense counsel.  
25 We'll get to the bottom of it. And, again, I don't know --

1 we'll have court staff look at it and see if it can't be  
2 remediated, but I hear -- I understand the point you're  
3 making.

4 MR. HULL: Your Honor, Dan Hull for Joe Biggs.

5 I was going to ask you to reconsider your 401  
6 ruling, and I would ask you -- I -- to do that before we got  
7 on to staingate, but I -- I don't see why this video --

8 THE COURT: Hold on one second, Mr. Hull.

9 MR. HULL: Yeah.

10 THE COURT: Counsel, I reprimand all of you for  
11 not being at attention while one of your brethren is  
12 speaking.

13 Mr. Hull?

14 MR. HULL: I fail to see how this video, under any  
15 stretch of 401 in this case, comes in. This is the best --  
16 and you don't see a lot of them -- 401 objection for  
17 exclusion that you see. Things don't get excluded much  
18 based on relevance. And I'm also intrigued by the notion  
19 that somehow, we need to show -- I'm not sure exactly how to  
20 analyze this -- we need to show -- or the Government -- it  
21 feels it needs to show how the officers were reacting. The  
22 officers -- the entire Capitol Hill police force is there to  
23 protect that perimeter, and what they're acting like once  
24 the perimeter is, you know, breached and there's a secondary  
25 breach going into the building -- seems to me to be even

1 less relevant than the crypt video. So this is not a  
2 personal injury case. These are people who were trained a  
3 lot of times in Quantico-type settings. And I find it --  
4 I -- almost unfathomable that we would have -- no -- we have  
5 evidence about how the cops are reacting when it's their job  
6 to protect the perimeter. That said, I'll get off that. I  
7 would ask you to reconsider.

8 On staingate -- let's get back to it -- those are  
9 my chartreuse -- I'll have to admit -- Post-it notes. So  
10 we'll get that -- it's a res ipsa loquitur kind of thing, I  
11 think.

12 THE COURT: All right. A ray of clarity, then, on  
13 that.

14 MR. SMITH: (Indicating.)

15 THE COURT: Mr. Smith --

16 MR. SMITH: Just for the record really quickly, we  
17 received this morning, three minutes before the hearing, a  
18 document from the next witness --

19 THE COURT REPORTER: Slow down.

20 THE COURT: Hold on.

21 MR. SMITH: Yeah.

22 THE COURT: All right.

23 MR. SMITH: At -- early this morning, shortly  
24 before the hearing, we received notes from the officer -- or  
25 the Architect of the Capitol employee, McIntyre, the next

1 witness, indicating -- concerning the black fence he's going  
2 to testify about. The notes have -- appear to show what  
3 sections of the fence were used on the morning of  
4 January 6th. The notes indicate how long each fence segment  
5 is by inch. So Your Honor, the problem that's posed for the  
6 defense is I've been furiously attempting to do the math  
7 here and figure out, you know -- reverse-engineer whether  
8 this fence that was used on January 6th is the same fence  
9 that was purchased in 2008 by the Architect of the Capitol.  
10 We have just two data points on that purchase order which is  
11 the length -- the total length, 328 linear feet, and the  
12 total cost which is \$32,000. So Your Honor, we're in a --  
13 we're, kind of, in a tight spot here. We have -- we were  
14 just given relevant information that would allow us to  
15 impeach a witness and, you know, we're scrambling here  
16 with --

17 THE COURT: It -- look, it -- it's the witness's  
18 notes?

19 MR. SMITH: No --

20 THE COURT: You said --

21 MR. SMITH: Your Honor, we're not sure -- I  
22 believe that Mr. Mulroe will represent that these notes were  
23 found in the Architect of the Capitol records this morning.  
24 But, Your Honor, we're, kind of -- this is a key issue in  
25 the case, how much damage might have been caused to one

1 fence segment; therefore, one needs to know how long the  
2 fence segment is, and we just got this, Your Honor.

3 THE COURT: I don't know what it is. How many  
4 pages is it?

5 MR. SMITH: It's two pages, Your Honor, but the  
6 problem is not the number of pages; it's the calculations.  
7 We just have inches now for various segments and we have --  
8 it's broken down into fence segments on the north side,  
9 center out, and south side from center out. So we have  
10 to -- Mr. Mulroe represents he believes that the fence at  
11 issue, the segment, was the north side, center out, but  
12 then, Your Honor, there's about 20 entries for different  
13 fence segments in inches which --

14 THE COURT: Why -- I hear what you're saying.  
15 You're going to be able to cross the witness until the cows  
16 come home about this document; right?

17 MR. SMITH: But, Your Honor, I would have to do  
18 the math, you're saying, in real time?

19 THE COURT: I don't know why you need math to ask  
20 the witness -- I understand why, ultimately, you need the  
21 math, but my point is if -- I guess you -- all the -- you  
22 have two pages of information. I don't understand why you  
23 can't just use it to question the witness along all the  
24 lines you would like and leave the math for later.

25 MR. SMITH: So Your Honor, the witness is going to



1 testify, I believe, that there was a purchase order in 2008  
2 for 30- -- for \$32,000 paid for approximately 32 -- 328  
3 linear feet of fencing. Then, Your Honor -- and Mr. -- I  
4 believe the witness is going to represent that each foot of  
5 fencing works out to about \$97 per foot. Then we have a  
6 representation from the Architect of the Capitol that  
7 each -- setting aside the total cost of \$32,000, each  
8 segment of the fence would cost around \$3,700. So --

9 THE COURT: Sounds like a good question to ask  
10 this witness, how that can be.

11 MR. SMITH: Well, then, Your Honor -- then we got  
12 the actual lengths of the fences used on January 6th and we  
13 have to put the inches into feet and then calculate whether  
14 this is the same size as the fence for the purchase order in  
15 2008. Does Your Honor understand what I'm saying? So we  
16 don't -- we have no evidence in the record showing that the  
17 fence that was broken is the same fence that corresponds  
18 with the 2008 purchase order unless we do the math on this  
19 page to calculate it. I'm struggling -- I'm trying to do  
20 the math right now --

21 THE COURT: Okay.

22 MR. SMITH: -- but we haven't had any time. We're  
23 trying to object -- correspond, you know -- argue with the  
24 Court about different issues.

25 THE COURT: Okay. How long is this witness's

1 direct going to be, Mr. Mulroe?

2 MR. MULROE: I would put it at about an hour to an  
3 hour-and-a-half --

4 THE COURT: All right. So we're --

5 MR. MULROE: -- on the longer end.

6 THE COURT: We're at least going to have one break  
7 and, maybe, the lunch break. So let -- we'll cross that  
8 bridge when we cross to it.

9 MR. ROOTS: (Indicating.)

10 THE COURT: Mr. Roots?

11 MR. ROOTS: Yeah. Even during direct, we would  
12 object to some invoices. There are a lot of redactions.  
13 We've been provided with different invoices regarding both  
14 the window issue, which we're also challenging the \$1,000  
15 amount, and the fence. We've been given some -- but by the  
16 way, every single invoice we have has different numbers and  
17 there are redactions. The vendor's name is redacted. So  
18 this is a violation of our right under the Sixth Amendment  
19 to confront our accusers. We will object to all that  
20 redacted stuff on confrontation grounds. We haven't been  
21 able to -- they're going to put the representative of the  
22 Architect of the Capitol on to talk about numbers and costs.  
23 We are not able, because the -- of all these redactions, to  
24 bring the vendor in to -- we don't even know the vendor.  
25 And so this is a violation of the confrontation clause and

1 we will object to all that.

2 THE COURT: Have -- so I mean, I might have --  
3 I -- you might have made your objection before one minute  
4 before we're about to have the witness take the stand, but  
5 let me just ask this.

6 Have these items been produced -- have -- in  
7 unredacted form to the defense or are these redactions  
8 things that they have been part of what you produced from  
9 the beginning?

10 MR. MULROE: Your Honor, the redactions have been  
11 produced from the beginning, and the redactions are on the  
12 documents as we, the Government, received them from the  
13 Architect of the Capitol which I understand to be part of  
14 the legislative branch. So I don't think that we have any  
15 issue of Mr. Roots or any other defense counsel asking the  
16 witness about what's under those redaction boxes. I think  
17 it is the name of the vendor for the glass and then other  
18 certain internal proprietary information for the Architect  
19 of the Capitol, but we just don't have the unredacted copy  
20 to produce even if we wanted to.

21 THE COURT: All right. So look, I --

22 MR. ROOTS: It's still a violation of the  
23 confrontation clause.

24 THE COURT: It can't -- but it can't be -- the  
25 redactions -- the Government has turned over -- or

1 Mr. Pattis will appreciate my correction. The -- at least  
2 the executive branch has turned over everything they have to  
3 you; right? So the fact that another branch of  
4 government -- or let's say it was -- a private actor  
5 redacted something and then gave it to the Government. The  
6 Government turns it over to you. They can't make the  
7 redaction magically disappear. So I think, for now -- I  
8 mean, look, you -- there are other sorts of ways for you to  
9 get at that information, of course. You can ask the  
10 witness, for starters, but then there's, obviously, other  
11 tools you had and have at your disposal, but I don't think  
12 that's a reason for them not to be able to put on this  
13 witness and we go from there.

14 Let's bring in the witness and the jury.

15 (Brief pause.)

16 THE DEPUTY CLERK: Jury panel.

17 (Jury returned to jury box.)

18 THE COURT: All right. Everyone may be seated.

19 Let me have counsel just pick up the phone for one  
20 moment for a bench conference.

21 (Bench conference:)

22 THE COURT: I just want to make sure that no  
23 counsel -- all right.

24 (Brief pause.)

25 Can I have everyone's attention up here. I just

1 want to make sure no counsel are -- have concerns about me  
2 giving the instruction that we talked about with the witness  
3 in the courtroom and on the stand. Obviously, they're, kind  
4 of, disconnected issues, but ordinarily I wouldn't give an  
5 instruction with a witness already having taken the stand.  
6 Does anyone object to that? Is there any objection to that?

7 MR. HULL: No, Your Honor.

8 THE COURT: All right. I just --

9 MS. HERNANDEZ: Your Honor, I'm sorry, just -- I  
10 guess you could make clear to the -- it has nothing to do  
11 with this witness.

12 THE COURT: Sure.

13 MS. HERNANDEZ: Yeah. And, Your Honor, also, I'm  
14 sorry. What happened over there right before you --

15 THE COURT: The juror fell off his seat. He fell  
16 and he was helped by his fellow juror and another individual  
17 there. The juror fell from his seat.

18 All right. No objection to that? All right.

19 Very well.

20 (Return from bench conference.)

21 THE COURT: All right. Welcome back, ladies and  
22 gentlemen.

23 Before we go any further -- and this has nothing  
24 to do with the witness who you'll hear from next -- but I'm  
25 going to -- I have another instruction for you.

1           You have heard testimony that certain witnesses --  
2           namely, Matthew Greene and Jeremy Bertino -- pled guilty to  
3           certain charges related to January 6th. The evidence  
4           regarding their guilty pleas was admitted for limited  
5           purposes relating to those witnesses' credibility or those  
6           witnesses' acknowledgement of their role in the alleged  
7           offense. You may not use the fact that either witness  
8           entered a guilty plea, nor the fact that I accepted those  
9           pleas, as evidence of the guilt of any defendant on trial in  
10          this case. I will instruct you further at the end of the  
11          trial regarding your consideration of testimony from a  
12          witness with a plea agreement.

13                 And with that, the Government may call its next  
14          witness.

15                 MR. MULROE: Thank you, Your Honor.

16                 The United States calls Jason McIntyre.

17                 **JASON MCINTYRE, WITNESS FOR THE GOVERNMENT, SWORN**

18                         DIRECT EXAMINATION

19                 BY MR. MULROE:

20                 Q. Good morning, sir.

21                 A. Good morning.

22                 Q. Please start by introducing yourself to the jury,  
23                 stating your full name and spelling your last name.

24                 A. Good morning. My name is Jason McIntyre. J-A-S-O-N;  
25                 McIntyre, M-C-I-N-T-Y-R-E.

1 Q. And, Mr. McIntyre, that microphone stem is adjustable  
2 and the base is movable. So feel free to position that  
3 whichever way is going to let you to speak directly and nice  
4 and close to the microphone.

5 Mr. McIntyre, where do you work?

6 A. I work for the Architect of the Capitol.

7 Q. Architect of the Capitol; is that a single person or is  
8 that an entity?

9 A. It's a legislative branch agency.

10 Q. What's your position with the Architect of the Capitol?

11 A. I am the deputy superintendent for the United States  
12 Capitol and Capitol Visitor Center.

13 Q. I want to ask you a little bit about the Architect of  
14 the Capitol generally. What is the Architect of the  
15 Capitol?

16 A. We are a legislative branch agency made up of about  
17 2,500 employees, and we are responsible for the care,  
18 maintenance, historic preservation, and construction  
19 activities that occur both in the United States Capitol as  
20 well as the Capitol complex.

21 Q. So care, maintenance, construction, preservation. What  
22 all are the specific activities of the office that go into  
23 those things?

24 A. My office, we employ about 225 employees who are  
25 responsible from -- for all aspects of historic preservation

1 and maintenance, to include plumbing, painting, carpentry,  
2 sheet metal, mechanic, cleaning -- daily cleaning, as well  
3 as other activities that may need to occur within the  
4 Capitol and on the outside of the Capitol building.

5 Q. So, kind of, full spectrum of the trades?

6 A. Correct.

7 Q. And you referred to "my office," or your office, with  
8 about 225 employees. Do you work for or run a particular  
9 part of the Architect of the Capitol?

10 A. Our office would be -- is called the Capitol  
11 superintendent's office.

12 Q. And what are the duties, generally speaking, of the  
13 Capitol superintendent's office as distinct from the overall  
14 Architect of the Capitol?

15 A. Our group is focused on the Capitol building and the  
16 Capitol Visitor Center.

17 Q. I'd like to ask you a little bit of the history of the  
18 Architect of the Capitol. How long has it been around?

19 A. The Architect of the Capitol was established in 1793.

20 Q. So about 230 years?

21 A. Correct.

22 Q. And has it always been the same size as it is now?

23 A. No. It's grown over time, as all agencies -- it began  
24 with the laying of the cornerstone of the original  
25 foundation of the Capitol building and, over time, as



1 additional buildings have come to the Capitol complex,  
2 the -- the -- the size of the agency has grown.

3 Q. The very first work on the foundation of that building,  
4 the Architect of the Capitol was there for?

5 A. That is correct.

6 Q. Does the Architect of the Capitol have a mission  
7 statement?

8 A. We do --

9 Q. What is that?

10 A. -- yes. Our mission statement is to serve, preserve,  
11 and inspire.

12 Q. Mr. McIntyre, I want to ask about your role specifically  
13 within the Architect of the Capitol. How long have you been  
14 with the office?

15 A. 14 years.

16 Q. So since about 2008, would that be?

17 A. Correct, 2008.

18 Q. And walk the jury through the positions that you've held  
19 with Architect of the Capitol.

20 A. When I began with the Architect of the Capitol, I was a  
21 fire protection engineer, and then became an assistant  
22 superintendent for the House office buildings.

23 THE COURT: Sir, can I -- I'm sorry to interrupt,  
24 but I don't think you're catching the microphone. Thank  
25 you. Yes.

1 THE WITNESS: I'll repeat myself. When I began  
2 with the Architect of the Capitol, I started as a fire  
3 protection engineer, and then became an assistant  
4 superintendent for the House office buildings. And I'm now  
5 the deputy superintendent for the United States Capitol  
6 building.

7 BY MR. MULROE:

8 Q. What about before coming to work at the Capitol? Did  
9 you work before that?

10 A. I did, yes.

11 Q. Where?

12 A. I worked for the United States Navy.

13 Q. What did you do for the Navy?

14 A. I was a fire protection engineer for their facilities  
15 construction program.

16 Q. And what is the educational background that's prepared  
17 you to hold all those roles?

18 A. I have a four-year engineering degree.

19 Q. Mr. McIntyre, over the course of your testimony, I'm  
20 going to be asking you some questions about the value of  
21 certain items at the Capitol. Is the nature of your work  
22 such that you've got some familiarity with how much  
23 different things cost on the Capitol grounds?

24 A. Yes.

25 Q. I want to orient you in time to January 6th, 2021. So

1 you were with the Architect of the Capitol at that time?

2 A. Yes, I was.

3 Q. Did you have the same role that you have now?

4 A. I did.

5 Q. Before going to the 6th, let me ask you a little bit  
6 about the time period leading up to the 6th. In the weeks  
7 preceding January 6th of 2021, was there anything  
8 significant going on on the Capitol grounds that was a focus  
9 of the Architect of the Capitol's attention?

10 A. Yes. We were in the process of constructing the  
11 presidential inaugural stands and support facilities for the  
12 upcoming January 20th, 2021, presidential inauguration.

13 Q. How often does the Architect of the Capitol carry out  
14 that work?

15 A. Once every four years.

16 MR. MULROE: And, Ms. Rohde, if we could have  
17 Exhibit-105, which I believe is in evidence, for the witness  
18 and jury.

19 BY MR. MULROE:

20 Q. Can you see the image on your screen, Mr. McIntyre?

21 A. Yes, I can.

22 Q. Are there parts of that image that are relevant to the  
23 preparations for the inauguration every four years?

24 A. Yes. This rendering shows the temporary construction  
25 that occurs on the west front of the building every four

1 years.

2 Q. And the screen is a touchscreen that you can annotate,  
3 if that's helpful. But what are the specific things that  
4 get put up every four years?

5 A. Every four years, the area here (indicating) has -- is  
6 where the primary major construction occurs. We have  
7 temporary bleachers located at this location, (indicating.)  
8 We have media stands on both sides of the -- what is called  
9 the presidential inaugural stands, (indicating.) All of  
10 that is constructed between about Labor Day of the year  
11 preceding the inaugural and all -- we are working on those  
12 facilities all the way through the -- January 19th of the  
13 year of the inaugural.

14 Q. And on the rendering that we see, where does the main  
15 action, so to speak, of the inauguration take place?

16 A. The president takes the oath of office on this very  
17 center section that I've circled. (Indicating.)

18 Q. All right. I'm clearing the annotations, and just one  
19 or two more questions about inauguration preparations.

20 How long does the entire process take to get the  
21 grounds ready?

22 A. We begin planning for this well over, you know, a  
23 year-and-a-half prior to the inaugural. The construction  
24 activities, as I said, take, you know, a few months. We  
25 begin right after the Labor Day concert series ends on the

1 Capitol grounds -- and then we begin that temporary  
2 construction -- all the way through the inaugural itself.  
3 And then we take about another month to disassemble  
4 everything and return the grounds to their condition they  
5 were prior to the inaugural.

6 Q. Is all of that work done by Architect of the Capitol  
7 staff or do outside contractors pitch in?

8 A. It's a mix of both Architect of the Capitol staff as  
9 well as an outside construction contractor.

10 Q. Is that true more generally apart from the inauguration?  
11 Does Architect of the Capitol sometimes rely on private  
12 entities to help do the work of the office?

13 A. We do from time to time. It depends on the scale as  
14 well as the skill set and how fast something needs to be  
15 completed.

16 Q. Mr. McIntyre, I'll take you now to January 6th, 2021.  
17 Were you working that day?

18 A. I was working virtually on the 6th.

19 Q. Was that common, during that time, to be working  
20 remotely?

21 A. It was, yes.

22 Q. Did there come a time during the 6th that you learned  
23 that something out of the ordinary was going on at the  
24 Capitol?

25 A. Yes.

1 Q. Tell us when and how you heard that.

2 A. My supervisor was on-site that day. We -- along with  
3 about a third of our staff. And you -- shortly, you know --  
4 in the afternoon, my boss and I were on the phone quite  
5 frequently both looking at the news coverage as well as  
6 personal accounts from my -- the employees that work for me  
7 as well as my boss on things -- on activities that were  
8 occurring at the Capitol.

9 Q. And on the 6th, generally, was construction active on  
10 that day on the stage?

11 A. We -- not during the middle of the day. So much of the  
12 construction we do -- to allow Congress to continue doing  
13 business during the day, much of our construction happens  
14 off hours. The -- we had been given prior notice that there  
15 may be large crowds at the Capitol on the 6th. And so much  
16 of our construction activities did not occur on the 6th.

17 Q. When you, working virtually, heard about what was going  
18 on at the Capitol, did that mean anything to you in terms of  
19 your professional duties as part of the Architect of the  
20 Capitol?

21 A. Absolutely. You know, our goal is to preserve the  
22 Capitol -- one of our goals is to preserve the United States  
23 Capitol and, obviously, as we are responsible for the care  
24 and the maintenance of the Capitol, any damage to the  
25 Capitol, we are responsible for identifying what that damage

1 is, how to fix it, and how much it would cost in order to  
2 fix that.

3 On the 6th, my boss and I made the decision to  
4 have teams prepped for the morning of the 7th in order to  
5 identify what damage there was to the building.

6 Q. And just to spell it out, what was it about what you saw  
7 or heard on the 6th that made you think that damage might be  
8 an issue?

9 A. We were getting reports from our employees and others  
10 that there was damage to doors, windows, graffiti, general  
11 damage to the grounds, et cetera.

12 Q. Walk us through, then, step by step, what were the  
13 actions that you and your colleagues took, you know,  
14 starting first thing when you began responding to what  
15 occurred?

16 A. On the -- so on the afternoon of the 6th, as I  
17 mentioned, we stood up what we call our disaster assessment  
18 teams. Those disaster assessment teams -- we began  
19 identifying individuals who would be able to make it to work  
20 as early as the Capitol Police gave us permission to come  
21 back to the building. Those disaster assessment teams are  
22 made up of, on average, five or six employees that --  
23 architects, engineers, trades-men and -women for the  
24 Architect of the Capitol. And those teams are responsible  
25 for systematically going through the building both on the

1 exterior as well as the interior of the building and  
2 identifying what damage there is, if that damage is an  
3 immediate safety issue, and if that -- or if that damage can  
4 be repaired at a later time, and then ultimately those teams  
5 are responsible for helping to put in place the plan of  
6 action to make those repairs.

7 Q. In the time that you had been with the Architect of the  
8 Capitol, had disaster assessment teams been called into  
9 action before?

10 A. Only once before in the time frame that I've been with  
11 the -- with the Architect of the Capitol.

12 Q. What was that for?

13 A. The 2011 earthquake in Mineral, Virginia, that impacted  
14 our buildings.

15 Q. I'm not sure if you told us, but did you personally go  
16 to the Capitol as part of this disaster response effort?

17 A. Yes, on the morning of the 7th.

18 Q. What time did you arrive?

19 A. Shortly before 5:00 a.m.

20 Q. Was it light out or dark out at that time?

21 A. The sun had not come up yet.

22 Q. What were your first impressions on arriving at the  
23 grounds in the dark?

24 A. You know, we typically keep the Capitol building, since  
25 it's a, you know -- we -- it's a working office building,



1 but we also -- the Capitol building is more or less kept as  
2 a working museum. It's, you know -- we -- our mission is to  
3 provide not only a place of business for Congress to carry  
4 out their business, but also a location where the American  
5 public can come and visit the building and be inspired by  
6 what they see. The building on the morning of the 7th was  
7 very different than any other morning that I've come to work  
8 in my 14 years. The amount of general disarray, trash, the  
9 state of the grounds -- if you can imagine, we have a whole  
10 team of people, not in my office, but that work for the  
11 Architect of the Capitol -- their mission is to care for the  
12 Capitol grounds. And so even on times of when we have large  
13 crowds, we have employees there that are there to take care  
14 of the building and the grounds, trash collection, you know,  
15 general maintenance. If something is broken, we fix it.  
16 And seeing the building on the morning of the 7th, it --  
17 quite different than any other morning I've ever seen it.

18 Q. Had you ever seen it anywhere close to that?

19 A. Not to my recollection.

20 Q. Not even after the earthquake?

21 A. No.

22 Q. As you reviewed the scene, was there any evidence of  
23 breaches to the building?

24 A. Yes.

25 Q. Tell us about that.

1 A. The primary evidence from breaches were broken windows,  
2 broken doors. I had about 25 of my employees who stayed in  
3 the building who were sheltered in place during much of the  
4 events of the 6th, and then stayed in the building after the  
5 police had cleared the building to help get the building  
6 ready for Congress to get back into session. Those 25  
7 employees, some of them were responsible for assisting  
8 United States Capitol Police in resecuring the building, and  
9 much of that was plywood over top of any broken windows or  
10 broken doors. That was -- that occurred throughout the  
11 evening of the 6th into the morning of the 7th.

12 Q. So you said you arrived around 5:00 a.m. Did you stay  
13 on the grounds past when the sun came up?

14 A. Yes.

15 Q. And did you have a chance to observe the grounds, the  
16 exterior of the Capitol?

17 A. Yes.

18 MR. MULROE: Ms. Harris, could we have the screen  
19 just for the witness for a moment.

20 BY MR. MULROE:

21 Q. And, Mr. McIntyre, I'm going to show you a series of  
22 four videos. I'm just going to show you the first couple of  
23 seconds of each and ask you whether these are videos that  
24 you reviewed prior to coming to court today and whether you  
25 recognize what's in them.

1 MR. MULROE: So Ms. Rohde, starting with 479A,  
2 please.

3 (Video played.)

4 THE DEPUTY CLERK: Mr. Mulroe, just so you know,  
5 479A, if you're doing A, B, C, and D, they're already  
6 admitted.

7 MR. MULROE: Thank you.

8 THE DEPUTY CLERK: You're welcome.

9 MR. MULROE: Saved me a couple of minutes.

10 Let's have the screen, please, for the jury, as  
11 well, then.

12 BY MR. MULROE:

13 Q. So Mr. McIntyre, starting with 479A, is this a video  
14 that shows the Capitol grounds on January 7th?

15 A. Yes.

16 Q. And having reviewed this before, does this video show  
17 them in about the same state that you encountered them?

18 A. Yes.

19 Q. Does it fairly and accurately depict the Capitol  
20 grounds?

21 A. Yes.

22 MR. MULROE: Let's let 479A, please, play,  
23 Ms. Rohde.

24 (Video played.)

25 MR. MULROE: And we can pause there.

1 BY MR. MULROE:

2 Q. Now, what is it that we see on the screen at the  
3 10-second mark?

4 A. This is a shot of the media stands on the west front  
5 north side of the Capitol grounds. This is showing you the  
6 scaffolding. The tattered white fabric that you see here is  
7 what would be called the scaffolding scrim. That was  
8 previously attached to the scaffolding. It was -- it's a --  
9 kind of, a cover so that, during the television event, you  
10 don't see all of the metal pipes. You see a solid white  
11 sheet, almost, that covers up all of those pipes.

12 Q. And prior to January 6th, is that the state the scrim  
13 was in?

14 A. No. The scrim had been recently installed and it was in  
15 good condition.

16 MR. MULROE: Continue the video.

17 (Video played.)

18 MR. MULROE: And moving on, please, Ms. Rohde, to  
19 479B.

20 (Video played.)

21 MR. MULROE: And let's pause there at the  
22 beginning.

23 BY MR. MULROE:

24 Q. Mr. McIntyre, we can hear and see leaf blowers or snow  
25 blowers. Was cleanup part of what had to happen on

1 January 7th?

2 A. Yes.

3 Q. Why?

4 A. First and foremost, there is an inaugural that was going  
5 to happen in 13 days. We had to assess -- at this location,  
6 we had to assess any damages that had occurred to the  
7 temporary structure, to not only make sure that the  
8 structure was structurally safe, but also to identify what  
9 construction activities now needed to occur to get it back  
10 to its condition it was prior to the events of the 6th. And  
11 we still had construction activities to -- that had not yet  
12 been completed, that needed to be completed within those  
13 next 13 days.

14 MR. MULROE: We're at three seconds. Let's let  
15 the video play.

16 (Video played.)

17 MR. MULROE: Let's pause there for a moment,  
18 Ms. Rohde.

19 BY MR. MULROE:

20 Q. At 52 seconds, Mr. McIntyre, we -- well, what is the  
21 structural feature we see going through the middle of the  
22 screen here?

23 A. To the -- the area that I've outlined in green, that is  
24 the balustrade of the lower west front terrace of the United  
25 States Capitol. Everything to the left of that balustrade

1 is the temporary wooden structure that is built for the  
2 presidential inaugural. That's what we call the  
3 presidential inaugural area. Everything to the right of  
4 that balustrade is where the stands begin.

5 Q. So if it were not for the inauguration, this balustrade  
6 would, kind of, be the edge of the terrace overlooking --

7 A. That is correct.

8 Q. -- open space?

9 Is it normally, kind of, blue like that?

10 A. No. Unfortunately, in the early morning of the 6th, we  
11 had finalized the painting of the blue sections that you see  
12 on the right-hand side of this balustrade. And the blue  
13 that you see on top of the balustrade is actually  
14 footprints, people walking through semi-wet blue paint and  
15 tracking that on top of the historic stone structure.

16 Q. And just to orient us geographically, is this a monument  
17 in the distance we can see there?

18 A. Yes, that's the Washington Monument.

19 Q. All right. Clearing --

20 A. That is a view looking down the United States -- the  
21 National Mall.

22 MR. MULROE: Clearing the screen, then, let's keep  
23 playing from 52 seconds.

24 (Video played.)

25 MR. MULROE: And then next, please, Ms. Rohde,

1 479C.

2 (Video played.)

3 MR. MULROE: And pause there.

4 BY MR. MULROE:

5 Q. So at the two-second mark, Mr. McIntyre, just to orient  
6 us, what part of the building do we see?

7 A. This is what is called the lower west terrace exit from  
8 the basement floor of the Capitol. We are standing outside  
9 the building, looking back toward the building.

10 MR. MULROE: Let's continue at two seconds.

11 (Video played.)

12 MR. ROOTS: Your Honor, I would object to  
13 relevance. These men --

14 THE COURT: Hold on. Hold on, sir. I'll hear you  
15 at sidebar.

16 (Brief pause.)

17 MR. ROOTS: I think I fully stated my objection.

18 THE COURT: Hold --

19 (Bench conference:)

20 THE COURT: Well, let me ask the --

21 (Brief pause.)

22 If -- Mr. Roots, I will -- you can hear me? Can  
23 you hear me? I understand --

24 MR. ROOTS: Yes.

25 THE COURT: I understand your objection. I

1 just -- you need to be able to hear me talk to the  
2 Government.

3 How -- I think I do understand the objection. How  
4 much more of this, sort of, overview -- I mean, we are  
5 talking about a lot of -- the jury is seeing a lot of things  
6 that, obviously, the defendants did not have anything  
7 directly to do with.

8 MR. MULROE: Yes, Your Honor. There is one more  
9 video of a similar length. So we are well over halfway  
10 through it. I do just want to, for the record, note the  
11 relevance of this is, one, establishing the civil disorder;  
12 and then, two, more specifically with respect to this  
13 witness's testimony, he's going to be testifying about the  
14 cost of repairs that were made, and that cost is higher  
15 because of the urgency and the need to triage and the sheer  
16 quantity of work that was necessary to get done in a very  
17 short amount of time because of what happened on the 6th.  
18 And so I think that showing this overall picture, you know,  
19 is very necessary for the jury to understand that part of  
20 what goes into the costs.

21 THE COURT: But is the cost of the things that the  
22 defendants are charged with -- did that have to be done at a  
23 very quick pace that this is relevant to?

24 MR. MULROE: Yes, Your Honor. So the glass  
25 repairs were one of -- I expect the witness will testify



1       that the glass repairs were one of the most urgent items to  
2       get taken care of before the inauguration. I would just  
3       front that the particular window at issue here was not  
4       repaired until after the inauguration, but the glass  
5       contract, you know, was done on a very, very abbreviated  
6       timeline.

7               THE COURT: And is he going to testify as the --  
8       as to the total amount of costs that were associated with  
9       January 6th?

10              MR. MULROE: I don't anticipate asking him that.  
11       I don't think that that figure would necessarily be  
12       directly relevant to the counts charging these defendants.

13              MR. METCALF: (Indicating.)

14              THE COURT: All right. Mr. Metcalf, I have  
15       already -- I mean, I'm not going to hear from you because I  
16       heard from Mr. Roots. I mean, I can't have multiple  
17       lawyers -- I mean, I -- if one of you objects, that's fine.  
18       I'll hear from you. I'm not going to hear --

19              MR. METCALF: Your Honor, it's a different issue  
20       than what Mr. --

21              THE COURT: All right.

22              MR. METCALF: -- Roots objected to.

23              THE COURT: What's the issue?

24              MR. METCALF: Based on the cost with the window, I  
25       just have been going through what is premarked as 931A, and

1 I would just like to lodge an objection as to relevance and  
2 jury confusion.

3 THE COURT: Okay. Mr. Metcalf, we'll get to that  
4 when we get to it or we'll get to it at a break. I'm not  
5 going to take up an objection to an exhibit just out of  
6 order randomly.

7 Mr. -- as to the objection that's been lodged,  
8 I'll give the Government a little more leeway here.  
9 Obviously, you get a little leeway for the reasons you  
10 described, but I don't -- it won't be much more leeway. If  
11 you have another minute or two of this, fine, but we need to  
12 move on to the things that are directly relevant to these  
13 defendants.

14 MR. METCALF: Your Honor, I just have one other  
15 issue with regards to what's being shown right now.

16 THE COURT: Uh-huh.

17 MR. METCALF: Ms. Harris indicated that these  
18 exhibits were already admitted, the 479 -- it seems like A  
19 through D. I have no notes indicating when these were  
20 admitted before.

21 THE COURT: Well, we can consider that. I think  
22 the issue was there was a witness who I, sort of,  
23 conditionally admitted a bunch of things with -- subject to  
24 objections for relevance and the like. That's where I think  
25 the confusion lies. So I'd ask -- we can --

1 Ms. Harris, there were a bunch of things that  
2 were, sort of, en masse admitted. I think we -- just since  
3 we have this moment -- I was going to do it at a break, but  
4 we need to be careful. If we're talking about something the  
5 jury has not seen yet, we should still treat it as --  
6 Ms. Harris, you should not -- I know this is hard, but we  
7 need to communicate and you should not necessarily treat it  
8 as admitted for all purposes. Give the defense a chance to  
9 object and the like. Because there were things that were  
10 admitted, sort of, en masse, and I think it was really  
11 just almost an issue of authenticity and foundation rather  
12 than having a -- all the objections heard. Does that --

13 MR. MULROE: Your Honor --

14 THE COURT: -- make sense?

15 MR. MULROE: Your Honor --

16 THE DEPUTY CLERK: Okay. And if you want to go  
17 back and just look at -- it was January 13th through  
18 Inspector Loyd.

19 THE COURT: Oh. So maybe, they -- if it was --  
20 oh, okay.

21 MR. MULROE: Your Honor --

22 THE COURT: I think that's that category, but,  
23 maybe, Mr. Mulroe's going to clarify.

24 MR. MULROE: Yes. This was part of the large set  
25 that we --

1 THE COURT: Right.

2 MR. MULROE: -- had put in conditionally through  
3 Inspector Loyd. We eventually decided not to show this with  
4 him just for the sake of moving things along.

5 THE COURT: All right. Just -- I would just say,  
6 we'll all -- the Government and Ms. Harris and I will try to  
7 be cognizant of -- if there are things that have not been  
8 before the jury, even though I technically, sort of,  
9 admitted them en masse, we do need to give the defendants an  
10 opportunity to object if there's some sort of relevance, 403  
11 objection, et cetera.

12 All right. So let's proceed.

13 MR. METCALF: Thank you.

14 (Return from bench conference.)

15 MR. MULROE: All right. Let's keep moving.

16 Ms. Rhode, would you let the video play.

17 (Video played.)

18 MR. MULROE: And then, lastly, Ms. Rohde, 479D,  
19 please.

20 (Video played.)

21 BY MR. MULROE:

22 Q. Now, Mr. McIntyre, as you and the disaster assessment  
23 teams took a look at what all needed to be done, was that  
24 amount of work something that could be accomplished all at  
25 once or did the Architect of the Capitol have to set

1 priorities?

2 A. We had to set priorities.

3 Q. What were the considerations that went into prioritizing  
4 the work?

5 A. We had to look at not only do we have the skill set to  
6 make those repairs, do we have the materials to make those  
7 repairs in the time frame -- much of this area that -- in  
8 these videos, obviously, is on the congressional -- on the  
9 presidential inaugural stands, so a very different timeline  
10 than something that may have occurred elsewhere in the  
11 building. Big thing for us --

12 Q. Just to unpack that, something that happened on what you  
13 might call the back side of the inaugural side --

14 A. On the east front of the building, correct.

15 Q. On the east front. Higher or lower priority?

16 A. In this area, on the west front, certainly, a higher  
17 priority.

18 Q. Because that's what's going to be on the TV cameras when  
19 the inauguration occurs?

20 A. That is correct.

21 Q. Okay. I cut you off there. Please keep going.

22 A. The biggest challenge for us during this time frame in  
23 January of 2021 was availability of materials in the middle  
24 of the pandemic. The hardest part for our office in  
25 general, or any construction contractor at the time, was

1 finding the materials needed and getting them to you. Being  
2 able to purchase the materials was one thing, but being able  
3 to get them delivered to you is another. So for us, that  
4 was one of the primary factors on, could we make these  
5 repairs through Architect of the Capitol employees or would  
6 we have to contract this out?

7 Q. Phrase "supply chain" relevant at all there?

8 A. Yes.

9 Q. Tell us how.

10 A. The supply chain at the time was very difficult, to say  
11 the least. Price of materials had gone -- were going way  
12 up, as well as the availability to ship the products that  
13 you purchased from wherever they were manufactured or stored  
14 in a warehouse to the Capitol complex.

15 Q. And in terms of prioritizing which work to complete  
16 first, you mentioned the inauguration. Was security a  
17 factor in this at all?

18 A. Yes, it was.

19 Q. How so?

20 A. As we talked about earlier, there were broken exterior  
21 windows and doors. Those broken exterior windows and doors  
22 were one of our highest priorities, not just from an  
23 Architect of the Capitol perspective, but also from a United  
24 States Capitol Police perspective. This is a secured  
25 building. You can't enter the building without proper

1 identification and clearances and, especially during the  
2 pandemic, only -- there were no visitors allowed in the  
3 building at this time.

4 We worked with the Capitol Police to identify with  
5 them what their priorities were for us to help them resecure  
6 the building, which resulted in much of the -- what you  
7 would call the exterior envelope of the building: Doors,  
8 windows, things of that nature.

9 Q. So you talked about the inauguration. You talked about  
10 security. Did climate come into play at all?

11 A. It does, yes. We have -- you can imagine the  
12 building -- the Capitol building; it not only itself is  
13 historic, but it houses many historic pieces of art --  
14 artwork, statutes, marble busts, different aspects --

15 (Brief interruption.)

16 BY MR. MULROE:

17 Q. Just hold on one moment.

18 A. And different items in the building that rely on  
19 temperature and humidity control. Having broken windows,  
20 broken glass in doors, broken doors, things of that nature,  
21 doesn't allow us to maintain the best temperature and  
22 humidity control in the building, especially in the winter.  
23 In the winter, if you can imagine, it's the middle of  
24 January. Needing to make sure that we maintain proper  
25 humidity control as well as temperature control is important

1 to our building. Our building also has -- if any of you  
2 have ever been in the building, the building has works of  
3 art that are part of the building, and so those are called  
4 frescos. Those frescos are the -- directly painted on the  
5 wet plaster when the plaster was being applied. Much of  
6 that dates from the 1850s. And temperature and humidity  
7 control is very important for the plaster -- those plaster  
8 walls. If you don't keep it in a consistent-ish temperature  
9 and humidity range, you can start to see delamination of  
10 that plaster which would result in a loss of that historic  
11 fabric.

12 Q. Thinking back to 2021, not too many 60-degree days that  
13 winter, were there?

14 A. I don't remember.

15 Q. Mr. McIntyre, I want to start asking you now about some  
16 of the specific damage and specific repairs that took place.  
17 I want to start with windows.

18 MR. MULROE: So Ms. Rohde, could we have  
19 Exhibit-425, please. And you can actually take that to the  
20 27-second mark and pause it there.

21 (Video played.)

22 MR. METCALF: Your Honor, at this point, I object  
23 as far as cumulative.

24 THE COURT: Okay. Well, I just noticed, in any  
25 event, we -- now is a time -- a good break time, I think,



1 when you're switching topics, to take our morning 10-minute  
2 break.

3 So ladies and gentlemen, I'll have Ms. Harris  
4 excuse you for 10 minutes. We'll give the court reporter a  
5 chance to rest and we'll come back.

6 (Jury returned to jury room.)

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

8 Sir, you may step down.

9 (Witness steps down.)

10 I'll wait for Ms. Harris to come back into the  
11 room.

12 All right. Again, you all may be seated.

13 Mr. Metcalf, before we go to break, I mean, he's  
14 about to testify as to the value of things. How is it  
15 cumulative? There's been no testimony on this.

16 MR. METCALF: As far as showing the jury the video  
17 and this image, again, I'm -- I'm objecting on cumulative  
18 grounds. If we're talking about two windows, which is what  
19 he's going to basically testify to, from my understanding,  
20 and what the cost is for each one of those windows, they  
21 have exhibits that they've prepared for him to be able to  
22 explain that. It -- the jury doesn't need to have to go see  
23 the video of Mr. Pezzola again at the window. They've  
24 already seen it 15 times. So --

25 THE COURT: I don't know about 15.

1 MR. METCALF: This objection for this video in  
2 particular, I think, is reasonable. He could go through the  
3 different exhibits that have been prepared for this witness  
4 and that we've been noticed on, and 425 is not one of those  
5 exhibits that we were noticed on with this witness as well.

6 THE COURT: All right.

7 MR. METCALF: So --

8 THE COURT: Mr. -- all right.

9 MR. METCALF: For all those reasons, I believe  
10 that it's unnecessary, and it's highly prejudicial as well.  
11 So cumulative grounds and relevance grounds and 403 grounds.

12 THE COURT: All right. Mr. Mulroe.

13 MR. HULL: Biggs joins, Your Honor.

14 THE COURT: All right. Mr. Mulroe.

15 MR. MULROE: Your Honor, the purpose of showing  
16 this still from the video is to orient the witness to which  
17 windows we're talking about. We need to show him the  
18 windows in question to ask him questions about those. I  
19 don't know that there's any other way to direct him to which  
20 of the many, many panes of glass we are talking about.

21 THE COURT: Okay.

22 MR. MULROE: I also think that, you know -- first  
23 of all, I think we -- even if we were to show this video  
24 again, a cumulative objection would not be well placed, but  
25 I think, under the circumstances of what we're using it for,

1 the objection should be overruled.

2 THE COURT: You're just showing a still?

3 MR. MULROE: We're just showing a still. I think  
4 that -- I had planned to show the 22 seconds following that  
5 and then pause it again and ask him, you know, what shape  
6 the window was in when he reviewed it compared to what we  
7 see in the video. I think that would be entirely proper,  
8 but --

9 THE COURT: Okay.

10 MR. MULROE: -- I'd defer to the Court.

11 THE COURT: I'm going to overrule the objection.  
12 I mean, they've seen this a few times. I'm sure they'll see  
13 it a few more times. But explaining what witness -- what  
14 windows we're talking about, I think that's fair. So I'll  
15 overrule -- it's a reasonable objection, but I'm going to  
16 overrule the objection.

17 MR. MULROE: And I would just ask, Your Honor, I  
18 think the first objection in this witness was from  
19 Mr. Roots, and then there have been some from Mr. Metcalf.  
20 I know a little bit of flexibility in formality is, you  
21 know, appropriate at times, but I think that, for the  
22 orderliness of the proceedings, we should respect the  
23 one-lawyer rule.

24 THE COURT: No, you are correct, and I've said  
25 that from the beginning. So if -- Mr. Metcalf, you or

1 Mr. Roots can object on a -- obviously, on a  
2 witness-by-witness basis, but just one of you, please.

3 MR. METCALF: Thank you.

4 THE COURT: We need to take our 10 minutes for the  
5 court reporter. We'll be back in 10.

6 THE DEPUTY CLERK: All rise. This Honorable Court  
7 stands in recess for 10 minutes.

8 (Brief recess taken.)

9 THE DEPUTY CLERK: Jury panel.

10 (Jury returned to jury box.)

11 THE DEPUTY CLERK: We are back on the record in  
12 Criminal Matter 21-175, United States of America v. Ethan  
13 Nordean, et al.

14 THE COURT: All right. Mr. Mulroe, you may  
15 proceed.

16 (Brief pause.)

