

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO  
1437 Bannock Street  
Denver, CO 80203

Case Number 2023CV032577, Division/Courtroom 209

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CERTIFIED STENOGRAPHER'S TRIAL TRANSCRIPT  
TRIAL DAY 3: November 1, 2023

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NORMA ANDERSON, MICHELLE PRIOLA,  
CLAUDINE CMARADA, KRISTA KAHER,  
KATHI WRIGHT, and CHRISTOPHER  
CASTILIAN,

Petitioners,

v.

JENA GRISWOLD, in her official capacity as  
Colorado Secretary of State, and  
DONALD J. TRUMP,

Respondents,

and

COLORADO REPUBLICAN STATE CENTRAL  
COMMITTEE, and DONALD J. TRUMP,

Intervenors.

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The trial in the above-entitled matter,  
commenced on Wednesday, November 1, 2023, at 8:20 a.m.,  
before the HONORABLE SARAH B. WALLACE, Judge of the  
District Court.

This transcript is a complete transcription  
of the proceedings that were had in the above-entitled  
matter on the aforesaid date.

Reported by: K. Michelle Dittmer, RPR

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1		
2	I N D E X	
3	WITNESSES:	PAGE
4	For the Petitioners:	
5	GERARD MAGLIOCCA	
6	Direct Examination by Mr. Murray	10
	Cross-Examination by Mr. Gessler	76
7	Redirect Examination by Mr. Murray	86
8	HILARY RUDY	
9	Direct Examination by Ms. Tierney	88
	Cross-Examination by Mr. Gessler	125
10	Cross-Examination by Ms. Raskin	143
	Examination by Mr. Kotlarczyk	149
11	Recross-Examination by Mr. Gessler	154
	Redirect Examination by Ms. Tierney	155
12	Examination by The Court	157
	Further Examination by Mr. Gessler	158
13		
14	Move for Directed Verdict	162
15		
16	For the Respondent/Intervenor Donald Trump:	
17	KASHYAP PATEL	
18	Direct Examination by Mr. Shaw	200
	Cross-Examination by Mr. Grimsley	231
19	Redirect Examination by Mr. Shaw	264
20	KATRINA PIERSON	
21	Direct Examination by Mr. Shaw	268
	Cross-Examination by Mr. Olson	300
22		
23		
24		
25		

1	EXHIBITS:	RECEIVED
2	107	105
3	158	124
4	263	319
5	265	319
6	1027	206
7	1028	224
8		
9		
10	**STENOGRAPHER'S NOTE: All quotations from exhibits are	
11	reflected in the manner in which they were read into the	
12	record and do not necessarily indicate an exact quote	
13	from the document.	
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1 MORNING SESSION, WEDNESDAY, NOVEMBER 1, 2023

2 WHEREUPON, the court convened at  
3 8:20 a.m., and the following proceedings were had:

4 \* \* \* \* \*

5 THE COURT: Good morning. Everyone may be  
6 seated.

7 Do we need to talk about any preliminary  
8 matters, or can we get to the next witness?

9 MR. OLSON: I think we can get to the next  
10 witness, Your Honor.

11 MR. GESSLER: Nothing from us, Your Honor.

12 MS. RASKIN: I would just like to renew  
13 our motion to exclude testimony from yesterday. I would  
14 like to renew our motion to exclude the testimony of  
15 Mr. Magliocca, 702.

16 THE COURT: And that -- that motion is  
17 denied on the basis of my previous written ruling.

18 Anything from the Secretary?

19 MR. KOTLARCZYK: No preliminary matters  
20 for the Secretary, Your Honor.

21 THE COURT: Great. Let's call your next  
22 witness.

23 MR. MURRAY: Your Honor, would you like  
24 entries of appearance first?

25 THE COURT: Yes. Thank you.



1 MR. MURRAY: For petitioners,  
2 Jason Murray, Eric Olson, and Sean Grimsley,  
3 Martha Tierney, Mario Nicolais, and Nikhel Sus.

4 THE COURT: Thank you.

5 MR. GESSLER: Your Honor, on behalf of  
6 President Trump, I have to look around to see who's here  
7 today. Myself, Scott Gessler, Jacob Roth. Next to me,  
8 Jonathan Shaw and Chris Halbohn.

9 MS. RASKIN: Jane Raskin, Mike Melito,  
10 Nathan Moelker and Robert Kitsmiller on behalf of the  
11 Republican State Central Committee.

12 MR. KOTLARCZYK: And good morning,  
13 Your Honor. Michael Kotlarczyk on behalf of the  
14 Secretary of State, joined with Jennifer Sullivan from  
15 the Attorney General's Office and Deputy Secretary of  
16 State, Christopher Beall.

17 THE COURT: Great. Thank you.

18 And thank you, Mr. Murray.

19 MR. MURRAY: Of course.

20 Petitioners call Professor Gerard  
21 Magliocca to the stand.

22 THE COURT: Professor Magliocca.

23 GERARD MAGLIOCCA,  
24 having been first duly sworn, was examined and  
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. MURRAY:

3 Q. Good morning, Professor. Could you  
4 introduce yourself, please.

5 A. Yes. I'm Gerard Magliocca.

6 Q. How do you spell your last name?

7 A. M-a-g-l-i-o-c-c-a.

8 Q. Where do you work?

9 A. I teach at the Indiana University,  
10 Robert H. McKinney School of Law.

11 Q. Now, you're here as an expert today. What  
12 topics are you here to testify about?

13 A. I am here to give expert testimony on the  
14 history of Section 3 of the Fourteenth Amendment.

15 Q. How long have you been at Indiana  
16 University McKinney School of Law?

17 A. 22 years.

18 Q. And in those 22 years, has your  
19 scholarship had any particular focus?

20 A. Yes. I focus mainly on constitutional  
21 history.

22 Q. Are you a member of any professional  
23 organizations related to constitutional history?

24 A. Yes. I'm a member of the Supreme Court  
25 Historical Society, the American Society of Legal

1 Historians, and I'm on the board of editors of the  
2 Journal of American Constitutional History.

3 Q. Can you give us a general overview of what  
4 kinds of published works you have in the area of  
5 constitutional history?

6 A. Well, I've written five books and  
7 something in the neighborhood of 20 law review articles  
8 on various constitutional history subjects.

9 Q. Have you written any books specifically  
10 about the Fourteenth Amendment or its history?

11 A. Yes. About ten years ago, I wrote a  
12 biography of Congressman John Bingham, who was the main  
13 drafter of Section 1 of the Fourteenth Amendment as a  
14 member of the Joint Committee on Reconstruction.

15 Q. Have you written any academic articles or  
16 journals related to the history of the Fourteenth  
17 Amendment?

18 A. Yes. I have four articles that cover  
19 different aspects of the history of Section 1, Section 2,  
20 and Section 3 of the Amendment.

21 Q. Do you have any other articles about  
22 19th century history?

23 A. Well, yes, several. I mean, some of them  
24 cover the period of Jacksonian democracy. Some cover the  
25 period in the late 19th century, sort of around the

1 Populist period or the Gilded Age, and others of my -- my  
2 books also focus on different aspects of those subjects.

3 Q. You mention that you've written on the  
4 subject of Section 3 of the Fourteenth Amendment. Tell  
5 us about that.

6 A. Yes. So in 2020, I drafted a paper on  
7 Section 3, and that paper was posted to the Social  
8 Science Research Network, which is the place where  
9 professors post their draft papers to share with the  
10 public, in December of 2020.

11 Q. Was that later published?

12 A. Yes. That was published in 2021 in  
13 Constitutional Commentary, which is a peer-reviewed  
14 journal run out of the University of Minnesota.

15 Q. Before you posted your article about  
16 Section 3 on SSRN in December of 2020, give us a sense of  
17 the state of the existing scholarship on Section 3 of the  
18 Fourteenth Amendment.

19 A. There really wasn't any.

20 Q. How, if at all, has that changed since  
21 then?

22 A. Well, it's changed quite a bit, especially  
23 in the last few months.

24 Q. Have you written any other articles about  
25 Section 3?

1           A.    Yes.  I have a draft paper that is going  
2   to be coming out in the Journal of Constitutional History  
3   that's -- or Constitutional Law that is kind of run out  
4   of the University of Pennsylvania.  That was given as a  
5   talk at a symposium in January on the Fourteenth  
6   Amendment.

7           Q.    Can you tell us whether any of your work  
8   on Section 3 has ever been cited by courts?

9           A.    Yes.  My original article was cited by the  
10  United States Court of Appeals for the Fourth Circuit, as  
11  well as a Federal District Court in Georgia.

12          Q.    Has your work on Section 3 ever been cited  
13  by any government agencies?

14          A.    Yes.  The Congressional Research Service  
15  cited the article in an analysis of Section 3 that they  
16  did.

17          Q.    Have you ever given expert testimony on  
18  Section 3 of the Fourteenth Amendment?

19          A.    Yes, I have.  I gave expert testimony on  
20  the history of the Amendment in an administrative  
21  proceeding in Georgia that was addressing the eligibility  
22  of Representative Taylor Greene.

23          Q.    I want to pull up Petitioners'  
24  Exhibit 162.

25                    What is this?

1 A. This is my CV.

2 Q. Is it current?

3 A. Yes.

4 Q. I don't want to talk about every entry  
5 here, but just briefly, can you summarize your  
6 educational background for us.

7 A. Yes. I received my undergraduate degree  
8 from Stanford and my law degree from Yale.

9 Q. If you go to the second page, just tell us  
10 briefly which of the books on your CV relate to  
11 19th century history or constitutional history.

12 A. All five of the ones that have been  
13 published.

14 Q. And is this entry here the biography you  
15 were referring to about John Bingham?

16 A. Yes, it is.

17 Q. And if we go down to "Book Chapters, Law  
18 Review, Articles and Essays," we see a few entries  
19 related to Section 3 of the Fourteenth Amendment.

20 Were those the forthcoming article and the  
21 previously published article --

22 A. Yes.

23 Q. -- that you mentioned earlier?

24 A. Yes.

25 Q. And briefly, on page 4, can you just

1 highlight for us on this page of your CV some of the  
2 articles here that relate to 19th century history or  
3 the history of the Fourteenth Amendment.

4 A. Sure. The one at the top is about  
5 Section 2 of the Fourteenth Amendment.

6 Then also the one, let's see, going down a  
7 little bit -- okay, "Why did the Incorporation of the  
8 Bill of Rights Fail in the Late 19th Century" is a  
9 19th century historical piece.

10 And then also the one that's entitled  
11 "Indians and Invaders: The Citizenship Clause and  
12 Illegal Aliens" focuses on Section 1 of the Amendment, on  
13 the citizenship clause of Section 1.

14 And the paper on the legal tender cases,  
15 "A New Approach to Congressional Power, Revisiting the  
16 Legal Tender Cases" is about the Supreme Court decisions  
17 on the constitutionality of paper money that were  
18 rendered in the 1860s and 18- -- well, up into the 1880s.

19 "Constitutional False Positives in the  
20 Populist Moment" was about constitutional development in  
21 the late 19th century, basically focusing on the 1890s.

22 "Cherokee Removal and the Fourteenth  
23 Amendment" was talking about the Trail of Tears and then  
24 how that had an influence on some of the thinking behind  
25 Section 1 of the Fourteenth Amendment.

1 Q. If we go to the next page of your CV, you  
2 have a list of recent professional activities.

3 Do any of those relate to the history of  
4 the Fourteenth Amendment?

5 A. Yes. So the podcast on Section 4, which I  
6 haven't written a whole article about that, but I did  
7 write about that in one -- a piece of one article. I did  
8 a podcast with Eric Foner, who is basically America's  
9 leading historian on Reconstruction, earlier this year.

10 And then the symposium piece is the one I  
11 mentioned earlier. That's my draft paper about another  
12 aspect of Section 3.

13 And then the -- there was a presentation  
14 about the Section 3 article last fall. And then I gave a  
15 talk last year about my biography of Bushrod Washington  
16 at John Marshall's house, which was rather fun.

17 Q. And on the last page, I'm not going to  
18 highlight all of these, but did some of these also relate  
19 to Section 3 of the Fourteenth Amendment?

20 A. Yes. I did a podcast with Professor Dan  
21 Hemel in January of 2021 about Section 3. That was, of  
22 course, in the immediate aftermath of January 6, 2021.

23 Q. And what about this entry about John  
24 Bingham with Kurt Lash?

25 A. Yeah. So that was a podcast I did with



1 Professor Lash for the National Constitution Center about  
2 John Bingham's career that was part of a series of events  
3 that commemorated the 150th anniversary of the  
4 ratification of the Fourteenth Amendment in 2018.

5 Q. When you're doing your historical  
6 scholarship on the Fourteenth Amendment, what kinds of  
7 sources do you consider?

8 A. Well, I mean, I'm trying to look at  
9 primary sources because that's the best way to try to get  
10 at the truth of what happened. So I'm always most  
11 interested in looking at those.

12 Q. What are the -- what are the types of  
13 primary sources that you would look at in your  
14 scholarship?

15 A. Well, they kind of run the gamut, but you  
16 could look at congressional debates and reports. You can  
17 look at presidential documents. You can look at judicial  
18 cases.

19 You can look at contemporary newspapers,  
20 contemporary books, basically any kind of source that  
21 would be a sort of firsthand account of what occurred in  
22 a particular time period.

23 Q. I'm pulling up Petitioners' Exhibit 144.  
24 What is this exhibit?

25 A. This is an index of the materials that I

1 considered for my expert report.

2 Q. And if we walk through this index, we see  
3 some cases. There's some citations to law review  
4 articles, some statutes, citations to Congressional  
5 Record, et cetera.

6 Are those the sorts of materials that you  
7 would review in your historical scholarship outside the  
8 courtroom?

9 A. Yes, they are.

10 Q. Tell us a bit about the historical  
11 methodology that you used in forming your opinions in  
12 this case.

13 A. Well, I mean, the first thing you want to  
14 do is make sure that the sources you're looking at are  
15 true and accurate. I mean, usually that's pretty  
16 straightforward because they are official government  
17 records of one sort or another.

18 You know, for example, there was an  
19 official compilation of presidential documents assembled  
20 at the end of the 19th century, and I have a set in my  
21 office that I found in an antique shop one time. And so  
22 I refer to that just to make sure, if I see a document  
23 online, that I can look it up to make sure it's a real  
24 document and not -- there's not some error in  
25 transcription or something.

1                   For newspapers, it's a little more  
2 challenging. I mean, there are some sort of trustworthy  
3 databases of old newspapers. One's run by the Library of  
4 Congress.

5                   You can also cross-check newspapers  
6 because typically an article would be reprinted more than  
7 once, or at least the sort of substance of the article  
8 would be reprinted in another newspaper. So you can try  
9 to make sure that whatever you're looking at is, in fact,  
10 an accurate rendition of whatever the article is  
11 discussing.

12                  Q. As a historian, what do you do if there is  
13 some kind of ambiguity or mismatch among different  
14 historical sources?

15                  A. Well, look, the first thing you're looking  
16 at is kind of what is the context of the source.

17                         Now, for example, in the case of the  
18 Fourteenth Amendment, you would be more interested in  
19 what supporters of the Amendment had to say than you  
20 would be about what an opponent of the Amendment would  
21 have said, in the same way that if you were looking at a  
22 judicial opinion, you'd be more interested in what the  
23 Court said rather than what any dissenting opinions said  
24 to understand what the opinion was about.

25                         Also, you would look at who the speaker or

1 author was. Now, in -- some people are just more  
2 authoritative than others in their exposition of the  
3 Fourteenth Amendment. And, you know, at the top of the  
4 list or near the top would be John Bingham, I mean, not  
5 just because I wrote a book about him, but because he was  
6 centrally involved in all elements of the Fourteenth  
7 Amendment's proposal and ratification and implementation.  
8 And this has been recognized by the Supreme Court many  
9 times and by scholars many times.

10 Q. Can you tell us whether or not the  
11 historical methodology that you've just laid out was the  
12 method that you used in forming and presenting your  
13 opinions in this case?

14 A. It was.

15 MR. MURRAY: At this time, petitioners  
16 move to admit Professor Magliocca as an expert in the  
17 history of Section 3 of the Fourteenth Amendment.

18 MR. GESSLER: Your Honor, we have no  
19 objection to Professor Magliocca's expertise.

20 Obviously we renew and endorse the  
21 702 motion, Your Honor.

22 THE COURT: Professor Magliocca will be  
23 admitted as an expert in the history of Section 3 of  
24 14 -- of the Fourteenth Amendment.

25 MR. MURRAY: Thank you, Your Honor.

1 Q. (By Mr. Murray) Let's start by setting the  
2 stage for the adoption of Section 3.

3 What does the historical record tell us  
4 about why Section 3 was put into the Fourteenth Amendment  
5 in the first place?

6 A. Well, the main thing that prompted  
7 Section 3 was that they wanted to keep officials who had  
8 left to join the Confederacy from returning to office  
9 unless they showed that they deserved a second chance to  
10 return to office.

11 So basically there were elections held  
12 throughout the South in 1865 after the war ended, and  
13 many of the same people who had been in office before the  
14 war and had left to join the Confederacy were returned to  
15 office. And some of them showed up to the new Congress  
16 and essentially said, "Okay, we're here to take our seats  
17 now," as if nothing had happened.

18 And Congressional Republicans were very  
19 upset at this idea. They felt that this was wrong. And  
20 so there was a proposal by the Joint Committee on  
21 Reconstruction to do something to exclude people like  
22 that from positions of authority unless they demonstrated  
23 some repentance or, you know, deserved forgiveness.

24 Q. Does the historical record tell us  
25 anything about whether that was intended as punishment

1 for insurrectionists?

2 A. Yes. I mean, it was not intended as  
3 punishment. There was -- a number of senators discussed  
4 the fact that this was simply adding another  
5 qualification to office because of the events that had  
6 occurred.

7 Q. What does the historical record tell us  
8 about the role that the oath plays in Section 3?

9 A. So the oath plays a central role, not just  
10 in the text, but in the rationale for Section 3 in two  
11 respects.

12 I mean, the first is it was a way of  
13 limiting the scope of the provision. They didn't want to  
14 disqualify all former Confederates from office or from  
15 serving. They wanted to focus that on the people they  
16 thought were most responsible for Secession and the Civil  
17 War, and the oath was a way to do that.

18 Now, secondly, senators said if you had  
19 sworn an oath to support the Constitution and you had  
20 broken it by engaging in insurrection and joining the  
21 Confederacy, it was a kind of moral perjury -- that was  
22 the term that some people used -- that you had engaged in  
23 and you were just untrustworthy to hold office again  
24 unless you demonstrated some reason why you should be  
25 allowed a second chance.

1 Q. What, if anything, does the historical  
2 record tell us about whether Section 3 was limited to the  
3 events of the Civil War or not?

4 A. It was not limited to the events of the  
5 Civil War, and we know that because, first, the language  
6 was general. It just referred to insurrection or  
7 rebellion, and secondly, there were senators in the  
8 debate that made pointedly clear that they thought it  
9 also should apply to any future insurrection that might  
10 occur.

11 Q. When did the Fourteenth Amendment get  
12 ratified?

13 A. 1868.

14 Q. In the years after its ratification, walk  
15 us through some of the ways that Section 3 got enforced  
16 to exclude from office those who had been engaged in  
17 insurrection or rebellion in violation of their oath.

18 A. Okay. So this happened in different  
19 forms. In some states that were under martial law, the  
20 Union Army did the enforcing.

21 In southern states that were no longer  
22 under martial law, state officials and state courts did  
23 the enforcing.

24 Individual Houses of Congress also  
25 sometimes did the enforcing if someone was a member elect

1 and then there was a question raised about whether they  
2 could be seated because of some involvement with the  
3 Confederacy. And then the individual House of Congress,  
4 the House or the Senate, would have to decide if the  
5 person could be seated or not.

6 And then finally, in 1870, Congress passed  
7 a -- or created a federal civil action to enforce  
8 Section 3 by allowing U.S. attorneys to bring a writ of  
9 quo warranto to oust officials who were in office  
10 illegally because of Section 3.

11 Q. You mentioned state courts enforcing  
12 Section 3. Tell us a little bit more about that history.

13 A. Yeah. So in 1869, there were cases in  
14 North Carolina and Louisiana that addressed enforcement  
15 of Section 3 of the Fourteenth Amendment against state  
16 officials pursuant to state enforcement mechanism.

17 So in North Carolina there were  
18 two officials who were removed from office as ineligible,  
19 and in Louisiana they didn't remove the person because of  
20 a procedural reason, but they said that it could have  
21 been had the procedural posture been correct.

22 Q. Were those cases in North Carolina and  
23 Louisiana before or after the enactment of federal  
24 implementing legislation in 1870?

25 A. They were before. They were in 1869.



1           Q.    Tell us a bit about the history of amnesty  
2 under Section 3 and Congress's power to remove the  
3 disability by a two-thirds vote.

4           A.    Right.  So as soon as the  
5 Fourteenth Amendment was ratified, applications poured in  
6 from people who were disqualified seeking a waiver.

7                       Basically you would apply to your member  
8 of Congress, and then what Congress did initially was  
9 pass a series of measures that would simply give amnesty  
10 to people by name, right?  There would be a list of  
11 names, all of these people get amnesty if you could get a  
12 two-thirds vote of each House to pass the legislation.

13                      After a couple of years, Congress decided  
14 to create a more general amnesty that did not involve  
15 individual names.  And that was enacted in 1872 and gave  
16 amnesty to nearly all of the people covered by Section 3,  
17 except for a few hundred who were sort of considered the  
18 worst of the worst, including Jefferson Davis, the former  
19 President of the Confederacy.

20           Q.    And what does that history of amnesty tell  
21 you about the historical understanding of whether  
22 congressional legislation was needed to enforce the  
23 disability of Section 3?

24           A.    Well, it tells me that people didn't think  
25 it was needed.  Now, that goes along two dimensions.

1 First, the people who were applying for amnesty must have  
2 thought that they needed it right away.

3 And why did they think that? Probably  
4 because the Amendment had been ratified, and states were  
5 in a position to enforce the Amendment if needed.

6 Secondly, Congress granted amnesty to  
7 these individuals, in some cases, before any enforcement  
8 legislation was enacted. And in a sense, they were  
9 removing a disability that existed. Because the  
10 Fourteenth Amendment had been ratified, they couldn't  
11 remove something that didn't exist.

12 Q. I want to pull up the language of  
13 Section 3, and I want to first highlight the phrase  
14 "insurrection."

15 Have you studied the historical meaning  
16 that the word "insurrection" would have had at the time  
17 of ratification of the Fourteenth Amendment?

18 A. Yes, I have.

19 Q. What did insurrection mean at that time?

20 A. Well, according to the historical sources,  
21 an insurrection was any public use of force or threat of  
22 force by a group of people to hinder or prevent the  
23 execution of the law.

24 Q. What were some of the historical sources  
25 that you looked at that informed your understanding of

1 insurrection as a public use of force to -- or threat of  
2 force to prevent execution of the law?

3 A. Well, I looked at historical examples of  
4 insurrections that occurred before the Civil War as  
5 informed by some presidential documents about them.

6 I looked at dictionaries, I looked at  
7 judicial decisions, and I looked at an authoritative  
8 treatment of the law of war that was issued during the  
9 Civil War.

