

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America, )  
)  
Plaintiff, ) Criminal Action  
) No. 21-cr-175  
vs. )  
) JURY TRIAL  
Ethan Nordean, ) Day 43  
Joseph R. Biggs, )  
Zachary Rehl, ) Washington, DC  
Enrique Tarrio, ) March 7, 2023  
Dominic J. Pezzola, ) Time: 1:45 p.m.  
)  
Defendants. )

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

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

THE COURTROOM DEPUTY: We are back on the record in criminal record 21-75, United States of America versus Ethan Nordean, et al.

THE COURT: All right. Good afternoon. I hear the door was locked or something, so it delayed some of you from coming back into the courtroom. So, sorry for that.

Is there anything we need to discuss now?

MR. JAUREGUI: Thank you, Your Honor. Good afternoon Jauregui for Tarrio.

Judge, I was discussing with the government -- I want to thank Mr. McCullough for helping us -- we were having trouble finding the phone call, that 42-second phone call for his Exhibit 653 that I had objected to earlier, if Your Honor recalls the phone call logs.

What's at issue is a 42-second phone call, allegedly from Biggs to my client, and we couldn't find it in the original call-out report, the one that was, I guess, introduced through Mr. Bertino, if Your Honor recalls. It ended up being the government helped us find that phone call in another report from AT&T that's called an AU report, and then we've been searching that phone call throughout lunch.

Apparently, that AU report is different than a regular landline report, and is actually a lot less reliable than the other report. And when you look at the AT&T, their

1 own report, their own key, it says: A call may show up on one  
2 or more reports; however, AT&T has no ability to definitively  
3 state or correlate calls as being the same transaction. You  
4 may infer any conclusions based on your own analysis of the  
5 records.

6 So, Judge, it's going to be our position that this  
7 other report is not as reliable, based on the research that  
8 we've done, as other reports generated by AT&T. Since it's not  
9 reliable and the government has not called an expert to testify  
10 on telephonic records and whether or not this phone call  
11 actually happened, this agent is not qualified to testify to  
12 that fact. They've only introduced it, a different report,  
13 through Bertino.

14 We would argue that this exhibit should not come into  
15 evidence. It's unreliable, they have not laid the foundation  
16 and do not have a expert to testify as to whether this  
17 42-second phone call even happened to begin with. So, again,  
18 we renew our objection now, on this ground, to 653.

19 THE COURT: All right. This one, I guess, we haven't  
20 gotten to yet with the witness.

21 MR. JAUREGUI: No, Your Honor.

22 THE COURT: Okay.

23 MR. JAUREGUI: But it's coming.

24 THE COURT: Right. Okay.

25 What's the government's response to all of that

1 collectively?

2 MR. KENERSON: So I know that Mr. McCullough was  
3 speaking to Mr. Jauregui at one point. And I apologize if I  
4 speak -- I'm trying to run something down about these records  
5 on my end at the same time. But, my -- first, just so that the  
6 record is clear, the source of Exhibit 653 -- Exhibit 653-1,  
7 which is the PDF with those calls singled out, is the report --  
8 AU report. It's the same one that was introduced through  
9 Mr. Bertino, so we're not talking about a separate report from  
10 one that's already in evidence. That's number one.

11 Number two, according to the AT&T record key, report  
12 AU is calls that traverse the mobility network. Report  
13 landline is calls that traverse the wireline and Voice over  
14 Internet Protocol network. And what Mr. Jauregui was referring  
15 to is what AT&T -- again, AT&T's language in their records key:  
16 No ability to definitively state or correlate calls as being  
17 the same transaction.

18 THE COURT: What does that mean?

19 MR. KENERSON: I'm -- I have a way of reading it, but  
20 one thing it does not say is that there's records in our --  
21 records that don't exist. And, the record of a call from  
22 Enrique -- or, from Joe Biggs to Enrique Tarrio lasting 42  
23 seconds is within the report AU which, according to AT&T, is  
24 for calls that traverse the mobility network.

25 THE COURT: Can you just read to me what exactly it

1 says -- the language that Mr. Jauregui pointed out.

2 MR. KENERSON: "A call may show up in one or more  
3 reports; however, AT&T has no ability to definitively state or  
4 correlate calls as being the same transactions."

5 So, again, the way I read that is that sometimes the  
6 same call will show up in multiple reports. They can't say for  
7 sure it's the same call, even if it appears to be at the same  
8 time in two different reports. But what they certainly do not  
9 say is: There are phantom calls that show up in our records,  
10 which is, I think, is what they're trying to say this is.

11 MR. JAUREGUI: The problem is that it can show up in  
12 one report, and not in the other. Just because one says  
13 "landline" doesn't mean that wireless calls do not come out  
14 through there. It's wireless and VoIP, so it's Voice over  
15 Internet Protocol. It registers both mobile phones and  
16 landlines.

17 That type of report, just based on the basic research  
18 we did over lunch, is more reliable than this AU report, which  
19 only logs mobile phone calls through their towers. It also  
20 pings as to the cell towers with their GPS locations, and we're  
21 tracking down now the towers.

22 THE COURT: Well, saying something is "more reliable"  
23 is sort of, like, more reliable as to what? I mean, I don't  
24 take that language to say, from an -- from -- I don't take the  
25 language that we're talking about to say sometimes we have

1 phone calls on your bill here or statement or whatever it is on  
2 these reports, and that report -- and that phone call didn't --  
3 it didn't exist, right? I mean --

4 MR. JAUREGUI: Well, Judge, the problem is that AT&T  
5 is basically saying: You may infer your conclusion based on  
6 your own analysis. They're basically saying: Look, we can't  
7 certify this as being valid. You got to conduct your own  
8 analysis to determine whether or not the phone call even  
9 happened.

10 Now, the only way --

11 THE COURT: Well, no. No. No. I think you're  
12 taking -- and I understand why you're arguing this, but I think  
13 you're talking it too far, right?

14 MR. JAUREGUI: Judge, I'm only using the words from  
15 AT&T. I'm reading it verbatim: You may infer any conclusions  
16 based on your own analysis.

17 The government introduced this through a business  
18 records exception. Okay? Basically saying that the records  
19 are valid and reliable. AT&T is telling Your Honor: Our  
20 records are not valid and reliable. That's what they're  
21 saying: You have to draw your own conclusions and your own  
22 analysis.

23 So the proper way is for them to bring a telephonic  
24 expert, a cellular networks expert, to say: I have analyzed  
25 the records, I've determined, based on X, Y, and Z that this

1 phone call actually happened, that it's actually reliable. And  
2 based on my expert analysis, we can infer that the phone call  
3 happened.

4 Absent that --

5 THE COURT: I don't think what -- I don't think that  
6 language calls into question that a phone call happened from  
7 point A to point B. The language says: We cannot -- I'm  
8 sorry. If somebody can repeat it -- but it sounds like it's  
9 talking about whether call A, on one report, is the same call  
10 as on another report. It's saying: We can't tell you the  
11 correlation between those two things. You may have to do your  
12 own analysis.

13 But looking at one report, it doesn't call into  
14 question that a call -- that a 42-second call happened at a  
15 given time, does it?

16 MR. JAUREGUI: Judge, what's worrying is, is that it  
17 exists on one report and it doesn't exist on the other report.  
18 Especially with the wide-ranging reports that on January 6, the  
19 cell phone weren't working correctly. The mobile networks  
20 weren't working. People were not connecting. The systems were  
21 down; not only the phones, but the internet.

22 So I'm beginning to think that this is some kind of  
23 glitch in the system that it created a phone call that doesn't  
24 exist. There's no proof that the actual conversation happened,  
25 or if it was just connecting through the internet, through the



1 mobile network, and it actually never rang on one of these  
2 phones.

3 So, since it's on one report and not the other, I  
4 think it's very concerning, I think it's unreliable. And  
5 absent some kind of expert testimony, it shouldn't come in  
6 because it's the basis of the entire exhibit.

7 THE COURT: I mean, I think it comes -- I mean, it's  
8 still a business record and, so, I think I can admit it. And  
9 whatever that language means, you can cross her about. And if  
10 there's some -- and if between now and whenever you put on your  
11 case, you do find: Oh, actually, no, Judge, it does mean maybe  
12 the call didn't happen -- you can put that on in your case.

13 I think that's, like, an over reading of that  
14 language, which does call into question some things, but it  
15 doesn't, as I read it, call into question that a call happened  
16 at that time. But, again, you can cross-examine her with what  
17 you have, and in your own case -- I mean, I know you're just  
18 researching it now -- if you find out that actually it is as  
19 dramatic as you say, then you can, you know, do what you need  
20 to do in your case.

21 But I think for the moment, I'm going to let it in,  
22 and you can cross on it.

23 MR. JAUREGUI: Please note our objection. Thank you  
24 Your Honor.

25 THE COURT: All right. Very well.

1 MR. SMITH: Your Honor, the Court is familiar with  
2 the headphones that are sometimes provided to the parties. The  
3 court reporter is wearing a set right now, where she can hear  
4 the audiovisual through the Court's audio system. For --  
5 before cross-examination starts, we would like to have the  
6 jury -- make sure the jury has headsets for the audio because  
7 there's some very subtle and faint audio that we need to play  
8 for them.

9 THE COURT: We don't have enough. We don't have  
10 close to enough.

11 MR. SMITH: So, Your Honor, I don't know in this  
12 court, but I know that in, at least, across the Potomac in  
13 federal court, we can make a request so that the jury can have  
14 headphones for certain types of audio. So we would -- before  
15 cross-examination starts. This is -- it raises to the level of  
16 a constitutional issue. We need to have the jury listening to  
17 audio.

18 THE COURT: I can tell you, we can't make  
19 them occur -- we can make the request. We've -- we are at the  
20 limit right now. You all, I think this court and the other  
21 courts in our courthouse are at the phone limit right now.  
22 And, so, taking from your -- taking -- I mean, I can't --

23 MR. SMITH: We would then put the request in with the  
24 court overall, or the administration, to have access to  
25 earphones for the jury for some of the audio.

1 THE COURT: Well, look, Ms. -- I think Ms. Harris is,  
2 right now, I suspect -- no, she's not.

3 THE COURTROOM DEPUTY: I am.

4 THE COURT: We can make the request.

5 THE COURTROOM DEPUTY: This is John.

6 THE COURT: She is. She is at least attempting to  
7 make the request.

8 But I can tell you, we are at -- this courthouse is  
9 at its limits of phones -- of headphones. We can see what we  
10 can do, but I can't -- I mean, on basically -- you know, 18  
11 hours notice, I don't know what I can tell you.

12 MR. SMITH: Your Honor, then we would probably  
13 request permission to buy them. And, you know, even if it's  
14 not through a CJA voucher, just an opportunity, meaning time,  
15 an afternoon, to buy them.

16 THE COURT: This is something, I got to say, I can't  
17 believe we're talking about it now.

18 How long -- how much longer does the government  
19 anticipate direct?

20 MR. KENERSON: So, yeah. I expect that we will go  
21 through the day. So --

22 THE COURT: All right. Let's -- let's --

23 Ms. Harris, we'll see what we can find out between  
24 now and the end of the day with John, and we can take it up at  
25 the end of the day. And if we need to give you a little time

1 in the morning to do that, we can.

2 MR. SMITH: We could do it after court today with the  
3 courtroom technologist. If he can let us know how to get the  
4 wireless set up so we purchase linked onto the system, then we  
5 could do it before tomorrow.

6 THE COURT: All right. Let's -- Ms. Harris, if at  
7 a -- let's put it this way: Is John around today?

8 THE COURTROOM DEPUTY: Yes, he is. But he said it  
9 can't be done. He just called me, because he can hear what's  
10 going on.

11 THE COURT: Okay.

12 THE COURTROOM DEPUTY: He's in the overflow. And  
13 he's confirmed for me that it can't be done.

14 THE COURT: He confirmed to you that it cannot be --  
15 that we do not have any?

16 THE COURTROOM DEPUTY: That it can't be connected to  
17 be done. We don't have it. He said it can't be done. We  
18 cannot do what they do over at EDVA. Said it can't be done.  
19 He heard the whole conversation.

20 THE COURT: Meaning, the Court doesn't have that  
21 ability. The question is, if defendants were to purchase  
22 something, can that -- is there technology available that can  
23 be done?

24 THE COURTROOM DEPUTY: I'll ask him that.

25 THE COURT: Right. So at the break -- let's see if

1 we can make him available at our afternoon break to speak with  
2 defense counsel, and we can get to the bottom of that.

3 MR. SMITH: Your Honor, there is -- I can just say  
4 that with Bluetooth technology, if we use -- if the defense  
5 were to use the speaker other than the -- kind of the  
6 old-fashioned one that's sitting on the government's table  
7 right there, we can just have a set of earphones that connect  
8 to -- by Bluetooth to the defense speaker we put on the  
9 lectern.

10 THE COURT: Then the question becomes: But we all  
11 have to be able to hear it.

12 MR. SMITH: So it would have to be played -- in other  
13 words, it would be played in the courtroom, on the speakers,  
14 simultaneous -- with a speaker sitting there, so that people in  
15 the courtroom can hear it, but then, also, there's a Bluetooth  
16 connection.

17 THE COURT: I mean -- all right.

18 Mr. Kenerson?

19 MR. KENERSON: So, I think, just two points on that.  
20 One is if it really is so subtle it has to be heard with  
21 earphones, I think that all the parties, including the witness,  
22 the Court, and the government, need earphones.

23 THE COURT: Right.

24 MR. KENERSON: And then, second is if it's so subtle  
25 it could only be heard with earphones, I think we would request

1 of proffer of which video and what time or times we're talking  
2 about ahead of time.

3 THE COURT: Well, look, let's forge ahead with the  
4 witness, and at the break we can have -- hopefully we'll have  
5 John here to be able to answer -- all right. So, hopefully at  
6 the break we'll have John to at least answer some of the  
7 technical questions, and then we'll go from there.

8 All right. If there's nothing further, let's bring  
9 the witness back. And the jury, please. We need them.

10 And just for counsel's planning, 5 o'clock is our end  
11 point today.

12 (Whereupon the jurors enter the courtroom.)

13 THE COURT: Everyone may be seated.

14 Mr. Kenerson, you may proceed.

15 MR. KENERSON: Thank you.

16 DIRECT EXAMINATION (Cont.)

17 BY MR. KENERSON:

18 Q. Good afternoon, Ms. Miller.

19 A. Good afternoon.

20 Q. When we left, some of these defendants were walking up  
21 after crossing the barriers at the Peace Circle, correct?

22 A. Correct.

23 Q. You see the map behind you --

24 A. I do.

25 Q. -- labeled Government's 105?

1 MR. KENERSON: I ask Special Agent be able to use  
2 that as demonstrative during her testimony.

3 THE COURT: All right. She shall be so permitted.

4 BY MR. KENERSON:

5 Q. Can you show us, using some of the magnets on there, where  
6 the defendants wound up?

7 A. This is after the first breach?

8 Q. Yes.

9 A. So, yellow is going to correlate with Rehl. Red is going  
10 to correlate with Nordean, blue is going to correlate with  
11 Biggs, and green is going to correlate with Pezzola. After the  
12 first breach, they're all in the pedestrian walkway still  
13 moving forward.

14 Q. Thank you.

15 And, did you review any other videos showing, kind of,  
16 the progress of the crowd up that walkway?

17 A. Yes.

18 MR. KENERSON: May we have 447-A, please, which I  
19 believe the Court admitted this morning.

20 And to the extent it was provisionally admitted -- I  
21 can't remember which one -- wherever this fell in, I would ask  
22 for permission to publish.

23 THE COURT: All right. Without objection, permission  
24 to publish will be granted.

25 BY MR. KENERSON:

1 Q. Ms. Rohde, if we could just play this to 25 seconds.

2 (Video played.)

3 If we could pause right here.

4 The same breach we saw, but from another angle?

5 A. It is.

6 Q. All right. Can we keep playing to 48 seconds, please.

7 (Video played.)

8 If we can pause right here.

9 What is that that's down on the walkway right there  
10 (indicating)?

11 A. That's a barrier.

12 Q. And are there some other barricades that are still upright  
13 now?

14 A. There are.

15 Q. All right. If we could play now until a minute, 10,  
16 please.

17 (Video played.)

18 Pause right here, please.

19 And for the record, this is at a minute, 10.

20 Do you recognize this person here who I've circled  
21 (indicating)?

22 A. It's Pepe.

23 Q. What about this person with the sunglasses and the  
24 backwards cap?

25 A. Dominic Pezzola.



1 Q. (Circling image.)

2 A. Marching Group.

3 Q. (Circling image.)

4 A. Marching Group.

5 Q. (Circling image.)

6 A. Marching Group.

7 Q. Thank you.

8 And for the record, that's three people: One in front  
9 of Mr. Pezzola with a yellow bandana over his head, one in a  
10 tan coat behind to the left as we look, and one -- excuse me,  
11 behind the person in the tan coat. You just circled someone in  
12 green.

13 Who is that?

14 A. Those two are also Marching Group.

15 Q. Thank you.

16 (Video played.)

17 If we could pause again.

18 This person right here (indicating)?

19 A. Marching Group.

20 Q. Right there (indicating)?

21 A. Marching Group.

22 Q. Play again, please.

23 (Video played.)

24 Pause right here.

25 Who is that (indicating)?

1 A. Pepe.

2 Q. What does he have in his hand?

3 A. Radio.

4 Q. What about his other hand?

5 A. Fence.

6 Q. Play again, please.

7 (Video played.)

8 Pause right here, please -- oh, back up just a sec.

9 Paused at 1:38.

10 Who is over here on the left of the screen (indicating)?

11 A. Dominic Pezzola.

12 Q. Play again, please.

13 (Video played.)

14 Pause. And go back just one beat.

15 Person here to the right, do you recognize him  
16 (indicating)?

17 A. I do.

18 Q. Who is that?

19 A. Paul Rae, Marching Group.

20 Q. Have we seen him earlier in your testimony today?

21 A. We have.

22 Q. Play again, please.

23 (Video played.)

24 Pause one more time.

25 With the glasses right there (indicating)?

1 A. Dominic Pezzola.

2 Q. All right. We can take that down.

3 Can we go to Exhibit 445-D as in David, please.

4 (Video played.)

5 Do you recognize this scene here (indicating)?

6 A. I do.

7 Q. How does it compare to the scene that we just saw?

8 A. It's the same area. Same timeframe.

9 Q. Can we play, please.

10 (Video played.)

11 Can we -- I'm sorry. Keep playing for another few  
12 seconds.

13 (Video played.)

14 Can we pause here.

15 Right there (indicating)?

16 A. Dominic Pezzola.

17 Q. And can we let it play for just another second, please.

18 (Video played.)

19 Pause right there. Back up just a --

20 What I've circled right there (indicating)?

21 A. Zach Rehl.

22 Q. All right. Ms. Rohde, I'm going to ask you to play in just  
23 a second.

24 Special Agent Miller, I'm going to ask you to keep your  
25 ears open for the next few seconds.

1 (Video played.)

2 Pause it.

3 Did you just hear some words being said?

4 A. I did.

5 Q. What were those words?

6 A. Sounded like: Proud Boys over here.

7 Q. Are you able to definitively say who said that?

8 A. I am not.

9 Q. Can we have 437-B, as in boy, please.

10 (Video played.)

11 And can you tell us -- just, again, as a general  
12 matter -- what area we're in right now?

13 A. Same area we just were. Same timeframe.

14 Q. Can we play, please.

15 (Video played.)

16 Pause right here.

17 Did we just see someone say something into the camera?

18 A. We did. That is Pepe.

19 Q. What did he say?

20 A. "Let's go. This is what we came for."

21 Q. And are you familiar with the chat group Boots on Ground?

22 A. Yes.

23 Q. Was Mr. Pepe in that group?

24 A. He was.

25 Q. Go ahead.

1 (Video played.)

2 And can we also have, Ms. Rohde, now, 421-B, as in boy.

3 (Video played.)

4 And can you orient us to, generally, what we're looking  
5 at here again (indicating)?

6 A. Same area. Same timeframe.

7 Q. And, Ms. Rohde, can we play until about 36 seconds.

8 (Video played.)

9 That person who we just saw turn away from the camera,  
10 who is that?

11 A. Dominic Pezzola.

12 Q. Thank you.

13 (Video played.)

14 Pause it right there, Ms. Rohde.

15 What did we just see Mr. Pepe do?

16 A. Cheer, raise his hand.

17 Q. And did you see this individual who just came in and  
18 jumped?

19 A. I did.

20 Q. Do you recognize him?

21 A. I do. That's Guarno, New York Proud Boy.

22 Q. Where have we seen him before today?

23 A. As Pezzola crossed the fence, he was right behind him.

24 Q. All right. Can we have, Ms. Rohde, I think 492-FX, if  
25 that's available. I think that's in evidence.

1           If we could go forward there just a few seconds. Just  
2 keep going. I'll tell you when to stop.

3           (Video played.)

4           Stop right here.

5           Are we looking at -- well, tell us, again, the area  
6 we're looking at.

7           A. Still looking at the same timeframe. Same area.

8           Q. And at 2 seconds, who have I circled in the camo hat?

9           A. Zachary Rehl.

10          Q. All right. If we keep going forward, Ms. Rohde.

11          (Video played.)

12          A little bit further than this.

13          (Video played.)

14          If we could just play it from here, starting at  
15 24 seconds.

16          (Video played.)

17          And pausing at 35 seconds.

18          There's a group of individuals highlighted. Who is at  
19 the front of that group?

20          A. Ethan Nordean.

21          Q. And who is behind him?

22          A. Travis Nugent.

23          Q. And this person I've circled over here in the red hoodie  
24 (indicating), who is that?

25          A. McDonald.

1 Q. What about there (indicating)?

2 A. Joseph Biggs.

3 Q. And for the record, that's the person in the black cap.

4 And what about there?

5 A. Gilbert Fonticoba.

6 Q. And how is this group of people interacting with each other  
7 right now?

8 A. They're all holding onto one another, like a stack  
9 formation.

10 Q. And which direction are they moving?

11 A. They're proceeding towards where the police officers are.

12 Q. All right.

13 Can we play it, please.

14 (Video played.)

15 Ms. Rohde, we can stop here, at 1:01.

16 Special Agent, if could move the magnets corresponding  
17 to what we've just seen.

18 A. (Complies.)

19 Q. Thank you.

20 Now, have you reviewed any messages from Ministry -- in  
21 the Ministry of Self-Defense Leaders chat from the timeframe  
22 that we've just been looking at?

23 A. I have.

24 Q. Can we go to Exhibit 1137, please, Ms. Rohde.

25 Do you recognize these messages (indicating)?

1 A. I do.

2 Q. What chat are they a part of?

3 A. They're part of the Leaders chat.

4 Q. All right. If we could play until 13 seconds, please.

5 (Video played.)

6 If we can pause right here.

7 Did you recognize the individual who was speaking in  
8 that video we just watched?

9 A. I did. That's Charles Donohoe.

10 Q. And what does Aaron Wolkind say in response?

11 A. "I should have quit my job and came."

12 Q. What time was the time that Mr. Wolkind sent that message?

13 A. 12:58 p.m.

14 Q. All right. Let's turn away from this chat for one moment.

15 And, Ms. Rohde, can we have 417-X -- I think at this  
16 point, just for the witness -- X as in x-ray?

17 MR. KENERSON: And I would seek permission to  
18 publish.

19 THE COURT: All right. Permission is granted.

20 BY MR. KENERSON:

21 Q. Can we play this, please.

22 (Video played.)

23 Pausing this at 13 seconds.

24 Who are the individuals highlighted right now  
25 (indicating)?



1 A. The one on the right is Joseph Biggs. The one on the left  
2 is Ethan Nordean.

3 Q. Thank you.

4 If we can play this again, to 24 seconds.

5 (Video played.)

6 Pause right here.

7 Do you see a person outlined right now (indicating)?

8 A. I do.

9 Q. Do you recognize that person?

10 A. I do.

11 Q. Who is that?

12 A. Zach Rehl.

13 Q. Play again.

14 (Video played.)

15 If we could pause right there.

16 What did we just see the person you identified as Zach  
17 Rehl doing?

18 A. He appears to be yelling in the direction of law  
19 enforcement.

20 MS. HERNANDEZ: Objection, Your Honor, as to "appears  
21 to be yelling."

22 THE COURT: Overruled.

23 BY MR. KENERSON:

24 Q. All right. Can we play again, please.

25 (Video played.)

1           If we could pause at 53 seconds.

2           Tell us, again, the individuals who are outlined.

3           A. The one in front is going to be Ethan Nordean in the black  
4           hat and the black jacket, and the one right behind him is  
5           Joseph Biggs.

6           Q. And you just mentioned Mr. Nordean's hat. Do you see  
7           anything on that hat?

8           A. I do.

9           Q. Which portion of the hat is that in?

10          A. It's going to be -- well, it's right here (indicating).

11          Q. And you have circled in green something in the bottom right  
12          of Mr. Nordean's hat, for the record.

13                 What color is that?

14          A. Yellow.

15          Q. Now, where is, in this photo -- or, this video, where it's  
16          stopped currently, at 51 seconds, where is Mr. Nordean relative  
17          to the rest of the crowd?

18          A. In front of them.

19          Q. Can we play, please.

20                 (Video played.)

21                 Ms. Rohde, can we have 445-BX, please.

22                 MR. KENERSON: And I think this one is already in,  
23                 but to the extent it's not, we can go just for the witness, and  
24                 I'd ask for permission to publish.

25                 THE COURT: All right. Permission is granted.

1 (Video played.)

2 And pausing at 19 seconds.

3 BY MR. KENERSON:

4 Q. Who is this person who is outlined (indicating)?

5 A. Ethan Nordean.

6 Q. What color is his jacket?

7 A. Black.

8 Q. Is he wearing gloves?

9 A. He is not.

10 Q. Does he have something in his hand?

11 A. He does.

12 Q. What is that?

13 A. It appears to be a beverage.

14 Q. And is that in his right hand or his left?

15 A. It's in his right hand.

16 Q. We can play again, please, to 32 seconds.

17 (Video played.)

18 Who is that who is now highlighted at 31 seconds  
19 (indicating)?

20 A. Joseph Biggs.

21 Q. Play again, please.

22 (Video played.)

23 Can we have 445-BY, please.

24 MR. KENERSON: And to the extent this has not been  
25 fully admitted, we ask permission to publish.

1 THE COURT: All right. Permission to publish  
2 granted.

3 BY MR. KENERSON:

4 Q. And just as we start here, this person I've circled, who is  
5 that (indicating)?

6 MS. HERNANDEZ: Your Honor, may be we heard?

7 (Bench discussion:)

8 MS. HERNANDEZ: Your Honor, this is classic overview  
9 summary testimony. We've seen this video of Mr. Nordean and  
10 Mr. Biggs at this -- at this gate I don't know how many times  
11 throughout I don't know how many different witnesses. The  
12 police officer -- a female police officer who was at the fence  
13 discussed it. Mr. Smith (sic) has, you know, shown this video  
14 multiple times. This is just summary overview testimony.

15 MR. SMITH: Nordean joins.

16 MS. HERNANDEZ: And I would move to strike and just  
17 cease this.

18 THE COURT: Mr. Kenerson?

19 MR. KENERSON: I think, Your Honor, as an initial  
20 matter -- I'm trying to remember. Obviously, the transcript  
21 will control -- I do not recall, certainly not with the  
22 government witness, these individuals having been identified as  
23 Mr. Biggs and Mr. Nordean. I think defense counsel may have  
24 referred to them as such on cross. I'm not disputing that.

25 But certainly I don't think we've brought it out on

1 direct yet, and I think we're entitled to, even if the video  
2 has been shown before, establish that the person that we  
3 contend is these people and are doing these things are who we  
4 say they are.

5 MS. HERNANDEZ: There was a female officer. I can't  
6 remember her name.

7 MR. JAUREGUI: Shae Cooney.

8 THE COURT: She did not identify any of the  
9 defendants, though.

10 MS. HERNANDEZ: Well, the outlines of Mr. Biggs and  
11 Mr. Nordean were on the tape, I believe. But in any event, she  
12 did -- she was -- I thought she did describe the gentlemen who  
13 were there. And I don't recall whether it was on direct or  
14 redirect, she actually pointed out Mr. Nordean as the person  
15 that -- I mean, there was all sorts of discussion about whether  
16 she could see him or not see him or who she was pointing to and  
17 that type of thing, and I don't believe she was the only  
18 officer to testify to this.

19 MR. JAUREGUI: Your Honor --

20 MS. HERNANDEZ: And the earlier testimony about  
21 Pezzola was the same, also, we've seen multiple times.

22 MR. JAUREGUI: I think some of this also came in  
23 through Nick Quested. Jauregui for Tarrío.

24 THE COURT: Some of it did, but he didn't identify  
25 people, and I'm going give the government some latitude to go

1 through this and identify the people. And, frankly, they're  
2 identifying more than the defendants through this witness, so  
3 for that reason, it's not duplicative.

4 I understand what you're saying, Ms. Hernandez, but,  
5 you know, we've discussed what the point of some of this  
6 testimony is going to be. It's going to go beyond some of the  
7 defendants. So, I mean, they're just running through this and  
8 identifying the defendants. They can do that.

9 MR. KENERSON: He's, Your Honor, has requested they  
10 identify the witnesses at the scene, we're just putting that on  
11 the record.

12 THE COURT: Fair enough. But the point stands about  
13 the larger group of people that they're using this testimony to  
14 identify.

15 You may proceed.

16 (Open court:)

17 BY MR. KENERSON:

18 Q. Who is the person off to the right with the yellow circle  
19 (indicating)?

20 A. Joseph Biggs.

21 Q. If we could play, please.

22 (Video played.)

23 And if we could stop here.

24 Who is off -- now off to the right at 3 seconds

25 (indicating)?

1 A. Zach Rehl.

2 Q. And the location that we see Zach Rehl right now, how does  
3 that compare to the person who you identified as Mr. Rehl in  
4 Exhibit 417-X?

5 A. Same location. Just moving forward.

6 Q. Keep playing, please.

7 (Video played.)

8 All right. I can't to -- at -- what we just saw there  
9 was a barricade that came down (indicating), correct?

10 A. Yes.

11 Q. Going to step back in time briefly, just shortly before  
12 that came down.

13 Can we go to 492-G, please. And can we skip ahead, to  
14 24 seconds.

15 (Video played.)

16 We can go back, actually, just to 24 seconds.

17 (Still shot.)

18 This person I've circled in yellow, do you recognize  
19 that individual (indicating)?

20 A. I do.

21 Q. Who is that?

22 A. Zachary Johnson, Proud Boy out of Florida.

23 Q. And based on your view of the video, did he march with the  
24 Proud Boys that day?

25 A. He did.

1 Q. And how about this person, this baseball cap here  
2 (indicating)?

3 A. Paul Rae.

4 Q. If we could skip forward to 1 minute and 31 seconds,  
5 please.

6 (Still shot.)

7 Who is this individual to the left (indicating)?

8 A. Dominic Pezzola.

9 Q. Can we skip to 317, please.

10 Recognize that person (indicating)?

11 A. I do.

12 Q. Where have you seen him before?

13 A. In the Marching Group.

14 Q. Do you see any others in the Marching Group here?

15 A. I do.

16 Q. Can you circle them?

17 A. (Complies.)

18 Q. Thank you.

19 All right. If we can play this to 4 minutes at this  
20 point.

21 (Video played.)

22 Sorry. I missed the cue. Can we back up to 4 minutes,  
23 Ms. Rohde? I'm sorry.

24 All right. I'm going to ask you, do you see Mr. --  
25 well, who is this individual I've circled (indicating)?



1 A. Ethan Nordean.

2 Q. And do you see this hand down here (indicating)?

3 A. I do.

4 Q. Is there a glove on this hand in the photo?

5 A. There is not.

6 Q. What color is the jacket it's attached to?

7 A. Black.

8 Q. Is that hand on the top of the fence or the bottom of the  
9 fence?

10 A. Bottom of the fence.

11 Q. Can we keep playing, please.

12 (Video played.)

13 MS. HERNANDEZ: Something wrong with the video, Your  
14 Honor?

15 (Video played.)

16 MR. KENERSON: Can we pause the video, please, at  
17 4:30. And if we could back up maybe a half second, Ms. Rohde.  
18 BY MR. KENERSON:

19 Q. Do you recognize this individual I've circled right behind  
20 Mr. Nordean (indicating)?

21 A. I do.

22 Q. Who is he?

23 A. Mark Bru.

24 Q. Are we going to see him in a little bit?

25 A. We will.

1 Q. And this individual in the red hoodie again (indicating)?

2 A. McDonald.

3 (Video played.)

4 MR. KENERSON: Can we pause right here, Ms. Rohde.

5 BY MR. KENERSON:

6 Q. Now, paused at 5:18. Do you see Ethan Nordean on the  
7 screen still?

8 A. I do.

9 Q. Can you circle him?

10 A. (Complies.)

11 Q. Where is he relative to where he was before?

12 A. He's moved forward.

13 Q. And where is he relative to the rest of the rioters?

14 A. He's in front of them.

15 Q. He appear to have any problem balancing right now?

16 A. He does not.

17 Q. Can we play, please.

18 (Video played.)

19 Ms. Rohde, we can take this down at 5:33.

20 Can we have Exhibit 145, please, which I believe is  
21 already in evidence, and skip to 8 minutes and 27 seconds.

22 (Video played.)

23 And, Special Agent Miller, is this Capitol surveillance  
24 video?

25 A. It is.

1 Q. Can you tell us what we are looking at here (indicating)?

2 A. So we are looking at the pedestrian walkway, which would be  
3 here, and then the fence we were just watching the video from  
4 is here (indicating).

5 Q. All right. And what is the time on the surveillance video  
6 at this point?

7 A. 12:58:27 p.m.

8 Q. And based on your review of the video, can you show us  
9 where on this fence line members of the Marching Group  
10 stretched from?

11 A. Sure. So they stretched from over here to over here  
12 (indicating).

13 Q. And for the record, the witness has indicated all the way  
14 to the right of the fence line, as we look at the screen, to  
15 shortly before the tower in the middle of the Plaza.

16 Ms. Rohde, can we play this to about 9 minutes.

17 (Video played.)

18 We can stop there.

19 What have we just seen the crowd do on this video  
20 (indicating)?

21 A. Once the fences went down, the crowd moved forward.

22 Q. And what's the timestamp currently on the CCTV video?

23 A. 12:59 p.m.

24 Q. Can we go to Exhibit 452, please. And can we play this to  
25 about 9 seconds.

1 (Video played.)

2 Does this show, generally, the same fence line we've  
3 been looking at?

4 A. It does.

5 Q. Going to circle someone right here. Do you recognize that  
6 person (indicating)?

7 A. I do. That's Charles Donohoe.

8 Q. Can you describe what he is doing with his right hand?

9 A. He has his phone in the air.

10 Q. And how about this individual here (indicating)?

11 A. That is Loehrke.

12 Q. Can we play for just a few seconds, Ms. Rohde.

13 (Video played.)

14 Can we back up just half a second here. Slightly more.  
15 Slightly more. Okay.

16 You recognize the person I've circled in yellow?

17 A. I do. That's Johnson.

18 Q. And we spoke about him just very recently?

19 A. We did.

20 Q. What about this other person who is trailing just behind  
21 Johnson (indicating)?

22 A. That's James Haffner.

23 Q. And based on your review of the video, was Haffner involved  
24 at all in the march?

25 A. He was.

1 Q. All right. If we could play for just a few more seconds,  
2 Ms. Rohde.

3 (Video played.)

4 Thank you. We can stop it here.

5 Can we go back to Exhibit 1137, please. And playing  
6 where we left off at 13 seconds, can we play it to 32 seconds,  
7 please.

8 (Video played.)

9 That -- the message that we just saw it play, who sent  
10 that message?

11 A. Charles Donohoe.

12 Q. And what we just saw, how does that compare to the scene  
13 that we just saw in Exhibit 452?

14 A. It's the same scene.

15 Q. What does -- well, first of all, whose messages are coming  
16 from the right?

17 A. I'm sorry. Re-ask your question.

18 Q. Sure. There are messages on the left here and there are  
19 messages on the right, like the ones that I've circled in  
20 green. Do you know whose are coming from the right?