17 (Witness resumes the witness stand.)

18 BY MR. MULROE:

19 Q. All right. Mr. McIntyre, welcome back.

20 Where we left off, we were just about to look at  
21 the 27-second mark of Exhibit-425.

22 MR. MULROE: So Ms. Rohde, would you pull that up  
23 for us, please.

24 And, Ms. Harris, if we could have it for the jury.

25 BY MR. MULROE:

1 Q. Mr. McIntyre, the window we see on the left side of the  
2 screen here, are you familiar with that window?

3 A. Yes, I am.

4 Q. Do you know where in the Capitol that's located?

5 A. Yes, that's located on the west front of the building on  
6 the -- what's called the Senate connecting corridor.

7 Q. Are you able to point that out to us on the map that's  
8 over your left shoulder? Feel free, with the Court's  
9 indulgence, to stand up if you need to reach. But where is  
10 the Senate connecting corridor?

11 A. (Indicating.) The area right next to -- where the  
12 Breach No. 4 is pointing, that's the area called the Senate  
13 connecting corridor.

14 Q. Can you tell us just a little bit about what the Senate  
15 connecting corridor is and when it came to be.

16 A. That section of the building is from the 1850s when the  
17 Capitol building was expanded both north and south, north  
18 for the Senate; south for the House. That corridor was  
19 the -- kind of, the hallway, so to speak, that connected the  
20 original center section building and the Senate wing  
21 extension.

22 Q. And what happens in the Senate connecting corridor  
23 nowadays?

24 A. The primary function of that is a hallway that connects  
25 the Senate wing extension and the Senate wing.

1 Q. Going back to the window on the screen, are each of  
2 these parts of the window a separate pane of glass or is  
3 this all one big pane of glass?

4 A. Those are individual panes of glass.

5 Q. So lower left, lower right, upper left, upper right,  
6 four different ones that we can at least partially see; is  
7 that accurate?

8 A. That is correct.

9 MR. MULROE: All right. Ms. Rohde, if we could  
10 play that video to the 49-second mark.

11 (Video played.)

12 MR. MULROE: And pause it there.

13 BY MR. MULROE:

14 Q. Mr. McIntyre, when you arrived at the Capitol on  
15 January 7th, did you have an opportunity to observe that  
16 window in the Senate connecting corridor?

17 A. Yes.

18 Q. What kind of shape was the window in when you found it?

19 A. At that time, both of those panes of glass were boarded  
20 up from -- on the inside of the building and from the  
21 outside of the building. The glass was -- had been removed  
22 at that point.

23 Q. So no glass left in the panes?

24 A. That is correct.

25 Q. You said boarded up. Were these windows part of the

1 temporary repairs that you told us about earlier?

2 A. Yes, both of these were temporarily covered up by  
3 plywood by Architect of the Capitol employees on the night  
4 of the 6th.

5 Q. So the labor for who actually did the work was employees  
6 of the Architect of the Capitol?

7 A. For the temporary means of securing that window, that is  
8 correct.

9 Q. And what about the materials for the temporary repairs,  
10 that plywood, is that something that your office had on hand  
11 or did you have to purchase it?

12 A. We did have that on hand, yes.

13 Q. Now, from your perspective, was the temporary repair  
14 something that would be suitable for the longer term?

15 A. No, not for the long-term.

16 Q. Why not?

17 A. Again, this was a working office building and it -- a  
18 working office building for senators and members of  
19 Congress, but also, from a safety and security perspective,  
20 it still had -- there were many things in the building,  
21 including these windows, that we needed to make an  
22 identification of. Did it need to be repaired immediately  
23 or could it wait? Something of this nature at this location  
24 was on the higher end of our priority list.

25 Q. And just to put it in context, were these panes the only

1 broken glass at the Capitol after January 6th or was other  
2 glass broken, as well?

3 A. These were not the only broken pieces of glass. There  
4 were many, many pieces of broken exterior glass and interior  
5 glass.

6 Q. All right. So like the temporary repairs, I want to ask  
7 you about the permanent repairs in terms of labor and in  
8 terms of materials.

9 Starting with the materials, did the Architect of  
10 the Capitol have sufficient glass on hand to make the  
11 repairs of all these broken windows?

12 A. Unfortunately, we did not. Based on the number of  
13 windows and the size of windows -- panes that were broken,  
14 we did not have this much glass available on hand to make  
15 the repairs.

16 Q. So what, if any, steps did your office take to obtain  
17 the glass that would be necessary?

18 A. Beginning on the morning of the 7th, we began reaching  
19 out to glass contractors that we have -- had successfully  
20 worked with in the past to identify, did they have the  
21 manpower to complete these repairs and, most importantly,  
22 did they have the materials on hand? We talked about supply  
23 chain earlier. If they didn't have it, we had low  
24 confidence that they would be able to get it in time to help  
25 us make these repairs.



1 Q. And you said the word "manpower" in there, so let me  
2 move to the labor part of the equation. Was the plan to  
3 have Architect of the Capitol employees do the actual  
4 installation of the glass or was that something that would  
5 be contracted out, as well?

6 A. It -- we contracted that out, as well.

7 Q. Why was that?

8 A. Our paint shop is responsible for what we would call  
9 glazing products in our buildings. And if you recall back  
10 to the video we saw earlier on the inaugural stands, our  
11 paint shop is responsible for painting those stands. And so  
12 our -- we did not have the labor available at this time to  
13 do any of this glass work. They were now going to be tasked  
14 with repainting the entire congressional stands within a --  
15 within less than a two-week period.

16 Q. So you mentioned talking to vendors or contractors. I  
17 want to ask you generally in the ordinary business of the  
18 Architect of the Capitol, is a competitive bidding process  
19 sometimes used to select contractors for projects?

20 A. Most of the time, yes.

21 Q. And when competitive bidding is used, what all does that  
22 entail?

23 A. For a competitive bidding process, you would develop a  
24 scope of work, you would submit that to multiple qualified  
25 contractors. Those multiple qualified contractors would let

1 you know that they would like to bid on the project. You  
2 then do a -- for something of this nature, you would do a  
3 site walk -- you would -- with all of the contractors so  
4 they could each see what the expectations were. You then  
5 receive bids from those contract- -- you -- there is some  
6 time frame, but then you receive bids from those  
7 contractors. You then have to compare those bids to each  
8 other to make sure that they understood the scope correctly  
9 and that they're each bidding on the same scope of work.  
10 And then, from there, if we had any questions, we would have  
11 to go back to those contractors with -- give them time to  
12 respond, and then ultimately select a contractor based on a  
13 predetermined set of factors. Cost could be the primary  
14 factor, timing could be the primary factor, or it could be a  
15 combination of factors, as well.

16 Q. So that whole process that you described, start to  
17 finish, about how long would you expect that ordinarily to  
18 take?

19 A. For something of this nature, just to get them under  
20 contract, 30 to 60 days.

21 Q. And then on top of that 30 to 60 days, are there any  
22 procedures connected with security or access that would add  
23 more time to that?

24 A. If it was a contractor who had not done business with us  
25 before, they would, then, have to go through what's called

1 United States Capitol Police suitability. They would have  
2 to submit fingerprints for each of their employees, as well  
3 as have a criminal background investigation completed. And  
4 then they would be able to -- if found suitable, they would,  
5 then, be able to obtain a congressional ID badge which would  
6 allow them to come onto our campus to perform work.

7 Q. Did the Architect of the Capitol go through that  
8 competitive bidding process to get the glass repairs done  
9 after January 6th?

10 A. We did not.

11 Q. Why not?

12 A. First and foremost, timing. There was a significant  
13 amount of glass that overlooked the congressional stands.  
14 That was a safety concern, based on its location. As well  
15 as the doors that you showed in one of the videos earlier,  
16 that lower west terrace exit, those doors, which are used a  
17 significant amount on the day of the inaugural -- that's  
18 where everyone who comes out onto the presidential platform  
19 and the congressional stands -- that's the entrance they use  
20 from the building. We had to make those repairs in less  
21 than two weeks. And to do a competitive bid for this, we  
22 would not have been able to be under contract, and if it was  
23 a contractor who had not previously done business with the  
24 Architect of the Capitol, we would not be able to get them  
25 through that Capitol -- United States Capitol Police

1 background checks prior to the time frame to make these  
2 repairs.

3 Q. So if you're not going through the bidding process, is  
4 there a formal alternative under the procedures and  
5 regulations governing the Architect of the Capitol?

6 A. Yes, there is. It's called a sole-source justification.  
7 You can justify going to a single source, and there are  
8 specific reasons to do that.

9 Q. Was a sole-source justification used for the glass  
10 repairs?

11 A. Yes, it was.

12 Q. Why was that, if it's additional to the reasons that you  
13 already told us?

14 A. As we've talked about, exigency, the speed at which we  
15 needed to make these repairs from both a safety/security,  
16 you know, temperature control, you know, aesthetics, all of  
17 the above.

18 Q. And when you do a sole-source justification, is that a  
19 formal procedure or is it something that you just, kind of,  
20 can do willy-nilly?

21 A. We do have a formal procedure within the Architect of  
22 the Capitol to submit and have a sole-source justification  
23 approved.

24 Q. Does it involve approvals by senior officials?

25 A. Yes, it does.

1 Q. What was it about -- well, I should ask -- withdrawn.

2 As part of the sole-source process for the  
3 windows, did the Architect of the Capitol ultimately settle  
4 on a glass vendor?

5 A. We did, yes.

6 Q. What was it about that glass vendor that made them the  
7 right choice?

8 A. We had reached out to several contract -- several glass  
9 vendors. The glass vendor that we selected had the material  
10 in stock. They had the manpower available to do the work in  
11 the time frame that we were asking. They had also  
12 successfully done business with us in the past. And they  
13 had active background clearances to do work on the Capitol.  
14 And their employees had what I called earlier a  
15 congressional ID badge.

16 Q. When you do a sole-source justification, do you get an  
17 unlimited budget to work with?

18 A. We do not. We have to establish a budget prior to that  
19 time frame so that -- and we have to have that funding  
20 available in order to do that work.

21 Q. And then, when a contractor proposes a price for a job,  
22 do you just accept that automatically or is there any kind  
23 of assessment that's done to it?

24 A. We assessed their proposal -- sometimes called an  
25 estimate or a proposal -- we assess that for both fair and

1 reasonable pricing.

2 MR. MULROE: Your Honor, may I approach the  
3 witness with an exhibit?

4 THE COURT: You may, sir.

5 BY MR. MULROE:

6 Q. Mr. McIntyre, I'm going to walk up and hand you what's  
7 marked 931B, a two-page document.

8 MR. MULROE: And we won't publish it yet, but,  
9 Ms. Rohde, if you could have that queued up on the screen,  
10 please.

11 BY MR. MULROE:

12 Q. Mr. McIntyre, do you recognize the document I've just  
13 handed you?

14 A. Yes, I do.

15 Q. What is that?

16 A. This is one of the proposals in the many -- of the many  
17 proposals provided to us. What's on the screen is not the  
18 document you handed me.

19 Okay. Thank you. This was one of the proposals  
20 that was provided to the Architect of the Capitol by the  
21 glass vendor to make repairs to the broken windows.

22 Q. Does this proposal include the panes that we saw on the  
23 video just a moment ago?

24 A. Yes, it does.

25 Q. And is this a fair and accurate reproduction of that

1 proposal from the glass company?

2 A. Yes, it is.

3 MR. MULROE: Move to admit 931B.

4 MR. ROOTS: Objection on grounds already stated.

5 MR. MULROE: One-lawyer rule, Your Honor.

6 THE COURT: I'm sorry, Mr. Mulroe. Can you repeat  
7 that.

8 MR. MULROE: Just pursuant to the decorum policy,  
9 one lawyer per defendant, please.

10 THE COURT: All right. It has been Mr. Roots.  
11 Mr. Roots is the attorney -- the relevant attorney. I've  
12 already overruled the objection. You may proceed.

13 MR. MULROE: Thank you, Your Honor.

14 And, Ms. Harris, if we may publish that, please.

15 BY MR. MULROE:

16 Q. So Mr. McIntyre, let's just start at the top. And if  
17 you could walk us through the parts of this.

18 MR. MULROE: Ms. Rohde, if we could zoom in just,  
19 kind of, at the top part of it. Yep.

20 BY MR. MULROE:

21 Q. So starting with the date and the expiration,  
22 Mr. McIntyre, tell us, chronologically, where did the repair  
23 of these panes fit into the overall glass project that had  
24 to be done?

25 A. This was our second group of glass that needed to be

1 repaired following the events of the 6th.

2 Q. And was this one completed by the time the inauguration  
3 happened?

4 A. This work was not completed prior to the inauguration.

5 Q. Was any glass work completed prior to the inauguration?

6 A. Yes, a significant amount.

7 Q. And what decided which ones would come first in line?

8 A. The primary decision factor was anything visible by --  
9 on the day of the inaugural, any of the doors or windows  
10 that were -- of entrances that would be used on -- to get in  
11 or out of the building on the day of the inaugural, as well  
12 as if there was anything that was deemed a critical safety  
13 issue.

14 Q. And so of all the steps in the repair of the glass, were  
15 all the different parts of the project done by different  
16 vendors or the same vendor?

17 A. All of the glass was repaired by the same vendor.

18 MR. MULROE: All right. Ms. Rohde, if we could  
19 take the call-out away.

20 BY MR. MULROE:

21 Q. And then looking down on the first page, Mr. McIntyre,  
22 we see a section with the heading: Date, Activity, and  
23 Price. What do we see under that?

24 A. We see a list of a group of pieces of glass that the  
25 contractor included as part of this proposal as a lump sum



1 price that you see in the -- on the right-hand side, that  
2 \$7,545.

3 Q. And so we don't have to show it quite yet, but does the  
4 list of panes continue on to the second page of the  
5 proposal?

6 A. Yes, it does.

7 Q. Are all the panes the same size or different sizes?

8 A. They are different size -- some of them are different  
9 sizes.

10 Q. And the panes that we saw in the video, do you see those  
11 on this list?

12 A. I do, yes.

13 Q. Which ones are those?

14 A. They are ones that are listed as the 24-inch by 54-inch  
15 by one-quarter-inch clear laminated safety glass.

16 Q. All right. So as we see down this list, fair to say we  
17 see different dimensions of different panes?

18 A. Yes.

19 MR. MULROE: And then, Ms. Rohde, if we could go  
20 to the second page.

21 BY MR. MULROE:

22 Q. That continues on with three more line items; is that  
23 right?

24 A. That is correct.

25 Q. And I think you mentioned it, but just to clarify, did

1 the vendor itemize the price of these panes on a  
2 pane-by-pane basis or was it one lump sum for all the panes  
3 in this proposal?

4 A. They did not itemize. This is a lump sum for the pieces  
5 of glass as part of this estimate -- this proposal. My  
6 apologies.

7 Q. If we look at the bottom of all the costs, we see a line  
8 that says, Labor, furnish and install; is that right?

9 A. That is correct.

10 Q. What does that figure represent?

11 A. That is a lump sum cost for them to install the glass.

12 Q. And is the labor cost broken down pane by pane or is  
13 that an all-in lump sum?

14 A. It's an all-in lump sum, as well.

15 Q. What is that amount?

16 A. \$8,550.

17 Q. Why are there so many different sizes of panes?

18 A. If you could imagine, the United States Capitol has been  
19 built and expanded many times over the years. Each window  
20 may have a different size piece of glass, depending upon  
21 where it's located in the building, as well as some of these  
22 pieces of glass are -- the windows that we saw in the  
23 earlier video, some of these are at different locations in  
24 the building where windows are smaller, or they may even be  
25 in -- these may be pieces of glass that are in a door.

1 Q. Now, looking at these costs, do we have the total at the  
2 bottom, about 16,000-and-some dollars?

3 A. That is correct.

4 Q. Did you use the phrase "fair and reasonable" before,  
5 Mr. McIntyre?

6 A. I did, yes.

7 Q. Was a review for fairness and reasonableness done on  
8 this proposal we've got in front of us?

9 A. Yes, it was.

10 Q. And what was the conclusion that was reached?

11 A. The conclusion was that it was fair and reasonable based  
12 on comparing it to --

13 MR. ROOTS: Objection. Hearsay. Who said this?

14 THE COURT: Overruled.

15 BY MR. MULROE:

16 Q. You can start over.

17 A. It was determined that the \$16,000 number was fair and  
18 reasonable based on comparing it to other pricing that we  
19 had received for other glass products in the recent past.

20 Q. And, Mr. McIntyre, if I were to compare this to what it  
21 might cost to put windows in my house, would that be a  
22 reasonable way to assess the fairness and reasonableness of  
23 this figure?

24 A. No.

25 Q. Why not?

1 A. One of the challenges that we have, and many other  
2 secure facilities have, is there's an inherent cost of doing  
3 business. Simply to get a piece of material onto our  
4 campus, for a glass contractor to bring a product onto our  
5 facility, it takes time for their employee to drive to an  
6 off-site facility where they have to be -- where they have  
7 to be screened, their vehicle has to be screened. They then  
8 have to come to our campus and be rescreened. That takes  
9 time. Time costs money. And so -- they also have to have  
10 this -- they have to go through the background checks. All  
11 of the inherent time and effort it takes by the contractor  
12 in order to do business at our facility or other secure  
13 facilities inherently raises the price.

14 MR. ROOTS: Your Honor, may we be heard at  
15 sidebar?

16 THE COURT: Yes, sir.

17 (Bench conference:)

18 MR. ROOTS: The statute that penalizes damage to  
19 federal property over \$1,000 does not -- it leaves it up to  
20 the jury to determine the value. So here is this witness  
21 talking about how government costs are higher  
22 than Mr. Mulroe's house and it's for the jury -- listen, the  
23 costs that are mentioned in the statute, there's nothing  
24 about -- it's up -- this is a fact question for the jury.  
25 So the -- it could be the jury determines that the value is

1 based on Mulroe's house. So they're giving a legal  
2 conclusion that is not warranted by either the case law or  
3 the statute. The statute just says "damage over \$1,000."  
4 This is a jury question. It is the same as damage to  
5 Mr. Mulroe's window.

6 THE COURT: Right -- no, no, no, what I understand  
7 the witness to be doing is explaining why they paid them --  
8 the amount of money they paid was required, for example,  
9 because they have these screening requirements for people  
10 who come in to work on the Capitol and that drives up the  
11 cost, you know? The question of -- and then they paid X.  
12 But he's explaining why they paid X. Why isn't that -- I  
13 mean, the reasonableness or non-reasonableness is really  
14 not -- I mean, the question, as you say, was the value of it  
15 over 1,000 or not over 1,000? He's explaining why they --  
16 the costs are higher than if you just repair your own house,  
17 because they have security concerns. I don't see why he  
18 can't just explain that as a matter of fact.

19 MR. ROOTS: I think we would like a limiting  
20 instruction after this is over so the jury is aware that it  
21 is up to them to determine the value and the damage. It's  
22 not as stated by the Government.

23 THE COURT: Well, I'm not -- okay. We can talk  
24 about that and, maybe, you're right, but I think the witness  
25 is allowed to explain why the value is higher than if, for

1 example, you -- he's allowed to explain what went into the  
2 cost and, you know, then the jury can make of that what they  
3 will. And, maybe, you're right. So we can take that up  
4 afterward, but I think he's allowed to explain this.

5 All right. Mr. Mulroe, you may proceed.

6 (Return from bench conference.)

7 BY MR. MULROE:

8 Q. All right. Picking up where we left off, Mr. McIntyre,  
9 based on the lump sum charges by the glass company to fix a  
10 whole bunch of panes, did you undertake to calculate on a  
11 pane-by-pane basis, sort of, the per-item cost of doing  
12 these repairs?

13 A. Yes, I did.

14 MR. MULROE: May I approach with an exhibit, Your  
15 Honor?

16 THE COURT: You may.

17 BY MR. MULROE:

18 Q. Mr. McIntyre, I'm going to hand you a one-page document  
19 marked Government-931A.

20 MR. MULROE: And if we could have the screen off  
21 for the jury.

22 BY MR. MULROE:

23 Q. Do you recognize that document?

24 A. Yes, I do.

25 Q. What is that?

1 A. This is the estimate that I created to identify the cost  
2 to repair a single pane of glass as part of the repairs  
3 associated with the January 6th damage.

4 Q. And is -- are these calculations based in part on the  
5 figures from the glass company that we were just looking at?

6 A. In part, yes.

7 Q. Do they also include, in part, costs that the Architect  
8 of the Capitol incurred directly?

9 A. Yes, it does.

10 MR. MULROE: Move to admit 931A.

11 THE COURT: All right. It will be admitted, and  
12 permission to publish.

13 BY MR. MULROE:

14 Q. All right. So that set of numbers on the screen,  
15 Mr. McIntyre, is that 931A?

16 A. Yes, it is.

17 Q. I would like to walk you through how you reached some of  
18 these numbers. And I'm going to do it by means of  
19 Government Exhibit -- for demonstrative purposes only --  
20 939.

21 MR. MULROE: So Ms. Harris, if we could switch the  
22 display, please, to the podium laptop.

23 BY MR. MULROE:

24 Q. We're just going to take this in parts, Mr. McIntyre.  
25 Does that sound good?

1 A. Yes.

2 Q. So the very first slide that we've got up, is this the  
3 same document that we just saw? The overall 931A with all  
4 its parts.

5 A. Yes, it is.

6 Q. All right. I'm going to focus you first on the section  
7 that is labeled "Materials and Supplies" which I've  
8 highlighted and which I'm now blowing up to the whole  
9 screen. So what does this part of the cost calculation  
10 represent?

11 A. This is a combination of any materials that the  
12 Architect of the Capitol purchased in order to make these  
13 repairs, as well as a -- as well as the glass material and  
14 glass labor that were provided to us by a contractor.

15 Q. So items 1 and 2, glass material contractor and glass  
16 labor contractor, are those based on the proposal from the  
17 glass company that we just saw?

18 A. Yes, they are.

19 Q. All right. I want to ask you about each of those in  
20 turn. So starting with what I've just highlighted, the \$200  
21 per pane of material costs from the calculator -- from  
22 the -- excuse me -- from the contractor. When we go to the  
23 next slide, we're going to set up a little table. So the  
24 top row says "Total Cost." What is the number we see for  
25 "Total Cost"?



1 A. 7,545.

2 Q. And is that the same figure from the overall materials  
3 cost of the glass company's proposal?

4 A. Yes, it is.

5 Q. Now --

6 MR. ROOTS: Your Honor, may we be heard at sidebar  
7 one last time?

8 THE COURT: Yes, sir.

9 (Bench conference:)

10 MR. ROOTS: Okay. This is objectionable on 403  
11 grounds. It's misleading and unfairly prejudicial. There's  
12 part of this exhibit where they have superimposed an image  
13 of Mr. Pezzola busting, you know -- with a broken window and  
14 then there -- it's been superimposed over that, and also,  
15 it's very misleading because they were -- I would remind the  
16 Court that Count 7 -- we're really talking about Count 7.  
17 Count 7 does not allow the Government to put on evidence of  
18 two windows. The -- Count 7 specifically says that we're  
19 dealing with a window -- a single window -- adjacent to the  
20 Senate wing door. That's Count 7. There is no two windows.  
21 So that's very specific. It's merely the window that is on  
22 the left. It cannot -- the Government cannot convict any of  
23 these guys, especially Pezzola, of breaking the window on  
24 the right. It is only the specific window. So there's only  
25 one window at issue in Count 7, not the other one to the

1 right of that window. It's very misleading.

2 THE COURT: Okay. This is, obviously, something  
3 that could have been teed up long before now, but I assume  
4 the Government's position is that they can prove two panes  
5 that linked up with one window.

6 Is that correct?

7 MR. MULROE: Yes, Your Honor.

8 THE COURT: All right. I mean, look,  
9 Mr. Metcalf [sic], we can -- I'm not in the middle of the --  
10 this -- overall -- okay. I don't see the slide you're  
11 talking about with Mr. Pezzola here, but the point is  
12 they're in the middle of trying to prove up what these two  
13 panes that we just saw video of Mr. Pezzola taking, maybe,  
14 in part, but playing a role in smashing through, and they  
15 are attempting to prove the cost of those two panes. This  
16 is a witness that can testify as to what the government  
17 paid. He's testifying as to how he calculated what the  
18 government paid for those two panes. I don't see anything  
19 objectionable about it. I really don't.

20 So you may proceed, Mr. Mulroe.

21 (Return from bench conference.)

22 BY MR. MULROE:

23 Q. So picking up, Mr. McIntyre, the 7,545 is for all the  
24 panes, total, from this order; correct?

25 A. That is correct.

1 Q. And if you could tell us, how many panes made up the  
2 order?

3 A. There were 28 panes of glass.

4 Q. So to figure out what it costs on a pane-by-pane basis,  
5 was it as simple as just dividing the 7,500 by 28 panes?

6 THE COURT: I'm sorry. Mr. Mulroe, just -- if  
7 you'll just pause.

8 I just need all counsel and everyone to refrain  
9 from speaking while we have a witness on the stand.

10 Mr. Mulroe, you may proceed.

11 BY MR. MULROE:

12 Q. Did you just do that simple division of 7,545 divided by  
13 28?

14 A. I could have, but I don't feel like that would have been  
15 a fair assessment.

16 Q. Why not?

17 A. There are three pieces of glass within this estimate  
18 that are distinctly different than the other 25.

19 Q. And what makes those three panes so different from the  
20 rest?

21 A. They are much thicker pieces of glass.

22 Q. All right. So I'm putting two additional lines on the  
23 demonstrative. We've got one-quarter-inch pane times 25 and  
24 one-and-three-quarter-inch pane times 3; is that correct?

25 A. That is correct.

1 Q. Did you form an assessment of how much more valuable the  
2 thicker panes were as compared to the thinner panes?

3 A. Yes.

4 Q. And what was that number?

5 A. The inch-and-three-quarter panes are approximately four  
6 times as expensive as a quarter-inch pane of glass.

7 Q. So showing that four times multiplier on the  
8 demonstrative.

9 And then based on -- I won't have you do all the  
10 algebra here, but based on that four times multiplier, did  
11 you figure out the cost of a quarter-inch pane and the cost  
12 of a one-and-three-quarter-inch pane such that they would  
13 add up to the total 7,545?

14 A. Yes, we did -- I did.

15 Q. What were those numbers?

16 A. Approximately \$200 for the quarter-inch pane of glass  
17 and, obviously, as -- with a four-time multiplier, \$800 for  
18 those inch-and-three-quarter-inch pieces of glass.

19 Q. And then just to check that math there, Mr. McIntyre,  
20 and make sure it adds up, 200 times 25 is -- I know you may  
21 not have scrap paper or a calculator up there. But do you  
22 have the product handy?

23 A. Put me on the spot here. No.

24 Q. Does \$5,000 sound about right?

25 A. Yeah, \$5,000. Yes.

1 Q. And what about 800 times 3? Would \$2,400 sound about  
2 right?

3 A. Yes, that is correct, \$2,400.

4 Q. So then if we add that 5,000 and 2,400, would that be  
5 \$7,400?

6 A. That is correct, \$7,400.

7 Q. Now, Mr. McIntyre, I noticed that the number we got to  
8 at the bottom, 7,400, is a little bit less than the actual  
9 total price of the glass at 7,545. Why is that?

10 A. Again, this was an approximation. Our glass contractor  
11 did not provide us a pane-by-pane estimate. They provided  
12 us a lump sum. This was -- that \$200 number is --  
13 ultimately, I rounded down on that \$200 number. I believe  
14 it was \$203. And so in the -- to be fair, this is not an  
15 exact science. \$203 is -- would be unfair to provide that  
16 as an exact number, and so we rounded -- I rounded that down  
17 to \$200.

18 Q. Why did you round down instead of rounding up?

19 A. Again, I feel like that's the fairest assessment to make  
20 when providing someone an estimate.

21 Q. Okay. So that is how we got to \$200 per pane on  
22 materials. Do I have that right?

23 A. That is correct.

24 Q. What about the next line? \$231 per pane on glass labor  
25 contractor. Did you apply the same process or a different

1 process to reach that?

2 A. The same process.

3 Q. All right. So maybe, we'll move through a little  
4 faster. But the total price of all the labor, would that be  
5 8,550?

6 A. That is correct.

7 Q. And same number and same size of panes for purposes of  
8 this calculation?

9 A. Thickness of glass. That is correct.

10 Q. So that is a -- 25 quarter-inch and 3  
11 one-and-three-quarter inches?

12 A. That is correct.

13 Q. Did you apply the same multiplier or a different  
14 multiplier?

15 A. It was the same multiplier, yes.

16 Q. And what was that, again?

17 A. Four times.

18 Q. Now, if we apply that same math to the 8,550, would  
19 these numbers be accurate based on your calculations and  
20 based on the Exhibit-931A that you have in front of you?

21 A. That is correct.

22 Q. And then if we do 231 times 25, would \$5,775 sound about  
23 right?

24 A. That is correct.

25 Q. And then for the three one-and-three-quarter-inch panes

1 put together, would \$2,772 sound about right?

2 A. Yes.

3 Q. I hope someone will check me if I'm wrong. But if we  
4 add those figures together, would that reach a total of  
5 \$8,547?

6 A. Yes, it does.

7 Q. Now, once again, is there any discrepancy between the  
8 product of those estimates and the actual all-in cost of the  
9 glass labor?

10 A. Again, rounded -- I rounded down in the event that there  
11 was dollars and cents.

12 Q. So once again, you've rounded down on the labor half of  
13 it?

14 A. Yes, I did.

15 Q. All right. Let's go back, then. We've covered the 200  
16 materials. We've covered the 231 labor. Let me ask you  
17 about the remaining lines on this part of the cost  
18 calculation. \$25 for HazMat sampling. What is HazMat  
19 sampling?

20 A. In a building of our age, considering this section of  
21 the building was constructed in the 1850s, there may be  
22 hazardous materials as part of the glass, the window, the --  
23 the material that holds the glass in place, which is called  
24 glazing, the paint. And so we have to -- in order to allow  
25 either our employees or an outside contractor to do work on

1 that, we have to know what -- if there is any hazardous  
2 material as part of that window assembly. And so this  
3 sampling amount was the amount that it costs for us to take  
4 a sample of those materials and send it away to a laboratory  
5 to have it determined if there's any hazardous materials we  
6 have to address.

7 Q. And this \$25 for a single pane, is that itemized on a  
8 pane-by-pane basis?

9 A. That would be on a pane-by-pane basis, yes.

10 Q. What about the next one? Skipping over zero, but \$35  
11 for paint supplies. It may be self-explanatory, but what is  
12 that?

13 A. That includes the paint, paint brushes, rollers, tape,  
14 you know, all of those disposable items that goes along with  
15 our -- with a -- the Architect of the Capitol's paint shop  
16 employees, for them to perform the work after the contractor  
17 has replaced this pane of glass.

18 Q. So moving on in the demonstrative, Mr. McIntyre, back to  
19 the overall picture of 931A, your cost calculation, we've  
20 now covered everything in that red box for materials and  
21 supplies; is that right?

22 A. That is correct.

23 Q. I want to move on, then, to the portion on the left that  
24 I've just highlighted, a section that's captioned "Direct  
25 Labor." What all -- well, let me first go to the next slide



1 and blow that up a little bit. What does the direct labor  
2 section of the cost calculation represent?

3 A. This represents the cost incurred by the Architect of  
4 the Capitol, through our employees, performing work  
5 associated with the repair of each pane of glass.

6 Q. So beyond the work that the glass company did, was there  
7 extra work to do?

8 A. Yes.

9 Q. What did that consist of?

10 A. At -- as we talked about earlier, it was our insulation  
11 shop, who is our qualified hazardous material workers.  
12 Those workers take the samples in order to send them away,  
13 and then they also -- we also -- it is the Architect of the  
14 Capitol's painters who, after that pane of glass is  
15 repaired, have to do the painting around that pane of glass  
16 to make it match what would have been there prior to  
17 January 6th.

18 Q. And matching the paint appearance, is that necessary,  
19 really, at the Capitol?

20 A. Yeah. We paint -- about 16 hours a day, something we're  
21 painting within the buildings. And so we would not have  
22 the, you know -- a public corridor within the Capitol  
23 building on the first floor of a heavily trafficked area of  
24 the building have a section of the construction of the  
25 building not be in a finished condition.

1 Q. So let's just look at the numbers, then. Starting with  
2 the first line: AoC Painter, WG, Wage Rates. What is the  
3 number we see in the "Rate" column?

4 A. \$34.15.

5 Q. And what is that?

6 A. That's the average hourly rate of one of our painters in  
7 our paint shop.

8 Q. And how many hours on the part of the painters was  
9 necessary for a pane of glass?

10 A. Five hours.

11 Q. So when you multiply that five hours by \$34.15 an hour,  
12 what do you get, roughly?

13 A. \$171.

14 Q. And I don't see any cents there. Did you round in the  
15 amount column?

16 A. I believe Excel would have rounded in this one, yes. So  
17 it would have rounded to the nearest dollar.

18 Q. So moving to the next one, then, the insulation wage  
19 rates, what's the rate?

20 A. \$37.57.

21 Q. And how many hours from the insulators?

22 A. Three hours.

23 Q. What does that come to?

24 A. \$113.

25 Q. And, again, rounding to the nearest dollar, is that how

1 we get to the bottom line of that section, \$283 of direct  
2 labor total?

3 A. That is correct.

4 Q. All right. So if we put that all together, then, as you  
5 have done on Exhibit-931A, Mr. McIntyre, the \$491 of  
6 material and supplies plus the \$283 of direct labor, what  
7 bottom-line figure per pane of glass does that get us?

8 A. \$774 per pane of glass.

9 Q. And now, I'm going to ask you a slightly more basic  
10 arithmetic question. But if we wanted to figure out the  
11 cost of two panes of glass, what would we do?

12 A. Add an additional \$774.

13 Q. All right. So take that 774, multiply it by two. About  
14 what do we get?

15 A. The 1,552 --

16 Q. About --

17 A. -- 58.

18 Q. 1,548?

19 A. Yeah, 1,548.

20 Q. And the easiest question of all. Is that number, 1,548,  
21 greater than \$1,000?

22 A. Yes, it is.

23 Q. Mr. McIntyre, this \$1,548, were there any costs  
24 associated with the broken windows that are not encompassed  
25 in that amount?

1 A. We did not include the temporary means to secure the  
2 window. So the plywood as well as the labor for our  
3 carpentry shop to cut the plywood to the appropriate size  
4 and secure it to the door.

5 Q. Now, overall, the approach that you took to generating  
6 the pane-by-pane amount, would you characterize that as an  
7 aggressive approach, a conservative approach, or somewhere  
8 in between?

9 A. I attempted to be as fair as possible, and be  
10 conservative. I felt that this was the most fair way to  
11 take the lump sum proposal that we received for this group  
12 of windows from our glass vendor and break it down on a  
13 pane-by-pane basis.

14 Q. Anything significant about the glass process or the  
15 glass calculations that I haven't asked you?

16 A. No.

17 Q. All right. Mr. McIntyre, in that case, I want to move  
18 us to a different part of the Capitol.

19 MR. MULROE: And I'll ask Ms. Rohde to pull up  
20 what's in evidence as Government 492G, take that and just  
21 pause it at the six-minute mark.

22 And once that's up, Ms. Harris, if you don't mind  
23 publishing that from the Government table.

24 (Video played.)

25 BY MR. MULROE:

1 Q. Can you see what's on the screen, Mr. McIntyre?

2 A. Yes, I can.

3 Q. Now, this fence that we can see taking up most of the  
4 right side of the screen, do you recognize that fence?

5 A. Yes, I do.

6 Q. What is that?

7 A. That is a temporary fence that we, the Architect of the  
8 Capitol, install in the days leading up to the presidential  
9 inaugural on the west front.

10 Q. And if you would, just stand up and point out on the  
11 map, if it's visible, where that fence runs when it's in  
12 place.

13 A. It runs approximately this location here. (Indicating.)

14 MR. MULROE: And for the record, just note the  
15 witness is indicating the, sort of, gentle curve that the  
16 Breach 2 sticker is pointing to.

17 BY MR. MULROE:

18 Q. What's the purpose of this fence, Mr. McIntyre?

19 A. During the inaugural, there are several different  
20 sections of ticketed areas. You can imagine this event  
21 can -- there's over 100,000 tickets that are provided for  
22 this event. And so this is, you know -- similar to any  
23 major venue, this is an area that provides, kind of, a  
24 visual and, you know, a, kind of, crowd-control separation  
25 between two ticketed areas of the presidential inaugural.

1 Q. How long has the Architect of the Capitol been using  
2 this type of fence for the inauguration?

3 A. We purchased this fence in 2008.

4 Q. Walk us through the process of installing the fence.  
5 When does work on the fence begin?

6 A. Approximately two weeks -- two to three weeks prior to  
7 each inaugural we bring this fencing out of storage. We  
8 have it -- we have this fencing stored in an off-site  
9 storage location. We bring this fencing to the site and  
10 then our AoC employees install this fencing for about that  
11 two- to three-week period leading up to an inaugural. And  
12 then we remove this fencing and put it back into storage.

13 Q. Mechanically, how is it that the fence goes up? Is it  
14 affixed to the ground in any way?

15 A. It is, yes.

16 Q. How so?

17 A. Each of the posts are -- use a construction anchor to go  
18 into the concrete, and then each of the fence panels are,  
19 then, secured to the posts.

20 Q. So post to ground and then panel to post, basically?

21 A. That is correct.

22 Q. Was the fence in place on January 6th, 2021?

23 A. Yes, it was.

24 Q. Fully or partially?

25 A. Fully.

1 Q. Was the fence in place on January 7th, 2021?

2 A. No, it was not.

3 Q. What kind of shape was the fence in when you arrived at  
4 the Capitol on the 7th?

5 A. When I arrived on the 7th, the fence was completely  
6 dismantled piece by piece, effectively. Pieces were strewn  
7 about the entire west front. We found pieces all over the  
8 stands, all over the grounds, in the building. So it -- the  
9 fence was a total loss.

10 Q. When you say pieces, are you talking about those panels?

11 A. No. If you look on the picture here, each of these  
12 vertical pieces, you know -- each of those pieces had --  
13 for -- many of them had been broken off. Once the top  
14 rail -- once -- and you can see this one's already bent, and  
15 one is already coming out of the assembly. Once that top  
16 rail and that bottom rail became out of parallel from each  
17 other, each of those vertical pieces began to snap off.

18 Q. What, if anything, did Architect of the Capitol staff do  
19 with all these parts of the fence?

20 A. Unfortunately, they were not reusable. We recycled  
21 them.

22 Q. Why weren't they reusable?

23 A. This was a -- it's a lightweight aluminum  
24 powder-coated -- powder-coated is a type of paint process --  
25 powder-coated finish fence. And once that aluminum is no

1 longer straight, it's -- you -- you're not bending it back  
2 without losing parts and pieces of the fence. And based on  
3 the amount of fence that had been heavily damaged, we made a  
4 determination that it was not able to be put back together  
5 or salvaged.

6 Q. With this fence beyond repair, what, if anything, did  
7 you do for inauguration to take its place?

8 A. We did not have a suitable replacement, especially in  
9 the time frame between the 6th and the 20th. We -- at the  
10 last minute, the presidential inaugural committee provided  
11 for our use, similar to what you would see in an airport,  
12 the, you know -- the black stanchions with the retractable  
13 ropes that we temporarily placed along this location, and  
14 then those were removed and crated back up. They rented  
15 those for this event.

16 Q. Did the Architect of the Capitol have to pay anything  
17 for the temporary barriers that were put in place instead of  
18 the fence?

19 A. We did not.

20 Q. Did anyone?

21 A. I -- the presidential inaugural committee would have  
22 rented those.

23 Q. I want to ask you, Mr. McIntyre, about the original  
24 purchase of this black fence.

25 MR. MULROE: And with the Court's permission, I'll



1 approach with what's marked Government Exhibit-932B.

2 THE COURT: No -- without objection, you may, sir.

3 BY MR. MULROE:

4 Q. (Indicating.)

5 A. Thank you.

6 Q. Mr. McIntyre, do you recognize the document I've handed  
7 you -- it's about two pages -- marked 932B?

8 A. Yes, I do.

9 Q. What is that?

10 A. This is the purchase order in -- from 2008 when the  
11 fencing was purchased.

12 Q. Is that the same fencing that was in place on  
13 January 6th, 2021?

14 A. Yes, it is.

15 MR. MULROE: Move to admit 932B.

16 THE COURT: All right. It will be admitted.

17 BY MR. MULROE:

18 Q. And I should ask first, Mr. McIntyre, at the top of the  
19 screen, there are some redaction boxes. As far as you're  
20 aware, anything redacted that has anything to do with the  
21 cost of the fence?

22 A. No.

23 Q. Let's move, then, to the -- Section 13 in the middle of  
24 the page captioned "Schedule." And what information do we  
25 see in that little table there, Mr. McIntyre?

1 A. It identifies the commodity, the inaugural fencing for  
2 the lower west terrace, and then a total cost of that  
3 fencing at \$32,000.

4 Q. And would that be the whole fence or just part of the  
5 fence or the fence plus some other stuff?

6 A. This was the whole fence.

7 MR. MULROE: Ms. Rohde, if we could go to the  
8 second page and zoom in on the top, summary info  
9 continuation page.

10 BY MR. MULROE:

11 Q. What is the information we see on that part of the  
12 exhibit?

13 A. A brief description of the product that would be  
14 provided to us for this \$32,000.

15 Q. Please read us that description.

16 A. "Contractor shall provide and install 328 linear feet of  
17 35-inch-tall two-line black powder-coated fence, style," and  
18 then some redacted information.

19 Q. And then location?

20 A. "Location: West front of the United States Capitol,  
21 Washington, D.C."

22 Q. All right. So Mr. McIntyre, one more piece of math for  
23 us here.

24 MR. MULROE: If we could go back, please,  
25 Ms. Harris, to the podium laptop.

1 BY MR. MULROE:

2 Q. I'll ask you, Mr. McIntyre, given that we have the price  
3 of the entire fence and given that we have the length of the  
4 entire fence, what would we do to calculate the price per  
5 linear foot of the fence?

6 A. We would take the total cost, \$32,000, of the product --  
7 of the entire fence and divide that by the 328 linear feet  
8 of fencing that was provided to us.

9 Q. And would \$97.56 sound like the right number if we did  
10 that math?

11 A. That is correct.

12 Q. That's per foot of fence?

13 A. That is per foot of fence.

14 Q. Now, you've talked about panels, Mr. McIntyre. Strike  
15 that.

16 Let me ask first, this purchase order that we see  
17 was from when?

18 A. 2008.

19 Q. Do you know whether a competitive bidding process was  
20 used to buy the fence or a sole-source justification or some  
21 other procedure?

22 A. It was competitively bid at the time.

23 Q. Now, going to the panels that you've mentioned, were all  
24 of the panels of the fence the same length or were they  
25 different lengths?

1 A. There were a handful that were a different length.

2 Q. Are you aware of, generally speaking, what the lengths  
3 in play were?

4 A. Yes.

5 Q. What was the most common length?

6 A. The vast majority of the panels were 72 inches in  
7 length.

8 Q. Is that about six feet?

9 A. Yes.

10 Q. Now, as part of your professional experience,  
11 Mr. McIntyre, are you familiar with the lifespan -- the  
12 usable lifespan of materials like these fence parts?

13 A. Yes.

14 Q. Tell us, again, how often was this fence called into  
15 use.

16 A. Rough -- once every four years, each time for about two  
17 to three weeks.

18 Q. What did it do when it was not being used for the  
19 inauguration?

20 A. Our Architect of the Capitol employees would disassemble  
21 each of those panels from the posts and then crate them back  
22 up and take them back to an off-site storage facility where  
23 we store other construction materials that we don't keep on  
24 hand at the Capitol.

25 Q. Is that the facility that you mentioned a bit earlier?

1 A. That is correct.

2 Q. Is that facility, in your experience, appropriate for  
3 keeping and maintaining things when they're not in use?

4 A. Yes. We store many construction materials at this  
5 off-site warehouse.

6 Q. Are you aware of what condition the fence parts were in  
7 prior to January 6th, 2021?

8 A. Yes.

9 Q. What condition?

10 A. I would consider them like new.

11 Q. Like new?

12 A. Like new.

13 Q. Before January 6th, 2021, as far as you know, did the  
14 Architect of the Capitol have any plans to replace the black  
15 inaugural fence?