10 Q. You mentioned historical examples. Tell  
11 us a little bit more about what historical examples  
12 informed the understanding of insurrection during  
13 Reconstruction.

14 A. Sure. Well, there were two notable  
15 insurrections early on in American history. One was the  
16 Whiskey Insurrection, which is also known as the Whiskey  
17 Rebellion, and that happened in 1794 in Pennsylvania.

18 It was a tax protest by farmers who were  
19 angry at a new federal tax on distilleries that had been  
20 put in as part of Alexander Hamilton's financial scheme  
21 for the Federal Government.

22 And during that time, armed farmers  
23 basically attacked federal tax collectors, who tried to  
24 collect the tax, or used intimidation to prevent them  
25 from doing so.

1                   Eventually President Washington called out  
2 the militia to sort of restore the legal authority of the  
3 government on tax collection, and a few people were  
4 prosecuted, but President Washington pardoned them all.

5                   Q.   How many, roughly, armed farmers were  
6 involved in the Whiskey Insurrection?

7                   A.   In the hundreds.

8                   Q.   You mentioned that there was another  
9 example you looked at. Tell us about that.

10                  A.   Yes. The second example was called  
11 Fries's Insurrection. That was in 1799. That was in a  
12 different part of Pennsylvania. It was a different group  
13 of farmers that were upset about a different tax.

14                               This time it was a federal property tax,  
15 and they used intimidation to prevent the tax assessors  
16 from the Federal Government to come in and do the  
17 property assessments that would have been necessary to  
18 collect the tax.

19                  Q.   And what was the scale of the violence  
20 involved in Fries's Insurrection?

21                  A.   Well, there was no actual violence.  
22 There's no record of anybody being killed. And again,  
23 you're talking about, you know, hundreds of armed farmers  
24 who were sort of behind the sort of resistance to this  
25 tax.

1 Q. If there was no actual violence, in what  
2 sense was it understood to be an insurrection?

3 A. Well, it involved the threat of violence;  
4 that is, there was violent intimidation of the federal  
5 tax officials, I mean, and that -- that did -- did the  
6 trick, at least from the point of view of the farmers,  
7 for some period of time.

8 Q. What relevance did the Whiskey  
9 Insurrection and Fries's Insurrection have to the  
10 historical understanding of the meaning of insurrection  
11 during Reconstruction?

12 A. Well, these were well-known examples. I  
13 mean, probably the Whiskey Insurrection was a little  
14 better known because it was referred to in the  
15 39th Congress. I mean, you can find books written about  
16 the Whiskey Insurrection in the run-up to the Civil War.

17 And also one of the leading cases on sort  
18 of discussing insurrection arose out of Fries's  
19 Insurrection in -- it was a case from 1800, so all of  
20 this would have been background that people would have  
21 been familiar with at the time.

22 Q. These weren't obscure examples?

23 A. No, not at all.

24 THE COURT: I'm sorry, Professor. So when  
25 you say that it informs what an insurrection was at a

1 time, is that because, like, case law called them  
2 insurrections or . . .

3 THE WITNESS: Well, yes, in part. The,  
4 case of Fries, for example, which arose out of Fries's  
5 Insurrection, described it that way, as did President  
6 Adams' pardons of the individuals who were involved.

7 THE COURT: Okay.

8 THE WITNESS: Uh-huh.

9 Q. (By Mr. Murray) And you've already touched  
10 on this, but did either of these examples rise to the  
11 level of a full-scale war or rebellion?

12 A. No.

13 Q. You also mentioned that you looked at some  
14 dictionary definitions. Tell us what we're looking at  
15 here.

16 A. This is Webster's Dictionary from 1828.

17 Q. This is on page 785 of your appendix.

18 How did Webster's Dictionary define  
19 insurrection at that time?

20 A. Webster's defined it as "a rising against  
21 civil or political authority, the open and active  
22 opposition of a number of persons to the execution of law  
23 in a city or state."

24 Q. And did -- did Webster's say anything  
25 about any difference between insurrection on the one hand

1 and rebellion on the other?

2 A. Yes. It said that a rebellion was  
3 basically an attempt to overthrow the government or  
4 create a new government.

5 I mean, people, to some degree, used those  
6 terms interchangeably because, as I said, the Whiskey  
7 Insurrection is sometimes called the Whiskey Rebellion,  
8 but this definition defined them more historically, or  
9 different -- differentiated them more historically.

10 Q. Was this the only example of a dictionary  
11 definition that you found informative?

12 A. No.

13 Q. I want to pull up page 747 of your  
14 appendix.

15 What is this?

16 A. This is a dictionary from 1848 by the  
17 Reverend John Boag, who was a noted English  
18 lexicographer.

19 Q. And why did you look there?

20 A. Well, because it is another -- he was a  
21 noted person, I mean, not as famous as Noah Webster,  
22 obviously, but -- and -- but it had a definition of  
23 insurrection within it.

24 Q. How did the definition in this dictionary  
25 compare to what we just looked at in Webster's

1 Dictionary?

2 A. It is essentially identical.

3 Q. You also mentioned that you looked at  
4 cases defining insurrection.

5 Tell us first a bit about how those cases  
6 came up.

7 A. Right.

8 So prior to 1862, there was no crime of  
9 insurrection. So the only time that cases discussed  
10 insurrection came in treason cases when judges were  
11 instructing juries, giving them a charge on treason, and  
12 invariably they would discuss what an insurrection was in  
13 those charges.

14 Q. If we go to page 750 of your appendix, is  
15 this one such charge?

16 A. Yes.

17 Q. And tell us the circumstances of this  
18 charge.

19 A. Okay. So this is a charge to a grand jury  
20 in the United States Circuit Court in Missouri in 1861.  
21 The way things worked then, Supreme Court Justices would  
22 participate in trials to some extent. And so this grand  
23 jury charge was presided over by John Catron, who was an  
24 Associate Justice of the Court at that time.

25 Q. If we go to page 752 -- and I apologize,



1 sometimes these historical sources are a little bit hard  
2 to read. But can you tell us how Justice Catron defined  
3 insurrection?

4 A. Yes. He said that "The conspiracy and the  
5 insurrection connected with it must be to effect  
6 something of a public nature concerning the  
7 United States," and that included "overthrowing the  
8 government, or to nullify and totally hinder the  
9 execution of some U.S. law or the U.S. Constitution, or  
10 some part thereof, or to compel its abrogation, repeal,  
11 modification, or change by a resort to violence."

12 Q. And how does that inform your opinion  
13 here?

14 A. Well, I mean, that is an authoritative  
15 statement of law in 1861, close to the time when the  
16 Fourteenth Amendment was ratified. And it is consistent  
17 with the dictionary definitions just seen, in saying that  
18 an overthrow of the government was not required to have  
19 an insurrection.

20 And it's consistent with the examples of  
21 the Whiskey Insurrection and Fries's Insurrection where  
22 there was no attempt to overthrow the government. There  
23 was an attempt instead to resist the execution of law.

24 Q. Was this instruction by Justice Catron an  
25 isolated example in the case law?

1 A. No.

2 Q. Tell us a bit more about that.

3 A. Well, there are other treason cases from  
4 before the Civil War that have very similar language.  
5 The one I mentioned earlier was a case they called Case  
6 of Fries, which was about Fries's Insurrection, and then  
7 another called United States vs. Hanway from the 1850s.

8 Q. How did the charges in the Case of Fries  
9 and Hanway compare to Justice Catron's charge here?

10 A. They're essentially identical.

11 Q. You said you also looked at sources  
12 related to the laws of war.

13 I want to pull up page 553 of your  
14 appendix.

15 Tell us what we're looking at here.

16 A. So this is the legal code that was, you  
17 know, issued to the Union Army during the Civil War.

18 Q. And why did you look at the -- at this  
19 source by Francis Lieber?

20 A. Yeah. So a couple of reasons. First is,  
21 it was the authoritative sort of law of war that applied  
22 during the Civil War.

23 And secondly, Francis Lieber was probably  
24 the leading legal scholar of his day, and so he's a  
25 particularly authoritative author or speaker on these

1 kinds of questions.

2 Q. On page 594 of your appendix, walk us  
3 through what Frances Lieber said constituted an  
4 insurrection.

5 A. He said that "Insurrection is the rising  
6 of people in arms against their government, or a portion  
7 of it, or against one or more of its laws."

8 Q. And how, if at all, in this source did  
9 insurrection contrast to Civil War or rebellion?

10 A. Well, Lieber described a rebellion as  
11 simply a very large insurrection, although he then went  
12 on to say that often it involved an attempt to overthrow  
13 the government or to set up a separate government.

14 Q. And again, how does this discussion by  
15 Francis Lieber inform your opinion as to the  
16 understanding of insurrection during Reconstruction?

17 A. Well, it's consistent with all the other  
18 sources that I looked at.

19 Q. Can you tell us whether or not you saw any  
20 serious disagreement during Reconstruction about the  
21 meaning of the phrase "insurrection"?

22 A. No, I did not.

23 Q. How have today's historical scholars  
24 addressed the definition of insurrection?

25 A. Well, of the ones who have addressed it

1 recently, they have been in agreement basically with the  
2 opinion that I'm offering and these sources that you've  
3 seen; in particular, the draft paper by Professor William  
4 Baude and Professor Michael Stokes Paulsen and the work,  
5 again, in a draft paper by Professor Mark Graber at the  
6 University of Maryland.

7 Q. If we go back to the language of  
8 Section 3, I want to now turn our attention to the phrase  
9 "insurrection or rebellion against the same."

10 How, if at all, does the language "against  
11 the same" affect your opinion as to the historical  
12 understanding of Section 3?

13 A. Well, that the language limits the  
14 definition of an insurrection, for Section 3 purposes, to  
15 one that is against the Constitution of the United  
16 States.

17 Q. And so how does that limit or change the  
18 definition of insurrection?

19 A. Well, it eliminates a certain class of  
20 insurrections from things that would be considered for  
21 purposes of Section 3.

22 So the most obvious example would be an  
23 insurrection against state or local law. That would not  
24 be a Section 3 insurrection because it does not involve  
25 the Constitution of the United States.

1 Q. Does the historical record tell us  
2 anything about why Section 3 would be limited to a  
3 particular type of insurrections, namely, those against  
4 the Constitution?

5 A. Okay. Well, one is, again, they were  
6 concerned to limit the scope of the provision, right, and  
7 this is a way of doing that.

8 And then second, there's a thought that  
9 since the oath was central to both sort of the limitation  
10 and the rationale, the oath that you take is to the  
11 Constitution of the United States. It's not to the  
12 United States generally. And so it makes sense to think  
13 that the insurrection we're concerned about, or  
14 rebellion, would be one against the Constitution that you  
15 swore an oath to support.

16 Q. I want to draw our attention now to the  
17 language "shall have engaged in insurrection or  
18 rebellion."

19 Does the historical evidence shed light on  
20 what it means to have engaged in insurrection or how that  
21 would have been understood historically?

22 A. Yes. I mean, during Reconstruction,  
23 engage in insurrection was understood broadly to include  
24 any voluntary act in furtherance of an insurrection  
25 against the Constitution, including words of incitement.

1 Q. What sorts of historical sources did you  
2 look at in forming that opinion?

3 A. Well, I looked at judicial decisions. I  
4 looked at opinions of the United States Attorney General.  
5 Those were sort of the two leading sources that I looked  
6 at.

7 Q. I want to pull up page 788 of your  
8 appendix.

9 Tell us what we're looking at here.

10 A. This is an opinion by the United States  
11 Attorney General in 1867 interpreting the Military  
12 Reconstruction Acts of Congress.

13 Q. Okay. And what's the historical  
14 significance of this opinion of the U.S. Attorney General  
15 interpreting the Reconstruction Acts?

16 A. Okay. This will take a minute to explain.

17 So in 1867, Congress passed a series of  
18 measures that placed most of the former Confederacy under  
19 martial law, and in doing so, Congress ordered that these  
20 states hold new elections for conventions that would  
21 write new state constitutions and would ratify the  
22 Fourteenth Amendment.

23 Now, as part of the direction as to how  
24 these elections were to be run, Congress said that people  
25 who would be disqualified from office by the language of

1 Section 3 of the Fourteenth Amendment should not be  
2 allowed to vote in the elections for these new  
3 conventions, and the Union Army was tasked with enforcing  
4 this provision.

5 Q. So just to back us up a little bit, this  
6 is May of 1867. Was that after Congress had submitted  
7 the Fourteenth Amendment for ratification?

8 A. Yes. It was in the period between the  
9 submission of the Amendment to the states and its  
10 ratification. So the statute refers to the proposed  
11 Section 3 of the Fourteenth Amendment.

12 Q. And to be clear, how did the language of  
13 the Reconstruction Acts compare to the language of the  
14 proposed constitutional Amendment in Section 3?

15 A. It was identical.

16 Q. Did this opinion of the U.S. Attorney  
17 General have any kind of legal effect?

18 A. Yes, it did. The opinion was approved by  
19 the Cabinet. We have the Cabinet minutes on that. And  
20 then was the basis for instructions that were issued to  
21 the Union Army commanders in the former Confederacy as to  
22 how they were to implement Congress's directive on these  
23 elections.

24 Q. What form did the instructions to the  
25 Union Army take in terms of implementing the opinion of

1 the Attorney General on the Reconstruction Acts?

2 A. Basically they were instructions issued by  
3 the Secretary of War. Also, Ulysses S. Grant was  
4 involved because he was the General of the Armies at the  
5 time.

6 Q. Can you tell us whether or not those  
7 instructions included the language of this opinion?

8 A. They did.

9 Q. So how would you characterize the  
10 historical significance of these opinions by Andrew  
11 Johnson's Attorney General?

12 A. Well, they are an authoritative  
13 interpretation by the Attorney General of the United  
14 States on the language that ended up being ratified in  
15 Section 3 of the Fourteenth Amendment.

16 Q. Who was the Attorney General at the time?

17 A. Stanbery.

18 Q. I want to direct our attention to page 800  
19 of your appendix.

20 Walk us through what Attorney  
21 General Stanbery said about what it means to have engaged  
22 in insurrection.

23 A. Well, he described it as some direct,  
24 overt act done with the intent to further the rebellion.

25 And then later he said that the act had to



1 be voluntary, because there was some concern about people  
2 who were drafted into the Confederacy, that they not come  
3 under the disqualification because they had not acted  
4 voluntarily.

5 So basically a direct, overt act done with  
6 intent to further the rebellion that was voluntary.

7 Q. There's a discussion here of "mere acts of  
8 common humanity."

9 Charity can't be considered as  
10 participating in the rebellion, or forced contributions  
11 can't be seen as participation, correct?

12 A. Correct.

13 Q. Did the opinion of the Attorney General  
14 identify any other conduct in furtherance of insurrection  
15 or rebellion that would be considered outside the scope  
16 of Section 3?

17 A. No.

18 Q. What does this source tell you about  
19 whether or not someone would have needed to have taken up  
20 arms in order to have been understood to have engaged in  
21 insurrection at this time?

22 A. It was not required.

23 Q. Let's go to page 804 of your appendix.  
24 Tell us what we're looking at here.

25 A. Well, this is a second opinion that the

1 Attorney General issued because, remember, the Army had  
2 never organized an election before, so the Union Army  
3 commanders requested additional guidance from the  
4 Attorney General as to how to do this. So a second  
5 opinion was issued.

6 Q. Does this second opinion have any  
7 historical significance?

8 A. Yes. Again, it was -- it was approved and  
9 used as a basis for instructions to the Union Army  
10 commanders.

11 Q. If we go to page 815, walk us through what  
12 this second opinion of the Attorney General tells us  
13 about what it meant to have engaged in insurrection.

14 A. Well, again, here it says that "it must be  
15 an overt and voluntary act done with the intent of aiding  
16 or furthering the common unlawful purpose, namely, the  
17 insurrection," and then that "voluntary contributions,  
18 even such indirect contributions as arise from a loan of  
19 money or the purchase of bonds, would count for  
20 disqualification."

21 Q. And so again, what does that tell us about  
22 whether or not Section 3 was understood to apply only to  
23 those who took up arms against the Union?

24 A. It did not apply only to those who took up  
25 arms.

1 Q. Later in that page, what did Attorney  
2 General Stanbery say about speech?

3 A. Well, he said that "Disloyal sentiments,  
4 opinions, or sympathies would not disqualify, but when a  
5 person, has, by speech or by writing, incited others to  
6 engage in rebellion, he must come under the  
7 disqualification."

8 Q. Now, we've seen this discussion in the  
9 Attorney General's opinion about a voluntary act in  
10 furtherance of the rebellion.

11 Tell us how early judicial cases compare  
12 to this discussion in the Attorney General's opinion.

13 A. They are consistent.

14 Q. If we go to page 203 of your appendix,  
15 what is this case?

16 A. This is Worthy vs. Barrett, one of the  
17 North Carolina cases that I referred to earlier.

18 Q. And when was this case decided?

19 A. 1869.

20 Q. On the second page, what does the  
21 Worthy Court say about what constitutes engaging in  
22 rebellion?

23 A. Well, "A voluntary act by personal service  
24 or by contributions, other than charitable, of anything  
25 that was useful or necessary."

1 Q. How did that compare to what we just  
2 looked at from Attorney General Stanbery?

3 A. It's essentially the same.

4 Q. Were there any other cases addressing this  
5 language at this time?

6 A. Yes. There was a federal case in  
7 North Carolina in 1871, United States vs. Powell, that  
8 again said that a voluntary act in furtherance of  
9 insurrection or rebellion was the definition of engaged  
10 in insurrection.

11 Q. Were there any cases at this time that  
12 disagreed with Attorney General Stanbery's opinion that  
13 words of incitement were enough to have engaged in  
14 insurrection?

15 A. Not that I'm aware of, no.

16 Q. In your report, you also discuss some  
17 pre-Civil War cases on the law of treason. Why did you  
18 look at those cases?

19 A. Well, as I mentioned earlier, the only  
20 time that judges discussed insurrection before the  
21 Civil War came in treason cases, so naturally I wanted to  
22 look at those.

23 Q. Do those cases, those treason cases from  
24 before the Civil War, shed any light on this question of  
25 whether or not someone needed to have personally taken up

1 arms in order to have levied war against the government  
2 or engaged in insurrection?

3 A. Yes. They made clear that you do not need  
4 to take up arms to be engaged in levying war. You could  
5 do so by encouraging or instigating an insurrection.

6 Q. And did those cases specifically address  
7 this issue of instigation or incitement?

8 A. Yes, they do.

9 Q. And you touched on this a minute ago, but  
10 walk us through kind of what those cases said about  
11 incitement.

12 A. Well, I mean, basically they said that  
13 just because you had not been on the scene of the -- of  
14 the violent event or that you had sort of not -- not  
15 taken up arms, that that didn't matter. That what  
16 mattered was basically you could be engaged in an overt  
17 act supporting treason if you instigated, incited,  
18 encouraged that activity.

19 Q. During Reconstruction, did -- and during  
20 the Civil War, did Congress ever address this issue of  
21 disqualifying insurrectionists?

22 A. Yes. So as I mentioned earlier, if a  
23 member elect showed up to the House of Representatives or  
24 the Senate, there could be a challenge about whether that  
25 person was involved in the Confederacy, and then each

1 House of Congress would have to assess whether that  
2 involvement disqualified them.

3 Q. Let's turn to page 463 of your appendix.

4 What is this historical source?

5 A. This is "Hinds' Precedents" of the House  
6 of Representatives, which is an authoritative source of  
7 decisions by individual Houses of Congress running  
8 through the 18th and 19th centuries.

9 Q. Why did you look at Hinds' Precedents?

10 A. Well, this is where you would look for  
11 precedents from individual Houses of Congress as opposed  
12 to, say, legislation or judicial precedents.

13 Q. Tell us a bit about the case of  
14 John Young Brown.

15 A. Yes. So John Young Brown was a member  
16 elect to the House of Representatives from Kentucky, and  
17 when he arrived in 1868, he was challenged on the ground  
18 that he had given aid to the Confederacy.

19 Q. Let's look at page 465 of your appendix,  
20 and I want to pull up some language here.

21 What are we looking at here?

22 A. This is essentially a letter to the editor  
23 that Mr. Brown wrote early during the Civil War in which  
24 he advocated violence against Union troops that might  
25 enter Kentucky.

1 Q. And was there any argument in the case of  
2 John Young Brown that he had done anything to aid the  
3 rebellion, other than this letter to the editor?

4 A. No. This was all that he was accused of  
5 doing.

6 Q. How did Congress decide the case of  
7 John Young Brown?

8 A. They did not seat Mr. Brown.

9 Q. On what basis?

10 A. That he had been involved with the  
11 Confederacy and was disqualified.

12 Q. Now, you said this case was in 1867,  
13 correct?

14 A. Yes -- 1868.

15 Q. 1868?

16 Was that before or after Section 3 had  
17 been ratified?

18 A. It was a little bit before Section 3 was  
19 ratified, so it was not a Section 3 enforcement strictly  
20 speaking.

21 Q. So on what basis did Congress say that  
22 Mr. Brown was disqualified?

23 A. Well, they -- the House has broad power to  
24 disqualify or refuse to seat members elect, especially in  
25 that era, and so basically they said that he had given

1 aid to the Confederacy, through this editorial.

2 Q. If the case of Mr. Brown was not a case  
3 applying Section 3 itself, why did you look at it in  
4 informing your understanding as to the scope of  
5 Section 3?

6 A. Well, because this decision was taken in  
7 the year that the Fourteenth Amendment was ratified, and  
8 it concerned the kind of conduct that would be considered  
9 disqualifying. So it seemed like informative, as an  
10 example, for what people might have been thinking about  
11 when the provision was subject to ratification.

12 Q. Did you look at any other congressional  
13 cases of disqualification or exclusion?

14 A. Yes.

15 There was one other case in 1867 of Philip  
16 Thomas. Mr. Thomas was a senator elect from Maryland,  
17 and he had given \$100 to his son before his son went off  
18 to join the Confederate Army, and he was challenged on  
19 the grounds that he had given aid to the Confederacy by  
20 doing that.

21 Q. Had he done anything other than give \$100  
22 to his son when his son was leaving to join the  
23 Confederate Army?

24 A. No.

25 Q. How did Congress address the case of



1 Philip Thomas?

2 A. They did not seat Mr. Thomas.

3 Q. On what basis?

4 A. That he had given aid to the Confederacy.  
5 That was disqualifying.

6 Q. Same question as with Mr. Brown. Was that  
7 a Section 3 case?

8 A. No, it was not because it came in 1867, a  
9 year before the Fourteenth Amendment was ratified.

10 Q. And did you still consider that to be  
11 relevant in understanding the historical backdrop to  
12 Section 3?

13 A. Yes, for the reasons I just identified,  
14 that it happened while Section 3 was pending before the  
15 states and concerned what kind of conduct would be  
16 considered disqualifying from office.

17 Q. You've -- you've mentioned historical  
18 sources discussing "a voluntary act in support of  
19 insurrection by words or deeds."

20 Did the issue of inaction ever come up?  
21 Were there any cases where an individual was charged for  
22 having abdicated a duty to protect the Constitution?

23 A. No.

24 Q. So does the historical evidence kind of  
25 tell us anything one way or another about whether they

1 saw any kinds of inaction as potentially being covered by  
2 Section 3?