21 A. Jeremy Bertino.

22 Q. What does Mr. Bertino post at 12:59 p.m.?

23 A. He says: Form a sphere.

24 And this is in response to Donohoe's post.

25 Q. Okay. Thank you.

1 And right after that?

2 A. He says: Holy fuck. Do it, boys.

3 Q. What -- that video that Ms. --

4 THE COURT: I'm sorry. I'm sorry.

5 You may continue, Mr. Kenerson.

6 BY MR. KENERSON:

7 Q. That video that Mr. Donohoe sent that we just watched, what  
8 time did he watch it?

9 A. 12:58 p.m.

10 Q. Was this MoSD Leaders chat the only Telegram group that was  
11 active around that time?

12 A. It was not.

13 Q. Ms. Rohde, can we have what I think is already in evidence  
14 as 510-33.

15 What's the date of the chat that we're looking at,  
16 Special Agent?

17 A. January 6, 2021.

18 Q. What chat group?

19 A. Ministry of Self-Defense, Main 2, which is the members'  
20 chat.

21 Q. And what does Jeremy Bertino post at 1 o'clock and  
22 25 seconds?

23 A. He says: Storming the Capitol right now.

24 Q. Was Boot on Ground chat also active around this time?

25 A. It was.

1 Q. Can we go to 512-8, please, which I believe is in evidence.

2 Still January 6?

3 A. Yes.

4 Q. What chat are we in now?

5 A. Boots on Ground.

6 Q. What does Mr. Bertino post at 1 o'clock and 50 seconds in  
7 that group?

8 A. "Storming the Capitol building right now."

9 Q. What about just below that?

10 A. "Get there."

11 Q. If we could scroll down a series of messages from -- scroll  
12 up just one little bit, Ms. Rohde. Sorry.

13 Starting at 1:02:06 p.m., what does Aaron Wolkind post?

14 A. He says: Storming the Capitol building right now.

15 Q. How many times?

16 A. Four times, total.

17 Q. And if we could scroll down.

18 What's the message at 1:04:18 p.m. from the string  
19 off emojis?

20 A. It says: #OTGProudBoys are wearing orange hats and moving  
21 as a group. Silver armband can represent militia member.

22 Q. What does Aaron Wolkind post at 1:04:22?

23 A. He says: Go find eggs and rotten tomatoes. Throw feces at  
24 these jerkoffs.

25 Q. Can we go back to Exhibit 1137, please. And can we play it

1 to the end.

2 (Video played.)

3 If we can pause right there. Put this back with the  
4 last message on the screen, please.

5 For the record, this is paused at 1 minute on the  
6 counter.

7 Can you read the message from Aaron Wolkind at  
8 1:03 p.m. in MoSD Leaders?

9 A. Sure. He says: Push inside. Find some eggs and rotten  
10 tomatoes.

11 Q. Do those messages continue in the chat even though the  
12 screenshot has ended?

13 A. Yes.

14 Q. Can we go to 509-32. Just for the witness, for now.

15 MR. KENERSON: I believe this was provisionally  
16 admitted this morning, Your Honor. I would ask permission to  
17 publish.

18 THE COURT: All right. Permission to publish is  
19 granted.

20 BY MR. KENERSON:

21 Q. Still January 6, 2021?

22 A. Yes.

23 Q. What's the chat?

24 A. New MoSD Leaders chat.

25 Q. And you see that message we just saw from Aaron Wolkind?



1 A. I do.

2 Q. How does Jeremy -- well, sorry. Strike that.

3 What's Jeremy Bertino's next post at 1:10:06 p.m.?

4 A. He says: They deploy the mace yet?

5 Q. And does Mr. Donohoe post anything shortly thereafter?

6 A. He does. He says: We are trying.

7 Q. All right. If we could have the screen back just for the  
8 witness. If we could have 5:10:34, please.

9 MR. KENERSON: I believe this was one the Court  
10 provisionally admitted. We would seek to publish to the jury.

11 THE COURT: Permission is granted.

12 BY MR. KENERSON:

13 Q. This is same date?

14 A. Yes.

15 Q. And which chat?

16 A. Ministry of Self-Defense Main 2 Members' chat.

17 Q. And can you read the messages starting at 1:10:49 from  
18 Aaron of Bloody East?

19 A. Sure. So Wolkind says: Decision to not wear color is  
20 paying off. They think there are way more of us than there  
21 really is.

22 Proud Boy hand symbol.

23 10:10:49, Wolkind says: #SignalBoost. Police lines  
24 have been breached my MAGA at the Capitol, but not inside the  
25 building. Mace just deployed. Do not take Constitution

1 Avenue. Approximately 1,000 Proud Boys marching down.

2 Bertino responds: Exactly.

3 Q. Special Agent, based on your review of the video after that  
4 black fence came down, where did Nordean, Biggs, and Rehl go?

5 A. They moved to the next set.

6 MS. HERNANDEZ: Objection. Compound question.

7 THE COURT: Overruled.

8 A. They moved to the next set of barricades, where the police  
9 are.

10 BY MR. KENERSON:

11 Q. Can you move magnets accordingly, please.

12 A. Going to be in this area here (indicating).

13 Q. And I noticed you moved the green magnet as well. Did  
14 Mr. Pezzola also go over to that area (indicating)?

15 A. I did. Yes, he does.

16 Q. Did Mr. Biggs take a video shortly after the group entered  
17 that area?

18 A. He does.

19 Q. Can we have 404-G, please.

20 (Video played.)

21 And, Special Agent Miller, do you recognize this  
22 video (indicating)?

23 A. I do.

24 Q. Where was this recovered?

25 A. From Biggs's Google Cloud.

1 Q. And do you still have that exhibit with the metadata in  
2 front of you?

3 A. I do.

4 Q. According to the metadata, what time was this photo taken?

5 A. 12:59:29 p.m.

6 Q. On January 6?

7 A. On January 6.

8 Q. All right. If we could play, please.

9 (Video played.)

10 Pause right here. Go back to about -- if we can go back  
11 to about 10 seconds.

12 (Video played.)

13 We can go forward slowly. Excuse me.

14 (Video played.)

15 Do you recognize anyone in the frame right now  
16 (indicating)?

17 A. I do.

18 Q. Who is that?

19 A. Zach Rehl.

20 Q. Can we continue playing, please.

21 (Video played.)

22 We can pause right here.

23 Do you recognize anyone here (indicating)?

24 A. I do.

25 Q. Who is that?

1 A. Mr. Nordean.

2 Q. If we could just go ahead very slowly, Ms. Rohde, maybe  
3 frame by frame for a little bit.

4 (Video played.)

5 Do you recognize any members of the Marching Group in  
6 this photo (indicating)?

7 A. I do.

8 Q. If you could circle them.

9 A. (Complies.)

10 Q. For the record, you've circled eight individuals. The one  
11 all the way to the left, do you recognize that person who I  
12 have now circled in yellow (indicating)?

13 A. This one -- oh. No.

14 Q. Can we go forward a couple of frames.

15 (Video played.)

16 We'll go back in just a second.

17 But this person now who has emerged from behind a phone,  
18 do you recognize him (indicating)?

19 A. I do. That's Dominic Pezzola.

20 Q. Ms. Rohde, if we can go back to about 14 seconds, and go  
21 frame by frame for a second.

22 (Video played.)

23 Start from here.

24 (Video played.)

25 That person, do you recognize him (indicating)?

1 A. Yes. That's Matt Greene.

2 Q. If we could play to the end.

3 (Video played.)

4 Do you recognize that person at the very end who said:  
5 This is awesome?

6 A. I do. That's Joseph Biggs.

7 Q. And, Ms. Rohde, if we could go back to the very beginning.  
8 And before playing, can we turn the volume up. And if we could  
9 just play until about 4 seconds and then stop.

10 (Video played.)

11 Okay.

12 THE COURT: That might have been too far up.

13 MR. KENERSON: That might have been too far.

14 MS. ROHDE: Sorry.

15 (Video played.)

16 BY MR. KENERSON:

17 Q. All right. We can pause there.

18 Did you hear some words at the very beginning of that?

19 A. I did. It says: We've just taken the Capitol.

20 Q. Did you recognize the voice?

21 A. I do. It's Joseph Biggs.

22 Q. Thank you.

23 Have you reviewed any photos that show, kind of, the  
24 vantage point of this whole area from this point in time  
25 (indicating)?

1 A. I have.

2 Q. Can we go to Exhibit 201, please.

3 And, Special Agent, do you know when, about, this was  
4 taken relative to that Plaza filling up?

5 A. It's going to be shortly after.

6 Q. And --

7 A. A little after 1 p.m.

8 Q. -- Ms. Rohde, I don't know if it's possible to kind of zoom  
9 in towards, kind of, the front of that group?

10 And, Special Agent Miller, if you could just, by --  
11 well, first of all, do you recognize members of the Marching  
12 Group in this photo?

13 A. I do.

14 Q. Can you kind of just give us a flavor -- you don't have to  
15 point out every single one -- but circling some of them to  
16 indicate where they were?

17 A. (Complies.)

18 Q. Thank you.

19 For the record, you've made nine circles on the screen,  
20 some of which cover multiple individuals, four of which are in  
21 the front, and four of which are just behind the front.

22 All right. Thank you, Ms. Rohde. We can take off that  
23 exhibit. I would --

24 Have you reviewed any other videos from Mr. Biggs's  
25 Google Cloud from down in that same area?

1 A. I have.

2 Q. Can we have, I think just for the witness right now,  
3 404-KX.

4 (Video played.)

5 MR. KENERSON: And I believe this was provisionally  
6 admitted this morning. I would ask for permission to publish.

7 THE COURT: Permission to publish is granted.

8 BY MR. KENERSON:

9 Q. We see Mr. Biggs' face up in the corner again. Remind us  
10 what that indicates.

11 A. This is recovered from his iCloud -- or, not his iCloud,  
12 excuse me -- his Google Cloud.

13 Q. And according to the metadata, what time was this taken?

14 A. 1:04:53 p.m.

15 Q. All right. If we could play, Ms. Rohde.

16 (Video played.)

17 And can we pause right here.

18 Who is the individual closest to us who is highlighted?

19 A. Zachary Rehl.

20 Q. And these two who I have circled, who are they  
21 (indicating)?

22 A. Dominic Pezzola on the left and Matthew Greene on the  
23 right.

24 Q. And this other person who is highlighted over to the left,  
25 where have we seen him today (indicating)?

1 A. In the Marching Group.

2 Q. If we could play it to the end, Ms. Rohde.

3 (Video played.)

4 What did we see Mr. Rehl do towards the end of that  
5 video?

6 A. Put his mask up.

7 Q. Let me show what I think has been admitted into evidence as  
8 404-N, as in Nancy.

9 THE COURTROOM DEPUTY: I don't have a 404-N.

10 BY MR. KENERSON:

11 Q. Well, let me ask you, do you recognize this photo?

12 A. It's a photo recovered from Biggs's Google Cloud.

13 THE COURTROOM DEPUTY: I don't have it here.

14 A. Yes, I do.

15 MR. KENERSON: Oh, I'm sorry.

16 THE COURTROOM DEPUTY: I do have it. It was on  
17 another page. Sorry about that.

18 MR. KENERSON: No worries.

19 BY MR. KENERSON:

20 Q. Okay. So whose account was this recovered from?

21 A. Biggs's Google.

22 Q. And what direction is the photographer looking? If you  
23 could show us on the map.

24 A. Photographer is looking this direction (indicating).

25 Q. And you have indicated kind of towards where the stands on



1 the map come to a right angle on the right side of the map as  
2 we look at it.

3 A. That's correct.

4 Q. And, again, you recognize these two individuals?

5 A. Dominic Pezzola and Matthew Greene.

6 Q. Can we have Exit 404-Q, please.

7 Where was this photo recovered from?

8 A. Biggs's Google.

9 Q. And who is this right here (indicating)?

10 A. Ethan Nordean.

11 Q. Which direction is he facing right now?

12 A. The direction of law enforcement. Capitol is behind the  
13 law enforcement.

14 Q. Thank you.

15 Can we have Exhibit 145-A, please.

16 (Video played.)

17 And is this more Capitol surveillance video?

18 A. It is.

19 Q. Can you tell us what time it is this exhibit starts?

20 A. 1:08 p.m.

21 Q. And can we play this until 6 seconds, Ms. Rohde, on the  
22 timer, and then pause.

23 (Video played.)

24 Do you recognize any of the defendants on the screen  
25 here (indicating)?

1 A. Nordean. Biggs.

2 Q. And for the record, you have indicated Nordean as the  
3 person kind of all the way to the right, facing law enforcement  
4 as we look at the photo, and Biggs as someone who is facing  
5 away from the camera, to the left of Mr. Nordean, correct?

6 A. Correct.

7 Q. All right. Ms. Rohde, can we play until 10 seconds.

8 (Video played.)

9 If we can pause right here.

10 Did you see the individual walk onto the screen from the  
11 right in kind of a red, white, and blue getup?

12 A. Yes.

13 Q. If we can just fast forward a little bit, Ms. Rohde.

14 (Video played.)

15 That's good.

16 And -- sorry. If we could go back -- I apologize,  
17 Ms. Rohde. Could we go back to 10 seconds, and then just play  
18 it at normal speed?

19 (Video played.)

20 And before we start, Special Agent, can you circle the  
21 person in red, white, and blue?

22 A. (Complies.)

23 Q. Do you see Mr. Nordean on here (indicating)?

24 A. (Indicating.)

25 Q. All right. Thank you.

1 Play until about 20 seconds.

2 (Video played.)

3 Pause here.

4 What are we seeing the individual in red, white, and  
5 blue doing?

6 A. He's engaging with law enforcement.

7 Q. Where is Mr. Nordean relative to him at this point?

8 A. Relatively close.

9 Q. What direction is Mr. Nordean looking?

10 A. In the direction of the individual engaging with law  
11 enforcement.

12 Q. Has he taken any action with respect to the person in red,  
13 white, and blue to this point?

14 A. He has not.

15 Q. Can we keep playing, please.

16 (Video played.)

17 Pause right here.

18 Did we just see those two individuals come together  
19 (indicating)?

20 A. We did. And that's Biggs and Nordean.

21 Q. What did we just see them do?

22 A. Hug.

23 Q. Are you able to see -- well, do you see any other  
24 defendants on here right now (indicating)?

25 A. So I know where they are, but I don't see them in this, no.

1 Q. All right. If we could play this for a few more seconds,  
2 Ms. Rohde.

3 (Video played.)

4 Pause it right there.

5 Did you see anyone with that little bit of movement?

6 A. Can you back it up and play it again?

7 Q. Sure.

8 (Video played.)

9 MR. PATTIS: Judge, objection. 403.

10 THE COURT: Overruled.

11 (Video played.)

12 A. I believe that's Pezzola (indicating).

13 BY MR. KENERSON:

14 Q. All right. Let's continue.

15 At -- going back to the area around the person with the  
16 red, white, and blue, have we seen either Mr. Biggs or  
17 Mr. Nordean make any move towards the person to this point?

18 A. No.

19 Q. Can we play.

20 (Video played.)

21 Have we now?

22 A. Not yet -- well, Nordean's hand is on his shoulder.

23 Q. Thank you.

24 Can we play.

25 (Video played.)

1           We can pause at 1:15.

2           Do we see anyone interacting with that person in red,  
3       white, and blue?

4       A.   We do.

5       Q.   Who?

6       A.   Looks like a Marching Group member.

7       Q.   Ms. Rohde, are we able to zoom in on that area  
8       (indicating)?

9           If we could back it up just maybe a couple of seconds,  
10       Ms. Rohde.

11           (Video played.)

12           Back it up maybe just a couple seconds before that.

13           (Video played.)

14           All right. We can play from here.

15           (Video played.)

16           Do we see the person in the red, white, and blue? Can  
17       you circle him, please?

18       A.   (Complies.)

19       Q.   Thank you.

20           Do we see any further interaction between him and  
21       Mr. Nordean?

22       A.   We do.

23           (Video played.)

24       Q.   You can pause it here, Ms. Rohde.

25           Do you know what was said in that conversation?

1 A. I do not.

2 Q. Can we go to Exhibit 229-X.

3 THE COURT: All right. Mr. Kenerson, is this a  
4 change of scene?

5 MR. KENERSON: It's as good a time as any.

6 THE COURT: All right. We're going to take a  
7 ten-minute break for the court reporter for the afternoon.

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

9 (Whereupon the jurors leave the courtroom.)

10 (Noise interruption.)

11 THE COURT: While the jury is leaving, please.

12 You may step down.

13 Everyone may be seated.

14 We'll take ten -- oh, Ms. Hernandez?

15 MS. HERNANDEZ: Your Honor, this continues to be  
16 repeat, some re-overview evidence. We saw all of this through,  
17 I believe, the young officer who the shield was taken from him.  
18 They pointed out the guy in the red, white, and blue and  
19 Nordean's interactions and that type of thing.

20 And the second objection that I want to make, there  
21 were a lot of questions asked of the witness about people in  
22 the marching band, and she's just circling people in the  
23 marching band rather than -- I thought the Court had limited it  
24 to certain people in the -- not the marching band -- the  
25 Marching Group, whatever -- the Jackson 5 and the rest of them.

1           So, I thought the Court had limited the testimony. I  
2           know the Court had limited testimony as to particulars, but  
3           I -- just generally speaking, I thought this notion of people  
4           in the Marching Group is going too far.

5           THE COURT: I mean, I don't think we -- we didn't --  
6           you all didn't tee up for me this issue in that way. I don't  
7           think it's outside the bounds for them. No one objected, and I  
8           don't think it's outside the bounds for them to point out: Oh,  
9           this person was in the group, that person was in the group.

10           I thought of this tools issue -- and I think it's  
11           consistent of how the parties thought of it -- is when we're  
12           talking about something independent and kind of different than  
13           just moving forward and being present at a particular place.

14           Mr. Kenerson?

15           MR. KENERSON: And just one thing I would note on  
16           that, is that in the series of email exchanges between the  
17           parties that wound up being the issue we teed up before the  
18           Court, we noted that in addition to those videos that we  
19           ultimately then played for the Court, we intended to point out  
20           where various members of the Marching Group were at various  
21           times in photographs and videos where that also included the  
22           defendants.

23           THE COURT: Okay. As to the -- whether it's  
24           cumulative, which I think is your first question, you know,  
25           again, I think they have not done this issue -- they have not

1 had the opportunity -- or they have not -- whether they had the  
2 opportunity or not, this testimony is -- first of all, the last  
3 scene, to the extent we could see anything, I don't think we've  
4 seen that view before. Again, whether that added anything,  
5 only time will tell.

6 But, I do think the government, as broadly speaking,  
7 gets the opportunity that they want to to point out, you know,  
8 these other people where the -- I mean -- and that was a way of  
9 pointing out: Okay, here's where the Marching Group is and  
10 whatnot.

11 So, you know, I think -- I don't think it's  
12 cumulative, bottom line.

13 Let's take 10 minutes. Be back at 3:30.

14 (Recess.)

15 (Whereupon the jurors enter the courtroom.)

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

19 THE COURT: All right. Mr. Kenerson, you may  
20 proceed.

21 MR. KENERSON: Thank you, Your Honor.

22 And, Ms. Harris and Ms. Rohde, if we could have the  
23 screen just for the witness, and have Exhibit 229-X, which I  
24 believe was provisionally admitted this morning.

25 And seek permission to publish.



1 THE COURT: All right. Permission to publish is  
2 granted -- at a lower volume.

3 MR. KENERSON: Thank you.

4 BY MR. KENERSON:

5 Q. All right. Special Agent Miller, can you just point on the  
6 map to where we are looking at right now?

7 A. We're going to be looking in this area right here  
8 (indicating).

9 Q. And can we play this until 11 seconds, please.

10 (Video played.)

11 THE COURT: Can I also just ask both Mr. Kenerson and  
12 the witness, if you would both keep your voices up -- a little  
13 closer to the microphone and voices up. Thank you.

14 MR. KENERSON: Thank you, Your Honor. I will, as  
15 always, do my best.

16 And, Ms. Rohde, if we could go just a tiny bit  
17 forward here.

18 (Video played.)

19 BY MR. KENERSON:

20 Q. All right. Do you see some individuals highlighted on the  
21 screen (indicating)?

22 A. I do.

23 Q. Who are they?

24 A. The one on the left, the camo hat, would be Zach Rehl;  
25 Ethan Nordean, black backwards hat, yellow mask; and then next

1 to him is Joseph Biggs.

2 Q. Can we play to 21 seconds, please.

3 (Video played.)

4 And we now -- the camera has moved from where we were  
5 before, correct?

6 A. Yes.

7 Q. And there's another individual highlighted. Do you  
8 recognize that person (indicating)?

9 A. I do. That's Dominic Pezzola.

10 Q. If we could play again, please.

11 (Video played.)

12 If we could pause it right here, at 34 seconds.

13 What is Mr. Pezzola doing with his arm right there  
14 (indicating)?

15 A. He's pointing in the direction of law enforcement.

16 Q. Thank you.

17 Play again.

18 (Video played.)

19 If we could stop here, actually going back to about  
20 51 seconds, Ms. Rohde.

21 (Video played.)

22 Slightly back further, slightly back further. All  
23 right. Stop right there.

24 This is paused at 50 seconds. The individual circled  
25 right now, kind of to the left side of the screen in the

1 center, top to the bottom, who is that (indicating)?

2 A. Dominic Pezzola.

3 Q. And, Ms. Rohde, can we go frame by frame.

4 (Video played.)

5 And if we could stop there.

6 If I can circle the arm that's extending off screen to  
7 the left from the individual circled. Whose arm is that  
8 (indicating)?

9 A. Dominic Pezzola.

10 Q. If we can continue going frame by frame.

11 (Video played.)

12 If we could stop right there.

13 What I've just kind of drawn a yellow outline around --  
14 which I will take off so we can actually see what's there --  
15 what is that (indicating)?

16 A. A riot shield.

17 MR. METCALF: Objection, Your Honor. Calls for  
18 speculation. What are we looking at here?

19 THE COURT: Overruled.

20 BY MR. KENERSON:

21 Q. What is that?

22 A. A riot shield.

23 Q. Does that appear to be vertical, horizontal, or somewhere  
24 in between right now?

25 A. It appears to be vertical.

1 Q. Now, I've circled an individual over to the right side  
2 here, at 52 seconds. Who is that (indicating)?

3 A. Zach Rehl.

4 Q. If we could continue going frame by frame for just a  
5 second, Ms. Rohde.

6 (Video played.)

7 And we can play now.

8 (Video played.)

9 If we could pause here, at 1:24. Maybe back up a half  
10 second, Ms. Rohde.

11 (Video played.)

12 Right there. The person circled over at the right side  
13 of the screen, who is that (indicating)?

14 A. Dominic Pezzola.

15 Q. And does he have something in his possession now?

16 A. I does. He has a riot shield.

17 Q. Can we -- Ms. Rohde, can we back up the time briefly, to  
18 11 -- excuse me -- 55 seconds.

19 (Video played.)

20 I previously circled this person over here, I think, in  
21 the camo hat. You had said it was Zach Rehl, correct?

22 A. Correct.

23 Q. All right. Ms. Rohde, can we play.

24 (Video played.)

25 Can we pause right now.

1           What did we just see Zach Rehl do?

2           A.   He went into his pocket and pulled out his cell phone.

3           Q.   All right.  If we could skip to 1:24, where we'd previously  
4           left off.

5                    (Video played.)

6           If we could now play until the end.

7                    (Video played.)

8           Who is highlighted right now (indicating)?

9           A.   Dominic Pezzola.

10          Q.   And down to the right (indicating)?

11          A.   Zach Rehl and Joseph Biggs.

12          Q.   Thank you.

13                   (Video played.)

14          Actually, we can stop this exhibit right here, at 1:39.

15          Can we go to 444-AX, please, which I believe is already  
16          in evidence.

17          All right.  Ms. Rohde, if we could play this, please.

18                   (Video played.)

19          If we could pause it right here.

20          Do you recognize the incident that we're about to see,  
21          Special Agent?

22          A.   I do.  It's one we just saw on the last video.

23          Q.   All right.  Can we play again.

24                   (Video played.)

25          If we could pause right here, at 27 seconds.  Who is

1 highlighted?

2 A. Dominic Pezzola.

3 Q. Continue, please.

4 (Video played.)

5 Again, pausing at 35 seconds. Who is highlighted?

6 A. Dominic Pezzola.

7 Q. Play again.

8 (Video played.)

9 Now, pausing at 41 seconds, who is highlighted?

10 A. Dominic Pezzola.

11 Q. What does he have in his hands?

12 A. A riot shield.

13 Q. Is it on the ground or in the air?

14 A. In the air.

15 Q. Can we play, please.

16 (Video played.)

17 And, Ms. Rohde, can we have 1127, which I believe is in  
18 evidence.

19 Do you recognize the individual I have circled?

20 A. I do. It's Dominic Pezzola, and he has a riot shield in  
21 his hand.

22 Q. And, Ms. Rohde, I'm going to circle a spray can right here.  
23 If you're able to zoom in as much as we can on that.

24 Special Agent, are you able to see what type of spray  
25 that is?

1 A. I am. It's wasp, hornet spray.

2 Q. Thank you.

3 Is there a photo recovered from Mr. Biggs's Google Cloud  
4 around this point in time?

5 A. There is.

6 Q. Could we have 404-W, please.

7 Do you recognize this photo we're looking at?

8 A. I do.

9 Q. Where was it recovered?

10 A. Biggs's Google Cloud.

11 Q. Do you know about when this was taken relative to the  
12 scenes we just saw?

13 A. Shortly thereafter.

14 Q. What is it a photo of?

15 A. It's a photo of the officers trying to decontaminate.

16 Q. All right. Can we go back to Exhibit 229-X for a moment.  
17 And, Ms. Rohde, can we skip to 2 minutes and 4 seconds. And if  
18 we could play from here.

19 THE JURORS: Screen is not on.

20 MR. KENERSON: Oh, sorry.

21 BY MR. KENERSON:

22 Q. If we can play from here.

23 (Video played.)

24 If we can pause right here, Ms. Rohde, at 2 minutes and  
25 12 seconds.

1           What do you see inside the yellow circle I've just drawn  
2           (indicating)?

3           A.   Law enforcement.

4           Q.   And what are they holding?

5           A.   They are holding barricades.

6           Q.   Are you able to point for the jurors, on the map behind  
7           you, where approximately this is taking place?

8           A.   It would be in this area here (indicating).

9           Q.   And for the record, you have indicated towards the bottom  
10          of the set of scaffolding on the right side as we look at that  
11          map; is that correct?

12          A.   That's correct.

13          Q.   Ms. Rohde, if we could play this to the end, please.

14                (Video played.)

15                Pause right here, at 2:31.

16                Who is outlined towards the bottom of the screen?

17          A.   You have Joseph Biggs, Zachary Rehl. And then above Zach  
18          is going to be Matt Greene, and then to the right is Dominic  
19          Pezzola.

20          Q.   Thank you.

21                (Video played.)

22                All right. Ms. Rohde, can we have Exhibit 261, which I  
23          believe is already in evidence.

24                (Video played.)

25                And, Special Agent, what type of video is it that we are



1 looking at here?

2 A. This is going to be body cam recovered from the law  
3 enforcement officers.

4 Q. Do you recognize the location, approximately, on Capitol  
5 grounds?

6 A. I do. It's the same location from the video we just  
7 watched.

8 Q. All right. Can we -- can we play this until about 49  
9 seconds, please.

10 (Video played.)

11 Pause right there.

12 This individual whose face is in the top center of the  
13 screen, do you recognize him (indicating)?

14 A. I do. That's Bru. He was in the Marching Group.

15 Q. Have we seen him earlier today?

16 A. We have.

17 Q. And, Ms. Rohde, if you could just let this play for about 3  
18 seconds or so, until about 52.

19 (Video played.)

20 And if we could go frame by frame for a few here,  
21 Ms. Rohde.

22 (Video played.)

23 Stop right here for just a moment.

24 This person I've circled in the red hoodie, do you  
25 recognize him (indicating)?

1 A. It's McDonald.

2 Q. Discussed him earlier today?

3 A. We did.

4 Q. All right. Keep playing.

5 (Video played.)

6 Can we stop right there, Ms. Rohde, at 54 seconds.

7 Who's hand is this that I've just circled (indicating)?

8 A. McDonald's.

9 Q. What do you see in his hand?

10 A. A chemical irritant.

11 Q. Who is this just to the left, as we look, if you recognize  
12 that person (indicating)?

13 A. That's AJ Fischer.

14 Q. Have we talked about him earlier today?

15 A. We did.

16 Q. Can you continue going frame by frame, please, Ms. Rohde.

17 (Video played.)

18 All right. We can play here now at speed again.

19 (Video played.)

20 If we can stop right here, please.

21 What's the timestamp on the video currently?

22 A. 1:14:47 p.m.

23 MR. KENERSON: And can we have up, please, 145-CX. I  
24 think just for the witness. I think this was provisionally  
25 admitted this morning, and I would ask to publish it for the

1 jury.

2 THE COURT: All right. It may be published to the  
3 jury.

4 MR. KENERSON: If we could go to 24 seconds in,  
5 Ms. Rohde.

6 (Video played.)

7 Now -- actually, sorry. Can we back up briefly,  
8 before this.

9 (Video played.)

10 BY MR. KENERSON:

11 Q. What's the timestamp right now, at 18 seconds, on this  
12 video?

13 A. 1:15:12 p.m.

14 Q. All right. Can we go now to 24 seconds.

15 (Video played.)

16 Do you recognize any of the individuals outlined right  
17 now?

18 A. I do. So, you have Ethan Nordean, Joseph Biggs, Rehl --  
19 well, Zach Rehl.

20 Q. And for the record, you have circled the individual in the  
21 black backwards baseball cap as Ethan Nordean, the person in  
22 the plaid and black hat as Joseph Biggs, and the person in the  
23 camouflage hat as Zachary Rehl.

24 And, Special Agent, do you recognize where on Capitol  
25 grounds this is, approximately?

1 A. It's nearby the video we just watched.

2 Q. Can we skip to 1:49 in this footage, please.

3 (Still shot.)

4 And I'm going to direct your attention down to the  
5 bottom of the screen again, Special Agent.

6 Do you recognize the individual I've just circled  
7 (indicating).

8 A. I do. That's Zach Rehl.

9 Q. All right. Can we play.

10 (Video played.)

11 You can pause right here, at 2:09.

12 Do you recognize any of the individuals inside the  
13 circle here, Special Agent (indicating)?

14 A. I do. You have Ethan Nordean, you've got Fonticoba, Paul  
15 Rae, and Joe Biggs. And then AJ Fischer.

16 Q. I was going to say: At the top here (indicating)?

17 A. That's AJ Fischer.

18 Q. Now, can we let this play for just a moment.

19 (Video played.)

20 Pause right here.

21 Do you see Joseph Biggs talking to an individual right  
22 now (indicating)?

23 A. I do.

24 Q. Does Mr. Biggs have anything in his hand?

25 A. A phone.

1 Q. Was there footage recovered from Mr. Biggs's Google account  
2 at about this time and location?

3 A. There was.

4 Q. Can we have 404-Z, as in zebra, please.

5 Do you recognize this (indicating)?

6 A. I do.

7 Q. Where was this recovered?

8 A. From Biggs's Google Cloud.

9 Q. And according to the Google metadata, when was this taken?

10 A. On January 6, at 1:16:25 p.m.

11 Q. All right. Can we play, please.

12 (Video played.)

13 Can we pause right here.

14 Did you recognize that voice that responded to the  
15 question: What do you gotta say, brother?

16 A. I did. That was Joseph Biggs.

17 Q. Thank you.

18 Can we play again.

19 (Video played.)

20 If we could pause back there.

21 And did you hear someone else say something just after  
22 we started playing?

23 A. I did. That would have been AJ Fischer. He said: "Proud  
24 of Your Boy."

25 Q. Thank you.

1 Can we play again.

2 (Video played.)

3 And, Ms. Rohde, I apologize. If we could go back to  
4 41 seconds on that clip. If we go frame by frame for just one  
5 moment.

6 (Video played.)

7 Stop right there.

8 Individual I've circled here, do you recognize him  
9 (indicating)?

10 A. I do. That's Zach Rehl.

11 Q. Thank you.

12 Zach Rehl send any text messages around this point in  
13 time?

14 A. He did.

15 Q. Can we have Exhibit 547-5, please, which I think was  
16 provisionally admitted, and would ask to -- for permission to  
17 publish.

18 THE COURT: All right. Permission to publish is  
19 granted.

20 BY MR. KENERSON:

21 Q. Do you recognize these messages in front of you, Special  
22 Agent?

23 A. I do.

24 Q. Where were these recovered from?

25 A. Zachary Rehl's phone.

1 Q. And other than Mr. Rehl, as a general matter, who was  
2 involved in this group text?

3 A. It's going to be individuals who were part of the  
4 Philadelphia Proud Boys.

5 Q. Could you tell us the message Zach Rehl sent at  
6 1:15:21 p.m.?

7 A. He says: Everyone raided the Capitol.

8 Q. Thank you.

9 Can we go back, Ms. Rohde, to 145-CX, please. And can  
10 we play it starting at 2:13.

11 (Video played.)

12 I think you have previously told us that that was -- the  
13 person I'm circling currently was Joe Biggs, correct?

14 A. Correct.

15 Q. And that person was AJ Fischer?

16 A. Correct.

17 Q. Do you recognize that person I've just circled below  
18 Mr. Fischer (indicating)?

19 A. That's Johnson.

20 Q. And remind us, have we seen Johnson before today?

21 A. We have.

22 Q. Where?

23 A. Marching Group.

24 Q. Ms. Rohde, is it possible to zoom this into the bottom,  
25 right?

1 Thank you. Can we play here.

2 (Video played.)

3 Pausing at 2:27.

4 Did Mr. Biggs just interact with any of the people  
5 standing around him?

6 A. He did.

7 Q. What did we see?

8 A. We saw a fist pump.

9 Q. Between whom?

10 A. Johnson, Fischer.

11 Q. And who else?

12 A. Rae.

13 Q. With?

14 A. Joseph Biggs.

15 Q. Thank you.

16 And can we continue -- well, first of all, is  
17 Mr. Nordean still on screen right now?

18 A. He is. He's just almost out of picture, but he's right  
19 there (indicating).

20 Q. Thank you.

21 A. And Rehl is also. He's right there (indicating).

22 Q. Thank you.

23 All right. Can we play until about 2:40.

24 (Video played.)

25 Did Mr. Nordean just have any interaction with any



1 members of that group?

2 A. He did.

3 Q. What did we just see?

4 A. Another fist bump.

5 Q. With who?

6 A. Fischer, Rae, looked like Fonticoba, and Johnson.

7 Q. Thank you.

8 MR. PATTIS: Objection, Judge. 403.

9 THE COURT: Overruled.

10 BY MR. KENERSON:

11 Q. How close was the group to police officers at this point?

12 A. Very close.

13 Q. Did you recover any other photographs from Mr. Biggs's  
14 Google account during this sequence?

15 A. Yes.

16 Q. Could we go to Exhibit 404-DD, David, David, please.

17 Where was this recovered (indicating)?

18 A. From Biggs's Google Cloud.

19 Q. And can you tell us, according to Google's metadata, what  
20 time this was taken?

21 A. 1:18:28 p.m.

22 Q. If we go to 404-EE, echo, echo, please.

23 Where was this recovered?

24 A. Biggs's Google.

25 Q. And according to the data provided by Google, what time was

1 this taken?

2 A. 1:18:32 p.m. on January 6.

3 Q. And this person I've circled here, do you recognize him  
4 (indicating)?

5 A. Ethan Nordean.

6 Q. What about back there (indicating)?

7 A. Zachary Rehl.

8 Q. What about right here (indicating)?

9 A. Johnson.

10 Q. Can we go back to 145-CX, Ms. Rohde, and skip to the  
11 6-minute and 48-second mark.

12 And can we take off the zoom, please. All right. If we  
13 can play for just a moment.

14 (Video played.)

15 And pausing right here. And, Ms. Rohde, are we able to  
16 zoom in over on that portion (indicating)?

17 Do you recognize any of the individuals within the  
18 three, kind of, circles there?

19 A. I do. So this is McDonald, this is Rae, Biggs, Rehl  
20 (indicating).

21 Q. All right. If we could play for --

22 MS. HERNANDEZ: Your Honor, could we have the time  
23 for this particular video picture?

24 MR. KENERSON: Ms. Rohde, if we could scroll the zoom  
25 up and to the left.

1 Special Agent, what time is it right now?

2 A. 1:21:18 p.m.

3 Q. Thank you.

4 MS. HERNANDEZ: Thank you.

5 MR. KENERSON: All right. If we could let it play.

6 (Video played.)