16 A. No, we did not.

17 Q. What about after January 6th?

18 A. Unfortunately, yes; we will have to replace this fence  
19 prior -- post January 6th.

20 Q. Has that process started yet?

21 A. We have not started that process yet.

22 Q. Now, looking back to the amount that was paid in 2008, I  
23 want to ask you just a couple of questions about time,  
24 Mr. McIntyre.

25 You have been with the Architect of the Capitol

1 for how long?

2 A. 14 years.

3 Q. And in that time on the job, has your work caused you to  
4 remain, kind of, aware of the prices of building materials  
5 and other goods over time?

6 A. Yes.

7 Q. In your experience, has the cost of materials like  
8 fencing gone up or gone down since 2008?

9 A. Since 2008, the cost of building materials, including  
10 fencing, has gone up.

11 Q. We talked about the windows; we talked about the fence.  
12 Speaking broadly and without going into details, were other  
13 repairs necessary after January 6th, as well?

14 A. Yes.

15 Q. Did the inauguration ultimately go forward successfully?

16 A. Yes, it did.

17 MR. MULROE: Nothing further.

18 THE COURT: All right. Very well.

19 CROSS-EXAMINATION

20 BY MR. SMITH:

21 Q. Good afternoon, Mr. McIntyre. I'm Nick Smith. I'm  
22 going to ask you some -- a few brief questions for Defendant  
23 Ethan Nordean about the fence that you just testified about.

24 A. Good afternoon.

25 Q. So you testified that the black fence we were just

1 looking at at -- which was placed on January 6th around the  
2 Breach No. 2 sticker behind you, that was the -- called the  
3 inaugural fencing -- inaugural fence; correct?

4 A. It's one of many fences that are installed as part of  
5 the inaugural -- if you would like to call it the black  
6 inaugural fence, I think that would be fair.

7 Q. That works.

8 Okay. So -- and you testified that the black  
9 inaugural fence was placed where it was on January 6th for  
10 purposes of the inauguration that would occur on  
11 January 20th; right?

12 A. That is correct.

13 Q. Okay. And so it -- the function of it, I think you  
14 testified, was twofold, essentially. It was aesthetic, to  
15 demarcate sections of the crowd, some visitors from other  
16 visitors, and the other function was crowd control; is that  
17 what you said?

18 A. It's so that one -- it's so that people would not cross  
19 from one ticketed section into another, yes.

20 Q. Okay. And so the function of the fence was not to --  
21 was not -- didn't relate to security for the vote count on  
22 January 6th?

23 A. That is correct.

24 Q. Okay. And so you testified that each segment of the  
25 fence was about six feet in length -- linear feet; correct?

1 A. That is correct.

2 Q. Okay. And I'm just going to draw something for you so  
3 we're on the same page here.

4 MR. SMITH: Ms. Harris, I'd just like permission  
5 to have a blank screen up for the jury where I'll draw --

6 THE DEPUTY CLERK: I'm sorry. Say that again.

7 MR. SMITH: I'd just like permission to show a  
8 blank screen to the jury so I can make a diagram with my  
9 finger.

10 THE COURT: Yes.

11 THE DEPUTY CLERK: Do you have an exhibit number  
12 for it?

13 MR. SMITH: It's -- it's not an exhibit. It's --  
14 I guess you could --

15 THE COURT: Ms. Harris, you may give --

16 THE DEPUTY CLERK: Okay.

17 THE COURT: -- Mr. Smith access to the -- I guess  
18 it's, sort of, an electronic ELMO.

19 MR. MULROE: No objection.

20 BY MR. SMITH:

21 Q. So Mr. McIntyre, I've drawn a dashed line in front of a  
22 representation of the Capitol building that I've drawn at  
23 the top. Is it fair to say that the black fence that was in  
24 front of the Capitol was in segments? So --

25 A. Individual panels, yes.



1 Q. Individual -- so -- yeah. I was going to clarify that  
2 Mr. Mulroe referred to them as panels. I'll call them  
3 panels or segments. But in -- if this is a representation  
4 of the fence that was -- existed in front of the Capitol on  
5 January 6th, there were panels of the fence that are  
6 detachable from one another; correct?

7 A. They are all attached to posts. So at the end of the  
8 installation process -- it's similar to any fence line; if  
9 part of that fence were to be pushed, it would ultimately --  
10 it would impact the entire linear fence.

11 Q. So I've drawn vertical lines on that diagram that I put  
12 on the screen. Are -- is that, kind of -- is this an  
13 accurate, sort of, representation of how the fence was  
14 assembled? There are posts that are between various  
15 segments of the fence, and they're all connected to the  
16 posts individually?

17 A. Yes.

18 Q. Okay. So there were some segments that were six feet in  
19 length. There were also some segments that were about four  
20 feet in length; correct?

21 A. Correct. There's a handful of sizes. If you imagine,  
22 this fence line that we installed was not a straight line.  
23 It has a slight curve in it. And so when you're trying to  
24 install fence panels that are straight, every so often, you  
25 have to have a fence panel that's a little smaller so you

1 can make up that radius.

2 Q. And -- so I believe that you testified that the decision  
3 was made to replace the entire -- the entire length of  
4 fencing; correct?

5 A. We did have to dispose of the entire length of the  
6 fencing.

7 Q. It -- okay. And do you -- you testified that you --  
8 when you came to the Capitol on January 7th, you witnessed  
9 some of the fence destruction yourself; correct?

10 A. That is correct.

11 Q. You are not able to testify that every segment of the  
12 fence -- I guess there would be over 30 segments of the  
13 fence -- that every segment of the fence was destroyed;  
14 correct?

15 A. Correct.

16 Q. So the decision to replace the entire fence was made  
17 without regard to whether any individual segment or panel of  
18 the fence was destroyed; correct?

19 A. It was made as a collective whole. If parts and pieces  
20 of the fence are no longer usable, the ability to replicate  
21 this fence is more expensive than replacing the entire  
22 fence.

23 Q. So if some segments of that fence in the diagram I just  
24 showed you were not destroyed, for example, or destroyed  
25 beyond repair, nevertheless, the decision will be made to

1 replace the entire fence?

2 A. That is correct.

3 Q. Okay. So for example, if it -- if a protester were  
4 standing in front of one individual segment of the fence  
5 that was not destroyed and was not standing in front of  
6 segments of the defense -- of the fence that were destroyed,  
7 you would not be able to say that that individual caused the  
8 Architect of the Capitol to replace the entire fence;  
9 correct?

10 MR. MULROE: Objection. Calls for an opinion on  
11 causation.

12 THE COURT: Well -- overruled.

13 THE WITNESS: Our office does not make a  
14 determination on how the damage occurred. Our office makes  
15 a determination, if there is damage found, what that damage  
16 is, the extent of that damage, and how to repair that  
17 damage.

18 MR. SMITH: Thank you.

19 I'm going to bring up, Ms. Harris, what was --  
20 what the Government -- the Government's demonstrative for  
21 the fence, the cost calculation. Thank you.

22 BY MR. SMITH:

23 Q. Can you see that, Mr. McIntyre?

24 A. I can see that, yes.

25 Q. Okay. So you were asked first about where this \$32,000

1 figure came from, and you testified that that was the price  
2 that the Architect of the Capitol paid for the black  
3 inaugural fence in 2008; correct?

4 A. That is correct.

5 Q. And you were asked to divide that by 328 linear feet  
6 because that reflects the length of the black inaugural  
7 fence that was purchased in 2008; correct?

8 A. Correct.

9 Q. And you arrived at a figure of \$97.56; correct?

10 A. That is correct.

11 Q. You -- I don't think you were asked about what the  
12 figure would be for any individual segment -- the cost  
13 figure would be for any individual panel or segment of the  
14 fence; correct?

15 A. I was not.

16 Q. Okay. So I apologize for making you go through the math  
17 now, but, maybe, I'll make it easier for you. You said that  
18 some of the panels were about seven feet in length; correct?

19 A. Six feet, 72 inches.

20 Q. Excuse me. Six feet and -- 72 inches in length. And so  
21 if we multiply 6 by \$97.56, we arrive at \$585.36; correct?

22 A. That math sounds correct, yes.

23 Q. Okay. And that's less than \$1,000; right?

24 A. That number is less than \$1,000.

25 Q. Okay. And you said that some of the fence segments were

1 four feet in length; correct?

2 A. There were -- there are a handful of segments that are  
3 shorter than six feet, yes.

4 Q. And so if we were to multiply \$97.56 times 4, we would  
5 arrive at \$390.24 for each segment or panel; correct?

6 A. That math sounds correct.

7 Q. And that's less than \$1,000; right?

8 A. That is less than \$1,000.

9 Q. So I'm going to bring up what was marked as Government  
10 Exhibit-932A. And you can let me know if you saw this one.

11 THE COURT: Mr. Smith, while you do that, I'll  
12 just note that the prior exhibit that you had up, we did not  
13 identify. It's -- it was 932B.

14 MR. SMITH: It -- thank you, Your Honor.

15 THE COURT: The prior exhibit. Go ahead. You may  
16 proceed.

17 MR. SMITH: So Ms. Harris, I'd like to publish  
18 Government Exhibit-932A. The data of this was incorporated  
19 into the demonstrative the Government showed, but I'm going  
20 to use it for a slightly different purpose.

21 MR. MULROE: I'd ask to be heard briefly at  
22 sidebar.

23 (Bench conference:)

24 THE COURT: All right. Mr. Mulroe?

25 MR. MULROE: Your Honor, the primary thing I want

1 to note is just that the first page of the exhibit -- which  
2 I don't know if Mr. Smith is interested in or not -- is a  
3 letter from the Architect of the Capitol to a different  
4 prosecution team, essentially, saying, Dear Ms. Prosecutor,  
5 here's the information you asked for. I think that's not  
6 relevant and likely to contain hearsay. So if Mr. Smith is  
7 amenable to just admitting --

8 MR. SMITH: I would not do that to Ms. Kearney. I  
9 have no intention to use it.

10 THE COURT: All right. So how do you want to  
11 proceed just as a practical matter? Is it only this page we  
12 have up that you care about, Mr. Smith?

13 MR. SMITH: Yes, Your Honor. Yes.

14 THE COURT: So we'll just admit -- I'll just admit  
15 Page -- whatever -- however you want to identify it. Page X  
16 of Exhibit-Y.

17 MR. SMITH: Thank you, Your Honor.

18 THE COURT: All right. It -- Mr. Mulroe, you look  
19 like you're confused.

20 MR. MULROE: I do just want to note one other  
21 thing. I think that what Mr. Smith may be about to do is to  
22 impeach Mr. McIntyre with an inconsistent figure that was  
23 supplied by the Architect of the Capitol. I just want to be  
24 clear. I think we're not going to object. We're fine with  
25 him using it. But I do want to be clear that this is not

1 his calculation, this is not his statement, and this is not  
2 his --

3 THE COURT: Well, it's -- I don't know if it's  
4 impeaching, but it came from his office and it says an  
5 estimate and I don't know why he can't ask him about it.  
6 So -- and you've said you won't object. So let's proceed.

7 MR. SMITH: Thank you.

8 (Return from bench conference.)

9 MR. SMITH: So Ms. Harris --  
10 Permission to publish?

11 THE DEPUTY CLERK: It will be admitted?

12 MR. SMITH: Yes, it will be Page 3 of Government  
13 Exhibit-932A --

14 THE COURT: Yes.

15 MR. SMITH: -- and only that page.

16 THE COURT: Just that page shall be admitted.

17 BY MR. SMITH:

18 Q. So Mr. McIntyre, can you see that page on your screen?

19 A. Yes, I can.

20 Q. Does it appear to be a damage estimate for the Capitol  
21 breach from the Architect of the Capitol?

22 A. Yes, it is.

23 Q. And I'm going to draw a circle over a circle here. I've  
24 drawn a green circle around a section of black fencing. Is  
25 that the black fence we've been talking about?

1 A. Yes, it is.

2 Q. Okay. And do you see that there is a little description  
3 of the damage estimate next to the green line I've drawn?

4 A. Yes.

5 Q. And does it say that the cost to replace the full extent  
6 of the damaged fencing was \$32,000?

7 A. Yes.

8 Q. And what does the next line read?

9 A. The estimate for one section is \$3,500.

10 Q. Do you recall how we went through -- first, how you went  
11 through some math with Mr. Mulroe about the price -- the  
12 cost per foot of the inaugural black fence?

13 A. Yes.

14 Q. And I think the cost per foot that you arrived at was  
15 \$97 and some change?

16 A. That is correct.

17 Q. And then you and I, on cross-examination, went through  
18 some math about how -- what an individual panel or segment  
19 of the fence would cost, using the multiplier of feet, the  
20 length of the fence, and the \$97 per foot figure; right?

21 A. Correct.

22 Q. And did we ever arrive at a figure that was above  
23 \$1,000?

24 A. We did not.

25 Q. Okay. So can you -- this is a damage estimate from your



1 office; correct?

2 A. It is from my office, yes.

3 Q. Okay. Can you -- do you understand, having reviewed  
4 these materials with the Government, with the defense, and  
5 before your testimony today, how that figure of \$3,500 was  
6 arrived at?

7 A. I do understand where this number came from.

8 Q. And where does it come from?

9 A. Unfortunately, when my office prepared this document,  
10 they provided a number that was associated with a different  
11 section of fence panel. There is a -- there are multiple  
12 types of fences that were damaged on the date of the -- on  
13 the 6th and, unfortunately, this was published without  
14 proper review, and this was the damage estimate for a single  
15 section of fencing of a different kind of fencing.

16 Q. And, sir, do you know when this document was provided to  
17 the prosecutors in this case?

18 MR. MULROE: Objection --

19 THE WITNESS: I do not.

20 MR. MULROE: -- relevance.

21 THE COURT: Overruled.

22 BY MR. SMITH:

23 Q. Do you know when the office of the Architect of the  
24 Capitol produced this information to the Government in  
25 respect of the January 6th investigations?

1 A. I do not.

2 Q. Thank you.

3 You testified that sometimes when the Architect of  
4 the Capitol purchases materials, it goes through a bidding  
5 process, and sometimes there's a no-bid process; correct?

6 A. A -- that we would either go through a bidding process  
7 or we would go through a sole-source.

8 Q. And I think you testified that with respect to the black  
9 fence and its purchase in 2008, there was a bidding process  
10 on that; correct?

11 A. It was a -- competitively bid, yes.

12 Q. Okay. What is your knowledge based on when you  
13 testified to that?

14 A. I have an individual who works for me who was the  
15 requester for that fencing back in 2008, and they -- I have  
16 personally spoken with them, looked at the -- and their  
17 recollection is that it was a competitively bid process.

18 Q. Their recollection. Did you see any records?

19 A. We do not have a sole-source justification on hand for  
20 that. And so, therefore, the determination was that it was  
21 a competitively bid process.

22 Q. I see. Do you know whether \$97 and change for one foot  
23 of black fencing is a market price?

24 A. Today or in 2008?

25 Q. In 2008.

1 A. In 2008? I did not make that determination --

2 Q. Okay.

3 A. -- back in 2008.

4 Q. So I think one thing you testified about was that in a  
5 bidding process, one feature of the bidding process, when  
6 there's competition for a bid on materials that the Capitol  
7 would purchase, is that they compete on price; correct?

8 A. That could be a factor.

9 Q. And if there is no competition on price, there's only  
10 one supplier setting a price. It's a take-it-or-leave-it  
11 for the Capitol; correct?

12 A. Potentially. You have room to negotiate. If we do not  
13 believe that it is fair and reasonable, we would negotiate  
14 with that contractor. If that contractor didn't provide  
15 pricing that we felt is fair and reasonable, we would not  
16 proceed with a sole-source.

17 Q. You -- in your direct examination, you were shown  
18 Government Exhibit-492G, and you drew some lines -- some  
19 green lines on the screen at the eight-minute mark. And I  
20 just want to bring that up and show that to you for one  
21 brief moment here.

22 (Brief pause.)

23 MR. SMITH: Ms. Harris, permission to publish  
24 Government Exhibit-492G at eight minutes. It must not have  
25 been eight minutes. There we go.

1 (Video played.)

2 BY MR. SMITH:

3 Q. Do you recall seeing the black fence on the screen  
4 during your direct examination?

5 A. Yes.

6 Q. And I think you drew some green lines indicating how --  
7 well, do you recall drawing green lines on the screen?

8 A. I do remember drawing on the screen, yes.

9 Q. And do you remember what your testimony was when you  
10 were drawing the green lines?

11 A. We were talking about how -- the parts and pieces of the  
12 fencing.

13 Q. And do you recall what your -- the thrust of your remark  
14 was about the parts and pieces?

15 A. That there's a top rail, a bottom rail, and then  
16 individual vertical pickets, balusters -- you may call them  
17 something different -- but individual vertical rails that  
18 connect to that top rail and that bottom rail.

19 Q. So when you were drawing on this -- you were given this  
20 picture as an example to draw on; correct, to describe -- to  
21 make your point?

22 A. I don't believe that was the purpose of Mr. Mulroe's  
23 showing me this picture. It was to -- for me to recall and  
24 to say that this was the black fencing installed at the  
25 inaugural.

1 Q. Correct. Now, that is true. I'm going to get to a more  
2 detailed point here.

3 When you -- you said on January -- the morning of  
4 January 7th, you viewed some of the black fence that had  
5 been destroyed; correct?

6 A. That is correct.

7 Q. Okay. Do you recall seeing this fence, this particular  
8 segment?

9 A. They're not distinguishable. One piece is not  
10 distinguishable from another.

11 Q. They're not?

12 A. This is a fence that is several hundred feet long made  
13 up of very similar materials for that entire length.

14 Q. So you would not be able to say today whether this piece  
15 of fencing that you're looking at on this screen is one that  
16 you saw on the morning of January 7th?

17 A. Again, my office's responsibility is to determine if  
18 there is damage and what the cost to repair that damage is,  
19 not looking at --

20 Q. So -- I understand, sir, and that's a fair point, but  
21 I'm asking you something slightly different. You testified  
22 that you did see pieces of the fence on January 7th;  
23 correct?

24 A. That is correct.

25 Q. You don't know today -- sitting here today -- whether

1 the image on the screen, this fence in the image, is one  
2 that you saw on January 7th; correct?

3 A. Correct.

4 Q. And that was because you testified that once the fence  
5 came down, it was difficult to determine which segment was  
6 which; right?

7 A. Correct.

8 Q. Okay. And do you know whether your office went through  
9 the segments after the fence had come down to determine  
10 where they had been originally placed before the whole fence  
11 was torn down?

12 A. No.

13 Q. So there was no assessment done of whether damage to a  
14 particular segment is associated with any particular point  
15 in the line as it stood on January 6th?

16 A. Again, our office wouldn't make a determination of how  
17 damage occurred. We would look at: Is there damage? How  
18 do we repair that damage? How much does it cost to repair  
19 that damage?

20 MR. SMITH: I think that's everything. Thank you,  
21 Mr. McIntyre.

22 CROSS-EXAMINATION

23 BY MR. HULL:

24 Q. Good morning, Mr. McIntyre -- well, good afternoon.

25 A. Good afternoon.

1 Q. My name's Dan Hull. I represent Joe Biggs, along with  
2 this gentleman over here in the teal tie. And I just have a  
3 few questions for you.

4 First of all, on January 7th, when you saw the  
5 damage for the first time, did you have -- come to learn at  
6 any point that any particular individuals were responsible  
7 for the damage?

8 A. Again, as I said before, my office's responsibility is  
9 not to make a determination of how the damage occurred. My  
10 office's responsibility, as the Architect of the Capitol --  
11 our mission is to determine if there is damage, how to  
12 repair it, how much it would cost to repair it.

13 Q. Okay. So you don't have any information or knowledge  
14 about any of the defendants, including my client, as  
15 damaging the fence that day?

16 A. No.

17 Q. You have been with the office of the Architect of the  
18 Capitol for 14 years; is that right?

19 A. Just over 14 years, yes.

20 Q. And eight years ago, you were promoted -- I assume it  
21 was a promotion -- to deputy superintendent of the U.S.  
22 Capitol?

23 A. In 2019 is when I became deputy --

24 Q. Got that job?

25 A. Deputy superintendent.

1 Q. You switched over to the superintendent's office eight  
2 years ago; is that fair to say?

3 A. I used to -- I previously worked in the House  
4 superintendent's office, and after many years in the House  
5 superintendent's office, I accepted a position in the  
6 Capitol superintendent's office.

7 Q. I really appreciated your testimony from the standpoint  
8 of somebody who's lived here a long time. And I think you  
9 said that you look at your job and the office -- and the job  
10 of your office to serve -- let me see if I got this right --  
11 preserve and inspire, something like that?

12 A. That is correct.

13 Q. And that's because you think of the Capitol as being not  
14 just a place of work, but also a museum, a place where the  
15 public can come in and out and see Americana; correct?

16 A. It's the primary building of our United States  
17 Government from our -- of our democracy. It's the, you  
18 know -- the center of our congressional business that  
19 occurs, you know, on a daily basis every year.

20 Q. So this is, kind of, a labor of love for you, as well as  
21 a job; is that fair?

22 A. I take pride in what I do. Absolutely.

23 Q. Sure. No, I understand that. And with respect to -- we  
24 talked about serve, preserve, and inspire. With respect to  
25 preserve, does that include protecting the Capitol -- I



1 assume that would mean making it safe. Would you agree with  
2 me?

3 A. Protect is not -- that seems to me, the way that you're  
4 describing it, more of a law enforcement and -- mission.  
5 The Architect of the Capitol's mission is definitely  
6 different, to, you know, serve, preserve, and inspire, you  
7 know -- serve the American -- Congress and the Supreme  
8 Court, preserve the nation's Capitol, and to inspire those  
9 who come to our buildings. That's our mission.

10 Q. I understand that, but you do work with law enforcement,  
11 people that, you know, are employed -- Capitol Police, other  
12 sister, brother agencies that might have jurisdiction over  
13 that plot of land. So you do work with them, your office  
14 does.

15 A. Quite often, yes.

16 Q. Okay. And as part of that, you deal with certain kinds  
17 of equipment, certain kinds of protocols or plans to  
18 preserve?

19 A. The Capitol Police, their mission, and law enforcement's  
20 mission, I don't believe, is -- preserve is not part of  
21 their mission. I'm not sure I quite understand your  
22 question.

23 Q. Well, I think you said earlier in your testimony -- and  
24 excuse me if I'm not being clear -- that you had notice -- I  
25 think you said this very -- up front -- of large crowds that

1 were going to be at the Capitol on January 6th; is that  
2 right?

3 A. From time to time, our office does receive notification  
4 from law enforcement that -- to expect crowds. That may be  
5 something from a planned demonstration to what you see at  
6 the Supreme -- in front of the Supreme Court from time to  
7 time based on when rulings are being handed down. We are  
8 certainly kept at least somewhat notified of large general  
9 happenings on the campus.

10 Q. And why is that important to you from the standpoint of  
11 what you do?

12 A. I have men and women in the building who may need to  
13 know that -- if there's an area that they should avoid for  
14 the day at the direction of the United States Capitol  
15 Police. And so --

16 Q. Does it have anything to do with requests for certain  
17 kinds of equipment or barriers or movable kinds of equipment  
18 that you could use to control crowds at the perimeter?

19 A. We are not responsible for -- my office is not  
20 responsible for any of those items that you just listed.

21 Q. Okay. So you -- what -- your testimony is that your  
22 interest, or why it's important that you had notice of large  
23 crowds that day, was only to internally protect the people  
24 that were under your command, if you will?

25 A. It would be to pass along that United States Capitol

1 Police's message that -- to expect large crowds and to  
2 anticipate that it may impact your day-to-day working on the  
3 Capitol complex.

4 Q. Okay. But your testimony also, I guess, is that it had  
5 nothing to do with equipment or requests or requisitions  
6 that might be needed by, you know -- to secure the perimeter  
7 around the Capitol. January 6th is a very different day.  
8 It only happens every four years. And even, you know, aside  
9 from 2020 [sic], it's a year that, you know, you would  
10 expect to get requests not just on what to do about the  
11 inaugural stage, but also to protect the, you know -- the  
12 perimeter with certain kinds of equipment that you would  
13 have in your office; is that correct?

14 MR. MULROE: Objection. Compound.

15 THE COURT: Sustained.

16 BY MR. HULL:

17 Q. Are you -- let me ask it a different way. Bad question.

18 Are you ever involved in providing or help to  
19 provide equipment or making recommendations about equipment  
20 with respect to protecting the perimeter of the Capitol?

21 A. No.

22 Q. That never happens?

23 A. Not my office, no.

24 Q. So your testimony, I guess, also is that, as part of  
25 your mission to preserve, that element of it, has nothing to

1 do with protecting the Capitol from outside attackers?

2 A. Our mission is -- from a preserve perspective is both --  
3 historic preservation perspective. We're dealing with some  
4 of the nation's oldest buildings and, you know, a building  
5 that was originally started in, you know -- prior to 1800  
6 and originally occupied in, you know -- in the early  
7 1800s -- our mission is to make sure that that building is  
8 historically preserved for generations to come.

9 Q. I understand. Do you ever have occasion to make  
10 recommendations about certain kinds of equipment that might  
11 be used to protect the Capitol and the Capitol grounds?  
12 That's really my question.

13 A. No.

14 MR. MULROE: Asked and answered.

15 THE COURT: Sustained.

16 BY MR. HULL:

17 Q. Did anyone make a request to your office or to you about  
18 commandeering certain kinds of equipment to protect the  
19 perimeter in advance of January 6th?

20 MR. MULROE: Object to scope.

21 THE COURT: Sustained.

22 MR. HULL: Your Honor, can we go to the phones?

23 THE COURT: Let's do this.

24 Ladies and gentlemen, it's 12:27. So I'm going to  
25 let you all go to lunch and we'll see you at the end of the

1 lunch hour.

2 (Jury returned to jury room.)

3 THE COURT: All right. Everyone may be seated.

4 (Witness steps down.)

5 MR. HULL: I heard the click of the door. I --

6 Your Honor --

7 THE COURT: Mr. Hull, just hold on one second

8 while the witness leaves the room.

9 (Brief pause.)

10 All right. Here's, I think, just where I am on  
11 this. He already answered the question. The objection was  
12 beyond the scope, which I sustained. But also there's a  
13 foundation question. He -- he already said, That never  
14 happens. I mean, you asked him, actually, twice: Do you  
15 ever give recommendations for equipment to be moved around  
16 for the security of the Capitol? He said, on both  
17 occasions, No, we don't do that. And then you want to go  
18 into, Well, did it happen on January 6th? He already said  
19 it never happens.

20 MR. HULL: Your Honor, he's also said that, you  
21 know, one important facet of his job is to preserve the  
22 Capitol.

23 THE COURT: But you asked him the question you're  
24 getting at twice, and he said, No, it never happens. I  
25 don't know how --

1 MR. HULL: Well, you know, he's -- on  
2 January 7th -- maybe I should have laid a better foundation.  
3 On January 7th, he is inspecting, if you will, part of the  
4 damage that's done to the west front of the Capitol with  
5 respect to the inaugural stage. He's obviously very  
6 involved in that. Protection -- that particular fence, what  
7 I was going to ask him one more question about, is, you  
8 know, a fence that comes up every four years. He knows  
9 about it. He's known about it since 2004. It has something  
10 to do with controlling crowds.

11 THE COURT: Right. I'm just saying the --  
12 literally, the exact -- all of that notwithstanding, you  
13 asked him the foundational question. If he had said, Well,  
14 yes, sometimes we do, then you get to say, Well, did it  
15 happen on January 6th? But when he says, twice, No, we  
16 never did it, in addition to scope, I think you have as -- a  
17 foundational problem.

18 MR. HULL: Your Honor, I understand. I'll move on  
19 when we come back and ask him a couple more questions.

20 THE COURT: All right. See you all at 1:30.

21 THE DEPUTY CLERK: All rise. This Honorable Court  
22 stands in recess.

23 (Luncheon recess taken at 12:30 p.m.)

24 \* \* \* \* \*

25 CERTIFICATE OF OFFICIAL COURT REPORTER

1 I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify  
2 that the above and foregoing constitutes a true and accurate  
3 transcript of my stenographic notes and is a full, true and  
4 complete transcript of the proceedings to the best of my  
5 ability, dated this 1st day of March 2023.

6 /s/Timothy R. Miller, RPR, CRR, NJ-CCR  
7 Official Court Reporter  
8 United States Courthouse  
9 Room 6722  
10 333 Constitution Avenue, NW  
11 Washington, DC 20001  
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\$	/	1:21-cr-00175-TJK-6	231 [2] - 11471:22, 11472:16	11403:23, 11406:5, 11406:15, 11406:16
<b>\$1,000</b> [9] - 11411:14, 11461:19, 11462:3, 11476:21, 11493:23, 11493:24, 11494:7, 11494:8, 11497:23	<b>/s/Timothy</b> [1] - 11512:6	<b>1:30</b> [1] - 11511:20 <b>1st</b> [2] - 11378:21, 11512:5	<b>24-inch</b> [1] - 11458:14 <b>240</b> [1] - 11379:3 <b>25</b> [7] - 11427:2, 11427:6, 11468:18, 11468:23, 11469:20, 11471:10, 11471:22	<b>403</b> [13] - 11385:22, 11386:6, 11395:14, 11398:8, 11398:13, 11399:10, 11399:20, 11403:1, 11403:14, 11437:10, 11443:11, 11466:10
<b>\$1,548</b> [1] - 11476:23	<b>0</b>	<b>2</b>	<b>252-7233</b> [1] - 11378:15 <b>253-0514</b> [1] - 11379:13	<b>403-7323</b> [1] - 11379:7 <b>41</b> [1] - 11378:8 <b>425</b> [1] - 11443:4 <b>429-6520</b> [1] - 11378:25
<b>\$113</b> [1] - 11475:24	<b>06511</b> [1] - 11378:22	<b>2</b> [6] - 11381:4, 11381:9, 11381:14, 11465:15, 11478:16, 11488:2	<b>27-second</b> [2] - 11441:20, 11445:21	<b>472-3391</b> [1] - 11379:3 <b>479</b> [1] - 11435:18 <b>479A</b> [4] - 11428:1, 11428:5, 11428:13, 11428:22
<b>\$16,000</b> [1] - 11460:17	<b>1</b>	<b>2,400</b> [1] - 11470:4 <b>2,500</b> [1] - 11416:17	<b>28</b> [3] - 11468:3, 11468:5, 11468:13 <b>2:11</b> [1] - 11391:21 <b>2:13</b> [2] - 11391:21, 11392:3 <b>2:36</b> [2] - 11388:3, 11393:11	<b>479B</b> [1] - 11429:19 <b>479C</b> [1] - 11432:1 <b>479D</b> [1] - 11437:18 <b>48</b> [1] - 11382:10 <b>49</b> [1] - 11379:9
<b>\$171</b> [1] - 11475:13	<b>1</b> [5] - 11378:6, 11381:3, 11381:9, 11381:13, 11465:15	<b>2-JOSEPH</b> [1] - 11378:5	<b>3</b>	<b>49-second</b> [1] - 11447:10
<b>\$2,400</b> [2] - 11470:1, 11470:3	<b>1,000</b> [2] - 11462:15	<b>20</b> [1] - 11409:12 <b>200</b> [2] - 11469:20, 11472:15	<b>3</b> [8] - 11381:4, 11381:10, 11381:14, 11393:14, 11468:24, 11470:1, 11471:10, 11496:12	<b>492G</b> [1] - 11477:20 <b>4r</b> [1] - 11378:18 <b>4th</b> [1] - 11378:14
<b>\$2,772</b> [1] - 11472:1	<b>1,548</b> [3] - 11476:18, 11476:19, 11476:20	<b>20001</b> [2] - 11379:19, 11512:8	<b>3-ZACHARY</b> [1] - 11378:5	<b>5</b> [3] - 11381:5, 11381:11, 11381:15
<b>\$200</b> [6] - 11465:20, 11469:16, 11470:12, 11470:13, 11470:17, 11470:21	<b>1,552</b> [1] - 11476:15	<b>20005</b> [1] - 11378:25	<b>30</b> [4] - 11410:2, 11451:20, 11451:21, 11491:12	<b>5,000</b> [1] - 11470:4
<b>\$203</b> [2] - 11470:14, 11470:15	<b>1-ETHAN</b> [1] - 11378:4	<b>2004</b> [1] - 11511:9	<b>305</b> [2] - 11379:7, 11379:10	<b>5-ENRIQUE</b> [1] - 11378:6
<b>\$231</b> [1] - 11470:24	<b>10</b> [4] - 11442:4, 11445:4, 11445:5, 11445:7	<b>2008</b> [20] - 11408:9, 11410:1, 11410:15, 11410:18, 11418:16, 11418:17, 11479:3, 11482:10, 11484:18, 11486:22, 11487:8, 11487:9, 11493:3, 11493:7, 11499:9, 11499:15, 11499:24, 11499:25, 11500:1, 11500:3	<b>32</b> [1] - 11410:2 <b>328</b> [5] - 11408:11, 11410:2, 11483:16, 11484:7, 11493:5	<b>52</b> [2] - 11430:20, 11431:23
<b>\$25</b> [2] - 11472:18, 11473:7	<b>10-minute</b> [1] - 11442:1	<b>2011</b> [1] - 11425:13	<b>33012</b> [1] - 11379:9	<b>54-inch</b> [1] - 11458:14
<b>\$283</b> [2] - 11476:1, 11476:6	<b>10-second</b> [1] - 11429:3	<b>2019</b> [1] - 11504:23	<b>33014</b> [1] - 11379:6	<b>555</b> [1] - 11378:14
<b>\$3,500</b> [2] - 11497:9, 11498:5	<b>100,000</b> [1] - 11478:21	<b>202</b> [3] - 11378:15, 11378:25, 11379:20	<b>333</b> [2] - 11379:19, 11512:8	<b>58</b> [1] - 11476:17
<b>\$3,700</b> [1] - 11410:8	<b>10003</b> [1] - 11378:18	<b>2020</b> [1] - 11508:9	<b>35-inch-tall</b> [1] - 11483:17	<b>59047</b> [1] - 11379:16
<b>\$32,000</b> [8] - 11408:12, 11410:2, 11410:7, 11483:3, 11483:14, 11484:6, 11492:25, 11497:6	<b>10016</b> [1] - 11379:13	<b>2021</b> [11] - 11419:25, 11420:7, 11420:12, 11422:16, 11438:23, 11441:12, 11479:22, 11480:1, 11482:13, 11486:7, 11486:13	<b>354-3111</b> [1] - 11379:20	<b>5:00</b> [2] - 11425:19, 11427:12
<b>\$34.15</b> [2] - 11475:4, 11475:11	<b>1014</b> [1] - 11379:9	<b>2023</b> [2] - 11378:6, 11512:5	<b>3795</b> [1] - 11400:6	<b>6</b> [4] - 11381:5, 11381:12, 11381:15, 11493:21
<b>\$35</b> [1] - 11473:10	<b>113</b> [1] - 11379:15	<b>203</b> [1] - 11378:22	<b>383</b> [1] - 11378:21	<b>6-DOMINIC</b> [1] - 11378:6
<b>\$37.57</b> [1] - 11475:20	<b>12:27</b> [1] - 11509:24	<b>20530</b> [1] - 11378:15	<b>393-3017</b> [1] - 11378:22	<b>60</b> [2] - 11451:20, 11451:21
<b>\$390.24</b> [1] - 11494:5	<b>12:30</b> [1] - 11511:23	<b>20777</b> [1] - 11379:3	<b>3:15</b> [1] - 11393:14	<b>60-degree</b> [1] - 11441:12
<b>\$491</b> [1] - 11476:5	<b>13</b> [3] - 11430:5, 11430:13, 11482:23	<b>209</b> [1] - 11379:6	<b>4</b>	<b>6175</b> [1] - 11379:5
<b>\$5,000</b> [2] - 11469:24, 11469:25	<b>13th</b> [1] - 11436:17	<b>20th</b> [4] - 11378:17, 11420:12, 11481:9, 11488:11	<b>4</b> [2] - 11446:12, 11494:4	<b>646</b> [1] - 11379:13
<b>\$5,775</b> [1] - 11471:22	<b>14</b> [5] - 11418:15, 11426:8, 11487:2, 11504:18, 11504:19	<b>21-175</b> [2] - 11381:2, 11445:12	<b>401</b> [8] - 11398:5, 11398:13, 11399:20,	<b>6722</b> [2] - 11379:18,
<b>\$585.36</b> [1] - 11493:21	<b>1420</b> [1] - 11378:24	<b>22</b> [1] - 11444:4		
<b>\$7,400</b> [2] - 11470:5, 11470:6	<b>15</b> [2] - 11442:24, 11442:25	<b>225</b> [2] - 11416:24, 11417:8		
<b>\$7,545</b> [1] - 11458:2	<b>153</b> [1] - 11379:5	<b>230</b> [1] - 11417:20		
<b>\$774</b> [2] - 11476:8, 11476:12	<b>16</b> [1] - 11474:20			
<b>\$8,547</b> [1] - 11472:5	<b>16,000-and-some</b> [1] - 11460:2			
<b>\$8,550</b> [1] - 11459:16	<b>1793</b> [1] - 11417:19			
<b>\$800</b> [1] - 11469:17	<b>1800</b> [1] - 11509:5			
<b>\$97</b> [4] - 11410:5, 11497:15, 11497:20, 11499:22	<b>1800s</b> [1] - 11509:7			
<b>\$97.56</b> [4] - 11484:9, 11493:9, 11493:21, 11494:4	<b>1850s</b> [3] - 11441:6, 11446:16, 11472:21			
	<b>19th</b> [1] - 11421:12			
	<b>1:21-cr-00175-TJK-1</b> [1] - 11378:2			
	<b>1:21-cr-00175-TJK-2</b> [1] - 11378:3			
	<b>1:21-cr-00175-TJK-3</b> [1] - 11378:3			
	<b>1:21-cr-00175-TJK-5</b> [1] - 11378:4			



11512:7 <b>6th</b> [51] - 11379:12, 11408:4, 11408:8, 11410:12, 11415:3, 11419:25, 11420:5, 11420:6, 11420:7, 11422:16, 11422:18, 11422:22, 11423:9, 11423:15, 11423:16, 11424:3, 11424:7, 11424:16, 11427:4, 11427:11, 11429:12, 11430:10, 11431:10, 11433:17, 11434:9, 11448:4, 11449:1, 11452:9, 11457:1, 11464:3, 11474:17, 11479:22, 11481:9, 11482:13, 11486:7, 11486:13, 11486:17, 11486:19, 11487:13, 11488:1, 11488:9, 11488:22, 11490:5, 11498:13, 11498:25, 11503:15, 11507:1, 11508:7, 11509:19, 11510:18, 11511:15	<b>8</b> <b>8,550</b> [2] - 11471:5, 11471:18 <b>800</b> [1] - 11470:1 <b>822-2901</b> [1] - 11379:10 <b>9</b> <b>902-3869</b> [1] - 11378:19 <b>917</b> [1] - 11378:19 <b>931A</b> [5] - 11434:25, 11464:10, 11464:15, 11465:3, 11473:19 <b>931B</b> [2] - 11455:7, 11456:3 <b>932B</b> [3] - 11482:7, 11482:15, 11494:13 <b>939</b> [1] - 11464:20 <b>99</b> [1] - 11379:12 <b>9:00</b> [1] - 11378:6 <b>A</b> <b>a.m</b> [3] - 11378:6, 11425:19, 11427:12 <b>abbreviated</b> [1] - 11434:5 <b>ability</b> [5] - 11388:4, 11389:3, 11392:10, 11491:20, 11512:5 <b>able</b> [25] - 11393:1, 11394:23, 11402:10, 11403:19, 11403:20, 11405:18, 11409:15, 11411:21, 11411:23, 11413:12, 11424:19, 11433:1, 11439:2, 11442:21, 11446:7, 11449:24, 11452:4, 11452:5, 11452:22, 11452:24, 11481:4, 11491:11, 11492:7, 11502:14 <b>absolutely</b> [5] - 11400:20, 11400:22, 11401:17, 11423:21, 11505:22 <b>accept</b> [1] - 11454:22 <b>accepted</b> [2] - 11415:8, 11505:5 <b>access</b> [3] - 11391:19, 11451:22, 11489:17 <b>accomplished</b> [1] - 11437:24 <b>account</b> [1] - 11405:19 <b>accounts</b> [1] -	11423:6 <b>accurate</b> [5] - 11447:7, 11455:25, 11471:19, 11490:13, 11512:2 <b>accurately</b> [1] - 11428:19 <b>accusers</b> [1] - 11411:19 <b>acknowledgement</b> [1] - 11415:6 <b>acted</b> [2] - 11402:18, 11403:19 <b>acting</b> [2] - 11400:24, 11406:23 <b>action</b> [3] - 11421:15, 11425:6, 11425:9 <b>actions</b> [5] - 11386:2, 11390:6, 11402:14, 11424:13 <b>active</b> [2] - 11423:9, 11454:13 <b>activities</b> [8] - 11416:19, 11416:22, 11417:3, 11421:24, 11423:7, 11423:16, 11430:9, 11430:11 <b>Activity</b> [1] - 11457:22 <b>activity</b> [1] - 11397:11 <b>actor</b> [1] - 11413:4 <b>actual</b> [4] - 11410:12, 11450:3, 11470:8, 11472:8 <b>add</b> [6] - 11382:25, 11451:22, 11469:13, 11470:4, 11472:4, 11476:12 <b>addition</b> [1] - 11511:16 <b>additional</b> [4] - 11418:1, 11453:12, 11468:22, 11476:12 <b>additionally</b> [1] - 11397:25 <b>address</b> [1] - 11473:6 <b>adds</b> [1] - 11469:20 <b>adjacent</b> [1] - 11466:19 <b>adjustable</b> [1] - 11416:1 <b>admit</b> [7] - 11404:8, 11407:9, 11456:3, 11464:10, 11482:15, 11495:14 <b>admitted</b> [14] - 11388:19, 11415:4, 11428:6, 11435:18, 11435:20, 11435:23, 11436:2, 11436:8, 11436:10, 11437:9,	11464:11, 11482:16, 11496:11, 11496:16 <b>admitting</b> [1] - 11495:7 <b>advance</b> [1] - 11509:19 <b>aesthetic</b> [1] - 11488:14 <b>aesthetics</b> [1] - 11453:16 <b>affected</b> [1] - 11403:6 <b>affixed</b> [1] - 11479:14 <b>afternoon</b> [6] - 11423:4, 11424:16, 11487:21, 11487:24, 11503:24, 11503:25 <b>age</b> [1] - 11472:20 <b>agencies</b> [2] - 11417:23, 11506:12 <b>agency</b> [3] - 11416:9, 11416:16, 11418:2 <b>aggressive</b> [1] - 11477:7 <b>agitation</b> [1] - 11389:14 <b>ago</b> [4] - 11395:21, 11455:23, 11504:20, 11505:2 <b>agree</b> [6] - 11384:4, 11384:19, 11388:18, 11395:13, 11397:24, 11506:1 <b>agreed</b> [1] - 11383:20 <b>agreement</b> [1] - 11415:12 <b>ahead</b> [1] - 11494:15 <b>aided</b> [1] - 11379:21 <b>airport</b> [1] - 11481:11 <b>aisle</b> [1] - 11404:22 <b>al</b> [1] - 11445:13 <b>alarm</b> [1] - 11404:21 <b>algebra</b> [1] - 11469:10 <b>all-in</b> [3] - 11459:13, 11459:14, 11472:8 <b>alleged</b> [7] - 11383:21, 11383:23, 11384:4, 11384:5, 11396:23, 11396:24, 11415:6 <b>allegedly</b> [1] - 11399:19 <b>allow</b> [1] - 11388:9, 11394:12, 11396:20, 11402:13, 11404:9, 11408:14, 11423:12, 11440:21, 11452:6, 11466:17, 11472:24 <b>allowed</b> [5] - 11394:1, 11440:2, 11462:25, 11463:1, 11463:4 <b>allowing</b> [1] - 11403:5	<b>allows</b> [2] - 11389:22, 11390:13 <b>almost</b> [3] - 11407:4, 11429:11, 11436:11 <b>alternative</b> [1] - 11453:4 <b>aluminum</b> [2] - 11480:23, 11480:25 <b>amenable</b> [1] - 11495:7 <b>amended</b> [1] - 11385:17 <b>Amendment</b> [1] - 11411:18 <b>AMERICA</b> [1] - 11378:2 <b>America</b> [2] - 11381:3, 11445:12 <b>American</b> [2] - 11426:4, 11506:7 <b>Americana</b> [1] - 11505:15 <b>amount</b> [18] - 11392:15, 11411:15, 11426:8, 11433:17, 11434:8, 11437:24, 11452:13, 11452:17, 11457:6, 11459:15, 11462:8, 11473:3, 11475:15, 11476:25, 11477:6, 11481:3, 11486:22 <b>analyze</b> [1] - 11406:20 <b>anchor</b> [1] - 11479:17 <b>annotate</b> [1] - 11421:2 <b>annotations</b> [1] - 11421:18 <b>answered</b> [2] - 11509:14, 11510:11 <b>anticipate</b> [2] - 11434:10, 11508:2 <b>anticipating</b> [1] - 11386:1 <b>anyway</b> [1] - 11403:5 <b>AoC</b> [2] - 11475:2, 11479:10 <b>apart</b> [1] - 11422:10 <b>apologies</b> [1] - 11459:6 <b>apologize</b> [1] - 11493:16 <b>apparent</b> [1] - 11386:16 <b>appear</b> [3] - 11395:17, 11408:2, 11496:20 <b>appearance</b> [1] - 11474:18 <b>appearance's</b> [1] - 11404:19 <b>APPEARANCES</b> [2] -
<b>7</b> <b>7</b> [7] - 11378:17, 11466:16, 11466:17, 11466:18, 11466:20, 11466:25 <b>7,400</b> [1] - 11470:8 <b>7,500</b> [1] - 11468:5 <b>7,545</b> [5] - 11466:1, 11467:23, 11468:12, 11469:13, 11470:9 <b>7166</b> [1] - 11379:2 <b>72</b> [3] - 11485:6, 11493:19, 11493:20 <b>764-9347</b> [1] - 11379:16 <b>774</b> [1] - 11476:13 <b>775</b> [1] - 11379:16 <b>7th</b> [20] - 11424:4, 11425:17, 11426:6, 11426:16, 11427:11, 11428:14, 11430:1, 11447:15, 11449:18, 11480:1, 11480:4, 11480:5, 11491:8, 11502:4, 11502:16, 11502:22, 11503:2, 11504:4, 11511:2, 11511:3				