3 A. No.

4 Q. If we step back and look at all the  
5 historical sources that you've just discussed, what do  
6 those sources tell us about whether or not an individual  
7 is disqualified, or was understood to be such at the  
8 time, without having taken up arms against the government  
9 himself or herself?

10 A. Well, the answer is, you could be  
11 disqualified without having had taken up arms against the  
12 government in the period of the Civil War.

13 Q. I want to move now to a discussion of  
14 offices and officers.

15 Set the table for us a little bit about  
16 how those terms come up in Section 3.

17 A. Sure.

18 Well, Section 3 says that "No person shall  
19 hold any office, civil or military, under the United  
20 States" -- or under any state -- "if they had taken an  
21 oath as an officer of the United States," among other  
22 things, "to support the Constitution of the United States  
23 and then have engaged in insurrection against the same."

24 Q. So to be clear, first you have to have  
25 taken an oath as a qualifying official or officer of the

1 United States and then engaged in insurrection?

2 A. Correct.

3 Q. And if you've done that, if you've taken  
4 an oath as an officer and engaged in insurrection, then  
5 what kinds of offices or positions are you disqualified  
6 from at that point?

7 A. Right. That's -- right. So the first  
8 portion describes the offices, and the second portion  
9 describes the officers.

10 Q. Have you looked at historical evidence  
11 bearing on the question of whether the office of the  
12 presidency was understood to be an office under the  
13 United States such that a disqualified individual could  
14 not take that office?

15 A. I have.

16 Q. And what is your opinion on that question?

17 A. My opinion is that during Reconstruction,  
18 the presidency was considered an office under the United  
19 States for purposes of Section 3.

20 Q. And have you looked at historical evidence  
21 addressing whether or not the President during  
22 Reconstruction was considered as an officer of the United  
23 States?

24 A. I have.

25 Q. And what is that opinion?

1           A.    My opinion is that during Reconstruction,  
2   the President was considered an officer of the United  
3   States for purposes of Section 3.

4           Q.    In addressing the meaning of officer and  
5   office, what kinds of historical evidence did you  
6   look at?

7           A.    So I looked at congressional debates and  
8   reports. I looked at presidential documents. I looked  
9   at opinions of the United States Attorney General. I  
10  looked at judicial decisions, contemporary newspapers,  
11  were the main ones.

12          Q.    Did historical sources at this time  
13  define, in the context of Section 3, what it meant to be  
14  an officer of the United States?

15          A.    Yes, they -- yes, they did.

16          Q.    And what did they say you had to do in  
17  order to be an officer of the United States?

18          A.    Well, the main thing was that you had to  
19  have taken an oath to support the Constitution, that  
20  that -- again, the oath was central to the text and the  
21  purpose, and it was also considered pivotal to the  
22  question of whether you were an officer or not.

23          Q.    If we go back to the North Carolina  
24  Supreme Court's decision in Worthy, was this one of the  
25  cases on this issue that you were mentioning earlier?

1 A. Yes.

2 Q. What did the Worthy Court's decision tell  
3 us about who was an officer?

4 A. Well, the Court said that it "did not know  
5 how better to draw the distinction between an officer and  
6 a mere placement," let's say an employee, "than by making  
7 his oath the test."

8 And then went on to say that every officer  
9 is required not only to take an oath of office but an  
10 oath to support the Constitution of the state and of the  
11 United States.

12 Q. Did Attorney General Stanbery ever address  
13 this issue as well?

14 A. Yes, he did, in one of his opinions that  
15 we looked at earlier.

16 Q. If we go back to the first opinion of the  
17 Attorney General on page 797 of your appendix, walk us  
18 through what Stanbery said about officer of the United  
19 States under the language of Section 3.

20 A. Well, he said that the term was to be used  
21 in its most general sense and without any qualification,  
22 and that the oath was central to determining whether  
23 someone was an officer or not.

24 Q. And how did Attorney General Stanbery's  
25 opinion that officer is used without any qualification

1 relate to your opinion as to whether the presidency was  
2 understood to be covered at this time?

3 A. Well, there was no qualification for the  
4 President of the United States.

5 Q. I want to ask you briefly about an  
6 argument that's been made in this case, that the  
7 President's oath under Article II "to preserve, protect  
8 and defend the Constitution of the United States," is  
9 not, for purposes of Section 3, an oath to support the  
10 Constitution of the United States.

11 Are you familiar with that line of  
12 argument?

13 A. Yes, I am.

14 Q. Have you seen any historical evidence that  
15 bears on the question of whether the President's oath to  
16 defend the Constitution would have been understood to  
17 fall under Section 3?

18 A. I have.

19 Q. I'm pulling up page 869 of your appendix,  
20 and I apologize, this is another one of those  
21 hard-to-read historical sources.

22 But what are we looking at here?

23 A. This is a grand jury charge that was  
24 issued by a Federal Circuit Judge in Tennessee in 1870,  
25 and it was reprinted in a newspaper.

1 Q. Well, why are we looking at a newspaper  
2 here?

3 A. Well, because in those days, grand jury  
4 charges were often reprinted in newspapers as a kind of  
5 exercise in public education, as well as just to tell  
6 people what -- what was going on in the courts.

7 Q. And who originally identified this  
8 historical source?

9 A. I did.

10 Q. Okay. What did this charge tell us about  
11 oaths in Section 3?

12 A. Well, Judge Emmon said: The oath which  
13 shall have been taken need not be in the precise words of  
14 the Amendment, quote, "to support the Constitution of the  
15 United States."

16 He went on to say that there were slight  
17 differences in the forms of the oaths that people took,  
18 but the important thing was whether they include, you  
19 know, substantially, even if not literally, an obligation  
20 to the federal power. And that the jury was not to  
21 consider the argument that, in effect, the wording of the  
22 oath was not -- did not include the word "support."

23 Q. How does that relate to your opinion that  
24 the oath that the President swears to defend the  
25 Constitution is covered by Section 3?

1           A.    It leads me to the conclusion that it is  
2 covered because the difference in wording is irrelevant.

3           Q.    Did you also consider any presidential  
4 proclamations in addressing whether the President was  
5 considered to be an officer of the United States at this  
6 time?

7           A.    I did.

8           Q.    And tell us a bit about those  
9 proclamations.

10          A.    Well, these are proclamations that were  
11 issued by President Andrew Johnson, who was the President  
12 at the time that the Fourteenth Amendment was ratified,  
13 in which he explained how he had the authority to create  
14 provisional governments in the Confederacy following  
15 Lee's surrender to Grant.

16          Q.    If we look at page 442 of your appendix,  
17 is this one of those proclamations?

18          A.    Yes, it is.

19          Q.    Tell us a bit about the context here.

20          A.    Yes. Well, the President is issuing, in  
21 effect, an executive order -- they called it a  
22 proclamation then usually -- where he's establishing a  
23 government in one of the former Confederate states. And  
24 he justifies that on the grounds, in part, that he is the  
25 chief civil executive officer of United States.



1 Q. And remind us what year this was.

2 A. This is 1865.

3 Q. Before -- shortly before Section 3 of the  
4 Fourteenth Amendment was adopted?

5 A. Yes.

6 Q. Was this an isolated example of  
7 President Andrew Johnson?

8 A. No. He issued the same proclamation for  
9 different states throughout the Confederacy, and these  
10 proclamations were widely reprinted in newspapers at the  
11 time because they were setting forth the terms of the  
12 governments that were to govern in several states of the  
13 United States.

14 Q. Was Andrew Johnson the only President in  
15 the 19th century to refer to himself as an officer of  
16 the United States?

17 A. No. President John Tyler, in the 1840s,  
18 referred to himself as the chief executive officer. And  
19 President James Buchanan, who was Lincoln's predecessor,  
20 referred to himself as the chief executive officer under  
21 the Constitution.

22 Q. In your report, you also talk about  
23 examples of how this issue came up in Congress. Tell us  
24 a bit about that.

25 A. Yes. Well, there were references to the

1 President as either the executive officer of the United  
2 States or an executive officer of the United States in  
3 Congress multiple times during the Congress, either that  
4 proposed the Fourteenth Amendment or the one that oversaw  
5 its ratification.

6 Q. I want to look at page 488 of your  
7 appendix, an excerpt from the Congressional Globe.

8 What are we looking at here?

9 A. This is a speech by John Bingham in 1868  
10 in which he describes the President as the executive  
11 officer of the United States.

12 Q. And remind us what John Bingham's role was  
13 in the adoption of the Fourteenth Amendment.

14 A. Well, he was the principal drafter of  
15 Section 1 of the Amendment, and he was a member of the  
16 Joint Committee on Reconstruction, which was sort of the  
17 pivotal committee that essentially assembled the proposal  
18 of the Fourteenth Amendment more generally.

19 Q. Tell us about some of the other contexts  
20 in which this issue of the President as an officer of the  
21 United States came up at this time.

22 A. Yes. Well, it was also addressed in  
23 President Johnson's impeachment trial, which occurred in  
24 1868, shortly after this speech that Bingham gave, in  
25 which the President's own lawyer described him as an

1 executive officer of the United States.

2 Q. Was that an isolated reference in Congress  
3 at the time?

4 A. No. There were many other references to  
5 the President as -- different formulations, whether  
6 executive officer of the United States, the executive  
7 officer of the United States, in one case mere executive  
8 officer of the United States, by various members of  
9 Congress, including Bingham on at least one other  
10 occasion.

11 Q. Let's look at page 811 of your appendix.

12 This is from a second opinion of Stanbery  
13 on the Reconstruction Acts. And what did he say on that  
14 issue?

15 A. Well, he said that the President, who was  
16 his boss, is simply an executive officer.

17 Q. Did anyone at the time specifically  
18 address the question of whether Section 3 covered the  
19 office of the President?

20 A. Yes.

21 Q. How did that come up?

22 A. That came up during the Senate debate on  
23 the Section 3 language.

24 Q. I'm pulling up page 477 of your appendix,  
25 excerpts from the Congressional Globe from that time.

1 Walk us through how that issue came up in  
2 the debate about Section 3.

3 A. So a question was posed as to why the  
4 President or the Vice President was not specifically  
5 mentioned among the offices listed in Section 3, and  
6 Senator Lot Morrill of Maine, who was a supporter of the  
7 Fourteenth Amendment said: Well, let me call the  
8 senator's attention to the words "hold any office, civil  
9 or military, under the United States."

10 And then the response to that was, in  
11 effect: Oh, yes, I'm sorry about that. Never mind.

12 I mean, when I first saw this excerpt in  
13 2020 when I was researching the original article, it was  
14 very exciting because you rarely get such a clear  
15 statement of legislative history, right? Normally,  
16 legislative history is about things that you're not  
17 particularly interested in or they're more vague in their  
18 phrasing.

19 This is about as specific as you can get.

20 Q. Were you the one who dug this up?

21 A. Yes.

22 Q. Did anyone come back later in the debate  
23 and say: Actually you were wrong, we are excluding the  
24 presidency from Section 3?

25 A. No.

1 Q. Talk to us a bit about how Jefferson Davis  
2 came up in the debates around Section 3.

3 A. Well, there was a consensus at the time  
4 that Jefferson Davis was ineligible to be President  
5 because of Section 3. And when Congress considered  
6 granting amnesty to individuals, an objection to granting  
7 amnesty to everyone was that, "Well, that would give  
8 Jefferson Davis amnesty, and that meant that he could  
9 then be President of the United States," which people  
10 thought was just unacceptable.

11 Q. And when specifically did that issue of  
12 kind of amnesty including Jefferson Davis come up in  
13 these debates?

14 A. Well, it came up more -- I mean, it was  
15 discussed a little bit during the time that the  
16 Fourteenth Amendment was under ratification, pending, but  
17 it really came up more when the debate on amnesty heated  
18 up in the 1870s, around the time of the General Amnesty  
19 Act in 1872, and then again in a debate in 1876, when  
20 they were thinking about giving amnesty to the remaining  
21 few hundreds of people who had not been given amnesty in  
22 1872.

23 Q. In the discussions about amnesty that  
24 might allow Jefferson Davis to become the President  
25 again, describe kind of the tone of the supporters of

1 Section 3 at that prospect.

2 A. Well, they thought it was kind of  
3 preposterous that Jefferson Davis could be eligible to be  
4 President of the United States, and they insisted that  
5 the only way that could happen is if he were given  
6 amnesty.

7 Q. Can you tell us whether the historical  
8 purpose that you've identified behind Section 3 tells us  
9 anything about whether or not the President was  
10 understood to be excluded.

11 A. Well, yes, in the sense that it would have  
12 been odd to say that people who had broken their oath to  
13 the Constitution by engaging in insurrection were  
14 ineligible to every office in the land except the highest  
15 one.

16 Q. Did the debates ever talk about kind of  
17 high office versus sort of lower-level officials in the  
18 context of Section 3?

19 A. Yes. There were references in the Senate  
20 to the fact that, in part, the idea of Section 3 was to  
21 go after people who were the most responsible for  
22 Secession and the Civil War, and that tended to include  
23 higher-level officials. They were seen as basically more  
24 blameworthy for what had happened than, say, your  
25 lower-level official.

1 Q. I want to ask you just a few final  
2 questions.

3 Last Friday, Trump served an expert report  
4 in this case by Robert Delahunty. Have you had a chance  
5 to review that expert report?

6 A. I have.

7 Q. Describe for us your level of familiarity  
8 with the people who today are recognized as experts on  
9 Section 3.

10 A. I'm very familiar with them.

11 Q. When was the first time you had ever heard  
12 of Robert Delahunty?

13 A. When I learned that he would be an expert  
14 witness in this case.

15 Q. How would you characterize Robert  
16 Delahunty's contributions, if any, to the scholarly  
17 debate on the history of Section 3?

18 A. I don't know of any.

19 Q. Is Robert Delahunty someone that you would  
20 consider to be an expert in this history?

21 A. No.

22 Q. Robert Delahunty cites an article, a law  
23 review article --

24 MR. GESSLER: Your Honor, I'm going to  
25 object to this entire line of questioning. This was not

1 part of his expert report, and it's totally improper.

2 MR. MURRAY: Your Honor, we got his expert  
3 report at midnight on Friday, and I understood that we  
4 were able to do short rebuttal or response to that since  
5 we did not have a chance to respond in writing.

6 MR. GESSLER: Your Honor, he may contend  
7 with Professor Delahunty's arguments if he sees fit, but  
8 he is not an expert on Professor Delahunty's expertise.  
9 He is not here to render an opinion on whether he's a  
10 better expert than Professor Delahunty is a better -- or  
11 Professor Delahunty is a better expert.

12 So I understand some experts think  
13 they're -- well, I won't say any more. Thank you,  
14 Your Honor.

15 THE COURT: The Court will sustain the  
16 objection to the extent that I agree, I don't think it's  
17 proper for one witness to comment on the other witness's  
18 expertise. That's what you do on cross-examination.

19 However, I will allow the professor to  
20 talk about his response to the opinions of --  
21 Professor Delahunty, is that the correct name?

22 MR. GESSLER: Yes, ma'am.

23 MR. MURRAY: Thank you, Your Honor.

24 Q. (By Mr. Murray) One of the sources that  
25 Professor Delahunty relies on is an article by



1 Professors Blackman and Tillman on the question of  
2 whether or not the presidency is an office under the  
3 United States.

4 Is that an article that you're familiar  
5 with?

6 A. I am.

7 Q. Can you situate that article in the  
8 broader scholarly debate surrounding the history of  
9 Section 3?

10 A. Well, I mean, of the draft papers that  
11 have considered the question of whether the President is  
12 an officer of the United States for purposes of  
13 Section 3, and there aren't that many, I would say that  
14 their position so far is in the minority.

15 Q. Tell us who some of the other scholars are  
16 who have addressed this issue and disagreed with the  
17 Blackman and Tillman position.

18 A. Yeah. So there's the draft paper by  
19 Professors Baude and Paulsen that I mentioned earlier,  
20 the draft paper by -- a draft paper by Professor Graber  
21 that I referenced earlier.

22 There's another draft paper by John -- and  
23 I -- Villalopos [phonetic], I believe, is the correct  
24 pronunciation of his name, and they all take the view  
25 that the President is an officer of the United States for

1 purposes of Section 3, as I do.

2 Q. I want to ask you about a few other  
3 sources that are cited in Mr. Delahunty's expert report.  
4 I want to pull it up on the screen here, Petitioners'  
5 Exhibit 227.

6 If we go to page 10, there's a discussion  
7 of the presidential election of 1872 and the candidacy of  
8 Horace Greeley, which I think was also referenced in  
9 opening statements.

10 Have you reviewed this portion of  
11 Mr. Delahunty's report?

12 A. Yes, I have.

13 Q. And tell us what you understand to be the  
14 argument about Horace Greeley in 1872.

15 A. Well, I understood the argument to be that  
16 Horace Greeley ran for President in 1872 as the  
17 Democratic nominee, and no one objected to that on the  
18 grounds that he was ineligible to do so under Section 3,  
19 and that, therefore, that might mean that Section 3 does  
20 not apply to the presidency.

21 Q. Do you agree with that argument?

22 A. No.

23 Q. Why not?

24 A. Horace Greeley was not a Confederate. He  
25 was a loyal supporter of President Lincoln during the

1 war. He was a supporter of Radical Republican policies  
2 during Reconstruction early on. He was a supporter of  
3 the conviction of Andrew Johnson in the impeachment trial  
4 in 1868.

5 Section 3 had nothing to do with him.

6 Q. Didn't anybody kind of criticize him for  
7 southern sympathies though?

8 A. Yes. But, I mean, that was just sort of  
9 political rhetoric that people were putting out. And,  
10 you know, there's a distinction between that and the sort  
11 of legal ineligibility that would attach to Section 3.

12 Now, for example, John Bingham gave a  
13 speech in 1872, a campaign speech against Greeley. He  
14 was campaigning for Grant's reelection, and he expressly  
15 distinguished Horace Greeley, whom he opposed, but  
16 basically he could be President if he won, from  
17 Jefferson Davis, who he said could not be President  
18 because of Section 3 of the Fourteenth Amendment unless  
19 Davis got amnesty.

20 So it was pretty clear. Davis was a  
21 Confederate; he was ineligible. Greeley was not a  
22 Confederate; he was eligible.

23 Q. And let's -- I know you've said that  
24 Horace Greeley was not a Confederate, and so wasn't  
25 covered by Section 3. But let's assume for the sake of

1 argument that he was otherwise covered by Section 3.

2 What, if anything, does the state of  
3 amnesty by the time of the 1872 election tell us here?

4 A. Well, if Greeley had been covered by  
5 Section 3, he would have received amnesty under the  
6 General Amnesty Act that was enacted in the spring of  
7 1872, so it wouldn't -- Section 3 couldn't have applied  
8 to him anyway while he was running for President.

9 Q. Does the example of Horace Greeley tell us  
10 anything here?

11 A. No.

12 Q. There's also a discussion in  
13 Mr. Delahunty's report citing to an article by  
14 Professor Kurt Lash about earlier drafts of Section 3 of  
15 the Fourteenth Amendment and whether those shed any light  
16 on whether the presidency is covered.

17 Are you familiar with those arguments?

18 A. Yes.

19 Q. And what is your opinion on those  
20 arguments from a historical standpoint?

21 A. Well, they're inconclusive, right? That  
22 is to say, you can't draw a conclusion from early drafts  
23 as to what the final draft means unless somebody says:  
24 The reason we're changing the draft from this to that is  
25 because of something.

1           So nobody made any such commentary about  
2     the differences between early drafts and the final draft.

3           I mean, it would be nice if we had more  
4     information about the drafting and ratification of the  
5     Fourteenth Amendment, but we have what we have. And so,  
6     therefore, you really can't draw any conclusion about the  
7     final draft from any of the earlier drafts.

8           Q.    Is there any indication that you've seen  
9     in any of the congressional debates about Section 3 that  
10    anyone intended to exclude the President or the  
11    presidency?

12          A.    No.

13          Q.    I want to turn to page 30 of the report.

14                There's a discussion here of three sources  
15    identified by Professors Blackman and Tillman that they  
16    cite to suggest the President is not constitutionally an  
17    officer of the United States.

18                Did you review that portion of  
19    Mr. Delahunty's report?

20          A.    I did.

21          Q.    Were those historical examples persuasive  
22    to you?

23          A.    No.

24          Q.    Why not?

25          A.    Well, a couple of reasons. I mean, first

1 of all, they all arise a decade after the ratification of  
2 the Fourteenth Amendment.

3 They are not about Section 3. That's a  
4 second reason.

5 Now, a third is, I don't know who David  
6 McKnight was. I mean, he -- but put another way, he's  
7 not Noah Webster or Francis Lieber, so he doesn't have  
8 the same sort of authority. So the statement in his  
9 treatise is of, you know, only very limited importance.

10 The other two statements came out of the  
11 Senate impeachment trial of Secretary of War, William  
12 Belknap. He was accused of corruption, among other  
13 things.

14 And the thing is that in -- first of all,  
15 that was a trial that was not about the President. So  
16 the statements by the senators that the President was not  
17 an officer of the United States were a kind of dicta,  
18 basically, that had nothing to do with the trial that  
19 they were involved in.

20 Now, let's contrast that with the  
21 statements about this issue in the impeachment trial of  
22 Andrew Johnson, right?

23 Now, that happened in 1868 when the  
24 Fourteenth Amendment was ratified. That was about the  
25 President. He was on trial. People did say that he was

1 an officer of the United States. His own lawyer said it,  
2 as well as members of the -- of Congress.

3 And it was an actual issue in the trial,  
4 and the reason for that is that President Johnson was  
5 accused of committing a high crime and misdemeanor by  
6 refusing to follow an act of Congress because he thought  
7 it was unconstitutional. Okay. So set aside what you  
8 think of that argument.

9 Part of making that argument meant saying:  
10 Well, he wasn't a judicial officer, and only judicial  
11 officers can set aside laws because they are  
12 unconstitutional. He's only an executive officer.

13 So that was part of the reason why people  
14 were describing him as an executive officer or the  
15 executive officer.

16 So it was actually related to the issues  
17 under discussion in a way that, of course, these  
18 statements that you see here in the Secretary of War's  
19 trial some years later were not.

20 So I just think, overall, it's not  
21 persuasive evidence on the question.

22 Q. I want to briefly ask you about  
23 Professor Delahunty's argument that Section 3 is too  
24 ambiguous for courts to decide without congressional  
25 implementing legislation.

1           Do you have a view on that issue from a  
2 historical matter -- standpoint?

3           A. Well, yes. First of all, we see examples  
4 of people applying Section 3 and interpreting it at the  
5 time, right? And so in the end, it's really no different  
6 than a lot of other legal standards which are broad, and  
7 you have to figure out how to apply them to a particular  
8 set of facts. But that's what we do with standards like  
9 that.

10           Now, it would be nice if we had more  
11 examples, more cases to guide us, but I had a colleague,  
12 you know -- she's no longer with us now -- but when  
13 people would say, "Why don't we have more information  
14 before we make a decision," she would just look at you  
15 and say, "Alas," you know, like, we have what we have.  
16 We have to -- we have to work with what we have.

17           But there's no reason to think that we  
18 can't work with what we have.

19           Q. Do you agree with Mr. Delahunty's argument  
20 that the phrase "insurrection" was ambiguous at the time?