7 If we could stop right there.

8 BY MR. KENERSON:

9 Q. What did we just see Mr. McDonald do?

10 A. I'm sorry. Can you play it again?

11 Q. Sure. If we could --

12 (Video played.)

13 And what did we just see Mr. McDonald do?

14 A. He threw an item in the direction of law enforcement.

15 Q. Ms. Rohde, if we could move up the zoom box, just so it's  
16 in the upper corner. And we can play it from here, please.

17 (Video played.)

18 Which direction does this group move?

19 A. Towards the back.

20 Q. And, if we could go back. If we could stop right there.

21 Oop.

22 (Video played.)

23 And let me know if we need to watch this in motion.

24 But do you recognize this person right here who I have  
25 circled (indicating)?

1 A. Yeah. That's Ethan Nordean.

2 Q. And who is directly in front of him?

3 A. McDonald.

4 Q. See anyone else you recognize in this, kind of, highlighted  
5 portion?

6 A. Johnson. Biggs. Marching Group.

7 Q. We'll let it play, please, Ms. Rohde.

8 (Video played.)

9 Now, it ends.

10 All right. What direction was that group moving at the  
11 end of that clip?

12 A. They were moving this direction (indicating). Away from  
13 the Capitol.

14 Q. And where does ultimately, based on your review of the  
15 video, at least some members of that group wind up?

16 A. On the West Lawn.

17 Q. And can you point on the map -- well, first of all, is the  
18 West Lawn on the part of the map that we see here?

19 A. It is not. It's down here (indicating).

20 Q. Can you trace, approximately, the route that that group  
21 went?

22 A. Sure. So they would have gone this way, over this way,  
23 over this wall, to the lawn (indicating).

24 Q. And for the record -- go ahead.

25 A. (Indicating.)

1 (Drops magnet.)

2 Can I go back there?

3 Q. Sure.

4 SPECIAL AGENT HANAK: I got it, if you can step down.

5 THE COURT: The hazards of demonstratives.

6 SPECIAL AGENT HANAK: Thank you.

7 THE WITNESS: Thanks. Sorry about that.

8 BY MR. KENERSON:

9 Q. All right. Thank you, Special Agent Miller.

10 And for the record, you drew a line down to the right of  
11 the tower in the center of the Plaza as we look at it, and then  
12 past the tower, over the end of the Plaza. And then now you've  
13 put the blue magnet and the red magnet kind of just off of the  
14 diagram on the white part of this exhibit, correct?

15 A. Correct.

16 Q. Okay. Is there video of members of that group going over  
17 that wall you described?

18 A. Yes.

19 MR. KENERSON: And can we have, I think, just for the  
20 witness, 441-AX, which I think was provisionally admitted this  
21 morning, and seek to publish it to the jury.

22 THE COURT: Permission to publish is granted.

23 (Video played.)

24 BY MR. KENERSON:

25 Q. And before this place, Special Agent, can you just tell

1 us -- show us where on the map we are right now (indicating)?

2 A. It would be over here (indicating).

3 Q. And for the record, you have indicated kind of the wall at  
4 the back of the Plaza to the left of the tower, as we look at  
5 it?

6 A. That's correct.

7 Q. All right. Can we play.

8 (Video played.)

9 And at 7 seconds, pausing. Who just came over?

10 A. Ethan Nordean.

11 Q. All right. Can we play.

12 (Video played.)

13 And pause there. If we could just go slightly to the  
14 left. Or slightly back. Excuse me, Ms. Rohde. I'm sorry.

15 (Video played.)

16 Pausing at 18 seconds.

17 Who is this to the left here (indicating)?

18 A. Joseph Biggs.

19 Q. And who is this (indicating)?

20 A. That's Shannon Rusch.

21 Q. Have we seen him before?

22 A. We have. At the food trucks.

23 Q. And who is to his right, who is about to come on the  
24 screen?

25 A. Trevor McDonald.

1 (Video played.)

2 Q. And if we could pause -- go back just briefly there.

3 (Video played.)

4 Individual who just looked at us -- or, not looked at  
5 us, but we just got a slight profile shot, who is that?

6 A. It's going to be Fonticoba.

7 Q. Play to the end, please.

8 (Video played.)

9 Now, where did this group go from here (indicating)?

10 A. To the lawn.

11 Q. Where there any videos recovered from Mr. Biggs' account  
12 from the lawn at this approximate time?

13 A. There was.

14 Q. Can we have Exhibit 404-LL, please.

15 (Video played.)

16 Where was this recovered?

17 Well, first of all -- sorry -- do you recognize this?

18 A. I do.

19 Q. Where was this recovered?

20 A. Biggs's Google.

21 Q. All right. If we could play for just one second and then  
22 pause it please.

23 (Video played.)

24 All right. Do you recognize the individuals depicted in  
25 this video, Special Agent (indicating)?

1 A. I do.

2 Q. Can you tell us?

3 A. Sure. S, this is Rusch, Nordean, Fonticoba, Biggs,  
4 McDonald -- you'll get a better shot of his face here in a  
5 second -- and Paul Rae.

6 Q. Thank you.

7 And what is Mr. Fonticoba doing with his hands?

8 A. He's doing the Proud Boys hand gesture.

9 Q. Can you play it, please.

10 (Video played.)

11 Now, you moved some magnets down. There was a red one  
12 and a blue one. Can you remind us who is red and who is blue?

13 A. Red is Nordean, blue is Biggs.

14 Q. Now, according to the metadata provided by Google, what  
15 time was that video taken?

16 A. 1:27:30 p.m. on January 6th.

17 MR. KENERSON: Can we have Exhibit 512-9, please,  
18 which I think was provisionally admitted this morning. So once  
19 it's up for the witness, I would seek permission to publish.

20 THE COURT: All right. Permission to publish is  
21 granted.

22 BY MR. KENERSON:

23 Q. What date is this chat?

24 A. January 6, 2021.

25 Q. What chat are we in?



1 A. The Boots on Ground.

2 Q. And at 1:21:43, what does Captain post?

3 A. "@abolishthedemocrats. What's your current location?"

4 Followed by, "I am by the White House."

5 Q. Do you know who Captain is?

6 A. It's Gabriel Garcia.

7 Q. Who is Gabriel Garcia?

8 A. He's a Proud Boys out of Florida.

9 Q. At 1:32:44, what does Gilbert respond?

10 A. "We are at the front of the Capitol."

11 Q. Who is Gilbert?

12 A. Fonticoba.

13 Q. How does Aaron Wolkind respond at 1:33:25?

14 A. "Proud of your Boy," with a Proud Boys hand signal.

15 Q. What does MR. Fonticoba say at 1:35:01?

16 A. "We are here. We got maz and hit with paint balls."

17 Q. What's the next one?

18 A. He sends his location.

19 Q. Just be clear. What he actually sent, was that the numbers  
20 or this photo, or both?

21 A. He sent the numbers.

22 Q. And where does the photo come from?

23 A. It comes from Google.

24 Q. So in other words, was that added?

25 A. It was added.

1 Q. Did that location from Google correspond to the coordinates  
2 provided?

3 A. It does.

4 Q. And how does that location on Capitol grounds compare with  
5 the spot on the lawn that that photo was -- or, that video was  
6 taken that we just watched?

7 A. It's in the same area.

8 Q. This was in Boots on Ground chat, correct?

9 A. Correct.

10 Q. Have you reviewed the Ministry of Self-Defense members'  
11 chats?

12 A. Yes.

13 Q. The person at the beginning, who you said was Gabriel  
14 Garcia, is he in those chats as well?

15 A. I believe so.

16 Q. All right. We've spent a little time talking about events  
17 where Biggs, Nordean, and for a time Rehl, were after the  
18 incident with the shield, correct?

19 A. Yes.

20 Q. Did Mr. Pezzola, along with Mr. Greene, leave that area as  
21 well?

22 A. They did.

23 Q. Can you trace for us on the map the proximate route that  
24 they took?

25 A. They end up going this direction and back, to the back wall

1 (indicating).

2 Q. So for the record, you have indicated kind of to the left  
3 from the scaffolding that we were at before, to the left, and  
4 then down past the TV tower, and at the bottom of the wall,  
5 correct?

6 A. Correct.

7 Q. Okay. Did they stop anywhere along the way?

8 A. They did.

9 Q. All right.

10 MR. KENERSON: Can we have Exhibit 440-AX, please,  
11 which I believe the Court provisionally admitted this morning.  
12 Would seek permission to publish.

13 THE COURT: All right. Permission to publish  
14 granted.

15 BY MR. KENERSON:

16 Q. Special Agent, can you tell us where we are on the map  
17 right now?

18 A. We are in this area here (indicating).

19 Q. And you've indicated towards the upper part of the Plaza,  
20 but before you get to the staging, correct?

21 A. Correct.

22 Q. And to the left of the tower?

23 A. Yes.

24 Q. All right. Ms. Rohde, can we play this until 7 seconds,  
25 please.

1 (Video played.)

2 Can we pause right there.

3 Who is this individual who has just been highlighted  
4 (indicating)?

5 A. Charles Donohoe.

6 Q. Can we play again.

7 (Video played.)

8 And pausing again here.

9 Is that Mr. Donohoe still?

10 A. It is.

11 Q. Can we play until about 27 seconds, please.

12 (Video played.)

13 All right. Ms. Rohde, if we can go frame by frame, kind  
14 of slowly, for a little bit, please.

15 (Video played.)

16 Stop.

17 At -- where we stopped, at 28 seconds, what do we see  
18 there?

19 A. A water bottle.

20 Q. And what type of people are over on this side of the water  
21 bottle, to the right of it?

22 A. Law enforcement.

23 Q. Ms. Rohde, can we go frame by frame a couple more, please.

24 (Video played.)

25 And we can play the exhibit now.

1 (Video played.)

2 Now, at 28 seconds, what do which see here?

3 A. Charles Donohoe and a water bottle.

4 Q. And can you just describe how Mr. Donohoe's body is  
5 positioned as we are stopped here at 28 seconds?

6 A. It's positioned as if he just threw something.

7 Q. All right. We can take this exhibit down for now.

8 MR. KENERSON: Can we have Exhibit 205-X, please,  
9 which I think was provisionally admitted this morning. Would  
10 seek permission to publish.

11 (Video played.)

12 And, Ms. Rohde, if we could zoom in to, generally,  
13 the area that I've just circled (indicating).

14 BY MR. KENERSON:

15 Q. Do you recognize the people highlighted towards the top of  
16 this?

17 A. I do.

18 Q. Who are they?

19 A. Dominic Pezzola and Matthew Greene.

20 Q. And based on your review of video evidence and others, who  
21 is down at the bottom?

22 A. Charles Donohoe.

23 Q. And just timing-wise, as a general matter, how does this  
24 compare in terms of the time of this photograph to the time of  
25 the video we just saw?

1 A. It's the same.

2 Q. Thank you.

3 And, Ms. Rohde, if we can --

4 MS. HERNANDEZ: Your Honor, do we have a time for  
5 both items?

6 THE WITNESS: It's approximately 1:25 p.m.

7 THE COURT: You may proceed, Mr. Kenerson.

8 MR. KENERSON: Can we go to 160-B, as in boy, X,  
9 which I believe was provisionally admitted, and would seek  
10 permission to publish.

11 (Video played.)

12 Before this starts zooming in, can you go back out to  
13 the beginning?

14 BY MR. KENERSON:

15 Q. At the beginning of this exhibit, what timestamp is on the  
16 CCTV?

17 A. 1:25:31 p.m.

18 Q. All right. Can we skip this forward to 7 seconds. And,  
19 Ms. Rohde, if we could zoom in on that portion, if it's  
20 possible -- the portion with the highlighting, that is.

21 (Video played.)

22 Do you recognize the individual highlighted  
23 (indicating)?

24 A. I do. That's Charles Donohoe.

25 Q. All right. If we go back to the beginning, Ms. Rohde.

1 (Video played.)

2 And I think zoom back out now.

3 (Video played.)

4 All right. Can we play this until about 13 seconds.

5 (Video played.)

6 And if we could stop there (indicating).

7 What did we just see Mr. Donohoe do?

8 A. He just threw two water bottles in the direction of law  
9 enforcement.

10 Q. And can you tell us what the trajectory of the first one we  
11 saw was versus the trajectory of the second?

12 A. The second one was a lot higher. The first one was more  
13 kind of direct.

14 THE COURT REPORTER: I didn't hear what you said.

15 MR. PATTIS: I was asking for clarification. I  
16 didn't hear the answer, and someone at the table gave it to me  
17 here.

18 BY MR. KENERSON:

19 Q. Those two throws, did they happen in quick success or far  
20 apart on the video we just saw?

21 MR. METCALF: Objection as to leading.

22 THE COURT: Overruled.

23 A. They happened right after each other.

24 BY MR. KENERSON:

25 Q. Where -- well, can we skip this video to approximately

1 1:32.

2 (Video played.)

3 And if we could zoom in towards the middle right here  
4 (indicating).

5 Ms. Rohde, if you could just click a couple frames  
6 forward, please.

7 (Video played.)

8 Do you recognize anyone currently, Special Agent?

9 A. Keep going.

10 (Video played.)

11 Greene and Pezzola (indicating).

12 Q. And we'll take the highlighting off.

13 Greene is on the left or right, as we're looking at it?

14 A. Greene is on the left.

15 Q. And Pezzola?

16 A. Is on the right.

17 Q. And what color are the hats of the individuals they are  
18 standing near right now?

19 A. Orange.

20 Q. All right. If we could zoom back out, please.

21 If you let this play to 1:54, please.

22 (Video played.)

23 A. This is what you're looking at, so you guys can see  
24 (indicating).

25 Q. Thank you, Special Agent.



1 MS. HERNANDEZ: Your Honor, we can't hear.

2 THE COURT: All right. I will just ask -- ask both  
3 witness and lawyer to keep your voices up and keep your mouth  
4 near the microphone.

5 BY MR. KENERSON:

6 Q. Special Agent, can you let us know -- and we'll zoom in if  
7 we need to -- who is now circled?

8 A. Sure. So Greene is going to be in the back, Pezzola is in  
9 front, and then the bubble to the right is Charles Donohoe,  
10 with the white around the coat.

11 Q. All right. Can we play from this point, Ms. Rohde.

12 (Video played.)

13 Pause right here.

14 A flag just inconveniently went into our bubble. But  
15 were you able to tell who was inside the bubble?

16 A. Yeah. So it was Charles Donohoe in the front, Dominic  
17 Pezzola behind him, and then Matt Greene.

18 Q. And do you see this white flag I've circled over here  
19 (indicating)?

20 A. I do. It's got a tree on it.

21 Q. Can we, Ms. Rohde, go to 450-X, which I believe was  
22 provisionally admitted this morning.

23 MR. KENERSON: And ask for permission to publish to  
24 the jury.

25 THE COURT: Permission to publish is granted.

1 (Video played.)

2 BY MR. KENERSON:

3 Q. Circling this flag to the left of the screen now, this  
4 white flag. How does that compare to the flag we just saw?

5 A. It's the same flag.

6 Q. Can you play it, please.

7 (Video played.)

8 Pausing at 8 seconds.

9 Who do we see highlighted?

10 A. Charles Donohoe in the front, Dominic Pezzola behind him,  
11 and then Matthew Greene in the rear.

12 Q. Can we play again, please.

13 (Video played.)

14 What direction were Mr. Pezzola, Greene, and Donohoe  
15 moving there?

16 MR. METCALF: Objection. Form. Leading.

17 THE COURT: Overruled.

18 BY MR. KENERSON:

19 Q. What direction did they move?

20 A. Towards the back, to the wall.

21 Q. Can we have Exhibit 442-A please, which I believe is  
22 already in evidence.

23 And as this comes up, Special Agent Miller, do you  
24 recognize this video?

25 A. I do.

1 Q. Can you tell us where on Capitol grounds -- can you show us  
2 on the map where on Capitol grounds this was taken from?

3 A. Sure. It's going to be back here (indicating).

4 Q. And for the record, you have indicated towards the left  
5 half of the Plaza, as we look at it, towards the back wall,  
6 correct?

7 A. Correct.

8 Q. Can we -- and do you know the -- well, do you know the  
9 proximate time it was this video was taken?

10 A. In between 2:27 and 2:30.

11 Q. 2:27 or 1:27?

12 A. 1:27 -- I'm sorry -- and 1:30.

13 Q. Can we play this just for the first couple of seconds,  
14 please.

15 (Video played.)

16 Right there (indicating).

17 Who is that individual that we just saw walking by?

18 A. Charles Donohoe, and he has a shield.

19 Q. And if we could play just a couple seconds further.

20 (Video played.)

21 Who has now come into our screen?

22 A. Dominic Pezzola.

23 Q. And what is in his hand?

24 A. A shield.

25 Q. Play again.

1 MR. PATTIS: Judge, may we be heard briefly, please?

2 (Bench discussion:)

3 MR. PATTIS: I objected a number of times on 403  
4 grounds. I didn't want to say "waste of time" aloud because it  
5 sounded argumentative. But if I have to sit there another 5 or  
6 10 or 15 to 20 minutes of grainy photographs identifying people  
7 in a crowd, I think I'm going to be engaged in an insurrection.  
8 Nobody here is disputing that the folks were there. This is a  
9 waste of time.

10 THE COURT: Mr. Pattis -- well, let me hear from the  
11 government in response.

12 MR. KENERSON: I mean, I understand that Mr. Pattis  
13 would like this to move quicker, and I understand he says that  
14 no one is disputing that they are there. Number one, the photo  
15 on the screen is not a surveillance photo. This is two videos  
16 afterwards. We are about to hear Mr. Pezzola say he stole the  
17 riot shield, number one, on this particular video.

18 Number two, I have not heard any defendant saying  
19 that they are agreeing to our vision of who moved where, when,  
20 at what time, and I think we have a right to prove that.

21 MR. METCALF: Your Honor, Steven Metcalf. At this  
22 the point, I would object to this because there's a question  
23 posed to Mr. Pezzola, and the question says: Hey, you stole a  
24 riot shield.

25 That asks for a legal conclusion. We don't know who

1 that individual who'd asked the question is. We don't have a  
2 right to confront that individual. And Mr. Pezzola simply  
3 answers as a "yeah." So at this point, we say that on  
4 relevance grounds and on 403 grounds, and based on the question  
5 form that was posed to him, asking for a legal conclusion.

6 THE COURT: I'm going to object -- I'm going to  
7 overrule all those objections, Mr. Metcalf.

8 Mr. -- and as to Mr. Pattis's objection, I'm going to  
9 overrule it at this point, because I do think, again, I'm going  
10 to give -- the government does get to do their motions here,  
11 and I think they're trying to move it as quickly as they can.  
12 And the other piece of it is, they've been using this to point  
13 out the movements of other people that we've talked about here.

14 Thankfully, we are -- Mr. Pattis, we're only 23  
15 minutes away from the end of the day. But, I take your point,  
16 and at some point, it may become a 403 issue.

17 Mr. Metcalf, yes, sir.

18 MR. METCALF: Your Honor, I will also object on  
19 hearsay grounds based on the person's statements.

20 THE COURT: Well, at a minimum, it's a statement of  
21 party opponent, your client's statement. So --

22 MR. METCALF: Understood. But my client says,  
23 "Yeah," so I object to the question that is asked of him --

24 THE COURT: Right. But the question is not --

25 MR. METCALF: -- "Did you steal a shield"?

1 THE COURT: The question is not hearsay because  
2 hearsay questions cannot be hearsay. Moreover, it would at  
3 least be admissible to show your client's response.

4 You may proceed, Mr. Kenerson.

5 (Open court:)

6 BY MR. KENERSON:

7 Q. Thank you, Special Agent.

8 Remind us, who is on our screen right now?

9 A. Dominic Pezzola.

10 Q. And, Ms. Rohde, can we play from here.

11 (Video played.)

12 Sorry. Can we go back just a few seconds. I think some  
13 portion of that was cut off on the audio. Keep going. Keep  
14 going. Keep going. About there.

15 (Video played.)

16 Pause there.

17 And did we just hear an exchange on the screen?

18 A. We did.

19 Q. What was that exchange?

20 A. Someone asked, "You just stole a riot shield?"

21 To which Pezzola said, "Yeah."

22 Q. And, Ms. Rohde, can we back up just maybe a second or so?

23 Do you recognize this person in the blue hoodie  
24 (indicating)?

25 A. I do. That's Matt Greene.

1 Q. Can we go to Exhibit 509 -- well, I'm sorry.

2 Can we play this again? Just to the end.

3 (Video played.)

4 That person --

5 Pause right here.

6 That person with the longer hair who was just behind

7 Mr. Greene, have you seen him in other videos from today?

8 A. I have. He was in the Marching Group.

9 Q. Thank you.

10 (Video played.)

11 We can pause it here.

12 If we can go to 509-33, which I believe is in

13 evidence -- excuse me, is not in evidence. This was

14 provisionally admitted, so just for the witness.

15 MR. KENERSON: I would seek permission to publish.

16 THE COURT: It will be admitted. And permission to  
17 publish.

18 BY MR. KENERSON:

19 Q. We still on January 6, 2021?

20 A. We are.

21 Q. Which group?

22 A. New MoSD, which is the leaders.

23 Q. At 1:37:27, what does Charles Donohoe post?

24 A. "Got a riot shield."

25 Q. Can you remind us what Mr. Donohoe's position was within

1 MoSD?

2 A. He was a leader.

3 Q. Going to show you, as well, what's been admitted as  
4 Government's Exhibit 475.

5 Who is depicted in this photograph -- oh, sorry. Hold  
6 on. It's not up yet.

7 Who is depicted in this photograph (indicating)?

8 A. Dominic Pezzola.

9 Q. Where was this recovered?

10 A. From Donohoe's device.

11 Q. And can you tell us what Mr. Pezzola is doing with his  
12 hand?

13 MR. METCALF: Objection, Your Honor. Cumulative.

14 THE COURT: Overruled.

15 A. He's doing the Proud Boys hand gesture.

16 BY MR. KENERSON:

17 Q. And where on Capitol grounds this was taken?

18 A. They're back by the wall.

19 Q. Now, the -- looking at the board, the magnet for Mr. Rehl  
20 is still over near the scaffolding. Is that where he was at  
21 this point, based on your review of video?

22 A. He's still by the scaffolding, but he's towards the rear --  
23 or, he's by the TV tower.

24 Q. You can move the magnet there.

25 A. (Complies.)



1 Q. Did -- were any videos recovered from Mr. Rehl's phone in  
2 about that area?

3 A. There were.

4 Q. Can we have Exhibit 400-N, as in Nancy, please.

5 Do you recognize this?

6 A. I do.

7 Q. What is this?

8 A. This is video recovered from Mr. Rehl's device.

9 MR. KENERSON: Your Honor, I move for the admission  
10 of 400-N as in Nancy.

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

13 MR. KENERSON: And, Ms. Rohde, can we play this.

14 (Video played.)

15 BY MR. KENERSON:

16 Q. Do we hear any noises partway through that video?

17 A. We do. We hear a loud "boom."

18 Q. Was Mr. Rehl sending any messages around this time?

19 A. He was.

20 Q. Can we go back to Exhibit 547-5, please. And if we could  
21 scroll down to the message at 1:34:33.

22 What did Mr. Rehl send to this group that we  
23 discussed earlier at 1:34:33?

24 A. He says: We're at a standstill. Cops are dropping  
25 concussion bombs and pepper spraying. People are pepper

1 spraying back and fighting riot cops.

2 Q. Did Mr. Rehl express any displeasure as to what was going  
3 on?

4 A. He did not.

5 MS. HERNANDEZ: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. KENERSON:

8 Q. Well, did you find any messages in Mr. Rehl's phone about  
9 this point in time in this thread, other than this one?

10 A. Yes -- well, later on.

11 Q. Right. Back up around 1:34?

12 A. No.

13 Q. If we go back down to the 1:34 message.

14 Anywhere in that message does he express displeasure?

15 A. He does not.

16 Q. Based on your review of the video, had the crowd stopped  
17 moving at that point, largely, or were they still moving?

18 A. They had stopped.

19 Q. Did the crowd eventually move forward?

20 A. They did.

21 Q. When they did, did Mr. Rehl remain at the tower?

22 A. He moved forward with them.

23 Q. Now, this group that we just saw with Mr. Donohoe,  
24 Mr. Pezzola, and Mr. Greene, did they stay where their magnet  
25 is currently?

1 A. They did not.

2 Q. Can we have Exhibit 160-C as in Charlie, X, please.

3 And before we zoom in, can you tell us the timestamp  
4 at the start of this video?

5 A. 1:36:22 p.m.

6 Q. And can we go to 20 seconds in.

7 And based on your review of video, who is circled here  
8 (indicating)?

9 A. It's going to be Charles Donohoe, Matthew Greene, and  
10 Dominic Pezzola.

11 Q. And can you point on the map behind you to where the  
12 entrance to the scaffolding is?

13 A. (Indicating).

14 Q. And you have indicated, for the record, there's a little  
15 door on the left side of the inaugural scaffolding, correct?

16 A. Correct.

17 Q. Can you tell us where on this exhibit -- relative to this  
18 exhibit would that door be?

19 A. To the right.

20 Q. Towards the top or towards the bottom?

21 A. Towards the bottom. Down here (indicating).

22 Q. All right. Ms. Rohde, I'm going to ask if we could speed  
23 this up to about four times.

24 If we could play, please.

25 (Video played.)

1           And while this is going, I want to ask you, you see some  
2 police activity on the screen?

3       A. I do.

4       Q. Is there more -- relative to the scaffolding door, is there  
5 more police activity to the right or to the left as we're  
6 looking at it?

7       A. To the left.

8       Q. If we could stop towards the end of this video.

9           Where has that group just gotten?

10      A. Next to the scaffolding.

11      Q. I think you said at the beginning of this, that the  
12 timestamp was 1:36:22; is that right?

13      A. Yes. Correct.

14      Q. The video we just watched, can you tell us what the length  
15 of it is down in the bottom right-hand corner?

16      A. 2 minutes and 7 seconds, and we're at 2 minutes and 4 in  
17 the video.

18      Q. And so if the video started at 1:36:22, they arrived up at  
19 the scaffolding approximately 2 minutes, 7 seconds later,  
20 approximately what time is that?

21      A. A little after 1:38.

22      Q. And can you move the green magnet accordingly, please?

23      A. (Complies.)

24           MR. KENERSON: May I have Exhibit 412-AX, please,  
25 which I believe was provisional admitted, and would seek

1 permission to publish.

2 THE COURT: All right. Permission to publish is  
3 granted.

4 BY MR. KENERSON:

5 Q. And before we start playing, we see Mr. Pezzola's head up  
6 to the right.

7 What does that signify?

8 A. Mr. Pezzola is going to be in this video.

9 Q. Does he speak?

10 A. Yes.

11 Q. All right. Can we play the video, please.

12 (Video played.)

13 Who is outlined here, at 4 seconds (indicating)?

14 A. Dominic Pezzola.

15 Q. And who is behind him, if you know?

16 A. Charles Donohoe.

17 (Video played.)

18 Q. Pause right here.

19 Do you recognize this individual (indicating)?

20 A. He's in the Marching Group.

21 Q. Is he at the back, with Mr. Greene and Mr. Pezzola?

22 A. He is not.

23 Q. If we could keep playing, please.

24 (Video played.)

25 Who are the individuals who are highlighted right now?

1 A. So it was Donohoe, before he went off the screen, and then  
2 you have Dominic Pezzola and Matthew Greene.

3 Q. Thank you.

4 (Video played.)

5 If we can pause right there.

6 Did you recognize that voice?

7 A. I did.

8 Q. Whose voice was that?

9 A. Pezzola's.

10 Q. And who was over in the direction that Mr. Pezzola was  
11 moving?

12 A. Law enforcement.

13 Q. Ms. Rohde, if we could have Exhibit 463, just for the  
14 witness, please.

15 MR. KENERSON: And I believe that this was either  
16 admitted or provisionally admitted this morning. But  
17 regardless, would seek permission to publish.

18 THE COURT: All right. Permission is granted.

19 BY MR. KENERSON:

20 Q. Special Agent, can you tell us where we are in the Capitol  
21 relative to what we just saw?

22 A. Yeah. We're very -- we're very close by.

23 Q. Can you point on the map, please.

24 A. So, what you just saw before was in this area, and where we  
25 are now is right here (indicating).

1 Q. So it's very close?

2 A. Very close.

3 Q. Thank you.

4 Do you recognize the individual in brown in the middle  
5 of the photo?

6 A. I do.

7 Q. Have we seen him earlier today?

8 A. We have. He's in the Marching Group.

9 Q. Did we hear him saying anything in the Marching Group?

10 A. We do. He says: Treason. Pick a side.

11 Q. And what is this individual doing in this photograph  
12 (indicating)?

13 A. He is -- appears to be spraying in the direction of law  
14 enforcement. They're on the other side of that spray.

15 Q. Do you know the individual's name?

16 A. Christopher Worrell. He's a Florida Proud Boy.

17 Q. Can we have the screen just for the witness on  
18 Exhibit 509-34, please.

19 MR. KENERSON: I believe that this was provisionally  
20 admitted -- actually, might be fully admitted. But either way,  
21 I seek permission to publish.

22 THE COURT: Permission is granted.

23 BY MR. KENERSON:

24 Q. What chat are we in now?

25 A. We are in New MoSD, which is the leaders' chat.

1 Q. And what date?

2 A. January 6, 2021.

3 Q. Can you tell us what John Stewart posted at 1:39:45?

4 A. He posts a screenshot of: Just in; the Madison Building on  
5 Capitol hall is being evacuated -- Capitol Hill, excuse me.

6 Q. What about below that?

7 A. Stewart says, "Normies stopped pushing;" followed by  
8 Bertino saying, "Holy shot;" and then Wolkind saying,  
9 "Abahahaha, OP success."

10 Q. Do you have any reason to believe any of these individuals  
11 were in Washington, D.C. at this point in time?

12 A. I do not.

13 Q. We go to 160-D as in David, X, please.

14 MR. KENERSON: I believe this was provisionally  
15 admitted. Seek to publish to the jury.

16 THE COURT: All right. Permission to publish is  
17 granted.

18 BY MR. KENERSON:

19 Q. Another version of Capitol Hill surveillance video?

20 A. Yes.

21 Q. What time does this one start?

22 A. 1:44:10 p.m.

23 Q. All right. If we can skip to 33 seconds, Ms. Rohde.

24 And if we could zoom over to that area briefly.

25 (Video played.)



1           Are you able to tell who any of those pixilated people  
2     are (indicating)?

3     A.   So, I can tell you that this is Biggs (indicating).

4     Q.   How can you tell that that's Biggs?

5     A.   Based off the attire he's wearing. You can see his hat,  
6     and you can see the plaid.

7     Q.   Thank you.

8           If we could go back out of zoom, please. And if we  
9     could play this again at four times speed, Ms. Rohde.

10          Before we start that, can you tell us -- remind us where  
11     the entrance to the scaffolding is relative to the camera?

12     A.   It's going to be in the lower right, over in this direction  
13     (indicating).

14     Q.   Thank you.

15          (Video played.)

16          And while this is moving again, do we see a line of law  
17     enforcement officers?

18     A.   We do.

19     Q.   Relative to the scaffolding entrance, are they more to our  
20     left or to our right?

21     A.   They're to the left of the scaffolding entrance.

22     Q.   That's as we look at it, correct?

23     A.   Correct.

24     Q.   So if we could just get that back up so we can see the time  
25     counter.

1           That exhibit was 1 minute and 45 seconds long?

2       A.   Yes.

3       Q.   1:41, excuse me.

4           And what time did it start?

5       A.   1:44:10.

6       Q.   So, apologies to make you do math again, but if it started  
7       at 1:44:10 and was a minute and 41 seconds long, approximately  
8       what time does it end?

9       A.   1:45:51.

10      Q.   Thank you.

11           Were there still shots taken from around the area where  
12      that group wound up?

13      A.   Yes.

14      Q.   Can we have Exhibit 211, please.

15           And can you just tell us, as a general matter, what  
16      we're looking at here in Exhibit 211 (indicating)?

17      A.   Sure. This is going to be a photograph. Scaffolding is  
18      over here (indicating).

19      Q.   And are you able to see any of -- well, you mentioned  
20      Mr. Biggs. Are you able to see Mr. Biggs in here?

21      A.   I am (indicating).

22      Q.   And if we could have, just for the witness, Exhibit 211-X.

23           MR. KENERSON: I believe this was provisionally  
24      admitted this morning, and would seek to show to the jury.

25           THE COURT: All right. Permission to publish is

1 granted.

2 BY MR. KENERSON:

3 Q. On 211-X, how does this photograph compare to 211, which we  
4 just looked at?

5 A. It's the same.

6 Q. Zoomed in? Zoomed out? The same level?

7 A. Zoomed in.

8 Q. And do you recognize any of the people on the zoomed-in  
9 version?

10 A. I do (indicating). Joseph Biggs, Shannon Rusch, Paul Rae,  
11 Ethan Nordean, McDonald, Fonticoba, Marching Group, Marching  
12 Group, Marching Group.

13 Q. And approximately -- do you know approximately when this  
14 photo was taken relative to the end of the last clip that we  
15 watched?

16 A. Same time -- roughly same time.

17 MR. KENERSON: All right. If we can move to 420-AX,  
18 please, which I believe was provisionally admitted, and seek to  
19 publish.

20 MR. JAUREGUI: 420-AX?

21 MR. KENERSON: Yes.

22 THE COURT: All right. Permission to publish is  
23 granted.

24 BY MR. KENERSON:

25 Q. Special Agent, do you recognize the area of the Capitol

1 this is (indicating)?

2 A. I do. The scaffolding is going to be this way  
3 (indicating).

4 Q. To the left, you said?

5 A. To the left.

6 Q. Thank you.

7 Do you recognize these two individuals (indicating)?

8 A. I do. That's Dominic Pezzola and Matthew Greene.

9 Q. And can we play this video, please.

10 (Video played.)

11 Stop right here.

12 Do you see other members of the Marching Group on your  
13 screen?

14 A. I do.

15 Q. Can you circle them?

16 A. (Complies.)

17 Q. Thank you. We can clear it.

18 And, Special Agent, I should have asked you to do this  
19 earlier, but can you move the magnets for Mr. Nordean and  
20 Mr. Biggs up to where they wound up?

21 A. (Complies.)

22 MR. KENERSON: And I see it's 4:59.

23 THE COURT: Is now a good time -- well --

24 MR. KENERSON: Good a time as any.

25 THE COURT: All right. Very well.

1 Ladies and gentlemen, it is 4:59. We will see you  
2 tomorrow at 9 o'clock. Once again, as always, no discussion of  
3 the evidence in this case with anyone, no independent  
4 investigation, and please avoid the media regarding January 6  
5 or this case specifically. Thank you. Enjoy your evening.

6 (Whereupon the jurors leave the courtroom.)

7 THE COURT: Everyone may be seated.

8 And, ma'am, you may step down -- or, Special Agent,  
9 you can step down.

10 THE WITNESS: Do you want these (indicating)?

11 THE COURT: I think you can give them to  
12 Mr. Kenerson.

13 All right. We'll see everyone at 9 o'clock tomorrow.

14 Yes, Mr. Metcalf?

15 MR. METCALF: Your Honor, just very briefly.

16 This morning I arrived at the building at 8:43, and I  
17 got a chance to see Ms. Hernandez --

18 THE COURTROOM DEPUTY: Please use the microphone.  
19 The court reporter can't hear you.

20 MR. METCALF: -- I got a chance to see Ms. Hernandez  
21 go through security. And then after that, I patiently waited  
22 as groups and groups of jurors came to the building, and I'm  
23 talking about 20 to 25 people then went before I was able to go  
24 through and actually gain access to the building. I think by  
25 the time I got up here, it was about 9:02.

1           And I do not want anything like to that happen. I  
2     don't know what's going -- happen again. I've taken, Your  
3     Honor, me being late that one time very seriously, and I've  
4     always tried to be here much, much earlier than our start time  
5     as a result of that. But today the lines were just  
6     astronomical, and I don't know how this is going to go  
7     tomorrow.