11378:11, 11379:1 <b>appeared</b> [3] - 11382:9, 11382:14, 11393:2 <b>applied</b> [1] - 11441:5 <b>apply</b> [3] - 11470:25, 11471:13, 11471:18 <b>applying</b> [1] - 11405:18 <b>appreciate</b> [2] - 11382:18, 11413:1 <b>appreciated</b> [1] - 11505:7 <b>apprehension</b> [1] - 11389:21 <b>approach</b> [6] - 11455:2, 11463:14, 11477:5, 11477:7, 11482:1 <b>appropriate</b> [7] - 11384:17, 11394:10, 11394:15, 11397:20, 11444:21, 11477:3, 11486:2 <b>approvals</b> [1] - 11453:24 <b>approved</b> [1] - 11453:23 <b>approximation</b> [1] - 11470:10 <b>Architect</b> [69] - 11407:25, 11408:9, 11408:23, 11410:6, 11411:22, 11412:13, 11412:18, 11416:6, 11416:7, 11416:10, 11416:13, 11416:14, 11417:9, 11417:14, 11417:18, 11417:19, 11418:4, 11418:6, 11418:13, 11418:19, 11418:20, 11419:2, 11420:1, 11420:9, 11420:13, 11422:6, 11422:8, 11422:11, 11423:19, 11424:24, 11425:7, 11425:11, 11426:11, 11437:25, 11439:5, 11439:23, 11448:3, 11448:6, 11449:9, 11450:3, 11450:18, 11452:7, 11452:24, 11453:5, 11453:21, 11454:3, 11455:20, 11464:7, 11465:12, 11473:15, 11474:3, 11474:13, 11478:7, 11479:1, 11480:18, 11481:16, 11485:20, 11486:14,	11486:25, 11492:8, 11493:2, 11495:3, 11495:23, 11496:21, 11498:23, 11499:3, 11504:10, 11504:17, 11506:5 <b>architects</b> [1] - 11424:23 <b>area</b> [11] - 11405:15, 11421:5, 11430:23, 11431:3, 11438:7, 11438:16, 11446:11, 11446:12, 11474:23, 11478:23, 11507:13 <b>areas</b> [2] - 11478:20, 11478:25 <b>argue</b> [2] - 11392:12, 11410:23 <b>arguing</b> [1] - 11385:4 <b>argument</b> [6] - 11393:16, 11398:5, 11398:6, 11398:14, 11399:12, 11403:23 <b>arguments</b> [1] - 11397:24 <b>arithmetic</b> [1] - 11476:10 <b>arose</b> [1] - 11404:21 <b>arrest</b> [4] - 11400:11, 11402:2, 11402:3 <b>arrive</b> [4] - 11425:18, 11493:21, 11494:5, 11497:22 <b>arrived</b> [7] - 11427:12, 11447:14, 11480:3, 11480:5, 11493:9, 11497:14, 11498:6 <b>arriving</b> [2] - 11390:15, 11425:22 <b>art</b> [2] - 11440:13, 11441:3 <b>artfully</b> [1] - 11390:18 <b>articulate</b> [1] - 11387:12 <b>articulated</b> [1] - 11383:25 <b>artwork</b> [1] - 11440:14 <b>aside</b> [3] - 11387:20, 11410:7, 11508:8 <b>aspect</b> [1] - 11396:18 <b>aspects</b> [3] - 11396:8, 11416:25, 11440:14 <b>assaulted</b> [1] - 11388:6 <b>assembled</b> [1] - 11490:14 <b>assembly</b> [2] - 11473:2, 11480:15 <b>assess</b> [4] - 11430:5, 11430:6, 11454:25,	11460:22 <b>assessed</b> [1] - 11454:24 <b>assessment</b> [10] - 11424:17, 11424:18, 11424:21, 11425:8, 11437:22, 11454:23, 11468:15, 11469:1, 11470:19, 11503:13 <b>assistant</b> [2] - 11418:21, 11419:3 <b>assisting</b> [1] - 11427:7 <b>associated</b> [6] - 11434:8, 11464:3, 11474:5, 11476:24, 11498:10, 11503:14 <b>assume</b> [4] - 11401:15, 11467:3, 11504:20, 11506:1 <b>AT</b> [1] - 11379:15 <b>attached</b> [2] - 11429:8, 11490:7 <b>attacked</b> [1] - 11395:6 <b>attackers</b> [1] - 11509:1 <b>attempt</b> [1] - 11388:23 <b>attempted</b> [1] - 11477:9 <b>attempting</b> [5] - 11392:23, 11400:10, 11402:2, 11408:6, 11467:15 <b>attention</b> [4] - 11381:20, 11406:11, 11413:25, 11420:9 <b>attitude</b> [2] - 11400:9, 11401:25 <b>attorney</b> [2] - 11456:11 <b>ATTORNEY</b> [1] - 11379:15 <b>ATTORNEY'S</b> [1] - 11378:14 <b>authenticity</b> [1] - 11436:11 <b>automatically</b> [1] - 11454:22 <b>availability</b> [2] - 11438:23, 11439:12 <b>available</b> [4] - 11449:14, 11450:12, 11454:10, 11454:20 <b>Avenue</b> [3] - 11379:12, 11379:19, 11512:8 <b>average</b> [2] - 11424:22, 11475:6 <b>avoid</b> [1] - 11507:13 <b>aware</b> [5] - 11462:20,	11482:20, 11485:2, 11486:6, 11487:4  <b>B</b>  <b>B.A</b> [1] - 11378:12 <b>background</b> [5] - 11419:16, 11452:3, 11453:1, 11454:13, 11461:10 <b>bad</b> [1] - 11508:17 <b>badge</b> [2] - 11452:5, 11454:15 <b>balusters</b> [1] - 11501:16 <b>balustrade</b> [6] - 11430:24, 11430:25, 11431:4, 11431:5, 11431:12, 11431:13 <b>barriers</b> [2] - 11481:17, 11507:17 <b>base</b> [1] - 11416:2 <b>based</b> [18] - 11406:18, 11434:24, 11449:12, 11451:12, 11452:14, 11460:11, 11460:18, 11462:1, 11463:9, 11464:4, 11465:16, 11469:9, 11469:10, 11471:19, 11471:20, 11481:2, 11499:12, 11507:7 <b>basement</b> [1] - 11432:8 <b>basic</b> [1] - 11476:9 <b>basis</b> [10] - 11387:13, 11445:2, 11459:2, 11463:11, 11468:4, 11473:8, 11473:9, 11477:13, 11505:19 <b>became</b> [5] - 11392:24, 11418:21, 11419:3, 11480:16, 11504:23 <b>becomes</b> [1] - 11390:9 <b>BEFORE</b> [1] - 11378:9 <b>began</b> [7] - 11417:23, 11418:20, 11419:1, 11424:14, 11424:18, 11449:18, 11480:17 <b>begin</b> [5] - 11421:22, 11421:25, 11422:1, 11431:4, 11479:5 <b>beginning</b> [6] - 11395:20, 11412:9, 11412:11, 11429:22, 11444:25, 11449:18 <b>behind</b> [1] - 11488:2 <b>believes</b> [1] - 11409:10	<b>bench</b> [6] - 11413:20, 11414:20, 11437:14, 11463:6, 11467:21, 11496:8 <b>Bench</b> [5] - 11413:21, 11432:19, 11461:17, 11466:9, 11494:23 <b>bending</b> [1] - 11481:1 <b>bent</b> [1] - 11480:14 <b>Bertino</b> [1] - 11415:2 <b>Bertino's</b> [1] - 11383:4 <b>best</b> [3] - 11406:15, 11440:21, 11512:4 <b>better</b> [1] - 11511:2 <b>between</b> [7] - 11401:10, 11421:10, 11472:7, 11477:8, 11478:25, 11481:9, 11490:14 <b>beyond</b> [7] - 11390:4, 11391:15, 11396:19, 11474:6, 11481:6, 11491:25, 11510:12 <b>bid</b> [8] - 11451:1, 11452:21, 11484:22, 11499:5, 11499:11, 11499:17, 11499:21, 11500:6 <b>bidding</b> [12] - 11450:18, 11450:21, 11450:23, 11451:9, 11452:8, 11453:3, 11484:19, 11499:4, 11499:6, 11499:9, 11500:5 <b>bids</b> [3] - 11451:5, 11451:6, 11451:7 <b>big</b> [2] - 11438:11, 11447:3 <b>biggest</b> [1] - 11438:22 <b>Biggs</b> [7] - 11381:4, 11381:14, 11395:12, 11397:10, 11406:4, 11443:13, 11504:1 <b>BIGGS</b> [1] - 11378:5 <b>bit</b> [9] - 11402:16, 11416:13, 11417:17, 11420:5, 11444:20, 11446:14, 11470:8, 11474:1, 11485:25 <b>black</b> [19] - 11408:1, 11481:12, 11481:24, 11483:17, 11486:14, 11487:25, 11488:5, 11488:8, 11489:23, 11493:2, 11493:6, 11496:24, 11496:25, 11497:12, 11499:8, 11499:23, 11501:3, 11501:24, 11502:4
--	---	--	--	--

<p><b>blank</b> [2] - 11489:5, 11489:8</p> <p><b>bleachers</b> [1] - 11421:7</p> <p><b>blow</b> [1] - 11474:1</p> <p><b>blowers</b> [2] - 11429:24, 11429:25</p> <p><b>blowing</b> [1] - 11465:8</p> <p><b>blue</b> [4] - 11431:9, 11431:11, 11431:12, 11431:14</p> <p><b>boarded</b> [2] - 11447:19, 11447:25</p> <p><b>body</b> [1] - 11392:24</p> <p><b>boss</b> [3] - 11423:4, 11423:7, 11424:3</p> <p><b>bottom</b> [9] - 11405:25, 11459:7, 11460:2, 11470:8, 11476:1, 11476:7, 11480:16, 11501:15, 11501:18</p> <p><b>bottom-line</b> [1] - 11476:7</p> <p><b>box</b> [3] - 11413:17, 11445:10, 11473:20</p> <p><b>boxes</b> [2] - 11412:16, 11482:19</p> <p><b>Boys</b> [2] - 11397:3, 11397:18</p> <p><b>branch</b> [5] - 11412:14, 11413:2, 11413:3, 11416:9, 11416:16</p> <p><b>Breach</b> [3] - 11446:12, 11478:16, 11488:2</p> <p><b>breach</b> [2] - 11406:25, 11496:21</p> <p><b>breached</b> [2] - 11391:21, 11406:24</p> <p><b>breaches</b> [2] - 11426:23, 11427:1</p> <p><b>break</b> [8] - 11411:6, 11411:7, 11435:4, 11436:3, 11441:25, 11442:2, 11442:13, 11477:12</p> <p><b>breaking</b> [3] - 11396:14, 11396:22, 11466:23</p> <p><b>breaks</b> [1] - 11390:9</p> <p><b>brethren</b> [1] - 11406:11</p> <p><b>bridge</b> [1] - 11411:8</p> <p><b>Brief</b> [6] - 11413:15, 11432:16, 11440:15, 11445:8, 11445:16, 11500:22</p> <p><b>brief</b> [6] - 11413:24, 11432:21, 11483:13, 11487:22, 11500:21, 11510:9</p>	<p><b>briefly</b> [1] - 11494:21</p> <p><b>bring</b> [8] - 11411:24, 11413:14, 11461:4, 11479:7, 11479:9, 11492:19, 11494:9, 11500:20</p> <p><b>broadly</b> [1] - 11487:12</p> <p><b>broken</b> [23] - 11409:8, 11410:17, 11426:15, 11427:1, 11427:2, 11427:9, 11427:10, 11439:20, 11439:21, 11440:19, 11440:20, 11449:1, 11449:2, 11449:3, 11449:4, 11449:11, 11449:13, 11455:21, 11459:12, 11466:13, 11476:24, 11480:13</p> <p><b>brother</b> [1] - 11506:12</p> <p><b>brought</b> [2] - 11388:2, 11388:7</p> <p><b>brushes</b> [1] - 11473:13</p> <p><b>budget</b> [2] - 11454:17, 11454:18</p> <p><b>building</b> [77] - 11386:18, 11387:21, 11391:19, 11391:24, 11392:3, 11394:2, 11394:13, 11404:6, 11406:25, 11417:4, 11417:15, 11417:25, 11418:3, 11419:6, 11420:25, 11424:5, 11424:21, 11424:25, 11425:1, 11425:24, 11425:25, 11426:1, 11426:5, 11426:6, 11426:14, 11426:16, 11426:23, 11427:3, 11427:4, 11427:5, 11427:8, 11432:6, 11432:9, 11438:11, 11438:14, 11439:25, 11440:3, 11440:6, 11440:7, 11440:12, 11440:18, 11440:22, 11441:1, 11441:2, 11441:3, 11446:5, 11446:16, 11446:17, 11446:20, 11447:20, 11447:21, 11448:17, 11448:18, 11448:20, 11452:20, 11457:11, 11459:21, 11459:24, 11472:20, 11472:21, 11474:23, 11474:24, 11474:25, 11480:8, 11487:4, 11487:9,</p>	<p>11489:22, 11505:16, 11507:12, 11509:4, 11509:7</p> <p><b>buildings</b> [8] - 11418:1, 11418:22, 11419:4, 11425:14, 11450:9, 11474:21, 11506:9, 11509:4</p> <p><b>built</b> [2] - 11431:1, 11459:19</p> <p><b>bunch</b> [3] - 11435:23, 11436:1, 11463:10</p> <p><b>business</b> [10] - 11423:13, 11426:3, 11426:4, 11450:17, 11451:24, 11452:23, 11454:12, 11461:3, 11461:12, 11505:18</p> <p><b>busting</b> [1] - 11466:13</p> <p><b>busts</b> [1] - 11440:14</p> <p><b>buy</b> [1] - 11484:20</p> <p><b>BY</b> [43] - 11415:19, 11419:7, 11420:19, 11427:20, 11428:12, 11429:1, 11429:23, 11430:19, 11432:4, 11437:21, 11440:16, 11445:18, 11445:25, 11447:13, 11455:5, 11455:11, 11456:15, 11456:20, 11457:20, 11458:21, 11460:15, 11463:7, 11463:17, 11463:22, 11464:13, 11464:23, 11467:22, 11468:11, 11477:25, 11478:17, 11482:3, 11482:17, 11483:10, 11484:1, 11487:20, 11489:20, 11492:22, 11496:17, 11498:22, 11501:2, 11503:23, 11508:16, 11509:16</p>	<p>11465:21, 11469:21</p> <p><b>call-out</b> [1] - 11457:19</p> <p><b>cameras</b> [1] - 11438:18</p> <p><b>campus</b> [4] - 11452:6, 11461:4, 11461:8, 11507:9</p> <p><b>cannot</b> [2] - 11466:22</p> <p><b>Capitol</b> [155] - 11396:25, 11397:8, 11398:4, 11403:9, 11406:22, 11407:25, 11408:9, 11408:23, 11410:6, 11411:22, 11412:13, 11412:19, 11416:6, 11416:7, 11416:10, 11416:12, 11416:14, 11416:15, 11416:19, 11416:20, 11417:4, 11417:9, 11417:10, 11417:13, 11417:14, 11417:15, 11417:16, 11417:18, 11417:19, 11417:25, 11418:1, 11418:4, 11418:6, 11418:13, 11418:19, 11418:20, 11419:2, 11419:5, 11419:8, 11419:21, 11419:23, 11420:1, 11420:8, 11420:13, 11422:1, 11422:6, 11422:8, 11422:11, 11422:24, 11423:8, 11423:15, 11423:18, 11423:20, 11423:22, 11423:23, 11423:24, 11423:25, 11424:20, 11424:24, 11425:8, 11425:11, 11425:16, 11425:24, 11426:1, 11426:11, 11426:12, 11427:8, 11427:16, 11428:14, 11428:19, 11429:5, 11430:25, 11432:8, 11437:25, 11439:5, 11439:14, 11439:23, 11439:24, 11440:4, 11440:12, 11446:4, 11446:17, 11447:14, 11448:3, 11448:6, 11449:1, 11449:10, 11450:3, 11450:18, 11452:1, 11452:7, 11452:24, 11452:25, 11453:5, 11453:22, 11454:3, 11454:13, 11455:20, 11459:18, 11462:10, 11464:8, 11465:12,</p>	<p>11474:4, 11474:19, 11474:22, 11477:18, 11478:8, 11479:1, 11480:4, 11480:18, 11481:16, 11483:20, 11485:20, 11485:24, 11486:14, 11486:25, 11489:22, 11489:24, 11490:4, 11491:8, 11492:8, 11493:2, 11495:3, 11495:23, 11496:20, 11496:21, 11498:24, 11499:4, 11500:6, 11500:11, 11504:10, 11504:18, 11504:22, 11505:6, 11505:13, 11505:25, 11506:8, 11506:11, 11506:19, 11507:1, 11507:14, 11507:25, 11508:3, 11508:7, 11508:20, 11509:1, 11509:11, 11510:16, 11510:22, 11511:4</p> <p><b>Capitol's</b> [4] - 11420:9, 11473:15, 11474:14, 11506:5</p> <p><b>captioned</b> [2] - 11473:24, 11482:24</p> <p><b>captures</b> [1] - 11403:11</p> <p><b>care</b> [7] - 11416:17, 11416:21, 11423:23, 11426:11, 11426:13, 11434:2, 11495:12</p> <p><b>careful</b> [3] - 11404:15, 11404:24, 11436:4</p> <p><b>careless</b> [1] - 11404:24</p> <p><b>Carmen</b> [12] - 11379:2, 11381:11</p> <p><b>carpentry</b> [2] - 11417:1, 11477:3</p> <p><b>carry</b> [2] - 11420:13, 11426:3</p> <p><b>case</b> [16] - 11384:20, 11385:6, 11395:17, 11395:20, 11396:8, 11396:16, 11397:4, 11397:12, 11404:14, 11406:15, 11407:2, 11408:25, 11415:10, 11462:2, 11477:17, 11498:17</p> <p><b>cases</b> [2] - 11384:21, 11385:2</p> <p><b>catching</b> [1] - 11418:24</p> <p><b>category</b> [1] - 11436:22</p>
<b>C</b>				
<p><b>calculate</b> [4] - 11410:13, 11410:19, 11463:10, 11484:4</p> <p><b>calculated</b> [1] - 11467:17</p> <p><b>calculation</b> [7] - 11465:9, 11471:8, 11472:18, 11473:19, 11474:2, 11492:21, 11496:1</p> <p><b>calculations</b> [4] - 11409:6, 11464:4, 11471:19, 11477:15</p> <p><b>calculator</b> [2] -</p>				

<p><b>causation</b> [1] - 11492:11</p> <p><b>caused</b> [5] - 11405:6, 11405:10, 11408:25, 11487:3, 11492:7</p> <p><b>causes</b> [1] - 11386:23</p> <p><b>CCR</b> [3] - 11379:17, 11512:1, 11512:6</p> <p><b>center</b> [6] - 11409:9, 11409:11, 11421:17, 11446:20, 11505:18</p> <p><b>Center</b> [2] - 11416:12, 11417:16</p> <p><b>cents</b> [2] - 11472:11, 11475:14</p> <p><b>certain</b> [12] - 11397:3, 11397:4, 11412:18, 11415:1, 11415:3, 11419:21, 11506:16, 11506:17, 11507:16, 11508:12, 11509:10, 11509:18</p> <p><b>certainly</b> [2] - 11438:16, 11507:8</p> <p><b>CERTIFICATE</b> [1] - 11511:25</p> <p><b>certify</b> [1] - 11512:1</p> <p><b>cetera</b> [3] - 11387:23, 11424:11, 11437:11</p> <p><b>chain</b> [3] - 11439:7, 11439:10, 11449:23</p> <p><b>challenge</b> [1] - 11438:22</p> <p><b>challenged</b> [1] - 11386:12</p> <p><b>challenges</b> [1] - 11461:1</p> <p><b>challenging</b> [1] - 11411:14</p> <p><b>chance</b> [3] - 11427:15, 11436:8, 11442:5</p> <p><b>change</b> [2] - 11497:15, 11499:22</p> <p><b>changes</b> [1] - 11403:25</p> <p><b>changing</b> [2] - 11383:22, 11383:24</p> <p><b>characterize</b> [3] - 11400:9, 11401:25, 11477:6</p> <p><b>charge</b> [2] - 11398:25, 11399:9</p> <p><b>charged</b> [3] - 11396:14, 11402:19, 11433:22</p> <p><b>charges</b> [4] - 11396:9, 11396:19, 11415:3, 11463:9</p> <p><b>charging</b> [1] - 11434:12</p>	<p><b>chartreuse</b> [3] - 11405:13, 11405:15, 11407:9</p> <p><b>chartreuse-colored</b> [1] - 11405:13</p> <p><b>check</b> [2] - 11469:19, 11472:3</p> <p><b>checks</b> [2] - 11453:1, 11461:10</p> <p><b>choice</b> [1] - 11454:7</p> <p><b>chronologically</b> [1] - 11456:22</p> <p><b>Circle</b> [1] - 11387:10</p> <p><b>circle</b> [5] - 11401:19, 11401:24, 11496:23, 11496:24</p> <p><b>circled</b> [1] - 11421:17</p> <p><b>circumstances</b> [2] - 11386:3, 11443:25</p> <p><b>cite</b> [2] - 11400:6, 11400:19</p> <p><b>cites</b> [1] - 11385:2</p> <p><b>civil</b> [9] - 11386:20, 11392:15, 11398:14, 11398:16, 11399:4, 11399:9, 11399:12, 11399:14, 11433:11</p> <p><b>clarify</b> [4] - 11405:5, 11436:23, 11458:25, 11490:1</p> <p><b>clarity</b> [1] - 11407:12</p> <p><b>clash</b> [1] - 11398:12</p> <p><b>clause</b> [2] - 11411:25, 11412:23</p> <p><b>cleaning</b> [2] - 11417:2</p> <p><b>cleanup</b> [1] - 11429:25</p> <p><b>clear</b> [10] - 11385:2, 11389:21, 11391:13, 11403:17, 11403:21, 11414:10, 11458:15, 11495:24, 11495:25, 11506:24</p> <p><b>clearances</b> [2] - 11440:1, 11454:13</p> <p><b>cleared</b> [1] - 11427:5</p> <p><b>clearing</b> [3] - 11421:18, 11431:19, 11431:22</p> <p><b>CLERK</b> [13] - 11381:2, 11413:16, 11428:4, 11428:8, 11436:16, 11445:6, 11445:9, 11445:11, 11489:6, 11489:11, 11489:16, 11496:11, 11511:21</p> <p><b>click</b> [1] - 11510:5</p> <p><b>client</b> [4] - 11383:15, 11387:9, 11397:10, 11504:14</p>	<p><b>client's</b> [1] - 11399:13</p> <p><b>clients</b> [6] - 11383:14, 11387:6, 11396:13, 11397:17, 11403:22</p> <p><b>climate</b> [1] - 11440:10</p> <p><b>Clock</b> [1] - 11392:5</p> <p><b>close</b> [3] - 11389:17, 11416:4, 11426:18</p> <p><b>closely</b> [1] - 11389:25</p> <p><b>closer</b> [1] - 11393:14</p> <p><b>coated</b> [4] - 11480:24, 11480:25, 11483:17</p> <p><b>cognizant</b> [1] - 11437:7</p> <p><b>colleagues</b> [1] - 11424:13</p> <p><b>collection</b> [1] - 11426:14</p> <p><b>collective</b> [1] - 11491:19</p> <p><b>colored</b> [1] - 11405:13</p> <p><b>COLUMBIA</b> [1] - 11378:1</p> <p><b>column</b> [2] - 11475:3, 11475:15</p> <p><b>combination</b> [2] - 11451:15, 11465:11</p> <p><b>coming</b> [6] - 11383:8, 11403:9, 11403:18, 11419:8, 11427:24, 11480:15</p> <p><b>command</b> [1] - 11507:24</p> <p><b>commandeering</b> [1] - 11509:18</p> <p><b>commented</b> [1] - 11394:5</p> <p><b>comments</b> [1] - 11382:24</p> <p><b>committee</b> [2] - 11481:10, 11481:21</p> <p><b>commodity</b> [1] - 11483:1</p> <p><b>common</b> [2] - 11422:19, 11485:5</p> <p><b>communicate</b> [2] - 11389:3, 11436:7</p> <p><b>company</b> [5] - 11456:1, 11463:9, 11464:5, 11465:17, 11474:6</p> <p><b>company's</b> [1] - 11466:3</p> <p><b>compare</b> [2] - 11451:7, 11460:20</p> <p><b>compared</b> [4] - 11384:21, 11389:11, 11444:6, 11469:2</p> <p><b>comparing</b> [2] - 11460:12, 11460:18</p>	<p><b>compete</b> [1] - 11500:7</p> <p><b>competing</b> [1] - 11389:6</p> <p><b>competition</b> [2] - 11500:6, 11500:9</p> <p><b>competitive</b> [6] - 11450:18, 11450:21, 11450:23, 11452:8, 11452:21, 11484:19</p> <p><b>competitively</b> [4] - 11484:22, 11499:11, 11499:17, 11499:21</p> <p><b>complete</b> [3] - 11439:15, 11449:21, 11512:4</p> <p><b>completed</b> [7] - 11422:15, 11430:12, 11452:3, 11457:2, 11457:4, 11457:5</p> <p><b>completely</b> [1] - 11480:5</p> <p><b>complex</b> [4] - 11416:20, 11418:1, 11439:14, 11508:3</p> <p><b>complied</b> [1] - 11401:11</p> <p><b>component</b> [1] - 11392:14</p> <p><b>compound</b> [1] - 11508:14</p> <p><b>computer</b> [1] - 11379:21</p> <p><b>computer-aided</b> [1] - 11379:21</p> <p><b>concede</b> [1] - 11402:24</p> <p><b>conceptually</b> [1] - 11385:23</p> <p><b>concern</b> [1] - 11452:14</p> <p><b>concerned</b> [1] - 11405:1</p> <p><b>concerning</b> [1] - 11408:1</p> <p><b>concerns</b> [2] - 11414:1, 11462:17</p> <p><b>concert</b> [1] - 11421:25</p> <p><b>conclusion</b> [3] - 11460:10, 11460:11, 11462:2</p> <p><b>concrete</b> [1] - 11479:18</p> <p><b>condition</b> [6] - 11422:4, 11429:15, 11430:10, 11474:25, 11486:6, 11486:9</p> <p><b>conditionally</b> [2] - 11435:23, 11437:2</p> <p><b>conduct</b> [1] - 11400:18</p>	<p><b>conference</b> [11] - 11413:20, 11413:21, 11414:20, 11432:19, 11437:14, 11461:17, 11463:6, 11466:9, 11467:21, 11494:23, 11496:8</p> <p><b>confidence</b> [1] - 11449:24</p> <p><b>confront</b> [1] - 11411:19</p> <p><b>confrontation</b> [4] - 11398:23, 11411:20, 11411:25, 11412:23</p> <p><b>confused</b> [1] - 11495:19</p> <p><b>confusing</b> [2] - 11395:14, 11404:4</p> <p><b>confusion</b> [7] - 11386:15, 11386:23, 11390:17, 11392:2, 11392:5, 11435:2, 11435:25</p> <p><b>Congress</b> [5] - 11423:12, 11426:3, 11427:6, 11448:19, 11506:7</p> <p><b>congressional</b> [7] - 11438:8, 11450:14, 11452:5, 11452:13, 11452:19, 11454:15, 11505:18</p> <p><b>connect</b> [1] - 11501:18</p> <p><b>connected</b> [4] - 11386:17, 11446:19, 11451:22, 11490:15</p> <p><b>connecting</b> [6] - 11446:6, 11446:10, 11446:13, 11446:15, 11446:22, 11447:16</p> <p><b>connects</b> [1] - 11446:24</p> <p><b>Conor</b> [2] - 11378:13, 11381:8</p> <p><b>consented</b> [1] - 11401:12</p> <p><b>consenting</b> [1] - 11394:13</p> <p><b>conservative</b> [2] - 11477:7, 11477:10</p> <p><b>consider</b> [2] - 11435:21, 11486:10</p> <p><b>consideration</b> [1] - 11415:11</p> <p><b>considerations</b> [1] - 11438:3</p> <p><b>considering</b> [1] - 11472:20</p> <p><b>consist</b> [1] - 11474:9</p>
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<p><b>consistent</b> [2] - 11386:19, 11441:8</p> <p><b>consistent-ish</b> [1] - 11441:8</p> <p><b>conspiracy</b> [6] - 11383:6, 11383:14, 11396:8, 11396:10, 11396:18, 11396:19</p> <p><b>constitutes</b> [1] - 11512:2</p> <p><b>Constitution</b> [2] - 11379:19, 11512:8</p> <p><b>constructed</b> [2] - 11421:10, 11472:21</p> <p><b>constructing</b> [1] - 11420:10</p> <p><b>construction</b> [19] - 11416:18, 11416:21, 11419:15, 11420:24, 11421:6, 11421:23, 11422:2, 11422:9, 11423:9, 11423:12, 11423:13, 11423:16, 11430:9, 11430:11, 11438:25, 11474:24, 11479:17, 11485:23, 11486:4</p> <p><b>contain</b> [1] - 11495:6</p> <p><b>context</b> [1] - 11448:25</p> <p><b>continuation</b> [1] - 11483:9</p> <p><b>continue</b> [4] - 11423:12, 11429:16, 11432:10, 11458:4</p> <p><b>CONTINUED</b> [1] - 11379:1</p> <p><b>continues</b> [1] - 11458:22</p> <p><b>contract</b> [6] - 11434:5, 11439:6, 11451:5, 11451:20, 11452:22, 11454:8</p> <p><b>contracted</b> [2] - 11450:5, 11450:6</p> <p><b>contractor</b> [20] - 11422:9, 11438:25, 11451:12, 11451:24, 11452:23, 11454:21, 11457:25, 11461:4, 11461:11, 11465:14, 11465:15, 11465:16, 11465:22, 11470:10, 11470:25, 11472:25, 11473:16, 11483:16, 11500:14</p> <p><b>contractors</b> [9] - 11422:7, 11449:19, 11450:16, 11450:19, 11450:25, 11451:3, 11451:7, 11451:11</p>	<p><b>control</b> [9] - 11440:19, 11440:22, 11440:25, 11441:7, 11453:16, 11478:24, 11488:16, 11507:18</p> <p><b>controlling</b> [1] - 11511:10</p> <p><b>convict</b> [1] - 11466:22</p> <p><b>cops</b> [1] - 11407:5</p> <p><b>copy</b> [1] - 11412:19</p> <p><b>corner</b> [1] - 11405:15</p> <p><b>cornerstone</b> [1] - 11417:24</p> <p><b>correct</b> [83] - 11383:2, 11397:8, 11400:22, 11417:6, 11417:21, 11418:5, 11418:17, 11431:7, 11438:14, 11438:20, 11444:24, 11447:8, 11447:24, 11448:8, 11458:24, 11459:9, 11460:3, 11467:6, 11467:24, 11467:25, 11468:24, 11468:25, 11470:3, 11470:6, 11470:23, 11471:6, 11471:9, 11471:12, 11471:21, 11471:24, 11473:22, 11476:3, 11479:21, 11484:11, 11486:1, 11488:3, 11488:12, 11488:23, 11488:25, 11489:1, 11490:6, 11490:20, 11490:21, 11491:4, 11491:9, 11491:10, 11491:14, 11491:15, 11491:18, 11492:2, 11492:9, 11493:3, 11493:4, 11493:7, 11493:8, 11493:9, 11493:10, 11493:14, 11493:18, 11493:21, 11493:22, 11494:1, 11494:5, 11494:6, 11497:16, 11497:21, 11498:1, 11499:5, 11499:10, 11500:7, 11500:11, 11501:20, 11502:1, 11502:5, 11502:6, 11502:23, 11502:24, 11503:2, 11503:3, 11503:7, 11505:12, 11505:15, 11508:13</p> <p><b>correction</b> [1] - 11413:1</p> <p><b>correctly</b> [1] - 11451:8</p> <p><b>correspond</b> [1] - 11410:23</p>	<p><b>corresponds</b> [1] - 11410:17</p> <p><b>Corridor</b> [1] - 11392:5</p> <p><b>corridor</b> [8] - 11446:6, 11446:10, 11446:13, 11446:15, 11446:18, 11446:22, 11447:16, 11474:22</p> <p><b>Cost</b> [2] - 11465:24, 11465:25</p> <p><b>cost</b> [44] - 11408:12, 11410:7, 11410:8, 11419:23, 11424:1, 11433:14, 11433:21, 11434:24, 11442:20, 11451:13, 11459:11, 11459:12, 11460:21, 11461:2, 11462:11, 11463:2, 11463:11, 11464:1, 11465:9, 11466:3, 11467:15, 11469:11, 11472:8, 11472:17, 11473:19, 11474:2, 11474:3, 11476:11, 11482:21, 11483:2, 11484:6, 11487:7, 11487:9, 11492:21, 11493:12, 11497:5, 11497:12, 11497:14, 11497:19, 11502:18, 11503:18, 11504:12</p> <p><b>costs</b> [14] - 11411:22, 11433:20, 11434:8, 11459:7, 11460:1, 11461:9, 11461:21, 11461:23, 11462:16, 11464:7, 11465:21, 11468:4, 11473:3, 11476:23</p> <p><b>counsel</b> [10] - 11381:20, 11381:24, 11382:14, 11405:24, 11406:10, 11412:15, 11413:19, 11413:23, 11414:1, 11468:8</p> <p><b>Count</b> [6] - 11466:16, 11466:17, 11466:18, 11466:20, 11466:25</p> <p><b>count</b> [1] - 11488:21</p> <p><b>counts</b> [1] - 11434:12</p> <p><b>couple</b> [7] - 11381:17, 11396:15, 11402:8, 11427:22, 11428:9, 11486:23, 11511:19</p> <p><b>course</b> [4] - 11389:7, 11391:12, 11413:9, 11419:19</p> <p><b>Court</b> [10] - 11379:17, 11379:18, 11383:17,</p>	<p>11393:24, 11404:22, 11445:6, 11506:8, 11507:6, 11511:21, 11512:6</p> <p><b>court</b> [17] - 11383:7, 11383:9, 11383:10, 11383:16, 11384:7, 11384:10, 11386:19, 11399:21, 11404:16, 11405:4, 11406:1, 11410:24, 11427:24, 11442:4, 11444:10, 11445:5, 11466:16</p> <p><b>COURT</b> [144] - 11378:1, 11381:16, 11382:4, 11382:8, 11382:11, 11382:14, 11383:19, 11383:24, 11384:11, 11384:15, 11384:24, 11385:8, 11386:24, 11387:4, 11388:15, 11390:23, 11390:25, 11391:4, 11392:17, 11393:5, 11393:20, 11394:17, 11395:7, 11395:9, 11396:2, 11396:4, 11396:7, 11397:21, 11398:20, 11398:22, 11398:24, 11399:3, 11399:16, 11399:18, 11399:22, 11399:24, 11400:2, 11400:13, 11401:3, 11401:13, 11402:6, 11404:12, 11405:3, 11405:9, 11405:21, 11406:8, 11406:10, 11407:12, 11407:15, 11407:19, 11407:20, 11407:22, 11408:17, 11408:20, 11409:3, 11409:14, 11409:19, 11410:9, 11410:21, 11410:25, 11411:4, 11411:6, 11411:10, 11412:2, 11412:21, 11412:24, 11413:18, 11413:22, 11414:8, 11414:12, 11414:15, 11414:21, 11418:23, 11432:14, 11432:18, 11432:20, 11432:25, 11433:21, 11434:7, 11434:14, 11434:21, 11434:23, 11435:3, 11435:16, 11435:21, 11436:14, 11436:19, 11436:22, 11437:1, 11437:5, 11441:24, 11442:7, 11442:25, 11443:6,</p>	<p>11443:8, 11443:12, 11443:14, 11443:21, 11444:2, 11444:9, 11444:11, 11444:24, 11445:4, 11445:14, 11455:4, 11456:6, 11456:10, 11460:14, 11461:16, 11462:6, 11462:23, 11463:16, 11464:11, 11466:8, 11467:2, 11467:8, 11468:6, 11482:2, 11482:16, 11487:18, 11489:10, 11489:15, 11489:17, 11492:12, 11494:11, 11494:15, 11494:24, 11495:10, 11495:14, 11495:18, 11496:3, 11496:14, 11496:16, 11498:21, 11508:15, 11509:15, 11509:21, 11509:23, 11510:3, 11510:7, 11510:23, 11511:11, 11511:20, 11511:25</p> <p><b>Court's</b> [2] - 11384:5, 11446:8</p> <p><b>court's</b> [4] - 11382:15, 11383:8, 11386:19, 11481:25</p> <p><b>Courthouse</b> [2] - 11379:18, 11512:7</p> <p><b>courtroom</b> [3] - 11381:22, 11405:23, 11414:3</p> <p><b>cover</b> [1] - 11429:9</p> <p><b>coverage</b> [1] - 11423:5</p> <p><b>covered</b> [4] - 11448:2, 11472:15, 11472:16, 11473:20</p> <p><b>covers</b> [2] - 11405:15, 11429:11</p> <p><b>cows</b> [1] - 11409:15</p> <p><b>CR</b> [1] - 11378:2</p> <p><b>cracked</b> [2] - 11391:21, 11402:16</p> <p><b>crafted</b> [1] - 11384:21</p> <p><b>crate</b> [1] - 11485:21</p> <p><b>crated</b> [1] - 11481:14</p> <p><b>created</b> [1] - 11464:1</p> <p><b>credibility</b> [1] - 11415:5</p> <p><b>Criminal</b> [2] - 11381:2, 11445:12</p> <p><b>criminal</b> [1] - 11452:3</p> <p><b>critical</b> [1] - 11457:12</p> <p><b>CROSS</b> [2] - 11487:19, 11503:22</p> <p><b>cross</b> [10] - 11393:25,</p>
---	--	---	---	---