21           A. No. I mean, we've gone through quite a  
22 bit of material to define what insurrection was and, you  
23 know, that doesn't mean we know how it should be applied  
24 to every set of facts, but it's -- there's quite a bit of  
25 material that defined what an insurrection was as of



1 Reconstruction.

2 Q. Do you agree with Mr. Delahunty's argument  
3 that the phrase "engaged in insurrection" does not  
4 include speech?

5 A. No, I do not agree with that.

6 Q. Mr. Delahunty cites the Second  
7 Confiscation Act in making that argument.

8 Can you explain to us what the Second  
9 Confiscation Acts were and kind of what you understand  
10 that argument to be.

11 A. Sure.

12 The Second Confiscation Act was a criminal  
13 statute enacted in 1862 that defined insurrection by  
14 listing a series of terms including "to set afoot, to  
15 incite, to engage."

16 And then my understanding is the argument  
17 is: Well, Section 3 did not include the word "incite"  
18 in -- in its terminology in the way that the Second  
19 Confiscation Act did, so, therefore, maybe incite was not  
20 included by Section 3.

21 Q. Do you agree with that argument from a  
22 historical perspective?

23 A. No.

24 Q. Why not?

25 A. Well, first of all, I mean, there's a

1 difference between a criminal statute, which is what the  
2 Second Confiscation Act was, and the provision of  
3 Section 3, which is creating a new qualification for  
4 office. So the comparison is not that close.

5           Secondly, there's no explanation in the  
6 debates on Section 3 as to why the word "incite" was not  
7 included. So again, it's like you can't really draw  
8 conclusions from a prior version, right, as compared to  
9 the final version unless you know something about why  
10 there's a difference.

11           Thirdly, constitutional provisions are not  
12 statutes. They are not as specific as statutes. They're  
13 written in general language. That was well understood at  
14 the time.

15           Chief Justice Marshall explained this in  
16 his opinion for the Court in McCulloch vs. Maryland, that  
17 you can't make constitutions as specific as statutes  
18 because then they would be incredibly long, incredibly  
19 hard to understand for average people.

20           So, you know, constitutional provisions  
21 like Section 3 were written in general terms.

22           Q. What, if any, conclusion do you draw from  
23 the fact that Section 3 does not specifically mention  
24 incitement?

25           A. I don't draw any particular conclusion

1 from it. I draw conclusions from the other sources that  
2 interpreted Section 3, mainly the Attorney General's  
3 opinions.

4 Q. My last question for you is, if we step  
5 back and evaluate Professor Delahunty's historical  
6 methodology laid out in his report as a whole, what is  
7 your opinion as to the reliability of his historical  
8 method?

9 MR. GESSLER: Your Honor, we will object  
10 again.

11 THE COURT: Sustained.

12 Q. (By Mr. Murray) Professor Magliocca, you  
13 discussed earlier the types of historical methodologies  
14 that scholars in history typically follow when they are  
15 deciding historical questions, correct?

16 A. Yes.

17 Q. And can you tell us whether or not, in  
18 your view, Mr. Delahunty followed those prescribed  
19 methodologies?

20 MR. GESSLER: Your Honor, objection again.  
21 And further we would note that Mr. Magliocca has not  
22 been -- I'm sorry, Professor Magliocca has not been  
23 proffered as an expert on historical methodologies.

24 THE COURT: Sustained. He can talk about  
25 his methodologies, but you can cross-examine

1 Professor Delahunty on his.

2 MR. MURRAY: Understood, Your Honor.

3 We don't have any more questions.

4 Thank you.

5 THE COURT: Cross-examination.

6 You may proceed. Thank you.

7 MR. GESSLER: Sure.

8 CROSS-EXAMINATION

9 BY MR. GESSLER:

10 Q. So you've been on the witness stand  
11 before, correct, in the Georgia case --

12 A. Yes.

13 Q. -- if I remember correctly?

14 Okay. Have you been a witness in any  
15 other instances?

16 A. No.

17 Q. Okay. So do you know how this works with  
18 me asking a few questions?

19 A. Uh-huh.

20 Q. And thank you for being here today.

21 So I want to ask a little bit about  
22 sources.

23 You'd agree with me, with respect to the  
24 Fourteenth Amendment and Section 3, that there's  
25 recently, within the past few years, a substantial amount

1 of new scholarship on that issue?

2 A. Yes.

3 Q. Okay. And you mentioned that your view  
4 that the Tillman and Blackman viewpoint is in the  
5 minority, correct?

6 A. Yes.

7 Q. Okay. And you would agree with me that  
8 when courts make decisions on interpretation, they don't  
9 count up the number of professors on one side of an issue  
10 versus the number on the other side and make their  
11 decision on that basis?

12 A. Well, no, it's not the only factor.

13 Q. Well, it's probably not even one factor.  
14 They look at the strength and the quality of the  
15 underlying arguments, correct?

16 A. Yes.

17 Q. Okay. Now, you're -- you and I had  
18 chatted just very briefly, and you're familiar with  
19 Professor Blackman, correct?

20 A. Yes, I know him, and I like him.

21 Q. And you two have mutual admiration for one  
22 another and mutual respect for one another's scholarship?

23 A. Yes.

24 Q. And you still have some pretty sharp  
25 disagreements on the meaning and application of

1 Section 3. Is that fair to say?

2 A. Yes.

3 Q. Okay. And it's fair to say that you two  
4 will continue to have discussions, continue to disagree,  
5 perhaps sometimes resolve your disagreements as part of  
6 the scholarly and analytical process?

7 A. Probably later today.

8 Q. He may even be listening to your testimony  
9 today.

10 A. Could be.

11 Q. Okay. And then you'd agree with me that  
12 people will -- that scholars such as yourself and others  
13 will continue to analyze the historical record and  
14 sometimes modify your opinions based on what you find,  
15 correct?

16 A. Yes.

17 Q. Okay. And, in fact, there's one instance  
18 where Professors Baude and Paulsen quoted the historical  
19 record of the case of Jefferson Davis.

20 Do you -- are you familiar with that?

21 A. Yes.

22 Q. Okay. And Professors Tillman and Blackman  
23 looked at the history very closely and said the actual  
24 record, this record written by -- with respect to  
25 Justice Chase's ruling was incorrectly recorded.

1 Do you remember that?

2 A. Well, they've made the argument that it  
3 was incorrectly recorded.

4 Q. Okay. And so what they did is they  
5 compared an 1869 version from an American Law Review to  
6 an 1894 version and said: Look, the 1894 was  
7 essentially -- that sentence with respect to Section 3  
8 was inserted, we believe, incorrectly?

9 A. Well, yes. Now, that's a bit more  
10 complicated in the sense that, I mean, first of all, it's  
11 not clear that it was inserted incorrectly. Because if  
12 you look at newspaper commentary at the time, I mean,  
13 there was somewhat of a mixed set of views about what  
14 Chief Justice Chase was saying in that case or thought  
15 about it.

16 Secondly, it was actually pretty common  
17 practice back then for comments to be inserted in  
18 official reports years after the fact.

19 In my book on Bushrod Washington, he would  
20 revise his reports or he had someone who helped him edit  
21 them, you know, years after the fact to change them.

22 And so today -- they didn't have an  
23 official set of reporting systems the way we do now,  
24 right? So today that would seem, well, improper or very  
25 odd, whereas back then it was more common.

1                   So yes, but they've made that argument as  
2 you've described it.

3                   Q.    And so the point I'm trying to make -- and  
4 I'm assuming you'll agree with me, but I'll ask you if  
5 you agree with me -- that there's still substantial  
6 debate about the accuracy or the quality of the  
7 historical record, in some instances, with respect to  
8 Section 3?

9                   A.    Yes.

10                  Q.    Okay.  And you'd agree that you have a  
11 pronounced point of view, and some other scholars have  
12 different points of view on that issue?

13                  A.    Yes.

14                  Q.    Okay.  Now, my understanding and -- is  
15 that you have not rendered an opinion, nor have you been  
16 asked to render an opinion on the meaning of the word  
17 "incitement"?

18                  A.    That's correct.

19                  Q.    Or "incite" or any variant of that?

20                  A.    Right.

21                  Q.    And so your argument is that insurrection  
22 can include words of incitement?

23                  A.    Yes.

24                  Q.    But you're not necessarily defining what  
25 incitement is?



1           A.    Correct.  I'm not a First Amendment  
2 expert.

3           Q.    Okay.

4                   MR. GESSLER:  Excuse me one moment.

5           Q.    (By Mr. Gessler)  And is it -- just to  
6 understand sort of your definition of insurrection, in  
7 order to engage in insurrection, in your view, that  
8 requires -- does that require an overt and voluntary act?

9           A.    Well, an overt or a voluntary act would  
10 constitute engaging in insurrection.  I mean, whether  
11 inaction could is -- was just not something that was  
12 addressed, so the history doesn't tell us the answer to  
13 that.

14          Q.    Okay.  Could someone engage in  
15 insurrection with an involuntary act?

16          A.    No.

17          Q.    Okay.  Could someone engage in  
18 insurrection with a secret act?

19          A.    Well, no, in the sense that there had to  
20 be some public action that was being -- that was involved  
21 probably in the sense that there was a public use for --  
22 or public purpose to the insurrection.

23          Q.    Okay.

24          A.    So, yeah, I would -- I would tend to think  
25 not.

1 Q. So you'd agree with me that it requires an  
2 overt and voluntary act?

3 A. Well, an overt and voluntary act would  
4 qualify, yes.

5 Q. Okay. And that someone has to have a  
6 specific intent?

7 A. Well, that's a question on which the  
8 sources don't give us a clear answer. The Attorney  
9 General's opinions do refer to intent.

10 On the other hand, the cases don't. The  
11 cases, to some degree, could be understood as saying that  
12 awareness or knowledge is sufficient.

13 The reason I say that is because let's say  
14 you had a sheriff, okay, in a southern state. They're  
15 the sheriff before the Civil War, they maintain the same  
16 position during the Civil War and after the Civil War.  
17 So they're doing the same job the whole time. All that's  
18 changed is, you know, they were -- they were under the  
19 United States, they were under the Confederacy, they're  
20 under the United States.

21 It's not clear there if there's any intent  
22 involved, but they would have been disqualified because  
23 they had served prior to the war, now they're serving  
24 during the war, now they're still there after the war.

25 It is clear that they were aware of the

1 insurrection, right? But they were just doing the same  
2 job in the same way. So it's less clear as -- that that  
3 would constitute intent.

4 Q. So let me ask you, I mean, because there's  
5 a couple branches of Section 3, right?

6 A. Uh-huh.

7 Q. There's the "aid and comfort to the  
8 enemies" branch, and there's the "engage in insurrection  
9 or rebellion"?

10 A. Yes.

11 Q. Okay. So are you saying it's unclear  
12 whether or not that sheriff engaged in insurrection or --

13 A. No. That sheriff was deemed to have  
14 engaged in insurrection.

15 Q. Okay.

16 A. My point was that you can't say that there  
17 was any specific intent involved there --

18 Q. Okay.

19 A. -- that we know of.

20 Q. Because he was exercising civil authority  
21 under the government of the Confederacy?

22 A. In the same way that he did before and  
23 afterwards, yes.

24 Q. Okay. Are you familiar with  
25 Professor Kurt -- well, you are familiar with

1 Professor Kurt Lash. You two, I think, have either  
2 written an article together or served on a panel?

3 A. We did a podcast together, yes.

4 Q. Okay. And he recently wrote an article  
5 sort of talking about the historical record of Section 3,  
6 correct?

7 A. Yes.

8 Q. And you'd agree with me that he uncovered  
9 some -- some aspects or some items within the historical  
10 record that were relatively new to scholarship?

11 A. Well, yeah, I think every draft paper is  
12 able to do that, yes.

13 Q. And -- and that's just part of the  
14 advancement of scholarship, each draft paper adds new  
15 information?

16 A. Right.

17 Q. Okay. And have you been in correspondence  
18 or spoken with Professor Lash since he wrote his paper?

19 A. I have, yes.

20 Q. Okay. And that's a collegial relationship  
21 similar to the one you share with Professors Tillman and  
22 Blackman; would that be fair to say?

23 A. Yes.

24 Q. Okay.

25 MR. GESSLER: Could you excuse me one

1 second, Your Honor.

2 (A pause occurred in the proceedings.)

3 Q. (By Mr. Gessler) Let me just ask you one  
4 more question, or just another set of questions on the  
5 First Amendment issues, the word with incite.

6 So did I correctly hear you saying that  
7 you're not here today as an expert on the First  
8 Amendment?

9 A. Correct.

10 Q. Okay. So you have not, for purposes of  
11 today -- maybe at some other point -- sort of done an  
12 analysis of what incitement means or the historical  
13 record about that?

14 A. No. I mean, there were no First Amendment  
15 cases from the Supreme Court until well after  
16 Reconstruction, so that's -- that's part of the reason  
17 why.

18 Q. Okay. So basically the historical record  
19 you've looked at predates modern First Amendment law?

20 A. Correct.

21 MR. GESSLER: Okay. All right. I have no  
22 further questions. Thank you very much.

23 THE COURT: Any redirect?

24 MR. MURRAY: Very briefly, Your Honor.

25 /////

1 REDIRECT EXAMINATION

2 BY MR. MURRAY:

3 Q. You were asked about Professor Kurt Lash.  
4 Do you remember that?

5 A. Yes.

6 Q. Have you reviewed Professor Lash's draft  
7 paper on Section 3?

8 A. Yes.

9 Q. Can you tell us whether anything in that  
10 draft paper changed or affected your opinion on what  
11 would -- what insurrection would have been understood to  
12 mean at the time of Reconstruction?

13 A. No. He didn't really address that very  
14 much.

15 Q. Can you tell us whether or not anything in  
16 Professor Lash's paper changed your opinion as to what  
17 kinds of conduct was sufficient to have engaged in  
18 insurrection?

19 A. No. He didn't really address that much  
20 either.

21 Q. Can you talk to us just very briefly about  
22 what the time period was that Professor Lash looked at?

23 A. Well, I mean, he was mostly looking at  
24 1866 to 1868, although he did talk about a few other  
25 things, including the Horace Greeley example that

1 Professor Delahunty also referred to in his expert  
2 report.

3 Q. Can you tell us whether or not, in your  
4 opinion, the time period he looked at in his article was  
5 sort of the whole body of historical evidence?

6 A. Well, I mean, mostly but not identically,  
7 right? That is, in other words, the time period that  
8 we're really all looking at is pretty much between 1865  
9 and 1872, when Congress passed the General Amnesty. I  
10 mean, there may be one or two things after that but very  
11 little.

12 So his paper covers, you know, much of  
13 that period, though not -- I would say not certain things  
14 that came kind of towards the latter end of that period.

15 MR. MURRAY: Thank you, Your Honor.

16 THE COURT: Does the Colorado Republican  
17 Party have any questions for Professor Magliocca?

18 MS. RASKIN: We have no questions.  
19 Thank you.

20 MR. KOTLARCZYK: No questions from the  
21 Secretary, Your Honor.

22 THE COURT: Okay. Professor Magliocca,  
23 thank you so much for your testimony.

24 THE WITNESS: Thank you.

25 MS. TIERNEY: Good morning, Your Honor.

1 Our next witness is Hilary Rudy, and she is not in the  
2 courtroom yet. She is walking over at this very moment.

3 THE COURT: Okay. Why don't we take our  
4 break then a little bit early and reconvene at 10:15.

5 MS. TIERNEY: Okay. Thank you.

6 (Recess taken from 9:54 a.m. until  
7 10:15 a.m.)

8 THE COURT: You may be seated.

9 MS. TIERNEY: Are we ready to go?

10 THE COURT: Yeah. Oh, I'm sorry. I  
11 didn't even see you there.

12 Will you raise your right hand, please.

13 HILARY RUDY,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 THE COURT: Great.

17 DIRECT EXAMINATION

18 BY MS. TIERNEY:

19 Q. Good morning. Could you introduce  
20 yourself, please.

21 THE COURT: I cannot hear you very well,  
22 so if you could --

23 MS. TIERNEY: Can you hear me better now?

24 THE COURT: Yeah.

25 MS. TIERNEY: Okay. Here we go. I'll



1 lean in.

2 Q. (By Ms. Tierney) Could you introduce  
3 yourself, please.

4 A. Yes. Good morning.

5 My name is Hilary Rudy. I'm the deputy  
6 elections director in the Colorado Secretary of State's  
7 Office.

8 Q. And how long have you held that position  
9 at the Colorado Secretary of State's Office?

10 A. Since 2013.

11 Q. And did you hold a different position or  
12 different positions before that position at the Colorado  
13 Secretary of State's Office?

14 A. I did. Prior to that, I held a couple of  
15 different positions in the legal team.

16 Q. And so when did you first start working at  
17 the Secretary of State's Office?

18 A. I began working as a full-time staffer in  
19 2006.

20 Q. And how many different Secretary of States  
21 have you served with?

22 A. Including my internship in 2005, seven.

23 Q. And what political affiliation were those  
24 Secretaries of State? Were they mixed? Or all one, the  
25 other?

1           A.    Mixed, both Republican and Democratic  
2   Secretaries.

3           Q.    And you've not spoken to anyone on our  
4   legal team prior to your testimony today or in  
5   preparation for today, correct?

6           A.    That's correct.

7           Q.    And have you testified in your role as  
8   deputy elections director for the Secretary of State  
9   previously?

10          A.    I have.

11          Q.    How many times?

12          A.    I don't know the exact number, but  
13   several.

14          Q.    In your present role, what are your duties  
15   generally?

16          A.    Generally speaking, I oversee the teams  
17   within the elections division that provide support,  
18   training, and oversight to the county clerk. So that  
19   would be the teams that oversee ballot access, the legal  
20   team, the statewide voter registration system, county  
21   support, training. Primarily the public-facing and  
22   county-facing portions of the Division.

23          Q.    Okay. Can you describe generally what  
24   role the Secretary of State's Office has in the  
25   administration of elections in Colorado?

1           A.    Yes.  So in Colorado, the Secretary of  
2 State is the chief election official for state and  
3 federal elections.

4                   And our role is to certify the content for  
5 state and federal offices to the ballot, to certify it to  
6 county clerks, to oversee the county clerks in each of  
7 Colorado's 64 counties in running elections, to ensure  
8 that they comply with all of the legal requirements, to  
9 provide training and support in that, and just to  
10 generally ensure that they have what they need to run the  
11 elections and then certify the results for statewide  
12 contests.

13           Q.    Okay.  I'm going to ask you a couple  
14 questions about some of those roles.

15                   But first, in your -- in the Secretary of  
16 State's role in administering elections, what role do the  
17 courts play in that process?

18           A.    So the Secretary makes decisions with  
19 respect to candidate access to the ballot, with respect  
20 to certifying results, with respect to a lot of things  
21 around the election.

22                   And there is a role for the courts when  
23 somebody wants to protest a candidate's qualifications,  
24 protest the outcome of an election.  There's a role for  
25 courts at various parts throughout the elections calendar

1 to basically make a decision if somebody is protesting a  
2 determination made by the Secretary of State.

3 Q. And once a court makes a decision, what  
4 does the Secretary of State's Office do with that  
5 decision?

6 A. Well, once a court has made a decision,  
7 then the Secretary's Office conforms to that decision.

8 So if a court decides that the Secretary  
9 decided incorrectly at the outset, then the Secretary's  
10 Office will correct that. Or if the Secretary's decision  
11 is affirmed, then we will move forward with whatever that  
12 determination was.

13 Q. And is there a particular statute that  
14 people challenging a decision of the Secretary of State  
15 often use to present issues to the court?

16 A. Well, there are a number of statutes that  
17 allow for a challenge of the Secretary's decision  
18 throughout the -- throughout Title 1 of the Colorado  
19 Revised Statutes.

20 But depending on how near we are to  
21 particular elections deadlines, typically Section 113 is  
22 used to challenge something that needs to be cited  
23 quickly.

24 Q. Okay. And for demonstrative purposes, I'm  
25 going to pull that statute up and ask you some questions

1 about it.

2 MS. TIERNEY: Could you pull up Colorado  
3 Revised Statute 1-1-113.

4 Q. (By Ms. Tierney) And I, in particular,  
5 just want to start with Section 1.

6 First, let me ask you, how familiar are  
7 you with Colorado Revised Statute 1-1-113?

8 A. I'm fairly familiar. I don't have it  
9 memorized, but I'm aware generally of what it says.

10 Q. And you're a lawyer by training, correct?

11 A. I have a law degree, but I don't practice.

12 Q. All right. In the -- in 1-1-113, I just  
13 want to ask you a couple of questions about some of the  
14 provisions in Section 1.

15 So do you see Section 1 there on the  
16 screen?

17 A. Yes.

18 Q. So it says: "When any controversy arises  
19 between any official charged with any duty or function  
20 under this code and any candidate, or any officers or  
21 representatives of a . . . party, or any persons who have  
22 made nominations or when any eligible elector files a  
23 verified petition in a district court of competent  
24 jurisdiction alleging that a person charged with a duty  
25 under this code has committed or is about to

1 commit . . ."

2 I wanted to ask you how your office --

3 MS. TIERNEY: Yes, Mr. Gessler?

4 THE COURT: Well, first --

5 MR. GESSLER: I'm waiting for the

6 question.

7 THE COURT: -- you have to finish the

8 question.

9 Q. (By Ms. Tierney) I wanted to ask you how  
10 your office has interpreted the "committed or is about to  
11 commit" language?

12 MR. GESSLER: Your Honor, we would object  
13 as to testimony on legal interpretation of a statute.

14 THE COURT: And I'm going to overrule it  
15 because I don't think she's testifying as to what it  
16 does, just how it has historically been interpreted by  
17 the Secretary of State. I'm the one that's going to have  
18 to decide how it -- what the actual effect of the statute  
19 is.

20 Q. (By Ms. Tierney) Do you need me to repeat  
21 the question, or do you remember it?

22 A. If you could repeat it once for me,  
23 thanks.

24 Q. I was asking how your -- the Secretary of  
25 State's Office has interpreted the language, "has

1 committed or is about to commit a breach or neglect of  
2 duty or other wrongful act"?

3 A. In general, the Office has interpreted  
4 this to mean that if the Office has made a decision with  
5 which any of the parties listed in the statute disagrees  
6 with respect to conducting an election, that that means  
7 they have the right to challenge that decision in court  
8 and receive a quick decision.

9 Q. Okay. And in your experience, have people  
10 using 1-1-113 to make challenges done so both before an  
11 act has been taken and after an act has been taken? So  
12 the "about to commit" language versus -- and the  
13 committed language?

14 A. I can't think of specific examples, but  
15 generally speaking, yes, I think leading to an election,  
16 that has happened, yeah.

17 Q. Okay. Take you back to my question about  
18 what role the Secretary of State's Office has in the  
19 administration of elections.

20 You described a broad, broad role, and are  
21 those duties and powers of the Secretary of State set  
22 forth in statute?

23 A. Yes. Generally speaking, they're set  
24 forth in Section 1-1-107 of the Colorado Revised  
25 Statutes. There's also a provision in Article 1.5, which

1 discusses the Secretary's authority specifically with  
2 respect to federal elections.