8           Is there any chance, just out of an abundance of  
9     caution, that we could start at 9:15 tomorrow?

10          THE COURT: No. I think we should start at 9,  
11     although there's -- I mean, and I think -- didn't we go through  
12     this earlier? I know Mr. Smith had voiced a concern.

13          Don't you all have the ability to, I mean, more or  
14     less, cut the line, as attorneys?

15          MR. METCALF: Yes. But jurors -- I'm told that  
16     jurors take precedence.

17          THE COURT: Ah. Well, maybe you can't cut past the  
18     juror.

19          MS. HERNANDEZ: It was exceedingly busy today, and  
20     everybody was cutting -- everybody who could cut the line was  
21     cutting the line, except for the prosecutors, who don't have to  
22     stand in line whatsoever, I must say.

23          MR. PATTIS: And we know, Judge, that the true law  
24     enforcement officers in this building are the defense bar. We  
25     try to check the government for abusing its power, and we never

1 ask for the LEO privilege to jump the line, as we watch our  
2 colleagues float through like Muhammad Ali.

3 THE COURT: My understanding is that everyone on this  
4 side of the bar has the ability to get to the front of the line  
5 one way or another, and I encourage you all to use that power.

6 Mr. Roots?

7 MR. ROOTS: Your Honor, on a related note, it seems  
8 from our observations that on the first day of these jury  
9 trials in this building, there are a lot of jurors and  
10 potential jurors that are lined up outside waiting to get in  
11 the building. But then, maybe on the second day, when these  
12 jury trials in this building get formulated, the jurors don't  
13 seem to be lined up in the morning.

14 So, this begs the question: It seems -- we don't  
15 even know about the security logistics, and I, personally,  
16 don't care. Maybe it's -- apparently, the jurors are being  
17 shuttled in by a bus of some kind, a system we don't know  
18 about, which is fine with me. But if the jurors are being told  
19 something about that they're in danger or they have security  
20 concerns, maybe relating to the defendants, we feel that that  
21 could be prejudicial to us.

22 THE COURT: I think all -- to the extent you're  
23 reflecting on the ebb and flow of traffic, I think what it  
24 means only is, like, as you observed, on Mondays, you have a  
25 large group coming in of venire, and then it should -- that

1       should recede as the week goes. So, hopefully there won't be  
2       as much traffic tomorrow, but we'll find out.

3               MS. HERNANDEZ: Your Honor, as to what Mr. Roots is  
4       saying, my understanding is that the jurors in this case are  
5       bussed in from some location. I don't know where, and I don't  
6       know whether it's this case and the Oath Keepers case, but it  
7       is -- they're treated differently as to --

8               THE COURT: I entered an order on the docket about  
9       that, I don't know, in November? So --

10              MS. HERNANDEZ: I think what Mr. Roots is questioning  
11       is whether -- it's an extraordinary measure. I'm not  
12       challenging the measure. I'm just saying, I think what he's  
13       questioned is whether the jurors are -- something has been told  
14       to them when they get bussed in, because that doesn't happen  
15       with regular juries.

16              THE COURT: Nothing has been imparted to them.  
17       Correct.

18              See everyone at 9 o'clock tomorrow.

19                               \*   \*   \*



CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 7th day of march, 2023

---

Janice E. Dickman, CRR, CMR, CCR  
Official court reporter  
Room 6523  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

## INDEX

## WITNESS:

Nicole Miller

Direct Examination by Mr. Kenerson (cont.)..... 12314

## EXHIBIT:

Government's Exhibit 400-N..... 12397

\* \* \*

|  |  |   |  |
|--|--|---|--|
| <p><b>0</b></p>  | <p>1:04:22 [1] - 12339:22<br/>1:04:53 [1] - 12347:14<br/>1:08 [1] - 12349:20<br/>1:10:06 [1] - 12341:3<br/>1:10:49 [1] - 12341:17<br/>1:14:47 [1] - 12366:22<br/>1:15 [1] - 12353:1<br/>1:15:12 [1] - 12367:13<br/>1:15:21 [1] - 12371:6<br/>1:16:25 [1] - 12369:10<br/>1:18:28 [1] - 12373:21<br/>1:18:32 [1] - 12374:2<br/>1:21:18 [1] - 12375:2<br/>1:21:43 [1] - 12381:2<br/>1:24 [2] - 12360:9,<br/>12361:3<br/>1:25 [1] - 12386:6<br/>1:25:31 [1] - 12386:17<br/>1:27 [2] - 12391:11,<br/>12391:12<br/>1:27:30 [1] - 12380:16<br/>1:30 [1] - 12391:12<br/>1:32 [1] - 12388:1<br/>1:32:44 [1] - 12381:9<br/>1:33:25 [1] - 12381:13<br/>1:34 [2] - 12398:11,<br/>12398:13<br/>1:34:33 [2] - 12397:21,<br/>12397:23<br/>1:35:01 [1] - 12381:15<br/>1:36:22 [3] - 12399:5,<br/>12400:12, 12400:18<br/>1:37:27 [1] - 12395:23<br/>1:38 [2] - 12318:9,<br/>12400:21<br/>1:39 [1] - 12361:14<br/>1:39:45 [1] - 12404:3<br/>1:41 [1] - 12406:3<br/>1:44:10 [3] - 12404:22,<br/>12406:5, 12406:7<br/>1:45 [1] - 12301:8<br/>1:45:51 [1] - 12406:9<br/>1:49 [1] - 12368:2<br/>1:54 [1] - 12388:21</p>  | <p>12395:19, 12404:2<br/>2023 [2] - 12301:7,<br/>12413:8<br/>205-X [1] - 12385:8<br/>20530 [1] - 12301:16<br/>20777 [1] - 12302:8<br/>209 [1] - 12302:10<br/>21 [1] - 12358:2<br/>21-175 [1] - 12356:17<br/>21-75 [1] - 12303:3<br/>21-cr-175 [1] - 12301:4<br/>211 [3] - 12406:14,<br/>12406:16, 12407:3<br/>211-X [2] - 12406:22,<br/>12407:3<br/>229-X [3] - 12354:2,<br/>12356:23, 12363:16<br/>23 [1] - 12393:14<br/>24 [6] - 12322:15,<br/>12325:4, 12331:14,<br/>12331:16, 12367:4,<br/>12367:14<br/>25 [3] - 12316:1,<br/>12338:22, 12409:23<br/>261 [1] - 12364:22<br/>27 [3] - 12334:21,<br/>12361:25, 12384:11<br/>271 [1] - 12301:21<br/>28 [3] - 12384:17,<br/>12385:2, 12385:5<br/>2:09 [1] - 12368:11<br/>2:13 [1] - 12371:10<br/>2:27 [3] - 12372:3,<br/>12391:10, 12391:11<br/>2:30 [1] - 12391:10<br/>2:31 [1] - 12364:15<br/>2:40 [1] - 12372:23</p> | <p><b>4</b></p>  |
| <p>06511 [1] - 12302:5</p>   |  |   |  |
| <p><b>1</b></p>  |  |   |  |
| <p>1 [6] - 12332:4,<br/>12338:21, 12339:6,<br/>12340:5, 12346:7,<br/>12406:1<br/>1,000 [1] - 12342:1<br/>10 [7] - 12316:15,<br/>12316:19, 12343:11,<br/>12350:7, 12350:17,<br/>12356:13, 12392:6<br/>10010 [1] - 12301:25<br/>10016 [1] - 12302:16<br/>1014 [1] - 12302:13<br/>105 [1] - 12314:25<br/>10:10:49 [1] -<br/>12341:23<br/>11 [2] - 12357:9,<br/>12360:18<br/>11201 [1] - 12301:21<br/>1123 [1] - 12301:24<br/>1127 [1] - 12362:17<br/>113 [1] - 12302:18<br/>1137 [3] - 12323:24,<br/>12337:5, 12339:25<br/>12 [1] - 12363:25<br/>12314 [1] - 12414:4<br/>12397 [1] - 12414:7<br/>12:58 [2] - 12324:13,<br/>12338:9<br/>12:58:27 [1] - 12335:7<br/>12:59 [2] - 12335:23,<br/>12337:22<br/>12:59:29 [1] - 12343:5<br/>13 [4] - 12324:4,<br/>12324:23, 12337:6,<br/>12387:4<br/>1301 [1] - 12301:18<br/>14 [1] - 12344:20<br/>1420 [1] - 12302:2<br/>145 [1] - 12334:20<br/>145-A [1] - 12349:15<br/>145-CX [3] - 12366:23,<br/>12371:9, 12374:10<br/>15 [1] - 12392:6<br/>153 [1] - 12302:10<br/>160-B [1] - 12386:8<br/>160-C [1] - 12399:2<br/>160-D [1] - 12404:13<br/>18 [3] - 12311:10,<br/>12367:11, 12378:16<br/>19 [1] - 12327:2<br/>1:01 [1] - 12323:15<br/>1:02:06 [1] - 12339:13<br/>1:03 [1] - 12340:8<br/>1:04:18 [1] - 12339:18</p> | <p><b>2</b></p> <p>2 [8] - 12322:8,<br/>12338:19, 12341:16,<br/>12363:17, 12363:24,<br/>12400:16, 12400:19<br/>20 [4] - 12351:1,<br/>12392:6, 12399:6,<br/>12409:23<br/>20001 [1] - 12413:14<br/>20005 [2] - 12301:19,<br/>12302:2<br/>201 [1] - 12346:2<br/>2021 [5] - 12338:17,<br/>12340:21, 12380:24,<br/>12395:19, 12404:2<br/>2023 [2] - 12301:7,<br/>12413:8<br/>205-X [1] - 12385:8<br/>20530 [1] - 12301:16<br/>20777 [1] - 12302:8<br/>209 [1] - 12302:10<br/>21 [1] - 12358:2<br/>21-175 [1] - 12356:17<br/>21-75 [1] - 12303:3<br/>21-cr-175 [1] - 12301:4<br/>211 [3] - 12406:14,<br/>12406:16, 12407:3<br/>211-X [2] - 12406:22,<br/>12407:3<br/>229-X [3] - 12354:2,<br/>12356:23, 12363:16<br/>23 [1] - 12393:14<br/>24 [6] - 12322:15,<br/>12325:4, 12331:14,<br/>12331:16, 12367:4,<br/>12367:14<br/>25 [3] - 12316:1,<br/>12338:22, 12409:23<br/>261 [1] - 12364:22<br/>27 [3] - 12334:21,<br/>12361:25, 12384:11<br/>271 [1] - 12301:21<br/>28 [3] - 12384:17,<br/>12385:2, 12385:5<br/>2:09 [1] - 12368:11<br/>2:13 [1] - 12371:10<br/>2:27 [3] - 12372:3,<br/>12391:10, 12391:11<br/>2:30 [1] - 12391:10<br/>2:31 [1] - 12364:15<br/>2:40 [1] - 12372:23</p> | <p><b>3</b></p> <p>3 [2] - 12330:24,<br/>12365:17<br/>31 [2] - 12327:18,<br/>12332:4<br/>317 [1] - 12332:9<br/>32 [2] - 12327:16,<br/>12337:6<br/>33 [1] - 12404:23<br/>33012 [1] - 12302:13<br/>33014 [1] - 12302:11<br/>333 [1] - 12413:13<br/>34 [1] - 12358:12<br/>35 [2] - 12322:17,<br/>12362:5<br/>36 [1] - 12321:7<br/>383 [1] - 12302:4<br/>3:30 [1] - 12356:13</p>  | <p>4 [6] - 12332:19,<br/>12332:22, 12345:9,<br/>12363:17, 12400:16,<br/>12401:13<br/>400-N [2] - 12397:4,<br/>12397:10<br/>400-N..... [1]<br/>- 12414:7<br/>403 [5] - 12352:9,<br/>12373:8, 12392:3,<br/>12393:4, 12393:16<br/>404-DD [1] - 12373:16<br/>404-EE [1] - 12373:22<br/>404-G [1] - 12342:19<br/>404-KX [1] - 12347:3<br/>404-LL [1] - 12379:14<br/>404-N [2] - 12348:8,<br/>12348:9<br/>404-Q [1] - 12349:6<br/>404-W [1] - 12363:6<br/>404-Z [1] - 12369:4<br/>41 [3] - 12362:9,<br/>12370:4, 12406:7<br/>412-AX [1] - 12400:24<br/>417-X [2] - 12324:15,<br/>12331:4<br/>42 [1] - 12305:22<br/>42-second [4] -<br/>12303:13, 12303:16,<br/>12304:17, 12308:14<br/>420-AX [2] - 12407:17,<br/>12407:20<br/>421-B [1] - 12321:2<br/>43 [1] - 12301:6<br/>437-B [1] - 12320:9<br/>440-AX [1] - 12383:10<br/>441-AX [1] - 12377:20<br/>442-A [1] - 12390:21<br/>444-AX [1] - 12361:15<br/>445-BX [1] - 12326:21<br/>445-BY [1] - 12327:23<br/>445-D [1] - 12319:3<br/>447-A [1] - 12315:18<br/>45 [1] - 12406:1<br/>450-X [1] - 12389:21<br/>452 [2] - 12335:24,<br/>12337:13<br/>463 [1] - 12402:13<br/>475 [1] - 12396:4<br/>48 [1] - 12316:6<br/>48-second [1] -<br/>12374:11<br/>49 [2] - 12302:13,<br/>12365:8<br/>492-FX [1] - 12321:24<br/>492-G [1] - 12331:13<br/>4:30 [1] - 12333:17</p> |

|  |  |   |  |
|--|--|---|--|
| 4:59 [2] - 12408:22,<br>12409:1  | <b>8</b>   | <b>active</b> [2] - 12338:11,<br>12338:24   | 12314:3, 12320:25,<br>12331:13, 12344:2,<br>12376:24   |
| <b>5</b>   | <b>8</b> [2] - 12334:21,<br>12390:8  | <b>activity</b> [2] - 12400:2,<br>12400:5   | <b>air</b> [3] - 12336:9,<br>12362:13, 12362:14  |
| <b>5</b> [3] - 12314:10,<br>12354:25, 12392:5  | <b>8:43</b> [1] - 12409:16   | <b>actual</b> [1] - 12308:24  | <b>AJ</b> [5] - 12366:13,<br>12368:15, 12368:17,<br>12369:23, 12371:15   |
| <b>50</b> [2] - 12339:6,<br>12358:24   | <b>9</b>   | <b>added</b> [3] - 12356:4,<br>12381:24, 12381:25   | <b>al</b> [2] - 12303:4,<br>12356:18   |
| <b>509</b> [1] - 12395:1   | <b>9</b> [6] - 12335:16,<br>12335:25, 12409:2,<br>12409:13, 12410:10,<br>12412:18  | <b>addition</b> [1] -<br>12355:18   | <b>Alan</b> [1] - 12302:15   |
| <b>509-32</b> [1] - 12340:14   | <b>909</b> [1] - 12301:24  | <b>administration</b> [1] -<br>12310:24   | <b>Ali</b> [1] - 12411:2   |
| <b>509-33</b> [1] - 12395:12   | <b>99</b> [1] - 12302:16   | <b>admissible</b> [1] -<br>12394:3  | <b>allegedly</b> [1] -<br>12303:16   |
| <b>509-34</b> [1] - 12403:18   | <b>9:02</b> [1] - 12409:25   | <b>admission</b> [1] -<br>12397:9   | <b>almost</b> [1] - 12372:18   |
| <b>51</b> [2] - 12326:16,<br>12358:20  | <b>9:15</b> [1] - 12410:9  | <b>admit</b> [1] - 12309:8  | <b>aloud</b> [1] - 12392:4   |
| <b>510-33</b> [1] - 12338:14   | <b>A</b>   | <b>admitted</b> [28] -<br>12315:19, 12315:20,<br>12327:25, 12340:16,<br>12341:10, 12347:6,<br>12348:7, 12356:24,<br>12366:25, 12370:16,<br>12377:20, 12380:18,<br>12383:11, 12385:9,<br>12386:9, 12389:22,<br>12395:14, 12395:16,<br>12396:3, 12397:11,<br>12400:25, 12402:16,<br>12403:20, 12404:15,<br>12406:24, 12407:18   | <b>America</b> [3] - 12301:3,<br>12303:3, 12356:17   |
| <b>512-8</b> [1] - 12339:1   | <b>Aaron</b> [7] - 12324:10,<br>12339:13, 12339:22,<br>12340:7, 12340:25,<br>12341:18, 12381:13  | <b>afternoon</b> [7] -<br>12303:5, 12303:9,<br>12311:15, 12313:1,<br>12314:18, 12314:19,<br>12354:7   | <b>analysis</b> [7] - 12304:4,<br>12307:6, 12307:8,<br>12307:16, 12307:22,<br>12308:2, 12308:12  |
| <b>512-9</b> [1] - 12380:17  | <b>Abahahaha</b> [1] -<br>12404:9  | <b>afterwards</b> [1] -<br>12392:16   | <b>analyzed</b> [1] -<br>12307:24  |
| <b>52</b> [2] - 12360:2,<br>12365:18   | <b>ability</b> [7] - 12304:2,<br>12305:16, 12306:3,<br>12312:21, 12410:13,<br>12411:4, 12413:7   | <b>agent</b> [1] - 12304:11   | <b>angle</b> [2] - 12316:4,<br>12349:1   |
| <b>53</b> [1] - 12326:1  | <b>able</b> [15] - 12313:11,<br>12314:5, 12315:1,<br>12320:7, 12351:23,<br>12353:7, 12362:23,<br>12362:24, 12364:6,<br>12374:15, 12389:15,<br>12405:1, 12406:19,<br>12406:20, 12409:23 | <b>AGENT</b> [2] - 12377:4,<br>12377:6  | <b>answer</b> [3] - 12314:5,<br>12314:6, 12387:16  |
| <b>54</b> [1] - 12366:6  | <b>abolishthedemocrat</b><br><b>s</b> [1] - 12381:3  | <b>Agent</b> [32] - 12315:1,<br>12319:24, 12323:16,<br>12334:23, 12338:16,<br>12342:3, 12342:21,<br>12346:3, 12346:10,<br>12350:20, 12357:5,<br>12361:21, 12362:24,<br>12364:25, 12367:24,<br>12368:5, 12368:13,<br>12370:22, 12375:1,<br>12377:9, 12377:25,<br>12379:25, 12383:16,<br>12388:8, 12388:25,<br>12389:6, 12390:23,<br>12394:7, 12402:20,<br>12407:25, 12408:18,<br>12409:8 | <b>answers</b> [1] - 12393:3   |
| <b>547-5</b> [2] - 12370:15,<br>12397:20   | <b>absent</b> [2] - 12308:4,<br>12309:5  | <b>agreeing</b> [1] -<br>12392:19   | <b>anticipate</b> [1] -<br>12311:19  |
| <b>55</b> [1] - 12360:18   | <b>abundance</b> [1] -<br>12410:8  | <b>ahead</b> [6] - 12314:2,   | <b>apart</b> [1] - 12387:20  |
| <b>59047</b> [1] - 12302:19  | <b>abusing</b> [1] -<br>12410:25   |   | <b>apologies</b> [1] -<br>12406:6  |
| <b>5:10:34</b> [1] - 12341:8   | <b>access</b> [2] - 12310:24,<br>12409:24  |   | <b>apologize</b> [3] -<br>12305:3, 12350:16,<br>12370:3  |
| <b>5:18</b> [1] - 12334:6  | <b>according</b> [8] -<br>12305:11, 12305:23,<br>12343:4, 12347:13,<br>12369:9, 12373:19,<br>12373:25, 12380:14  |   | <b>appear</b> [2] - 12334:15,<br>12359:23  |
| <b>5:33</b> [1] - 12334:19   | <b>accordingly</b> [2] -<br>12342:11, 12400:22   |   | <b>approximate</b> [1] -<br>12379:12   |
| <b>6</b>   | <b>account</b> [4] -<br>12348:20, 12369:1,<br>12373:14, 12379:11   |   | <b>area</b> [24] - 12319:8,<br>12320:12, 12320:13,<br>12321:6, 12322:5,<br>12322:7, 12342:12,<br>12342:14, 12342:17,<br>12345:24, 12346:25,<br>12352:15, 12353:7,<br>12357:7, 12364:8,<br>12382:7, 12382:20,<br>12383:18, 12385:13,<br>12397:2, 12402:24,<br>12404:24, 12406:11,<br>12407:25 |
| <b>6</b> [13] - 12308:18,<br>12338:17, 12339:2,<br>12340:21, 12343:6,<br>12343:7, 12349:21,<br>12369:10, 12374:2,<br>12380:24, 12395:19,<br>12404:2, 12409:4 | <b>accurate</b> [1] - 12413:5  |   | <b>argue</b> [1] - 12304:14  |
| <b>6-minute</b> [1] -<br>12374:11  | <b>Action</b> [1] - 12301:4  |   | <b>arguing</b> [1] - 12307:12  |
| <b>601</b> [1] - 12301:15  | <b>action</b> [1] - 12351:12   |   | <b>argumentative</b> [1] -<br>12392:5  |
| <b>6175</b> [1] - 12302:10   |  |   | <b>arm</b> [3] - 12358:13,<br>12359:6, 12359:7   |
| <b>6523</b> [1] - 12413:13   |  |   |  |
| <b>653</b> [3] - 12303:14,<br>12304:18, 12305:6  |  |   |  |
| <b>653-1</b> [1] - 12305:6   |  |   |  |
| <b>6th</b> [1] - 12380:16  |  |   |  |
| <b>7</b>   |  |   |  |
| <b>7</b> [6] - 12301:7,<br>12378:9, 12383:24,<br>12386:18, 12400:16,<br>12400:19   |  |   |  |
| <b>700</b> [1] - 12301:18  |  |   |  |
| <b>7166</b> [1] - 12302:7  |  |   |  |
| <b>7th</b> [1] - 12413:8   |  |   |  |

|  |   |   |  |
|--|---|---|--|
| <p><b>armband</b> <sup>[1]</sup> - 12339:21</p> <p><b>arrived</b> <sup>[2]</sup> - 12400:18, 12409:16</p> <p><b>astronomical</b> <sup>[1]</sup> - 12410:6</p> <p><b>AT&amp;T</b> <sup>[11]</sup> - 12303:21, 12303:25, 12304:2, 12304:8, 12305:11, 12305:15, 12305:23, 12306:3, 12307:4, 12307:15, 12307:19</p> <p><b>AT&amp;T's</b> <sup>[1]</sup> - 12305:15</p> <p><b>attached</b> <sup>[1]</sup> - 12333:6</p> <p><b>attempting</b> <sup>[1]</sup> - 12311:6</p> <p><b>attention</b> <sup>[1]</sup> - 12368:4</p> <p><b>attire</b> <sup>[1]</sup> - 12405:5</p> <p><b>Attorney</b> <sup>[1]</sup> - 12302:18</p> <p><b>Attorney's</b> <sup>[1]</sup> - 12301:20</p> <p><b>attorneys</b> <sup>[1]</sup> - 12410:14</p> <p><b>AU</b> <sup>[6]</sup> - 12303:21, 12303:23, 12305:8, 12305:12, 12305:23, 12306:18</p> <p><b>audio</b> <sup>[7]</sup> - 12310:4, 12310:6, 12310:7, 12310:14, 12310:17, 12310:25, 12394:13</p> <p><b>audiovisual</b> <sup>[1]</sup> - 12310:4</p> <p><b>available</b> <sup>[3]</sup> - 12312:22, 12313:1, 12321:25</p> <p><b>Avenue</b> <sup>[4]</sup> - 12301:18, 12302:16, 12342:1, 12413:13</p> <p><b>avoid</b> <sup>[1]</sup> - 12409:4</p> <p><b>awesome</b> <sup>[1]</sup> - 12345:5</p> | <p>12331:9</p> <p><b>barricades</b> <sup>[3]</sup> - 12316:12, 12342:8, 12364:5</p> <p><b>barrier</b> <sup>[1]</sup> - 12316:11</p> <p><b>barriers</b> <sup>[1]</sup> - 12314:21</p> <p><b>baseball</b> <sup>[2]</sup> - 12332:1, 12367:21</p> <p><b>based</b> <sup>[19]</sup> - 12304:4, 12304:7, 12306:17, 12307:5, 12307:16, 12307:25, 12308:2, 12331:23, 12335:8, 12336:23, 12342:3, 12376:14, 12385:20, 12393:4, 12393:19, 12396:21, 12398:16, 12399:7, 12405:5</p> <p><b>basic</b> <sup>[1]</sup> - 12306:17</p> <p><b>basis</b> <sup>[1]</sup> - 12309:6</p> <p><b>beat</b> <sup>[1]</sup> - 12318:14</p> <p><b>become</b> <sup>[1]</sup> - 12393:16</p> <p><b>becomes</b> <sup>[1]</sup> - 12313:10</p> <p><b>BEFORE</b> <sup>[1]</sup> - 12301:11</p> <p><b>begin</b> <sup>[1]</sup> - 12304:17</p> <p><b>beginning</b> <sup>[8]</sup> - 12308:22, 12345:7, 12345:18, 12382:13, 12386:13, 12386:15, 12386:25, 12400:11</p> <p><b>begs</b> <sup>[1]</sup> - 12411:14</p> <p><b>behind</b> <sup>[17]</sup> - 12314:23, 12317:10, 12317:11, 12321:23, 12322:21, 12326:4, 12333:19, 12336:20, 12344:17, 12346:21, 12349:12, 12364:6, 12389:17, 12390:10, 12395:6, 12399:11, 12401:15</p> <p><b>below</b> <sup>[3]</sup> - 12339:9, 12371:17, 12404:6</p> <p><b>bench</b> <sup>[2]</sup> - 12328:7, 12392:2</p> <p><b>bertino</b> <sup>[1]</sup> - 12303:19</p> <p><b>Bertino</b> <sup>[8]</sup> - 12304:13, 12305:9, 12337:21, 12337:22, 12338:21, 12339:6, 12342:2, 12404:8</p> <p><b>Bertino's</b> <sup>[1]</sup> - 12341:3</p> <p><b>best</b> <sup>[2]</sup> - 12357:15, 12413:7</p> <p><b>better</b> <sup>[1]</sup> - 12380:4</p> <p><b>between</b> <sup>[8]</sup> - 12308:11, 12309:10, 12311:23, 12353:20,</p> | <p>12355:16, 12359:24, 12372:9, 12391:10</p> <p><b>beverage</b> <sup>[1]</sup> - 12327:13</p> <p><b>beyond</b> <sup>[1]</sup> - 12330:6</p> <p><b>Biggs</b> <sup>[45]</sup> - 12301:6, 12302:1, 12303:17, 12305:22, 12315:11, 12323:2, 12325:1, 12326:5, 12327:20, 12328:10, 12328:23, 12329:10, 12330:20, 12342:4, 12342:16, 12345:6, 12345:21, 12350:1, 12350:4, 12351:20, 12352:16, 12358:1, 12361:11, 12364:17, 12367:18, 12367:22, 12368:15, 12368:21, 12368:24, 12369:16, 12371:13, 12372:4, 12372:14, 12374:19, 12376:6, 12378:18, 12380:3, 12380:13, 12382:17, 12405:3, 12405:4, 12406:20, 12407:10, 12408:20</p> <p><b>Biggs'</b> <sup>[2]</sup> - 12347:9, 12379:11</p> <p><b>Biggs's</b> <sup>[13]</sup> - 12342:25, 12346:24, 12348:12, 12348:21, 12349:8, 12363:3, 12363:10, 12369:1, 12369:8, 12373:13, 12373:18, 12373:24, 12379:20</p> <p><b>bill</b> <sup>[1]</sup> - 12307:1</p> <p><b>bit</b> <sup>[8]</sup> - 12322:12, 12333:24, 12339:12, 12344:3, 12350:13, 12352:5, 12357:16, 12384:14</p> <p><b>black</b> <sup>[9]</sup> - 12323:3, 12326:3, 12326:4, 12327:7, 12333:7, 12342:4, 12357:25, 12367:21, 12367:22</p> <p><b>Bloody</b> <sup>[1]</sup> - 12341:18</p> <p><b>blue</b> <sup>[14]</sup> - 12315:10, 12350:11, 12350:21, 12351:5, 12351:13, 12352:16, 12353:3, 12353:16, 12354:18, 12377:13, 12380:12, 12380:13, 12394:23</p> <p><b>Bluetooth</b> <sup>[3]</sup> - 12313:4, 12313:8, 12313:15</p> | <p><b>board</b> <sup>[1]</sup> - 12396:19</p> <p><b>body</b> <sup>[2]</sup> - 12365:2, 12385:4</p> <p><b>bombs</b> <sup>[1]</sup> - 12397:25</p> <p><b>boom</b> <sup>[1]</sup> - 12397:17</p> <p><b>Boot</b> <sup>[1]</sup> - 12338:24</p> <p><b>Boots</b> <sup>[4]</sup> - 12320:21, 12339:5, 12381:1, 12382:8</p> <p><b>bottle</b> <sup>[3]</sup> - 12384:19, 12384:21, 12385:3</p> <p><b>bottles</b> <sup>[1]</sup> - 12387:8</p> <p><b>bottom</b> <sup>[15]</sup> - 12313:2, 12326:11, 12333:8, 12333:10, 12356:12, 12359:1, 12364:9, 12364:16, 12368:5, 12371:24, 12383:4, 12385:21, 12399:20, 12399:21, 12400:15</p> <p><b>bounds</b> <sup>[2]</sup> - 12355:7, 12355:8</p> <p><b>box</b> <sup>[1]</sup> - 12375:15</p> <p><b>boy</b> <sup>[3]</sup> - 12320:9, 12321:2, 12386:8</p> <p><b>Boy</b> <sup>[6]</sup> - 12321:21, 12331:22, 12341:22, 12369:24, 12381:14, 12403:16</p> <p><b>boys</b> <sup>[1]</sup> - 12338:2</p> <p><b>Boys</b> <sup>[8]</sup> - 12320:6, 12331:24, 12342:1, 12371:4, 12380:8, 12381:8, 12381:14, 12396:15</p> <p><b>breach</b> <sup>[3]</sup> - 12315:7, 12315:12, 12316:4</p> <p><b>breached</b> <sup>[1]</sup> - 12341:24</p> <p><b>break</b> <sup>[5]</sup> - 12312:25, 12313:1, 12314:4, 12314:6, 12354:7</p> <p><b>briefly</b> <sup>[7]</sup> - 12331:11, 12360:17, 12367:7, 12379:2, 12392:1, 12404:24, 12409:15</p> <p><b>bring</b> <sup>[2]</sup> - 12307:23, 12314:8</p> <p><b>broadly</b> <sup>[1]</sup> - 12356:6</p> <p><b>Broadway</b> <sup>[1]</sup> - 12301:24</p> <p><b>Brooklyn</b> <sup>[1]</sup> - 12301:21</p> <p><b>brother</b> <sup>[1]</sup> - 12369:15</p> <p><b>brought</b> <sup>[1]</sup> - 12328:25</p> <p><b>brown</b> <sup>[1]</sup> - 12403:4</p> <p><b>Bru</b> <sup>[2]</sup> - 12333:23, 12365:14</p> <p><b>bubble</b> <sup>[3]</sup> - 12389:9, 12389:14, 12389:15</p> |
| <b>B</b>   |   |   |  |
| <p><b>backwards</b> <sup>[3]</sup> - 12316:24, 12357:25, 12367:21</p> <p><b>balancing</b> <sup>[1]</sup> - 12334:15</p> <p><b>balls</b> <sup>[1]</sup> - 12381:16</p> <p><b>band</b> <sup>[3]</sup> - 12354:22, 12354:23, 12354:24</p> <p><b>bandana</b> <sup>[1]</sup> - 12317:9</p> <p><b>Bankruptcy</b> <sup>[1]</sup> - 12302:21</p> <p><b>bar</b> <sup>[2]</sup> - 12410:24, 12411:4</p> <p><b>barricade</b> <sup>[1]</sup> -</p>   |   |   |  |

|   |  |   |  |
|---|--|---|--|
| <b>Building</b> [2] -<br>12301:24, 12404:4<br><b>building</b> [10] -<br>12339:8, 12339:14,<br>12341:25, 12409:16,<br>12409:22, 12409:24,<br>12410:24, 12411:9,<br>12411:11, 12411:12<br><b>bump</b> [1] - 12373:4<br><b>bus</b> [1] - 12411:17<br><b>business</b> [2] -<br>12307:17, 12309:8<br><b>bussed</b> [2] - 12412:5,<br>12412:14<br><b>busy</b> [1] - 12410:19<br><b>buy</b> [2] - 12311:13,<br>12311:15<br><b>BY</b> [48] - 12314:17,<br>12315:4, 12315:25,<br>12324:20, 12325:23,<br>12327:3, 12328:3,<br>12330:17, 12333:18,<br>12338:6, 12340:20,<br>12341:12, 12342:10,<br>12345:16, 12347:8,<br>12348:10, 12348:19,<br>12352:13, 12357:4,<br>12357:19, 12359:20,<br>12363:21, 12367:10,<br>12370:20, 12373:10,<br>12375:8, 12377:8,<br>12377:24, 12380:22,<br>12383:15, 12385:14,<br>12386:14, 12387:18,<br>12387:24, 12389:5,<br>12390:2, 12390:18,<br>12394:6, 12395:18,<br>12396:16, 12397:15,<br>12398:7, 12401:4,<br>12402:19, 12403:23,<br>12404:18, 12407:2,<br>12407:24 | 12323:3, 12332:1,<br>12367:21<br><b>Capitol</b> [22] -<br>12334:23, 12338:23,<br>12339:8, 12339:14,<br>12341:24, 12345:19,<br>12349:12, 12349:17,<br>12365:4, 12367:24,<br>12371:7, 12376:13,<br>12381:10, 12382:4,<br>12391:1, 12391:2,<br>12396:17, 12402:20,<br>12404:5, 12404:19,<br>12407:25<br><b>Captain</b> [2] - 12381:2,<br>12381:5<br><b>care</b> [1] - 12411:16<br><b>Carmen</b> [2] - 12302:6,<br>12302:7<br><b>case</b> [9] - 12309:11,<br>12309:12, 12309:17,<br>12309:20, 12409:3,<br>12409:5, 12412:4,<br>12412:6<br><b>caution</b> [1] - 12410:9<br><b>CCR</b> [1] - 12413:12<br><b>CCTV</b> [2] - 12335:22,<br>12386:16<br><b>cease</b> [1] - 12328:17<br><b>cell</b> [3] - 12306:20,<br>12308:19, 12361:2<br><b>cellular</b> [1] - 12307:24<br><b>center</b> [3] - 12359:1,<br>12365:12, 12377:11<br><b>certain</b> [2] - 12310:14,<br>12354:24<br><b>certainly</b> [3] - 12306:8,<br>12328:21, 12328:25<br><b>CERTIFICATE</b> [1] -<br>12413:2<br><b>certify</b> [2] - 12307:7,<br>12413:4<br><b>challenging</b> [1] -<br>12412:12<br><b>chance</b> [3] - 12409:17,<br>12409:20, 12410:8<br><b>change</b> [1] - 12354:4<br><b>Charles</b> [14] - 12324:9,<br>12336:7, 12337:11,<br>12384:5, 12385:3,<br>12385:22, 12386:24,<br>12389:9, 12389:16,<br>12390:10, 12391:18,<br>12395:23, 12399:9,<br>12401:16<br><b>Charlie</b> [1] - 12399:2<br><b>chat</b> [21] - 12320:21,<br>12323:21, 12324:2,<br>12324:3, 12324:14,<br>12338:10, 12338:15, | 12338:18, 12338:20,<br>12338:24, 12339:4,<br>12340:11, 12340:23,<br>12340:24, 12341:15,<br>12341:16, 12380:23,<br>12380:25, 12382:8,<br>12403:24, 12403:25<br><b>chats</b> [2] - 12382:11,<br>12382:14<br><b>check</b> [1] - 12410:25<br><b>cheer</b> [1] - 12321:16<br><b>chemical</b> [1] -<br>12366:10<br><b>chernan7@aol.com</b><br>[1] - 12302:8<br><b>Christopher</b> [1] -<br>12403:16<br><b>Circle</b> [1] - 12314:21<br><b>circle</b> [12] - 12330:18,<br>12332:16, 12334:9,<br>12336:5, 12344:8,<br>12350:20, 12353:17,<br>12359:6, 12362:22,<br>12364:1, 12368:13,<br>12408:15<br><b>circled</b> [33] -<br>12316:20, 12317:11,<br>12319:20, 12322:8,<br>12322:23, 12326:11,<br>12328:4, 12331:18,<br>12332:25, 12333:19,<br>12336:16, 12337:19,<br>12344:10, 12344:12,<br>12347:20, 12358:24,<br>12359:7, 12360:1,<br>12360:12, 12360:20,<br>12362:19, 12365:24,<br>12366:7, 12367:20,<br>12368:6, 12370:8,<br>12371:17, 12374:3,<br>12375:25, 12385:13,<br>12389:7, 12389:18,<br>12399:7<br><b>circles</b> [2] - 12346:19,<br>12374:18<br><b>Circling</b> [3] - 12317:1,<br>12317:3, 12317:5<br><b>circling</b> [4] -<br>12346:15, 12354:22,<br>12371:13, 12390:3<br><b>CJA</b> [1] - 12311:14<br><b>clarification</b> [1] -<br>12387:15<br><b>classic</b> [1] - 12328:8<br><b>clear</b> [3] - 12305:6,<br>12381:19, 12408:17<br><b>click</b> [1] - 12388:5<br><b>client</b> [2] - 12303:17,<br>12393:22<br><b>client's</b> [2] - 12393:21, | 12394:3<br><b>clip</b> [3] - 12370:4,<br>12376:11, 12407:14<br><b>close</b> [7] - 12310:10,<br>12351:8, 12373:11,<br>12373:12, 12402:22,<br>12403:1, 12403:2<br><b>closer</b> [1] - 12357:13<br><b>closest</b> [1] - 12347:18<br><b>Cloud</b> [8] - 12342:25,<br>12346:25, 12347:12,<br>12348:12, 12363:3,<br>12363:10, 12369:8,<br>12373:18<br><b>CMR</b> [1] - 12413:12<br><b>coat</b> [3] - 12317:10,<br>12317:11, 12389:10<br><b>colleagues</b> [1] -<br>12411:2<br><b>collectively</b> [1] -<br>12305:1<br><b>color</b> [5] - 12326:13,<br>12327:6, 12333:6,<br>12341:19, 12388:17<br><b>COLUMBIA</b> [1] -<br>12301:1<br><b>coming</b> [5] - 12303:7,<br>12304:23, 12337:15,<br>12337:20, 12411:25<br><b>compare</b> [7] -<br>12319:7, 12331:3,<br>12337:12, 12382:4,<br>12385:24, 12390:4,<br>12407:3<br><b>complete</b> [1] -<br>12413:6<br><b>complies</b> [11] -<br>12323:18, 12332:17,<br>12334:10, 12344:9,<br>12346:17, 12350:22,<br>12353:18, 12396:25,<br>12400:23, 12408:16,<br>12408:21<br><b>compound</b> [1] -<br>12342:6<br><b>concern</b> [1] -<br>12410:12<br><b>concerning</b> [1] -<br>12309:4<br><b>concerns</b> [1] -<br>12411:20<br><b>conclusion</b> [3] -<br>12307:5, 12392:25,<br>12393:5<br><b>conclusions</b> [3] -<br>12304:4, 12307:15,<br>12307:21<br><b>concussion</b> [1] -<br>12397:25<br><b>conduct</b> [1] - 12307:7 |
| <b>C</b>  |  |   |  |
| <b>Cadman</b> [1] -<br>12301:21<br><b>call-out</b> [1] - 12303:18<br><b>cam</b> [1] - 12365:2<br><b>camera</b> [5] - 12320:17,<br>12321:9, 12350:5,<br>12358:4, 12405:11<br><b>camo</b> [3] - 12322:8,<br>12357:24, 12360:21<br><b>camouflage</b> [1] -<br>12367:23<br><b>cannot</b> [4] - 12308:7,<br>12312:14, 12312:18,<br>12394:2<br><b>cap</b> [4] - 12316:24,   |  |   |  |