<p>11394:2, 11394:11, 11403:17, 11403:20, 11409:15, 11411:7, 11411:8, 11488:18, 11497:17</p> <p><b>Cross</b> [2] - 11380:4, 11380:4</p> <p><b>CROSS- EXAMINATION</b> [2] - 11487:19, 11503:22</p> <p><b>cross-examination</b> [3] - 11394:2, 11403:17, 11497:17</p> <p><b>Cross-Examination</b> [2] - 11380:4, 11380:4</p> <p><b>cross-examine</b> [1] - 11393:25</p> <p><b>crowd</b> [8] - 11389:11, 11390:8, 11391:22, 11392:24, 11392:25, 11478:24, 11488:15, 11488:16</p> <p><b>crowd-control</b> [1] - 11478:24</p> <p><b>crowds</b> [8] - 11423:15, 11426:13, 11506:25, 11507:4, 11507:18, 11507:23, 11508:1, 11511:10</p> <p><b>CRR</b> [3] - 11379:17, 11512:1, 11512:6</p> <p><b>crypt</b> [12] - 11385:20, 11386:11, 11386:18, 11388:7, 11389:5, 11389:9, 11390:14, 11390:21, 11391:18, 11391:23, 11395:16, 11407:1</p> <p><b>CT</b> [1] - 11378:22</p> <p><b>cumulative</b> [6] - 11386:22, 11441:23, 11442:15, 11442:17, 11443:11, 11443:24</p> <p><b>curve</b> [2] - 11478:15, 11490:23</p> <p><b>customarily</b> [1] - 11405:12</p> <p><b>cut</b> [2] - 11438:21, 11477:3</p>	<p>11424:7, 11424:10, 11424:11, 11425:2, 11425:3, 11441:16, 11461:18, 11462:3, 11462:4, 11462:21, 11464:3, 11492:14, 11492:15, 11492:16, 11492:17, 11496:20, 11497:3, 11497:25, 11498:14, 11502:18, 11503:13, 11503:17, 11503:18, 11503:19, 11504:5, 11504:7, 11504:9, 11504:11, 11511:4</p> <p><b>damaged</b> [3] - 11481:3, 11497:6, 11498:12</p> <p><b>damages</b> [1] - 11430:6</p> <p><b>damaging</b> [1] - 11504:15</p> <p><b>Dan</b> [3] - 11395:11, 11406:4, 11504:1</p> <p><b>danger</b> [1] - 11403:15</p> <p><b>dark</b> [2] - 11425:20, 11425:23</p> <p><b>dashed</b> [1] - 11489:21</p> <p><b>data</b> [2] - 11408:10, 11494:18</p> <p><b>date</b> [2] - 11456:21, 11498:12</p> <p><b>Date</b> [1] - 11457:22</p> <p><b>dated</b> [1] - 11512:5</p> <p><b>dates</b> [1] - 11441:6</p> <p><b>DAVID</b> [1] - 11378:17</p> <p><b>DAY</b> [1] - 11378:8</p> <p><b>day-to-day</b> [1] - 11508:2</p> <p><b>days</b> [6] - 11430:5, 11430:13, 11441:12, 11451:20, 11451:21, 11478:8</p> <p><b>DC</b> [4] - 11378:15, 11378:25, 11379:19, 11512:8</p> <p><b>deal</b> [1] - 11506:16</p> <p><b>dealing</b> [2] - 11466:19, 11509:3</p> <p><b>Dear</b> [1] - 11495:4</p> <p><b>decibels</b> [1] - 11386:15</p> <p><b>decide</b> [1] - 11384:10</p> <p><b>decided</b> [2] - 11437:3, 11457:7</p> <p><b>decision</b> [5] - 11424:3, 11457:8, 11491:2, 11491:16, 11491:25</p> <p><b>decorum</b> [1] - 11456:8</p> <p><b>deemed</b> [1] - 11457:12</p>	<p><b>deface</b> [3] - 11381:23, 11382:15, 11404:21</p> <p><b>defaces</b> [1] - 11405:18</p> <p><b>defacing</b> [2] - 11382:1, 11382:6</p> <p><b>defame</b> [1] - 11404:25</p> <p><b>defeated</b> [1] - 11394:5</p> <p><b>Defendant</b> [15] - 11381:3, 11381:4, 11381:5, 11381:9, 11381:10, 11381:11, 11381:12, 11381:13, 11381:14, 11381:15</p> <p><b>defendant</b> [5] - 11394:13, 11404:3, 11415:9, 11456:9, 11487:22</p> <p><b>defendant's</b> [1] - 11385:5</p> <p><b>Defendants</b> [3] - 11378:7, 11378:16, 11379:2</p> <p><b>defendants</b> [19] - 11381:24, 11386:14, 11391:1, 11391:6, 11396:1, 11396:24, 11398:11, 11399:8, 11402:23, 11403:18, 11403:20, 11404:3, 11405:24, 11433:6, 11433:22, 11434:12, 11435:13, 11437:9, 11504:14</p> <p><b>defense</b> [10] - 11386:12, 11394:9, 11395:6, 11405:24, 11408:6, 11412:7, 11412:15, 11436:8, 11492:6, 11498:4</p> <p><b>defer</b> [1] - 11444:10</p> <p><b>definitely</b> [1] - 11506:5</p> <p><b>degree</b> [1] - 11419:18</p> <p><b>delamination</b> [1] - 11441:9</p> <p><b>deliberately</b> [1] - 11404:20</p> <p><b>delivered</b> [1] - 11439:3</p> <p><b>demarcate</b> [1] - 11488:15</p> <p><b>democracy</b> [1] - 11505:17</p> <p><b>demonstrate</b> [1] - 11390:2</p> <p><b>demonstrating</b> [2] - 11391:16, 11392:14</p> <p><b>demonstration</b> [1] - 11507:5</p> <p><b>demonstrative</b> [6] -</p>	<p>11464:19, 11468:23, 11469:8, 11473:18, 11492:20, 11494:19</p> <p><b>denied</b> [2] - 11384:18, 11403:24</p> <p><b>depict</b> [1] - 11428:19</p> <p><b>depicted</b> [2] - 11389:25, 11397:11</p> <p><b>DEPUTY</b> [13] - 11381:2, 11413:16, 11428:4, 11428:8, 11436:16, 11445:6, 11445:9, 11445:11, 11489:6, 11489:11, 11489:16, 11496:11, 11511:21</p> <p><b>deputy</b> [5] - 11416:11, 11419:5, 11504:21, 11504:23, 11504:25</p> <p><b>derelict</b> [2] - 11394:7, 11401:7</p> <p><b>describe</b> [8] - 11389:8, 11389:9, 11392:21, 11392:22, 11392:23, 11393:1, 11501:20</p> <p><b>described</b> [7] - 11386:13, 11392:3, 11392:4, 11398:1, 11398:7, 11435:10, 11451:16</p> <p><b>describing</b> [2] - 11386:4, 11506:4</p> <p><b>description</b> [5] - 11391:13, 11398:7, 11483:13, 11483:15, 11497:2</p> <p><b>deserves</b> [1] - 11393:19</p> <p><b>destroyed</b> [7] - 11491:13, 11491:18, 11491:24, 11492:5, 11492:6, 11502:5</p> <p><b>destruction</b> [2] - 11382:19, 11491:9</p> <p><b>detachable</b> [1] - 11490:6</p> <p><b>detailed</b> [1] - 11502:2</p> <p><b>details</b> [1] - 11487:12</p> <p><b>detention</b> [1] - 11395:21</p> <p><b>detention-land</b> [1] - 11395:21</p> <p><b>determination</b> [7] - 11481:4, 11492:14, 11492:15, 11499:20, 11500:1, 11503:16, 11504:9</p> <p><b>determine</b> [6] - 11461:20, 11462:21,</p>	<p>11502:17, 11503:5, 11503:9, 11504:11</p> <p><b>determined</b> [2] - 11460:17, 11473:5</p> <p><b>determines</b> [1] - 11461:25</p> <p><b>develop</b> [1] - 11450:23</p> <p><b>diagram</b> [3] - 11489:8, 11490:11, 11491:23</p> <p><b>difference</b> [1] - 11401:10</p> <p><b>different</b> [42] - 11397:15, 11404:2, 11409:12, 11410:24, 11411:13, 11411:16, 11419:23, 11426:7, 11426:17, 11434:19, 11438:9, 11440:14, 11440:18, 11443:3, 11447:6, 11457:15, 11458:7, 11458:8, 11458:17, 11459:17, 11459:20, 11459:23, 11468:18, 11468:19, 11470:25, 11471:13, 11477:18, 11478:19, 11484:25, 11485:1, 11494:20, 11495:3, 11498:10, 11498:15, 11501:17, 11502:21, 11506:6, 11508:7, 11508:17</p> <p><b>difficult</b> [2] - 11439:10, 11503:5</p> <p><b>dimensions</b> [1] - 11458:17</p> <p><b>Direct</b> [2] - 11380:3, 11473:24</p> <p><b>direct</b> [8] - 11411:1, 11411:11, 11443:19, 11474:1, 11476:1, 11476:6, 11500:17, 11501:4</p> <p><b>DIRECT</b> [1] - 11415:18</p> <p><b>direction</b> [1] - 11507:14</p> <p><b>directly</b> [7] - 11404:7, 11416:3, 11433:7, 11434:12, 11435:12, 11441:4, 11464:8</p> <p><b>disagree</b> [1] - 11396:22</p> <p><b>disagrees</b> [1] - 11385:14</p> <p><b>disappear</b> [1] - 11413:7</p> <p><b>disarray</b> [1] - 11426:8</p> <p><b>disassemble</b> [2] - 11422:3, 11485:20</p> <p><b>disaster</b> [6] -</p>
<b>D</b>				
<p><b>D.C</b> [3] - 11378:5, 11397:6, 11483:21</p> <p><b>daily</b> [2] - 11417:2, 11505:19</p> <p><b>damage</b> [37] - 11408:25, 11423:24, 11423:25, 11424:5,</p>				

<p>11424:17, 11424:18, 11424:21, 11425:8, 11425:16, 11437:22 <b>disconnected</b> [1] - 11414:4 <b>discrepancy</b> [1] - 11472:7 <b>discussed</b> [6] - 11381:19, 11383:25, 11384:13, 11384:25, 11385:13, 11385:17 <b>dismantled</b> [1] - 11480:6 <b>disorder</b> [9] - 11386:21, 11392:15, 11398:14, 11398:16, 11399:4, 11399:9, 11399:13, 11399:15, 11433:11 <b>display</b> [1] - 11464:22 <b>disposable</b> [1] - 11473:14 <b>disposal</b> [1] - 11413:11 <b>dispose</b> [1] - 11491:5 <b>disrespectful</b> [1] - 11405:2 <b>distance</b> [1] - 11431:17 <b>distinct</b> [1] - 11417:13 <b>distinctly</b> [1] - 11468:18 <b>distinguishable</b> [2] - 11502:9, 11502:10 <b>distraction</b> [1] - 11393:15 <b>DISTRICT</b> [3] - 11378:1, 11378:1, 11378:10 <b>divide</b> [2] - 11484:7, 11493:5 <b>divided</b> [1] - 11468:12 <b>dividing</b> [1] - 11468:5 <b>division</b> [1] - 11468:12 <b>document</b> [12] - 11384:3, 11407:18, 11409:16, 11455:7, 11455:12, 11455:18, 11463:18, 11463:23, 11465:3, 11482:6, 11498:9, 11498:16 <b>documents</b> [1] - 11412:12 <b>dollar</b> [2] - 11475:17, 11475:25 <b>dollars</b> [2] - 11460:2, 11472:11 <b>Dominic</b> [1] - 11381:5 <b>done</b> [17] - 11394:16,</p>	<p>11422:6, 11433:16, 11433:22, 11434:5, 11437:23, 11451:24, 11452:8, 11452:23, 11454:12, 11454:23, 11456:24, 11457:15, 11460:7, 11476:5, 11503:13, 11511:4 <b>door</b> [20] - 11386:2, 11386:10, 11387:19, 11388:3, 11388:8, 11388:11, 11390:1, 11390:7, 11390:15, 11390:22, 11391:8, 11391:11, 11391:19, 11400:16, 11401:1, 11402:16, 11459:25, 11466:20, 11477:4, 11510:5 <b>doors</b> [13] - 11393:4, 11393:24, 11424:10, 11427:2, 11427:10, 11439:21, 11440:7, 11440:20, 11452:15, 11452:16, 11457:9 <b>doubt</b> [1] - 11390:20 <b>down</b> [21] - 11404:16, 11407:19, 11409:8, 11431:20, 11442:8, 11442:9, 11457:21, 11458:16, 11459:12, 11470:13, 11470:16, 11470:18, 11472:10, 11472:12, 11477:12, 11487:8, 11503:5, 11503:9, 11503:11, 11507:7, 11510:4 <b>dramatic</b> [1] - 11395:4 <b>draw</b> [6] - 11401:19, 11401:24, 11489:2, 11489:5, 11496:23, 11501:20 <b>drawing</b> [4] - 11501:7, 11501:8, 11501:10, 11501:19 <b>drawn</b> [5] - 11489:21, 11489:22, 11490:11, 11496:24, 11497:3 <b>drew</b> [2] - 11500:18, 11501:6 <b>Drive</b> [1] - 11379:15 <b>drive</b> [1] - 11461:5 <b>drives</b> [1] - 11462:10 <b>during</b> [12] - 11392:18, 11411:11, 11422:19, 11422:22, 11423:11, 11423:13, 11427:3, 11429:9, 11438:22, 11440:1, 11478:19, 11501:4</p>	<p><b>duties</b> [4] - 11400:5, 11401:11, 11417:12, 11423:19 <b>duty</b> [1] - 11394:8</p> <p><b>E</b></p> <p><b>early</b> [4] - 11407:23, 11424:20, 11431:10, 11509:6 <b>earthquake</b> [2] - 11425:13, 11426:20 <b>easier</b> [1] - 11493:17 <b>easiest</b> [1] - 11476:20 <b>easily</b> [1] - 11382:16 <b>East</b> [2] - 11378:17, 11379:15 <b>east</b> [2] - 11438:14, 11438:15 <b>easy</b> [1] - 11403:15 <b>edge</b> [1] - 11431:6 <b>educational</b> [1] - 11419:16 <b>effectively</b> [2] - 11387:20, 11480:6 <b>effort</b> [3] - 11396:18, 11425:16, 11461:11 <b>eight</b> [5] - 11500:19, 11500:24, 11500:25, 11504:20, 11505:1 <b>eight-minute</b> [1] - 11500:19 <b>either</b> [4] - 11415:7, 11462:2, 11472:25, 11499:6 <b>electronic</b> [1] - 11489:18 <b>element</b> [1] - 11508:25 <b>ELMO</b> [1] - 11489:18 <b>elsewhere</b> [1] - 11438:10 <b>employ</b> [1] - 11416:24 <b>employed</b> [1] - 11506:11 <b>employee</b> [2] - 11407:25, 11461:5 <b>employees</b> [20] - 11416:17, 11416:24, 11417:8, 11423:6, 11424:9, 11424:22, 11426:13, 11427:2, 11427:7, 11439:5, 11448:3, 11448:5, 11450:3, 11452:2, 11454:14, 11472:25, 11473:16, 11474:4, 11479:10, 11485:20 <b>en</b> [3] - 11436:2, 11436:10, 11437:9 <b>encompassed</b> [1] -</p>	<p>11476:24 <b>encountered</b> [1] - 11428:17 <b>end</b> [8] - 11388:10, 11391:10, 11393:13, 11411:5, 11415:10, 11448:24, 11490:7, 11509:25 <b>ends</b> [1] - 11421:25 <b>enforcement</b> [5] - 11401:19, 11401:24, 11506:4, 11506:10, 11507:4 <b>enforcement's</b> [1] - 11506:19 <b>engineer</b> [4] - 11408:7, 11418:21, 11419:3, 11419:14 <b>engineering</b> [1] - 11419:18 <b>engineers</b> [1] - 11424:23 <b>Enrique</b> [1] - 11381:5 <b>entail</b> [1] - 11450:22 <b>enter</b> [4] - 11391:24, 11394:2, 11394:13, 11439:25 <b>entered</b> [5] - 11388:4, 11393:23, 11398:3, 11402:13, 11415:8 <b>entering</b> [3] - 11388:21, 11388:24, 11398:4 <b>enters</b> [1] - 11392:2 <b>entire</b> [17] - 11393:10, 11406:22, 11421:20, 11450:14, 11480:7, 11484:3, 11484:4, 11484:7, 11490:10, 11491:3, 11491:5, 11491:16, 11491:21, 11492:1, 11492:8, 11502:13 <b>entirely</b> [1] - 11444:7 <b>entities</b> [1] - 11422:12 <b>entity</b> [1] - 11416:8 <b>entrance</b> [2] - 11404:6, 11452:19 <b>entrances</b> [1] - 11457:10 <b>entries</b> [1] - 11409:12 <b>entry</b> [1] - 11386:17 <b>envelope</b> [1] - 11440:7 <b>equation</b> [1] - 11450:2 <b>equipment</b> [10] - 11506:17, 11507:17, 11508:5, 11508:12, 11508:19, 11509:10, 11509:18, 11510:15 <b>Erik</b> [2] - 11378:12,</p>	<p>11381:8 <b>error</b> [1] - 11385:3 <b>especially</b> [4] - 11440:1, 11440:22, 11466:23, 11481:8 <b>Esq</b> [12] - 11378:12, 11378:12, 11378:13, 11378:13, 11378:16, 11378:20, 11378:23, 11379:2, 11379:4, 11379:8, 11379:11, 11379:14 <b>essentially</b> [2] - 11488:14, 11495:4 <b>establish</b> [2] - 11401:8, 11454:18 <b>established</b> [1] - 11417:19 <b>establishing</b> [1] - 11433:11 <b>estimate</b> [12] - 11454:25, 11459:5, 11464:1, 11468:17, 11470:11, 11470:20, 11496:5, 11496:20, 11497:3, 11497:9, 11497:25, 11498:14 <b>estimates</b> [1] - 11472:8 <b>et</b> [4] - 11387:23, 11424:11, 11437:11, 11445:13 <b>Ethan</b> [3] - 11381:3, 11445:12, 11487:23 <b>evening</b> [1] - 11427:11 <b>event</b> [7] - 11400:16, 11429:9, 11441:25, 11472:10, 11478:20, 11478:22, 11481:15 <b>events</b> [6] - 11386:17, 11388:2, 11398:17, 11427:4, 11430:10, 11457:1 <b>eventually</b> [1] - 11437:3 <b>evidence</b> [25] - 11385:4, 11385:5, 11388:9, 11389:5, 11390:11, 11390:13, 11392:10, 11393:19, 11394:23, 11396:11, 11398:15, 11399:11, 11403:10, 11403:11, 11404:1, 11404:2, 11407:5, 11410:16, 11415:3, 11415:9, 11420:17, 11426:22, 11427:1, 11466:17, 11477:20 <b>evident</b> [2] - 11388:12,</p>
--	---	--	--	---

<p>11391:5</p> <p><b>exact</b> [4] - 11393:23, 11470:15, 11470:16, 11511:12</p> <p><b>exactly</b> [4] - 11389:2, 11394:25, 11403:11, 11406:19</p> <p><b>Examination</b> [3] - 11380:3, 11380:4, 11380:4</p> <p><b>EXAMINATION</b> [3] - 11415:18, 11487:19, 11503:22</p> <p><b>examination</b> [5] - 11394:2, 11403:17, 11497:17, 11500:17, 11501:4</p> <p><b>examine</b> [1] - 11393:25</p> <p><b>example</b> [5] - 11462:8, 11463:1, 11491:24, 11492:3, 11501:20</p> <p><b>Excel</b> [1] - 11475:16</p> <p><b>excising</b> [1] - 11387:6</p> <p><b>excluded</b> [1] - 11406:17</p> <p><b>exclusion</b> [1] - 11406:17</p> <p><b>excuse</b> [4] - 11442:4, 11465:22, 11493:20, 11506:24</p> <p><b>executive</b> [1] - 11413:2</p> <p><b>exhibit</b> [10] - 11435:5, 11455:3, 11463:14, 11466:12, 11483:12, 11489:11, 11489:13, 11494:12, 11494:15, 11495:1</p> <p><b>Exhibit</b> [2] - 11464:19, 11495:16</p> <p><b>Exhibit-105</b> [1] - 11420:17</p> <p><b>Exhibit-425</b> [2] - 11441:19, 11445:21</p> <p><b>Exhibit-492G</b> [2] - 11500:18, 11500:24</p> <p><b>Exhibit-931A</b> [2] - 11471:20, 11476:5</p> <p><b>Exhibit-932A</b> [3] - 11494:10, 11494:18, 11496:13</p> <p><b>Exhibit-932B</b> [1] - 11482:1</p> <p><b>Exhibit-Y</b> [1] - 11495:16</p> <p><b>exhibits</b> [4] - 11435:18, 11442:21, 11443:3, 11443:5</p> <p><b>exigency</b> [1] -</p>	<p>11453:14</p> <p><b>existed</b> [1] - 11490:4</p> <p><b>exit</b> [2] - 11432:7, 11452:16</p> <p><b>expanded</b> [2] - 11446:17, 11459:19</p> <p><b>expect</b> [5] - 11433:25, 11451:17, 11507:4, 11508:1, 11508:10</p> <p><b>expectations</b> [1] - 11451:4</p> <p><b>expensive</b> [2] - 11469:6, 11491:21</p> <p><b>experience</b> [10] - 11388:5, 11388:6, 11388:7, 11391:7, 11391:14, 11392:12, 11403:4, 11485:10, 11486:2, 11487:7</p> <p><b>experienced</b> [4] - 11385:24, 11390:14, 11392:19, 11403:6</p> <p><b>expiration</b> [1] - 11456:21</p> <p><b>explain</b> [14] - 11388:2, 11388:5, 11388:16, 11391:9, 11394:14, 11394:23, 11402:13, 11402:21, 11403:19, 11442:22, 11462:18, 11462:25, 11463:1, 11463:4</p> <p><b>explained</b> [3] - 11386:10, 11386:12, 11390:19</p> <p><b>explaining</b> [6] - 11402:17, 11402:18, 11444:13, 11462:7, 11462:12, 11462:15</p> <p><b>explains</b> [3] - 11386:2, 11388:25, 11390:6</p> <p><b>explanation</b> [1] - 11394:9</p> <p><b>explanatory</b> [1] - 11473:11</p> <p><b>extension</b> [2] - 11446:21, 11446:25</p> <p><b>extent</b> [3] - 11385:6, 11492:16, 11497:5</p> <p><b>exterior</b> [6] - 11425:1, 11427:16, 11439:20, 11439:21, 11440:7, 11449:4</p> <p><b>extra</b> [1] - 11474:7</p> <p><b>extraordinary</b> [2] - 11403:8, 11403:10</p> <p><b>extrapolation</b> [1] - 11397:19</p> <p><b>eyes</b> [3] - 11389:20, 11398:9, 11398:13</p>	<p><b>F</b></p> <p><b>fabric</b> [2] - 11429:6, 11441:11</p> <p><b>face</b> [2] - 11388:13, 11397:2</p> <p><b>facet</b> [1] - 11510:21</p> <p><b>facilities</b> [5] - 11419:14, 11420:11, 11421:12, 11461:2, 11461:13</p> <p><b>facility</b> [6] - 11461:5, 11461:6, 11461:12, 11485:22, 11485:25, 11486:2</p> <p><b>fact</b> [10] - 11385:4, 11389:9, 11389:16, 11397:7, 11405:16, 11413:3, 11415:7, 11415:8, 11461:24, 11462:18</p> <p><b>factor</b> [6] - 11389:12, 11439:17, 11451:14, 11457:8, 11500:8</p> <p><b>factors</b> [5] - 11389:6, 11399:10, 11439:4, 11451:13, 11451:15</p> <p><b>fail</b> [1] - 11406:14</p> <p><b>fair</b> [28] - 11390:25, 11394:18, 11394:21, 11394:22, 11395:2, 11395:9, 11396:21, 11400:14, 11403:7, 11405:21, 11444:14, 11454:25, 11455:25, 11458:16, 11460:4, 11460:11, 11460:17, 11468:15, 11470:14, 11477:9, 11477:10, 11488:6, 11489:23, 11500:13, 11500:15, 11502:20, 11505:2, 11505:21</p> <p><b>fairest</b> [1] - 11470:19</p> <p><b>fairly</b> [1] - 11428:19</p> <p><b>fairness</b> [2] - 11460:7, 11460:22</p> <p><b>familiar</b> [2] - 11446:2, 11485:11</p> <p><b>familiarity</b> [1] - 11419:22</p> <p><b>far</b> [7] - 11396:1, 11402:9, 11403:17, 11441:23, 11442:16, 11482:19, 11486:13</p> <p><b>fast</b> [1] - 11422:14</p> <p><b>faster</b> [1] - 11471:4</p> <p><b>fear</b> [4] - 11389:15, 11389:20, 11398:9, 11398:12</p>	<p><b>feature</b> [2] - 11430:21, 11500:5</p> <p><b>federal</b> [1] - 11461:19</p> <p><b>feet</b> [18] - 11408:11, 11410:3, 11410:13, 11483:16, 11484:7, 11485:8, 11488:25, 11490:18, 11490:20, 11493:5, 11493:18, 11493:19, 11493:20, 11494:1, 11494:3, 11497:19, 11502:12</p> <p><b>fell</b> [3] - 11414:15, 11414:17</p> <p><b>fellow</b> [1] - 11414:16</p> <p><b>felon</b> [1] - 11383:13</p> <p><b>felt</b> [3] - 11403:11, 11477:10, 11500:15</p> <p><b>fence</b> [113] - 11408:1, 11408:3, 11408:4, 11408:8, 11409:1, 11409:2, 11409:8, 11409:10, 11409:13, 11410:8, 11410:14, 11410:17, 11411:15, 11478:3, 11478:4, 11478:7, 11478:11, 11478:18, 11479:2, 11479:3, 11479:4, 11479:5, 11479:13, 11479:18, 11479:22, 11480:1, 11480:3, 11480:5, 11480:9, 11480:19, 11480:25, 11481:2, 11481:3, 11481:6, 11481:18, 11481:24, 11482:21, 11483:4, 11483:5, 11483:6, 11483:17, 11484:3, 11484:4, 11484:5, 11484:7, 11484:12, 11484:13, 11484:20, 11484:24, 11485:12, 11485:14, 11486:6, 11486:15, 11486:18, 11487:11, 11487:23, 11487:25, 11488:3, 11488:6, 11488:9, 11488:20, 11488:25, 11489:23, 11490:4, 11490:5, 11490:8, 11490:9, 11490:10, 11490:13, 11490:15, 11490:22, 11490:24, 11490:25, 11491:9, 11491:12, 11491:13, 11491:16, 11491:18, 11491:20, 11491:21, 11491:22, 11491:23, 11492:1,</p>	<p>11492:4, 11492:6, 11492:8, 11492:21, 11493:3, 11493:7, 11493:14, 11493:25, 11496:25, 11497:12, 11497:19, 11497:20, 11498:11, 11499:9, 11501:3, 11502:4, 11502:7, 11502:12, 11502:22, 11503:1, 11503:4, 11503:9, 11503:10, 11504:15, 11511:6, 11511:8</p> <p><b>fences</b> [3] - 11410:12, 11488:4, 11498:12</p> <p><b>fencing</b> [26] - 11410:3, 11410:5, 11479:7, 11479:8, 11479:9, 11479:10, 11479:12, 11482:11, 11482:12, 11483:1, 11483:3, 11484:8, 11487:8, 11487:10, 11488:3, 11491:4, 11491:6, 11496:24, 11497:6, 11498:15, 11499:15, 11499:23, 11501:12, 11501:24, 11502:15</p> <p><b>few</b> [5] - 11421:24, 11444:12, 11444:13, 11487:22, 11504:3</p> <p><b>figure</b> [17] - 11408:7, 11434:11, 11459:10, 11460:23, 11466:2, 11468:4, 11469:11, 11476:7, 11476:10, 11493:1, 11493:9, 11493:12, 11493:13, 11495:22, 11497:20, 11497:22, 11498:5</p> <p><b>figures</b> [2] - 11464:5, 11472:4</p> <p><b>filings</b> [2] - 11387:18, 11388:18</p> <p><b>finalized</b> [1] - 11431:11</p> <p><b>fine</b> [5] - 11384:12, 11385:23, 11434:17, 11435:11, 11495:24</p> <p><b>finer</b> [1] - 11388:15</p> <p><b>finger</b> [1] - 11489:9</p> <p><b>fingerprints</b> [1] - 11452:2</p> <p><b>finish</b> [2] - 11451:17, 11480:25</p> <p><b>finished</b> [1] - 11474:25</p> <p><b>fire</b> [3] - 11418:21, 11419:2, 11419:14</p> <p><b>first</b> [28] - 11381:19,</p>
--	---	---	---	---



<p>11385:16, 11391:19, 11392:11, 11395:15, 11418:3, 11424:14, 11425:22, 11427:22, 11430:4, 11439:16, 11443:22, 11444:18, 11452:12, 11457:7, 11457:21, 11465:2, 11465:6, 11473:25, 11474:23, 11475:2, 11482:18, 11484:16, 11492:25, 11495:1, 11497:10, 11504:4, 11504:5</p> <p><b>first-hand</b> [1] - 11392:11</p> <p><b>fit</b> [1] - 11456:23</p> <p><b>five</b> [15] - 11385:20, 11386:5, 11387:14, 11390:1, 11390:6, 11392:17, 11392:18, 11393:8, 11393:9, 11393:13, 11403:13, 11424:22, 11475:10, 11475:11</p> <p><b>five-and-a-half</b> [1] - 11393:13</p> <p><b>five-minute</b> [1] - 11393:8</p> <p><b>fix</b> [4] - 11424:1, 11424:2, 11426:15, 11463:9</p> <p><b>FL</b> [2] - 11379:6, 11379:9</p> <p><b>flexibility</b> [1] - 11444:20</p> <p><b>floodgates</b> [1] - 11392:8</p> <p><b>floor</b> [2] - 11432:8, 11474:23</p> <p><b>Floor</b> [2] - 11378:21, 11379:12</p> <p><b>floors</b> [1] - 11397:11</p> <p><b>focus</b> [5] - 11391:20, 11393:16, 11404:5, 11420:8, 11465:6</p> <p><b>focused</b> [1] - 11417:15</p> <p><b>folks</b> [4] - 11381:22, 11381:23, 11403:3, 11403:9</p> <p><b>following</b> [2] - 11444:4, 11457:1</p> <p><b>foot</b> [9] - 11410:4, 11410:5, 11484:5, 11484:12, 11484:13, 11497:12, 11497:14, 11497:20, 11499:22</p> <p><b>footprints</b> [1] - 11431:14</p>	<p><b>FOR</b> [2] - 11378:1, 11415:17</p> <p><b>force</b> [4] - 11394:3, 11394:5, 11401:8, 11406:22</p> <p><b>foregoing</b> [1] - 11512:2</p> <p><b>foremost</b> [2] - 11430:4, 11452:12</p> <p><b>form</b> [3] - 11404:18, 11412:7, 11469:1</p> <p><b>formal</b> [3] - 11453:4, 11453:19, 11453:21</p> <p><b>formality</b> [1] - 11444:20</p> <p><b>forward</b> [1] - 11487:15</p> <p><b>foundation</b> [5] - 11417:25, 11418:3, 11436:11, 11510:13, 11511:2</p> <p><b>foundational</b> [2] - 11511:13, 11511:17</p> <p><b>four</b> [18] - 11419:18, 11420:15, 11420:23, 11420:25, 11421:4, 11421:5, 11427:22, 11447:6, 11469:5, 11469:7, 11469:10, 11469:17, 11471:17, 11485:16, 11490:19, 11494:1, 11508:8, 11511:8</p> <p><b>four-time</b> [1] - 11469:17</p> <p><b>four-year</b> [1] - 11419:18</p> <p><b>frame</b> [8] - 11425:10, 11438:7, 11438:22, 11451:6, 11453:1, 11454:11, 11454:19, 11481:9</p> <p><b>frankly</b> [6] - 11388:8, 11388:12, 11389:18, 11390:9, 11390:11, 11402:15</p> <p><b>free</b> [2] - 11416:2, 11446:8</p> <p><b>frequently</b> [1] - 11423:5</p> <p><b>frescos</b> [2] - 11441:4</p> <p><b>front</b> [23] - 11387:10, 11388:23, 11420:25, 11429:4, 11430:24, 11434:3, 11438:14, 11438:15, 11438:16, 11446:5, 11460:8, 11471:20, 11478:9, 11480:7, 11483:20, 11489:21, 11489:24, 11490:4, 11492:4,</p>	<p>11492:5, 11506:25, 11507:6, 11511:4</p> <p><b>fronts</b> [1] - 11393:18</p> <p><b>full</b> [5] - 11393:13, 11415:23, 11417:5, 11497:5, 11512:3</p> <p><b>fully</b> [3] - 11432:17, 11479:24, 11479:25</p> <p><b>function</b> [4] - 11446:24, 11488:13, 11488:16, 11488:20</p> <p><b>funding</b> [1] - 11454:19</p> <p><b>furiously</b> [1] - 11408:6</p> <p><b>furnish</b> [1] - 11459:8</p> <p><b>future</b> [1] - 11385:11</p>	<p>11454:6, 11454:8, 11454:9, 11455:21, 11456:1, 11456:23, 11456:25, 11457:5, 11457:14, 11457:17, 11457:24, 11458:15, 11459:5, 11459:11, 11459:20, 11459:22, 11459:25, 11460:19, 11461:4, 11463:9, 11464:2, 11464:5, 11465:13, 11465:14, 11465:15, 11465:17, 11466:3, 11468:3, 11468:17, 11468:21, 11469:6, 11469:16, 11469:18, 11470:9, 11470:10, 11470:24, 11471:9, 11472:9, 11472:22, 11472:23, 11473:17, 11474:5, 11474:6, 11474:14, 11474:15, 11475:9, 11476:7, 11476:8, 11476:11, 11477:12, 11477:14, 11477:15</p> <p><b>glazing</b> [2] - 11450:9, 11472:24</p> <p><b>goal</b> [1] - 11423:21</p> <p><b>goals</b> [1] - 11423:22</p> <p><b>goods</b> [1] - 11487:5</p> <p><b>governing</b> [1] - 11453:5</p> <p><b>GOVERNMENT</b> [1] - 11415:17</p> <p><b>government</b> [37] - 11381:7, 11383:5, 11383:20, 11385:3, 11385:11, 11385:18, 11385:25, 11386:20, 11387:12, 11387:15, 11394:23, 11396:19, 11399:14, 11402:10, 11402:20, 11403:16, 11406:20, 11412:12, 11412:25, 11413:4, 11413:5, 11413:6, 11415:13, 11433:2, 11435:8, 11461:21, 11462:22, 11466:17, 11466:22, 11467:16, 11467:18, 11477:20, 11477:23, 11492:20, 11494:19, 11498:4, 11498:24</p> <p><b>Government</b> [10] - 11393:22, 11437:6, 11464:19, 11482:1, 11494:9, 11494:18, 11496:12, 11500:18,</p>	<p>11500:24, 11505:17</p> <p><b>government's</b> [4] - 11387:1, 11405:2, 11467:4, 11492:20</p> <p><b>Government-931A</b> [1] - 11463:19</p> <p><b>grade</b> [1] - 11385:15</p> <p><b>graffiti</b> [1] - 11424:10</p> <p><b>greater</b> [1] - 11476:21</p> <p><b>green</b> [7] - 11430:23, 11496:24, 11497:3, 11500:19, 11501:6, 11501:7, 11501:10</p> <p><b>Greene</b> [2] - 11399:7, 11415:2</p> <p><b>ground</b> [2] - 11479:14, 11479:20</p> <p><b>grounds</b> [27] - 11386:8, 11398:13, 11404:9, 11411:20, 11419:23, 11420:8, 11421:21, 11422:1, 11422:4, 11424:11, 11425:23, 11426:9, 11426:12, 11426:14, 11427:13, 11427:15, 11428:14, 11428:20, 11429:5, 11442:18, 11443:11, 11456:4, 11466:11, 11480:8, 11509:11</p> <p><b>group</b> [8] - 11392:1, 11392:8, 11400:17, 11417:15, 11456:25, 11457:24, 11477:11</p> <p><b>grown</b> [2] - 11417:23, 11418:2</p> <p><b>guess</b> [10] - 11382:22, 11396:16, 11399:20, 11409:21, 11414:10, 11489:14, 11489:17, 11491:12, 11508:4, 11508:24</p> <p><b>guilt</b> [2] - 11385:5, 11415:9</p> <p><b>guilty</b> [4] - 11383:12, 11415:2, 11415:4, 11415:8</p> <p><b>guys</b> [1] - 11466:23</p>
<b>G</b>				
<p><b>game</b> [1] - 11403:7</p> <p><b>general</b> [5] - 11424:10, 11426:8, 11426:15, 11438:25, 11507:8</p> <p><b>generally</b> [6] - 11416:14, 11417:12, 11422:10, 11423:9, 11450:17, 11485:2</p> <p><b>generating</b> [1] - 11477:5</p> <p><b>generations</b> [1] - 11509:8</p> <p><b>gentle</b> [1] - 11478:15</p> <p><b>gentleman</b> [1] - 11504:2</p> <p><b>gentlemen</b> [5] - 11395:18, 11397:7, 11414:22, 11442:3, 11509:24</p> <p><b>geographically</b> [1] - 11431:16</p> <p><b>given</b> [8] - 11384:12, 11402:19, 11408:14, 11411:15, 11423:14, 11484:2, 11484:3, 11501:19</p> <p><b>glad</b> [1] - 11403:13</p> <p><b>glass</b> [80] - 11412:17, 11433:24, 11434:1, 11434:4, 11440:20, 11443:20, 11447:2, 11447:3, 11447:4, 11447:19, 11447:21, 11447:23, 11449:1, 11449:2, 11449:3, 11449:4, 11449:5, 11449:10, 11449:14, 11449:17, 11449:19, 11450:4, 11450:13, 11452:8, 11452:13, 11453:9, 11454:4,</p>				
<b>H</b>				
<p><b>half</b> [4] - 11393:13, 11411:3, 11421:23, 11472:12</p> <p><b>halfway</b> [1] - 11433:9</p> <p><b>hallway</b> [2] - 11446:19, 11446:24</p> <p><b>hand</b> [15] - 11392:11, 11397:22, 11398:12,</p>				

11431:12, 11448:10,  
11448:12, 11449:10,  
11449:14, 11449:22,  
11455:6, 11458:1,  
11463:18, 11485:24,  
11499:19

**hand-to-hand** [1] -  
11398:12

**handed** [4] -  
11455:13, 11455:18,  
11482:6, 11507:7

**handful** [3] - 11485:1,  
11490:21, 11494:2

**handy** [1] - 11469:22

**happenings** [1] -  
11507:9

**hard** [1] - 11436:6

**hardest** [1] - 11438:24

**Harris** [18] - 11427:18,  
11435:17, 11436:1,  
11436:6, 11437:6,  
11442:3, 11442:10,  
11445:24, 11456:14,  
11464:21, 11477:22,  
11483:25, 11489:4,  
11489:15, 11492:19,  
11494:17, 11496:9,  
11500:23

**Hassan** [2] - 11379:4,  
11381:11

**HASSAN** [1] - 11379:5

**Haven** [1] - 11378:22

**hazardous** [4] -

11472:22, 11473:1,  
11473:5, 11474:11

**HazMat** [2] - 11472:18

**heading** [1] -  
11457:22

**hear** [16] - 11387:11,  
11387:15, 11403:13,  
11404:22, 11406:2,  
11409:14, 11414:24,  
11429:24, 11432:14,  
11432:22, 11432:23,  
11433:1, 11434:15,  
11434:18

**heard** [13] - 11385:25,  
11387:23, 11394:8,  
11415:1, 11423:1,  
11423:17, 11424:7,  
11434:16, 11436:12,  
11461:14, 11466:6,  
11494:21, 11510:5

**hearing** [2] -  
11407:17, 11407:24

**hearsay** [2] -  
11460:13, 11495:6

**heavily** [2] - 11474:23,  
11481:3

**heck** [1] - 11396:14

**HELD** [1] - 11378:9

**held** [1] - 11418:18

**help** [6] - 11393:3,  
11422:12, 11427:5,  
11440:5, 11449:24,  
11508:18

**helped** [1] - 11414:16

**helpful** [1] - 11421:3

**helping** [1] - 11425:5

**hereby** [1] - 11512:1

**Hernandez** [8] -

11379:2, 11381:11,  
11382:23, 11382:25,  
11384:19, 11395:10,  
11397:21, 11403:23

**HERNANDEZ** [13] -

11383:2, 11383:22,  
11384:2, 11385:1,  
11397:23, 11398:21,  
11398:23, 11399:2,  
11399:4, 11399:17,  
11399:19, 11414:9,  
11414:13

**Hialeah** [1] - 11379:9

**higher** [7] - 11433:14,  
11438:15, 11438:16,  
11448:24, 11461:21,  
11462:16, 11462:25

**highest** [1] - 11439:22

**Highland** [1] - 11379:3

**highlighted** [3] -

11465:8, 11465:20,  
11473:24

**highly** [2] - 11395:13,  
11443:10

**Hill** [1] - 11406:22

**himself** [1] - 11393:2

**historic** [7] -

11416:18, 11416:25,  
11431:15, 11440:13,  
11441:10, 11509:3

**historically** [1] -

11509:8

**history** [1] - 11417:17

**hold** [9] - 11392:23,

11406:8, 11407:20,  
11419:17, 11432:14,  
11432:18, 11440:17,  
11510:7

**holds** [2] - 11391:25,  
11472:23

**Hollow** [1] - 11379:2

**home** [1] - 11409:16

**honest** [1] - 11402:8

**Honor** [73] - 11382:2,

11382:7, 11383:2,  
11384:18, 11385:1,  
11386:7, 11387:16,  
11388:1, 11389:4,  
11389:19, 11390:10,

11390:17, 11391:15,  
11391:20, 11392:10,  
11392:20, 11393:6,  
11393:17, 11393:21,  
11395:2, 11395:11,  
11396:22, 11397:23,  
11399:23, 11400:20,  
11401:5, 11401:12,  
11401:16, 11406:4,  
11408:5, 11408:12,  
11408:21, 11408:24,  
11409:2, 11409:5,  
11409:12, 11409:17,  
11409:25, 11410:3,  
11410:11, 11410:15,  
11412:10, 11414:7,  
11414:9, 11414:13,  
11415:15, 11432:12,  
11433:8, 11433:24,  
11434:19, 11435:14,  
11436:13, 11436:15,  
11436:21, 11441:22,  
11443:13, 11443:15,  
11444:17, 11455:2,  
11456:5, 11456:13,  
11461:14, 11463:15,  
11466:6, 11467:7,  
11494:14, 11494:25,  
11495:13, 11495:17,  
11509:22, 11510:6,  
11510:20, 11511:18

**Honor's** [1] - 11389:16

**Honorable** [2] -

11445:6, 11511:21

**HONORABLE** [1] -  
11378:9

**hope** [1] - 11472:3

**hopefully** [1] -  
11382:16

**hour** [4] - 11411:2,  
11411:3, 11475:11,  
11510:1

**hour-and-a-half** [1] -  
11411:3

**hourly** [1] - 11475:6

**hours** [8] - 11382:10,  
11423:14, 11474:20,  
11475:8, 11475:10,  
11475:11, 11475:21,  
11475:22

**House** [3] - 11418:22,

11505:3, 11505:4

**house** [6] - 11419:4,  
11446:18, 11460:21,  
11461:22, 11462:1,  
11462:16

**houses** [1] - 11440:13

**hull** [8] - 11387:4,  
11387:11, 11395:10,  
11396:4, 11397:24,

11406:8, 11406:13,  
11510:7

**Hull** [5] - 11378:23,  
11381:10, 11395:11,  
11406:4, 11504:1

**HULL** [22] - 11378:24,  
11382:7, 11382:9,  
11382:12, 11387:3,  
11395:11, 11396:3,  
11396:6, 11396:22,  
11406:4, 11406:9,  
11406:14, 11414:7,  
11443:13, 11503:23,  
11508:16, 11509:16,  
11509:22, 11510:5,  
11510:20, 11511:1,  
11511:18

**Hull**.....

**11503** [1] - 11380:4

**humanize** [1] -

11389:23

**humidity** [5] -

11440:19, 11440:22,  
11440:25, 11441:6,  
11441:9

**hundred** [1] -

11502:12

**I**

**ID** [2] - 11452:5,

11454:15

**idea** [3] - 11387:24,

11390:7, 11392:7

**ideas** [1] - 11397:3

**identical** [1] -

11404:18

**identification** [2] -  
11440:1, 11448:22

**identifies** [1] -

11483:1

**identify** [8] -

11391:12, 11424:5,  
11430:8, 11440:4,  
11449:20, 11464:1,  
11494:13, 11495:15

**identifying** [3] -  
11423:25, 11424:19,  
11425:2

**II** [1] - 11379:11

**ill** [1] - 11387:24

**ill-prepared** [1] -  
11387:24

**image** [7] - 11389:18,  
11420:20, 11420:22,  
11442:17, 11466:12,  
11503:1

**imagine** [6] - 11426:9,  
11440:11, 11440:23,  
11459:18, 11478:20,

11490:21  
**immediate** [1] -

11425:3

**immediately** [1] -

11448:22

**impact** [2] - 11490:10,  
11508:2

**impacted** [1] -

11425:13

**impeach** [2] -

11408:15, 11495:22

**impeaching** [1] -

11496:4

**important** [11] -

11389:4, 11389:12,  
11389:23, 11390:2,  
11390:5, 11392:14,  
11440:25, 11441:7,  
11507:10, 11507:22,  
11510:21

**importantly** [1] -

11449:21

**impressions** [1] -

11425:22

**IN** [1] - 11378:1

**inaugural** [36] -

11420:11, 11421:9,  
11421:11, 11421:13,  
11421:23, 11422:2,  
11422:5, 11430:4,  
11431:2, 11431:3,  
11438:9, 11438:13,  
11450:10, 11452:17,  
11457:9, 11457:11,  
11478:9, 11478:19,  
11478:25, 11479:7,  
11479:11, 11481:10,  
11481:21, 11483:1,  
11486:15, 11488:3,  
11488:5, 11488:6,  
11488:9, 11493:3,  
11493:6, 11497:12,  
11501:25, 11508:11,  
11511:5

**inauguration** [19] -

11420:12, 11420:23,  
11421:15, 11421:19,  
11422:10, 11431:5,  
11434:2, 11434:4,  
11438:19, 11439:16,  
11440:9, 11457:2,  
11457:4, 11457:5,  
11479:2, 11481:7,  
11485:19, 11487:15,  
11488:10

**inch** [14] - 11405:14,

11408:5, 11458:15,  
11468:23, 11468:24,  
11469:5, 11469:6,  
11469:11, 11469:12,