3 Q. Okay. Now, I'm going to turn to ask you  
4 some more questions about ballot access generally. You  
5 testified that that is one of the functions of the  
6 Colorado Secretary of State's Office.

7 So more specifically, what role does the  
8 Secretary of State's Office play in candidate ballot  
9 access?

10 A. So our office is the filing office for  
11 state and federal offices for individuals seeking access  
12 to the ballot, seeking to run for office in Colorado.

13 So we receive that paperwork, we verify  
14 the information on the application as required under  
15 state law, and then ultimately there is a deadline by  
16 which our office must certify all contests to the ballot,  
17 both candidates and measures.

18 Q. So specifically what role does the  
19 Secretary of State play in certifying that content for  
20 the ballot?

21 A. Can you tell me what you mean by that?

22 Q. So do candidates submit information to you  
23 that then you use to certify the content for the ballot?

24 A. Yes. So the law requires candidates  
25 submit specific paperwork depending on how they're



1 accessing the ballot: whether that's by petition, through  
2 assembly, or whatever the nominating process is.

3 And based on the legal requirements for  
4 that paperwork, then we will verify the information on  
5 the paperwork and then set the ballot.

6 Q. And what is the deadline for the ballot  
7 certification for the presidential primary for Colorado  
8 in 2024?

9 A. I believe it's January 5.

10 Q. Is the process for ballot access --  
11 explain the process for ballot access for presidential  
12 candidates for the presidential primary in Colorado.

13 A. So for the presidential primary election,  
14 what the law requires is that candidates access the  
15 ballot through one of three methods.

16 The first is through party nomination, so  
17 they would submit a candidate acceptance, a letter from  
18 the party saying they're a bona fide party candidate, and  
19 a filing fee.

20 If they choose to submit a petition, they  
21 would submit their petition. But before they can  
22 circulate a petition, they need to submit the statement  
23 from the party that they're a bona fide party candidate,  
24 circulate the petition. And then with their petition  
25 submission, they would also need to submit the acceptance

1 of nomination form for the petition.

2 And then the third option is to submit a  
3 writing affidavit of intent and a filing fee.

4 Q. Has Colorado always had a presidential  
5 primary?

6 A. No.

7 Q. Can you explain when we didn't have one  
8 and when we got one?

9 A. So Colorado had a presidential primary for  
10 several years until around 2000, and then it was  
11 eliminated in the law.

12 And then in 2016, a citizen initiative  
13 passed, reestablishing the presidential primary and  
14 reestablishing it with some specific processes around our  
15 current mail ballot model.

16 Q. And where in the law is the process for  
17 presidential primary candidates to be placed on the  
18 Colorado presidential primary ballot?

19 A. It's in Article 4. I don't recall the  
20 specific statute citation.

21 Q. Okay. I'm going to have a copy of that  
22 statute brought up just for demonstrative purposes, and  
23 that's Statute -- Colorado Revised Statute 1-4-1204.

24 Do you see that statute there?

25 A. Yes.

1 Q. And does that -- just to be clear, does  
2 that statute apply to other ballot access candidates?

3 A. No. This is the statute specific for  
4 presidential primary elections.

5 Q. Okay. So this part of the statute deals  
6 with how a candidate gets their name on the ballot,  
7 correct?

8 A. That's correct.

9 Q. And you walked through the various  
10 processes in your testimony a moment ago.

11 What is the Secretary of State's view of  
12 whether it may exclude candidates from the ballot who are  
13 constitutionally prohibited from assuming office?

14 A. It's the Secretary's position that if we  
15 have affirmative knowledge that a candidate is ineligible  
16 for office, then we will not certify them to the ballot.

17 Q. Let's talk just a little bit about state  
18 legislative candidates and how the Colorado Constitution  
19 applies to them, and then we'll talk about the  
20 presidential candidates and the U.S. Constitution.

21 What are the constitutional eligibility  
22 requirements for state legislative candidates?

23 A. Well, there's a residency requirement that  
24 the candidate reside within their district for the  
25 requisite amount of time. There's an age requirement,

1 and then obviously a Colorado residency requirement.

2 If it's a partisan office, which state  
3 legislative office is, then they must also be affiliated  
4 with their party nominating them or unaffiliated for a  
5 specific period of time.

6 Q. And has the Secretary of State's Office  
7 kept state legislative candidates off the ballot due to  
8 ineligibility in the past?

9 A. Yes.

10 Q. About how many times?

11 A. I couldn't say with any certainty. I  
12 mean, it's not unusual for us to correspond with a  
13 candidate and ask for additional information to determine  
14 if they have additional information to prove an  
15 eligibility requirement like residency, but it's -- it  
16 has happened that a candidate doesn't reside within their  
17 district or hasn't been affiliated with the party for the  
18 right amount of time.

19 Q. And what process does the Secretary of  
20 State's Office undertake to verify the qualifications for  
21 those state legislative candidates?

22 A. When our office receives the candidate  
23 paperwork, we verify the information on that form with  
24 the information in the statewide voter registration  
25 system.

1 Q. And if the Secretary of State's Office  
2 determines that a state legislative candidate's records  
3 in the statewide voter registration database show that  
4 the person meets the eligibility criteria, what happens  
5 next?

6 A. Then they are qualified to the ballot and  
7 will be certified by the deadline for certification.

8 Q. And what happens in that case if someone  
9 disagrees with the Secretary of State's decision on  
10 candidate eligibility?

11 A. In that case, if someone disagrees with  
12 that decision, then they can challenge that decision in  
13 court.

14 Q. And is that the Colorado Revised  
15 Statute 1-1-113 process we just discussed?

16 A. Generally speaking, yes.

17 THE COURT: Ms. Rudy, would you mind  
18 moving the microphone just a little bit closer to you.  
19 Thank you.

20 Q. (By Ms. Tierney) How frequently are those  
21 decisions of eligibility challenged, like how frequently  
22 is your office responding to those 1-1-113 or other  
23 challenges of candidate eligibility?

24 A. I think generally in almost every election  
25 in which we're certifying candidates or measures to the

1 ballot, we expect we may be challenged based on our  
2 decision to certify or not certify a candidate to the  
3 ballot.

4 Q. Okay. So if your office determines that a  
5 candidate's records in the statewide voter registration  
6 database show that the person is not eligible because  
7 they don't reside in the district or they're not of the  
8 proper age or some other defect, what actions does the  
9 Secretary of State take?

10 A. Generally, especially in the case of  
11 residency, we correspond with the candidate to see if  
12 they have additional information that establishes that  
13 they do meet the eligibility requirement in order to  
14 determine whether to qualify them or not qualify them to  
15 the ballot.

16 Q. So -- and after you engage in the  
17 correspondence or dialogue, what happens if you are not  
18 satisfied, after you've engaged in that dialogue, that  
19 the candidate meets the qualifications?

20 A. I would say that if it's unclear in any  
21 way, we're going to escalate to the administration and  
22 seek guidance before we make a final decision.

23 But in cases where it's very clear, we'll  
24 go ahead and exclude the candidate from the ballot.

25 Q. And again, if someone disagrees with the

1 Secretary of State's decision to keep a candidate off the  
2 ballot, what can they do?

3 A. They can challenge that decision in court.

4 Q. And after a court proceeding, whether it's  
5 1-1-113 or another proceeding, what does the Secretary of  
6 State's Office do if a court determines that a candidate  
7 is eligible?

8 A. Then we'll certify that candidate to the  
9 ballot.

10 Q. And conversely, if someone disagrees with  
11 the Secretary of State's decision to put a candidate on  
12 the ballot, do they also have the same recourse to  
13 challenge that decision?

14 A. Yes.

15 Q. And that's a similar proceeding in court?

16 A. It's similar, yes. Yeah.

17 Q. And what does the Secretary of State do  
18 after a court proceeding if the Court determines that a  
19 candidate is ineligible?

20 A. Then the Secretary would not certify the  
21 candidate to the ballot.

22 Q. Has the Colorado Supreme Court provided  
23 guidance to the Secretary of State on candidate  
24 eligibility in terms of past decisions?

25 A. I think likely, yes, that's happened, but

1 I can't recall specifically.

2 Q. Okay. Are you familiar with court --  
3 Colorado Supreme Court decisions interpreting Colorado's  
4 ballot access laws?

5 A. Yes, generally.

6 Q. And is it fair to say that they've weighed  
7 in many times on ballot access determinations?

8 A. I think, yes, generally speaking, I think  
9 typically we see that weigh-in on citizen initiatives in  
10 particular.

11 Q. Okay. Let's turn to presidential  
12 candidates now.

13 What is the process to verify the  
14 qualifications for presidential candidates?

15 A. Our office looks at the information  
16 provided in the affidavit itself. And if the affidavit  
17 is complete and we have no affirmative knowledge that any  
18 of the information is incorrect, then we would qualify  
19 that candidate to the ballot.

20 Q. And --

21 THE COURT: And is this the statement of  
22 intent, the affidavit you're referring to?

23 A. Yes, Your Honor, the statement of intent.

24 Q. (By Ms. Tierney) How many times has the  
25 Secretary of State's Office kept a presidential candidate



1 off the ballot?

2 A. I don't have a specific number. I -- it  
3 definitely has happened, and particularly for the general  
4 election.

5 Q. And what does the Colorado Secretary of  
6 State's Office do with a constitutionally ineligible  
7 candidate?

8 A. What do you mean by that?

9 Q. Do you not certify them to the ballot in  
10 that case?

11 A. Yes, that's correct, if there's  
12 information that they are not constitutionally eligible.

13 Q. Do you remember a ballot access case  
14 involving a Mr. Hassan?

15 A. Yes.

16 MS. TIERNEY: I'm going to pull up  
17 Exhibit P-107.

18 This exhibit has been stipulated, so I  
19 would move it into admission.

20 THE COURT: 107 is admitted.

21 (Exhibit 107 was admitted into evidence.)

22 Q. (By Ms. Tierney) Do you recognize this  
23 document?

24 A. Yes.

25 Q. And what is this?

1           A.    This is a letter that our office sent to  
2 Mr. Hassan after corresponding with him about access to  
3 the general election as an unaffiliated candidate for  
4 President.

5           Q.    And what year was this?

6           A.    This was in 2011.

7           Q.    And how did it come about that Mr. Hassan  
8 was kept off the ballot?

9           A.    Mr. Hassan began corresponding with our  
10 office, seeking access as an unaffiliated candidate for  
11 President, but notified us that he was not going to fill  
12 out the paperwork because he did not want to check the  
13 box that he was not a natural-born U.S. citizen.

14                   He didn't want to commit perjury, but he  
15 did want to seek access and was -- was looking to set up  
16 lawsuits challenging that provision in the Constitution.

17           Q.    And did -- what did the Secretary of  
18 State's Office determine regarding Mr. Hassan's  
19 eligibility?

20           A.    Mr. Hassan told us affirmatively that he  
21 failed to meet one of the constitutional qualifications.  
22 He also refused to file the required paperwork.

23                   And so our office advised Mr. Hassan that  
24 if he was, in fact, ineligible and did not file the  
25 correct paperwork, that he could not be a candidate for

1 that office.

2 Q. I'm going to direct your attention to the  
3 third paragraph in this letter.

4 A. Yes.

5 Q. Could you read that first sentence for me.

6 A. "The Secretary of State is responsible for  
7 ensuring that only eligible candidates are placed on the  
8 ballot and must give effect to applicable federal and  
9 state law unless a court has held such law to be  
10 invalid."

11 Q. And is that still the position that the  
12 Secretary of State's Office takes today in 2023?

13 A. It is.

14 Q. And can you describe generally what that  
15 first sentence in that letter means?

16 A. Well, as I said, the Secretary's Office is  
17 responsible for certifying qualified candidates to the  
18 ballot and for overseeing the conduct of elections for  
19 those candidate races.

20 And so our office is responsible for  
21 ensuring that we verify, to the extent the law requires  
22 us to, eligibility of candidates before placing their  
23 name on the ballot.

24 Q. And based on that statement, can you  
25 confirm that the Secretary of State's Office considers

1 both federal and state qualifications when determining  
2 whether a candidate is eligible?

3 A. We do.

4 Q. And what position does the Secretary of  
5 State's Office take on whether it is the final arbiter of  
6 eligibility?

7 A. The Secretary's Office is never the final  
8 arbiter of eligibility because the Secretary's decision  
9 to either certify a candidate or not can be challenged in  
10 court.

11 Q. And did the -- did Mr. Hassan take his  
12 case to court?

13 A. As I recall, he did.

14 Q. And do you recall the outcome of that  
15 case?

16 A. Generally, the outcome of that case was  
17 the court affirmed his ineligibility.

18 Q. His ineligibility, yeah.

19 And so once the Court affirmed his  
20 ineligibility, what did the Secretary of State's Office  
21 do?

22 A. We did not place Mr. Hassan's name on the  
23 ballot for the 2012 presidential election.

24 Q. Is the process you outlined for  
25 presidential candidates generally the same process for

1 other federal candidates seeking ballot access for  
2 congressional or senatorial seats?

3 A. Generally speaking, it's the same for  
4 congressional or senatorial seats.

5 We're also required by law to verify  
6 residence, party affiliation for partisan candidates.

7 Q. And aside from Mr. Hassan, have there been  
8 other federal candidates disqualified based on  
9 constitutional requirements, to your knowledge?

10 A. To my knowledge, I can't recall.

11 Q. Let's walk through, you -- you testified a  
12 few minutes ago about the general process for  
13 presidential primary candidate ballot access. I'm going  
14 to have -- we're going to look at Exhibit P-158.

15 MS. TIERNEY: Which has also been  
16 stipulated into evidence, and we'll -- we'll look at page  
17 2 of that exhibit.

18 Q. (By Ms. Tierney) Do you see that document?

19 A. Yes.

20 Q. And do you recognize it?

21 A. Yes.

22 Q. What is it?

23 A. It's the Major Party Candidate Statement  
24 of Intent for the Presidential Primary.

25 Q. And I'd like to ask you some questions

1 about the form itself first, before we talk about the  
2 candidate who's filled it out.

3 Who created this form?

4 A. Our ballot access team within the  
5 elections division.

6 Q. And how long has this particular form been  
7 in use by the Secretary of State's Office?

8 A. This form has been in use since the 2020  
9 presidential primary paperwork deadlines, and this  
10 particular version of it since June.

11 Q. And I see at the bottom -- are you looking  
12 at the bottom right of the form?

13 A. Yes. That's correct.

14 Q. And does it indicate there when it was  
15 last revised?

16 A. It does, although it's cut off on the  
17 screen that I see.

18 Q. Oh, okay. Well -- there you go.

19 A. Uh-huh.

20 Q. Can you see when it was last revised?

21 A. Yes.

22 Q. When was it?

23 A. June of 2023.

24 Q. And why are these forms revised?

25 A. Well, in this case, our office suite had

1 changed, and so we needed to update the suite number to  
2 ensure we could receive our mail properly.

3 And we also had transitioned to a ".gov"  
4 domain since the 2020 elections; we needed to update the  
5 email address. And we updated the year at the top of the  
6 form.

7 Q. And were those the only changes to the  
8 form, to your knowledge?

9 A. To my knowledge, yes.

10 Q. And so this is the -- aside from the email  
11 address and the suite number, this was the same Major  
12 Party Candidate Statement of Intent for Presidential  
13 Primary that was used in the 2020 cycle?

14 A. Yes.

15 Q. At the top of the form -- let me ask you a  
16 general question about forms.

17 What role does the Secretary of State's  
18 Office play in creating forms that are used by candidates  
19 for ballot access?

20 A. The Secretary's Office creates all forms  
21 that are used for candidates for state and federal office  
22 for ballot access.

23 Q. All right. Turning back to the form  
24 itself.

25 At the top of the form, do you see where

1 it says, "Office Information"?

2 A. Yes.

3 Q. And what is the significance of that  
4 language?

5 A. Well, generally at the top of each of our  
6 ballot access forms, we include information about the  
7 office being sought so that the candidate is aware  
8 they're completing the correct paperwork, but also for  
9 our staff in terms of processing that paperwork and  
10 verifying qualifications.

11 Q. And so underneath that "Office  
12 Information," it says, "Year of Presidential Primary  
13 Election: 2024."

14 You see that?

15 A. Yes.

16 Q. So, presumably, that year was also changed  
17 on this form, right?

18 A. Yes, that's correct.

19 Q. And then it lists the "Political Party"  
20 for the candidate?

21 A. Yes, that's correct.

22 Q. And then there's a section for  
23 "Qualifications for Office."

24 Do you see that?

25 A. I do.



1 Q. And what are the qualifications listed  
2 here?

3 A. The qualifications listed here are: "Age  
4 of 35 Years"; "Resident of the United States for at least  
5 14 years"; and "Natural-born U.S. Citizen."

6 Q. And do you know where those qualifications  
7 came from?

8 A. From the U.S. Constitution.

9 Q. And are you aware there are other  
10 qualifications for the President that are contained in  
11 the U.S. Constitution?

12 A. Yes.

13 Q. I'm going to turn your attention to about  
14 halfway down the form, there's some -- oh, it might not  
15 be blue in yours, it's blue in mine.

16 There's a bolded word that says,  
17 "Signature"?

18 A. Yes.

19 Q. And underneath that, there is a -- it  
20 says, "Applicant's Affirmation."

21 Can you read that affirmation?

22 A. "I intend to run for the office stated  
23 above and solemnly affirm that I meet all qualifications  
24 for the office prescribed by law. Furthermore, the  
25 information provided on this form is, to the best of my

1 knowledge, true and correct."

2 Q. And how does a candidate submitting the  
3 form confirm that affirmation?

4 A. A candidate would sign that affirmation  
5 and have that signature notarized.

6 Q. And how does the Secretary of State's  
7 Office view that affirmation when considering a  
8 candidate's qualifications?

9 A. Can you tell me what you mean by that?

10 Q. Well, that affirmation states that the  
11 person meets "all qualifications for . . . office."

12 So does the Secretary of State's Office  
13 interpret that to mean more qualifications that are  
14 listed on the form?

15 A. Well, qualifications listed on the form  
16 aren't intended to be an exhaustive list of  
17 qualifications, but we do require that every candidate  
18 affirm that they meet every qualification for office  
19 regardless of whether it's listed on the form.

20 Q. So is it fair to say that that affirmation  
21 is like a catchall affirmation?

22 A. I would say that's fair, yes.

23 Q. And do you have similar catchall  
24 affirmations for other nonpresidential candidates on  
25 their candidate statement of intent?

1           A.    Every candidate would sign an affirmation  
2   that they meet all qualifications for the office they're  
3   seeking.

4           Q.    If a candidate checks the boxes on the  
5   form under "Qualifications for Office" and signs the  
6   affirmation, what, if any, additional inquiry does the  
7   Secretary of State's -- make?

8           A.    Our office isn't going to further  
9   investigate that affidavit.  It's on its face complete  
10   and accurate and so, based on that, would certify a  
11   candidate to office -- or, I'm sorry, to the ballot.

12          Q.    And as you've testified a moment ago, a  
13   Colorado voter could challenge that determination of the  
14   Secretary of State, correct?

15          A.    Yes, that's correct.

16          Q.    Are you familiar with the Twenty-Second  
17   Amendment to the United States Constitution?

18          A.    I mean, generally.  I haven't read it  
19   recently.

20          Q.    Okay.  Well, can you state generally what  
21   your knowledge of it is?

22          A.    It would be helpful to see it.

23          Q.    Yeah, yeah.

24                   Well, I'll just represent it to you,  
25   because generally what it says is a President can't hold

1 more than two terms as President.

2 Has the -- do you have any questions or do  
3 you accept my description of the Twenty-Second Amendment?

4 Has the Secretary of State ever received a  
5 statement of intent for a presidential candidate who has  
6 already served two terms as President?

7 A. Not to my knowledge.

8 Q. From, say, Barack Obama or George W. Bush?

9 A. No, not to my knowledge.

10 Q. And what would the Secretary of State's  
11 Office do in that situation?

12 A. Well, I think that knowing that both of  
13 the potential candidates you named have served both  
14 terms, I think that the ballot access team would escalate  
15 that within the office to the administration for  
16 additional guidance.

17 But likely, we would not certify that  
18 candidate to the ballot.

19 Q. When you say elevate to the  
20 administration, give me just a little description of what  
21 that means.

22 A. Sure.

23 So when the ballot access manager or the  
24 ballot access team receive paperwork and there are  
25 questions about whether an eligibility provision is met

1 and it's not clear, we will escalate that through our  
2 legal team within the elections division to the Deputy  
3 Secretary of State for additional guidance.

4 Q. Okay. You testified a few moments ago  
5 about how sometimes if there are eligibility questions,  
6 you engage in dialogue with the candidate.

7 Would you engage in dialogue with  
8 George W. Bush or Barack Obama on that point?

9 A. I think we would seek some guidance from  
10 the Deputy Secretary before corresponding.

11 Q. Okay. All right. Let me ask you some  
12 specific questions about the pieces of this form that  
13 were filled out by the candidate.

14 Who submitted this particular form?

15 A. Donald Trump.

16 Q. And when did the Secretary of State's  
17 Office receive this form?

18 A. If we could scroll to the top.

19 Q. Oh, sorry.

20 There you go.

21 A. We received it on October 11 of 2023.

22 Q. And turning to the "Applicant's  
23 Affirmation" down at the middle of the page, who signed  
24 the form?

25 A. It appears to be Donald Trump.

1 Q. And is the signature properly notarized  
2 there?

3 A. It is.

4 Q. In your reading of this form, has the  
5 candidate verified the "Applicant's Affirmation" at the  
6 middle of the page there, that affirmation that you read?

7 A. Yes.

8 Q. And what did your office do when you  
9 received this form?

10 A. Our office -- the ballot access team  
11 escalated a question to the Deputy Secretary because  
12 there's ongoing litigation with respect to this  
13 applicant's qualifications.

14 Q. And so has your office taken any action  
15 with regard to certifying this candidate to the ballot or  
16 not?

17 A. We have not. We're not at the  
18 certification deadline. And it is our practice that when  
19 there is an ongoing legal challenge to our office's  
20 determination about a candidate's qualification, that we  
21 wait for that outcome.

22 Q. Okay.

23 MS. TIERNEY: Let's turn to page 3 of that  
24 exhibit, which is the next page. There we go.

25 Q. (By Ms. Tierney) Do you recognize this

1 document?

2 A. Yes.

3 Q. And what is this?

4 A. This is the State Party Presidential  
5 Primary Approval form.

6 Q. And what's the purpose of this form?

7 A. The purpose of this form is for the state  
8 party to advise our office that the candidate seeking  
9 party nomination is a bona fide party candidate.

10 Q. And who created this form?

11 A. The ballot access team within the  
12 elections division.

13 Q. And how long has this form been in use by  
14 the Colorado Secretary of State?

15 A. Since 2020.

16 Q. And was it similarly revised this year?

17 A. Yes. We would have revised the suite  
18 number and the email domain as well on this form, and the  
19 date.

20 Q. And at the top, where it says, "Party  
21 Contact Information," what is shown there?

22 A. That's the contact information for both of  
23 Colorado's major political parties.

24 Q. Okay. And so that contact information may  
25 also have been changed since 2020, correct?

1 A. Yes. That's correct.

2 Q. Has the same form been used by the  
3 Secretary of State's Office regardless of the political  
4 party of the Secretary of State?