|  |  |   |   |
|--|--|---|---|
| <p><b>confirmed</b> [2] - 12312:13, 12312:14</p> <p><b>confront</b> [1] - 12393:2</p> <p><b>connect</b> [1] - 12313:7</p> <p><b>connected</b> [1] - 12312:16</p> <p><b>connecting</b> [2] - 12308:20, 12308:25</p> <p><b>connection</b> [1] - 12313:16</p> <p><b>Conor</b> [1] - 12301:17</p> <p><b>Conor.mulroe@usdoj.gov</b> [1] - 12301:19</p> <p><b>consistent</b> [1] - 12355:11</p> <p><b>constitutes</b> [1] - 12413:5</p> <p><b>Constitution</b> [2] - 12341:25, 12413:13</p> <p><b>constitutional</b> [1] - 12310:16</p> <p><b>Cont</b> [1] - 12314:16</p> <p><b>cont.).....</b> [1] - 12414:4</p> <p><b>contend</b> [1] - 12329:3</p> <p><b>continue</b> [9] - 12338:5, 12340:11, 12343:20, 12352:14, 12359:10, 12360:4, 12362:3, 12366:16, 12372:16</p> <p><b>continues</b> [1] - 12354:15</p> <p><b>control</b> [1] - 12328:21</p> <p><b>conversation</b> [3] - 12308:24, 12312:19, 12353:25</p> <p><b>Cooney</b> [1] - 12329:7</p> <p><b>coordinates</b> [1] - 12382:1</p> <p><b>cops</b> [2] - 12397:24, 12398:1</p> <p><b>corner</b> [3] - 12347:9, 12375:16, 12400:15</p> <p><b>correct</b> [32] - 12314:21, 12314:22, 12331:9, 12349:3, 12350:5, 12350:6, 12358:5, 12360:21, 12360:22, 12364:11, 12364:12, 12371:13, 12371:14, 12371:16, 12377:14, 12377:15, 12378:6, 12382:8, 12382:9, 12382:18, 12383:5, 12383:6, 12383:20, 12383:21, 12391:6, 12391:7, 12399:15, 12399:16, 12400:13, 12405:22,</p> | <p>12405:23, 12412:17</p> <p><b>correctly</b> [1] - 12308:19</p> <p><b>correlate</b> [7] - 12304:3, 12305:16, 12306:4, 12315:9, 12315:10, 12315:11</p> <p><b>correlation</b> [1] - 12308:11</p> <p><b>correspond</b> [1] - 12382:1</p> <p><b>corresponding</b> [1] - 12323:16</p> <p><b>counsel</b> [2] - 12313:2, 12328:23</p> <p><b>counsel's</b> [1] - 12314:10</p> <p><b>counter</b> [2] - 12340:6, 12405:25</p> <p><b>couple</b> [7] - 12344:14, 12353:9, 12353:12, 12384:23, 12388:5, 12391:13, 12391:19</p> <p><b>Court</b> [11] - 12310:1, 12312:20, 12313:22, 12315:19, 12341:9, 12354:23, 12355:1, 12355:2, 12355:18, 12355:19, 12383:11</p> <p><b>court</b> [12] - 12302:21, 12310:3, 12310:12, 12310:13, 12310:20, 12310:24, 12312:2, 12330:16, 12354:7, 12394:5, 12409:19, 12413:12</p> <p><b>COURT</b> [94] - 12301:1, 12303:5, 12304:19, 12304:22, 12304:24, 12305:18, 12305:25, 12306:22, 12307:11, 12308:5, 12309:7, 12309:25, 12310:9, 12310:18, 12311:1, 12311:4, 12311:6, 12311:16, 12311:22, 12312:6, 12312:11, 12312:14, 12312:20, 12312:25, 12313:10, 12313:17, 12313:23, 12314:3, 12314:13, 12315:3, 12315:23, 12324:19, 12325:22, 12326:25, 12328:1, 12328:18, 12329:8, 12329:24, 12330:12, 12338:4, 12340:18, 12341:11, 12342:7, 12345:12, 12347:7, 12352:10, 12354:3,</p> | <p>12354:6, 12354:11, 12355:5, 12355:23, 12356:19, 12357:1, 12357:11, 12359:19, 12367:2, 12370:18, 12373:9, 12377:5, 12377:22, 12380:20, 12383:13, 12386:7, 12387:14, 12387:22, 12389:2, 12389:25, 12390:17, 12392:10, 12393:6, 12393:20, 12393:24, 12394:1, 12395:16, 12396:14, 12397:11, 12398:6, 12401:2, 12402:18, 12403:22, 12404:16, 12406:25, 12407:22, 12408:23, 12408:25, 12409:7, 12409:11, 12410:10, 12410:17, 12411:3, 12411:22, 12412:8, 12412:16, 12413:2</p> <p><b>Court's</b> [1] - 12310:4</p> <p><b>courthouse</b> [2] - 12310:21, 12311:8</p> <p><b>COURTROOM</b> [12] - 12303:2, 12311:3, 12311:5, 12312:8, 12312:12, 12312:16, 12312:24, 12348:9, 12348:13, 12348:16, 12356:16, 12409:18</p> <p><b>courtroom</b> [8] - 12303:7, 12312:3, 12313:13, 12313:15, 12314:12, 12354:9, 12356:15, 12409:6</p> <p><b>courts</b> [1] - 12310:21</p> <p><b>Courts</b> [1] - 12302:21</p> <p><b>cover</b> [1] - 12346:20</p> <p><b>CRC</b> [1] - 12302:21</p> <p><b>created</b> [1] - 12308:23</p> <p><b>criminal</b> [2] - 12303:3, 12356:17</p> <p><b>Criminal</b> [1] - 12301:4</p> <p><b>CRM</b> [1] - 12301:18</p> <p><b>cross</b> [6] - 12309:9, 12309:16, 12309:22, 12310:5, 12310:15, 12328:24</p> <p><b>cross-examination</b> [2] - 12310:5, 12310:15</p> <p><b>cross-examine</b> [1] - 12309:16</p> <p><b>crossed</b> [1] - 12321:23</p> <p><b>crossing</b> [1] - 12314:21</p> <p><b>crowd</b> [7] - 12315:16,</p> | <p>12326:17, 12335:19, 12335:21, 12392:7, 12398:16, 12398:19</p> <p><b>CRR</b> [2] - 12302:21, 12413:12</p> <p><b>CT</b> [1] - 12302:5</p> <p><b>cue</b> [1] - 12332:22</p> <p><b>cumulative</b> [3] - 12355:24, 12356:12, 12396:13</p> <p><b>current</b> [1] - 12381:3</p> <p><b>cut</b> [4] - 12394:13, 12410:14, 12410:17, 12410:20</p> <p><b>cutting</b> [2] - 12410:20, 12410:21</p> |
| <b>D</b>   |  |   |   |
| <p><b>D.C</b> [2] - 12404:11, 12413:14</p> <p><b>danger</b> [1] - 12411:19</p> <p><b>Daniel</b> [1] - 12302:1</p> <p><b>data</b> [1] - 12373:25</p> <p><b>date</b> [4] - 12338:15, 12341:13, 12380:23, 12404:1</p> <p><b>Dated</b> [1] - 12413:8</p> <p><b>David</b> [5] - 12301:23, 12319:3, 12373:16, 12404:13</p> <p><b>DC</b> [4] - 12301:7, 12301:16, 12301:19, 12302:2</p> <p><b>decision</b> [1] - 12341:19</p> <p><b>decontaminate</b> [1] - 12363:15</p> <p><b>defendant</b> [1] - 12392:18</p> <p><b>defendants</b> [11] - 12312:21, 12314:20, 12315:6, 12329:9, 12330:2, 12330:7, 12330:8, 12349:24, 12351:24, 12355:22, 12411:20</p> <p><b>Defendants</b> [2] - 12301:9, 12301:22</p> <p><b>Defense</b> [4] - 12323:21, 12338:19, 12341:16, 12382:10</p> <p><b>defense</b> [5] - 12313:2, 12313:4, 12313:8, 12328:23, 12410:24</p> <p><b>definitively</b> [4] - 12304:2, 12305:16, 12306:3, 12320:7</p> <p><b>delayed</b> [1] - 12303:6</p> <p><b>demonstrative</b> [1] -</p>  |  |   |   |



|   |   |  |  |
|---|---|--|--|
| <p>12315:2<br/> <b>demonstratives</b> [1] -<br/> 12377:5<br/> <b>depicted</b> [3] -<br/> 12379:24, 12396:5,<br/> 12396:7<br/> <b>deploy</b> [1] - 12341:4<br/> <b>deployed</b> [1] -<br/> 12341:25<br/> <b>DEPUTY</b> [12] -<br/> 12303:2, 12311:3,<br/> 12311:5, 12312:8,<br/> 12312:12, 12312:16,<br/> 12312:24, 12348:9,<br/> 12348:13, 12348:16,<br/> 12356:16, 12409:18<br/> <b>describe</b> [3] -<br/> 12329:12, 12336:8,<br/> 12385:4<br/> <b>described</b> [1] -<br/> 12377:17<br/> <b>determine</b> [1] -<br/> 12307:8<br/> <b>determined</b> [1] -<br/> 12307:25<br/> <b>device</b> [2] - 12396:10,<br/> 12397:8<br/> <b>diagram</b> [1] -<br/> 12377:14<br/> <b>DICKMAN</b> [1] -<br/> 12413:4<br/> <b>Dickman</b> [2] -<br/> 12302:21, 12413:12<br/> <b>different</b> [5] -<br/> 12303:23, 12304:12,<br/> 12306:8, 12328:11,<br/> 12355:12<br/> <b>differently</b> [1] -<br/> 12412:7<br/> <b>direct</b> [6] - 12311:19,<br/> 12329:1, 12329:13,<br/> 12368:4, 12387:13,<br/> 12414:4<br/> <b>DIRECT</b> [1] - 12314:16<br/> <b>direction</b> [20] -<br/> 12323:10, 12325:18,<br/> 12348:22, 12348:24,<br/> 12349:11, 12349:12,<br/> 12351:9, 12351:10,<br/> 12358:15, 12375:14,<br/> 12375:18, 12376:10,<br/> 12376:12, 12382:25,<br/> 12387:8, 12390:14,<br/> 12390:19, 12402:10,<br/> 12403:13, 12405:12<br/> <b>directly</b> [1] - 12376:2<br/> <b>discuss</b> [1] - 12303:8<br/> <b>discussed</b> [4] -<br/> 12328:13, 12330:5,<br/> 12366:2, 12397:23</p> | <p><b>discussing</b> [1] -<br/> 12303:11<br/> <b>discussion</b> [4] -<br/> 12328:7, 12329:15,<br/> 12392:2, 12409:2<br/> <b>displeasure</b> [2] -<br/> 12398:2, 12398:14<br/> <b>disputing</b> [3] -<br/> 12328:24, 12392:8,<br/> 12392:14<br/> <b>DISTRICT</b> [3] -<br/> 12301:1, 12301:1,<br/> 12301:12<br/> <b>District</b> [1] - 12302:21<br/> <b>docket</b> [1] - 12412:8<br/> <b>DOJ</b> [1] - 12301:18<br/> <b>DOJ-CRM</b> [1] -<br/> 12301:18<br/> <b>Dominic</b> [30] -<br/> 12301:8, 12316:25,<br/> 12318:11, 12319:1,<br/> 12319:16, 12321:11,<br/> 12332:8, 12344:19,<br/> 12347:22, 12349:5,<br/> 12358:9, 12359:2,<br/> 12359:9, 12360:14,<br/> 12361:9, 12362:2,<br/> 12362:6, 12362:10,<br/> 12362:20, 12364:18,<br/> 12385:19, 12389:16,<br/> 12390:10, 12391:22,<br/> 12394:9, 12396:8,<br/> 12399:10, 12401:14,<br/> 12402:2, 12408:8<br/> <b>done</b> [8] - 12304:8,<br/> 12312:9, 12312:13,<br/> 12312:17, 12312:18,<br/> 12312:23, 12355:25<br/> <b>Donohoe</b> [21] -<br/> 12324:9, 12336:7,<br/> 12337:11, 12338:7,<br/> 12341:5, 12384:5,<br/> 12384:9, 12385:3,<br/> 12385:22, 12386:24,<br/> 12387:7, 12389:9,<br/> 12389:16, 12390:10,<br/> 12390:14, 12391:18,<br/> 12395:23, 12398:23,<br/> 12399:9, 12401:16,<br/> 12402:1<br/> <b>Donohoe's</b> [4] -<br/> 12337:24, 12385:4,<br/> 12395:25, 12396:10<br/> <b>door</b> [4] - 12303:6,<br/> 12399:15, 12399:18,<br/> 12400:4<br/> <b>down</b> [31] - 12305:4,<br/> 12306:21, 12308:21,<br/> 12316:9, 12319:2,<br/> 12331:9, 12331:12,</p> | <p>12333:2, 12334:19,<br/> 12335:21, 12339:11,<br/> 12339:17, 12342:1,<br/> 12342:4, 12346:25,<br/> 12354:12, 12361:10,<br/> 12368:4, 12376:19,<br/> 12377:4, 12377:10,<br/> 12380:11, 12383:4,<br/> 12385:7, 12385:21,<br/> 12397:21, 12398:13,<br/> 12399:21, 12400:15,<br/> 12409:8, 12409:9<br/> <b>dramatic</b> [1] -<br/> 12309:19<br/> <b>draw</b> [1] - 12307:21<br/> <b>drawn</b> [2] - 12359:13,<br/> 12364:1<br/> <b>drew</b> [1] - 12377:10<br/> <b>Drive</b> [1] - 12302:18<br/> <b>dropping</b> [1] -<br/> 12397:24<br/> <b>Drops</b> [1] - 12377:1<br/> <b>duplicative</b> [1] -<br/> 12330:3<br/> <b>during</b> [2] - 12315:2,<br/> 12373:14</p> | <p>12345:2, 12345:4,<br/> 12348:2, 12348:4,<br/> 12361:6, 12364:13,<br/> 12376:11, 12377:12,<br/> 12379:7, 12382:25,<br/> 12393:15, 12395:2,<br/> 12400:8, 12406:8,<br/> 12407:14<br/> <b>ended</b> [2] - 12303:19,<br/> 12340:12<br/> <b>ends</b> [1] - 12376:9<br/> <b>enforcement</b> [16] -<br/> 12325:19, 12349:12,<br/> 12349:13, 12350:3,<br/> 12351:6, 12351:11,<br/> 12358:15, 12364:3,<br/> 12365:3, 12375:14,<br/> 12384:22, 12387:9,<br/> 12402:12, 12403:14,<br/> 12405:17, 12410:24<br/> <b>engaged</b> [1] - 12392:7<br/> <b>engaging</b> [2] -<br/> 12351:6, 12351:10<br/> <b>enjoy</b> [1] - 12409:5<br/> <b>Enrique</b> [3] - 12301:7,<br/> 12305:22<br/> <b>enter</b> [2] - 12314:12,<br/> 12356:15<br/> <b>entered</b> [2] -<br/> 12342:16, 12412:8<br/> <b>entire</b> [1] - 12309:6<br/> <b>entitled</b> [1] - 12329:1<br/> <b>entrance</b> [4] -<br/> 12399:12, 12405:11,<br/> 12405:19, 12405:21<br/> <b>Erik</b> [1] - 12301:15<br/> <b>erik.kenerson@</b><br/> <b>usdoj.gov</b> [1] -<br/> 12301:17<br/> <b>especially</b> [1] -<br/> 12308:18<br/> <b>establish</b> [1] - 12329:2<br/> <b>et</b> [2] - 12303:4,<br/> 12356:18<br/> <b>Ethan</b> [17] - 12301:6,<br/> 12303:3, 12322:20,<br/> 12325:2, 12326:3,<br/> 12333:1, 12334:6,<br/> 12349:10, 12356:17,<br/> 12357:25, 12367:18,<br/> 12367:21, 12368:14,<br/> 12374:5, 12376:1,<br/> 12378:10, 12407:11<br/> <b>ethan</b> [1] - 12327:5<br/> <b>evacuated</b> [1] -<br/> 12404:5<br/> <b>evening</b> [1] - 12409:5<br/> <b>event</b> [1] - 12329:11<br/> <b>events</b> [1] - 12382:16<br/> <b>eventually</b> [1] -</p> |
| <b>E</b>  |   |  |  |
| <p><b>earphones</b> [5] -<br/> 12310:25, 12313:7,<br/> 12313:21, 12313:22,<br/> 12313:25<br/> <b>ears</b> [1] - 12319:25<br/> <b>East</b> [3] - 12301:21,<br/> 12302:18, 12341:18<br/> <b>ebb</b> [1] - 12411:23<br/> <b>echo</b> [2] - 12373:22<br/> <b>EDVA</b> [1] - 12312:18<br/> <b>eggs</b> [2] - 12339:23,<br/> 12340:9<br/> <b>eight</b> [1] - 12344:10<br/> <b>either</b> [3] - 12352:16,<br/> 12402:15, 12403:20<br/> <b>email</b> [1] - 12355:16<br/> <b>Email</b> [13] - 12301:16,<br/> 12301:17, 12301:19,<br/> 12301:22, 12301:25,<br/> 12302:3, 12302:5,<br/> 12302:8, 12302:11,<br/> 12302:14, 12302:17,<br/> 12302:19, 12302:22<br/> <b>emerged</b> [1] -<br/> 12344:17<br/> <b>emojis</b> [1] - 12339:19<br/> <b>encourage</b> [1] -<br/> 12411:5<br/> <b>end</b> [20] - 12305:5,<br/> 12311:24, 12311:25,<br/> 12314:10, 12340:1,</p>  |   |  |  |



|   |  |  |  |
|---|--|--|--|
| <p>12398:19<br/> <b>evidence</b> [16] -<br/> 12304:15, 12305:10,<br/> 12321:25, 12334:21,<br/> 12338:13, 12339:1,<br/> 12348:7, 12354:16,<br/> 12361:16, 12362:18,<br/> 12364:23, 12385:20,<br/> 12390:22, 12395:13,<br/> 12409:3<br/> <b>exactly</b> [2] - 12305:25,<br/> 12342:2<br/> <b>Examination</b> [1] -<br/> 12414:4<br/> <b>EXAMINATION</b> [1] -<br/> 12314:16<br/> <b>examination</b> [2] -<br/> 12310:5, 12310:15<br/> <b>examine</b> [1] -<br/> 12309:16<br/> <b>exceedingly</b> [1] -<br/> 12410:19<br/> <b>except</b> [1] - 12410:21<br/> <b>exception</b> [1] -<br/> 12307:18<br/> <b>exchange</b> [2] -<br/> 12394:17, 12394:19<br/> <b>exchanges</b> [1] -<br/> 12355:16<br/> <b>excuse</b> [8] - 12317:10,<br/> 12343:13, 12347:12,<br/> 12360:18, 12378:14,<br/> 12395:13, 12404:5,<br/> 12406:3<br/> <b>exhibit</b> [13] -<br/> 12304:14, 12309:6,<br/> 12343:1, 12346:23,<br/> 12349:19, 12361:14,<br/> 12377:14, 12384:25,<br/> 12385:7, 12386:15,<br/> 12399:17, 12399:18,<br/> 12406:1<br/> <b>Exhibit</b> [36] -<br/> 12303:14, 12305:6,<br/> 12319:3, 12323:24,<br/> 12331:4, 12334:20,<br/> 12335:24, 12337:5,<br/> 12337:13, 12339:25,<br/> 12346:2, 12349:15,<br/> 12354:2, 12356:23,<br/> 12363:16, 12364:22,<br/> 12370:15, 12373:16,<br/> 12379:14, 12380:17,<br/> 12383:10, 12385:8,<br/> 12390:21, 12395:1,<br/> 12396:4, 12397:4,<br/> 12397:20, 12399:2,<br/> 12400:24, 12402:13,<br/> 12403:18, 12406:14,<br/> 12406:16, 12406:22,</p> | <p>12414:7<br/> <b>EXHIBIT</b> [1] - 12414:6<br/> <b>exist</b> [4] - 12305:21,<br/> 12307:3, 12308:17,<br/> 12308:24<br/> <b>exists</b> [1] - 12308:17<br/> <b>Exit</b> [1] - 12349:6<br/> <b>expect</b> [1] - 12311:20<br/> <b>expert</b> [6] - 12304:9,<br/> 12304:16, 12307:24,<br/> 12308:2, 12309:5<br/> <b>express</b> [2] - 12398:2,<br/> 12398:14<br/> <b>extending</b> [1] -<br/> 12359:6<br/> <b>extent</b> [5] - 12315:20,<br/> 12326:23, 12327:24,<br/> 12356:3, 12411:22<br/> <b>extraordinary</b> [1] -<br/> 12412:11</p> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> [3] - 12347:9,<br/> 12365:12, 12380:4<br/> <b>facing</b> [3] - 12349:11,<br/> 12350:3, 12350:4<br/> <b>fact</b> [1] - 12304:12<br/> <b>faint</b> [1] - 12310:7<br/> <b>fair</b> [1] - 12330:12<br/> <b>familiar</b> [2] - 12310:1,<br/> 12320:21<br/> <b>far</b> [5] - 12307:13,<br/> 12345:12, 12345:13,<br/> 12355:4, 12387:19<br/> <b>fashioned</b> [1] -<br/> 12313:6<br/> <b>fast</b> [1] - 12350:13<br/> <b>feces</b> [1] - 12339:23<br/> <b>fedcases@metcalflawnyc.com</b> [1]<br/> - 12302:17<br/> <b>federal</b> [1] - 12310:13<br/> <b>fell</b> [1] - 12315:21<br/> <b>female</b> [2] - 12328:12,<br/> 12329:5<br/> <b>fence</b> [11] - 12318:5,<br/> 12321:23, 12328:12,<br/> 12333:8, 12333:9,<br/> 12333:10, 12335:3,<br/> 12335:9, 12335:14,<br/> 12336:2, 12342:4<br/> <b>fences</b> [1] - 12335:21<br/> <b>few</b> [8] - 12319:11,<br/> 12319:25, 12322:1,<br/> 12336:12, 12337:1,<br/> 12352:1, 12365:20,<br/> 12394:12<br/> <b>fighting</b> [1] - 12398:1<br/> <b>filling</b> [1] - 12346:4</p> | <p><b>fine</b> [1] - 12411:18<br/> <b>first</b> [14] - 12305:5,<br/> 12315:7, 12315:12,<br/> 12337:15, 12346:11,<br/> 12355:24, 12356:2,<br/> 12372:16, 12376:17,<br/> 12379:17, 12387:10,<br/> 12387:12, 12391:13,<br/> 12411:8<br/> <b>First</b> [1] - 12302:4<br/> <b>Fischer</b> [8] -<br/> 12366:13, 12368:15,<br/> 12368:17, 12369:23,<br/> 12371:15, 12371:18,<br/> 12372:10, 12373:6<br/> <b>fist</b> [2] - 12372:8,<br/> 12373:4<br/> <b>FL</b> [2] - 12302:11,<br/> 12302:13<br/> <b>flag</b> [6] - 12389:14,<br/> 12389:18, 12390:3,<br/> 12390:4, 12390:5<br/> <b>flavor</b> [1] - 12346:14<br/> <b>float</b> [1] - 12411:2<br/> <b>Floor</b> [2] - 12302:4,<br/> 12302:16<br/> <b>Florida</b> [3] - 12331:22,<br/> 12381:8, 12403:16<br/> <b>flow</b> [1] - 12411:23<br/> <b>folks</b> [1] - 12392:8<br/> <b>followed</b> [2] - 12381:4,<br/> 12404:7<br/> <b>Fonticoba</b> [9] -<br/> 12323:5, 12368:14,<br/> 12373:6, 12379:6,<br/> 12380:3, 12380:7,<br/> 12381:12, 12381:15,<br/> 12407:11<br/> <b>food</b> [1] - 12378:22<br/> <b>footage</b> [2] - 12368:2,<br/> 12369:1<br/> <b>FOR</b> [1] - 12301:1<br/> <b>foregoing</b> [1] -<br/> 12413:5<br/> <b>forge</b> [1] - 12314:3<br/> <b>form</b> [3] - 12337:23,<br/> 12390:16, 12393:5<br/> <b>formation</b> [1] -<br/> 12323:9<br/> <b>formulated</b> [1] -<br/> 12411:12<br/> <b>forward</b> [16] -<br/> 12315:13, 12322:1,<br/> 12322:10, 12331:5,<br/> 12332:4, 12334:12,<br/> 12335:21, 12343:13,<br/> 12344:14, 12350:13,<br/> 12355:13, 12357:17,<br/> 12386:18, 12388:6,<br/> 12398:19, 12398:22</p> | <p><b>foundation</b> [1] -<br/> 12304:15<br/> <b>four</b> [5] - 12339:16,<br/> 12346:20, 12346:21,<br/> 12399:23, 12405:9<br/> <b>frame</b> [21] - 12343:15,<br/> 12344:3, 12344:21,<br/> 12359:3, 12359:10,<br/> 12360:4, 12365:20,<br/> 12366:16, 12370:4,<br/> 12384:13, 12384:23<br/> <b>frames</b> [2] - 12344:14,<br/> 12388:5<br/> <b>frankly</b> [1] - 12330:1<br/> <b>front</b> [16] - 12317:8,<br/> 12322:19, 12326:3,<br/> 12326:18, 12334:14,<br/> 12343:2, 12346:9,<br/> 12346:21, 12370:21,<br/> 12376:2, 12381:10,<br/> 12389:9, 12389:16,<br/> 12390:10, 12411:4<br/> <b>fuck</b> [1] - 12338:2<br/> <b>full</b> [1] - 12413:6<br/> <b>fully</b> [2] - 12327:25,<br/> 12403:20</p> <p style="text-align: center;"><b>G</b></p> <p><b>Gabriel</b> [3] - 12381:6,<br/> 12381:7, 12382:13<br/> <b>gain</b> [1] - 12409:24<br/> <b>Garcia</b> [3] - 12381:6,<br/> 12381:7, 12382:14<br/> <b>gate</b> [1] - 12328:10<br/> <b>general</b> [4] -<br/> 12320:11, 12371:1,<br/> 12385:23, 12406:15<br/> <b>generally</b> [4] -<br/> 12321:4, 12336:2,<br/> 12355:3, 12385:12<br/> <b>generated</b> [1] -<br/> 12304:8<br/> <b>gentlemen</b> [3] -<br/> 12329:12, 12354:8,<br/> 12409:1<br/> <b>gesture</b> [2] - 12380:8,<br/> 12396:15<br/> <b>getup</b> [1] - 12350:11<br/> <b>Gilbert</b> [3] - 12323:5,<br/> 12381:9, 12381:11<br/> <b>given</b> [1] - 12308:15<br/> <b>glasses</b> [1] - 12318:25<br/> <b>glitch</b> [1] - 12308:23<br/> <b>glove</b> [1] - 12333:4<br/> <b>gloves</b> [1] - 12327:8<br/> <b>Google</b> [19] -<br/> 12342:25, 12346:25,<br/> 12347:12, 12348:12,<br/> 12348:21, 12349:8,</p> |
|---|--|--|--|

12363:3, 12363:10,  
12369:1, 12369:8,  
12369:9, 12373:14,  
12373:18, 12373:24,  
12373:25, 12379:20,  
12380:14, 12381:23,  
12382:1  
**Google's** [1] -  
12373:19  
**gotta** [1] - 12369:15  
**government** [12] -  
12303:11, 12303:20,  
12304:9, 12307:17,  
12311:18, 12313:22,  
12328:22, 12329:25,  
12356:6, 12392:11,  
12393:10, 12410:25  
**Government's** [3] -  
12314:25, 12396:4,  
12414:7  
**government's** [2] -  
12304:25, 12313:6  
**GPS** [1] - 12306:20  
**grainy** [1] - 12392:6  
**granted** [19] -  
12315:24, 12324:19,  
12326:25, 12328:2,  
12340:19, 12341:11,  
12347:7, 12357:2,  
12370:19, 12377:22,  
12380:21, 12383:14,  
12389:25, 12401:3,  
12402:18, 12403:22,  
12404:17, 12407:1,  
12407:23  
**green** [6] - 12315:11,  
12317:12, 12326:11,  
12337:20, 12342:13,  
12400:22  
**Greene** [19] - 12345:1,  
12347:22, 12349:5,  
12364:18, 12382:20,  
12385:19, 12388:11,  
12388:13, 12389:8,  
12389:17, 12390:11,  
12390:14, 12394:25,  
12395:7, 12398:24,  
12399:9, 12401:21,  
12402:2, 12408:8  
**greene** [1] - 12388:14  
**Ground** [5] -  
12320:21, 12338:24,  
12339:5, 12381:1,  
12382:8  
**ground** [2] - 12304:18,  
12362:13  
**grounds** [10] -  
12365:5, 12367:25,  
12382:4, 12391:1,  
12391:2, 12392:4,

12393:4, 12393:19,  
12396:17  
**Group** [29] - 12317:2,  
12317:4, 12317:6,  
12317:14, 12317:19,  
12317:21, 12318:19,  
12332:13, 12332:14,  
12335:9, 12344:5,  
12346:12, 12348:1,  
12353:6, 12354:25,  
12355:4, 12355:20,  
12356:9, 12365:14,  
12371:23, 12376:6,  
12395:8, 12401:20,  
12403:8, 12403:9,  
12407:11, 12407:12,  
12408:12  
**group** [29] - 12320:21,  
12320:23, 12322:18,  
12322:19, 12323:6,  
12330:13, 12338:10,  
12338:18, 12339:7,  
12339:21, 12342:16,  
12346:9, 12355:9,  
12371:2, 12373:1,  
12373:11, 12375:18,  
12376:10, 12376:15,  
12376:20, 12377:16,  
12379:9, 12395:21,  
12397:22, 12398:23,  
12400:9, 12406:12,  
12411:25  
**groups** [2] - 12409:22  
**Guarno** [1] - 12321:21  
**guess** [2] - 12303:18,  
12304:19  
**guy** [1] - 12354:18  
**guys** [1] - 12388:23

## H

**Haffner** [2] - 12336:22,  
12336:23  
**hair** [1] - 12395:6  
**half** [4] - 12333:17,  
12336:14, 12360:9,  
12391:5  
**hall** [1] - 12404:5  
**HANAK** [2] - 12377:4,  
12377:6  
**hand** [22] - 12318:2,  
12318:4, 12321:16,  
12327:10, 12327:14,  
12327:15, 12333:2,  
12333:4, 12333:8,  
12336:8, 12341:22,  
12352:22, 12362:21,  
12366:7, 12366:9,  
12368:24, 12380:8,  
12381:14, 12391:23,

12396:12, 12396:15,  
12400:15  
**hands** [2] - 12362:11,  
12380:7  
**Harris** [4] - 12311:1,  
12311:23, 12312:6,  
12356:22  
**Hassan** [2] - 12302:9,  
12302:10  
**hassan@**  
**nhassanlaw.com** [1] -  
12302:11  
**hat** [12] - 12322:8,  
12326:4, 12326:6,  
12326:7, 12326:9,  
12326:12, 12357:24,  
12357:25, 12360:21,  
12367:22, 12367:23,  
12405:5  
**hats** [2] - 12339:20,  
12388:17  
**Haven** [1] - 12302:5  
**hazards** [1] - 12377:5  
**head** [2] - 12317:9,  
12401:5  
**headphones** [3] -  
12310:2, 12310:14,  
12311:9  
**headsets** [1] - 12310:6  
**hear** [18] - 12303:5,  
12310:3, 12312:9,  
12313:11, 12313:15,  
12320:3, 12345:18,  
12369:21, 12387:14,  
12387:16, 12389:1,  
12392:10, 12392:16,  
12394:17, 12397:16,  
12397:17, 12403:9,  
12409:19  
**heard** [6] - 12312:19,  
12313:20, 12313:25,  
12328:6, 12392:1,  
12392:18  
**hearsay** [4] -  
12393:19, 12394:1,  
12394:2  
**HELD** [1] - 12301:11  
**helped** [1] - 12303:20  
**helping** [1] - 12303:12  
**hereby** [1] - 12413:4  
**hernandez** [1] -  
12409:17  
**HERNANDEZ** [18] -  
12325:20, 12328:6,  
12328:8, 12328:16,  
12329:5, 12329:10,  
12329:20, 12333:13,  
12342:6, 12354:15,  
12374:22, 12375:4,  
12386:4, 12389:1,