<p>11469:16, 11469:18, 11471:10, 11471:25 <b>inch-and-three-quarter</b> [1] - 11469:5 <b>inch-and-three-quarter-inch</b> [1] - 11469:18 <b>inch-and-three-quarters</b> [1] - 11405:14 <b>inches</b> [7] - 11409:7, 11409:13, 11410:13, 11471:11, 11485:6, 11493:19, 11493:20 <b>incidents</b> [1] - 11403:22 <b>include</b> [5] - 11417:1, 11455:22, 11464:7, 11477:1, 11505:25 <b>included</b> [1] - 11457:25 <b>includes</b> [1] - 11473:13 <b>including</b> [6] - 11385:2, 11399:9, 11402:20, 11448:21, 11487:9, 11504:14 <b>inconsistent</b> [1] - 11495:22 <b>incorporated</b> [1] - 11494:18 <b>incredibly</b> [1] - 11391:17 <b>incurred</b> [2] - 11464:8, 11474:3 <b>indicate</b> [1] - 11408:4 <b>indicated</b> [2] - 11387:18, 11435:17 <b>indicating</b> [17] - 11387:3, 11400:1, 11404:11, 11407:14, 11408:1, 11411:9, 11421:5, 11421:7, 11421:9, 11421:17, 11434:13, 11435:19, 11446:11, 11478:13, 11478:15, 11482:4, 11501:6 <b>indictment</b> [2] - 11396:9, 11396:23 <b>individual</b> [14] - 11395:25, 11414:16, 11447:4, 11489:25, 11490:1, 11491:17, 11492:4, 11492:7, 11493:12, 11493:13, 11497:18, 11499:14, 11501:16, 11501:17 <b>individually</b> [1] - 11490:16</p>	<p><b>individuals</b> [8] - 11389:13, 11392:6, 11400:11, 11400:12, 11402:3, 11402:4, 11424:19, 11504:6 <b>indulgence</b> [1] - 11446:9 <b>inflammatory</b> [1] - 11395:4 <b>info</b> [1] - 11483:8 <b>information</b> [10] - 11408:14, 11409:22, 11412:18, 11413:9, 11482:24, 11483:11, 11483:18, 11495:5, 11498:24, 11504:13 <b>informed</b> [1] - 11382:5 <b>inherent</b> [2] - 11461:2, 11461:11 <b>inherently</b> [1] - 11461:13 <b>injury</b> [1] - 11407:2 <b>inside</b> [4] - 11388:7, 11397:7, 11402:1, 11447:20 <b>inspecting</b> [1] - 11511:3 <b>inspector</b> [5] - 11392:4, 11400:7, 11400:21, 11436:18, 11437:3 <b>inspire</b> [5] - 11418:11, 11505:11, 11505:24, 11506:6, 11506:8 <b>inspired</b> [1] - 11426:5 <b>install</b> [6] - 11459:8, 11459:11, 11478:8, 11479:10, 11483:16, 11490:24 <b>installation</b> [2] - 11450:4, 11490:8 <b>installed</b> [4] - 11429:14, 11488:4, 11490:22, 11501:24 <b>installing</b> [1] - 11479:4 <b>instead</b> [2] - 11470:18, 11481:17 <b>instruct</b> [3] - 11400:12, 11402:4, 11415:10 <b>instruction</b> [13] - 11382:23, 11383:1, 11383:3, 11383:15, 11383:17, 11384:19, 11384:23, 11385:9, 11385:18, 11414:2, 11414:5, 11414:25, 11462:20 <b>insulation</b> [2] -</p>	<p>11474:10, 11475:18 <b>insulators</b> [1] - 11475:21 <b>intelligent</b> [1] - 11397:6 <b>intend</b> [4] - 11393:7, 11393:9, 11393:10, 11404:24 <b>intent</b> [1] - 11404:20 <b>intention</b> [1] - 11495:9 <b>interest</b> [1] - 11507:22 <b>interested</b> [1] - 11495:2 <b>interfered</b> [2] - 11394:3, 11401:9 <b>interior</b> [2] - 11425:1, 11449:4 <b>internal</b> [1] - 11412:18 <b>internally</b> [1] - 11507:23 <b>interrupt</b> [1] - 11418:23 <b>interruption</b> [1] - 11440:15 <b>intrigued</b> [1] - 11406:18 <b>introduces</b> [1] - 11403:16 <b>introducing</b> [1] - 11415:22 <b>investigation</b> [1] - 11452:3 <b>investigations</b> [1] - 11498:25 <b>invite</b> [2] - 11404:16, 11404:25 <b>invoice</b> [1] - 11411:16 <b>invoices</b> [2] - 11411:12, 11411:13 <b>involve</b> [2] - 11386:14, 11453:24 <b>involved</b> [5] - 11392:6, 11398:11, 11399:8, 11508:18, 11511:6 <b>ipsa</b> [1] - 11407:10 <b>irrelevant</b> [1] - 11386:23 <b>ish</b> [1] - 11441:8 <b>issue</b> [15] - 11400:20, 11408:24, 11409:11, 11411:14, 11412:15, 11424:8, 11425:3, 11434:3, 11434:19, 11434:23, 11435:15, 11435:22, 11436:11, 11457:13, 11466:25 <b>issues</b> [2] - 11410:24, 11414:4 <b>item</b> [3] - 11397:25, 11400:3, 11463:11</p>	<p><b>itemize</b> [2] - 11459:1, 11459:4 <b>itemized</b> [1] - 11473:7 <b>items</b> [9] - 11387:25, 11412:6, 11419:21, 11434:1, 11440:18, 11458:22, 11465:15, 11473:14, 11507:20 <b>itself</b> [3] - 11403:1, 11422:2, 11440:12 <b>IV</b> [1] - 11378:23</p> <p style="text-align: center;"><b>J</b></p> <p><b>January</b> [50] - 11408:4, 11408:8, 11410:12, 11415:3, 11419:25, 11420:7, 11420:12, 11421:12, 11422:16, 11428:14, 11429:12, 11430:1, 11434:9, 11436:17, 11438:23, 11440:24, 11447:15, 11449:1, 11452:9, 11464:3, 11474:17, 11479:22, 11480:1, 11482:13, 11486:7, 11486:13, 11486:17, 11486:19, 11487:13, 11488:1, 11488:9, 11488:11, 11488:22, 11490:5, 11491:8, 11498:25, 11502:3, 11502:4, 11502:16, 11502:22, 11503:2, 11503:15, 11504:4, 11507:1, 11508:7, 11509:19, 11510:18, 11511:2, 11511:3, 11511:15 <b>JASON</b> [3] - 11380:3, 11415:17, 11415:24 <b>Jason</b> [4] - 11378:12, 11381:7, 11415:16, 11415:24 <b>Jauregui</b> [2] - 11379:8, 11381:12 <b>JAUREGUI</b> [1] - 11379:8 <b>Jeremy</b> [1] - 11415:2 <b>job</b> [8] - 11407:5, 11454:21, 11487:3, 11504:24, 11505:9, 11505:21, 11510:21 <b>Joe</b> [4] - 11395:12, 11397:10, 11406:4, 11504:1 <b>John</b> [2] - 11378:23, 11381:10 <b>joins</b> [1] - 11443:13</p>	<p><b>Joseph</b> [1] - 11381:4 <b>JUDGE</b> [1] - 11378:10 <b>judge</b> [1] - 11404:13 <b>Junior</b> [1] - 11401:21 <b>jurisdiction</b> [1] - 11506:12 <b>juror</b> [4] - 11397:6, 11414:15, 11414:16, 11414:17 <b>jurors</b> [1] - 11389:3 <b>jury</b> [42] - 11383:8, 11385:5, 11385:9, 11386:15, 11386:23, 11388:9, 11388:20, 11390:13, 11393:19, 11394:19, 11395:23, 11397:1, 11404:5, 11413:14, 11413:16, 11413:17, 11415:22, 11418:18, 11420:18, 11428:10, 11433:5, 11433:19, 11435:2, 11436:5, 11437:8, 11442:6, 11442:16, 11442:22, 11445:9, 11445:10, 11445:24, 11461:20, 11461:22, 11461:24, 11461:25, 11462:4, 11462:20, 11463:2, 11463:21, 11489:5, 11489:8, 11510:2 <b>Jury</b> [4] - 11413:17, 11442:6, 11445:10, 11510:2 <b>JURY</b> [1] - 11378:8 <b>justification</b> [7] - 11453:6, 11453:9, 11453:18, 11453:22, 11454:16, 11484:20, 11499:19 <b>justify</b> [1] - 11453:7</p> <p style="text-align: center;"><b>K</b></p> <p><b>Kearney</b> [1] - 11495:8 <b>keep</b> [6] - 11425:24, 11431:22, 11437:15, 11438:21, 11441:8, 11485:23 <b>keeping</b> [1] - 11486:3 <b>KELLY</b> [1] - 11378:9 <b>Kenerson</b> [2] - 11378:12, 11381:8 <b>kept</b> [3] - 11395:21, 11426:1, 11507:8 <b>key</b> [1] - 11408:24 <b>kind</b> [39] - 11386:6, 11387:18, 11387:22, 11387:25, 11388:9,</p>
--	---	--	---	--

11389:24, 11390:2, 11391:15, 11391:16, 11392:1, 11393:15, 11393:18, 11395:4, 11397:7, 11398:8, 11399:8, 11402:12, 11403:10, 11407:10, 11408:13, 11408:24, 11414:3, 11417:5, 11429:9, 11431:6, 11431:9, 11446:19, 11447:18, 11453:19, 11454:22, 11456:19, 11478:23, 11478:24, 11480:3, 11487:4, 11490:12, 11498:15, 11505:20 <b>kinds</b> [8] - 11397:4, 11506:16, 11506:17, 11507:17, 11508:12, 11509:10, 11509:18 <b>knowledge</b> [3] - 11392:11, 11499:12, 11504:13 <b>known</b> [1] - 11511:9 <b>knows</b> [2] - 11391:20, 11511:8	11483:25 <b>large</b> [9] - 11381:20, 11390:8, 11423:15, 11426:12, 11436:24, 11506:25, 11507:8, 11507:22, 11508:1 <b>last</b> [4] - 11382:10, 11415:23, 11466:7, 11481:10 <b>lastly</b> [1] - 11437:18 <b>LAW</b> [3] - 11379:5, 11379:8, 11379:15 <b>law</b> [7] - 11401:19, 11401:24, 11462:2, 11506:4, 11506:10, 11506:19, 11507:4 <b>lawyer</b> [3] - 11444:23, 11456:5, 11456:9 <b>lawyers</b> [1] - 11434:17 <b>laying</b> [1] - 11417:24 <b>leaders</b> [1] - 11395:19 <b>leading</b> [3] - 11420:6, 11478:8, 11479:11 <b>leaf</b> [1] - 11429:24 <b>learn</b> [1] - 11504:5 <b>learned</b> [1] - 11422:22 <b>least</b> [12] - 11387:12, 11388:25, 11389:21, 11396:15, 11397:11, 11402:11, 11403:21, 11411:6, 11413:1, 11439:11, 11447:6, 11507:8 <b>leave</b> [4] - 11400:12, 11402:4, 11409:24, 11500:10 <b>leaves</b> [2] - 11461:19, 11510:8 <b>led</b> [2] - 11393:3, 11398:12 <b>leeway</b> [6] - 11386:20, 11402:10, 11402:21, 11435:8, 11435:9, 11435:10 <b>left</b> [15] - 11382:23, 11391:22, 11392:9, 11401:20, 11401:22, 11430:25, 11445:20, 11446:1, 11446:8, 11447:5, 11447:23, 11463:8, 11466:22, 11473:23 <b>legal</b> [1] - 11462:1 <b>legislative</b> [3] - 11412:14, 11416:9, 11416:16 <b>length</b> [20] - 11395:3, 11408:11, 11433:9, 11484:3, 11484:24, 11485:1, 11485:5,	11485:7, 11488:25, 11490:19, 11490:20, 11491:3, 11491:5, 11493:6, 11493:18, 11493:20, 11494:1, 11497:20, 11502:13 <b>lengths</b> [3] - 11410:12, 11484:25, 11485:2 <b>less</b> [11] - 11394:25, 11404:15, 11407:1, 11426:1, 11450:15, 11452:20, 11470:8, 11493:23, 11493:24, 11494:7, 11494:8 <b>lest</b> [1] - 11404:13 <b>letter</b> [1] - 11495:3 <b>level</b> [3] - 11389:14, 11402:23, 11402:24 <b>lies</b> [2] - 11386:16, 11435:25 <b>life</b> [1] - 11390:10 <b>life-threatening</b> [1] - 11390:10 <b>lifespan</b> [2] - 11485:11, 11485:12 <b>light</b> [1] - 11425:20 <b>lightweight</b> [1] - 11480:23 <b>likely</b> [2] - 11397:5, 11495:6 <b>limited</b> [1] - 11415:4 <b>limiting</b> [3] - 11384:18, 11384:23, 11462:19 <b>line</b> [18] - 11391:25, 11392:23, 11401:10, 11457:7, 11458:22, 11459:7, 11470:24, 11475:2, 11476:1, 11476:7, 11483:17, 11489:21, 11490:8, 11490:22, 11497:3, 11497:8, 11503:15 <b>linear</b> [8] - 11408:11, 11410:3, 11483:16, 11484:5, 11484:7, 11488:25, 11490:10, 11493:5 <b>lines</b> [10] - 11400:6, 11409:24, 11468:22, 11472:17, 11490:11, 11500:18, 11500:19, 11501:6, 11501:7, 11501:10 <b>link</b> [1] - 11396:10 <b>linked</b> [1] - 11467:5 <b>linking</b> [1] - 11398:2 <b>list</b> [5] - 11448:24, 11457:24, 11458:4,	11458:11, 11458:16 <b>listed</b> [2] - 11458:14, 11507:20 <b>listen</b> [1] - 11461:22 <b>litany</b> [1] - 11387:25 <b>literally</b> [1] - 11511:12 <b>lived</b> [1] - 11505:8 <b>Livingston</b> [1] - 11379:16 <b>LLC</b> [1] - 11378:20 <b>located</b> [4] - 11421:7, 11446:4, 11446:5, 11459:21 <b>location</b> [10] - 11421:7, 11426:4, 11430:5, 11448:23, 11452:14, 11478:13, 11479:9, 11481:13, 11483:19, 11483:20 <b>locations</b> [1] - 11459:23 <b>lodge</b> [1] - 11435:1 <b>lodged</b> [1] - 11435:7 <b>logic</b> [2] - 11401:10, 11401:11 <b>long-term</b> [1] - 11448:15 <b>look</b> [22] - 11388:20, 11394:19, 11396:9, 11402:6, 11402:8, 11403:1, 11403:5, 11406:1, 11408:17, 11412:21, 11413:8, 11436:17, 11437:23, 11438:5, 11445:20, 11459:7, 11467:8, 11475:1, 11480:11, 11495:18, 11503:17, 11505:9 <b>looked</b> [2] - 11384:2, 11499:16 <b>looking</b> [12] - 11397:5, 11401:15, 11423:5, 11431:20, 11432:9, 11457:21, 11460:1, 11464:5, 11486:22, 11488:1, 11502:15, 11502:19 <b>loose</b> [1] - 11392:24 <b>Lopez</b> [1] - 11400:17 <b>loquiter</b> [1] - 11407:10 <b>losing</b> [1] - 11481:2 <b>loss</b> [2] - 11441:10, 11480:9 <b>lost</b> [1] - 11395:17 <b>loud</b> [2] - 11386:14, 11389:8 <b>love</b> [1] - 11505:20 <b>low</b> [1] - 11449:23 <b>lower</b> [7] - 11430:24,	11432:7, 11438:15, 11447:5, 11452:16, 11483:2 <b>Loyd</b> [8] - 11392:4, 11393:24, 11393:25, 11394:4, 11400:7, 11400:21, 11436:18, 11437:3 <b>luck</b> [1] - 11405:12 <b>lump</b> [9] - 11457:25, 11459:2, 11459:4, 11459:11, 11459:13, 11459:14, 11463:9, 11470:12, 11477:11 <b>lunch</b> [3] - 11411:7, 11509:25, 11510:1 <b>Luncheon</b> [1] - 11511:23
<b>L</b>				
<b>labeled</b> [1] - 11465:7 <b>labor</b> [17] - 11448:5, 11449:7, 11450:2, 11450:12, 11459:12, 11465:14, 11465:16, 11470:24, 11471:4, 11472:9, 11472:12, 11472:16, 11474:1, 11476:2, 11476:6, 11477:2, 11505:20 <b>Labor</b> [4] - 11421:10, 11421:25, 11459:8, 11473:25 <b>laboratory</b> [1] - 11473:4 <b>ladies</b> [3] - 11414:21, 11442:3, 11509:24 <b>laid</b> [1] - 11511:2 <b>Lake</b> [1] - 11379:15 <b>Lakes</b> [1] - 11379:6 <b>laminated</b> [1] - 11458:15 <b>land</b> [2] - 11395:21, 11506:13 <b>language</b> [8] - 11383:3, 11383:18, 11384:6, 11384:7, 11384:8, 11384:13, 11384:19, 11384:22 <b>laptop</b> [2] - 11464:22,				
<b>M</b>				
<b>M-C-I-N-T-Y-R-E</b> [1] - 11415:25 <b>machine</b> [1] - 11379:21 <b>magically</b> [1] - 11413:7 <b>main</b> [1] - 11421:14 <b>maintain</b> [3] - 11381:22, 11440:21, 11440:24 <b>maintaining</b> [1] - 11486:3 <b>maintenance</b> [5] - 11416:18, 11416:21, 11417:1, 11423:24, 11426:15 <b>major</b> [2] - 11421:6, 11478:23 <b>majority</b> [2] - 11386:25, 11485:6 <b>Mall</b> [1] - 11431:21 <b>manner</b> [1] - 11394:1 <b>manpower</b> [3] - 11449:21, 11450:1, 11454:10 <b>manufactured</b> [1] - 11439:13 <b>map</b> [2] - 11446:7, 11478:11 <b>marble</b> [1] - 11440:14 <b>March</b> [2] - 11378:6, 11512:5 <b>mark</b> [14] - 11381:21, 11404:14, 11404:17, 11404:19, 11405:6, 11405:15, 11405:19, 11429:3, 11432:5, 11441:20, 11445:21, 11447:10, 11477:21,				

<p>11500:19  <b>marked</b> [5] - 11455:7,  11463:19, 11482:1,  11482:7, 11494:9  <b>market</b> [1] - 11499:23  <b>masse</b> [3] - 11436:2,  11436:10, 11437:9  <b>match</b> [2] - 11405:17,  11474:16  <b>matching</b> [1] -  11474:18  <b>material</b> [9] - 11454:9,  11461:3, 11465:13,  11465:15, 11465:21,  11472:23, 11473:2,  11474:11, 11476:6  <b>Materials</b> [1] - 11465:7  <b>materials</b> [27] -  11438:6, 11438:23,  11439:1, 11439:2,  11439:11, 11448:9,  11449:8, 11449:9,  11449:22, 11465:11,  11466:2, 11470:22,  11472:16, 11472:22,  11473:4, 11473:5,  11473:20, 11485:12,  11485:23, 11486:4,  11487:4, 11487:7,  11487:9, 11498:4,  11499:4, 11500:6,  11502:13  <b>math</b> [16] - 11408:6,  11409:18, 11409:19,  11409:21, 11409:24,  11410:18, 11410:20,  11469:19, 11471:18,  11483:22, 11484:10,  11493:16, 11493:22,  11494:6, 11497:11,  11497:18  <b>Matter</b> [2] - 11381:2,  11445:12  <b>matter</b> [2] - 11462:18,  11495:11  <b>matters</b> [1] - 11381:17  <b>Matthew</b> [1] - 11415:2  <b>McCullough</b> [8] -  11378:12, 11381:7,  11394:8, 11394:14,  11398:1, 11398:7,  11400:2, 11401:14  <b>MCCULLOUGH</b> [12] -  11387:16, 11389:2,  11390:24, 11391:3,  11391:5, 11392:20,  11393:6, 11399:23,  11400:1, 11400:3,  11400:15, 11401:16  <b>MC GUIRE</b> [1] -</p>	<p>11378:24  <b>McIntyre</b> [56] -  11407:25, 11415:16,  11415:24, 11415:25,  11416:1, 11416:5,  11418:12, 11419:19,  11420:20, 11422:16,  11427:21, 11428:13,  11429:24, 11430:20,  11432:5, 11437:22,  11441:15, 11445:19,  11446:1, 11447:14,  11455:6, 11455:12,  11456:16, 11456:22,  11457:21, 11460:5,  11460:20, 11463:8,  11463:18, 11464:15,  11464:24, 11467:23,  11469:19, 11470:7,  11473:18, 11476:5,  11476:23, 11477:17,  11478:1, 11478:18,  11481:23, 11482:6,  11482:18, 11482:25,  11483:22, 11484:2,  11484:14, 11485:11,  11486:24, 11487:21,  11489:21, 11492:23,  11495:22, 11496:18,  11503:21, 11503:24  <b>MCINTYRE</b> [2] -  11380:3, 11415:17  <b>MD</b> [1] - 11379:3  <b>mean</b> [35] - 11386:24,  11388:1, 11388:11,  11388:20, 11389:2,  11391:16, 11394:17,  11394:21, 11396:13,  11398:2, 11398:7,  11398:15, 11398:16,  11398:18, 11399:1,  11399:12, 11399:17,  11401:17, 11402:5,  11402:8, 11403:24,  11412:2, 11413:8,  11423:18, 11433:4,  11434:15, 11434:16,  11434:17, 11442:13,  11444:12, 11462:13,  11462:14, 11467:8,  11506:1, 11510:14  <b>means</b> [3] - 11448:7,  11464:18, 11477:1  <b>meant</b> [1] - 11401:12  <b>mechanic</b> [1] -  11417:2  <b>mechanically</b> [1] -  11479:13  <b>media</b> [2] - 11421:8,  11429:4</p>	<p><b>meeting</b> [1] -  11388:10  <b>melee</b> [1] - 11397:7  <b>members</b> [2] -  11391:22, 11448:18  <b>men</b> [3] - 11424:23,  11432:13, 11507:12  <b>mentioned</b> [7] -  11424:17, 11439:16,  11450:16, 11458:25,  11461:23, 11484:23,  11485:25  <b>merely</b> [1] - 11466:21  <b>message</b> [1] - 11508:1  <b>metal</b> [2] - 11417:2,  11429:10  <b>Metcalf</b> [8] - 11379:11,  11381:13, 11434:14,  11435:3, 11442:13,  11444:19, 11444:25,  11467:9  <b>METCALF</b> [15] -  11379:11, 11434:13,  11434:19, 11434:22,  11434:24, 11435:14,  11435:17, 11437:13,  11441:22, 11442:16,  11443:1, 11443:7,  11443:9, 11445:3  <b>Miami</b> [1] - 11379:6  <b>microphone</b> [3] -  11416:1, 11416:4,  11418:24  <b>middle</b> [7] - 11423:11,  11430:21, 11438:23,  11440:23, 11467:9,  11467:12, 11482:23  <b>might</b> [13] - 11388:20,  11394:10, 11404:22,  11405:1, 11408:25,  11412:2, 11412:3,  11424:7, 11438:13,  11460:21, 11506:12,  11508:6, 11509:10  <b>Millard</b> [2] - 11400:17,  11401:21  <b>MILLER</b> [1] - 11512:1  <b>Miller</b> [2] - 11379:17,  11512:6  <b>mind</b> [4] - 11388:25,  11394:15, 11394:24,  11477:22  <b>Mineral</b> [1] - 11425:13  <b>Mink</b> [1] - 11379:2  <b>minute</b> [6] - 11393:8,  11412:3, 11435:11,  11477:21, 11481:10,  11500:19  <b>minutes</b> [17] -  11385:20, 11386:5,</p>	<p>11386:6, 11387:14,  11391:10, 11392:18,  11392:19, 11393:9,  11393:14, 11403:13,  11407:17, 11428:9,  11442:4, 11445:4,  11445:7, 11500:24,  11500:25  <b>misleading</b> [3] -  11466:11, 11466:15,  11467:1  <b>mission</b> [14] -  11418:6, 11418:10,  11426:2, 11426:11,  11504:11, 11506:4,  11506:5, 11506:9,  11506:19, 11506:20,  11506:21, 11508:25,  11509:2, 11509:7  <b>mistrial</b> [2] -  11384:16, 11384:17  <b>mix</b> [1] - 11422:8  <b>moisture</b> [1] -  11405:18  <b>moment</b> [9] - 11389:7,  11393:23, 11413:20,  11427:19, 11430:17,  11436:3, 11440:17,  11455:23, 11500:21  <b>Monday</b> [1] - 11405:11  <b>money</b> [2] - 11461:9,  11462:8  <b>month</b> [1] - 11422:3  <b>months</b> [1] - 11421:24  <b>monument</b> [1] -  11431:16  <b>Monument</b> [1] -  11431:18  <b>Moore</b> [2] - 11378:13,  11381:8  <b>more-than-</b>  <b>intelligent</b> [1] -  11397:6  <b>morning</b> [21] -  11381:16, 11407:17,  11407:23, 11408:3,  11408:23, 11415:20,  11415:21, 11415:24,  11424:4, 11425:17,  11426:6, 11426:7,  11426:16, 11426:17,  11427:11, 11431:10,  11442:1, 11449:18,  11502:3, 11502:16,  11503:24  <b>MORNING</b> [1] -  11378:9  <b>most</b> [10] - 11381:18,  11396:24, 11397:3,  11402:23, 11434:1,</p>	<p>11449:21, 11450:20,  11477:10, 11478:3,  11485:5  <b>motion</b> [2] - 11403:24  <b>mouth</b> [1] - 11383:8  <b>movable</b> [2] - 11416:2,  11507:17  <b>move</b> [13] - 11392:25,  11393:1, 11399:21,  11435:12, 11450:2,  11456:3, 11464:10,  11471:3, 11473:23,  11477:17, 11482:15,  11482:23, 11511:18  <b>moved</b> [2] - 11384:16,  11510:15  <b>moving</b> [5] -  11429:18, 11437:4,  11437:15, 11473:18,  11475:18  <b>MR</b> [207] - 11382:2,  11382:7, 11382:9,  11382:12, 11384:14,  11384:16, 11386:7,  11387:3, 11387:16,  11389:2, 11390:24,  11391:3, 11391:5,  11392:20, 11393:6,  11393:21, 11395:2,  11395:8, 11395:11,  11396:3, 11396:6,  11396:22, 11399:23,  11400:1, 11400:3,  11400:15, 11401:5,  11401:16, 11404:11,  11404:13, 11405:8,  11405:10, 11406:4,  11406:9, 11406:14,  11407:14, 11407:16,  11407:21, 11407:23,  11408:19, 11408:21,  11409:5, 11409:17,  11409:25, 11410:11,  11410:22, 11411:2,  11411:5, 11411:9,  11411:11, 11412:10,  11412:22, 11414:7,  11415:15, 11415:19,  11419:7, 11420:16,  11420:19, 11427:18,  11427:20, 11428:1,  11428:7, 11428:9,  11428:12, 11428:22,  11428:25, 11429:1,  11429:16, 11429:18,  11429:21, 11429:23,  11430:14, 11430:17,  11430:19, 11431:22,  11431:25, 11432:3,  11432:4, 11432:10,</p>
--	---	---	--	--



11432:12, 11432:17,  
11432:24, 11433:8,  
11433:24, 11434:10,  
11434:13, 11434:19,  
11434:22, 11434:24,  
11435:14, 11435:17,  
11436:13, 11436:15,  
11436:21, 11436:24,  
11437:2, 11437:13,  
11437:15, 11437:18,  
11437:21, 11440:16,  
11441:18, 11441:22,  
11442:16, 11443:1,  
11443:7, 11443:9,  
11443:13, 11443:15,  
11443:22, 11444:3,  
11444:10, 11444:17,  
11445:3, 11445:18,  
11445:22, 11445:25,  
11447:9, 11447:12,  
11447:13, 11455:2,  
11455:5, 11455:8,  
11455:11, 11456:3,  
11456:4, 11456:5,  
11456:8, 11456:13,  
11456:15, 11456:18,  
11456:20, 11457:18,  
11457:20, 11458:19,  
11458:21, 11460:13,  
11460:15, 11461:14,  
11461:18, 11462:19,  
11463:7, 11463:14,  
11463:17, 11463:20,  
11463:22, 11464:10,  
11464:13, 11464:21,  
11464:23, 11466:6,  
11466:10, 11467:7,  
11467:22, 11468:11,  
11477:19, 11477:25,  
11478:14, 11478:17,  
11481:25, 11482:3,  
11482:15, 11482:17,  
11483:7, 11483:10,  
11483:24, 11484:1,  
11487:17, 11487:20,  
11489:4, 11489:7,  
11489:13, 11489:19,  
11489:20, 11492:10,  
11492:18, 11492:22,  
11494:14, 11494:17,  
11494:21, 11494:25,  
11495:8, 11495:13,  
11495:17, 11495:20,  
11496:7, 11496:9,  
11496:12, 11496:15,  
11496:17, 11498:18,  
11498:20, 11498:22,  
11500:23, 11501:2,  
11503:20, 11503:23,  
11508:14, 11508:16,  
11509:14, 11509:16,

11509:20, 11509:22,  
11510:5, 11510:20,  
11511:1, 11511:18  
**MS** [13] - 11383:2,  
11383:22, 11384:2,  
11385:1, 11397:23,  
11398:21, 11398:23,  
11399:2, 11399:4,  
11399:17, 11399:19,  
11414:9, 11414:13  
**MT** [1] - 11379:16  
**Mulroe** [18] -  
11378:13, 11381:8,  
11408:22, 11409:10,  
11411:1, 11428:4,  
11443:12, 11443:14,  
11445:14, 11456:6,  
11463:5, 11467:20,  
11468:6, 11468:10,  
11490:2, 11494:24,  
11495:18, 11497:11  
**MULROE** [104] -  
11411:2, 11411:5,  
11412:10, 11415:15,  
11415:19, 11419:7,  
11420:16, 11420:19,  
11427:18, 11427:20,  
11428:1, 11428:7,  
11428:9, 11428:12,  
11428:22, 11428:25,  
11429:1, 11429:16,  
11429:18, 11429:21,  
11429:23, 11430:14,  
11430:17, 11430:19,  
11431:22, 11431:25,  
11432:3, 11432:4,  
11432:10, 11433:8,  
11433:24, 11434:10,  
11436:13, 11436:15,  
11436:21, 11436:24,  
11437:2, 11437:15,  
11437:18, 11437:21,  
11440:16, 11441:18,  
11443:15, 11443:22,  
11444:3, 11444:10,  
11444:17, 11445:18,  
11445:22, 11445:25,  
11447:9, 11447:12,  
11447:13, 11455:2,  
11455:5, 11455:8,  
11455:11, 11456:3,  
11456:4, 11456:5,  
11456:8, 11456:13,  
11456:15, 11456:18,  
11456:20, 11457:18,  
11457:20, 11458:19,  
11458:21, 11460:13,  
11460:15, 11461:14,  
11461:18, 11462:19,  
11463:7, 11463:14,  
11463:17, 11463:20,  
11463:22, 11464:10,  
11464:13, 11464:21,  
11464:23, 11466:6,  
11466:10, 11467:7,  
11467:22, 11468:11,  
11477:19, 11477:25,  
11478:14, 11478:17,  
11481:25, 11482:3,  
11482:15, 11482:17,  
11483:7, 11483:10,  
11483:24, 11484:1,  
11487:17, 11487:20,  
11489:4, 11489:7,  
11489:13, 11489:19,  
11489:20, 11492:10,  
11492:18, 11492:22,  
11494:14, 11494:17,  
11494:21, 11494:25,  
11495:8, 11495:13,  
11495:17, 11495:20,  
11496:7, 11496:9,  
11496:12, 11496:15,  
11496:17, 11498:18,  
11498:20, 11498:22,  
11500:23, 11501:2,  
11503:20, 11503:23,  
11508:14, 11508:16,  
11509:14, 11509:16,

11467:7, 11467:22,  
11468:11, 11477:19,  
11477:25, 11478:14,  
11478:17, 11481:25,  
11482:3, 11482:15,  
11482:17, 11483:7,  
11483:10, 11483:24,  
11484:1, 11487:17,  
11489:19, 11492:10,  
11494:21, 11494:25,  
11495:20, 11498:18,  
11498:20, 11508:14,  
11509:14, 11509:20  
**Mulroe's** [5] -  
11436:23, 11461:22,  
11462:1, 11462:5,  
11501:22  
**Mulroe**.....  
**11415** [1] - 11380:3  
**multiple** [7] -  
11398:16, 11398:19,  
11400:19, 11434:16,  
11450:24, 11450:25,  
11498:11  
**multiplier** [7] -  
11469:7, 11469:10,  
11469:17, 11471:13,  
11471:14, 11471:15,  
11497:19  
**multiply** [4] -  
11475:11, 11476:13,  
11493:21, 11494:4  
**museum** [2] -  
11426:2, 11505:14  
**must** [1] - 11500:24

## N

**Nadia** [2] - 11378:13,  
11381:8  
**name** [5] - 11411:17,  
11412:17, 11415:23,  
11415:24  
**name's** [1] - 11504:1  
**namely** [1] - 11415:2  
**nation's** [2] - 11506:8,  
11509:4  
**National** [1] -  
11431:21  
**nature** [7] - 11395:4,  
11419:21, 11440:8,  
11440:20, 11448:23,  
11451:2, 11451:19  
**Navy** [2] - 11419:12,  
11419:13  
**Nayib** [2] - 11379:4,  
11381:11  
**NAYIB** [1] - 11379:5  
**nearest** [2] -  
11475:17, 11475:25

**necessarily** [2] -  
11434:11, 11436:7  
**necessary** [6] -  
11433:16, 11433:19,  
11449:17, 11474:18,  
11475:9, 11487:13  
**necessity** [1] -  
11399:11  
**need** [21] - 11381:24,  
11386:10, 11395:15,  
11406:19, 11406:20,  
11409:19, 11409:20,  
11417:3, 11433:1,  
11433:15, 11435:11,  
11436:4, 11436:7,  
11437:9, 11442:22,  
11443:17, 11445:4,  
11446:9, 11448:22,  
11468:8, 11507:12  
**needed** [8] - 11430:9,  
11430:12, 11437:23,  
11439:1, 11448:21,  
11453:15, 11456:25,  
11508:6  
**needing** [1] -  
11440:24  
**needs** [4] - 11386:11,  
11406:21, 11409:1,  
11422:14  
**negotiate** [2] -  
11500:12, 11500:13  
**never** [5] - 11508:22,  
11510:13, 11510:19,  
11510:24, 11511:16  
**nevertheless** [1] -  
11491:25  
**New** [3] - 11378:18,  
11378:22, 11379:13  
**new** [3] - 11486:10,  
11486:11, 11486:12  
**news** [1] - 11423:5  
**next** [14] - 11407:18,  
11407:25, 11414:24,  
11415:13, 11430:13,  
11431:25, 11446:11,  
11465:23, 11470:24,  
11473:10, 11473:25,  
11475:18, 11497:3,  
11497:8  
**nice** [1] - 11416:3  
**Nicholas** [2] -  
11378:16, 11381:9  
**Nick** [1] - 11487:21  
**night** [1] - 11448:3  
**nilly** [1] - 11453:20  
**NJ** [3] - 11379:17,  
11512:1, 11512:6  
**NJ-CCR** [3] -  
11379:17, 11512:1,  
11512:6

**no-bid** [1] - 11499:5  
**noise** [1] - 11390:4  
**non** [3] - 11387:23,  
11401:2, 11462:13  
**non-performance** [1]  
- 11401:2  
**non-reasonableness**  
[1] - 11462:13  
**non-violent** [1] -  
11387:23  
**none** [6] - 11381:25,  
11391:1, 11391:6,  
11396:12, 11398:11,  
11403:17  
**NORDEAN** [1] -  
11378:4  
**Nordean** [19] -  
11381:3, 11381:14,  
11388:4, 11388:20,  
11391:8, 11391:11,  
11391:12, 11393:23,  
11394:1, 11394:3,  
11394:11, 11395:1,  
11398:3, 11400:23,  
11400:24, 11401:8,  
11402:11, 11445:13,  
11487:23  
**Nordean's** [3] -  
11386:17, 11390:16,  
11404:6  
**normally** [1] - 11431:9  
**Norman** [2] -  
11378:20, 11381:10  
**north** [6] - 11395:19,  
11409:8, 11409:11,  
11429:5, 11446:17  
**Nos** [1] - 11378:2  
**note** [6] - 11393:7,  
11433:10, 11478:14,  
11494:12, 11495:1,  
11495:20  
**notes** [9] - 11393:12,  
11407:9, 11407:24,  
11408:2, 11408:4,  
11408:18, 11408:22,  
11435:19, 11512:3  
**nothing** [11] -  
11383:13, 11397:16,  
11403:21, 11403:22,  
11405:17, 11414:10,  
11414:23, 11461:23,  
11487:17, 11508:5,  
11508:25  
**notice** [3] - 11423:14,  
11506:24, 11507:22  
**noticed** [4] -  
11441:24, 11443:4,  
11443:5, 11470:7  
**notification** [1] -  
11507:3