5 A. Yes. This form has only been used -- this  
6 will be its second presidential primary in use.

7 Q. Okay. And the last presidential primary,  
8 who was the Secretary of State?

9 A. Wayne Williams. Is that right? Am I  
10 correct?

11 Q. Just to confirm, who has the authority to  
12 revise or edit this form?

13 A. The ballot access team within the  
14 elections division.

15 Q. Okay. Now let's talk about the content of  
16 this form in terms of who filled it out.

17 MS. TIERNEY: One moment, Your Honor.

18 Q. (By Ms. Tierney) I'm going to just ask you  
19 a clarifying question on the presidential primary in  
20 2020: Who was the Secretary of State then?

21 A. Jena Griswold was Secretary in 2020.

22 Q. Okay. Okay. Who submitted this form that  
23 you see on your screen?

24 A. Donald Trump.

25 Q. The -- if you look at the bottom of the --



1 well, let me ask you about that.

2 Why do you say Donald Trump submitted this  
3 form?

4 A. That's the candidate listed.

5 Q. And so the information at the bottom of  
6 the form is -- what is the information at the bottom of  
7 the form?

8 A. It appears it was submitted by the -- the  
9 campaign representative for Mr. Trump and signed by the  
10 state party chair.

11 Q. And so does the candidate actually submit  
12 this form as well?

13 A. It's submitted by the candidate's  
14 campaign, typically.

15 Q. Okay.

16 A. Yes.

17 Q. But not submitted by the state party?

18 A. No.

19 Q. Okay. And at the -- if we look at the  
20 bottom half of the page, it says, "State Party Use Only."

21 Do you see that?

22 A. Yes.

23 Q. And it -- can you tell us who is the party  
24 official that submitted this form?

25 A. Dave Williams.

1 Q. And what is his official job title?

2 A. Chair of the state party.

3 Q. I asked that because it -- that was not a  
4 trick question and maybe you can't see it, but it does  
5 say that on the bottom of the form, so well done.

6 A. It's cut off on my screen. I see it now,  
7 yes.

8 Q. Okay. Has this particular form been  
9 modified by any of the persons filling it out from its  
10 original template?

11 A. It does not appear to have been.

12 Q. Okay. And what did your office do when  
13 you received this form?

14 A. We placed this with the other candidate  
15 paperwork for this candidate.

16 Q. What happens if a candidate doesn't submit  
17 this form?

18 A. Then we communicate with the candidate  
19 that this form is required before we can certify them to  
20 the ballot for the presidential primary.

21 Q. And you testified a few minutes ago  
22 about -- that the state party has to approve that the  
23 candidate is a bona fide candidate.

24 Do you remember that testimony?

25 A. Yes.

1 Q. What does it mean to be a bona fide  
2 candidate?

3 A. I don't know what that means to the party.  
4 From our perspective, it means that the  
5 party approves that that candidate represents the party.

6 Q. Okay. What position is the Secretary of  
7 State's Office taking in this litigation?

8 A. It is the Secretary of State's Office  
9 position that the paperwork is complete and final, but  
10 there is a challenge to this candidate's qualification.  
11 And so our office will not certify this candidate to the  
12 ballot until the Court makes its decision.

13 Q. And if this proceeding ultimately results  
14 in a determination that Mr. Trump is eligible to be a  
15 candidate for the Colorado presidential primary, what  
16 will the Secretary of State's Office do?

17 A. The Secretary's Office will certify the  
18 candidate.

19 Q. And similarly, if the outcome of this  
20 litigation is that the case is dismissed without further  
21 guidance from the Court, what will the Secretary of  
22 State's Office do?

23 A. I can't speculate as to that. I think we  
24 need to wait for the Court's outcome before we make a  
25 decision.

1           Q.    Okay.  Ms. Rudy, are you aware of any  
2    threats that the Secretary of State's Office has received  
3    regarding election activity?

4           MR. GESSLER:  Your Honor, I'm going to  
5    object to this.  It's well beyond the scope of what we  
6    were notified as to her testimony, and it's frankly  
7    irrelevant to this case.

8           THE COURT:  What's the relevance?

9           MS. TIERNEY:  Well, the Secretary of  
10   State's Office, I think, has a lot of knowledge about  
11   threats to election officials in the state, and I think  
12   the relevance here is that those threats can be tied and  
13   I will try to tie them to the January -- some of the  
14   January 6 activity.

15          THE COURT:  I'm going to sustain the  
16   objection.  That's outside the scope of this hearing.

17          MS. TIERNEY:  As a housekeeping matter,  
18   Your Honor, I want to move to admit P-158, which is the  
19   document on the screen, which was stipulated into  
20   evidence.  I just didn't move it.

21          THE COURT:  Okay.  I'm sorry.  What was  
22   the number?

23          MS. TIERNEY:  P-158.

24          THE COURT:  Exhibit 158 is admitted.

25                   (Exhibit 158 was admitted into evidence.)

1 MS. TIERNEY: May I have just one moment?

2 THE COURT: Uh-huh.

3 (A pause occurred in the proceedings.)

4 MS. TIERNEY: No further questions,  
5 Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GESSLER:

8 Q. Good morning, Ms. Rudy.

9 A. Good morning.

10 Q. How are you today?

11 A. Good. Thanks.

12 Q. Good.

13 So I'm going to ask you a few questions.

14 I believe I have cross-examined you at  
15 least a few times in the past two decades or so, so I'll  
16 just -- if you don't understand a question that I have,  
17 please just ask me.

18 THE COURT: And make sure to speak into  
19 the microphone, Mr. Gessler.

20 MR. GESSLER: Certainly.

21 Q. (By Mr. Gessler) If you don't understand a  
22 question I have, just please ask me to repeat it.

23 Let me start with -- in preparation today.

24 So you did not speak to any members of the  
25 petitioners' attorney, correct?

1 A. That's correct.

2 Q. Okay. Did you speak about your testimony  
3 with anyone in the Secretary of State's Office?

4 A. I did.

5 Q. And who is that?

6 A. Deputy Secretary Beall.

7 Q. And tell me what your conversation was  
8 with him.

9 A. In what respect?

10 Q. Describe the conversation. What topics  
11 did you discuss?

12 A. We generally discussed the topics that I  
13 could expect to speak about today and --

14 Q. Okay. Did you talk to him about the  
15 Secretary's position or lack thereof of a position with  
16 respect to this litigation?

17 A. We discussed this litigation, and we  
18 discussed my testimony today, yes.

19 Q. Okay. And as part of that discussion, did  
20 you have a discussion with him as to what position you  
21 would describe with respect to the litigation?

22 A. What do you mean by "what position . . .  
23 with respect" --

24 Q. Well, you testified --

25 A. -- "to the litigation"?

1 Q. -- earlier that the Secretary is going to,  
2 you know, wait for the Court's outcome. You also  
3 testified as to the meaning of the form.

4 Did you discuss either of those two issues  
5 with Secretary -- with Deputy Secretary Beall?

6 A. I generally shared with him what my  
7 answers to those questions were, yes.

8 Q. And when you gave your answer -- your  
9 thoughts as to what those answers were, did he tell you  
10 what the -- what perhaps his position was or his thoughts  
11 on that or what the Secretary's thoughts were?

12 A. Apart from saying that he agreed with the  
13 position that I was stating, no.

14 Q. Okay. Did you have any conversations with  
15 the Secretary herself on this issue?

16 A. I did not.

17 Q. Okay. Did you have any conversations  
18 with -- with the director of elections, Judd Choate?

19 A. I did not talk with Judd about this, yes.

20 Q. Okay. Okay. Did Mr. Beall inform you as  
21 to what the topics were going to be for the -- for your  
22 testimony today?

23 A. Yes. Mr. Beall and counsel.

24 Q. Okay. And did he walk through -- did you  
25 provide all of your answers that you anticipated giving

1 today, did you provide those answers to Mr. Beall as  
2 well?

3 A. Yes.

4 Q. Okay. Did he ask you to change your  
5 opinion in any way?

6 A. He did not.

7 Q. Okay. Okay. Let me ask you, you had  
8 testified a little bit earlier about the three methods  
9 for presidential -- for a major party presidential  
10 candidate to get on the ballot.

11 Do you remember that?

12 A. Yes, in a presidential primary.

13 Q. Okay. And you said to get on the -- for  
14 a -- to get on the ballot for a presidential primary,  
15 there was the party nomination process, the petition  
16 process, and then the affidavit-plus-fee process,  
17 correct?

18 A. That's correct.

19 Q. So I will tell you, I -- my read, I didn't  
20 quite understand what -- what do you mean by the party  
21 nomination process?

22 A. That's the process of filing the candidate  
23 affidavit, the party -- party form of bona fide party  
24 candidate, and the application fee.

25 Q. Okay. How is that different from the



1 filing of the affidavit of intent and the fee?

2 A. The third affidavit of intent and the fee  
3 is for a write-in candidate.

4 Q. Okay. For a write-in candidate for the  
5 party nomination?

6 A. That's correct.

7 Q. Okay. Let me ask you this:

8 So the -- and I was just wondering, so the  
9 form -- and we may bring it up -- but the form that --  
10 the statement of intent form, that was created in 2020,  
11 correct?

12 A. That's correct.

13 Q. Okay.

14 A. Well, 2019, ahead of the 2020 --

15 Q. In prepara- --

16 A. -- primary.

17 Q. In preparation.

18 Was there any rule or regulation setting  
19 that -- the contents of that form?

20 A. No.

21 Q. Okay. And you said earlier that the  
22 ballot access team has authority to modify that form --

23 A. That's --

24 Q. -- correct?

25 A. -- correct.

1 Q. Did the ballot access team create that  
2 form?

3 A. They did.

4 Q. Okay. And did they have full authority to  
5 create that form?

6 A. They did.

7 Q. Okay. And so that's -- that form is  
8 essentially created by the ballot access team, correct?

9 A. Yes, that's correct.

10 Q. Okay. And I want to chat with you about  
11 the qualifications, too.

12 So there's a -- I want to chat with you  
13 about the congressional form.

14 Are you familiar with the fact that the  
15 congressional form also requires a person to check three  
16 boxes for eligibility?

17 A. I've not recently looked at the  
18 congressional form. If I could see an example of it,  
19 that would be helpful.

20 Q. Okay. Because I'm afraid of the  
21 technology, I'm going to see if I can describe this to  
22 you.

23 I'm going to represent to you that one of  
24 the boxes that the candidate checks says, "Inhabitant of  
25 State."

1                   Does that refresh your memory, or do you  
2 still need to see the form?

3                   A.    It would be helpful if I could see the  
4 form.

5                   Q.    Fair enough.

6                   MR. GESSLER:  Your Honor, can we take  
7 about a minute break?  I would like to just pull up that  
8 form, please.

9                   THE COURT:  Sure.  While your team is  
10 finding that form, can you --

11                   MR. GESSLER:  Just continue the -- sure.

12                   THE COURT:  -- move to another topic and  
13 then come back.

14                   MR. GESSLER:  Okay.  Just let me . . .

15                   Q.    (By Mr. Gessler)  All right.

16                   THE COURT:  There we go.

17                   MR. GESSLER:  We have it.

18                   Q.    (By Mr. Gessler)  All right.  Do you see  
19 that form in front of you, Ms. Rudy?

20                   A.    Yes.

21                   Q.    Okay.  And that's --

22                   THE COURT:  So this is the write-in form?

23                   MR. GESSLER:  This will work.

24                   Q.    (By Mr. Gessler)  I want you to take a look  
25 at the write-in form.

1 A. Okay.

2 MR. GESSLER: That works fine.

3 Q. (By Mr. Gessler) And the second box says,  
4 "Inhabitant of Colorado," correct?

5 A. The second box under "Qualifications for  
6 Office" says that, yes.

7 Q. Okay. And in order to -- does that mean  
8 that the person has to be an inhabitant of Colorado at  
9 the time they fill out that form?

10 A. We verify that they are at the time they  
11 fill out that form, yes.

12 Q. That they are an inhabitant of Colorado at  
13 that time?

14 A. Yes.

15 Q. Okay. And is that the -- would you agree  
16 with me, then, that that's the Office's interpretation of  
17 federal requirements to qualify for the ballot, that they  
18 have to be an inhabitant of Colorado?

19 A. I don't think that's the sole  
20 qualification for that office.

21 Q. I understand.

22 But it's the Office's interpretation that  
23 that's one of three required qualifications for them to  
24 be on the ballot; is that correct?

25 A. Yes.

1           Q.    Okay.  And would it be fair to say, then,  
2   for the presidential candidate form, it's the Office's  
3   interpretation that to qualify, the candidate has to fill  
4   out the three requirements:  Specifically that they're a  
5   natural-born citizen, 14-year resident, and 35 years of  
6   age?

7           A.    Yes.  The form must be fully completed,  
8   each of the boxes checked, and the affidavit affirming  
9   that they meet all qualifications for office must be  
10  signed and notarized.

11          Q.    Okay.  And the statutory basis for those  
12  three requirements is -- is there a statutory basis for  
13  those three requirements in Colorado law that you can  
14  point to?

15          A.    Are we talking about the presidential form  
16  now?

17          Q.    Presidential form.

18          A.    Yes.  There is a statute that tells us  
19  that we give effect to the federal qualifications for  
20  office.

21          Q.    Okay.  And -- and is that the same statute  
22  that you rely on for this -- the qualifications for this  
23  write-in form?

24          A.    If you could bring the statute back up  
25  again, please.

1 Q. You had said there was a federal  
2 statute -- I'm sorry, there was a state statute.

3 Can you tell me what state statute that  
4 is?

5 A. I don't recall the specific citation, but  
6 all of the qualifications and requirements for the  
7 presidential primary are contained within Article 12 --  
8 I'm sorry, within Part 12 of Article 4.

9 Q. Okay.

10 A. Beginning with 1-4-1201.

11 Q. Okay. So it's the 1-4-120- -- the 1201,  
12 the 12 series of statutes that set forth the statutory  
13 basis for those requirements?

14 A. That's correct.

15 Q. Okay. And then -- and then for these  
16 three requirements for the write-in candidate, I'm going  
17 to -- for the United States Representative candidate,  
18 where it says: At least -- I think that says 25 years  
19 old, inhabitant of Colorado, and then the third item.

20 Is there Colorado statute that requires  
21 you to include -- requires the Office to include those  
22 three as well?

23 A. I don't recall off the top of my head, but  
24 the provisions for becoming a candidate in Colorado for  
25 Congress or Senate are set out in a different area of the

1 law.

2 Q. Okay. Is it the Office's practice that  
3 you need a state statute to include those three, or you  
4 can just -- or you look only to the U.S. Constitution?

5 A. The Office is required to certify eligible  
6 candidates to the ballot, and so wherever those  
7 eligibility requirements are set out is where we look.

8 Q. Okay. And so that's the Office's  
9 attempt -- or I should -- that's the Office's approach in  
10 establishing what the qualifications are for a candidate:  
11 Creating that form with those three boxes?

12 A. Again, that's not intended to be an  
13 exhaustive list of qualifications for office. But yes,  
14 we list the primary qualifications for office, and then  
15 each candidate signs an affidavit that they meet every  
16 qualification for office.

17 Q. Okay. So there could be more  
18 qualifications for this affidavit of intent for a  
19 write-in designation that's -- that are not on this form?

20 A. There could be.

21 Q. Okay. And you're saying that's -- so  
22 that's the intent, and it has been the intent of the  
23 Office since you've been there?

24 A. Yes.

25 Q. Okay. And -- and the basis for saying

1 that that's the intent is the -- is the affidavit  
2 write-in, that's -- what's the evidence that you are  
3 relying upon to say it's the intent: Is it your memory,  
4 or are you able to point to something else?

5 A. I've worked in the Office for 17 years,  
6 and that's been the practice since I have worked there.

7 Q. Okay. The practice has been for the form  
8 to not necessarily include -- the form itself to not  
9 necessarily list all of the requirements for an  
10 officeholder; is that correct?

11 A. That's correct. In the past, the form  
12 required the candidate to list their qualifications for  
13 office. The inclusion of checks -- checkboxes was  
14 intended to help candidates out to identify their  
15 specific qualifications.

16 Q. Okay. Can you identify any other forms in  
17 the Office that have requirements but that are not -- but  
18 they are -- that do not list all of the requirements on  
19 the form itself?

20 A. As I sit here now, no. Our office  
21 produces quite a number of forms.

22 Q. Okay. And you produce those forms to be  
23 able to provide guidance for a candidate, correct?

24 A. We produce those forms to provide guidance  
25 for candidates, campaigns, parties, voters. Our office



1 produces quite a number of forms.

2 Q. Do you produce those forms to be binding  
3 legal authority as well?

4 A. I'm sorry, what do you mean by that?

5 Q. Do you produce those forms to be binding  
6 legal requirements for candidates as well?

7 A. Binding --

8 Q. So is the information required to be  
9 filled out required for candidates under law?

10 A. In order to gain ballot access in  
11 Colorado, a candidate must complete fully their paperwork  
12 before they submit it.

13 Q. Okay. Let's talk about going behind the  
14 paperwork.

15 So you're familiar with the controversies  
16 involving the natural -- the natural-born citizenship for  
17 President Barack Obama when he ran in 2012; is that  
18 correct?

19 A. I read the news.

20 Q. Okay. Did that rise to the level for the  
21 Office to investigate whether President Barack Obama was,  
22 in fact, a natural-born citizen?

23 A. Our office never received any formal  
24 complaints or request to consider that information.

25 Q. Okay. So that wasn't quite my question.

1                   You earlier said that if you have  
2 affirmative knowledge that a candidate does not meet  
3 certain requirements, you will keep that candidate off  
4 the ballot, correct?

5                   A.    Correct.

6                   Q.    Okay.  And so if someone comes to you and  
7 says, "I have evidence that this candidate is not 35 --  
8 is not 35 years old," will you keep that candidate off  
9 the ballot?

10                  A.    We would escalate that to the Deputy  
11 Secretary for guidance.

12                  Q.    Okay.  And do you know what the criteria  
13 are that the Deputy Secretary of State would follow for  
14 that guidance?

15                  A.    If we have affirmative information that a  
16 candidate is ineligible, it is the Office's view that the  
17 Secretary can refrain from putting that candidate on the  
18 ballot.

19                  Q.    Okay.  So if I -- if someone were to come  
20 up and say, "I have affirmative evidence, here's --  
21 here's evidence that the -- this particular candidate is  
22 not 35 years old," what do you do with that evidence?

23                  A.    I can't speculate as to a hypothetical,  
24 not knowing what that evidence is.  That -- that would  
25 have to be the discussion with the Deputy Secretary.

1 Q. Okay. And then the Deputy Secretary would  
2 make that decision as to the quality of the evidence?

3 A. The Deputy Secretary, the Secretary would  
4 advise the Division as to the best manner to proceed.

5 Q. Okay. And the Division would follow that  
6 advice, correct?

7 A. That's correct.

8 Q. Okay. So the Deputy Secretary of State or  
9 Secretary would instruct the Division on how to -- how to  
10 proceed, correct?

11 A. That's correct.

12 Q. Okay. And -- so the Secretary and Deputy  
13 Secretary themselves would sort of personally -- would  
14 evaluate that -- evaluate the quality of the information  
15 that you received, correct?

16 A. The ballot access team would seek that  
17 guidance from the Deputy Secretary, that's correct.

18 Q. Okay. And do you know whether or not the  
19 Deputy Secretary of State and the Secretary of State  
20 would then evaluate the quality of that information?

21 A. Again --

22 Q. I'm going to ask you to hold off for a sec  
23 because we have sirens. It's been the pattern and  
24 practice in this courtroom.

25 Do you need me to repeat my question?

1 A. Please.

2 Q. Okay. So do you know the criteria that  
3 the Secretary or the -- and the Deputy Secretary of State  
4 would use to evaluate the quality of that information?

5 A. Again, I can't speak to a hypothetical  
6 situation.

7 Q. I'm not asking you to speak to a  
8 hypothetical situation.

9 I'm asking if you know what criteria they  
10 use to evaluate that information?

11 A. Well, since we're not in the situation  
12 where we're applying those criteria, I can't speak to  
13 what criteria they would use.

14 Q. Okay.

15 MR. GESSLER: Now, let's go back to the --  
16 that write-in candidate form, please.

17 Q. (By Mr. Gessler) Okay. So if I fill  
18 out -- let's say I decide to write for -- have a  
19 temporary bout of insanity and I decide to run for U.S.  
20 Congress as a write-in candidate. And I fill out the  
21 form and I say, "I am not an inhabitant of Colorado, but  
22 I will become an inhabitant at the time I'm elected."

23 Would you allow me to run, would the  
24 Office allow me to run for office?

25 A. We would escalate that to the Deputy

1 Secretary to have a discussion.

2 Q. Okay. I'm going to represent to you that  
3 the U.S. Constitution requires, explicitly requires a  
4 member of Congress, as a qualification, to hold office at  
5 the time they are elected.

6 With that information, is -- does that  
7 change your answer?

8 A. Again, I can't speak to hypotheticals. We  
9 would escalate that for a discussion with the Deputy  
10 Secretary before making a decision.

11 Q. Okay. And it's the Secretary or the  
12 Deputy Secretary that would make that decision?

13 A. We would seek their guidance before making  
14 a final determination, yes.

15 Q. Okay. For Hassan, if I remember  
16 correctly, you testified that Hassan never submitted the  
17 paperwork, the statement of intent.

18 Correct?

19 A. Yes, that's my recollection.

20 Q. And that was a statement of intent for a  
21 write-in candidate, correct?

22 A. I don't recall specifically. Would it be  
23 possible to pull the letter back up?

24 Q. Sure.

25 I will represent to you that he was for a

1 write-in candidate.

2 Will you accept that representation, or  
3 would you like to take a look at the letter?

4 A. I mean, I would prefer to take a look --

5 Q. That's fine.

6 A. -- but I will accept that.

7 MR. GESSLER: Could we pull that letter  
8 up, please. P-107.

9 Q. (By Mr. Gessler) Just tell us if you need  
10 to scroll down.

11 A. Yes. Could you scroll down to the second  
12 paragraph, please.

13 I don't see that it's for a write-in  
14 candidate. Honestly, I don't recall.

15 Q. Okay. Do you recall him being an  
16 unaffiliated candidate?

17 A. Yes. He was an unaffiliated candidate for  
18 the presidential election in November of 2012.

19 Q. Okay. And he refused to submit the  
20 paperwork, correct?

21 A. That's correct.

22 Q. Okay. So that did not -- as a result, you  
23 did not actually have to evaluate the paperwork because  
24 it was never submitted to your office, correct?

25 A. We did not have to evaluate the paperwork,

1 but we corresponded with him with respect to his  
2 qualifications.

3 Q. Okay.

4 MR. GESSLER: No further questions,  
5 Your Honor.

6 THE COURT: Do you have some questions?

7 MS. RASKIN: I do have some questions.

8 THE COURT: Okay.

9 CROSS-EXAMINATION

10 BY MS. RASKIN:

11 Q. Good morning, Ms. Rudy. I'm Jane Raskin.  
12 I represent the Colorado Republican Party.

13 I just want to go back and make sure I  
14 understand the procedure you described your office is  
15 following.

16 When it -- in connection with a  
17 presidential primary election, it receives paperwork  
18 under what I think you described as the party nomination  
19 process --

20 A. Yes.

21 Q. -- right?

22 So in that instance, as I understand it,  
23 you typically will receive the -- the Major Party  
24 Candidate Statement, the one you went over earlier. I  
25 think it was Exhibit 2 -- 158.