12398:5, 12410:19,  
12412:3, 12412:10  
**Hernandez** [5] -  
12302:6, 12302:7,  
12330:4, 12354:14,  
12409:20  
**Hialeah** [1] - 12302:13  
**higher** [1] - 12387:12  
**Highland** [1] - 12302:8  
**highlighted** [17] -  
12322:18, 12324:24,  
12327:18, 12347:18,  
12347:24, 12357:20,  
12358:7, 12361:8,  
12362:1, 12362:5,  
12362:9, 12376:4,  
12384:3, 12385:15,  
12386:22, 12390:9,  
12401:25  
**highlighting** [2] -  
12386:20, 12388:12  
**Hill** [2] - 12404:5,  
12404:19  
**hit** [1] - 12381:16  
**hold** [1] - 12396:5  
**holding** [3] - 12323:8,  
12364:4, 12364:5  
**Hollow** [1] - 12302:7  
**holy** [1] - 12338:2  
**Holy** [1] - 12404:8  
**Honor** [33] - 12303:9,  
12303:14, 12303:19,  
12304:21, 12307:19,  
12309:24, 12310:1,  
12310:11, 12311:12,  
12313:3, 12325:20,  
12328:6, 12328:8,  
12328:19, 12329:19,  
12330:9, 12333:14,  
12340:16, 12354:15,  
12356:21, 12357:14,  
12359:17, 12374:22,  
12386:4, 12389:1,  
12392:21, 12393:18,  
12396:13, 12397:9,  
12409:15, 12410:3,  
12411:7, 12412:3  
**HONORABLE** [1] -  
12301:11  
**hoodie** [4] - 12322:23,  
12334:1, 12365:24,  
12394:23  
**hopefully** [3] -  
12314:4, 12314:5,  
12412:1  
**horizontal** [1] -  
12359:23  
**hornet** [1] - 12363:1  
**hours** [1] - 12311:11  
**House** [1] - 12381:4

|  |   |   |   |
|--|---|---|---|
| <p><b>hug</b> <sup>[1]</sup> - 12351:22</p> <p><b>Hull</b> <sup>[2]</sup> - 12302:1, 12302:1</p>   | <p>12334:1, 12335:1, 12335:20, 12336:6, 12336:10, 12336:21, 12342:14, 12342:22, 12343:16, 12343:23, 12344:6, 12344:12, 12344:18, 12344:25, 12345:25, 12347:21, 12347:25, 12349:9, 12349:25, 12350:23, 12350:24, 12351:19, 12351:24, 12353:8, 12357:21, 12358:8, 12358:14, 12359:1, 12359:8, 12359:15, 12360:2, 12360:13, 12361:8, 12361:10, 12364:2, 12365:13, 12365:25, 12366:7, 12366:12, 12368:13, 12368:16, 12368:22, 12369:5, 12370:9, 12371:18, 12373:17, 12374:4, 12374:6, 12374:8, 12374:16, 12375:25, 12376:25, 12378:1, 12378:17, 12378:19, 12379:9, 12379:25, 12384:4, 12386:23, 12389:19, 12394:24, 12396:7, 12399:8, 12401:13, 12401:19, 12403:12, 12405:2, 12406:16, 12408:1, 12408:7, 12409:10</p> <p><b>indicating</b> <sup>[34]</sup> - 12326:10, 12335:4, 12335:12, 12342:12, 12348:24, 12352:12, 12357:8, 12364:8, 12368:7, 12372:19, 12372:21, 12374:20, 12376:12, 12376:19, 12376:23, 12378:2, 12383:1, 12383:18, 12385:13, 12387:6, 12388:4, 12388:11, 12388:24, 12391:3, 12391:16, 12399:13, 12399:21, 12402:25, 12405:3, 12405:13, 12406:18, 12406:21, 12407:10, 12408:3</p> <p><b>individual</b> <sup>[31]</sup> - 12321:17, 12324:7, 12331:19, 12332:7, 12332:25, 12333:19, 12334:1, 12336:10, 12347:18, 12350:10, 12351:4, 12351:10,</p> | <p>12358:7, 12358:24, 12359:7, 12360:1, 12362:19, 12365:12, 12367:20, 12368:6, 12368:21, 12370:8, 12379:4, 12384:3, 12386:22, 12391:17, 12393:1, 12393:2, 12401:19, 12403:4, 12403:11</p> <p><b>individual's</b> <sup>[1]</sup> - 12403:15</p> <p><b>individuals</b> <sup>[18]</sup> - 12322:18, 12324:24, 12326:2, 12328:22, 12344:10, 12346:20, 12349:4, 12351:18, 12357:20, 12367:16, 12368:12, 12371:3, 12374:17, 12379:24, 12388:17, 12401:25, 12404:10, 12408:7</p> <p><b>infer</b> <sup>[4]</sup> - 12304:4, 12307:5, 12307:15, 12308:2</p> <p><b>initial</b> <sup>[1]</sup> - 12328:19</p> <p><b>inside</b> <sup>[5]</sup> - 12340:9, 12341:24, 12364:1, 12368:12, 12389:15</p> <p><b>insurrection</b> <sup>[1]</sup> - 12392:7</p> <p><b>intended</b> <sup>[1]</sup> - 12355:19</p> <p><b>interact</b> <sup>[1]</sup> - 12372:4</p> <p><b>interacting</b> <sup>[2]</sup> - 12323:6, 12353:2</p> <p><b>interaction</b> <sup>[2]</sup> - 12353:20, 12372:25</p> <p><b>interactions</b> <sup>[1]</sup> - 12354:19</p> <p><b>internet</b> <sup>[2]</sup> - 12308:21, 12308:25</p> <p><b>Internet</b> <sup>[2]</sup> - 12305:14, 12306:15</p> <p><b>interruption</b> <sup>[1]</sup> - 12354:10</p> <p><b>introduced</b> <sup>[4]</sup> - 12303:18, 12304:12, 12305:8, 12307:17</p> <p><b>investigation</b> <sup>[1]</sup> - 12409:4</p> <p><b>involved</b> <sup>[2]</sup> - 12336:23, 12371:2</p> <p><b>irritant</b> <sup>[1]</sup> - 12366:10</p> <p><b>issue</b> <sup>[7]</sup> - 12303:16, 12310:16, 12355:6, 12355:10, 12355:17, 12355:25, 12393:16</p> <p><b>item</b> <sup>[1]</sup> - 12375:14</p> <p><b>items</b> <sup>[1]</sup> - 12386:5</p> | <p><b>IV</b> <sup>[1]</sup> - 12302:1</p> |
| <p><b>I</b></p>  |   | <p><b>J</b></p>   |   |
| <p><b>iCloud</b> <sup>[2]</sup> - 12347:11</p> <p><b>identified</b> <sup>[3]</sup> - 12325:16, 12328:22, 12331:3</p> <p><b>identify</b> <sup>[5]</sup> - 12329:8, 12329:24, 12330:1, 12330:10, 12330:14</p> <p><b>identifying</b> <sup>[3]</sup> - 12330:2, 12330:8, 12392:6</p> <p><b>II</b> <sup>[1]</sup> - 12302:15</p> <p><b>image</b> <sup>[3]</sup> - 12317:1, 12317:3, 12317:5</p> <p><b>imparted</b> <sup>[1]</sup> - 12412:16</p> <p><b>IN</b> <sup>[1]</sup> - 12301:1</p> <p><b>inaugural</b> <sup>[1]</sup> - 12399:15</p> <p><b>incident</b> <sup>[2]</sup> - 12361:20, 12382:18</p> <p><b>included</b> <sup>[1]</sup> - 12355:21</p> <p><b>including</b> <sup>[1]</sup> - 12313:21</p> <p><b>inconveniently</b> <sup>[1]</sup> - 12389:14</p> <p><b>independent</b> <sup>[2]</sup> - 12355:12, 12409:3</p> <p><b>INDEX</b> <sup>[1]</sup> - 12414:1</p> <p><b>indicate</b> <sup>[1]</sup> - 12346:16</p> <p><b>indicated</b> <sup>[9]</sup> - 12335:13, 12348:25, 12350:2, 12364:9, 12378:3, 12383:2, 12383:19, 12391:4, 12399:14</p> <p><b>indicates</b> <sup>[1]</sup> - 12347:10</p> <p><b>indicating</b> <sup>[101]</sup> - 12316:10, 12316:21, 12317:18, 12317:20, 12317:25, 12318:10, 12318:16, 12318:25, 12319:5, 12319:15, 12319:20, 12321:5, 12322:24, 12323:1, 12323:25, 12324:25, 12325:7, 12327:4, 12327:19, 12328:5, 12330:19, 12330:25, 12331:9, 12331:19, 12332:2, 12332:7, 12332:10, 12332:25, 12333:2, 12333:20,</p> |   | <p><b>jacket</b> <sup>[3]</sup> - 12326:4, 12327:6, 12333:6</p> <p><b>Jackson</b> <sup>[1]</sup> - 12354:25</p> <p><b>James</b> <sup>[1]</sup> - 12336:22</p> <p><b>Janice</b> <sup>[2]</sup> - 12302:21, 12413:12</p> <p><b>JANICE</b> <sup>[1]</sup> - 12413:4</p> <p><b>Janicedickmandcd@gmail.com</b> <sup>[1]</sup> - 12302:22</p> <p><b>January</b> <sup>[13]</sup> - 12308:18, 12338:17, 12339:2, 12340:21, 12343:6, 12343:7, 12369:10, 12374:2, 12380:16, 12380:24, 12395:19, 12404:2, 12409:4</p> <p><b>Jason</b> <sup>[1]</sup> - 12301:14</p> <p><b>jason.mccullough2@usdoj.gov</b> <sup>[1]</sup> - 12301:16</p> <p><b>jauregui</b> <sup>[1]</sup> - 12329:23</p> <p><b>JAUREGUI</b> <sup>[12]</sup> - 12303:9, 12304:21, 12304:23, 12306:11, 12307:4, 12307:14, 12308:16, 12309:23, 12329:7, 12329:19, 12329:22, 12407:20</p> <p><b>Jauregui</b> <sup>[6]</sup> - 12302:12, 12302:12, 12303:10, 12305:3, 12305:14, 12306:1</p> <p><b>jd hull@hullmcguire.com</b> <sup>[1]</sup> - 12302:3</p> <p><b>Jeremy</b> <sup>[4]</sup> - 12337:21, 12338:21, 12341:2, 12341:3</p> <p><b>jerkoffs</b> <sup>[1]</sup> - 12339:24</p> <p><b>job</b> <sup>[1]</sup> - 12324:11</p> <p><b>Joe</b> <sup>[3]</sup> - 12305:22, 12368:15, 12371:13</p> <p><b>John</b> <sup>[7]</sup> - 12302:1, 12311:5, 12311:24, 12312:7, 12314:5, 12314:6, 12404:3</p> <p><b>Johnson</b> <sup>[9]</sup> - 12331:22, 12336:17, 12336:21, 12371:19, 12371:20, 12372:10, 12373:6, 12374:9, 12376:6</p> <p><b>joins</b> <sup>[1]</sup> - 12328:15</p>  |   |

|  |   |  |  |
|--|---|--|--|
| <p><b>Joseph</b> <sup>[18]</sup> - 12301:6, 12323:2, 12325:1, 12326:5, 12327:20, 12330:20, 12345:6, 12345:21, 12358:1, 12361:11, 12364:17, 12367:18, 12367:22, 12368:21, 12369:16, 12372:14, 12378:18, 12407:10</p> <p><b>Judge</b> <sup>[10]</sup> - 12303:11, 12304:6, 12307:4, 12307:14, 12308:16, 12309:11, 12352:9, 12373:8, 12392:1, 12410:23</p> <p><b>JUDGE</b> <sup>[2]</sup> - 12301:11, 12301:12</p> <p><b>jump</b> <sup>[1]</sup> - 12411:1</p> <p><b>jumped</b> <sup>[1]</sup> - 12321:18</p> <p><b>juries</b> <sup>[1]</sup> - 12412:15</p> <p><b>juror</b> <sup>[1]</sup> - 12410:18</p> <p><b>JURORS</b> <sup>[1]</sup> - 12363:19</p> <p><b>jurors</b> <sup>[15]</sup> - 12314:12, 12354:9, 12356:15, 12364:6, 12409:6, 12409:22, 12410:15, 12410:16, 12411:9, 12411:10, 12411:12, 12411:16, 12411:18, 12412:4, 12412:13</p> <p><b>jury</b> <sup>[16]</sup> - 12310:6, 12310:13, 12310:16, 12310:25, 12314:9, 12341:10, 12354:11, 12367:1, 12367:3, 12377:21, 12389:24, 12404:15, 12406:24, 12411:8, 12411:12</p> <p><b>JURY</b> <sup>[2]</sup> - 12301:5, 12301:10</p> | <p>12315:1, 12315:4, 12315:18, 12315:25, 12324:17, 12324:20, 12325:23, 12326:22, 12327:3, 12327:24, 12328:3, 12328:19, 12330:9, 12330:17, 12333:16, 12333:18, 12334:4, 12334:5, 12338:6, 12340:15, 12340:20, 12341:9, 12341:12, 12342:10, 12345:13, 12345:16, 12347:5, 12347:8, 12348:10, 12348:15, 12348:18, 12348:19, 12352:13, 12354:5, 12355:15, 12356:21, 12357:3, 12357:4, 12357:14, 12357:19, 12359:20, 12363:20, 12363:21, 12366:23, 12367:4, 12367:10, 12370:20, 12373:10, 12374:24, 12375:5, 12375:8, 12377:8, 12377:19, 12377:24, 12380:17, 12380:22, 12383:10, 12383:15, 12385:8, 12385:14, 12386:8, 12386:14, 12387:18, 12387:24, 12389:5, 12389:23, 12390:2, 12390:18, 12392:12, 12394:6, 12395:15, 12395:18, 12396:16, 12397:9, 12397:13, 12397:15, 12398:7, 12400:24, 12401:4, 12402:15, 12402:19, 12403:19, 12403:23, 12404:14, 12404:18, 12406:23, 12407:2, 12407:17, 12407:21, 12407:24, 12408:22, 12408:24</p> <p><b>Kenerson</b> <sup>[13]</sup> - 12301:15, 12313:18, 12314:14, 12328:18, 12338:5, 12354:3, 12355:14, 12356:19, 12357:11, 12386:7, 12394:4, 12409:12, 12414:4</p> <p><b>key</b> <sup>[3]</sup> - 12304:1, 12305:11, 12305:15</p> <p><b>kind</b> <sup>[22]</sup> - 12308:22, 12309:5, 12313:5, 12315:15, 12345:23, 12346:8, 12346:9, 12346:14, 12348:25,</p> | <p>12350:3, 12350:11, 12355:12, 12358:25, 12359:13, 12374:18, 12376:4, 12377:13, 12378:3, 12383:2, 12384:13, 12387:13, 12411:17</p> <p><b>L</b></p> <p><b>labeled</b> <sup>[1]</sup> - 12314:25</p> <p><b>ladies</b> <sup>[2]</sup> - 12354:8, 12409:1</p> <p><b>laid</b> <sup>[1]</sup> - 12304:15</p> <p><b>Lake</b> <sup>[1]</sup> - 12302:18</p> <p><b>Lakes</b> <sup>[1]</sup> - 12302:11</p> <p><b>landline</b> <sup>[3]</sup> - 12303:24, 12305:13, 12306:13</p> <p><b>landlines</b> <sup>[1]</sup> - 12306:16</p> <p><b>language</b> <sup>[8]</sup> - 12305:15, 12306:1, 12306:24, 12306:25, 12308:6, 12308:7, 12309:9, 12309:14</p> <p><b>large</b> <sup>[1]</sup> - 12411:25</p> <p><b>largely</b> <sup>[1]</sup> - 12398:17</p> <p><b>larger</b> <sup>[1]</sup> - 12330:13</p> <p><b>last</b> <sup>[4]</sup> - 12340:4, 12356:2, 12361:22, 12407:14</p> <p><b>lasting</b> <sup>[1]</sup> - 12305:22</p> <p><b>late</b> <sup>[1]</sup> - 12410:3</p> <p><b>latitude</b> <sup>[1]</sup> - 12329:25</p> <p><b>law</b> <sup>[16]</sup> - 12325:18, 12349:12, 12349:13, 12350:3, 12351:6, 12351:10, 12358:15, 12364:3, 12365:2, 12375:14, 12384:22, 12387:8, 12402:12, 12403:13, 12405:16, 12410:23</p> <p><b>Law</b> <sup>[4]</sup> - 12302:7, 12302:10, 12302:12, 12302:18</p> <p><b>Lawn</b> <sup>[2]</sup> - 12376:16, 12376:18</p> <p><b>lawn</b> <sup>[4]</sup> - 12376:23, 12379:10, 12379:12, 12382:5</p> <p><b>lawyer</b> <sup>[1]</sup> - 12389:3</p> <p><b>leader</b> <sup>[1]</sup> - 12396:2</p> <p><b>Leaders</b> <sup>[5]</sup> - 12323:21, 12324:3, 12338:10, 12340:8, 12340:24</p> <p><b>leaders</b> <sup>[1]</sup> - 12395:22</p> <p><b>leaders'</b> <sup>[1]</sup> - 12403:25</p> | <p><b>leading</b> <sup>[3]</sup> - 12387:21, 12390:16, 12398:5</p> <p><b>least</b> <sup>[5]</sup> - 12310:12, 12311:6, 12314:6, 12376:15, 12394:3</p> <p><b>leave</b> <sup>[3]</sup> - 12354:9, 12382:20, 12409:6</p> <p><b>leaving</b> <sup>[1]</sup> - 12354:11</p> <p><b>lectern</b> <sup>[1]</sup> - 12313:9</p> <p><b>left</b> <sup>[35]</sup> - 12314:20, 12317:10, 12318:10, 12325:1, 12327:14, 12332:7, 12337:6, 12337:18, 12344:11, 12347:22, 12347:24, 12350:5, 12357:24, 12358:25, 12359:7, 12361:4, 12366:11, 12374:25, 12378:4, 12378:14, 12378:17, 12383:2, 12383:3, 12383:22, 12388:13, 12388:14, 12390:3, 12391:4, 12399:15, 12400:5, 12400:7, 12405:20, 12405:21, 12408:4, 12408:5</p> <p><b>legal</b> <sup>[2]</sup> - 12392:25, 12393:5</p> <p><b>length</b> <sup>[1]</sup> - 12400:14</p> <p><b>LEO</b> <sup>[1]</sup> - 12411:1</p> <p><b>less</b> <sup>[2]</sup> - 12303:24, 12410:14</p> <p><b>level</b> <sup>[2]</sup> - 12310:15, 12407:6</p> <p><b>limit</b> <sup>[2]</sup> - 12310:20, 12310:21</p> <p><b>limited</b> <sup>[3]</sup> - 12354:23, 12355:1, 12355:2</p> <p><b>limits</b> <sup>[1]</sup> - 12311:9</p> <p><b>line</b> <sup>[12]</sup> - 12335:9, 12335:14, 12336:2, 12356:12, 12377:10, 12405:16, 12410:14, 12410:20, 12410:21, 12410:22, 12411:1, 12411:4</p> <p><b>lined</b> <sup>[2]</sup> - 12411:10, 12411:13</p> <p><b>lines</b> <sup>[2]</sup> - 12341:23, 12410:5</p> <p><b>linked</b> <sup>[1]</sup> - 12312:4</p> <p><b>listening</b> <sup>[1]</sup> - 12310:16</p> <p><b>Livingston</b> <sup>[1]</sup> - 12302:19</p> <p><b>LLC</b> <sup>[1]</sup> - 12302:4</p> <p><b>location</b> <sup>[10]</sup> - 12331:2, 12331:5, 12365:4, 12365:6,</p> |
| <p><b>K</b></p> <p><b>keep</b> <sup>[17]</sup> - 12316:6, 12319:11, 12319:24, 12322:2, 12322:10, 12331:6, 12333:11, 12351:15, 12357:12, 12366:4, 12388:9, 12389:3, 12394:13, 12394:14, 12401:23</p> <p><b>Keepers</b> <sup>[1]</sup> - 12412:6</p> <p><b>KELLY</b> <sup>[1]</sup> - 12301:11</p> <p><b>KENERSON</b> <sup>[100]</sup> - 12305:2, 12305:19, 12306:2, 12311:20, 12313:19, 12313:24, 12314:15, 12314:17,</p>   |   |  |  |

|   |  |   |   |
|---|--|---|---|
| <p>12369:2, 12381:3,<br/>12381:18, 12382:1,<br/>12382:4, 12412:5<br/><b>locations</b> [1] -<br/>12306:20<br/><b>locked</b> [1] - 12303:6<br/><b>Loehrke</b> [1] -<br/>12336:11<br/><b>logistics</b> [1] -<br/>12411:15<br/><b>logs</b> [2] - 12303:15,<br/>12306:19<br/><b>look</b> [14] - 12303:25,<br/>12307:6, 12311:1,<br/>12314:3, 12317:10,<br/>12335:14, 12349:2,<br/>12350:4, 12364:10,<br/>12366:11, 12377:11,<br/>12378:4, 12391:5,<br/>12405:22<br/><b>looked</b> [4] - 12373:6,<br/>12379:4, 12407:4<br/><b>looking</b> [23] -<br/>12308:13, 12321:4,<br/>12322:5, 12322:6,<br/>12322:7, 12323:22,<br/>12335:1, 12335:2,<br/>12336:3, 12338:15,<br/>12348:22, 12348:24,<br/>12351:9, 12357:6,<br/>12357:7, 12359:18,<br/>12363:7, 12365:1,<br/>12388:13, 12388:23,<br/>12396:19, 12400:6,<br/>12406:16<br/><b>looks</b> [1] - 12353:6<br/><b>loud</b> [1] - 12397:17<br/><b>lower</b> [2] - 12357:2,<br/>12405:12<br/><b>lunch</b> [2] - 12303:22,<br/>12306:18</p> | <p><b>map</b> [15] - 12314:23,<br/>12348:23, 12349:1,<br/>12357:6, 12364:6,<br/>12364:11, 12376:17,<br/>12376:18, 12378:1,<br/>12382:23, 12383:16,<br/>12391:2, 12399:11,<br/>12402:23<br/><b>march</b> [3] - 12331:23,<br/>12336:24, 12413:8<br/><b>March</b> [1] - 12301:7<br/><b>Marching</b> [29] -<br/>12317:2, 12317:4,<br/>12317:6, 12317:14,<br/>12317:19, 12317:21,<br/>12318:19, 12332:13,<br/>12332:14, 12335:9,<br/>12344:5, 12346:11,<br/>12348:1, 12353:6,<br/>12354:25, 12355:4,<br/>12355:20, 12356:9,<br/>12365:14, 12371:23,<br/>12376:6, 12395:8,<br/>12401:20, 12403:8,<br/>12403:9, 12407:11,<br/>12407:12, 12408:12<br/><b>marching</b> [4] -<br/>12342:1, 12354:22,<br/>12354:23, 12354:24<br/><b>mark</b> [1] - 12374:11<br/><b>Mark</b> [1] - 12333:23<br/><b>mask</b> [2] - 12348:6,<br/>12357:25<br/><b>math</b> [1] - 12406:6<br/><b>Matt</b> [4] - 12345:1,<br/>12364:18, 12389:17,<br/>12394:25<br/><b>matter</b> [6] - 12320:12,<br/>12328:20, 12356:17,<br/>12371:1, 12385:23,<br/>12406:15<br/><b>Matthew</b> [7] -<br/>12347:22, 12349:5,<br/>12385:19, 12390:11,<br/>12399:9, 12402:2,<br/>12408:8<br/><b>maz</b> [1] - 12381:16<br/><b>McCullough</b> [1] -<br/>12303:12<br/><b>McCullough</b> [2] -<br/>12301:14, 12305:2<br/><b>McDonald</b> [10] -<br/>12322:25, 12334:2,<br/>12366:1, 12374:19,<br/>12375:9, 12375:13,<br/>12376:3, 12378:25,<br/>12380:4, 12407:11<br/><b>McDonald's</b> [1] -<br/>12366:8<br/><b>McGuire</b> [1] - 12302:1</p> | <p><b>MD</b> [1] - 12302:8<br/><b>mean</b> [18] - 12305:18,<br/>12306:13, 12306:23,<br/>12307:3, 12309:7,<br/>12309:11, 12309:17,<br/>12310:22, 12311:10,<br/>12313:17, 12329:15,<br/>12330:7, 12355:5,<br/>12356:8, 12392:12,<br/>12410:11, 12410:13<br/><b>meaning</b> [2] -<br/>12311:14, 12312:20<br/><b>means</b> [2] - 12309:9,<br/>12411:24<br/><b>measure</b> [2] -<br/>12412:11, 12412:12<br/><b>media</b> [1] - 12409:4<br/><b>member</b> [2] -<br/>12339:21, 12353:6<br/><b>members</b> [8] -<br/>12335:9, 12344:5,<br/>12346:11, 12355:20,<br/>12373:1, 12376:15,<br/>12377:16, 12408:12<br/><b>members'</b> [2] -<br/>12338:19, 12382:10<br/><b>Members'</b> [1] -<br/>12341:16<br/><b>mentioned</b> [2] -<br/>12326:6, 12406:19<br/><b>message</b> [11] -<br/>12324:12, 12337:9,<br/>12337:10, 12339:18,<br/>12340:4, 12340:7,<br/>12340:25, 12371:5,<br/>12397:21, 12398:13,<br/>12398:14<br/><b>messages</b> [12] -<br/>12323:20, 12323:25,<br/>12337:15, 12337:18,<br/>12337:19, 12339:11,<br/>12340:11, 12341:17,<br/>12370:12, 12370:21,<br/>12397:18, 12398:8<br/><b>metadata</b> [6] -<br/>12343:1, 12343:4,<br/>12347:13, 12369:9,<br/>12373:19, 12380:14<br/><b>metcalf</b> [1] - 12409:14<br/><b>Metcalf</b> [6] - 12302:15,<br/>12302:15, 12392:21,<br/>12393:7, 12393:17<br/><b>METCALF</b> [11] -<br/>12359:17, 12387:21,<br/>12390:16, 12392:21,<br/>12393:18, 12393:22,<br/>12393:25, 12396:13,<br/>12409:15, 12409:20,<br/>12410:15<br/><b>Miami</b> [1] - 12302:11</p> | <p><b>microphone</b> [3] -<br/>12357:13, 12389:4,<br/>12409:18<br/><b>middle</b> [3] - 12335:15,<br/>12388:3, 12403:4<br/><b>might</b> [3] - 12345:12,<br/>12345:13, 12403:20<br/><b>militia</b> [1] - 12339:21<br/><b>Miller</b> [9] - 12314:18,<br/>12319:24, 12334:23,<br/>12342:21, 12346:10,<br/>12357:5, 12377:9,<br/>12390:23, 12414:3<br/><b>minimum</b> [1] -<br/>12393:20<br/><b>Ministry</b> [5] -<br/>12323:20, 12323:21,<br/>12338:19, 12341:16,<br/>12382:10<br/><b>Mink</b> [1] - 12302:7<br/><b>minute</b> [7] - 12316:15,<br/>12316:19, 12332:4,<br/>12340:5, 12354:7,<br/>12406:1, 12406:7<br/><b>minutes</b> [12] -<br/>12332:19, 12332:22,<br/>12334:21, 12335:16,<br/>12356:13, 12363:17,<br/>12363:24, 12392:6,<br/>12393:15, 12400:16,<br/>12400:19<br/><b>missed</b> [1] - 12332:22<br/><b>mobile</b> [4] - 12306:15,<br/>12306:19, 12308:19,<br/>12309:1<br/><b>mobility</b> [2] -<br/>12305:12, 12305:24<br/><b>moment</b> [7] -<br/>12309:21, 12324:14,<br/>12363:16, 12365:23,<br/>12368:18, 12370:5,<br/>12374:13<br/><b>Mondays</b> [1] -<br/>12411:24<br/><b>Moore</b> [1] - 12301:20<br/><b>moreover</b> [1] -<br/>12394:2<br/><b>morning</b> [15] -<br/>12312:1, 12315:19,<br/>12340:16, 12347:6,<br/>12356:24, 12366:25,<br/>12377:21, 12380:18,<br/>12383:11, 12385:9,<br/>12389:22, 12402:16,<br/>12406:24, 12409:16,<br/>12411:13<br/><b>MoSD</b> [6] - 12338:10,<br/>12340:8, 12340:24,<br/>12395:22, 12396:1,<br/>12403:25</p> |
| <b>M</b>  |  |   |   |
| <p><b>ma'am</b> [1] - 12409:8<br/><b>Mace</b> [1] - 12341:25<br/><b>mace</b> [1] - 12341:4<br/><b>Madison</b> [1] - 12404:4<br/><b>MAGA</b> [1] - 12341:24<br/><b>magnet</b> [8] -<br/>12342:13, 12377:1,<br/>12377:13, 12396:19,<br/>12396:24, 12398:24,<br/>12400:22<br/><b>magnets</b> [5] -<br/>12315:5, 12323:16,<br/>12342:11, 12380:11,<br/>12408:19<br/><b>Main</b> [2] - 12338:19,<br/>12341:16</p>  |  |   |   |



|   |  |  |  |
|---|--|--|--|
| <p><b>motion</b> <sup>[1]</sup> - 12375:23</p> <p><b>motions</b> <sup>[1]</sup> - 12393:10</p> <p><b>mouth</b> <sup>[1]</sup> - 12389:3</p> <p><b>move</b> <sup>[15]</sup> - 12323:16, 12328:16, 12342:11, 12352:17, 12375:15, 12375:18, 12390:19, 12392:13, 12393:11, 12396:24, 12397:9, 12398:19, 12400:22, 12407:17, 12408:19</p> <p><b>moved</b> <sup>[9]</sup> - 12334:12, 12335:21, 12342:5, 12342:8, 12342:13, 12358:4, 12380:11, 12392:19, 12398:22</p> <p><b>movement</b> <sup>[1]</sup> - 12352:5</p> <p><b>movements</b> <sup>[1]</sup> - 12393:13</p> <p><b>moving</b> <sup>[12]</sup> - 12315:13, 12323:10, 12331:5, 12339:20, 12355:13, 12376:10, 12376:12, 12390:15, 12398:17, 12402:11, 12405:16</p> <p><b>MR</b> <sup>[139]</sup> - 12303:9, 12304:21, 12304:23, 12305:2, 12305:19, 12306:2, 12306:11, 12307:4, 12307:14, 12308:16, 12309:23, 12310:1, 12310:11, 12310:23, 12311:12, 12311:20, 12312:2, 12313:3, 12313:12, 12313:19, 12313:24, 12314:15, 12314:17, 12315:1, 12315:4, 12315:18, 12315:25, 12324:17, 12324:20, 12325:23, 12326:22, 12327:3, 12327:24, 12328:3, 12328:15, 12328:19, 12329:7, 12329:19, 12329:22, 12330:9, 12330:17, 12333:16, 12333:18, 12334:4, 12334:5, 12338:6, 12340:15, 12340:20, 12341:9, 12341:12, 12342:10, 12345:13, 12345:16, 12347:5, 12347:8, 12348:10, 12348:15, 12348:18, 12348:19, 12352:9, 12352:13, 12354:5, 12355:15,</p> | <p>12356:21, 12357:3, 12357:4, 12357:14, 12357:19, 12359:17, 12359:20, 12363:20, 12363:21, 12366:23, 12367:4, 12367:10, 12370:20, 12373:8, 12373:10, 12374:24, 12375:5, 12375:8, 12377:8, 12377:19, 12377:24, 12380:17, 12380:22, 12381:15, 12383:10, 12383:15, 12385:8, 12385:14, 12386:8, 12386:14, 12387:15, 12387:18, 12387:21, 12387:24, 12389:5, 12389:23, 12390:2, 12390:16, 12390:18, 12392:1, 12392:3, 12392:12, 12392:21, 12393:18, 12393:22, 12393:25, 12394:6, 12395:15, 12395:18, 12396:13, 12396:16, 12397:9, 12397:13, 12397:15, 12398:7, 12400:24, 12401:4, 12402:15, 12402:19, 12403:19, 12403:23, 12404:14, 12404:18, 12406:23, 12407:2, 12407:17, 12407:20, 12407:21, 12407:24, 12408:22, 12408:24, 12409:15, 12409:20, 12410:15, 12410:23, 12411:7</p> <p><b>MS</b> <sup>[19]</sup> - 12325:20, 12328:6, 12328:8, 12328:16, 12329:5, 12329:10, 12329:20, 12333:13, 12342:6, 12345:14, 12354:15, 12374:22, 12375:4, 12386:4, 12389:1, 12398:5, 12410:19, 12412:3, 12412:10</p> <p><b>MT</b> <sup>[1]</sup> - 12302:19</p> <p><b>Muhammad</b> <sup>[1]</sup> - 12411:2</p> <p><b>Mulroe</b> <sup>[1]</sup> - 12301:17</p> <p><b>multiple</b> <sup>[4]</sup> - 12306:6, 12328:14, 12329:21, 12346:20</p> <p><b>must</b> <sup>[1]</sup> - 12410:22</p> | <p><b>nadia.moore@usdoj.gov</b> <sup>[1]</sup> - 12301:22</p> <p><b>name</b> <sup>[2]</sup> - 12329:6, 12403:15</p> <p><b>Nancy</b> <sup>[3]</sup> - 12348:8, 12397:4, 12397:10</p> <p><b>Nayib</b> <sup>[2]</sup> - 12302:9, 12302:10</p> <p><b>nds@davidbsmithpllc.com</b> <sup>[1]</sup> - 12301:25</p> <p><b>near</b> <sup>[3]</sup> - 12388:18, 12389:4, 12396:20</p> <p><b>nearby</b> <sup>[1]</sup> - 12368:1</p> <p><b>need</b> <sup>[9]</sup> - 12303:8, 12309:19, 12310:7, 12310:16, 12311:25, 12313:22, 12314:9, 12375:23, 12389:7</p> <p><b>network</b> <sup>[4]</sup> - 12305:12, 12305:14, 12305:24, 12309:1</p> <p><b>networks</b> <sup>[2]</sup> - 12307:24, 12308:19</p> <p><b>never</b> <sup>[2]</sup> - 12309:1, 12410:25</p> <p><b>new</b> <sup>[1]</sup> - 12395:22</p> <p><b>New</b> <sup>[7]</sup> - 12301:18, 12301:25, 12302:5, 12302:16, 12321:21, 12340:24, 12403:25</p> <p><b>next</b> <sup>[7]</sup> - 12319:25, 12341:3, 12342:5, 12342:8, 12357:25, 12381:17, 12400:10</p> <p><b>Nicholas</b> <sup>[1]</sup> - 12301:23</p> <p><b>Nick</b> <sup>[1]</sup> - 12329:23</p> <p><b>nicole</b> <sup>[1]</sup> - 12414:3</p> <p><b>nine</b> <sup>[1]</sup> - 12346:19</p> <p><b>nobody</b> <sup>[1]</sup> - 12392:8</p> <p><b>noise</b> <sup>[1]</sup> - 12354:10</p> <p><b>noises</b> <sup>[1]</sup> - 12397:16</p> <p><b>Nordean</b> <sup>[44]</sup> - 12301:6, 12301:23, 12303:4, 12315:10, 12322:20, 12325:2, 12326:3, 12326:16, 12327:5, 12328:9, 12328:15, 12328:23, 12329:11, 12329:14, 12333:1, 12333:20, 12334:6, 12342:4, 12344:1, 12349:10, 12350:1, 12350:2, 12350:5, 12350:23, 12351:7, 12351:9, 12351:20, 12352:17, 12353:21, 12356:18, 12357:25, 12367:18,</p> | <p>12367:21, 12368:14, 12372:17, 12372:25, 12374:5, 12376:1, 12378:10, 12380:3, 12380:13, 12382:17, 12407:11, 12408:19</p> <p><b>Nordean's</b> <sup>[4]</sup> - 12326:6, 12326:12, 12352:22, 12354:19</p> <p><b>normal</b> <sup>[1]</sup> - 12350:18</p> <p><b>Norman</b> <sup>[1]</sup> - 12302:3</p> <p><b>Normies</b> <sup>[1]</sup> - 12404:7</p> <p><b>note</b> <sup>[3]</sup> - 12309:23, 12355:15, 12411:7</p> <p><b>noted</b> <sup>[1]</sup> - 12355:18</p> <p><b>notes</b> <sup>[1]</sup> - 12413:6</p> <p><b>nothing</b> <sup>[2]</sup> - 12314:8, 12412:16</p> <p><b>notice</b> <sup>[1]</sup> - 12311:11</p> <p><b>noticed</b> <sup>[1]</sup> - 12342:13</p> <p><b>notion</b> <sup>[1]</sup> - 12355:3</p> <p><b>November</b> <sup>[1]</sup> - 12412:9</p> <p><b>npattis@pattisandsmith.com</b> <sup>[1]</sup> - 12302:5</p> <p><b>Nugent</b> <sup>[1]</sup> - 12322:22</p> <p><b>number</b> <sup>[6]</sup> - 12305:10, 12305:11, 12392:3, 12392:14, 12392:17, 12392:18</p> <p><b>numbers</b> <sup>[2]</sup> - 12381:19, 12381:21</p> <p><b>NW</b> <sup>[4]</sup> - 12301:15, 12301:18, 12302:2, 12302:10</p> <p><b>NY</b> <sup>[3]</sup> - 12301:21, 12301:25, 12302:16</p> |
| <b>O</b>  |  |  |  |
| <p><b>o'clock</b> <sup>[6]</sup> - 12314:10, 12338:21, 12339:6, 12409:2, 12409:13, 12412:18</p> <p><b>Oath</b> <sup>[1]</sup> - 12412:6</p> <p><b>object</b> <sup>[4]</sup> - 12392:22, 12393:6, 12393:18, 12393:23</p> <p><b>objected</b> <sup>[3]</sup> - 12303:14, 12355:7, 12392:3</p> <p><b>objection</b> <sup>[14]</sup> - 12304:18, 12309:23, 12315:23, 12325:20, 12342:6, 12352:9, 12354:20, 12359:17, 12373:8, 12387:21, 12390:16, 12393:8, 12396:13, 12398:5</p>  |  |  |  |