<p><b>notified</b> <sup>[1]</sup> - 11507:8</p> <p><b>notion</b> <sup>[1]</sup> - 11406:18</p> <p><b>notwithstanding</b> <sup>[1]</sup> - 11511:12</p> <p><b>nowadays</b> <sup>[1]</sup> - 11446:23</p> <p><b>number</b> <sup>[29]</sup> - 11382:20, 11382:21, 11385:12, 11389:5, 11389:13, 11400:6, 11400:7, 11402:15, 11402:21, 11402:22, 11405:4, 11409:6, 11449:12, 11460:17, 11465:24, 11469:4, 11470:7, 11470:12, 11470:13, 11470:16, 11471:7, 11475:3, 11476:20, 11484:9, 11489:11, 11493:24, 11498:7, 11498:10</p> <p><b>numbers</b> <sup>[8]</sup> - 11392:15, 11411:16, 11411:22, 11464:14, 11464:18, 11469:15, 11471:19, 11475:1</p> <p><b>NW</b> <sup>[5]</sup> - 11378:14, 11378:24, 11379:5, 11379:19, 11512:8</p> <p><b>NY</b> <sup>[2]</sup> - 11378:18, 11379:13</p>	<p>11444:1, 11444:11, 11444:15, 11444:16, 11444:18, 11456:4, 11456:12, 11460:13, 11482:2, 11489:19, 11492:10, 11498:18, 11508:14, 11510:11</p> <p><b>objectionable</b> <sup>[2]</sup> - 11466:10, 11467:19</p> <p><b>objections</b> <sup>[3]</sup> - 11382:24, 11435:24, 11436:12</p> <p><b>objects</b> <sup>[1]</sup> - 11434:17</p> <p><b>observe</b> <sup>[2]</sup> - 11427:15, 11447:15</p> <p><b>observed</b> <sup>[1]</sup> - 11404:23</p> <p><b>obtain</b> <sup>[2]</sup> - 11449:16, 11452:5</p> <p><b>obviously</b> <sup>[16]</sup> - 11385:8, 11385:11, 11397:23, 11399:12, 11404:6, 11405:23, 11413:10, 11414:3, 11423:23, 11433:6, 11435:9, 11438:8, 11445:1, 11467:2, 11469:17, 11511:5</p> <p><b>occasion</b> <sup>[1]</sup> - 11509:9</p> <p><b>occasions</b> <sup>[1]</sup> - 11510:17</p> <p><b>occupied</b> <sup>[1]</sup> - 11509:6</p> <p><b>occur</b> <sup>[5]</sup> - 11416:19, 11417:3, 11423:16, 11430:9, 11488:10</p> <p><b>occurred</b> <sup>[7]</sup> - 11424:15, 11427:10, 11430:6, 11438:10, 11492:14, 11503:17, 11504:9</p> <p><b>occurring</b> <sup>[1]</sup> - 11423:8</p> <p><b>occurs</b> <sup>[4]</sup> - 11420:25, 11421:6, 11438:19, 11505:19</p> <p><b>OF</b> <sup>[5]</sup> - 11378:1, 11378:2, 11378:8, 11379:5, 11511:25</p> <p><b>off-site</b> <sup>[4]</sup> - 11461:6, 11479:8, 11485:22, 11486:5</p> <p><b>offense</b> <sup>[11]</sup> - 11383:4, 11383:5, 11383:12, 11383:21, 11383:23, 11384:4, 11384:5, 11386:21, 11415:7</p> <p><b>offenses</b> <sup>[3]</sup> - 11394:18, 11402:19,</p>	<p>11402:20</p> <p><b>offer</b> <sup>[1]</sup> - 11405:3</p> <p><b>offering</b> <sup>[1]</sup> - 11387:1</p> <p><b>office</b> <sup>[41]</sup> - 11416:22, 11416:24, 11417:7, 11417:10, 11417:11, 11417:13, 11418:14, 11418:22, 11419:4, 11421:16, 11422:12, 11425:25, 11426:10, 11438:24, 11448:10, 11448:17, 11448:18, 11449:16, 11492:13, 11492:14, 11496:4, 11498:1, 11498:2, 11498:9, 11498:23, 11503:8, 11503:16, 11504:17, 11505:1, 11505:4, 11505:5, 11505:6, 11505:9, 11505:10, 11506:13, 11507:3, 11507:19, 11508:13, 11508:23, 11509:17</p> <p><b>OFFICE</b> <sup>[1]</sup> - 11378:14</p> <p><b>office's</b> <sup>[3]</sup> - 11502:17, 11504:8, 11504:10</p> <p><b>officer</b> <sup>[26]</sup> - 11386:4, 11388:1, 11388:22, 11389:7, 11389:23, 11389:24, 11390:14, 11392:11, 11392:17, 11392:21, 11393:2, 11393:3, 11394:21, 11398:9, 11398:12, 11400:16, 11402:11, 11402:13, 11403:5, 11403:18, 11403:19, 11403:21, 11407:24</p> <p><b>Officer</b> <sup>[10]</sup> - 11393:24, 11393:25, 11394:4, 11394:11, 11398:2, 11400:16, 11400:17, 11401:21, 11401:23</p> <p><b>officer's</b> <sup>[10]</sup> - 11386:9, 11388:4, 11391:14, 11394:15, 11394:24, 11398:9, 11398:18, 11400:8, 11400:25, 11401:18</p> <p><b>officers</b> <sup>[25]</sup> - 11387:19, 11387:24, 11389:12, 11389:15, 11389:18, 11390:1, 11390:6, 11391:25, 11394:1, 11394:4, 11394:7, 11394:12, 11400:5, 11400:10, 11401:7, 11401:9,</p>	<p>11401:11, 11401:20, 11402:2, 11402:17, 11403:3, 11403:8, 11403:11, 11406:21, 11406:22</p> <p><b>OFFICES</b> <sup>[1]</sup> - 11379:5</p> <p><b>OFFICIAL</b> <sup>[1]</sup> - 11511:25</p> <p><b>Official</b> <sup>[2]</sup> - 11379:18, 11512:6</p> <p><b>officials</b> <sup>[1]</sup> - 11453:24</p> <p><b>often</b> <sup>[5]</sup> - 11400:22, 11420:13, 11485:14, 11490:24, 11506:15</p> <p><b>Ohio</b> <sup>[1]</sup> - 11392:5</p> <p><b>oldest</b> <sup>[1]</sup> - 11509:4</p> <p><b>on-site</b> <sup>[1]</sup> - 11423:2</p> <p><b>once</b> <sup>[14]</sup> - 11396:25, 11406:23, 11420:15, 11425:10, 11437:25, 11472:7, 11472:12, 11477:22, 11480:13, 11480:14, 11480:15, 11480:25, 11485:16, 11503:4</p> <p><b>one</b> <sup>[87]</sup> - 11381:19, 11382:20, 11385:12, 11388:17, 11388:18, 11389:18, 11389:19, 11396:13, 11396:15, 11397:12, 11399:9, 11399:10, 11400:3, 11402:15, 11402:22, 11404:3, 11405:4, 11405:22, 11405:23, 11406:8, 11406:11, 11408:25, 11409:1, 11411:6, 11412:3, 11413:19, 11421:18, 11423:22, 11433:8, 11433:11, 11433:25, 11434:1, 11434:17, 11435:14, 11439:2, 11439:4, 11439:22, 11440:17, 11442:20, 11443:4, 11444:23, 11445:2, 11447:3, 11452:15, 11455:16, 11455:19, 11456:5, 11456:9, 11457:2, 11458:15, 11459:2, 11461:1, 11463:18, 11466:7, 11466:25, 11467:5, 11468:23, 11468:24, 11469:12, 11471:11, 11471:25, 11473:10, 11475:6, 11475:16, 11475:18,</p>	<p>11480:15, 11483:22, 11488:4, 11488:18, 11488:19, 11490:6, 11492:4, 11494:10, 11495:20, 11497:9, 11499:22, 11500:4, 11500:5, 11500:10, 11500:20, 11502:9, 11502:15, 11503:1, 11510:7, 11510:21, 11511:7</p> <p><b>one's</b> <sup>[1]</sup> - 11480:14</p> <p><b>one-and-three-quarter</b> <sup>[1]</sup> - 11471:11</p> <p><b>one-and-three-quarter-inch</b> <sup>[3]</sup> - 11468:24, 11469:12, 11471:25</p> <p><b>one-lawyer</b> <sup>[2]</sup> - 11444:23, 11456:5</p> <p><b>one-page</b> <sup>[1]</sup> - 11463:18</p> <p><b>one-quarter-inch</b> <sup>[2]</sup> - 11458:15, 11468:23</p> <p><b>ones</b> <sup>[4]</sup> - 11447:6, 11457:7, 11458:13, 11458:14</p> <p><b>open</b> <sup>[1]</sup> - 11431:8</p> <p><b>opened</b> <sup>[1]</sup> - 11392:8</p> <p><b>openings</b> <sup>[1]</sup> - 11387:23</p> <p><b>opinion</b> <sup>[1]</sup> - 11492:10</p> <p><b>opportunity</b> <sup>[4]</sup> - 11389:16, 11401:4, 11437:10, 11447:15</p> <p><b>opposed</b> <sup>[1]</sup> - 11401:22</p> <p><b>opposite</b> <sup>[1]</sup> - 11390:8</p> <p><b>Orange</b> <sup>[1]</sup> - 11378:21</p> <p><b>order</b> <sup>[16]</sup> - 11408:10, 11410:1, 11410:14, 11410:18, 11424:1, 11424:4, 11435:6, 11454:20, 11461:12, 11465:12, 11467:24, 11468:2, 11472:24, 11474:12, 11482:10, 11484:16</p> <p><b>orderliness</b> <sup>[1]</sup> - 11444:22</p> <p><b>ordinarily</b> <sup>[2]</sup> - 11414:4, 11451:17</p> <p><b>ordinary</b> <sup>[2]</sup> - 11422:23, 11450:17</p> <p><b>orient</b> <sup>[4]</sup> - 11419:25, 11431:16, 11432:5, 11443:16</p> <p><b>original</b> <sup>[3]</sup> - 11417:24, 11446:20,</p>
<p style="text-align: center;"><b>O</b></p>				
<p><b>oath</b> <sup>[1]</sup> - 11421:16</p> <p><b>object</b> <sup>[22]</sup> - 11383:2, 11383:14, 11383:17, 11384:6, 11384:7, 11385:12, 11386:3, 11398:13, 11410:23, 11411:12, 11411:19, 11412:1, 11414:6, 11432:12, 11436:9, 11437:10, 11441:22, 11445:1, 11495:24, 11496:6, 11509:20</p> <p><b>objected</b> <sup>[1]</sup> - 11434:22</p> <p><b>objecting</b> <sup>[2]</sup> - 11399:20, 11442:17</p> <p><b>objection</b> <sup>[32]</sup> - 11384:8, 11384:22, 11385:15, 11385:22, 11386:8, 11406:16, 11412:3, 11414:6, 11414:18, 11432:17, 11432:25, 11433:3, 11435:1, 11435:5, 11435:7, 11437:11, 11443:1, 11443:24,</p>	<p>11444:1, 11444:11, 11444:15, 11444:16, 11444:18, 11456:4, 11456:12, 11460:13, 11482:2, 11489:19, 11492:10, 11498:18, 11508:14, 11510:11</p> <p><b>objectionable</b> <sup>[2]</sup> - 11466:10, 11467:19</p> <p><b>objections</b> <sup>[3]</sup> - 11382:24, 11435:24, 11436:12</p> <p><b>objects</b> <sup>[1]</sup> - 11434:17</p> <p><b>observe</b> <sup>[2]</sup> - 11427:15, 11447:15</p> <p><b>observed</b> <sup>[1]</sup> - 11404:23</p> <p><b>obtain</b> <sup>[2]</sup> - 11449:16, 11452:5</p> <p><b>obviously</b> <sup>[16]</sup> - 11385:8, 11385:11, 11397:23, 11399:12, 11404:6, 11405:23, 11413:10, 11414:3, 11423:23, 11433:6, 11435:9, 11438:8, 11445:1, 11467:2, 11469:17, 11511:5</p> <p><b>occasion</b> <sup>[1]</sup> - 11509:9</p> <p><b>occasions</b> <sup>[1]</sup> - 11510:17</p> <p><b>occupied</b> <sup>[1]</sup> - 11509:6</p> <p><b>occur</b> <sup>[5]</sup> - 11416:19, 11417:3, 11423:16, 11430:9, 11488:10</p> <p><b>occurred</b> <sup>[7]</sup> - 11424:15, 11427:10, 11430:6, 11438:10, 11492:14, 11503:17, 11504:9</p> <p><b>occurring</b> <sup>[1]</sup> - 11423:8</p> <p><b>occurs</b> <sup>[4]</sup> - 11420:25, 11421:6, 11438:19, 11505:19</p> <p><b>OF</b> <sup>[5]</sup> - 11378:1, 11378:2, 11378:8, 11379:5, 11511:25</p> <p><b>off-site</b> <sup>[4]</sup> - 11461:6, 11479:8, 11485:22, 11486:5</p> <p><b>offense</b> <sup>[11]</sup> - 11383:4, 11383:5, 11383:12, 11383:21, 11383:23, 11384:4, 11384:5, 11386:21, 11415:7</p> <p><b>offenses</b> <sup>[3]</sup> - 11394:18, 11402:19,</p>	<p>11402:20</p> <p><b>offer</b> <sup>[1]</sup> - 11405:3</p> <p><b>offering</b> <sup>[1]</sup> - 11387:1</p> <p><b>office</b> <sup>[41]</sup> - 11416:22, 11416:24, 11417:7, 11417:10, 11417:11, 11417:13, 11418:14, 11418:22, 11419:4, 11421:16, 11422:12, 11425:25, 11426:10, 11438:24, 11448:10, 11448:17, 11448:18, 11449:16, 11492:13, 11492:14, 11496:4, 11498:1, 11498:2, 11498:9, 11498:23, 11503:8, 11503:16, 11504:17, 11505:1, 11505:4, 11505:5, 11505:6, 11505:9, 11505:10, 11506:13, 11507:3, 11507:19, 11508:13, 11508:23, 11509:17</p> <p><b>OFFICE</b> <sup>[1]</sup> - 11378:14</p> <p><b>office's</b> <sup>[3]</sup> - 11502:17, 11504:8, 11504:10</p> <p><b>officer</b> <sup>[26]</sup> - 11386:4, 11388:1, 11388:22, 11389:7, 11389:23, 11389:24, 11390:14, 11392:11, 11392:17, 11392:21, 11393:2, 11393:3, 11394:21, 11398:9, 11398:12, 11400:16, 11402:11, 11402:13, 11403:5, 11403:18, 11403:19, 11403:21, 11407:24</p> <p><b>Officer</b> <sup>[10]</sup> - 11393:24, 11393:25, 11394:4, 11394:11, 11398:2, 11400:16, 11400:17, 11401:21, 11401:23</p> <p><b>officer's</b> <sup>[10]</sup> - 11386:9, 11388:4, 11391:14, 11394:15, 11394:24, 11398:9, 11398:18, 11400:8, 11400:25, 11401:18</p> <p><b>officers</b> <sup>[25]</sup> - 11387:19, 11387:24, 11389:12, 11389:15, 11389:18, 11390:1, 11390:6, 11391:25, 11394:1, 11394:4, 11394:7, 11394:12, 11400:5, 11400:10, 11401:7, 11401:9,</p>	<p>11401:11, 11401:20, 11402:2, 11402:17, 11403:3, 11403:8, 11403:11, 11406:21, 11406:22</p> <p><b>OFFICES</b> <sup>[1]</sup> - 11379:5</p> <p><b>OFFICIAL</b> <sup>[1]</sup> - 11511:25</p> <p><b>Official</b> <sup>[2]</sup> - 11379:18, 11512:6</p> <p><b>officials</b> <sup>[1]</sup> - 11453:24</p> <p><b>often</b> <sup>[5]</sup> - 11400:22, 11420:13, 11485:14, 11490:24, 11506:15</p> <p><b>Ohio</b> <sup>[1]</sup> - 11392:5</p> <p><b>oldest</b> <sup>[1]</sup> - 11509:4</p> <p><b>on-site</b> <sup>[1]</sup> - 11423:2</p> <p><b>once</b> <sup>[14]</sup> - 11396:25, 11406:23, 11420:15, 11425:10, 11437:25, 11472:7, 11472:12, 11477:22, 11480:13, 11480:14, 11480:15, 11480:25, 11485:16, 11503:4</p> <p><b>one</b> <sup>[87]</sup> - 11381:19, 11382:20, 11385:12, 11388:17, 11388:18, 11389:18, 11389:19, 11396:13, 11396:15, 11397:12, 11399:9, 11399:10, 11400:3, 11402:15, 11402:22, 11404:3, 11405:4, 11405:22, 11405:23, 11406:8, 11406:11, 11408:25, 11409:1, 11411:6, 11412:3, 11413:19, 11421:18, 11423:22, 11433:8, 11433:11, 11433:25, 11434:1, 11434:17, 11435:14, 11439:2, 11439:4, 11439:22, 11440:17, 11442:20, 11443:4, 11444:23, 11445:2, 11447:3, 11452:15, 11455:16, 11455:19, 11456:5, 11456:9, 11457:2, 11458:15, 11459:2, 11461:1, 11463:18, 11466:7, 11466:25, 11467:5, 11468:23, 11468:24, 11469:12, 11471:11, 11471:25, 11473:10, 11475:6, 11475:16, 11475:18,</p>	<p>11480:15, 11483:22, 11488:4, 11488:18, 11488:19, 11490:6, 11492:4, 11494:10, 11495:20, 11497:9, 11499:22, 11500:4, 11500:5, 11500:10, 11500:20, 11502:9, 11502:15, 11503:1, 11510:7, 11510:21, 11511:7</p> <p><b>one's</b> <sup>[1]</sup> - 11480:14</p> <p><b>one-and-three-quarter</b> <sup>[1]</sup> - 11471:11</p> <p><b>one-and-three-quarter-inch</b> <sup>[3]</sup> - 11468:24, 11469:12, 11471:25</p> <p><b>one-lawyer</b> <sup>[2]</sup> - 11444:23, 11456:5</p> <p><b>one-page</b> <sup>[1]</sup> - 11463:18</p> <p><b>one-quarter-inch</b> <sup>[2]</sup> - 11458:15, 11468:23</p> <p><b>ones</b> <sup>[4]</sup> - 11447:6, 11457:7, 11458:13, 11458:14</p> <p><b>open</b> <sup>[1]</sup> - 11431:8</p> <p><b>opened</b> <sup>[1]</sup> - 11392:8</p> <p><b>openings</b> <sup>[1]</sup> - 11387:23</p> <p><b>opinion</b> <sup>[1]</sup> - 11492:10</p> <p><b>opportunity</b> <sup>[4]</sup> - 11389:16, 11401:4, 11437:10, 11447:15</p> <p><b>opposed</b> <sup>[1]</sup> - 11401:22</p> <p><b>opposite</b> <sup>[1]</sup> - 11390:8</p> <p><b>Orange</b> <sup>[1]</sup> - 11378:21</p> <p><b>order</b> <sup>[16]</sup> - 11408:10, 11410:1, 11410:14, 11410:18, 11424:1, 11424:4, 11435:6, 11454:20, 11461:12, 11465:12, 11467:24, 11468:2, 11472:24, 11474:12, 11482:10, 11484:16</p> <p><b>orderliness</b> <sup>[1]</sup> - 11444:22</p> <p><b>ordinarily</b> <sup>[2]</sup> - 11414:4, 11451:17</p> <p><b>ordinary</b> <sup>[2]</sup> - 11422:23, 11450:17</p> <p><b>orient</b> <sup>[4]</sup> - 11419:25, 11431:16, 11432:5, 11443:16</p> <p><b>original</b> <sup>[3]</sup> - 11417:24, 11446:20,</p>

<p>11481:23  <b>originally</b> [3] -  11503:10, 11509:5,  11509:6  <b>otherwise</b> [1] -  11404:23  <b>outlined</b> [1] -  11430:23  <b>outside</b> [8] - 11388:6,  11417:4, 11422:7,  11422:9, 11432:8,  11447:21, 11472:25,  11509:1  <b>outweighs</b> [2] -  11395:5  <b>overall</b> [8] - 11417:13,  11433:18, 11456:23,  11465:3, 11466:2,  11467:10, 11473:19,  11477:5  <b>overlooked</b> [1] -  11452:13  <b>overlooking</b> [1] -  11431:6  <b>overrule</b> [3] -  11444:11, 11444:15,  11444:16  <b>overruled</b> [5] -  11444:1, 11456:12,  11460:14, 11492:12,  11498:21  <b>overview</b> [1] - 11433:4  <b>own</b> [1] - 11462:16</p>	<p>11462:11, 11462:12,  11467:17, 11467:18,  11486:22, 11493:2  <b>paint</b> [12] - 11431:14,  11450:8, 11450:11,  11472:24, 11473:11,  11473:13, 11473:15,  11474:18, 11474:20,  11475:7, 11480:24  <b>painted</b> [1] - 11441:4  <b>Painter</b> [1] - 11475:2  <b>painters</b> [3] -  11474:14, 11475:6,  11475:8  <b>painting</b> [5] - 11417:1,  11431:11, 11450:11,  11474:15, 11474:21  <b>pandemic</b> [2] -  11438:24, 11440:2  <b>pane</b> [38] - 11447:2,  11447:3, 11459:2,  11459:12, 11463:11,  11464:2, 11465:21,  11468:4, 11468:23,  11468:24, 11469:6,  11469:11, 11469:12,  11469:16, 11470:11,  11470:21, 11470:24,  11473:7, 11473:8,  11473:9, 11473:17,  11474:5, 11474:14,  11474:15, 11475:9,  11476:7, 11476:8,  11477:6, 11477:13  <b>pane-by-pane</b> [8] -  11459:2, 11463:11,  11468:4, 11470:11,  11473:8, 11473:9,  11477:6, 11477:13  <b>panel</b> [9] - 11413:16,  11445:9, 11479:20,  11490:25, 11491:17,  11493:13, 11494:5,  11497:18, 11498:11  <b>panels</b> [13] -  11479:18, 11480:10,  11484:14, 11484:23,  11484:24, 11485:6,  11485:21, 11489:25,  11490:2, 11490:3,  11490:5, 11490:24,  11493:18  <b>panes</b> [31] - 11443:20,  11447:4, 11447:19,  11447:23, 11448:25,  11449:13, 11455:22,  11456:23, 11458:4,  11458:7, 11458:10,  11458:17, 11459:1,  11459:2, 11459:17,</p>	<p>11463:10, 11467:4,  11467:13, 11467:15,  11467:18, 11467:24,  11468:1, 11468:3,  11468:5, 11468:19,  11469:2, 11469:5,  11471:7, 11471:25,  11476:11  <b>panoply</b> [1] -  11402:19  <b>paper</b> [1] - 11469:21  <b>parallel</b> [1] - 11480:16  <b>Park</b> [1] - 11379:12  <b>part</b> [42] - 11393:8,  11395:25, 11397:7,  11402:12, 11412:8,  11412:13, 11417:9,  11423:19, 11425:16,  11429:25, 11432:6,  11433:19, 11436:24,  11438:24, 11441:3,  11447:25, 11450:2,  11454:2, 11456:19,  11457:25, 11459:5,  11464:2, 11464:4,  11464:6, 11464:7,  11465:9, 11466:12,  11467:14, 11472:17,  11472:22, 11473:2,  11475:8, 11477:18,  11483:4, 11483:11,  11485:10, 11488:4,  11490:9, 11506:16,  11506:20, 11508:24,  11511:3  <b>partially</b> [2] - 11447:6,  11479:24  <b>participation</b> [1] -  11399:13  <b>particular</b> [11] -  11387:14, 11388:22,  11399:5, 11417:8,  11434:3, 11443:2,  11502:7, 11503:14,  11504:6, 11511:6  <b>particularly</b> [2] -  11398:10, 11402:18  <b>parties</b> [2] - 11382:21,  11385:19  <b>parts</b> [13] - 11420:22,  11447:2, 11456:17,  11457:15, 11464:24,  11465:4, 11480:19,  11481:2, 11485:12,  11486:6, 11491:19,  11501:11, 11501:14  <b>pass</b> [2] - 11403:1,  11507:25  <b>passes</b> [1] - 11403:14  <b>past</b> [4] - 11427:13,</p>	<p>11449:20, 11454:12,  11460:19  <b>Pattis</b> [4] - 11378:20,  11381:10, 11404:12,  11413:1  <b>PATTIS</b> [5] -  11378:20, 11404:11,  11404:13, 11405:8,  11405:10  <b>pause</b> [16] - 11413:15,  11413:24, 11428:25,  11429:21, 11430:17,  11432:3, 11432:16,  11432:21, 11441:20,  11444:5, 11445:16,  11447:12, 11468:7,  11477:21, 11500:22,  11510:9  <b>pay</b> [2] - 11385:14,  11481:16  <b>PC</b> [1] - 11378:24  <b>Peace</b> [1] - 11387:9  <b>pen</b> [1] - 11381:21  <b>penalizes</b> [1] -  11461:18  <b>people</b> [15] - 11387:7,  11388:10, 11391:22,  11391:23, 11391:24,  11396:15, 11403:8,  11407:2, 11426:10,  11431:14, 11462:9,  11488:18, 11506:11,  11507:23  <b>per</b> [14] - 11410:5,  11456:9, 11463:11,  11465:21, 11470:21,  11470:24, 11476:7,  11476:8, 11484:4,  11484:12, 11484:13,  11497:12, 11497:14,  11497:20  <b>per-item</b> [1] -  11463:11  <b>perfect</b> [1] - 11405:17  <b>perfectly</b> [2] -  11404:17, 11405:14  <b>perform</b> [2] - 11452:6,  11473:16  <b>performance</b> [4] -  11400:8, 11400:25,  11401:2, 11401:18  <b>performing</b> [1] -  11474:4  <b>perhaps</b> [1] -  11394:14  <b>perimeter</b> [8] -  11406:23, 11406:24,  11407:6, 11507:18,  11508:6, 11508:12,  11508:20, 11509:19</p>	<p><b>period</b> [3] - 11420:6,  11450:15, 11479:11  <b>permanent</b> [1] -  11449:7  <b>permission</b> [7] -  11424:20, 11464:12,  11481:25, 11489:4,  11489:7, 11496:10,  11500:23  <b>person</b> [2] - 11392:2,  11416:7  <b>personal</b> [2] -  11407:2, 11423:6  <b>personally</b> [2] -  11425:15, 11499:16  <b>perspective</b> [7] -  11404:20, 11439:23,  11439:24, 11448:13,  11448:19, 11509:2,  11509:3  <b>Pezzola</b> [9] - 11381:6,  11381:15, 11391:21,  11399:6, 11442:23,  11466:13, 11466:23,  11467:11, 11467:13  <b>PEZZOLA</b> [1] -  11378:6  <b>ph</b> [2] - 11401:21,  11401:22  <b>phone</b> [2] - 11413:19,  11423:4  <b>phones</b> [1] - 11509:22  <b>phrase</b> [2] - 11439:7,  11460:4  <b>physically</b> [2] -  11394:3, 11401:9  <b>pick</b> [2] - 11393:12,  11413:19  <b>pickets</b> [1] - 11501:16  <b>picking</b> [2] - 11463:8,  11467:23  <b>picture</b> [6] - 11389:20,  11433:18, 11473:19,  11480:11, 11501:20,  11501:23  <b>piece</b> [7] - 11459:20,  11461:3, 11480:6,  11483:22, 11502:9,  11502:14  <b>pieces</b> [21] -  11440:13, 11449:3,  11449:4, 11457:24,  11459:4, 11459:22,  11459:25, 11468:17,  11468:21, 11469:18,  11480:6, 11480:7,  11480:10, 11480:12,  11480:17, 11481:2,  11491:19, 11501:11,  11501:14, 11502:22</p>
<p><b>P</b></p>				
<p><b>P.A</b> [2] - 11379:5,  11379:8  <b>P.C</b> [1] - 11379:11  <b>p.m</b> [2] - 11388:3,  11511:23  <b>pace</b> [1] - 11433:23  <b>Page</b> [3] - 11400:6,  11495:15, 11496:12  <b>PAGE</b> [1] - 11380:2  <b>page</b> [16] - 11410:19,  11455:7, 11457:21,  11458:4, 11458:20,  11463:18, 11482:24,  11483:8, 11483:9,  11489:3, 11495:1,  11495:11, 11495:15,  11496:15, 11496:16,  11496:18  <b>pages</b> [6] - 11400:19,  11409:4, 11409:5,  11409:6, 11409:22,  11482:7  <b>paid</b> [9] - 11410:2,  11462:7, 11462:8,</p>				



<p><b>pin</b> <sup>[1]</sup> - 11402:7</p> <p><b>pinned</b> <sup>[1]</sup> - 11392:24</p> <p><b>pipes</b> <sup>[2]</sup> - 11429:10, 11429:11</p> <p><b>pitch</b> <sup>[1]</sup> - 11422:7</p> <p><b>place</b> <sup>[16]</sup> - 11382:22, 11405:12, 11421:15, 11425:5, 11426:3, 11427:3, 11441:16, 11472:23, 11478:12, 11479:22, 11480:1, 11481:7, 11481:17, 11482:12, 11505:14</p> <p><b>placed</b> <sup>[6]</sup> - 11405:6, 11443:24, 11481:13, 11488:1, 11488:9, 11503:10</p> <p><b>plain</b> <sup>[1]</sup> - 11385:3</p> <p><b>plan</b> <sup>[2]</sup> - 11425:5, 11450:2</p> <p><b>planned</b> <sup>[2]</sup> - 11444:4, 11507:5</p> <p><b>planning</b> <sup>[1]</sup> - 11421:22</p> <p><b>plans</b> <sup>[2]</sup> - 11486:14, 11506:17</p> <p><b>plaster</b> <sup>[5]</sup> - 11441:5, 11441:7, 11441:10</p> <p><b>platform</b> <sup>[1]</sup> - 11452:18</p> <p><b>play</b> <sup>[10]</sup> - 11393:7, 11393:8, 11393:9, 11393:10, 11428:22, 11430:15, 11437:16, 11440:10, 11447:10, 11485:3</p> <p><b>played</b> <sup>[14]</sup> - 11428:3, 11428:24, 11429:17, 11429:20, 11430:16, 11431:24, 11432:2, 11432:11, 11437:17, 11437:20, 11441:21, 11447:11, 11477:24, 11501:1</p> <p><b>playing</b> <sup>[3]</sup> - 11393:13, 11431:23, 11467:14</p> <p><b>plea</b> <sup>[3]</sup> - 11385:4, 11415:8, 11415:12</p> <p><b>pleas</b> <sup>[2]</sup> - 11415:4, 11415:9</p> <p><b>pled</b> <sup>[2]</sup> - 11383:12, 11415:2</p> <p><b>PLLC</b> <sup>[1]</sup> - 11378:17</p> <p><b>plot</b> <sup>[2]</sup> - 11395:18, 11506:13</p> <p><b>plumbing</b> <sup>[1]</sup> - 11417:1</p> <p><b>plus</b> <sup>[2]</sup> - 11476:6, 11483:5</p> <p><b>plywood</b> <sup>[5]</sup> -</p>	<p>11427:9, 11448:3, 11448:10, 11477:2, 11477:3</p> <p><b>podium</b> <sup>[2]</sup> - 11464:22, 11483:25</p> <p><b>point</b> <sup>[29]</sup> - 11383:6, 11386:1, 11388:15, 11388:24, 11393:11, 11394:7, 11395:16, 11395:23, 11396:16, 11397:1, 11398:8, 11398:25, 11400:5, 11400:10, 11402:1, 11404:9, 11405:11, 11406:2, 11409:21, 11441:22, 11446:7, 11447:22, 11467:11, 11478:10, 11501:21, 11502:2, 11502:20, 11503:14, 11504:6</p> <p><b>pointed</b> <sup>[1]</sup> - 11397:9</p> <p><b>pointing</b> <sup>[3]</sup> - 11401:21, 11446:12, 11478:16</p> <p><b>points</b> <sup>[2]</sup> - 11397:15, 11408:10</p> <p><b>Police</b> <sup>[9]</sup> - 11424:20, 11427:8, 11439:24, 11440:4, 11452:1, 11452:25, 11506:11, 11506:19, 11507:15</p> <p><b>police</b> <sup>[3]</sup> - 11394:5, 11406:22, 11427:5</p> <p><b>Police's</b> <sup>[1]</sup> - 11508:1</p> <p><b>policy</b> <sup>[1]</sup> - 11456:8</p> <p><b>poorly</b> <sup>[1]</sup> - 11387:25</p> <p><b>portion</b> <sup>[1]</sup> - 11473:23</p> <p><b>posed</b> <sup>[1]</sup> - 11408:5</p> <p><b>position</b> <sup>[7]</sup> - 11386:9, 11386:11, 11391:18, 11416:2, 11416:10, 11467:4, 11505:5</p> <p><b>positions</b> <sup>[2]</sup> - 11388:17, 11418:18</p> <p><b>possession</b> <sup>[1]</sup> - 11383:13</p> <p><b>possible</b> <sup>[1]</sup> - 11477:9</p> <p><b>post</b> <sup>[3]</sup> - 11479:20, 11486:19</p> <p><b>Post</b> <sup>[1]</sup> - 11407:9</p> <p><b>Post-it</b> <sup>[1]</sup> - 11407:9</p> <p><b>posts</b> <sup>[6]</sup> - 11479:17, 11479:19, 11485:21, 11490:7, 11490:14, 11490:16</p> <p><b>potential</b> <sup>[1]</sup> - 11390:17</p> <p><b>potentially</b> <sup>[1]</sup> - 11500:12</p> <p><b>powder</b> <sup>[4]</sup> -</p>	<p>11480:24, 11480:25, 11483:17</p> <p><b>powder-coated</b> <sup>[4]</sup> - 11480:24, 11480:25, 11483:17</p> <p><b>powerful</b> <sup>[2]</sup> - 11388:8, 11390:12</p> <p><b>practical</b> <sup>[1]</sup> - 11495:11</p> <p><b>preceding</b> <sup>[2]</sup> - 11420:7, 11421:11</p> <p><b>predetermined</b> <sup>[1]</sup> - 11451:13</p> <p><b>preemptive</b> <sup>[1]</sup> - 11394:9</p> <p><b>prefer</b> <sup>[1]</sup> - 11384:3</p> <p><b>prejudice</b> <sup>[1]</sup> - 11386:16</p> <p><b>prejudicial</b> <sup>[7]</sup> - 11383:15, 11384:4, 11393:17, 11395:14, 11398:10, 11443:10, 11466:11</p> <p><b>preliminary</b> <sup>[1]</sup> - 11381:17</p> <p><b>premarked</b> <sup>[1]</sup> - 11434:25</p> <p><b>preparations</b> <sup>[2]</sup> - 11420:23, 11421:19</p> <p><b>prepared</b> <sup>[5]</sup> - 11387:24, 11419:16, 11442:21, 11443:3, 11498:9</p> <p><b>prepped</b> <sup>[1]</sup> - 11424:4</p> <p><b>present</b> <sup>[9]</sup> - 11381:7, 11381:8, 11381:9, 11381:10, 11381:11, 11381:12, 11381:13, 11402:12</p> <p><b>preservation</b> <sup>[4]</sup> - 11416:18, 11416:21, 11416:25, 11509:3</p> <p><b>preserve</b> <sup>[13]</sup> - 11418:10, 11423:21, 11423:22, 11505:11, 11505:24, 11505:25, 11506:6, 11506:8, 11506:18, 11506:20, 11508:25, 11509:2, 11510:21</p> <p><b>preserved</b> <sup>[2]</sup> - 11385:15, 11509:8</p> <p><b>president</b> <sup>[1]</sup> - 11421:16</p> <p><b>presidential</b> <sup>[11]</sup> - 11420:11, 11420:12, 11421:9, 11431:2, 11431:3, 11438:9, 11452:18, 11478:8, 11478:25, 11481:10,</p>	<p>11481:21</p> <p><b>pretrial</b> <sup>[2]</sup> - 11387:18, 11388:18</p> <p><b>pretty</b> <sup>[1]</sup> - 11398:10</p> <p><b>previously</b> <sup>[3]</sup> - 11429:8, 11452:23, 11505:3</p> <p><b>price</b> <sup>[15]</sup> - 11439:11, 11454:21, 11458:1, 11459:1, 11461:13, 11470:9, 11471:4, 11484:2, 11484:4, 11493:1, 11497:11, 11499:23, 11500:7, 11500:9, 11500:10</p> <p><b>Price</b> <sup>[1]</sup> - 11457:23</p> <p><b>prices</b> <sup>[1]</sup> - 11487:4</p> <p><b>pricing</b> <sup>[3]</sup> - 11455:1, 11460:18, 11500:15</p> <p><b>pride</b> <sup>[1]</sup> - 11505:22</p> <p><b>primary</b> <sup>[10]</sup> - 11391:17, 11421:6, 11427:1, 11439:4, 11446:24, 11451:13, 11451:14, 11457:8, 11494:25, 11505:16</p> <p><b>priorities</b> <sup>[4]</sup> - 11438:1, 11438:2, 11439:22, 11440:5</p> <p><b>prioritizing</b> <sup>[2]</sup> - 11438:3, 11439:15</p> <p><b>priority</b> <sup>[3]</sup> - 11438:15, 11438:17, 11448:24</p> <p><b>private</b> <sup>[2]</sup> - 11413:4, 11422:11</p> <p><b>probative</b> <sup>[1]</sup> - 11395:5</p> <p><b>problem</b> <sup>[3]</sup> - 11408:5, 11409:6, 11511:17</p> <p><b>procedure</b> <sup>[3]</sup> - 11453:19, 11453:21, 11484:21</p> <p><b>procedures</b> <sup>[2]</sup> - 11451:22, 11453:4</p> <p><b>proceed</b> <sup>[10]</sup> - 11437:12, 11445:15, 11456:12, 11463:5, 11467:20, 11468:10, 11494:16, 11495:11, 11496:6, 11500:16</p> <p><b>proceedings</b> <sup>[2]</sup> - 11444:22, 11512:4</p> <p><b>Proceedings</b> <sup>[1]</sup> - 11379:21</p> <p><b>process</b> <sup>[26]</sup> - 11420:10, 11421:20, 11450:18, 11450:23, 11451:16, 11452:8, 11453:3, 11454:2, 11470:25, 11471:1,</p>	<p>11471:2, 11477:14, 11479:4, 11480:24, 11484:19, 11486:20, 11486:21, 11490:8, 11499:5, 11499:6, 11499:9, 11499:17, 11499:21, 11500:5</p> <p><b>produce</b> <sup>[1]</sup> - 11412:20</p> <p><b>produced</b> <sup>[5]</sup> - 11379:21, 11412:6, 11412:8, 11412:11, 11498:24</p> <p><b>product</b> <sup>[5]</sup> - 11461:4, 11469:22, 11472:8, 11483:13, 11484:6</p> <p><b>products</b> <sup>[3]</sup> - 11439:12, 11450:9, 11460:19</p> <p><b>professional</b> <sup>[2]</sup> - 11423:19, 11485:10</p> <p><b>program</b> <sup>[1]</sup> - 11419:15</p> <p><b>project</b> <sup>[3]</sup> - 11451:1, 11456:23, 11457:15</p> <p><b>projects</b> <sup>[1]</sup> - 11450:19</p> <p><b>promoted</b> <sup>[1]</sup> - 11504:20</p> <p><b>promotion</b> <sup>[1]</sup> - 11504:21</p> <p><b>proper</b> <sup>[4]</sup> - 11439:25, 11440:24, 11444:7, 11498:14</p> <p><b>property</b> <sup>[8]</sup> - 11382:16, 11382:18, 11382:19, 11404:16, 11404:21, 11404:24, 11405:2, 11461:19</p> <p><b>proposal</b> <sup>[12]</sup> - 11454:24, 11454:25, 11455:22, 11456:1, 11457:25, 11458:5, 11459:3, 11459:5, 11460:8, 11465:16, 11466:3, 11477:11</p> <p><b>proposals</b> <sup>[3]</sup> - 11455:16, 11455:17, 11455:19</p> <p><b>proposes</b> <sup>[1]</sup> - 11454:21</p> <p><b>proprietary</b> <sup>[1]</sup> - 11412:18</p> <p><b>prosecution</b> <sup>[1]</sup> - 11495:4</p> <p><b>prosecutor</b> <sup>[1]</sup> - 11495:4</p> <p><b>prosecutors</b> <sup>[1]</sup> - 11498:17</p> <p><b>protect</b> <sup>[7]</sup> - 11406:23,</p>
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<p>11407:6, 11506:3, 11507:23, 11508:11, 11509:11, 11509:18 <b>protecting</b> [3] - 11505:25, 11508:20, 11509:1 <b>protection</b> [4] - 11418:21, 11419:3, 11419:14, 11511:6 <b>protester</b> [1] - 11492:3 <b>protesters</b> [6] - 11387:20, 11387:21, 11389:9, 11389:15, 11400:9, 11401:25 <b>protocols</b> [1] - 11506:17 <b>Proud</b> [2] - 11397:3, 11397:18 <b>prove</b> [7] - 11386:20, 11396:20, 11396:21, 11467:4, 11467:12, 11467:15 <b>proved</b> [2] - 11383:5, 11399:14 <b>proves</b> [1] - 11398:8 <b>provide</b> [6] - 11426:3, 11470:11, 11470:15, 11483:16, 11500:14, 11508:19 <b>provided</b> [11] - 11411:13, 11455:17, 11455:20, 11465:14, 11470:11, 11478:21, 11481:10, 11483:14, 11484:8, 11498:10, 11498:16 <b>provides</b> [1] - 11478:23 <b>providing</b> [2] - 11470:20, 11508:18 <b>public</b> [6] - 11382:18, 11404:21, 11404:24, 11426:5, 11474:22, 11505:15 <b>public's</b> [1] - 11404:15 <b>publish</b> [6] - 11455:8, 11456:14, 11464:12, 11494:17, 11496:10, 11500:23 <b>published</b> [1] - 11498:13 <b>publishing</b> [1] - 11477:23 <b>pull</b> [2] - 11445:22, 11477:19 <b>purchase</b> [11] - 11408:10, 11410:1, 11410:14, 11410:18, 11439:2, 11448:11, 11481:24, 11482:10,</p>	<p>11484:16, 11499:9, 11500:7 <b>purchased</b> [6] - 11408:9, 11439:13, 11465:12, 11479:3, 11482:11, 11493:7 <b>purchases</b> [1] - 11499:4 <b>purpose</b> [6] - 11387:1, 11391:17, 11443:15, 11478:18, 11494:20, 11501:22 <b>purposes</b> [5] - 11415:5, 11436:8, 11464:19, 11471:7, 11488:10 <b>pursuant</b> [1] - 11456:8 <b>pushed</b> [1] - 11490:9 <b>pushes</b> [1] - 11386:6 <b>pushing</b> [1] - 11396:1 <b>put</b> [25] - 11388:15, 11388:22, 11389:21, 11392:10, 11394:23, 11400:20, 11403:2, 11403:10, 11410:13, 11411:2, 11411:21, 11413:12, 11421:4, 11425:5, 11437:2, 11448:25, 11460:21, 11466:17, 11469:23, 11472:1, 11476:4, 11479:12, 11481:4, 11481:17, 11490:11 <b>putting</b> [1] - 11468:22</p>	<p>11400:25 <b>questions</b> [12] - 11400:7, 11401:1, 11401:13, 11402:7, 11419:20, 11421:19, 11443:18, 11451:10, 11486:23, 11487:22, 11504:3, 11511:19 <b>queued</b> [1] - 11455:9 <b>quick</b> [1] - 11433:23 <b>quickly</b> [1] - 11407:16 <b>quite</b> [6] - 11389:18, 11423:4, 11426:17, 11458:3, 11506:15, 11506:21</p>	<p><b>reason</b> [6] - 11385:3, 11385:8, 11388:24, 11397:1, 11404:8, 11413:12 <b>reasonable</b> [9] - 11443:2, 11444:15, 11455:1, 11460:4, 11460:11, 11460:18, 11460:22, 11500:13, 11500:15 <b>reasonableness</b> [4] - 11460:7, 11460:22, 11462:13 <b>reasons</b> [4] - 11435:9, 11443:9, 11453:8, 11453:12 <b>receive</b> [3] - 11451:5, 11451:6, 11507:3 <b>received</b> [5] - 11407:17, 11407:24, 11412:12, 11460:19, 11477:11 <b>recent</b> [1] - 11460:19 <b>recently</b> [1] - 11429:14 <b>recess</b> [4] - 11445:7, 11445:8, 11511:22, 11511:23 <b>recognize</b> [5] - 11427:25, 11455:12, 11463:23, 11478:4, 11482:6 <b>recollection</b> [3] - 11426:19, 11499:17, 11499:18 <b>recommendations</b> [3] - 11508:19, 11509:10, 11510:15 <b>reconsider</b> [2] - 11406:5, 11407:7 <b>record</b> [7] - 11400:4, 11405:22, 11407:16, 11410:16, 11433:10, 11445:11, 11478:14 <b>recorded</b> [1] - 11379:21 <b>records</b> [2] - 11408:23, 11499:18 <b>recycled</b> [1] - 11480:20 <b>red</b> [3] - 11381:20, 11404:13, 11473:20 <b>redacted</b> [5] - 11411:17, 11411:20, 11413:5, 11482:20, 11483:18 <b>redaction</b> [3] - 11412:16, 11413:7, 11482:19 <b>redactions</b> [7] -</p>	<p>11411:12, 11411:17, 11411:23, 11412:7, 11412:10, 11412:11, 11412:25 <b>redirect</b> [1] - 11394:10 <b>referred</b> [2] - 11417:7, 11490:2 <b>reflects</b> [3] - 11392:18, 11392:19, 11493:6 <b>refrain</b> [1] - 11468:8 <b>regard</b> [1] - 11491:17 <b>regarding</b> [4] - 11385:20, 11411:13, 11415:4, 11415:11 <b>regardless</b> [2] - 11388:16, 11402:6 <b>regards</b> [1] - 11435:15 <b>regulations</b> [1] - 11453:5 <b>Rehl</b> [6] - 11381:4, 11381:14, 11398:2, 11398:4, 11398:6, 11404:7 <b>REHL</b> [1] - 11378:5 <b>rejects</b> [1] - 11399:21 <b>relate</b> [1] - 11488:21 <b>related</b> [1] - 11415:3 <b>relating</b> [1] - 11415:5 <b>relevance</b> [13] - 11386:8, 11387:13, 11387:17, 11388:12, 11402:9, 11406:18, 11432:13, 11433:11, 11435:1, 11435:24, 11437:10, 11443:11, 11498:20 <b>relevant</b> [20] - 11388:17, 11391:17, 11393:17, 11397:25, 11398:1, 11398:6, 11398:25, 11399:7, 11404:2, 11404:3, 11404:7, 11407:1, 11408:14, 11420:22, 11433:23, 11434:12, 11435:12, 11439:7, 11456:11, 11495:6 <b>rely</b> [2] - 11422:11, 11440:18 <b>remain</b> [1] - 11487:4 <b>remaining</b> [1] - 11472:17 <b>remark</b> [1] - 11501:13 <b>remediated</b> [1] - 11406:2 <b>remedy</b> [1] - 11384:17 <b>remember</b> [4] - 11394:24, 11441:14, 11501:8, 11501:9</p>
<b>R</b>				
<p><b>radius</b> [1] - 11491:1 <b>rail</b> [7] - 11480:14, 11480:16, 11501:15, 11501:18 <b>rails</b> [1] - 11501:17 <b>raises</b> [1] - 11461:13 <b>randomly</b> [1] - 11435:6 <b>range</b> [1] - 11441:9 <b>Rate</b> [1] - 11475:3 <b>rate</b> [2] - 11475:6, 11475:19 <b>Rates</b> [1] - 11475:2 <b>rates</b> [1] - 11475:19 <b>rather</b> [1] - 11436:11 <b>rational</b> [1] - 11404:1 <b>ray</b> [1] - 11407:12 <b>re</b> [1] - 11404:13 <b>reach</b> [3] - 11446:9, 11471:1, 11472:4 <b>reached</b> [3] - 11454:8, 11460:10, 11464:17 <b>reaching</b> [1] - 11449:18 <b>reacting</b> [2] - 11406:21, 11407:5 <b>read</b> [2] - 11483:15, 11497:8 <b>reading</b> [1] - 11401:14 <b>ready</b> [2] - 11421:21, 11427:6 <b>real</b> [1] - 11409:18 <b>realize</b> [1] - 11393:15 <b>really</b> [17] - 11382:22, 11384:20, 11385:22, 11386:14, 11389:11, 11389:13, 11389:22, 11390:13, 11396:25, 11407:16, 11436:10, 11462:13, 11466:16, 11467:19, 11474:19, 11505:7, 11509:12</p>				
<b>Q</b>				
<p><b>qualified</b> [3] - 11450:24, 11450:25, 11474:11 <b>Quantico</b> [1] - 11407:3 <b>Quantico-type</b> [1] - 11407:3 <b>quantity</b> [1] - 11433:16 <b>quarter</b> [12] - 11458:15, 11468:23, 11468:24, 11469:5, 11469:6, 11469:11, 11469:12, 11469:16, 11469:18, 11471:10, 11471:11, 11471:25 <b>quarter-inch</b> [4] - 11469:6, 11469:11, 11469:16, 11471:10 <b>quarters</b> [1] - 11405:14 <b>questioning</b> [3] - 11400:18, 11400:21,</p>				