1                   And that contains as an attachment, as I  
2 understand it, a document that's called the State Party  
3 Presidential Primary Approval?

4                   A.    We receive, for presidential primaries for  
5 major party candidates, the candidate statement of  
6 intent, the party approval form stating that the  
7 candidate is a bona fide party candidate, and the filing  
8 fee.

9                   Q.    Okay.  So you now have those two documents  
10 in hand, say.

11                   What do you do -- and those forms, as --  
12 as you have described, contain an affirmation by the  
13 candidate that he satisfies the requirements of law for  
14 the office he's seeking access to the ballot for, right?

15                   A.    Yes.

16                   Q.    And they include specifically three boxes  
17 for the candidate to check, to which he affirms that he's  
18 35 years old and a natural-born citizen and he's lived in  
19 the country for 14 years, right?

20                   A.    That's correct.

21                   Q.    So you get that document and you get the  
22 companion document, which is the party's certification  
23 that he's bona fide candidate of the party.

24                   What do you do to verify the candidate's  
25 affirmation that he is, in fact, qualified to hold the



1 office for which he's seeking access to the ballot?

2 A. The ballot access team doesn't do any  
3 investigation beyond the -- the review of the paperwork  
4 to ensure it's accurate and complete, and to review the  
5 party paperwork to ensure that the "Approved" box, as  
6 opposed to the "Disapprove" box, is checked.

7 Q. And if those boxes are all checked, the  
8 paperwork is in order, you certify that candidate for  
9 inclusion on the ballot, correct?

10 A. Well, it depends on where we are in the  
11 timeline. We don't certify candidates to the ballot  
12 until January 5.

13 Q. Okay. So you may get the paperwork early,  
14 but you wait until shortly before the certification date  
15 to actually complete the certification?

16 A. We certify on the certification deadline.

17 Q. Okay. And I assume that is, in part, to  
18 allow time for other interested parties to challenge the  
19 form if they want to, as you've described?

20 A. What is in time? I'm sorry, I don't  
21 understand.

22 Q. So during the period of time after which  
23 you've received the major candidate statement and the  
24 party certification that the candidate's bona fide a  
25 candidate of the party, you have said that other people,

1 whether it's a competing candidate or another party or  
2 another elector, can come in and make a complaint.  
3 Either informally, say, "Hey, look, I think this guy, you  
4 know, wasn't born in the United States." Or,  
5 alternatively, can actually file a petition under 113.

6 Right?

7 A. That's correct.

8 Q. So before you certify the ballot, you have  
9 this time period where those issues may be raised and may  
10 be resolved?

11 A. Those issues may be raised, but there are  
12 also other deadlines within that time period before  
13 certification for petitions and for the affidavit for  
14 write-in. Those deadlines come a little bit later.

15 Q. No, I understand.

16 But I'm just talking at this point about  
17 the process for a candidate nominated by a major party.

18 A. I understand, but you asked why we  
19 wouldn't certify until the deadline.

20 Q. Oh, I see -- oh, so in other words, what  
21 you're saying is, you certify all of the candidates the  
22 same day?

23 A. That's correct.

24 Q. So the others may implicate that decision  
25 even if you already have the major party candidate; is

1 that . . .

2 A. Only major parties may be certified for  
3 the presidential primary ballot.

4 But there are multiple ways to be placed  
5 on the ballot, and those deadlines differ, so we certify  
6 all candidates for both major party presidential  
7 primaries on the same date.

8 Q. Okay. So let's go back to the point at  
9 which you receive the paperwork, and understanding you  
10 don't certify it until the deadline.

11 If nobody comes in with any, what you've  
12 described, I think, is affirmative information that  
13 there's something incorrect in the certification form,  
14 and no one has filed a 113, and you ultimately reach the  
15 certification date, it's the Secretary's duty to certify  
16 that candidate to the ballot, correct?

17 A. That's correct.

18 Q. Okay. So when you were discussing earlier  
19 that you got some forms and you verify the info as  
20 required by state law, you were talking about candidates  
21 for state office, right?

22 A. We review every form that our office  
23 receives. State law requires us to verify information  
24 for state candidate forms, and for presidential primary  
25 elections, we review the information on the affidavit

1     itself.

2                     We're also required to verify that the  
3 party has completed the party approval form and has  
4 approved the candidate as a party representative.

5             Q.     Right.

6                     But for federal candidates, as opposed to  
7 state candidates, you don't have an equivalent process to  
8 check any databases to determine residency or where the  
9 person was born or things of that nature, as you do with  
10 state candidates?

11             A.     For presidential candidates, that's  
12 correct.

13             Q.     Okay.    So when you testified earlier  
14 that -- I think what you said was that the Secretary is  
15 never the final arbiter of whether a candidate is  
16 eligible to be listed on a ballot.

17                     That's not the case if there is no  
18 challenge made to the -- the request to be included,  
19 correct?

20             A.     There's always an opportunity for the  
21 Secretary's determination to be challenged in court; and  
22 in that case, the Court is the final arbiter.

23             Q.     Sure, there's an opportunity.

24                     But if nobody places a challenge, nobody  
25 complains, nobody files a 113, then the final decision is

1 made by the Secretary?

2 A. That's correct.

3 Q. Okay. Just one more question.

4 Has your office, to your knowledge, ever  
5 refused to certify a candidate for inclusion on the  
6 presidential primary ballot, understanding that it has  
7 been an issue for a short period of time?

8 A. Well, there are candidates that we've  
9 corresponded with, you know, ahead of the 2020 election  
10 who failed to complete the paperwork.

11 We've corresponded with a candidate ahead  
12 of this primary election, and they've failed to complete  
13 the proper paperwork.

14 Q. Has there ever been an instance in which a  
15 candidate has completed the paperwork that your office  
16 has created that you have disqualified in a presidential  
17 primary election?

18 A. Not to my knowledge.

19 MS. RASKIN: That's it. Thank you very  
20 much.

21 THE COURT: Mr. Kotlarczyk, proceed.

22 MR. KOTLARCZYK: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. KOTLARCZYK:

25 Q. Just a couple areas I wanted to follow up

1 on, Ms. Rudy.

2 You testified about Section 113 on your  
3 direct.

4 Do you recall?

5 A. I do.

6 Q. And you were asked some questions about  
7 when there are -- when the official charged with the duty  
8 has committed or is about to commit a breach or neglect  
9 of duty or other wrongful act.

10 Do you recall those questions?

11 A. Yes.

12 Q. And you were asked specifically about when  
13 a -- when it might arise when a 113 will be brought  
14 before a Secretary -- before an election official,  
15 including possibly the Secretary, has committed a breach  
16 or neglect of duty.

17 Do you recall that?

18 A. Yes.

19 Q. In the context of certifying a ballot on a  
20 certification date, is it -- do you have an understanding  
21 as to whether Section 113 challenges arise before the --  
22 before an election official exercises their duty to  
23 certify ballot contents, or whether the challenge would  
24 come afterwards?

25 A. There are a lot of provisions in the

1 candidate statutes that allow a challenge to a  
2 candidate's qualification. If -- if that candidate, for  
3 example, goes on petition, there are very specific  
4 provisions that allow challenges to the Secretary's  
5 determination.

6 So typically, those challenges arise  
7 under -- under the statute that the candidate has  
8 followed to achieve ballot access.

9 Q. And are sometimes challenges brought to  
10 whether a candidate will be listed on a ballot prior to a  
11 ballot certification deadline?

12 A. Yes.

13 Q. And can those challenges be brought  
14 under -- or have those challenges been brought under  
15 Section 113?

16 A. Yes. I believe some have.

17 Q. You were -- you've also been asked some  
18 questions about instances where the Secretary of State's  
19 Office has not -- has or has not certified a candidate to  
20 the -- a presidential candidate specifically to the  
21 ballot.

22 Do you recall those questions?

23 A. Yes.

24 Q. Do you recall in 2012 -- and so we're  
25 talking before primary ballots; this would be a general

1 election ballot -- do you remember a candidate with the  
2 last name of Wilson?

3 A. Yes, generally.

4 Q. Do you recall a dispute around Mr. Wilson  
5 and whether he would be placed on the presidential ballot  
6 as an unaffiliated presidential candidate?

7 A. Yes. As I recall, Mr. Wilson failed to  
8 complete part of the paperwork properly, and we  
9 communicated with him and ultimately chose not to place  
10 him on the ballot based on his failure to fully complete  
11 the paperwork.

12 Q. Okay. And what about in 2016 -- which,  
13 again, this would have been for the general election,  
14 not for the primary -- a candidate by the name of  
15 Denamore [phonetic]?

16 A. Yes.

17 Q. Could you tell the Court what you remember  
18 about that situation?

19 A. Similar to Wilson, Denamore, as I recall,  
20 did not fully complete the paperwork even after our  
21 office corresponding with them and we did not certify  
22 them to the ballot.

23 Q. And I believe you just testified a few  
24 moments ago about an instance that occurred in this  
25 election cycle for the presidential primary ballot.



1                   Could you describe a little more the  
2                   circumstances around that?

3                   A.    Yeah.  We received candidate paperwork for  
4                   Joseph Maldonado.  And the paperwork was not on the  
5                   correct form.  We hadn't updated and published the form  
6                   yet.  It wasn't properly notarized.  It wasn't signed by  
7                   the candidate himself.

8                   And so we returned the filing fee to  
9                   that -- that person and advised them that in order to  
10                  seek access to the ballot, they needed to complete the  
11                  proper paperwork and -- and that included the party --  
12                  the party approval paperwork as well.

13                  Q.    Okay.

14                  MR. KOTLARCZYK:  Your Honor, that was it  
15                  for my questioning.

16                  I know the Court had some areas designated  
17                  that wanted to hear from a representative from the  
18                  Secretary of State's Office on.  This is the only  
19                  will-call witness any party has listed from the Secretary  
20                  of State's Office, so I wanted to be sure that the Court  
21                  had any opportunity to ask Ms. Rudy any questions.

22                  THE COURT:  Why don't we finish redirect.  
23                  And if my question isn't addressed, then we'll -- I could  
24                  ask it.

25                  MR. KOTLARCZYK:  Thank you, Your Honor.

1 MR. GESSLER: And, Your Honor, I'm going  
2 to have one or two follow-up questions. I think we,  
3 respectfully, may have gone out of order based on the  
4 posture of the parties, but if I could just have an  
5 opportunity after Ms. Tierney is done, I would appreciate  
6 that.

7 THE COURT: Why don't you do yours so that  
8 then she can --

9 MR. GESSLER: That's fine.

10 THE COURT: -- wrap up with the redirect.

11 RECROSS-EXAMINATION

12 BY MR. GESSLER:

13 Q. Ms. Rudy, just very quickly.

14 For Mr. Wilson, Denamore, and Maldonado,  
15 all of those were rejected based on their failure to  
16 complete the proper paperwork; is that right?

17 A. Yes, that's correct.

18 Q. Okay. In your experience, has there ever  
19 been a presidential candidate who has completed the  
20 proper paperwork, yet been kept off the ballot by your  
21 office?

22 A. As I sit here today, I can't think of a  
23 specific example, no.

24 Q. Okay.

25 MR. GESSLER: Thank you.

1 REDIRECT EXAMINATION

2 BY MS. TIERNEY:

3 Q. Ms. Rudy, you have answered some questions  
4 about -- from Mr. Gessler about the forms in the Office.  
5 I just want to follow up on that briefly.

6 He asked you who generally drafts the  
7 forms, and I think you said the ballot access team.

8 Those forms are then reviewed by somebody  
9 else in your office for compliance with the law, correct?

10 A. Our legal team may take a look at the  
11 forms if there are substantive legal changes to those  
12 forms, so if qualifications have changed or if it's the  
13 first instance of a form. But if we're updating  
14 addresses, things like that, it -- it will just be the  
15 ballot access team.

16 Q. But the first time a form is created or if  
17 substantive changes are made, there is a further review  
18 of the form beyond the ballot access team?

19 A. Yes, that's correct.

20 Q. You also -- just want to follow up on  
21 the -- the -- confirming that your office, as you  
22 testified on direct examination, follows both state and  
23 federal law when determining candidate eligibility?

24 A. Yes, that's correct.

25 Q. And even if the federal qualifications may

1 not be spelled out elsewhere in state statute, correct?

2 A. Yes, that's correct.

3 Q. And on direct examination, we also had a  
4 colloquy about the Twenty-Second Amendment and what your  
5 office would do if George W. Bush or Barack Obama  
6 submitted a statement of intent. And you testified at  
7 that time that you would escalate that.

8 What -- and Mr. Gessler, I think, asked  
9 you some questions about what that -- what "escalating"  
10 means.

11 In that situation, when you would escalate  
12 that question, if it were to be determined by the Office  
13 that the -- George W. Bush or Barack Obama was ineligible  
14 based on federal constitutional qualifications, would you  
15 keep them off the ballot?

16 A. If that was the determination, yes.

17 Q. And conversely, if, for some reason,  
18 somebody -- you kept them off the ballot and somebody  
19 challenged that eligibility or the Secretary's  
20 determination to keep them off the ballot and a court  
21 decided that they should be placed on the ballot, what  
22 would your office do?

23 A. We would certify the name to the ballot.

24 MS. TIERNEY: I have nothing further.

25 /////

1 EXAMINATION

2 BY THE COURT:

3 Q. So, Ms. Rudy, you can -- if you don't know  
4 the answer to this, it's totally fine.

5 But what would you do if -- well, first of  
6 all, is it your understanding that if the Secretary of  
7 State's Office, the ballot access team all the way up to  
8 the Secretary of State, wanted to add a checkbox for --  
9 to address the Twenty-Second Amendment so it said, you  
10 know, You haven't been -- you haven't been President more  
11 than two terms, would that be within -- is your  
12 understanding something that the Secretary of State's  
13 Office could do?

14 A. Yes.

15 Q. And then my other question is similar.

16 If -- if Barack Obama were to -- or  
17 President Clinton were to submit a statement of intent  
18 and check all the -- well, check the boxes that are on  
19 there, regardless of what they are, and sign it, and  
20 nobody filed a lawsuit, in your estimation -- well, just  
21 what would the process be given that presumably whoever's  
22 reviewing that would know that President Clinton had  
23 already been President twice?

24 A. Again, it's hard to speak to  
25 hypotheticals, but certainly the ballot access team would

1 escalate that through the legal team to the Deputy  
2 Secretary for guidance. But given that that is an  
3 objective, knowable fact, it is unlikely that we would  
4 certify that candidate's name to the ballot.

5 THE COURT: Okay. Did anybody have any  
6 follow-up questions to mine?

7 MR. GESSLER: Of course, Your Honor.

8 FURTHER EXAMINATION

9 BY MR. GESSLER:

10 Q. Ms. Rudy, I just want to ask you a  
11 question.

12 So -- so the Court asked you a question,  
13 and you said -- with respect to the term limit. And you  
14 said if it's an objective, knowable fact, you would feel  
15 comfortable or you would predict that it would be likely  
16 that the Office would not allow that person to appear on  
17 the ballot.

18 Is that correct?

19 A. In the situation that we discussed, yes,  
20 that's correct.

21 Q. Right. And because the two-term limits,  
22 that's an objective, knowable fact, correct?

23 A. Yes. We know that they've served two  
24 terms.

25 Q. Right. So you know this case is about the

1 Fourteenth Amendment, correct?

2 A. That's correct.

3 Q. And is it your understanding that Congress  
4 can remove any disability to holding office under the  
5 Fourteenth Amendment?

6 A. I understand that.

7 Q. Okay. And would you agree with me that  
8 sitting here today, even if a court, whether in Colorado  
9 or elsewhere, were to hold that President Trump was  
10 disqualified, even in that highly unlikely situation,  
11 would you agree with me that it is not an objective,  
12 knowable fact as to whether or not Congress would, in the  
13 future, remove that disability?

14 MS. TIERNEY: Objection, Your Honor. I  
15 don't think the witness can testify to that.

16 THE COURT: I'll let her testify to the  
17 extent she knows the answer, but she's not designated as  
18 an expert on the subject.

19 A. I really can't speak to how our office  
20 would handle that situation.

21 Q. (By Mr. Gessler) Okay. Let me ask you  
22 this:

23 Would you agree with me that it's not an  
24 objective, knowable fact, sitting here today, how  
25 Congress will react in any way between now and the

1 presidential election in 2024?

2 A. I would say that, as with any area of law,  
3 it's impossible to know how a legislative body will act  
4 looking into the future.

5 Q. Okay.

6 A. I can't speak to how they will behave.

7 MR. GESSLER: Great. Thank you very much.

8 THE COURT: Does anybody else have any  
9 follow-ups?

10 MR. KOTLARCZYK: No, Your Honor.

11 MS. TIERNEY: No, Your Honor.

12 MS. RASKIN: No, Your Honor.

13 THE COURT: Okay. Great.

14 Thank you so much for your testimony,  
15 Ms. Rudy.

16 THE WITNESS: Thank you.

17 THE COURT: Am I correct in understanding  
18 that Ms. Rudy was the petitioners' last witness?

19 MS. TIERNEY: Your Honor, we -- thank you,  
20 Your Honor.

21 We have one witness who is testifying out  
22 of order on Friday. That's Mr. Heaphy.

23 THE COURT: Okay.

24 MS. TIERNEY: And we also have some  
25 exhibits that we are reworking to submit, the January 6



1 findings in particular, so that we are submitting only  
2 those Your Honor has found to be admissible to clean up  
3 the record a little bit.

4 And then we may want to highlight  
5 additional documents that are already admitted into  
6 evidence that we might submit.

7 But other than those three items,  
8 Mr. Heaphy, the January 6 findings, and some additional  
9 highlighting, we are completed.

10 THE COURT: Okay. Mr. Gessler, do we have  
11 anything we need to discuss before you call your first  
12 witness?

13 MR. GESSLER: Yes, Your Honor.

14 We would like to move for a directed  
15 verdict. We understand that Mr. Heaphy is going to be  
16 testifying on Friday, but it's our understanding that  
17 he's testifying at the request of this Court specifically  
18 for the admissibility of the January 6th Report, and for  
19 purposes of our directed -- our motion for directed  
20 verdict, we will assume that the January 6 Report is  
21 fully admissible.

22 And so we would like to move for directed  
23 verdict and have the opportunity to make that case, Your  
24 Honor.

25 THE COURT: Okay. Are you prepared to do

1 it right now?

2 MR. GESSLER: I am, indeed.

3 THE COURT: Well, good.

4 MR. GESSLER: Thank you, Your Honor.

5 So we move for directed verdict under  
6 Rule 50 here, and we are moving on very focused grounds.  
7 Specifically with respect to the -- whether or not  
8 President Trump incited anything under the Brandenburg  
9 standards under the First Amendment.

10 And so basically for purposes of this, we  
11 are accepting everything that the petitioners have  
12 provided in evidence, as well as we're accepting for --  
13 obviously for limited purposes, the admissibility of the  
14 January 6 Report.

15 So I just want to walk through the  
16 evidence, what you've received, apply what our very  
17 straightforward and well-established legal standards, and  
18 we believe this case warrants dismissal at this point  
19 because petitioners have not made out their case on this  
20 issue.

21 So as the Court knows, there have been a  
22 number of arguments raised with respect to Section 113  
23 and 1204. This directed motion is not involving that.

24 There have been a number of arguments  
25 we've presented with respect to the interpretation of

1 Article 3 -- I'm sorry, Section 3 of the Fourteenth  
2 Amendment. This directed motion is not focused on that.

3 What it is focused on is the Brandenburg  
4 standards, the definition of incitement.

5 Our argument under Section 3 is that  
6 President Trump has to engage in an insurrection.  
7 Petitioners have argued that incitement can constitute  
8 engage. Although for overall purposes, we don't accept  
9 that, we disagree with that argument, for purposes of the  
10 directed motion, we will operate on that premise.

11 So the evidence that the Court has  
12 received so far and in totality has been the January 6  
13 Report or portions of the January 6 Report.

14 It received evidence from Officer Hodges,  
15 and he testified to activities, the violence and things  
16 that happened at the Capitol. He did not testify to  
17 President Trump's actions.

18 Representative Calwell [sic], he testified  
19 to activities that happened at the Capitol as well, from  
20 his perspective. He did not testify to President Trump's  
21 activities beyond simply saying he heard the speech. And  
22 Representative Calwell, of course, testified to things in  
23 prior -- in prior years.

24 Mr. Pingeon testified -- again, very  
25 similar to Officer Hodges -- activities at the Capitol.

1           You have Professor Banks, who testified as  
2 to what President Trump's authorities were to mobilize  
3 the National Guard on January 6. He did not testify to  
4 President Trump's actions at all.

5           You have Professor Magliocca, who  
6 testified as to the meaning of Section 3. He did not  
7 testify to President Trump's actions. And importantly,  
8 he did not testify as to the meaning of intent or the  
9 applicability of the Fourteenth Amendment, so his  
10 testimony for purposes of this motion is -- is not  
11 relevant.

12           And you heard from Ms. Rudy, who testified  
13 as to the Secretary of State's authority. Of course,  
14 much different than President Trump's actions.

15           So basically there's two -- two things:  
16 One is information from the January 6 Report, and the  
17 second is Professor Simi's -- Professor Simi's testimony  
18 with respect to far right-wing extremists.

19           Neither one of those shows that  
20 President Trump, in any manner, in any way, incited an  
21 insurrection, incited violence, incited a riot. Not at  
22 all. Under the well-established Supreme Court standards  
23 of *Brandenburg v. Ohio*.

24           This case is entirely, petitioners' case  
25 is entirely a case about President Trump's speeches, his

1 speech, his Twitter, to video. That's the entire body of  
2 their evidence, and that's the entire body of evidence  
3 from the January 6 Report.

4 They don't allege that President Trump  
5 was -- you know, had meetings with the Proud Boys or  
6 Three Percenters. They don't allege that he, you know,  
7 carried a knife or a rifle or marched at the head of a  
8 column towards the Capitol. They don't argue that he  
9 engaged in any of those sort of physical overt actions.

10 It is all speech. That's the entire body  
11 of their case.

12 And if you remember, the petitioners sort  
13 of had this chart up here towards the end of  
14 Professor Simi's testimony, and he talked about this  
15 speech and that speech -- oh, there it is, over in the  
16 corner there. All of that stuff that President Trump  
17 did. And, of course, they sort of have a pejorative:  
18 Memory A, the punch in the face or the body slam or the  
19 stand back and stand by.

20 But those are all things that  
21 President Trump said. Every one of them is about him  
22 saying something or not saying something. He didn't  
23 condemn activities in Georgia or Charlottesville. He  
24 didn't -- didn't say something. So it's all speech.

25 We've submitted the speech standards under

1 Brandenburg v. Ohio, but I'm going to talk briefly -- I  
2 don't want to be too pedantic, but I'm going to talk  
3 about some of the applicability, okay? And particularly  
4 Professor Simi's testimony.

5 So Professor Simi was very clear. He  
6 testified that he was not opining about President Trump's  
7 intent. He said: I'm not in President Trump's head. I  
8 don't know what his intent is.