|   |   |   |  |
|---|---|---|--|
| <p><b>objections</b> <sup>[1]</sup> - 12393:7</p> <p><b>observations</b> <sup>[1]</sup> - 12411:8</p> <p><b>observed</b> <sup>[1]</sup> - 12411:24</p> <p><b>obviously</b> <sup>[1]</sup> - 12328:20</p> <p><b>occur</b> <sup>[1]</sup> - 12310:19</p> <p><b>OF</b> <sup>[3]</sup> - 12301:1, 12301:10, 12413:2</p> <p><b>Office</b> <sup>[2]</sup> - 12301:20, 12302:7</p> <p><b>officer</b> <sup>[5]</sup> - 12328:12, 12329:5, 12329:18, 12354:17</p> <p><b>officers</b> <sup>[6]</sup> - 12323:11, 12363:15, 12365:3, 12373:11, 12405:17, 12410:24</p> <p><b>Offices</b> <sup>[1]</sup> - 12302:10</p> <p><b>OFFICIAL</b> <sup>[1]</sup> - 12413:2</p> <p><b>Official</b> <sup>[1]</sup> - 12413:12</p> <p><b>old</b> <sup>[1]</sup> - 12313:6</p> <p><b>old-fashioned</b> <sup>[1]</sup> - 12313:6</p> <p><b>once</b> <sup>[3]</sup> - 12335:21, 12380:18, 12409:2</p> <p><b>one</b> <sup>[55]</sup> - 12303:18, 12304:1, 12304:19, 12305:3, 12305:8, 12305:10, 12305:20, 12306:2, 12306:12, 12308:9, 12308:13, 12308:17, 12309:1, 12309:3, 12313:6, 12313:20, 12315:21, 12317:8, 12317:9, 12317:10, 12318:14, 12318:24, 12323:8, 12324:14, 12325:1, 12326:3, 12326:4, 12326:22, 12339:12, 12341:9, 12344:10, 12344:13, 12346:15, 12355:7, 12355:15, 12357:24, 12361:22, 12370:4, 12379:21, 12380:11, 12380:12, 12381:17, 12387:10, 12387:12, 12392:14, 12392:17, 12398:9, 12404:21, 12410:3, 12411:5</p> <p><b>ones</b> <sup>[1]</sup> - 12337:19</p> <p><b>oop</b> <sup>[1]</sup> - 12375:21</p> <p><b>OP</b> <sup>[1]</sup> - 12404:9</p> <p><b>open</b> <sup>[3]</sup> - 12319:25, 12330:16, 12394:5</p> | <p><b>opponent</b> <sup>[1]</sup> - 12393:21</p> <p><b>opportunity</b> <sup>[4]</sup> - 12311:14, 12356:1, 12356:2, 12356:7</p> <p><b>Orange</b> <sup>[1]</sup> - 12302:4</p> <p><b>orange</b> <sup>[2]</sup> - 12339:20, 12388:19</p> <p><b>order</b> <sup>[1]</sup> - 12412:8</p> <p><b>orient</b> <sup>[1]</sup> - 12321:4</p> <p><b>original</b> <sup>[1]</sup> - 12303:18</p> <p><b>OTGProudBoys</b> <sup>[1]</sup> - 12339:20</p> <p><b>outline</b> <sup>[1]</sup> - 12359:13</p> <p><b>outlined</b> <sup>[6]</sup> - 12325:7, 12326:2, 12327:4, 12364:16, 12367:16, 12401:13</p> <p><b>outlines</b> <sup>[1]</sup> - 12329:10</p> <p><b>outside</b> <sup>[3]</sup> - 12355:7, 12355:8, 12411:10</p> <p><b>overall</b> <sup>[1]</sup> - 12310:24</p> <p><b>overflow</b> <sup>[1]</sup> - 12312:12</p> <p><b>overrule</b> <sup>[2]</sup> - 12393:7, 12393:9</p> <p><b>overruled</b> <sup>[8]</sup> - 12325:22, 12342:7, 12352:10, 12359:19, 12373:9, 12387:22, 12390:17, 12396:14</p> <p><b>overview</b> <sup>[3]</sup> - 12328:8, 12328:14, 12354:16</p> <p><b>own</b> <sup>[10]</sup> - 12304:1, 12304:4, 12307:6, 12307:7, 12307:16, 12307:21, 12308:12, 12309:17</p> | <p><b>page</b> <sup>[1]</sup> - 12348:17</p> <p><b>paint</b> <sup>[1]</sup> - 12381:16</p> <p><b>Park</b> <sup>[1]</sup> - 12302:16</p> <p><b>part</b> <sup>[6]</sup> - 12324:2, 12324:3, 12371:3, 12376:18, 12377:14, 12383:19</p> <p><b>particular</b> <sup>[3]</sup> - 12355:13, 12374:23, 12392:17</p> <p><b>particulars</b> <sup>[1]</sup> - 12355:2</p> <p><b>parties</b> <sup>[4]</sup> - 12310:2, 12313:21, 12355:11, 12355:17</p> <p><b>partway</b> <sup>[1]</sup> - 12397:16</p> <p><b>party</b> <sup>[1]</sup> - 12393:21</p> <p><b>past</b> <sup>[3]</sup> - 12377:12, 12383:4, 12410:17</p> <p><b>patiently</b> <sup>[1]</sup> - 12409:21</p> <p><b>Pattis</b> <sup>[5]</sup> - 12302:3, 12302:4, 12392:10, 12392:12, 12393:14</p> <p><b>PATTIS</b> <sup>[6]</sup> - 12352:9, 12373:8, 12387:15, 12392:1, 12392:3, 12410:23</p> <p><b>Pattis's</b> <sup>[1]</sup> - 12393:8</p> <p><b>Paul</b> <sup>[5]</sup> - 12318:19, 12332:3, 12368:14, 12380:5, 12407:10</p> <p><b>pause</b> <sup>[53]</sup> - 12316:3, 12316:8, 12316:18, 12317:17, 12317:24, 12318:8, 12318:14, 12318:24, 12319:14, 12319:19, 12320:2, 12320:16, 12321:14, 12324:6, 12325:6, 12325:15, 12326:1, 12333:16, 12334:4, 12340:3, 12343:10, 12343:22, 12345:17, 12347:17, 12349:22, 12350:9, 12351:3, 12351:17, 12352:4, 12353:1, 12353:24, 12358:12, 12360:9, 12360:25, 12361:19, 12361:25, 12363:24, 12364:15, 12365:11, 12368:11, 12368:20, 12369:13, 12369:20, 12378:13, 12379:2, 12379:22, 12384:2, 12389:13, 12394:16, 12395:5, 12395:11, 12401:18, 12402:5</p> <p><b>paused</b> <sup>[4]</sup> - 12318:9,</p> | <p>12334:6, 12340:5, 12358:24</p> <p><b>pausing</b> <sup>[11]</sup> - 12322:17, 12324:23, 12327:2, 12362:5, 12362:9, 12372:3, 12374:15, 12378:9, 12378:16, 12384:8, 12390:8</p> <p><b>paying</b> <sup>[1]</sup> - 12341:20</p> <p><b>PC</b> <sup>[1]</sup> - 12302:1</p> <p><b>PDF</b> <sup>[1]</sup> - 12305:7</p> <p><b>Peace</b> <sup>[1]</sup> - 12314:21</p> <p><b>pedestrian</b> <sup>[2]</sup> - 12315:12, 12335:2</p> <p><b>people</b> <sup>[22]</sup> - 12308:20, 12313:14, 12317:8, 12323:6, 12329:3, 12329:25, 12330:1, 12330:13, 12354:21, 12354:22, 12354:24, 12355:3, 12356:8, 12372:4, 12384:20, 12385:15, 12392:6, 12393:13, 12397:25, 12405:1, 12407:8, 12409:23</p> <p><b>Pepe</b> <sup>[5]</sup> - 12316:22, 12318:1, 12320:18, 12320:23, 12321:15</p> <p><b>pepper</b> <sup>[2]</sup> - 12397:25</p> <p><b>permission</b> <sup>[39]</sup> - 12311:13, 12315:22, 12315:23, 12324:17, 12324:19, 12326:24, 12326:25, 12327:25, 12328:1, 12340:16, 12340:18, 12341:11, 12347:6, 12347:7, 12356:25, 12357:1, 12370:16, 12370:18, 12377:22, 12380:19, 12380:20, 12383:12, 12383:13, 12385:10, 12386:10, 12389:23, 12389:25, 12395:15, 12395:16, 12397:12, 12401:1, 12401:2, 12402:17, 12402:18, 12403:21, 12403:22, 12404:16, 12406:25, 12407:22</p> <p><b>permitted</b> <sup>[1]</sup> - 12315:3</p> <p><b>person</b> <sup>[53]</sup> - 12316:20, 12316:23, 12317:11, 12317:18, 12318:15, 12321:9, 12322:23, 12323:3, 12325:7, 12325:9,</p> |
| <b>P</b>  |   |   |  |
| <p><b>P.A</b> <sup>[2]</sup> - 12302:10, 12302:12</p> <p><b>P.C</b> <sup>[1]</sup> - 12302:15</p> <p><b>p.m</b> <sup>[26]</sup> - 12301:8, 12324:13, 12335:7, 12335:23, 12337:22, 12338:9, 12339:13, 12339:18, 12340:8, 12341:3, 12343:5, 12346:7, 12347:14, 12349:20, 12366:22, 12367:13, 12369:10, 12371:6, 12373:21, 12374:2, 12375:2, 12380:16, 12386:6, 12386:17, 12399:5, 12404:22</p>  |   |   |  |

12325:16, 12327:4,  
12328:4, 12329:2,  
12329:14, 12330:18,  
12331:3, 12331:18,  
12332:1, 12332:10,  
12336:6, 12336:16,  
12336:20, 12344:11,  
12344:17, 12344:25,  
12345:4, 12347:24,  
12350:3, 12350:21,  
12351:12, 12352:15,  
12352:17, 12353:2,  
12353:16, 12355:9,  
12358:8, 12360:12,  
12360:20, 12365:24,  
12366:12, 12367:21,  
12367:22, 12371:13,  
12371:15, 12371:17,  
12374:3, 12375:24,  
12382:13, 12394:23,  
12395:4, 12395:6  
**person's** [1] -  
12393:19  
**personally** [1] -  
12411:15  
**Pezzola** [52] - 12301:8,  
12302:15, 12315:11,  
12316:25, 12317:9,  
12318:11, 12319:1,  
12319:16, 12321:11,  
12321:23, 12329:21,  
12332:8, 12342:14,  
12344:19, 12347:22,  
12349:5, 12352:12,  
12358:9, 12358:13,  
12359:2, 12359:9,  
12360:14, 12361:9,  
12362:2, 12362:6,  
12362:10, 12362:20,  
12364:19, 12382:20,  
12385:19, 12388:11,  
12388:15, 12389:8,  
12389:17, 12390:10,  
12390:14, 12391:22,  
12392:16, 12392:23,  
12393:2, 12394:9,  
12394:21, 12396:8,  
12396:11, 12398:24,  
12399:10, 12401:8,  
12401:14, 12401:21,  
12402:2, 12402:10,  
12408:8  
**Pezzola's** [2] -  
12401:5, 12402:9  
**phantom** [1] - 12306:9  
**Philadelphia** [1] -  
12371:4  
**phone** [25] - 12303:13,  
12303:15, 12303:16,  
12303:20, 12303:22,

12304:10, 12304:17,  
12306:19, 12307:1,  
12307:2, 12307:8,  
12308:1, 12308:2,  
12308:6, 12308:19,  
12308:23, 12310:21,  
12336:9, 12344:17,  
12361:2, 12368:25,  
12370:25, 12397:1,  
12398:8  
**phones** [4] -  
12306:15, 12308:21,  
12309:2, 12311:9  
**photo** [20] - 12326:15,  
12333:4, 12343:4,  
12344:6, 12346:12,  
12348:11, 12348:12,  
12349:7, 12350:4,  
12363:3, 12363:7,  
12363:14, 12363:15,  
12381:20, 12381:22,  
12382:5, 12392:14,  
12392:15, 12403:5,  
12407:14  
**photograph** [6] -  
12385:24, 12396:5,  
12396:7, 12403:11,  
12406:17, 12407:3  
**photographer** [2] -  
12348:22, 12348:24  
**photographs** [3] -  
12355:21, 12373:13,  
12392:6  
**photos** [1] - 12345:23  
**pick** [1] - 12403:10  
**picture** [2] - 12372:18,  
12374:23  
**piece** [1] - 12393:12  
**pings** [1] - 12306:20  
**pixilated** [1] - 12405:1  
**place** [3] - 12355:13,  
12364:7, 12377:25  
**plaid** [2] - 12367:22,  
12405:6  
**Plaintiff** [2] - 12301:4,  
12301:14  
**planning** [1] -  
12314:10  
**play** [101] - 12310:7,  
12316:1, 12316:15,  
12317:22, 12318:6,  
12318:12, 12318:22,  
12319:9, 12319:17,  
12319:22, 12320:14,  
12321:7, 12322:14,  
12323:13, 12324:4,  
12324:21, 12325:4,  
12325:13, 12325:24,  
12326:19, 12327:16,  
12327:21, 12330:21,

12332:19, 12334:17,  
12335:16, 12335:24,  
12336:12, 12337:1,  
12337:6, 12337:9,  
12339:25, 12343:8,  
12345:2, 12345:9,  
12347:15, 12348:2,  
12349:21, 12350:7,  
12350:17, 12351:1,  
12352:1, 12352:6,  
12352:19, 12352:24,  
12353:14, 12357:9,  
12358:2, 12358:10,  
12358:17, 12360:7,  
12360:23, 12361:6,  
12361:17, 12361:23,  
12362:7, 12362:15,  
12363:18, 12363:22,  
12364:13, 12365:8,  
12365:17, 12366:18,  
12368:9, 12368:18,  
12369:11, 12369:18,  
12370:1, 12371:10,  
12372:1, 12372:23,  
12374:13, 12374:21,  
12375:5, 12375:10,  
12375:16, 12376:7,  
12378:7, 12378:11,  
12379:7, 12379:21,  
12380:9, 12383:24,  
12384:6, 12384:11,  
12384:25, 12387:4,  
12388:21, 12389:11,  
12390:6, 12390:12,  
12391:13, 12391:19,  
12391:25, 12394:10,  
12395:2, 12397:13,  
12399:24, 12401:11,  
12405:9, 12408:9  
**played** [176] -  
12313:12, 12313:13,  
12316:2, 12316:7,  
12316:17, 12317:16,  
12317:23, 12318:7,  
12318:13, 12318:23,  
12319:4, 12319:10,  
12319:13, 12319:18,  
12320:1, 12320:10,  
12320:15, 12321:1,  
12321:3, 12321:8,  
12321:13, 12322:3,  
12322:11, 12322:13,  
12322:16, 12323:14,  
12324:5, 12324:22,  
12325:5, 12325:14,  
12325:25, 12326:20,  
12327:1, 12327:17,  
12327:22, 12330:22,  
12331:7, 12331:15,  
12332:21, 12333:12,  
12333:15, 12334:3,

12334:18, 12334:22,  
12335:17, 12336:1,  
12336:13, 12337:3,  
12337:8, 12340:2,  
12342:20, 12343:9,  
12343:12, 12343:14,  
12343:21, 12344:4,  
12344:15, 12344:22,  
12344:24, 12345:3,  
12345:10, 12345:15,  
12347:4, 12347:16,  
12348:3, 12349:16,  
12349:23, 12350:8,  
12350:14, 12350:19,  
12351:2, 12351:16,  
12352:3, 12352:8,  
12352:11, 12352:20,  
12352:25, 12353:11,  
12353:13, 12353:15,  
12353:23, 12355:19,  
12357:10, 12357:18,  
12358:3, 12358:11,  
12358:18, 12358:21,  
12359:4, 12359:11,  
12360:6, 12360:8,  
12360:11, 12360:19,  
12360:24, 12361:5,  
12361:7, 12361:13,  
12361:18, 12361:24,  
12362:4, 12362:8,  
12362:16, 12363:23,  
12364:14, 12364:21,  
12364:24, 12365:10,  
12365:19, 12365:22,  
12366:5, 12366:17,  
12366:19, 12367:6,  
12367:9, 12367:15,  
12368:10, 12368:19,  
12369:12, 12369:19,  
12370:2, 12370:6,  
12371:11, 12372:2,  
12372:24, 12374:14,  
12375:6, 12375:12,  
12375:17, 12375:22,  
12376:8, 12377:23,  
12378:8, 12378:12,  
12378:15, 12379:1,  
12379:3, 12379:8,  
12379:15, 12379:23,  
12380:10, 12384:1,  
12384:7, 12384:12,  
12384:15, 12384:24,  
12385:1, 12385:11,  
12386:11, 12386:21,  
12387:1, 12387:3,  
12387:5, 12388:2,  
12388:7, 12388:10,  
12388:22, 12389:12,  
12390:1, 12390:7,  
12390:13, 12391:15,  
12391:20, 12394:11,



|   |  |  |   |
|---|--|--|---|
| <p>12394:15, 12395:3, 12395:10, 12397:14, 12399:25, 12401:12, 12401:17, 12401:24, 12402:4, 12404:25, 12405:15, 12408:10</p> <p><b>playing</b> [12] - 12316:6, 12319:11, 12331:6, 12333:11, 12337:5, 12343:20, 12345:8, 12351:15, 12366:4, 12369:22, 12401:5, 12401:23</p> <p><b>Plaza</b> [8] - 12301:21, 12335:15, 12346:4, 12377:11, 12377:12, 12378:4, 12383:19, 12391:5</p> <p><b>PLLC</b> [1] - 12301:23</p> <p><b>pocket</b> [1] - 12361:2</p> <p><b>point</b> [37] - 12305:3, 12308:7, 12314:11, 12324:16, 12330:5, 12330:12, 12332:20, 12335:6, 12345:24, 12346:15, 12351:7, 12351:13, 12352:17, 12355:8, 12355:19, 12356:7, 12357:5, 12363:4, 12364:6, 12370:12, 12373:11, 12376:17, 12389:11, 12392:22, 12393:3, 12393:9, 12393:12, 12393:15, 12393:16, 12396:21, 12398:9, 12398:17, 12399:11, 12402:23, 12404:11</p> <p><b>pointed</b> [3] - 12306:1, 12329:14, 12354:18</p> <p><b>pointing</b> [3] - 12329:16, 12356:9, 12358:15</p> <p><b>points</b> [1] - 12313:19</p> <p><b>police</b> [8] - 12323:11, 12328:12, 12341:23, 12342:8, 12373:11, 12400:2, 12400:5</p> <p><b>portion</b> [6] - 12326:9, 12374:16, 12376:5, 12386:19, 12386:20, 12394:13</p> <p><b>posed</b> [2] - 12392:23, 12393:5</p> <p><b>position</b> [2] - 12304:6, 12395:25</p> <p><b>positioned</b> [2] - 12385:5, 12385:6</p> <p><b>possession</b> [1] - 12360:15</p> | <p><b>possible</b> [3] - 12346:8, 12371:24, 12386:20</p> <p><b>post</b> [10] - 12337:22, 12337:24, 12338:21, 12339:6, 12339:13, 12339:22, 12341:3, 12341:5, 12381:2, 12395:23</p> <p><b>posted</b> [1] - 12404:3</p> <p><b>posts</b> [1] - 12404:4</p> <p><b>potential</b> [1] - 12411:10</p> <p><b>Potomac</b> [1] - 12310:12</p> <p><b>power</b> [2] - 12410:25, 12411:5</p> <p><b>precedence</b> [1] - 12410:16</p> <p><b>prejudicial</b> [1] - 12411:21</p> <p><b>present</b> [1] - 12355:13</p> <p><b>previously</b> [3] - 12360:20, 12361:3, 12371:12</p> <p><b>privilege</b> [1] - 12411:1</p> <p><b>problem</b> [3] - 12306:11, 12307:4, 12334:15</p> <p><b>proceed</b> [5] - 12314:14, 12330:15, 12356:20, 12386:7, 12394:4</p> <p><b>proceeding</b> [1] - 12323:11</p> <p><b>proceedings</b> [1] - 12413:7</p> <p><b>proffer</b> [1] - 12314:1</p> <p><b>profile</b> [1] - 12379:5</p> <p><b>progress</b> [1] - 12315:16</p> <p><b>proof</b> [1] - 12308:24</p> <p><b>proper</b> [1] - 12307:23</p> <p><b>prosecutors</b> [1] - 12410:21</p> <p><b>Protocol</b> [2] - 12305:14, 12306:15</p> <p><b>Proud</b> [13] - 12320:6, 12321:21, 12331:22, 12331:24, 12341:22, 12342:1, 12369:23, 12371:4, 12380:8, 12381:8, 12381:14, 12396:15, 12403:16</p> <p><b>proud</b> [1] - 12381:14</p> <p><b>prove</b> [1] - 12392:20</p> <p><b>provided</b> [4] - 12310:2, 12373:25, 12380:14, 12382:2</p> <p><b>provisionally</b> [19] - 12315:20, 12340:15,</p> | <p>12341:10, 12347:5, 12356:24, 12366:24, 12370:16, 12377:20, 12380:18, 12383:11, 12385:9, 12386:9, 12389:22, 12395:14, 12402:16, 12403:19, 12404:14, 12406:23, 12407:18</p> <p><b>provisionary</b> [1] - 12400:25</p> <p><b>proximate</b> [2] - 12382:23, 12391:9</p> <p><b>publish</b> [38] - 12315:22, 12315:24, 12324:18, 12326:24, 12327:25, 12328:1, 12340:17, 12340:18, 12341:10, 12347:6, 12347:7, 12356:25, 12357:1, 12366:25, 12370:17, 12370:18, 12377:21, 12377:22, 12380:19, 12380:20, 12383:12, 12383:13, 12385:10, 12386:10, 12389:23, 12389:25, 12395:15, 12395:17, 12397:12, 12401:1, 12401:2, 12402:17, 12403:21, 12404:15, 12404:16, 12406:25, 12407:19, 12407:22</p> <p><b>published</b> [1] - 12367:2</p> <p><b>pulled</b> [1] - 12361:2</p> <p><b>pump</b> [1] - 12372:8</p> <p><b>purchase</b> [2] - 12312:4, 12312:21</p> <p><b>push</b> [1] - 12340:9</p> <p><b>pushing</b> [1] - 12404:7</p> <p><b>put</b> [8] - 12309:10, 12309:12, 12310:23, 12312:7, 12313:8, 12340:3, 12348:6, 12377:13</p> <p><b>putting</b> [1] - 12330:10</p> | <p>12394:2</p> <p><b>quick</b> [1] - 12387:19</p> <p><b>quicker</b> [1] - 12392:13</p> <p><b>quickly</b> [1] - 12393:11</p> <p><b>quit</b> [1] - 12324:11</p> |
| <b>R</b>  |  |  |   |
| <p><b>radio</b> [1] - 12318:3</p> <p><b>rae</b> [1] - 12372:12</p> <p><b>Rae</b> [7] - 12318:19, 12332:3, 12368:15, 12373:6, 12374:19, 12380:5, 12407:10</p> <p><b>raided</b> [1] - 12371:7</p> <p><b>raise</b> [1] - 12321:16</p> <p><b>raises</b> [1] - 12310:15</p> <p><b>rang</b> [1] - 12309:1</p> <p><b>ranging</b> [1] - 12308:18</p> <p><b>rather</b> [1] - 12354:23</p> <p><b>ray</b> [1] - 12324:16</p> <p><b>re</b> [2] - 12337:17, 12354:16</p> <p><b>re-ask</b> [1] - 12337:17</p> <p><b>re-overview</b> [1] - 12354:16</p> <p><b>read</b> [5] - 12305:25, 12306:5, 12309:15, 12340:7, 12341:17</p> <p><b>reading</b> [3] - 12305:19, 12307:15, 12309:13</p> <p><b>really</b> [2] - 12313:20, 12341:21</p> <p><b>rear</b> [2] - 12390:11, 12396:22</p> <p><b>reason</b> [2] - 12330:3, 12404:10</p> <p><b>recede</b> [1] - 12412:1</p> <p><b>recently</b> [1] - 12336:18</p> <p><b>recess</b> [1] - 12356:14</p> <p><b>recognize</b> [60] - 12316:20, 12318:15, 12319:5, 12321:20, 12323:25, 12324:7, 12325:9, 12331:18, 12332:10, 12333:19, 12336:5, 12336:16, 12342:21, 12343:15, 12343:23, 12344:5, 12344:11, 12344:18, 12344:25, 12345:4, 12345:20, 12346:11, 12348:11, 12349:4, 12349:24, 12358:8, 12361:20, 12362:19, 12363:7, 12365:4, 12365:13, 12365:25, 12366:11, 12367:16, 12367:24, 12368:6,</p>                                 |  |  |   |
| <b>Q</b>  |  |  |   |
| <p><b>qualified</b> [1] - 12304:11</p> <p><b>Quested</b> [1] - 12329:23</p> <p><b>questioned</b> [1] - 12412:13</p> <p><b>questioning</b> [1] - 12412:10</p> <p><b>questions</b> [3] - 12314:7, 12354:21,</p>   |  |  |   |

12368:12, 12369:5,  
12369:14, 12370:8,  
12370:21, 12371:17,  
12374:3, 12374:17,  
12375:24, 12376:4,  
12379:17, 12379:24,  
12385:15, 12386:22,  
12388:8, 12390:24,  
12394:23, 12397:5,  
12401:19, 12402:6,  
12403:4, 12407:8,  
12407:25, 12408:7  
**record** [25] - 12303:2,  
12303:3, 12305:6,  
12305:11, 12305:21,  
12309:8, 12316:19,  
12317:8, 12323:3,  
12326:12, 12330:11,  
12335:13, 12340:5,  
12344:10, 12346:19,  
12350:2, 12356:16,  
12364:9, 12367:20,  
12376:24, 12377:10,  
12378:3, 12383:2,  
12391:4, 12399:14  
**records** [11] - 12304:5,  
12304:10, 12305:4,  
12305:15, 12305:20,  
12305:21, 12306:9,  
12307:18, 12307:20,  
12307:25  
**recover** [1] - 12373:13  
**recovered** [19] -  
12342:24, 12347:11,  
12348:12, 12348:20,  
12349:7, 12363:3,  
12363:9, 12365:2,  
12369:1, 12369:7,  
12370:24, 12373:17,  
12373:23, 12379:11,  
12379:16, 12379:19,  
12396:9, 12397:1,  
12397:8  
**red** [16] - 12315:9,  
12322:23, 12334:1,  
12350:11, 12350:21,  
12351:4, 12351:12,  
12352:16, 12353:2,  
12353:16, 12354:18,  
12365:24, 12377:13,  
12380:11, 12380:12,  
12380:13  
**redirect** [1] - 12329:14  
**referred** [1] - 12328:24  
**referring** [1] -  
12305:14  
**reflecting** [1] -  
12411:23  
**regarding** [1] -  
12409:4

**regardless** [1] -  
12402:17  
**registers** [1] -  
12306:15  
**regular** [2] - 12303:24,  
12412:15  
**Rehl** [37] - 12301:7,  
12302:6, 12315:9,  
12319:21, 12322:9,  
12325:12, 12325:17,  
12331:1, 12331:2,  
12331:3, 12342:4,  
12343:19, 12347:19,  
12348:4, 12357:24,  
12360:3, 12360:21,  
12361:1, 12361:11,  
12364:17, 12367:18,  
12367:19, 12367:23,  
12368:8, 12370:10,  
12370:12, 12371:1,  
12371:5, 12372:21,  
12374:7, 12374:19,  
12382:17, 12396:19,  
12397:18, 12397:22,  
12398:2, 12398:21  
**Rehl's** [4] - 12370:25,  
12397:1, 12397:8,  
12398:8  
**related** [1] - 12411:7  
**relating** [1] - 12411:20  
**relative** [12] -  
12326:16, 12334:11,  
12334:13, 12346:4,  
12351:7, 12363:11,  
12399:17, 12400:4,  
12402:21, 12405:11,  
12405:19, 12407:14  
**relatively** [1] - 12351:8  
**relevance** [1] -  
12393:4  
**reliable** [9] - 12303:24,  
12304:7, 12304:9,  
12306:18, 12306:22,  
12306:23, 12307:19,  
12307:20, 12308:1  
**remain** [1] - 12398:21  
**remember** [3] -  
12315:21, 12328:20,  
12329:6  
**remind** [6] - 12347:9,  
12371:20, 12380:12,  
12394:8, 12395:25,  
12405:10  
**renew** [1] - 12304:18  
**repeat** [2] - 12308:8,  
12354:16  
**report** [25] - 12303:18,  
12303:20, 12303:21,  
12303:23, 12303:24,  
12303:25, 12304:1,

12304:7, 12304:12,  
12305:7, 12305:8,  
12305:9, 12305:11,  
12305:12, 12305:23,  
12306:12, 12306:17,  
12306:18, 12307:2,  
12308:9, 12308:10,  
12308:13, 12308:17,  
12309:3  
**reporter** [5] -  
12302:21, 12310:3,  
12354:7, 12409:19,  
12413:12  
**REPORTER** [2] -  
12387:14, 12413:2  
**reports** [7] - 12304:2,  
12304:8, 12306:3,  
12306:6, 12306:8,  
12307:2, 12308:18  
**represent** [1] -  
12339:21  
**request** [7] -  
12310:13, 12310:19,  
12310:23, 12311:4,  
12311:7, 12311:13,  
12313:25  
**requested** [1] -  
12330:9  
**research** [2] -  
12304:7, 12306:17  
**researching** [1] -  
12309:18  
**respect** [1] - 12351:12  
**respond** [2] - 12381:9,  
12381:13  
**responded** [1] -  
12369:14  
**responds** [1] -  
12342:2  
**response** [5] -  
12304:25, 12324:10,  
12337:24, 12392:11,  
12394:3  
**rest** [3] - 12326:17,  
12334:13, 12354:25  
**result** [1] - 12410:5  
**review** [9] - 12315:15,  
12335:8, 12336:23,  
12342:3, 12376:14,  
12385:20, 12396:21,  
12398:16, 12399:7  
**reviewed** [4] -  
12323:20, 12345:23,  
12346:24, 12382:10  
**right-hand** [1] -  
12400:15  
**riot** [10] - 12359:16,  
12359:22, 12360:16,  
12362:12, 12362:20,  
12392:17, 12392:24,