<p><b>remind</b> [1] - 11466:15</p> <p><b>remotely</b> [1] - 11422:20</p> <p><b>remove</b> [1] - 11479:12</p> <p><b>removed</b> [3] - 11382:17, 11447:21, 11481:14</p> <p><b>rendering</b> [2] - 11420:24, 11421:14</p> <p><b>rented</b> [2] - 11481:14, 11481:22</p> <p><b>repainting</b> [1] - 11450:14</p> <p><b>repair</b> [14] - 11448:13, 11456:22, 11457:14, 11462:16, 11464:2, 11474:5, 11481:6, 11491:25, 11492:16, 11502:18, 11503:18, 11504:12</p> <p><b>repaired</b> [6] - 11425:4, 11434:4, 11448:22, 11457:1, 11457:17, 11474:15</p> <p><b>repairs</b> [26] - 11425:6, 11433:14, 11433:25, 11434:1, 11438:6, 11438:7, 11439:5, 11441:16, 11448:1, 11448:9, 11449:6, 11449:7, 11449:11, 11449:15, 11449:21, 11449:25, 11452:8, 11452:20, 11453:2, 11453:10, 11453:15, 11455:21, 11463:12, 11464:2, 11465:13, 11487:13</p> <p><b>repeat</b> [2] - 11419:1, 11456:6</p> <p><b>replace</b> [7] - 11486:14, 11486:18, 11491:3, 11491:16, 11492:1, 11492:8, 11497:5</p> <p><b>replaced</b> [1] - 11473:17</p> <p><b>replacement</b> [1] - 11481:8</p> <p><b>replacing</b> [1] - 11491:21</p> <p><b>replicate</b> [1] - 11491:20</p> <p><b>report</b> [1] - 11405:4</p> <p><b>reported</b> [1] - 11404:14</p> <p><b>REPORTER</b> [2] - 11407:19, 11511:25</p> <p><b>Reporter</b> [3] - 11379:17, 11379:18, 11512:6</p>	<p><b>reporter</b> [2] - 11442:4, 11445:5</p> <p><b>reports</b> [1] - 11424:9</p> <p><b>represent</b> [6] - 11408:22, 11410:4, 11459:10, 11465:10, 11474:2, 11504:1</p> <p><b>representation</b> [4] - 11410:6, 11489:22, 11490:3, 11490:13</p> <p><b>representative</b> [1] - 11411:21</p> <p><b>represented</b> [1] - 11400:4</p> <p><b>represents</b> [2] - 11409:10, 11474:3</p> <p><b>reprimand</b> [1] - 11406:10</p> <p><b>reproduction</b> [1] - 11455:25</p> <p><b>request</b> [1] - 11509:17</p> <p><b>requester</b> [1] - 11499:15</p> <p><b>requests</b> [3] - 11507:16, 11508:5, 11508:10</p> <p><b>required</b> [1] - 11462:8</p> <p><b>requirements</b> [1] - 11462:9</p> <p><b>requisitions</b> [1] - 11508:5</p> <p><b>res</b> [1] - 11407:10</p> <p><b>rescreened</b> [1] - 11461:8</p> <p><b>resecure</b> [1] - 11440:5</p> <p><b>resecuring</b> [1] - 11427:8</p> <p><b>respect</b> [15] - 11387:24, 11389:4, 11390:16, 11396:24, 11398:14, 11400:23, 11400:24, 11433:12, 11444:22, 11498:25, 11499:8, 11505:23, 11505:24, 11508:20, 11511:5</p> <p><b>respond</b> [2] - 11401:4, 11451:12</p> <p><b>responded</b> [2] - 11394:4, 11403:6</p> <p><b>responding</b> [1] - 11424:14</p> <p><b>response</b> [2] - 11401:5, 11425:16</p> <p><b>responsibility</b> [3] - 11502:17, 11504:8, 11504:10</p> <p><b>responsible</b> [12] - 11416:17, 11416:25, 11423:23, 11423:25,</p>	<p>11424:24, 11425:5, 11427:7, 11450:8, 11450:11, 11504:6, 11507:19, 11507:20</p> <p><b>rest</b> [3] - 11387:6, 11442:5, 11468:20</p> <p><b>result</b> [1] - 11441:10</p> <p><b>resulted</b> [1] - 11440:6</p> <p><b>resumes</b> [1] - 11445:17</p> <p><b>retractable</b> [1] - 11481:12</p> <p><b>return</b> [1] - 11422:4</p> <p><b>Return</b> [5] - 11414:20, 11437:14, 11463:6, 11467:21, 11496:8</p> <p><b>returned</b> [4] - 11413:17, 11442:6, 11445:10, 11510:2</p> <p><b>reusable</b> [2] - 11480:20, 11480:22</p> <p><b>reverse</b> [1] - 11408:7</p> <p><b>reverse-engineer</b> [1] - 11408:7</p> <p><b>review</b> [2] - 11460:7, 11498:14</p> <p><b>reviewed</b> [5] - 11426:22, 11427:24, 11428:16, 11444:6, 11498:3</p> <p><b>Rhode</b> [1] - 11437:16</p> <p><b>Rhode's</b> [1] - 11393:11</p> <p><b>Riggleman</b> [3] - 11394:12, 11400:17, 11401:23</p> <p><b>Riggleman's</b> [1] - 11398:2</p> <p><b>right-hand</b> [2] - 11431:12, 11458:1</p> <p><b>riot</b> [1] - 11391:16</p> <p><b>rioters</b> [2] - 11390:5, 11402:1</p> <p><b>rise</b> [2] - 11445:6, 11511:21</p> <p><b>risk</b> [4] - 11386:15, 11390:17, 11392:2, 11392:5</p> <p><b>Road</b> [1] - 11379:2</p> <p><b>Roger</b> [2] - 11379:14, 11381:13</p> <p><b>ROGER</b> [1] - 11379:15</p> <p><b>Rohde</b> [16] - 11420:16, 11428:1, 11428:23, 11429:18, 11430:18, 11431:25, 11437:18, 11441:18, 11445:22, 11447:9, 11455:9, 11456:18, 11457:18, 11458:19,</p>	<p>11477:19, 11483:7</p> <p><b>role</b> [6] - 11383:4, 11383:21, 11415:6, 11418:12, 11420:3, 11467:14</p> <p><b>roles</b> [1] - 11419:17</p> <p><b>rollers</b> [1] - 11473:13</p> <p><b>room</b> [6] - 11405:2, 11442:6, 11442:11, 11500:12, 11510:2, 11510:8</p> <p><b>Room</b> [2] - 11379:18, 11512:7</p> <p><b>roots</b> [12] - 11383:19, 11384:11, 11385:13, 11385:18, 11411:10, 11412:15, 11432:22, 11434:16, 11444:19, 11445:1, 11456:10, 11456:11</p> <p><b>Roots</b> [3] - 11379:14, 11381:13, 11434:22</p> <p><b>ROOTS</b> [16] - 11379:15, 11384:14, 11384:16, 11411:9, 11411:11, 11412:22, 11432:12, 11432:17, 11432:24, 11456:4, 11460:13, 11461:14, 11461:18, 11462:19, 11466:6, 11466:10</p> <p><b>ropes</b> [1] - 11481:13</p> <p><b>Rotunda</b> [1] - 11400:12</p> <p><b>rough</b> [1] - 11485:16</p> <p><b>roughly</b> [1] - 11475:12</p> <p><b>round</b> [2] - 11470:18, 11475:14</p> <p><b>rounded</b> [8] - 11470:13, 11470:16, 11472:10, 11472:12, 11475:16, 11475:17</p> <p><b>rounding</b> [2] - 11470:18, 11475:25</p> <p><b>row</b> [1] - 11465:24</p> <p><b>RPR</b> [3] - 11379:17, 11512:1, 11512:6</p> <p><b>rule</b> [2] - 11444:23, 11456:5</p> <p><b>ruling</b> [1] - 11406:6</p> <p><b>rulings</b> [2] - 11386:19, 11507:7</p> <p><b>run</b> [1] - 11417:8</p> <p><b>runs</b> [2] - 11478:11, 11478:13</p> <p><b>rush</b> [1] - 11390:5</p>	<p>11381:12</p> <p><b>safe</b> [2] - 11430:8, 11506:1</p> <p><b>safety</b> [5] - 11425:3, 11448:19, 11452:14, 11457:12, 11458:15</p> <p><b>safety/security</b> [1] - 11453:15</p> <p><b>sake</b> [1] - 11437:4</p> <p><b>salvaged</b> [1] - 11481:5</p> <p><b>sample</b> [1] - 11473:4</p> <p><b>samples</b> [1] - 11474:12</p> <p><b>sampling</b> [3] - 11472:18, 11472:19, 11473:3</p> <p><b>saved</b> [1] - 11428:9</p> <p><b>saw</b> [14] - 11393:2, 11395:15, 11424:6, 11450:10, 11455:22, 11458:10, 11459:22, 11465:3, 11465:17, 11467:13, 11494:10, 11502:16, 11503:2, 11504:4</p> <p><b>scaffolding</b> [3] - 11429:6, 11429:7, 11429:8</p> <p><b>scale</b> [1] - 11422:13</p> <p><b>scene</b> [4] - 11386:14, 11386:18, 11388:20, 11426:22</p> <p><b>Schedule</b> [1] - 11482:24</p> <p><b>science</b> [1] - 11470:15</p> <p><b>scope</b> [6] - 11450:24, 11451:8, 11451:9, 11509:20, 11510:12, 11511:16</p> <p><b>scrambling</b> [1] - 11408:15</p> <p><b>scrap</b> [1] - 11469:21</p> <p><b>screen</b> [29] - 11392:22, 11401:20, 11420:20, 11421:2, 11427:18, 11428:10, 11429:2, 11430:22, 11431:22, 11446:2, 11447:1, 11455:9, 11455:17, 11463:20, 11464:14, 11465:9, 11478:1, 11478:4, 11482:19, 11489:5, 11489:8, 11490:12, 11496:18, 11500:19, 11501:3, 11501:7, 11501:8, 11502:15, 11503:1</p> <p><b>screened</b> [2] - 11461:7</p>
<div>S</div>				
<p><b>Sabino</b> [2] - 11379:8,</p>				

<b>screening</b> [1] - 11462:9	11444:7, 11444:12, 11446:1, 11447:6, 11451:4, 11457:22, 11457:23, 11457:24, 11458:1, 11458:10, 11458:16, 11458:17, 11459:7, 11462:17, 11465:24, 11467:10, 11467:18, 11475:3, 11475:14, 11478:1, 11478:3, 11480:14, 11481:11, 11482:25, 11483:11, 11484:16, 11492:23, 11492:24, 11496:18, 11497:2, 11499:18, 11499:22, 11502:22, 11505:10, 11505:15, 11507:5, 11509:25, 11511:20	<b>senior</b> [1] - 11453:24 <b>sense</b> [4] - 11389:14, 11404:21, 11436:14 <b>separate</b> [3] - 11398:5, 11403:23, 11447:2 <b>separation</b> [1] - 11478:24 <b>Seresa</b> [1] - 11401:22 <b>series</b> [5] - 11388:2, 11399:5, 11401:1, 11421:25, 11427:21 <b>serve</b> [5] - 11418:10, 11505:10, 11505:24, 11506:6, 11506:7 <b>SESSION</b> [1] - 11378:9 <b>session</b> [1] - 11427:6 <b>set</b> [8] - 11422:14, 11436:24, 11437:25, 11438:2, 11438:5, 11451:13, 11464:14, 11465:23 <b>setting</b> [2] - 11410:7, 11500:10 <b>settings</b> [1] - 11407:3 <b>settle</b> [1] - 11454:3 <b>seven</b> [1] - 11493:18 <b>sever</b> [1] - 11404:9 <b>several</b> [5] - 11391:10, 11454:8, 11478:19, 11502:12 <b>severance</b> [3] - 11399:21, 11403:24, 11403:25 <b>shall</b> [2] - 11483:16, 11496:16 <b>shape</b> [3] - 11444:5, 11447:18, 11480:3 <b>sheer</b> [2] - 11389:11, 11433:15 <b>sheet</b> [2] - 11417:2, 11429:11 <b>sheltered</b> [1] - 11427:3 <b>shield</b> [1] - 11398:18 <b>ship</b> [1] - 11439:12 <b>shop</b> [6] - 11450:8, 11450:11, 11473:15, 11474:11, 11475:7, 11477:3 <b>short</b> [2] - 11387:5, 11433:17 <b>shorter</b> [1] - 11494:3 <b>shorthand</b> [1] - 11379:21 <b>shortly</b> [3] - 11407:23, 11423:3, 11425:19 <b>shot</b> [1] - 11429:4 <b>shoulder</b> [1] - 11446:8	<b>show</b> [16] - 11383:4, 11390:12, 11406:19, 11406:20, 11406:21, 11408:2, 11427:21, 11427:22, 11428:16, 11437:3, 11443:17, 11443:23, 11444:4, 11458:3, 11489:7, 11500:20 <b>showed</b> [4] - 11394:25, 11452:15, 11491:24, 11494:19 <b>showing</b> [11] - 11386:13, 11399:6, 11410:16, 11429:5, 11433:18, 11442:16, 11443:15, 11444:2, 11444:3, 11469:7, 11501:23 <b>shown</b> [3] - 11395:3, 11435:15, 11500:17 <b>shows</b> [5] - 11389:10, 11389:17, 11397:14, 11420:24, 11428:14 <b>sic</b> [4] - 11394:15, 11404:25, 11467:9, 11508:9 <b>side</b> [16] - 11390:9, 11392:22, 11401:20, 11401:22, 11401:23, 11404:22, 11409:8, 11409:9, 11409:11, 11429:5, 11431:12, 11438:13, 11446:1, 11458:1, 11478:4 <b>sidebar</b> [4] - 11432:15, 11461:15, 11466:6, 11494:22 <b>sides</b> [1] - 11421:8 <b>sign</b> [1] - 11394:5 <b>significant</b> [6] - 11393:8, 11420:8, 11452:12, 11452:17, 11457:6, 11477:14 <b>similar</b> [5] - 11433:9, 11478:22, 11481:11, 11490:8, 11502:13 <b>simple</b> [2] - 11468:5, 11468:12 <b>simply</b> [2] - 11386:13, 11461:3 <b>single</b> [7] - 11411:16, 11416:7, 11453:7, 11464:2, 11466:19, 11473:7, 11498:14 <b>sister</b> [1] - 11506:12 <b>sit</b> [1] - 11405:12 <b>site</b> [7] - 11423:2, 11451:3, 11461:6, 11479:8, 11479:9, 11485:22, 11486:5	<b>sitting</b> [3] - 11405:11, 11405:23, 11502:25 <b>situation</b> [2] - 11390:10, 11403:8 <b>situations</b> [1] - 11389:19 <b>six</b> [8] - 11424:22, 11477:21, 11485:8, 11488:25, 11490:18, 11493:19, 11493:20, 11494:3 <b>six-minute</b> [1] - 11477:21 <b>Sixth</b> [1] - 11411:18 <b>size</b> [9] - 11410:14, 11417:22, 11418:2, 11449:13, 11458:7, 11458:8, 11459:20, 11471:7, 11477:3 <b>sizes</b> [4] - 11458:7, 11458:9, 11459:17, 11490:21 <b>skill</b> [2] - 11422:14, 11438:5 <b>skipping</b> [1] - 11473:10 <b>slide</b> [4] - 11465:2, 11465:23, 11467:10, 11473:25 <b>slight</b> [1] - 11490:23 <b>slightly</b> [3] - 11476:9, 11494:20, 11502:21 <b>slow</b> [1] - 11407:19 <b>smaller</b> [2] - 11459:24, 11490:25 <b>smart</b> [1] - 11395:24 <b>smashing</b> [1] - 11467:14 <b>Smith</b> [23] - 11378:16, 11381:9, 11385:22, 11387:18, 11388:17, 11390:18, 11393:20, 11395:13, 11397:9, 11397:24, 11400:4, 11400:20, 11400:22, 11401:3, 11401:18, 11407:15, 11487:21, 11489:17, 11494:11, 11495:2, 11495:6, 11495:12, 11495:21 <b>SMITH</b> [40] - 11378:17, 11378:20, 11382:2, 11386:7, 11393:21, 11395:2, 11395:8, 11401:5, 11407:14, 11407:16, 11407:21, 11407:23, 11408:19, 11408:21, 11409:5, 11409:17,
-----------------------------------	---	--	--	---

11409:25, 11410:11, 11410:22, 11487:20, 11489:4, 11489:7, 11489:13, 11489:20, 11492:18, 11492:22, 11494:14, 11494:17, 11495:8, 11495:13, 11495:17, 11496:7, 11496:9, 11496:12, 11496:15, 11496:17, 11498:22, 11500:23, 11501:2, 11503:20 <b>Smith</b> ..... <b>11487</b> [1] - 11380:4 <b>snap</b> [1] - 11480:17 <b>snow</b> [1] - 11429:24 <b>sole</b> [10] - 11453:6, 11453:9, 11453:18, 11453:22, 11454:2, 11454:16, 11484:20, 11499:7, 11499:19, 11500:16 <b>sole-source</b> [10] - 11453:6, 11453:9, 11453:18, 11453:22, 11454:2, 11454:16, 11484:20, 11499:7, 11499:19, 11500:16 <b>solid</b> [1] - 11429:10 <b>someone</b> [3] - 11404:23, 11470:20, 11472:3 <b>sometimes</b> [6] - 11422:11, 11450:19, 11454:24, 11499:3, 11499:5, 11511:14 <b>somewhat</b> [2] - 11387:8, 11507:8 <b>somewhere</b> [1] - 11477:7 <b>sorry</b> [7] - 11399:24, 11414:9, 11414:14, 11418:23, 11456:6, 11468:6, 11489:6 <b>sort</b> [14] - 11384:21, 11386:4, 11397:13, 11402:23, 11433:4, 11435:22, 11436:2, 11436:10, 11437:8, 11437:10, 11463:11, 11478:15, 11489:18, 11490:13 <b>sorts</b> [1] - 11413:8 <b>sound</b> [8] - 11383:10, 11390:4, 11464:25, 11469:24, 11470:1, 11471:22, 11472:1, 11484:9 <b>sounds</b> [6] - 11383:9, 11398:10, 11402:16,	11410:9, 11493:22, 11494:6 <b>source</b> [11] - 11453:6, 11453:7, 11453:9, 11453:18, 11453:22, 11454:2, 11454:16, 11484:20, 11499:7, 11499:19, 11500:16 <b>south</b> [3] - 11409:9, 11446:17, 11446:18 <b>space</b> [1] - 11431:8 <b>speaking</b> [6] - 11400:16, 11406:12, 11417:12, 11468:9, 11485:2, 11487:12 <b>specific</b> [7] - 11416:22, 11421:3, 11441:16, 11453:8, 11466:21, 11466:24 <b>specifically</b> [4] - 11400:23, 11418:12, 11433:12, 11466:18 <b>spectrum</b> [1] - 11417:5 <b>speed</b> [1] - 11453:14 <b>spell</b> [1] - 11424:6 <b>spelling</b> [1] - 11415:23 <b>spent</b> [3] - 11396:7, 11396:17 <b>spin</b> [1] - 11389:22 <b>spoken</b> [1] - 11499:16 <b>spot</b> [2] - 11408:13, 11469:23 <b>square</b> [1] - 11405:14 <b>staff</b> [6] - 11405:4, 11406:1, 11422:7, 11422:8, 11423:3, 11480:18 <b>stage</b> [3] - 11423:10, 11508:11, 11511:5 <b>stain</b> [1] - 11382:7 <b>staingate</b> [2] - 11406:7, 11407:8 <b>stanchions</b> [1] - 11481:12 <b>stand</b> [8] - 11384:9, 11412:4, 11414:3, 11414:5, 11445:17, 11446:9, 11468:9, 11478:10 <b>standing</b> [4] - 11390:8, 11432:8, 11492:4, 11492:5 <b>standpoint</b> [2] - 11505:7, 11507:10 <b>stands</b> [14] - 11420:11, 11421:8, 11421:9, 11429:4, 11431:4, 11438:9,	11445:7, 11450:10, 11450:11, 11450:14, 11452:13, 11452:19, 11480:8, 11511:22 <b>star</b> [1] - 11395:20 <b>start</b> [7] - 11415:22, 11441:9, 11441:15, 11441:17, 11451:16, 11456:16, 11460:16 <b>started</b> [4] - 11419:2, 11486:20, 11486:21, 11509:5 <b>starters</b> [1] - 11413:10 <b>starting</b> [8] - 11393:11, 11424:14, 11428:1, 11428:13, 11449:9, 11456:21, 11465:20, 11475:1 <b>state</b> [3] - 11426:9, 11428:17, 11429:12 <b>statement</b> [3] - 11418:7, 11418:10, 11496:1 <b>STATES</b> [3] - 11378:1, 11378:2, 11378:10 <b>states</b> [1] - 11383:3 <b>States</b> [21] - 11378:12, 11381:3, 11415:16, 11416:11, 11416:19, 11419:5, 11419:12, 11423:22, 11427:8, 11430:25, 11431:20, 11439:24, 11445:12, 11452:1, 11452:25, 11459:18, 11483:20, 11505:16, 11507:14, 11507:25, 11512:7 <b>stating</b> [1] - 11415:23 <b>statute</b> [4] - 11461:18, 11461:23, 11462:3 <b>statutes</b> [1] - 11440:14 <b>stay</b> [2] - 11389:6, 11427:12 <b>stayed</b> [2] - 11427:2, 11427:4 <b>stealing</b> [1] - 11398:17 <b>stem</b> [1] - 11416:1 <b>stenographic</b> [1] - 11512:3 <b>step</b> [4] - 11388:23, 11424:12, 11442:8 <b>steps</b> [4] - 11442:9, 11449:16, 11457:14, 11510:4 <b>stereotypes</b> [1] - 11397:5 <b>Steven</b> [2] - 11379:11, 11381:12	<b>sticker</b> [4] - 11382:2, 11382:4, 11478:16, 11488:2 <b>stickie</b> [2] - 11405:6, 11405:13 <b>stickies</b> [1] - 11404:18 <b>still</b> [9] - 11384:6, 11396:19, 11412:22, 11430:11, 11436:5, 11443:16, 11444:2, 11444:3, 11448:20 <b>stock</b> [1] - 11454:10 <b>stone</b> [1] - 11431:15 <b>stood</b> [3] - 11387:20, 11424:17, 11503:15 <b>stop</b> [3] - 11388:23, 11395:1, 11396:4 <b>storage</b> [4] - 11479:7, 11479:9, 11479:12, 11485:22 <b>store</b> [2] - 11485:23, 11486:4 <b>stored</b> [2] - 11439:13, 11479:8 <b>story</b> [1] - 11397:14 <b>straight</b> [4] - 11393:9, 11481:1, 11490:22, 11490:24 <b>strayed</b> [1] - 11397:14 <b>strays</b> [1] - 11385:11 <b>streaming</b> [1] - 11402:1 <b>Street</b> [6] - 11378:14, 11378:17, 11378:21, 11378:24, 11379:5, 11379:9 <b>stretch</b> [1] - 11406:15 <b>strewn</b> [1] - 11480:6 <b>strike</b> [1] - 11484:14 <b>stripes</b> [1] - 11404:2 <b>stronger</b> [1] - 11396:11 <b>structural</b> [1] - 11430:21 <b>structurally</b> [1] - 11430:8 <b>structure</b> [4] - 11430:7, 11430:8, 11431:1, 11431:15 <b>struggling</b> [1] - 11410:19 <b>stuff</b> [2] - 11411:20, 11483:5 <b>style</b> [1] - 11483:17 <b>subject</b> [1] - 11435:23 <b>submit</b> [3] - 11450:24, 11452:2, 11453:22 <b>substantially</b> [1] - 11395:5 <b>successfully</b> [3] -	11449:19, 11454:12, 11487:15 <b>sudden</b> [1] - 11390:5 <b>sufficient</b> [1] - 11449:10 <b>suggest</b> [3] - 11394:1, 11394:7, 11395:23 <b>suggested</b> [3] - 11383:20, 11385:18, 11404:22 <b>suggestion</b> [3] - 11386:16, 11394:9, 11404:15 <b>suitability</b> [1] - 11452:1 <b>suitable</b> [3] - 11448:14, 11452:4, 11481:8 <b>Suite</b> [2] - 11378:18, 11379:6 <b>sum</b> [9] - 11457:25, 11459:2, 11459:4, 11459:11, 11459:13, 11459:14, 11463:9, 11470:12, 11477:11 <b>summary</b> [1] - 11483:8 <b>sun</b> [2] - 11425:21, 11427:13 <b>superimposed</b> [2] - 11466:12, 11466:14 <b>superintendent</b> [6] - 11416:11, 11418:22, 11419:4, 11419:5, 11504:21, 11504:25 <b>superintendent's</b> [6] - 11417:11, 11417:13, 11505:1, 11505:4, 11505:5, 11505:6 <b>supervisor</b> [1] - 11423:2 <b>supplied</b> [1] - 11495:23 <b>supplier</b> [1] - 11500:10 <b>supplies</b> [3] - 11473:11, 11473:21, 11476:6 <b>Supplies</b> [1] - 11465:7 <b>supply</b> [3] - 11439:7, 11439:10, 11449:22 <b>support</b> [2] - 11398:16, 11420:11 <b>supposedly</b> [1] - 11399:6 <b>Supreme</b> [3] - 11506:7, 11507:6 <b>sustained</b> [4] - 11508:15, 11509:15, 11509:21, 11510:12
---	---	---	---	--



<b>switch</b> <sup>[1]</sup> - 11464:21 <b>switched</b> <sup>[1]</sup> - 11505:21 <b>switching</b> <sup>[1]</sup> - 11442:1 <b>SWORN</b> <sup>[1]</sup> - 11415:17 <b>symmetrical</b> <sup>[1]</sup> - 11404:17 <b>systematically</b> <sup>[1]</sup> - 11424:25	11477:1, 11478:7, 11481:17 <b>term</b> <sup>[2]</sup> - 11448:14, 11448:15 <b>terms</b> <sup>[16]</sup> - 11387:17, 11388:14, 11391:15, 11391:18, 11392:1, 11392:6, 11392:12, 11392:14, 11397:10, 11399:10, 11400:18, 11400:21, 11423:18, 11439:15, 11449:7, 11449:8 <b>terrace</b> <sup>[19]</sup> - 11386:10, 11387:19, 11388:3, 11388:8, 11388:11, 11389:25, 11390:7, 11390:15, 11390:22, 11391:8, 11391:11, 11393:4, 11393:24, 11400:15, 11430:24, 11431:6, 11432:7, 11452:16, 11483:2 <b>terror</b> <sup>[1]</sup> - 11394:15 <b>testified</b> <sup>[15]</sup> - 11393:22, 11487:23, 11487:25, 11488:8, 11488:14, 11488:24, 11491:2, 11491:7, 11493:1, 11499:3, 11499:8, 11499:13, 11500:4, 11502:21, 11503:4 <b>testify</b> <sup>[10]</sup> - 11388:4, 11392:9, 11408:2, 11410:1, 11433:25, 11434:7, 11442:14, 11442:19, 11467:16, 11491:11 <b>testifying</b> <sup>[2]</sup> - 11433:13, 11467:17 <b>testimony</b> <sup>[15]</sup> - 11388:1, 11391:20, 11398:3, 11415:1, 11415:11, 11419:19, 11433:13, 11442:15, 11498:5, 11501:9, 11505:7, 11506:23, 11507:21, 11508:4, 11508:24 <b>THE</b> <sup>[162]</sup> - 11378:1, 11378:1, 11378:9, 11381:2, 11381:16, 11382:4, 11382:8, 11382:11, 11382:14, 11383:19, 11383:24, 11384:11, 11384:15, 11384:24, 11385:8, 11386:24, 11387:4,	11388:15, 11390:23, 11390:25, 11391:4, 11392:17, 11393:5, 11393:20, 11394:17, 11395:7, 11395:9, 11396:2, 11396:4, 11396:7, 11397:21, 11398:20, 11398:22, 11398:24, 11399:3, 11399:16, 11399:18, 11399:22, 11399:24, 11400:2, 11400:13, 11401:3, 11401:13, 11402:6, 11404:12, 11405:3, 11405:9, 11405:21, 11406:8, 11406:10, 11407:12, 11407:15, 11407:19, 11407:20, 11407:22, 11408:17, 11408:20, 11409:3, 11409:14, 11409:19, 11410:9, 11410:21, 11410:25, 11411:4, 11411:6, 11411:10, 11412:2, 11412:21, 11412:24, 11413:16, 11413:18, 11413:22, 11414:8, 11414:12, 11414:15, 11414:21, 11415:17, 11418:23, 11419:1, 11428:4, 11428:8, 11432:14, 11432:18, 11432:20, 11432:25, 11433:21, 11434:7, 11434:14, 11434:21, 11434:23, 11435:3, 11435:16, 11435:21, 11436:14, 11436:16, 11436:19, 11436:22, 11437:1, 11437:5, 11441:24, 11442:7, 11442:25, 11443:6, 11443:8, 11443:12, 11443:14, 11443:21, 11444:2, 11444:9, 11444:11, 11444:24, 11445:4, 11445:6, 11445:9, 11445:11, 11445:14, 11455:4, 11456:6, 11456:10, 11460:14, 11461:16, 11462:6, 11462:23, 11463:16, 11464:11, 11466:8, 11467:2, 11467:8, 11468:6, 11482:2, 11482:16, 11487:18, 11489:6, 11489:10, 11489:11, 11489:15, 11489:16, 11489:17, 11492:12,	11492:13, 11494:11, 11494:15, 11494:24, 11495:10, 11495:14, 11495:18, 11496:3, 11496:11, 11496:14, 11496:16, 11498:19, 11498:21, 11508:15, 11509:15, 11509:21, 11509:23, 11510:3, 11510:7, 11510:23, 11511:11, 11511:20, 11511:21 <b>themselves</b> <sup>[1]</sup> - 11400:5 <b>theory</b> <sup>[2]</sup> - 11396:3, 11397:19 <b>thereabout</b> <sup>[1]</sup> - 11393:11 <b>therefore</b> <sup>[3]</sup> - 11383:6, 11409:1, 11499:20 <b>they've</b> <sup>[3]</sup> - 11442:21, 11442:23, 11444:12 <b>thicker</b> <sup>[2]</sup> - 11468:21, 11469:2 <b>thickness</b> <sup>[1]</sup> - 11471:9 <b>thinking</b> <sup>[1]</sup> - 11441:12 <b>thinner</b> <sup>[1]</sup> - 11469:2 <b>third</b> <sup>[2]</sup> - 11385:19, 11423:3 <b>thousand</b> <sup>[1]</sup> - 11389:20 <b>threatening</b> <sup>[1]</sup> - 11390:10 <b>three</b> <sup>[18]</sup> - 11397:11, 11405:14, 11407:17, 11430:14, 11458:22, 11468:17, 11468:19, 11468:24, 11469:5, 11469:12, 11469:18, 11471:11, 11471:25, 11475:22, 11479:6, 11479:11, 11485:17 <b>three-week</b> <sup>[1]</sup> - 11479:11 <b>throughout</b> <sup>[2]</sup> - 11390:18, 11427:10 <b>thrust</b> <sup>[1]</sup> - 11501:13 <b>ticketed</b> <sup>[3]</sup> - 11478:20, 11478:25, 11488:19 <b>tickets</b> <sup>[1]</sup> - 11478:21 <b>tie</b> <sup>[1]</sup> - 11504:2 <b>tight</b> <sup>[1]</sup> - 11408:13 <b>timeline</b> <sup>[2]</sup> - 11434:6, 11438:9 <b>timing</b> <sup>[2]</sup> - 11451:14, 11452:12	<b>Timothy</b> <sup>[1]</sup> - 11379:17 <b>TIMOTHY</b> <sup>[2]</sup> - 11378:9, 11512:1 <b>today</b> <sup>[6]</sup> - 11427:24, 11498:5, 11499:24, 11502:14, 11502:25 <b>together</b> <sup>[4]</sup> - 11472:1, 11472:4, 11476:4, 11481:4 <b>took</b> <sup>[6]</sup> - 11402:13, 11402:14, 11424:13, 11437:23, 11441:16, 11477:5 <b>tool</b> <sup>[2]</sup> - 11396:3, 11397:19 <b>tools</b> <sup>[1]</sup> - 11413:11 <b>top</b> <sup>[14]</sup> - 11427:9, 11431:13, 11431:15, 11451:21, 11456:16, 11456:19, 11465:24, 11480:13, 11480:15, 11482:18, 11483:8, 11489:23, 11501:15, 11501:18 <b>topics</b> <sup>[1]</sup> - 11442:1 <b>torn</b> <sup>[2]</sup> - 11405:16, 11503:11 <b>total</b> <sup>[14]</sup> - 11408:11, 11408:12, 11410:7, 11434:8, 11460:1, 11467:24, 11469:13, 11470:9, 11471:4, 11472:4, 11476:2, 11480:9, 11483:2, 11484:6 <b>Total</b> <sup>[2]</sup> - 11465:24, 11465:25 <b>touch</b> <sup>[1]</sup> - 11382:17 <b>touchscreen</b> <sup>[1]</sup> - 11421:2 <b>toward</b> <sup>[2]</sup> - 11401:25, 11432:9 <b>towards</b> <sup>[2]</sup> - 11393:12, 11400:9 <b>tracking</b> <sup>[1]</sup> - 11431:15 <b>trades</b> <sup>[2]</sup> - 11417:5, 11424:23 <b>trades-men</b> <sup>[1]</sup> - 11424:23 <b>trafficked</b> <sup>[1]</sup> - 11474:23 <b>trained</b> <sup>[2]</sup> - 11387:25, 11407:2 <b>TRANSCRIPT</b> <sup>[1]</sup> - 11378:8 <b>transcript</b> <sup>[7]</sup> - 11379:21, 11400:6, 11401:14, 11401:15,
--	---	---	--	--

<p>11401:16, 11512:3, 11512:4 <b>transcription</b> [1] - 11379:21 <b>trash</b> [2] - 11426:8, 11426:14 <b>traumatic</b> [1] - 11403:4 <b>treat</b> [2] - 11436:5, 11436:7 <b>trespassory</b> [2] - 11394:18, 11402:20 <b>triage</b> [1] - 11433:15 <b>trial</b> [4] - 11386:21, 11390:18, 11415:9, 11415:11 <b>TRIAL</b> [1] - 11378:8 <b>true</b> [4] - 11422:10, 11502:1, 11512:2, 11512:3 <b>try</b> [3] - 11396:20, 11396:21, 11437:6 <b>trying</b> [6] - 11397:15, 11401:8, 11410:19, 11410:23, 11467:12, 11490:23 <b>turn</b> [1] - 11465:20 <b>turned</b> [2] - 11412:25, 11413:2 <b>turning</b> [1] - 11391:23 <b>turns</b> [1] - 11413:6 <b>TV</b> [1] - 11438:18 <b>twice</b> [3] - 11510:14, 11510:24, 11511:15 <b>two</b> [37] - 11382:21, 11385:12, 11386:17, 11388:10, 11390:1, 11395:21, 11397:11, 11397:12, 11402:22, 11408:10, 11409:5, 11409:22, 11421:19, 11432:5, 11432:10, 11433:12, 11435:11, 11442:18, 11450:15, 11452:21, 11455:7, 11466:18, 11466:20, 11467:4, 11467:12, 11467:15, 11467:18, 11468:22, 11476:11, 11476:13, 11478:25, 11479:6, 11479:11, 11482:7, 11483:17, 11485:16 <b>two-line</b> [1] - 11483:17 <b>two-page</b> [1] - 11455:7 <b>two-second</b> [1] - 11432:5 <b>two-week</b> [1] -</p>	<p>11450:15 <b>twofold</b> [1] - 11488:14 <b>type</b> [5] - 11382:9, 11384:22, 11407:3, 11479:2, 11480:24 <b>types</b> [2] - 11402:19, 11498:12 <b>typically</b> [1] - 11425:24</p> <p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> [3] - 11378:14, 11379:18, 11504:21 <b>ultimately</b> [8] - 11393:3, 11409:20, 11425:4, 11451:12, 11454:3, 11470:13, 11487:15, 11490:9 <b>unable</b> [1] - 11392:25 <b>under</b> [12] - 11395:14, 11396:3, 11397:18, 11406:14, 11411:18, 11412:16, 11443:25, 11451:19, 11452:22, 11453:4, 11457:23, 11507:24 <b>understood</b> [1] - 11451:8 <b>undertake</b> [1] - 11463:10 <b>unduly</b> [1] - 11398:10 <b>unfair</b> [2] - 11386:16, 11470:15 <b>unfairly</b> [1] - 11466:11 <b>unfathomable</b> [1] - 11407:4 <b>unfortunately</b> [6] - 11431:10, 11449:12, 11480:20, 11486:18, 11498:9, 11498:13 <b>UNITED</b> [3] - 11378:1, 11378:2, 11378:10 <b>United</b> [21] - 11378:12, 11381:3, 11415:16, 11416:11, 11416:19, 11419:5, 11419:12, 11423:22, 11427:8, 11430:24, 11431:20, 11439:23, 11445:12, 11452:1, 11452:25, 11459:18, 11483:20, 11505:16, 11507:14, 11507:25, 11512:7 <b>unless</b> [1] - 11410:18 <b>unlimited</b> [1] - 11454:17 <b>unnecessary</b> [1] - 11443:10</p>	<p><b>unpack</b> [1] - 11438:12 <b>unredacted</b> [2] - 11412:7, 11412:19 <b>unsaid</b> [1] - 11404:13 <b>up</b> [72] - 11385:19, 11388:10, 11390:1, 11391:10, 11392:4, 11392:24, 11393:12, 11396:10, 11396:20, 11396:21, 11397:22, 11405:3, 11413:19, 11413:25, 11416:16, 11420:6, 11421:4, 11424:17, 11424:22, 11425:21, 11427:13, 11429:11, 11435:5, 11439:12, 11445:22, 11446:9, 11447:20, 11447:25, 11448:2, 11455:6, 11455:9, 11461:19, 11461:24, 11462:10, 11462:21, 11463:3, 11463:8, 11465:2, 11465:8, 11465:23, 11467:3, 11467:5, 11467:12, 11467:23, 11468:1, 11469:13, 11469:20, 11469:21, 11470:18, 11474:1, 11477:19, 11477:22, 11478:3, 11478:8, 11478:10, 11479:11, 11479:13, 11481:14, 11485:22, 11487:8, 11487:10, 11489:5, 11491:1, 11492:19, 11494:9, 11494:12, 11495:12, 11500:20, 11502:13, 11506:25, 11511:8 <b>upcoming</b> [1] - 11420:12 <b>upper</b> [16] - 11386:10, 11387:19, 11388:3, 11388:8, 11388:10, 11389:25, 11390:7, 11390:15, 11390:22, 11391:7, 11391:11, 11393:4, 11393:23, 11400:15, 11447:5 <b>urgency</b> [1] - 11433:15 <b>urgent</b> [1] - 11434:1 <b>usable</b> [2] - 11485:12, 11491:20</p> <p style="text-align: center;"><b>V</b></p> <p><b>valuable</b> [1] - 11469:1 <b>value</b> [8] - 11395:6,</p>	<p>11419:20, 11442:14, 11461:20, 11461:25, 11462:14, 11462:21, 11462:25 <b>various</b> [2] - 11409:7, 11490:14 <b>vast</b> [2] - 11386:25, 11485:6 <b>vehicle</b> [1] - 11461:7 <b>vendor</b> [11] - 11411:24, 11412:17, 11454:4, 11454:6, 11454:9, 11455:21, 11457:16, 11457:17, 11459:1, 11477:12 <b>vendor's</b> [1] - 11411:17 <b>vendors</b> [3] - 11450:16, 11454:9, 11457:16 <b>venue</b> [1] - 11478:23 <b>vertical</b> [5] - 11480:12, 11480:17, 11490:11, 11501:16, 11501:17 <b>video</b> [36] - 11385:20, 11386:5, 11386:6, 11389:10, 11389:17, 11390:11, 11390:12, 11393:8, 11393:10, 11394:19, 11394:22, 11395:3, 11395:17, 11403:1, 11406:7, 11406:14, 11407:1, 11428:13, 11428:16, 11429:16, 11430:15, 11433:9, 11437:16, 11442:16, 11442:23, 11443:1, 11443:16, 11443:23, 11444:7, 11447:10, 11450:10, 11455:23, 11458:10, 11459:23, 11467:13 <b>Video</b> [14] - 11428:3, 11428:24, 11429:17, 11429:20, 11430:16, 11431:24, 11432:2, 11432:11, 11437:17, 11437:20, 11441:21, 11447:11, 11477:24, 11501:1 <b>videos</b> [7] - 11398:17, 11398:19, 11399:5, 11427:22, 11427:23, 11438:8, 11452:15 <b>view</b> [6] - 11390:16, 11397:16, 11404:16, 11404:20, 11404:25, 11431:20 <b>viewed</b> [1] - 11502:4 <b>violation</b> [3] -</p>	<p>11411:18, 11411:25, 11412:22 <b>violence</b> [1] - 11395:25 <b>violent</b> [4] - 11386:13, 11387:23, 11396:24, 11398:11 <b>violently</b> [1] - 11400:24 <b>Virginia</b> [1] - 11425:13 <b>virtually</b> [2] - 11422:18, 11423:17 <b>vis-à-vis</b> [1] - 11391:18 <b>visible</b> [2] - 11457:8, 11478:11 <b>visit</b> [1] - 11426:5 <b>Visitor</b> [2] - 11416:12, 11417:16 <b>visitors</b> [3] - 11440:2, 11488:15, 11488:16 <b>visual</b> [1] - 11478:24 <b>volume</b> [1] - 11389:11 <b>vote</b> [1] - 11488:21</p> <p style="text-align: center;"><b>W</b></p> <p><b>Wage</b> [1] - 11475:2 <b>wage</b> [1] - 11475:18 <b>wait</b> [2] - 11442:10, 11448:23 <b>waive</b> [1] - 11384:8 <b>walk</b> [7] - 11418:18, 11424:12, 11451:3, 11455:6, 11456:17, 11464:17, 11479:4 <b>walking</b> [1] - 11431:14 <b>wall</b> [1] - 11392:25 <b>walls</b> [1] - 11441:8 <b>warehouse</b> [2] - 11439:14, 11486:5 <b>warranted</b> [1] - 11462:2 <b>Washington</b> [7] - 11378:5, 11378:15, 11378:25, 11379:19, 11431:18, 11483:21, 11512:8 <b>watch</b> [1] - 11389:16 <b>watched</b> [1] - 11398:16 <b>ways</b> [1] - 11413:8 <b>weak</b> [1] - 11384:20 <b>Wednesday</b> [1] - 11378:6 <b>week</b> [2] - 11450:15, 11479:11 <b>weeks</b> [5] - 11420:6, 11452:21, 11479:6, 11485:17</p>
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**weird** <sup>[1]</sup> - 11405:20  
**welcome** <sup>[3]</sup> -  
 11414:21, 11428:8,  
 11445:19  
**West** <sup>[1]</sup> - 11379:9  
**west** <sup>[27]</sup> - 11386:10,  
 11387:10, 11387:19,  
 11388:3, 11388:8,  
 11388:11, 11389:25,  
 11390:7, 11390:15,  
 11390:22, 11391:7,  
 11391:11, 11393:4,  
 11393:23, 11400:15,  
 11420:25, 11429:4,  
 11430:24, 11432:7,  
 11438:16, 11446:5,  
 11452:16, 11478:9,  
 11480:7, 11483:2,  
 11483:20, 11511:4  
**wet** <sup>[2]</sup> - 11431:14,  
 11441:5  
**WG** <sup>[1]</sup> - 11475:2  
**whatnot** <sup>[1]</sup> -  
 11405:18  
**whichever** <sup>[1]</sup> -  
 11416:3  
**white** <sup>[2]</sup> - 11429:6,  
 11429:10  
**whole** <sup>[10]</sup> - 11385:8,  
 11386:1, 11426:9,  
 11451:16, 11463:10,  
 11465:8, 11483:4,  
 11483:6, 11491:19,  
 11503:10  
**widely** <sup>[1]</sup> - 11404:14  
**wildest** <sup>[1]</sup> - 11397:19  
**willy** <sup>[1]</sup> - 11453:20  
**willy-nilly** <sup>[1]</sup> -  
 11453:20  
**window** <sup>[28]</sup> -  
 11396:14, 11396:23,  
 11411:14, 11434:3,  
 11434:24, 11442:23,  
 11444:6, 11446:1,  
 11446:2, 11447:1,  
 11447:2, 11447:16,  
 11447:18, 11448:7,  
 11459:19, 11462:5,  
 11466:13, 11466:19,  
 11466:21, 11466:23,  
 11466:24, 11466:25,  
 11467:1, 11467:5,  
 11472:22, 11473:2,  
 11477:2  
**windows** <sup>[29]</sup> -  
 11424:10, 11427:1,  
 11427:9, 11439:21,  
 11440:8, 11440:19,  
 11441:17, 11442:18,  
 11442:20, 11443:17,

11443:18, 11444:14,  
 11447:25, 11448:21,  
 11449:11, 11449:13,  
 11454:3, 11455:21,  
 11457:9, 11459:22,  
 11459:24, 11460:21,  
 11466:18, 11466:20,  
 11476:24, 11477:12,  
 11487:11  
**wing** <sup>[5]</sup> - 11391:19,  
 11446:20, 11446:25,  
 11466:20  
**winter** <sup>[3]</sup> - 11440:22,  
 11440:23, 11441:13  
**withdrawn** <sup>[1]</sup> -  
 11454:1  
**WITNESS** <sup>[5]</sup> -  
 11380:2, 11415:17,  
 11419:1, 11492:13,  
 11498:19  
**Witness** <sup>[1]</sup> - 11510:4  
**witness** <sup>[48]</sup> -  
 11385:24, 11393:22,  
 11394:11, 11400:10,  
 11402:2, 11407:18,  
 11408:1, 11408:15,  
 11409:15, 11409:20,  
 11409:23, 11409:25,  
 11410:4, 11410:10,  
 11412:4, 11412:16,  
 11413:10, 11413:13,  
 11413:14, 11414:2,  
 11414:5, 11414:11,  
 11414:24, 11415:7,  
 11415:12, 11415:14,  
 11420:17, 11427:19,  
 11433:25, 11435:22,  
 11442:9, 11443:3,  
 11443:5, 11443:16,  
 11444:13, 11444:18,  
 11445:2, 11445:17,  
 11455:3, 11461:20,  
 11462:7, 11462:24,  
 11467:16, 11468:9,  
 11478:15, 11510:8  
**witness's** <sup>[3]</sup> -  
 11408:17, 11410:25,  
 11433:13  
**witness-by-witness**  
<sup>[1]</sup> - 11445:2  
**witnessed** <sup>[1]</sup> -  
 11491:8  
**witnesses** <sup>[1]</sup> -  
 11415:1  
**witnesses'** <sup>[2]</sup> -  
 11415:5, 11415:6  
**women** <sup>[2]</sup> - 11424:23,  
 11507:12  
**wonder** <sup>[2]</sup> -  
 11388:21, 11394:19

**wondering** <sup>[1]</sup> -  
 11395:15  
**wooden** <sup>[1]</sup> - 11431:1  
**word** <sup>[1]</sup> - 11450:1  
**words** <sup>[5]</sup> - 11383:7,  
 11385:23, 11389:20,  
 11394:6, 11403:7  
**workers** <sup>[2]</sup> -  
 11474:11, 11474:12  
**works** <sup>[4]</sup> - 11410:5,  
 11441:2, 11488:7,  
 11499:14  
**worth** <sup>[1]</sup> - 11389:20  
**written** <sup>[1]</sup> - 11384:3

## Y

**year** <sup>[6]</sup> - 11419:18,  
 11421:10, 11421:13,  
 11421:23, 11505:19,  
 11508:9  
**year-and-a-half** <sup>[1]</sup> -  
 11421:23  
**years** <sup>[19]</sup> - 11395:21,  
 11417:20, 11418:15,  
 11420:15, 11420:23,  
 11421:1, 11421:4,  
 11421:5, 11426:8,  
 11459:19, 11485:16,  
 11487:2, 11504:18,  
 11504:19, 11504:20,  
 11505:2, 11505:4,  
 11508:8, 11511:8  
**yelling** <sup>[1]</sup> - 11389:10  
**yesterday** <sup>[5]</sup> -  
 11383:25, 11384:1,  
 11384:13, 11384:25,  
 11385:13  
**York** <sup>[2]</sup> - 11378:18,  
 11379:13  
**yourself** <sup>[2]</sup> -  
 11415:22, 11491:9

## Z

**Zachary** <sup>[1]</sup> - 11381:4  
**zero** <sup>[1]</sup> - 11473:10  
**zoom** <sup>[2]</sup> - 11456:18,  
 11483:8