12394:20, 12395:24,  
12398:1  
**rioters** [1] - 12334:13  
**RMR** [1] - 12302:21  
**Road** [1] - 12302:7  
**Roger** [2] - 12302:17,  
12302:18  
**rogerisaacroots@**  
**outlook.com** [1] -  
12302:19  
**ROHDE** [1] - 12345:14  
**Rohde** [81] - 12316:1,  
12319:22, 12321:2,  
12321:7, 12321:14,  
12321:24, 12322:10,  
12323:15, 12323:24,  
12324:15, 12326:21,  
12332:23, 12333:17,  
12334:4, 12334:19,  
12335:16, 12336:12,  
12337:2, 12338:13,  
12339:12, 12344:2,  
12344:20, 12345:7,  
12346:8, 12346:22,  
12347:15, 12348:2,  
12349:21, 12350:7,  
12350:13, 12350:17,  
12352:2, 12353:7,  
12353:10, 12353:24,  
12356:22, 12357:16,  
12358:20, 12359:3,  
12360:5, 12360:10,  
12360:17, 12360:23,  
12361:17, 12362:17,  
12362:22, 12363:17,  
12363:24, 12364:13,  
12364:22, 12365:17,  
12365:21, 12366:6,  
12366:16, 12367:5,  
12370:3, 12371:9,  
12371:24, 12374:10,  
12374:15, 12374:24,  
12375:15, 12376:7,  
12378:14, 12383:24,  
12384:13, 12384:23,  
12385:12, 12386:3,  
12386:19, 12386:25,  
12388:5, 12389:11,  
12389:21, 12394:10,  
12394:22, 12397:13,  
12399:22, 12402:13,  
12404:23, 12405:9  
**Room** [1] - 12413:13  
**Roots** [2] - 12302:17,  
12302:18  
**roots** [3] - 12411:6,  
12412:3, 12412:10  
**ROOTS** [1] - 12411:7  
**rotten** [2] - 12339:23,  
12340:9

|   |   |  |  |
|---|---|--|--|
| <p><b>roughly</b> <sup>[1]</sup> - 12407:16<br/> <b>route</b> <sup>[2]</sup> - 12376:20,<br/> 12382:23<br/> <b>run</b> <sup>[1]</sup> - 12305:4<br/> <b>running</b> <sup>[1]</sup> - 12330:7<br/> <b>Rusch</b> <sup>[3]</sup> - 12378:20,<br/> 12380:3, 12407:10</p>  | <p>12354:13, 12409:7<br/> <b>sec</b> <sup>[1]</sup> - 12318:8<br/> <b>second</b> <sup>[16]</sup> -<br/> 12313:24, 12319:17,<br/> 12319:23, 12333:17,<br/> 12336:14, 12344:16,<br/> 12344:21, 12354:20,<br/> 12360:5, 12360:10,<br/> 12379:21, 12380:5,<br/> 12387:11, 12387:12,<br/> 12394:22, 12411:11<br/> <b>seconds</b> <sup>[79]</sup> -<br/> 12305:23, 12316:1,<br/> 12316:6, 12319:12,<br/> 12319:25, 12321:7,<br/> 12322:1, 12322:8,<br/> 12322:15, 12322:17,<br/> 12324:4, 12324:23,<br/> 12325:4, 12326:1,<br/> 12326:16, 12327:2,<br/> 12327:16, 12327:18,<br/> 12330:24, 12331:14,<br/> 12331:16, 12332:4,<br/> 12334:21, 12335:25,<br/> 12336:12, 12337:1,<br/> 12337:6, 12338:22,<br/> 12339:6, 12343:11,<br/> 12344:20, 12345:9,<br/> 12349:21, 12350:7,<br/> 12350:17, 12351:1,<br/> 12352:1, 12353:9,<br/> 12353:12, 12357:9,<br/> 12358:2, 12358:12,<br/> 12358:20, 12358:24,<br/> 12360:2, 12360:18,<br/> 12361:25, 12362:5,<br/> 12362:9, 12363:17,<br/> 12363:25, 12365:9,<br/> 12365:18, 12366:6,<br/> 12367:4, 12367:11,<br/> 12367:14, 12370:4,<br/> 12378:9, 12378:16,<br/> 12383:24, 12384:11,<br/> 12384:17, 12385:2,<br/> 12385:5, 12386:18,<br/> 12387:4, 12390:8,<br/> 12391:13, 12391:19,<br/> 12394:12, 12399:6,<br/> 12400:16, 12400:19,<br/> 12401:13, 12404:23,<br/> 12406:1, 12406:7<br/> <b>security</b> <sup>[3]</sup> -<br/> 12409:21, 12411:15,<br/> 12411:19<br/> <b>see</b> <sup>[69]</sup> - 12311:9,<br/> 12311:23, 12312:25,<br/> 12314:23, 12320:17,<br/> 12321:15, 12321:17,<br/> 12325:7, 12325:16,<br/> 12326:6, 12329:16,</p> | <p>12331:2, 12332:14,<br/> 12332:24, 12333:2,<br/> 12333:24, 12334:6,<br/> 12340:25, 12347:9,<br/> 12348:4, 12350:10,<br/> 12350:23, 12351:18,<br/> 12351:21, 12351:23,<br/> 12351:25, 12352:5,<br/> 12353:2, 12353:16,<br/> 12353:20, 12354:8,<br/> 12356:3, 12357:20,<br/> 12359:14, 12361:1,<br/> 12361:20, 12362:24,<br/> 12364:1, 12366:9,<br/> 12368:21, 12372:7,<br/> 12373:3, 12375:9,<br/> 12375:13, 12376:4,<br/> 12376:18, 12384:17,<br/> 12385:2, 12387:7,<br/> 12388:23, 12389:18,<br/> 12390:9, 12400:1,<br/> 12401:5, 12405:5,<br/> 12405:6, 12405:16,<br/> 12405:24, 12406:19,<br/> 12406:20, 12408:12,<br/> 12408:22, 12409:1,<br/> 12409:13, 12409:17,<br/> 12409:20, 12412:18<br/> <b>seeing</b> <sup>[1]</sup> - 12351:4<br/> <b>seek</b> <sup>[15]</sup> - 12324:17,<br/> 12341:10, 12356:25,<br/> 12377:21, 12380:19,<br/> 12383:12, 12385:10,<br/> 12386:9, 12395:15,<br/> 12400:25, 12402:17,<br/> 12403:21, 12404:15,<br/> 12406:24, 12407:18<br/> <b>seem</b> <sup>[1]</sup> - 12411:13<br/> <b>Self</b> <sup>[4]</sup> - 12323:21,<br/> 12338:19, 12341:16,<br/> 12382:10<br/> <b>Self-Defense</b> <sup>[4]</sup> -<br/> 12323:21, 12338:19,<br/> 12341:16, 12382:10<br/> <b>send</b> <sup>[2]</sup> - 12370:12,<br/> 12397:22<br/> <b>sending</b> <sup>[1]</sup> -<br/> 12397:18<br/> <b>sends</b> <sup>[1]</sup> - 12381:18<br/> <b>sent</b> <sup>[6]</sup> - 12324:12,<br/> 12337:9, 12338:7,<br/> 12371:5, 12381:19,<br/> 12381:21<br/> <b>separate</b> <sup>[1]</sup> - 12305:9<br/> <b>sequence</b> <sup>[1]</sup> -<br/> 12373:14<br/> <b>series</b> <sup>[2]</sup> - 12339:11,<br/> 12355:16<br/> <b>seriously</b> <sup>[1]</sup> - 12410:3<br/> <b>set</b> <sup>[6]</sup> - 12310:3,</p> | <p>12312:4, 12313:7,<br/> 12342:5, 12342:8,<br/> 12364:10<br/> <b>shae</b> <sup>[1]</sup> - 12329:7<br/> <b>shall</b> <sup>[1]</sup> - 12315:3<br/> <b>Shannon</b> <sup>[2]</sup> -<br/> 12378:20, 12407:10<br/> <b>shield</b> <sup>[14]</sup> - 12354:17,<br/> 12359:16, 12359:22,<br/> 12360:16, 12362:12,<br/> 12362:20, 12382:18,<br/> 12391:18, 12391:24,<br/> 12392:17, 12392:24,<br/> 12393:25, 12394:20,<br/> 12395:24<br/> <b>shortly</b> <sup>[6]</sup> - 12331:11,<br/> 12335:15, 12341:5,<br/> 12342:16, 12346:5,<br/> 12363:13<br/> <b>shot</b> <sup>[6]</sup> - 12331:17,<br/> 12332:6, 12368:3,<br/> 12379:5, 12380:4,<br/> 12404:8<br/> <b>shots</b> <sup>[1]</sup> - 12406:11<br/> <b>shoulder</b> <sup>[1]</sup> -<br/> 12352:22<br/> <b>show</b> <sup>[16]</sup> - 12304:1,<br/> 12306:2, 12306:6,<br/> 12306:9, 12306:11,<br/> 12315:5, 12335:8,<br/> 12336:2, 12345:23,<br/> 12348:7, 12348:23,<br/> 12378:1, 12391:1,<br/> 12394:3, 12396:3,<br/> 12406:24<br/> <b>showing</b> <sup>[1]</sup> -<br/> 12315:15<br/> <b>shown</b> <sup>[2]</sup> - 12328:13,<br/> 12329:2<br/> <b>shuttled</b> <sup>[1]</sup> -<br/> 12411:17<br/> <b>sic</b> <sup>[1]</sup> - 12328:13<br/> <b>side</b> <sup>[10]</sup> - 12349:1,<br/> 12358:25, 12360:1,<br/> 12360:12, 12364:10,<br/> 12384:20, 12399:15,<br/> 12403:10, 12403:14,<br/> 12411:4<br/> <b>signal</b> <sup>[1]</sup> - 12381:14<br/> <b>SignalBoost</b> <sup>[1]</sup> -<br/> 12341:23<br/> <b>signify</b> <sup>[1]</sup> - 12401:7<br/> <b>silver</b> <sup>[1]</sup> - 12339:21<br/> <b>simply</b> <sup>[1]</sup> - 12393:2<br/> <b>simultaneous</b> <sup>[1]</sup> -<br/> 12313:14<br/> <b>single</b> <sup>[1]</sup> - 12346:15<br/> <b>singled</b> <sup>[1]</sup> - 12305:7<br/> <b>sit</b> <sup>[1]</sup> - 12392:5<br/> <b>sitting</b> <sup>[2]</sup> - 12313:6,</p> |
| <b>S</b>  |   |  |  |
| <p><b>Sabino</b> <sup>[1]</sup> - 12302:12<br/> <b>sabino@jaureguilaw</b><br/> <b>.com</b> <sup>[1]</sup> - 12302:14<br/> <b>saw</b> <sup>[20]</sup> - 12316:4,<br/> 12319:7, 12321:9,<br/> 12331:8, 12337:9,<br/> 12337:12, 12337:13,<br/> 12340:25, 12354:16,<br/> 12361:22, 12363:12,<br/> 12372:8, 12385:25,<br/> 12387:11, 12387:20,<br/> 12390:4, 12391:17,<br/> 12398:23, 12402:21,<br/> 12402:24<br/> <b>scaffolding</b> <sup>[14]</sup> -<br/> 12364:10, 12383:3,<br/> 12396:20, 12396:22,<br/> 12399:12, 12399:15,<br/> 12400:4, 12400:10,<br/> 12400:19, 12405:11,<br/> 12405:19, 12405:21,<br/> 12406:17, 12408:2<br/> <b>scene</b> <sup>[7]</sup> - 12319:5,<br/> 12319:7, 12330:10,<br/> 12337:12, 12337:14,<br/> 12354:4, 12356:3<br/> <b>scenes</b> <sup>[1]</sup> - 12363:12<br/> <b>screen</b> <sup>[28]</sup> -<br/> 12318:10, 12334:7,<br/> 12335:14, 12340:4,<br/> 12341:7, 12346:19,<br/> 12349:24, 12350:10,<br/> 12356:23, 12357:21,<br/> 12358:25, 12359:6,<br/> 12360:13, 12363:19,<br/> 12364:16, 12365:13,<br/> 12368:5, 12372:17,<br/> 12378:24, 12390:3,<br/> 12391:21, 12392:15,<br/> 12394:8, 12394:17,<br/> 12400:2, 12402:1,<br/> 12403:17, 12408:13<br/> <b>screenshot</b> <sup>[2]</sup> -<br/> 12340:12, 12404:4<br/> <b>scroll</b> <sup>[5]</sup> - 12339:11,<br/> 12339:17, 12374:24,<br/> 12397:21<br/> <b>searching</b> <sup>[1]</sup> -<br/> 12303:22<br/> <b>seated</b> <sup>[3]</sup> - 12314:13,</p> |   |  |  |

|   |   |   |   |
|---|---|---|---|
| 12313:14<br><b>Sixth</b> [1] - 12302:16<br><b>skip</b> [11] - 12331:13,<br>12332:4, 12332:9,<br>12334:21, 12361:3,<br>12363:17, 12368:2,<br>12374:10, 12386:18,<br>12387:25, 12404:23<br><b>slight</b> [1] - 12379:5<br><b>slightly</b> [6] - 12336:14,<br>12336:15, 12358:22,<br>12378:13, 12378:14<br><b>slowly</b> [3] - 12343:13,<br>12344:2, 12384:14<br><b>Smith</b> [5] - 12301:23,<br>12301:23, 12302:4,<br>12328:13, 12410:12<br><b>SMITH</b> [8] - 12310:1,<br>12310:11, 12310:23,<br>12311:12, 12312:2,<br>12313:3, 12313:12,<br>12328:15<br><b>someone</b> [7] -<br>12317:11, 12320:17,<br>12336:5, 12350:4,<br>12369:21, 12387:16,<br>12394:20<br><b>sometimes</b> [3] -<br>12306:5, 12306:25,<br>12310:2<br><b>somewhere</b> [1] -<br>12359:23<br><b>sorry</b> [24] - 12303:7,<br>12308:8, 12319:11,<br>12332:22, 12332:23,<br>12337:17, 12338:4,<br>12339:12, 12341:2,<br>12345:14, 12348:15,<br>12348:17, 12350:16,<br>12363:20, 12367:7,<br>12375:10, 12377:7,<br>12378:14, 12379:17,<br>12391:12, 12394:12,<br>12395:1, 12396:5<br><b>sort</b> [1] - 12306:23<br><b>sorts</b> [1] - 12329:15<br><b>sounded</b> [2] -<br>12320:6, 12392:5<br><b>sounds</b> [1] - 12308:8<br><b>source</b> [1] - 12305:6<br><b>speaker</b> [3] - 12313:5,<br>12313:8, 12313:14<br><b>speakers</b> [1] -<br>12313:13<br><b>speaking</b> [4] -<br>12305:3, 12324:7,<br>12355:3, 12356:6<br><b>SPECIAL</b> [2] -<br>12377:4, 12377:6<br><b>Special</b> [32] - 12315:1, | 12319:24, 12323:16,<br>12334:23, 12338:16,<br>12342:3, 12342:21,<br>12346:3, 12346:10,<br>12350:20, 12357:5,<br>12361:21, 12362:24,<br>12364:25, 12367:24,<br>12368:5, 12368:13,<br>12370:21, 12375:1,<br>12377:9, 12377:25,<br>12379:25, 12383:16,<br>12388:8, 12388:25,<br>12389:6, 12390:23,<br>12394:7, 12402:20,<br>12407:25, 12408:18,<br>12409:8<br><b>specifically</b> [1] -<br>12409:5<br><b>speculation</b> [1] -<br>12359:18<br><b>speed</b> [4] - 12350:18,<br>12366:18, 12399:22,<br>12405:9<br><b>spent</b> [1] - 12382:16<br><b>sphere</b> [1] - 12337:23<br><b>spot</b> [1] - 12382:5<br><b>spray</b> [4] - 12362:22,<br>12362:24, 12363:1,<br>12403:14<br><b>spraying</b> [3] -<br>12397:25, 12398:1,<br>12403:13<br><b>stack</b> [1] - 12323:8<br><b>staging</b> [1] - 12383:20<br><b>stand</b> [1] - 12410:22<br><b>standing</b> [2] -<br>12372:5, 12388:18<br><b>stands</b> [2] - 12330:12,<br>12348:25<br><b>standstill</b> [1] -<br>12397:24<br><b>start</b> [11] - 12328:4,<br>12344:23, 12350:20,<br>12399:4, 12401:5,<br>12404:21, 12405:10,<br>12406:4, 12410:4,<br>12410:9, 12410:10<br><b>started</b> [3] - 12369:22,<br>12400:18, 12406:6<br><b>starting</b> [4] -<br>12322:14, 12339:13,<br>12341:17, 12371:10<br><b>starts</b> [4] - 12310:5,<br>12310:15, 12349:19,<br>12386:12<br><b>state</b> [3] - 12304:3,<br>12305:16, 12306:3<br><b>statement</b> [3] -<br>12307:1, 12393:20,<br>12393:21 | <b>statements</b> [1] -<br>12393:19<br><b>STATES</b> [2] - 12301:1,<br>12301:12<br><b>States</b> [3] - 12301:3,<br>12303:3, 12356:17<br><b>stay</b> [1] - 12398:24<br><b>steal</b> [1] - 12393:25<br><b>stenographic</b> [1] -<br>12413:6<br><b>step</b> [5] - 12331:11,<br>12354:12, 12377:4,<br>12409:8, 12409:9<br><b>Steven</b> [2] - 12302:15,<br>12392:21<br><b>Stewart</b> [1] - 12404:3<br><b>stewart</b> [1] - 12404:7<br><b>still</b> [18] - 12309:8,<br>12315:12, 12316:12,<br>12322:7, 12331:17,<br>12332:6, 12334:7,<br>12339:2, 12340:21,<br>12343:1, 12368:3,<br>12372:17, 12384:9,<br>12395:19, 12396:20,<br>12396:22, 12398:17,<br>12406:11<br><b>stole</b> [3] - 12392:16,<br>12392:23, 12394:20<br><b>stop</b> [23] - 12322:2,<br>12322:4, 12323:15,<br>12330:23, 12335:18,<br>12337:4, 12345:9,<br>12358:19, 12358:23,<br>12359:5, 12359:12,<br>12361:14, 12365:23,<br>12366:6, 12366:20,<br>12370:7, 12375:7,<br>12375:20, 12383:7,<br>12384:16, 12387:6,<br>12400:8, 12408:11<br><b>stopped</b> [6] -<br>12326:16, 12384:17,<br>12385:5, 12398:16,<br>12398:18, 12404:7<br><b>storming</b> [3] -<br>12338:23, 12339:8,<br>12339:14<br><b>Street</b> [5] - 12301:15,<br>12302:2, 12302:4,<br>12302:10, 12302:13<br><b>stretched</b> [2] -<br>12335:10, 12335:11<br><b>strike</b> [2] - 12328:16,<br>12341:2<br><b>string</b> [1] - 12339:18<br><b>subtle</b> [3] - 12310:7,<br>12313:20, 12313:24<br><b>success</b> [2] -<br>12387:19, 12404:9 | <b>Suite</b> [3] - 12301:18,<br>12301:24, 12302:10<br><b>summary</b> [2] -<br>12328:9, 12328:14<br><b>sunglasses</b> [1] -<br>12316:23<br><b>surveillance</b> [5] -<br>12334:23, 12335:5,<br>12349:17, 12392:15,<br>12404:19<br><b>suspect</b> [1] - 12311:2<br><b>sustained</b> [1] -<br>12398:6<br><b>symbol</b> [1] - 12341:22<br><b>system</b> [4] - 12308:23,<br>12310:4, 12312:4,<br>12411:17<br><b>systems</b> [1] -<br>12308:20 |
| <b>T</b>  |   |   |   |
| <b>table</b> [2] - 12313:6,<br>12387:16<br><b>tan</b> [2] - 12317:10,<br>12317:11<br><b>tape</b> [1] - 12329:11<br><b>Tarrio</b> [5] - 12301:7,<br>12302:9, 12303:10,<br>12305:22, 12329:23<br><b>technical</b> [1] - 12314:7<br><b>technologist</b> [1] -<br>12312:3<br><b>technology</b> [2] -<br>12312:22, 12313:4<br><b>tee</b> [1] - 12355:6<br><b>teed</b> [1] - 12355:17<br><b>Telegram</b> [1] -<br>12338:10<br><b>telephonic</b> [2] -<br>12304:10, 12307:23<br><b>ten</b> [3] - 12354:7,<br>12354:8, 12354:14<br><b>ten-minute</b> [1] -<br>12354:7<br><b>terms</b> [1] - 12385:24<br><b>testify</b> [4] - 12304:9,<br>12304:11, 12304:16,<br>12329:18<br><b>testimony</b> [11] -<br>12309:5, 12315:2,<br>12318:20, 12328:9,<br>12328:14, 12329:20,<br>12330:6, 12330:13,<br>12355:1, 12355:2,<br>12356:2<br><b>text</b> [2] - 12370:12,<br>12371:2<br><b>thankfully</b> [1] -<br>12393:14  |   |   |   |

|   |   |  |  |
|---|---|--|--|
| <p><b>THE</b> <sup>[111]</sup> - 12301:1, 12301:1, 12301:11, 12303:2, 12303:5, 12304:19, 12304:22, 12304:24, 12305:18, 12305:25, 12306:22, 12307:11, 12308:5, 12309:7, 12309:25, 12310:9, 12310:18, 12311:1, 12311:3, 12311:4, 12311:5, 12311:6, 12311:16, 12311:22, 12312:6, 12312:8, 12312:11, 12312:12, 12312:14, 12312:16, 12312:20, 12312:24, 12312:25, 12313:10, 12313:17, 12313:23, 12314:3, 12314:13, 12315:3, 12315:23, 12324:19, 12325:22, 12326:25, 12328:1, 12328:18, 12329:8, 12329:24, 12330:12, 12338:4, 12340:18, 12341:11, 12342:7, 12345:12, 12347:7, 12348:9, 12348:13, 12348:16, 12352:10, 12354:3, 12354:6, 12354:11, 12355:5, 12355:23, 12356:16, 12356:19, 12357:1, 12357:11, 12359:19, 12363:19, 12367:2, 12370:18, 12373:9, 12377:5, 12377:7, 12377:22, 12380:20, 12383:13, 12386:6, 12386:7, 12387:14, 12387:22, 12389:2, 12389:25, 12390:17, 12392:10, 12393:6, 12393:20, 12393:24, 12394:1, 12395:16, 12396:14, 12397:11, 12398:6, 12401:2, 12402:18, 12403:22, 12404:16, 12406:25, 12407:22, 12408:23, 12408:25, 12409:7, 12409:10, 12409:11, 12409:18, 12410:10, 12410:17, 12411:3, 12411:22, 12412:8, 12412:16</p> <p><b>thereafter</b> <sup>[2]</sup> - 12341:5, 12363:13</p> <p><b>they've</b> <sup>[2]</sup> - 12304:12, 12393:12</p> <p><b>thread</b> <sup>[1]</sup> - 12398:9</p> | <p><b>three</b> <sup>[2]</sup> - 12317:8, 12374:18</p> <p><b>threw</b> <sup>[3]</sup> - 12375:14, 12385:6, 12387:8</p> <p><b>throughout</b> <sup>[2]</sup> - 12303:22, 12328:11</p> <p><b>throw</b> <sup>[1]</sup> - 12339:23</p> <p><b>throws</b> <sup>[1]</sup> - 12387:19</p> <p><b>timeframe</b> <sup>[5]</sup> - 12319:8, 12320:13, 12321:6, 12322:7, 12323:21</p> <p><b>timer</b> <sup>[1]</sup> - 12349:22</p> <p><b>timestamp</b> <sup>[6]</sup> - 12335:22, 12366:21, 12367:11, 12386:15, 12399:3, 12400:12</p> <p><b>timing</b> <sup>[1]</sup> - 12385:23</p> <p><b>timing-wise</b> <sup>[1]</sup> - 12385:23</p> <p><b>TIMOTHY</b> <sup>[1]</sup> - 12301:11</p> <p><b>tiny</b> <sup>[1]</sup> - 12357:16</p> <p><b>today</b> <sup>[14]</sup> - 12312:2, 12312:7, 12314:11, 12318:20, 12321:22, 12347:25, 12365:15, 12366:2, 12366:14, 12371:20, 12395:7, 12403:7, 12410:5, 12410:19</p> <p><b>together</b> <sup>[1]</sup> - 12351:18</p> <p><b>tomatoes</b> <sup>[2]</sup> - 12339:23, 12340:10</p> <p><b>tomorrow</b> <sup>[7]</sup> - 12312:5, 12409:2, 12409:13, 12410:7, 12410:9, 12412:2, 12412:18</p> <p><b>took</b> <sup>[1]</sup> - 12382:24</p> <p><b>tools</b> <sup>[1]</sup> - 12355:10</p> <p><b>top</b> <sup>[6]</sup> - 12333:8, 12359:1, 12365:12, 12368:16, 12385:15, 12399:20</p> <p><b>total</b> <sup>[1]</sup> - 12339:16</p> <p><b>towards</b> <sup>[19]</sup> - 12323:11, 12346:9, 12348:4, 12348:25, 12352:17, 12364:9, 12364:16, 12375:19, 12383:19, 12385:15, 12388:3, 12390:20, 12391:4, 12391:5, 12396:22, 12399:20, 12399:21, 12400:8</p> <p><b>tower</b> <sup>[8]</sup> - 12335:15, 12377:11, 12377:12, 12378:4, 12383:4,</p> | <p>12383:22, 12396:23, 12398:21</p> <p><b>towers</b> <sup>[3]</sup> - 12306:19, 12306:20, 12306:21</p> <p><b>Townsend</b> <sup>[1]</sup> - 12301:24</p> <p><b>trace</b> <sup>[2]</sup> - 12376:20, 12382:23</p> <p><b>tracking</b> <sup>[1]</sup> - 12306:21</p> <p><b>traffic</b> <sup>[2]</sup> - 12411:23, 12412:2</p> <p><b>trailing</b> <sup>[1]</sup> - 12336:20</p> <p><b>trajectory</b> <sup>[2]</sup> - 12387:10, 12387:11</p> <p><b>transaction</b> <sup>[2]</sup> - 12304:3, 12305:17</p> <p><b>transactions</b> <sup>[1]</sup> - 12306:4</p> <p><b>TRANSCRIPT</b> <sup>[1]</sup> - 12301:10</p> <p><b>transcript</b> <sup>[3]</sup> - 12328:20, 12413:5, 12413:6</p> <p><b>traverse</b> <sup>[3]</sup> - 12305:12, 12305:13, 12305:24</p> <p><b>Travis</b> <sup>[1]</sup> - 12322:22</p> <p><b>treason</b> <sup>[1]</sup> - 12403:10</p> <p><b>treated</b> <sup>[1]</sup> - 12412:7</p> <p><b>tree</b> <sup>[1]</sup> - 12389:20</p> <p><b>Trevor</b> <sup>[1]</sup> - 12378:25</p> <p><b>TRIAL</b> <sup>[2]</sup> - 12301:5, 12301:10</p> <p><b>trials</b> <sup>[2]</sup> - 12411:9, 12411:12</p> <p><b>tried</b> <sup>[1]</sup> - 12410:4</p> <p><b>trouble</b> <sup>[1]</sup> - 12303:13</p> <p><b>trucks</b> <sup>[1]</sup> - 12378:22</p> <p><b>true</b> <sup>[3]</sup> - 12410:23, 12413:5, 12413:6</p> <p><b>try</b> <sup>[1]</sup> - 12410:25</p> <p><b>trying</b> <sup>[6]</sup> - 12305:4, 12306:10, 12328:20, 12341:6, 12363:15, 12393:11</p> <p><b>turn</b> <sup>[3]</sup> - 12321:9, 12324:14, 12345:8</p> <p><b>TV</b> <sup>[2]</sup> - 12383:4, 12396:23</p> <p><b>two</b> <sup>[13]</sup> - 12305:11, 12306:8, 12308:11, 12313:19, 12317:14, 12347:20, 12349:4, 12351:18, 12387:8, 12387:19, 12392:15, 12392:18, 12408:7</p> <p><b>type</b> <sup>[6]</sup> - 12306:17, 12329:17, 12354:19, 12362:24, 12364:25,</p> | <p>12384:20</p> <p><b>types</b> <sup>[1]</sup> - 12310:14</p> <p><b>U</b></p> <p><b>U.S</b> <sup>[2]</sup> - 12301:20, 12302:21</p> <p><b>ultimately</b> <sup>[2]</sup> - 12355:19, 12376:14</p> <p><b>understood</b> <sup>[1]</sup> - 12393:22</p> <p><b>UNITED</b> <sup>[2]</sup> - 12301:1, 12301:12</p> <p><b>United</b> <sup>[3]</sup> - 12301:3, 12303:3, 12356:17</p> <p><b>unreliable</b> <sup>[2]</sup> - 12304:15, 12309:4</p> <p><b>up</b> <sup>[54]</sup> - 12303:19, 12304:1, 12306:2, 12306:6, 12306:9, 12306:11, 12311:24, 12312:4, 12314:20, 12315:6, 12315:16, 12318:8, 12319:19, 12332:22, 12333:17, 12336:14, 12339:12, 12345:8, 12345:12, 12346:4, 12347:9, 12348:6, 12352:6, 12353:9, 12353:12, 12355:6, 12355:17, 12357:12, 12357:13, 12360:9, 12360:17, 12366:23, 12367:7, 12374:25, 12375:15, 12376:15, 12380:19, 12382:25, 12389:3, 12390:23, 12394:22, 12396:6, 12398:11, 12399:23, 12400:18, 12401:5, 12405:24, 12406:12, 12408:20, 12409:25, 12411:10, 12411:13</p> <p><b>upper</b> <sup>[2]</sup> - 12375:16, 12383:19</p> <p><b>upright</b> <sup>[1]</sup> - 12316:12</p> <p><b>V</b></p> <p><b>valid</b> <sup>[3]</sup> - 12307:7, 12307:19, 12307:20</p> <p><b>vantage</b> <sup>[1]</sup> - 12345:24</p> <p><b>various</b> <sup>[2]</sup> - 12355:20</p> <p><b>venire</b> <sup>[1]</sup> - 12411:25</p> <p><b>verbatim</b> <sup>[1]</sup> - 12307:15</p> <p><b>version</b> <sup>[2]</sup> - 12404:19, 12407:9</p> <p><b>versus</b> <sup>[3]</sup> - 12303:3,</p> |
|---|---|--|--|



|   |  |  |  |
|---|--|--|--|
| 12356:17, 12387:11<br><b>vertical</b> [2] - 12359:23,<br>12359:25<br><b>video</b> [57] - 12314:1,<br>12324:8, 12326:15,<br>12328:9, 12328:13,<br>12329:1, 12331:23,<br>12333:13, 12333:16,<br>12334:24, 12335:3,<br>12335:5, 12335:8,<br>12335:19, 12335:22,<br>12336:23, 12338:3,<br>12338:7, 12342:3,<br>12342:16, 12342:20,<br>12342:22, 12348:5,<br>12349:17, 12361:22,<br>12364:25, 12365:6,<br>12366:21, 12367:12,<br>12368:1, 12374:23,<br>12376:15, 12377:16,<br>12379:25, 12380:15,<br>12382:5, 12385:20,<br>12385:25, 12387:20,<br>12387:25, 12390:24,<br>12391:9, 12392:17,<br>12396:21, 12397:8,<br>12397:16, 12398:16,<br>12399:4, 12399:7,<br>12400:8, 12400:14,<br>12400:17, 12400:18,<br>12401:8, 12401:11,<br>12404:19, 12408:9<br><b>Video</b> [172] - 12316:2,<br>12316:7, 12316:17,<br>12317:16, 12317:23,<br>12318:7, 12318:13,<br>12318:23, 12319:4,<br>12319:10, 12319:13,<br>12319:18, 12320:1,<br>12320:10, 12320:15,<br>12321:1, 12321:3,<br>12321:8, 12321:13,<br>12322:3, 12322:11,<br>12322:13, 12322:16,<br>12323:14, 12324:5,<br>12324:22, 12325:5,<br>12325:14, 12325:25,<br>12326:20, 12327:1,<br>12327:17, 12327:22,<br>12330:22, 12331:7,<br>12331:15, 12332:21,<br>12333:12, 12333:15,<br>12334:3, 12334:18,<br>12334:22, 12335:17,<br>12336:1, 12336:13,<br>12337:3, 12337:8,<br>12340:2, 12343:9,<br>12343:12, 12343:14,<br>12343:21, 12344:4,<br>12344:15, 12344:22,<br>12344:24, 12345:3, | 12345:10, 12345:15,<br>12347:4, 12347:16,<br>12348:3, 12349:16,<br>12349:23, 12350:8,<br>12350:14, 12350:19,<br>12351:2, 12351:16,<br>12352:3, 12352:8,<br>12352:11, 12352:20,<br>12352:25, 12353:11,<br>12353:13, 12353:15,<br>12353:23, 12357:10,<br>12357:18, 12358:3,<br>12358:11, 12358:18,<br>12358:21, 12359:4,<br>12359:11, 12360:6,<br>12360:8, 12360:11,<br>12360:19, 12360:24,<br>12361:5, 12361:7,<br>12361:13, 12361:18,<br>12361:24, 12362:4,<br>12362:8, 12362:16,<br>12363:23, 12364:14,<br>12364:21, 12364:24,<br>12365:10, 12365:19,<br>12365:22, 12366:5,<br>12366:17, 12366:19,<br>12367:6, 12367:9,<br>12367:15, 12368:10,<br>12368:19, 12369:12,<br>12369:19, 12370:2,<br>12370:6, 12371:11,<br>12372:2, 12372:24,<br>12374:14, 12375:6,<br>12375:12, 12375:17,<br>12375:22, 12376:8,<br>12377:23, 12378:8,<br>12378:12, 12378:15,<br>12379:1, 12379:3,<br>12379:8, 12379:15,<br>12379:23, 12380:10,<br>12384:1, 12384:7,<br>12384:12, 12384:15,<br>12384:24, 12385:1,<br>12385:11, 12386:11,<br>12386:21, 12387:1,<br>12387:3, 12387:5,<br>12388:2, 12388:7,<br>12388:10, 12388:22,<br>12389:12, 12390:1,<br>12390:7, 12390:13,<br>12391:15, 12391:20,<br>12394:11, 12394:15,<br>12395:3, 12395:10,<br>12397:14, 12399:25,<br>12401:12, 12401:17,<br>12401:24, 12402:4,<br>12404:25, 12405:15,<br>12408:10<br><b>videos</b> [8] - 12315:15,<br>12346:24, 12355:18,<br>12355:21, 12379:11, | 12392:15, 12395:7,<br>12397:1<br><b>view</b> [2] - 12331:23,<br>12356:4<br><b>vision</b> [1] - 12392:19<br><b>voice</b> [4] - 12345:20,<br>12369:14, 12402:6,<br>12402:8<br><b>Voice</b> [2] - 12305:13,<br>12306:14<br><b>voiced</b> [1] - 12410:12<br><b>voices</b> [3] - 12357:12,<br>12357:13, 12389:3<br><b>VoIP</b> [1] - 12306:14<br><b>volume</b> [2] - 12345:8,<br>12357:2<br><b>voucher</b> [1] -<br>12311:14<br><b>vs</b> [1] - 12301:5 | 12356:10<br><b>whatsoever</b> [1] -<br>12410:22<br><b>white</b> [12] - 12350:11,<br>12350:21, 12351:4,<br>12351:13, 12352:16,<br>12353:3, 12353:16,<br>12354:18, 12377:14,<br>12389:10, 12389:18,<br>12390:4<br><b>White</b> [1] - 12381:4<br><b>who'd</b> [1] - 12393:1<br><b>whole</b> [2] - 12312:19,<br>12345:24<br><b>wide</b> [1] - 12308:18<br><b>wide-ranging</b> [1] -<br>12308:18<br><b>wind</b> [1] - 12376:15<br><b>wireless</b> [3] -<br>12306:13, 12306:14,<br>12312:4<br><b>wireline</b> [1] - 12305:13<br><b>wise</b> [1] - 12385:23<br><b>WITNESS</b> [4] -<br>12377:7, 12386:6,<br>12409:10, 12414:2<br><b>witness</b> [23] -<br>12304:20, 12313:21,<br>12314:4, 12314:9,<br>12324:16, 12326:23,<br>12328:22, 12330:2,<br>12335:13, 12340:14,<br>12341:8, 12347:2,<br>12354:21, 12356:23,<br>12357:12, 12366:24,<br>12377:20, 12380:19,<br>12389:3, 12395:14,<br>12402:14, 12403:17,<br>12406:22<br><b>witnesses</b> [2] -<br>12328:11, 12330:10<br><b>Wolkind</b> [10] -<br>12324:10, 12324:12,<br>12339:13, 12339:22,<br>12340:7, 12340:25,<br>12341:19, 12341:23,<br>12381:13, 12404:8<br><b>words</b> [6] - 12307:14,<br>12313:13, 12320:3,<br>12320:5, 12345:18,<br>12381:24<br><b>Worrell</b> [1] - 12403:16<br><b>worries</b> [1] - 12348:18<br><b>worrying</b> [1] -<br>12308:16<br><b>wound</b> [4] - 12315:6,<br>12355:17, 12406:12,<br>12408:20 |
| <b>W</b>  |  |  |  |
| <b>waited</b> [1] - 12409:21<br><b>waiting</b> [1] - 12411:10<br><b>walk</b> [1] - 12350:10<br><b>walking</b> [2] -<br>12314:20, 12391:17<br><b>walkway</b> [4] -<br>12315:12, 12315:16,<br>12316:9, 12335:2<br><b>wall</b> [8] - 12376:23,<br>12377:17, 12378:3,<br>12382:25, 12383:4,<br>12390:20, 12391:5,<br>12396:18<br><b>Washington</b> [6] -<br>12301:7, 12301:16,<br>12301:19, 12302:2,<br>12404:11, 12413:14<br><b>wasp</b> [1] - 12363:1<br><b>waste</b> [2] - 12392:4,<br>12392:9<br><b>watch</b> [3] - 12338:8,<br>12375:23, 12411:1<br><b>watched</b> [7] - 12324:8,<br>12338:7, 12365:7,<br>12368:1, 12382:6,<br>12400:14, 12407:15<br><b>watching</b> [1] - 12335:3<br><b>water</b> [4] - 12384:19,<br>12384:20, 12385:3,<br>12387:8<br><b>wear</b> [1] - 12341:19<br><b>wearing</b> [4] - 12310:3,<br>12327:8, 12339:20,<br>12405:5<br><b>week</b> [1] - 12412:1<br><b>West</b> [3] - 12302:13,<br>12376:16, 12376:18<br><b>whatnot</b> [1] -  |  |  |  |

|   |
|---|
| <b>X</b>  |
| <b>x-ray</b> <sup>[1]</sup> - 12324:16  |
| <b>Y</b>  |
| <b>yelling</b> <sup>[2]</sup> - 12325:18,<br>12325:21<br><b>yellow</b> <sup>[10]</sup> - 12315:9,<br>12317:9, 12326:14,<br>12330:18, 12331:18,<br>12336:16, 12344:12,<br>12357:25, 12359:13,<br>12364:1<br><b>York</b> <sup>[4]</sup> - 12301:18,<br>12301:25, 12302:16,<br>12321:21<br><b>young</b> <sup>[1]</sup> - 12354:17  |
| <b>Z</b>  |
| <b>Zach</b> <sup>[17]</sup> - 12319:21,<br>12325:12, 12325:16,<br>12331:1, 12331:2,<br>12343:19, 12357:24,<br>12360:3, 12360:21,<br>12361:1, 12361:11,<br>12364:17, 12367:19,<br>12368:8, 12370:10,<br>12370:12, 12371:5<br><b>Zachary</b> <sup>[8]</sup> - 12301:7,<br>12322:9, 12331:22,<br>12347:19, 12364:17,<br>12367:23, 12370:25,<br>12374:7<br><b>zebra</b> <sup>[1]</sup> - 12369:4<br><b>zoom</b> <sup>[17]</sup> - 12346:8,<br>12353:7, 12362:23,<br>12371:24, 12374:12,<br>12374:16, 12374:24,<br>12375:15, 12385:12,<br>12386:19, 12387:2,<br>12388:3, 12388:20,<br>12389:6, 12399:3,<br>12404:24, 12405:8<br><b>zoomed</b> <sup>[4]</sup> - 12407:6,<br>12407:7, 12407:8<br><b>zoomed-in</b> <sup>[1]</sup> -<br>12407:8<br><b>zooming</b> <sup>[1]</sup> -<br>12386:12 |