9 He said, What I can say is that I think  
10 his behavior is characteristic of communications with  
11 right-wing, far-right-wing extremist groups. And he was  
12 very clear that President Trump's speech was interpreted  
13 in a particular way by these right-wing extremist groups.

14 And as you remember, I questioned him.  
15 You know, we had all these sort of fight or fight in the  
16 streets from figures, political figures other than  
17 President Trump.

18 And I asked him: Well, were those  
19 right-wing extremist communications?

20 And he was very clear: It depended. It  
21 depended upon the relationship, the patterns of behavior  
22 and things like that as to how right-wing extremists  
23 would interpret the comments.

24 So really his testimony was,  
25 President Trump said stuff and right-wing extremists

1 interpreted it in a certain way. And specifically when  
2 he said right-wing extremists, he referred to those three  
3 groups.

4 He also said that -- so the  
5 characteristics of these communications are in common  
6 with normal political speech. He talked about the  
7 communication methods. You know, what he called  
8 doublespeak and front door/back door.

9 And I'm sure he made us all feel  
10 uncomfortable that when we go in for a job interview  
11 versus when we talk to our significant other, we are  
12 engaging in doublespeak, or maybe front stage/back stage,  
13 I don't -- but one of those methodologies. So he  
14 testified about that.

15 But the important thing he said was that  
16 all of these forms of communication, all these methods of  
17 communication, you know, call-and-response and things  
18 like that, are common in political discourse, are  
19 commonly used in political discourse.

20 And the difference with far right-wing  
21 extremists is that they're -- is that they couple it with  
22 violence. That was -- that was sort of what he said.

23 And, of course, he was very clear that  
24 many of these people interpreted President Trump's  
25 comments.

1                   So that's the -- that's how Professor Simi  
2 testified.

3                   So let's apply that to the law. Okay.  
4 And -- and I will talk about a few things.

5                   So the James v. Meow Media, Inc., that's  
6 300 F.3d 683. And that's in the Sixth Circuit.

7                   And in that case, the -- the argument was  
8 that basically there was sort of an ongoing process of  
9 developing a method of communication and that after a  
10 while, the person hearing the communications was the --  
11 was conditioned to respond in a certain way.

12                   Now, the Court was very clear, and I'll  
13 quote it, said: "This glacial process of personality  
14 development is far from the temporal imminence that we  
15 have required to satisfy the Brandenburg test."

16                   So you have to have the temporal  
17 instance -- or imminence.

18                   So all of the stuff that Professor Simi  
19 talked about does not meet First Amendment standards.  
20 All the prior conversations, the years, the pattern of  
21 development, that has been explicitly rejected, rejected  
22 by the courts.

23                   It has to be imminent, okay? And it can't  
24 be communication that -- whether -- even if it  
25 advocates -- and we're not -- none of these



1 communications advocate it, which I'll get to that -- but  
2 it has to be imminent.

3           And so Professor Simi's framework of this  
4 pattern of behavior, it may apply to how people received  
5 those communications, but it doesn't constitute First  
6 Amendment standards. And we think those standards are  
7 very, very clear.

8           The Court also said that -- that the mere  
9 tendency of speech to encourage unlawful acts is not a  
10 sufficient reason for banning it, absent some showing of  
11 a direct connection between the speech and imminent  
12 illegal conduct.

13           So even if speech advocates something,  
14 even if it encourages it, the tendency to encourage it is  
15 itself not an absent reason -- absent a showing of a  
16 direct connection between the speech and the imminent  
17 illegal conduct. So there has to be a direct connection.

18           So President Trump saying, "Come on  
19 January 6, will be wild," that is not a direct connection  
20 between the speech and imminent illegal conduct. And  
21 that's, we submit, pretty straightforward case law.

22           Now --

23           THE COURT: And I'm sorry, that's still  
24 the --

25           MR. GESSLER: James v. Meow Media. And

1 they have a number of citations in there. The pincite is  
2 page 698, Your Honor.

3 And they cite Ashcroft v. Free Speech  
4 Coalition and McCoy v. Stewart in the quotation block  
5 that I'm referring to.

6 But it's a great case. I suggest it for  
7 everyone in the audience to read.

8 The second case -- and I'm not going to be  
9 awfully pedantic. I don't want to provide an entire  
10 legal brief here. But I am going to talk about a couple  
11 things.

12 Two more cases: Hess v. Indiana, and I  
13 believe we cited, that's a U.S. Supreme Court case from  
14 1973. And there, there has to be ". . . evidence, or  
15 rational inference from the import of the language, that  
16 [the] words were intended to produce, and likely to  
17 produce, imminent disorder . . ." Okay?

18 They --

19 THE COURT: So, Mr. Gessler, would you  
20 just slow it down --

21 MR. GESSLER: Certainly, Your Honor.

22 THE COURT: -- a little bit.

23 MR. GESSLER: I'm mindful of time. I  
24 guess that's why I'm talking quickly.

25 THE COURT: No, I'd rather you slow it

1 down so I can actually absorb what you're reading --

2 MR. GESSLER: Fair enough, Your Honor.

3 THE COURT: -- versus --

4 MR. GESSLER: Let me --

5 THE COURT: If you could start again with  
6 Hess v. Indiana.

7 MR. GESSLER: The Hess v. Indiana, that's  
8 414 U.S. 105. Okay?

9 And Hess says there have to be a couple  
10 things: There has to be intent; in other words, words  
11 have to be intended to produce, and they have to be  
12 likely to produce imminent disorder. And they could not  
13 be punished by the state on the ground that they had a  
14 tendency to lead to violence.

15 So the -- so you have to look at the  
16 import of the words, their direct meaning, not a  
17 particularized, coded meaning.

18 And, in fact, Professor Simi never  
19 testified that President Trump intended; in fact, he  
20 disavowed any testimony of President Trump's intent.

21 And Professor Simi was very clear that the  
22 words used, no matter who's using them, whether it's the  
23 term "fight" or something else, have an impact on the  
24 listener depending upon the circumstances. It's all  
25 contextual.

1                   Here's the last case, and I think this  
2 case is really dispositive here. And the case is  
3 Nwanguma v. Trump. Nwanguma v. Trump. And that's  
4 spelled N-w-a-n-g-u-m-a, v. Trump. And that's 903 F.3d  
5 604.

6                   And this is why this case is so  
7 dispositive. This was a rally involving President Trump,  
8 the same one who's here today. And he spoke at this  
9 rally.

10                   And this is described in the case.

11                   And President Trump spoke for about 35  
12 minutes. And Nwanguma, she attended the rally with the  
13 intention of peacefully protesting, okay?

14                   And her behavior precipitated directions  
15 from President Trump to the crowd on five different  
16 occasions during that speech. For her and a few of her  
17 colleagues to "get 'em out of here." That's what he  
18 said: "Get 'em out of here."

19                   And you, the Court, heard video of how  
20 President Trump delivers those comments, types of  
21 comments, not this video in particular. They said, "Get  
22 'em out of there."

23                   And in response, what happened is the  
24 crowd, members -- this is quote, ". . . members of the  
25 audience assaulted, pushed and shoved plaintiffs . . ."

1 and one of them was actually punched in the stomach. And  
2 the argument was that the -- that this implicitly  
3 encouraged the use of violence.

4 Now, President Trump said a few other  
5 things. He said once, after his five "get 'em out of  
6 here," he said: But don't hurt 'em. Actually, the case  
7 doesn't say "but." It says, "Don't hurt 'em," is what  
8 President Trump said. Okay?

9 And what the Court did, a couple things.  
10 The Court said even if the "get 'em out of here" could  
11 have viewed as implicitly encouraging unwanted physical  
12 touching, so the Court didn't accept that it  
13 implicitly -- didn't rule that it implicitly said.

14 Even accepted, the charge in Kentucky law  
15 that this case was -- was inciting to riot, so it was  
16 incitement and riot, both of which we urge are lesser  
17 standards than here, but certainly incitement.

18 And the Court said the notion that Trump's  
19 direction to remove a handful of disruptive protesters  
20 from among hundreds or thousands in attendance could be  
21 deemed to implicitly incite a riot is simply not  
22 plausible.

23 Even in those circumstances -- and this  
24 is, Your Honor, why I was very careful to submit a very  
25 specific hypothetical to Professor Simi when I was asking

1 him questions.

2 I asked him: Well, if President Trump  
3 were to say five times, "get 'em out of here," and this  
4 crowd, even if it were filled with right-wing extremists  
5 and then later -- and said it five times as opposed to  
6 only one time, the "don't hurt 'em" -- so I went through  
7 this -- I went through this exact hypothetical.

8 And even Professor Simi, he hedged a  
9 little bit and he said: Well, it still sort of depends  
10 on context, okay? And -- and so he -- even he wasn't  
11 quite willing to say: Yes, that was an incitement to  
12 violence.

13 But the Court here is very clear. That is  
14 not an incitement. Here, it says, "incitement to riot,"  
15 okay, and the Court focuses on the "incitement" prong of  
16 that.

17 Even there, the Court was very clear, that  
18 is not incitement.

19 And then the Court specially went on and  
20 said: ". . . especially where any implication of  
21 incitement to riotous violence is explicitly negated by  
22 the accompanying words, 'don't hurt 'em.' If words have  
23 meaning, the admonition 'don't hurt 'em' cannot be  
24 reasonably construed as an urging to 'hurt 'em.'"

25 So what the Court did there is the

1 Court -- and I don't want to say the Court rejected  
2 Dr. Simi's thesis, because the Court didn't say, Well --

3 THE COURT: Did Dr. Simi testify in this  
4 case?

5 MR. GESSLER: No. I'm sorry,  
6 Professor Simi. Did I say "Doctor"?

7 THE COURT: Well, you said "Doctor" and  
8 then I said "Doctor," and I'm sure --

9 MR. GESSLER: He may be a doctor, too.

10 THE COURT: -- I'm sure he has a  
11 doctorate.

12 MR. GESSLER: I don't believe he did.  
13 But -- I don't believe he did.

14 But what I'm saying is, Professor Simi has  
15 said, Well, the words can be reasonably interpreted  
16 there.

17 The Court doesn't accept that framework  
18 for a First Amendment analysis, which is what controls  
19 here.

20 So I'm not saying he's wrong. I mean,  
21 right-wing extremists have -- they very well may usually  
22 do that.

23 But I'm saying from a constitutional  
24 objective standard, what the Court does is the Court  
25 looks at the objective words. Okay?

1           The Court went on as part of its ruling  
2 and it said: ". . . the fact that audience members  
3 reacted by using force does not transform Trump's  
4 protected speech into unprotected speech. The reaction  
5 of listeners does not alter the otherwise protected  
6 nature of speech."

7           So in other words, the courts, and we,  
8 look at the objective meaning, the plain language of  
9 terms. We do not look at how those terms may be  
10 interpreted by the audience. Okay?

11           And they later said in that same case, "It  
12 is the words used by the speaker that must be at the  
13 focus of the incitement inquiry, not how they may be  
14 heard by a listener."

15           So, again, we look at the words itself.  
16 Okay?

17           And then -- and the case sort of cites the  
18 substantial amount of case law. I'm not going to cite  
19 all that because I do want to keep this motion short.

20           So we're not talking a difficult leap of  
21 faith to understand the applicability of *Nwanguma v.*  
22 *Trump*.

23           In fact, I would submit that the  
24 petitioner -- or the plaintiffs in *Nwanguma v. Trump*  
25 used -- I don't know -- exactly know what the argument,



1 but I'm assuming very similar arguments to petitioners  
2 here because they talked about the objective use of the  
3 words. The Court rejected how they're interpreted by  
4 listeners. You have to look at the words themselves.

5 In that case, the, you know, "get 'em out  
6 of here," even that, the Court was unwilling to accept as  
7 incitement. And the Court was very explicit, saying that  
8 it was negated.

9 And, of course, we have other courts  
10 talking very much about the incitement, and we cited some  
11 of that in our motion, even particularly provocative,  
12 directive language, very foul language in the cases  
13 directed at audiences and even that far more -- far  
14 closer in time than what we have here was treated as not  
15 imminent.

16 So under the imminence standard,  
17 absolutely nothing that President Trump said prior to  
18 January 6 would constitute incitement. And the most  
19 they've been able to come up with is the "will be wild"  
20 tweet. That's the most they have been able to come up  
21 with.

22 THE COURT: Well, what about the Ellipse  
23 speech?

24 MR. GESSLER: I'm getting there.

25 THE COURT: Okay.

1 MR. GESSLER: I'm fixing to get there.

2 THE COURT: Okay.

3 MR. GESSLER: But I said prior to  
4 January 6.

5 THE COURT: Oh, I'm sorry, I missed that.

6 MR. GESSLER: Okay.

7 So what I'm saying is, that's a pretty  
8 easy analysis. Under the imminence prong, none of that  
9 stuff counts.

10 Which brings the petitioners' case to one  
11 item, which is the Ellipse speech. And absolutely  
12 nothing in there, nothing in there, none of Trump's,  
13 President Trump's words were a call to violence.

14 And look, if the Nwanguma court says: Big  
15 crowd, protesters in there, crowd angry, "get 'em out of  
16 here" five times, direction to the crowd, focused on that  
17 person or those few plaintiffs, demanding that they be  
18 removed, "get 'em out of there," if the Court doesn't  
19 accept that as a call to riot, as incitement, there is no  
20 way that when President Trump says, "We need you to fight  
21 for our country, we need you to march down on the  
22 Capitol," there is no way that is incitement.

23 And then, of course, the peaceful and  
24 patriotic. Now, look, the petitioners have seemingly  
25 developed an argument that: Well, he didn't explicitly

1 say, "be peaceful and patriotic." President Trump merely  
2 said, "I know you'll go down there peacefully and  
3 patriotically."

4 But he emphasized "peacefully" and he  
5 emphasized "patriotically" in that speech. And under the  
6 same --

7 THE COURT: When you say "emphasize," you  
8 mean, in what way?

9 MR. GESSLER: Well, he -- he made strong  
10 words, he talked about it vociferously, and it was  
11 towards the end of the speech in the penultimate "what we  
12 are here to do today. I am with you, I am going to go  
13 down there with you, peacefully and patriotically."

14 And -- you know, and so he created a  
15 common sense of purpose as the, you know, penultimate  
16 culmination of his speech. That's why it was towards the  
17 end.

18 And so that certainly negates as well any  
19 violent intent.

20 So the words themselves, the objective  
21 meaning and objective use of the words, there is no call  
22 to violence. And everything that Trump says, "fight," is  
23 a common, common political metaphor meaning a political  
24 fight.

25 And Trump, on multiple occasions, says:

1 We're going to go down there and we're going to give our  
2 Representatives courage, we're going to demand that Vice  
3 President Trump -- Pence do the right thing. And  
4 obviously I'm paraphrasing.

5 I'm happy to repeat the speech if the  
6 Court wants, but you have it in front of you, a  
7 transcript. And you can look at those words. And under  
8 an objective meaning of those words, none of them, none  
9 of them are incitement.

10 Then the last argument that they make is  
11 that President Trump failed to do enough to stop the riot  
12 once it started. Okay? So they have sort of three --  
13 within the world of speech, the evidence, they sort of  
14 have three components:

15 First component is all the stuff in  
16 advance of January 6. Doesn't meet the imminence test.

17 Second component they have is the  
18 January 6 speech, and they say that's what incited. And  
19 even their own evidence, even quoting from the January 6  
20 Report, the January 6 Report says the violence started  
21 well before President Trump finished his speech. So that  
22 part of the violence, he certainly didn't incite with the  
23 January 6 speech.

24 And then their argument is, Well, he  
25 failed to stop the ongoing violence. And that's

1 inaction, which has never been held to cause incitement.  
2 And even -- and it's not an overt, voluntary act.  
3 There's no evidence of that.

4           And even this Court has required specific  
5 intent. And there's no intent that President Trump's  
6 absence -- what they call an absence; I mean, we dispute  
7 that factually. There's tweets in there where he says,  
8 Be peaceful, stay peaceful, and then a video. I mean,  
9 three communications.

10           And, of course, they say that's not  
11 enough. And under the Brandenburg standards, though,  
12 it's not even close to enough. That's not incitement.

13           So that's our motion for directed verdict,  
14 Your Honor. The Court has not yet ruled on these  
15 First Amendment issues, and obviously we're asking the  
16 Court to rule on it at sort of what I always call  
17 half-time motions.

18           But it has been pretty thoroughly briefed,  
19 and the reason I waited was to see what evidence. I  
20 mean, maybe they had evidence that Trump was on the phone  
21 with Proud Boys, saying, Go -- I mean, maybe they were to  
22 bring some evidence in there that, you know, he was  
23 sitting in a room and they were plotting out, you know,  
24 where people were going to stand and do it, but there's  
25 none of that. It's all speech.

1                   And so even on the grounds of speech, what  
2   President Trump did that day is not incitement under very  
3   well-established First Amendment principles, Your Honor.

4                   THE COURT:   Are you prepared to respond  
5   now, or do you need a few minutes to regroup or --

6                   MR. MURRAY:   Your Honor, we're happy to  
7   start now, but I think, you know, given the time, it  
8   might be better to give us a few minutes over lunch.

9                   THE COURT:   So this is where I am, is that  
10   I'd like to rule after lunch.   And we did start  
11   20 minutes late today, so I think Mr. Gessler spent about  
12   15 minutes.

13                   So if you think you can respond at the  
14   same amount of time, we would just probably break at  
15   12:30 to 1:30 for lunch.

16                   MR. MURRAY:   That's fine, Your Honor.  
17   Thank you.

18                   THE COURT:   Okay.

19                   MR. MURRAY:   As we just heard from  
20   Professor Magliocca, to have engaged in insurrection  
21   means any voluntary act by word or deed in furtherance of  
22   the common unlawful purpose of the insurrection.

23                   The Fourteenth Amendment is not limited to  
24   incitement.   It includes any voluntary conduct including  
25   specific acts of encouragement that further that common

1 end.

2                   President Trump was not just a part of the  
3 insurrection on January 6. He was the leader of the  
4 insurrection. He summoned the mob with repeated tweets  
5 identifying January 6 as the time to descend on the  
6 Capitol.

7                   We've seen from both the written evidence  
8 and the testimony of Professor Simi the effect that  
9 Trump's statements and tweets in advance of January 6 had  
10 on mobilizing violent extremists to come to the Capitol  
11 ready to fight.

12                   And he did that using violent language.  
13 Just hours after he tweeted, "Come to DC, will be wild,"  
14 he retweets from a right-wing extremist website a video  
15 chanting, "Fight for Trump," over the course of over a  
16 minute just to be sure that his supporters would have no  
17 doubt what his intentions were.

18                   Second, his lies gave the mob their common  
19 purpose. Beginning well before the election and leading  
20 up to it, he repeated claims that the only way he could  
21 lose the election was if it was stolen. And immediately  
22 on election night, he began repeating those same claims,  
23 even after court after court rejected his lies and even  
24 after advisor after advisor told him there was no basis  
25 for those claims of fraud.

1                   He created a false and desperate  
2                   expectation in his supporters that the only way, by  
3                   January 6, they could overturn the results of what they  
4                   thought were a stolen election was through force and  
5                   violence.

6                   Third, he incited the mob with his speech  
7                   at the Ellipse. And President Trump repeatedly wants to  
8                   suggest that his speech was all about being peaceful and  
9                   patriotic, but here's what we know.

10                   We've introduced findings from the  
11                   January 6 Report showing that President Trump had been  
12                   briefed well in advance of his speech on the Ellipse on  
13                   the fact that tens of thousands of his supporters refused  
14                   to go through the magnetometers because they were armed.

15                   Despite knowing that, Trump used violent  
16                   language, referring to "fight" or some version of that  
17                   20 times. He told his supporters: They get to go by a  
18                   very different set of rules because fraud was involved.

19                   That is an implicit call to violence that  
20                   based on a long-standing pattern of call-and-response  
21                   that he had developed among his supporters, he knew and  
22                   his supporters knew were intended as a command to go  
23                   beyond the normal rules of political engagement.

24                   He told them, "You do not take back our  
25                   country with weakness," and he repeatedly painted a



1 target on the backs of Vice President Pence and members  
2 of Congress.

3 And he told the mob, not only that they  
4 should go to the Capitol, commanding them to go, but told  
5 them he would be right there with them because he knew  
6 that telling them that would encourage them to go to the  
7 Capitol prepared for violence. That's classic  
8 incitement.

9 The cases that President Trump cites are  
10 fundamentally distinguishable. The Nwanguma case was a  
11 case where Trump simply said, "Get 'em out of here," with  
12 no violent rhetoric. The plaintiffs in that case  
13 identified no other context that suggested that his words  
14 were likely to be taken as a command to violence at the  
15 time.

16 That is not what we have here. We have  
17 months of contacts showing what Trump was telling his  
18 supporters to do on January 6 and why they were supposed  
19 to be there.

20 And nobody in that case said, "Fight like  
21 hell," and, "Fight, fight, fight." This is a  
22 fundamentally different situation.

23 Fourth, Trump incited the mob during the  
24 attack with his 2:24 tweet against Mike Pence. This was  
25 an hour after he learned that the Capitol was under

1 violent attack and that members of Congress and the Vice  
2 President's lives were in danger and he told them:  
3 Mike Pence didn't have the courage to do what needs to be  
4 done. USA demands the truth.

5 In context, "USA demands the truth" means:  
6 The mob that is pounding on the doors of the Capitol  
7 demand the truth. They are not going to stand for the  
8 certification. They're going to stop it.

9 At the very least, a reasonable fact  
10 finder could draw these inferences about what Trump  
11 intended in issuing that tweet.

12 And fifth, Trump refused to summon a  
13 federal law enforcement response to stop the mob or to  
14 call the mob off until it was clear they were not going  
15 to be successful in disrupting the certification.

16 The evidence we've introduced, including  
17 findings from the January 6 Committee, make clear that it  
18 was -- that after 4:00, it was clear that the  
19 certification was not going to be disrupted. Members of  
20 Congress had reached safety. Reinforcements had arrived  
21 through no effort of President Trump's, and the  
22 insurrection was starting to wind down.

23 And it was at that point, and that point  
24 only, after three hours of watching TV, that  
25 President Trump finally told his supporters to go home.

1                   Now, President Trump's defense is that  
2 this is just inaction, this isn't action. But it's a  
3 very well-established principle of law that inaction can  
4 support a finding of wrongful conduct when there is an  
5 affirmative duty to act.

6                   When does an affirmative duty to act  
7 arise? Well, number one, when there's a legal duty to  
8 act.

9                   President Trump swore an oath, the most  
10 powerful oath anywhere in the Constitution, to preserve,  
11 protect, and defend the Constitution. That is a legal  
12 duty to act.

13                   And you also have a legal duty to act when  
14 you've set the events in motion, and certainly we've seen  
15 that President Trump did that here.

16                   And we're prepared to provide additional  
17 authority in our proposed findings of fact and  
18 conclusions of law demonstrating that these are the kinds  
19 of circumstances where there is a duty to act.

20                   But what else does his inaction show? It  
21 shows that he intended the results of the insurrection,  
22 that he intended that the insurrection achieve its ends,  
23 because when everybody is telling you you have to do  
24 something and you're the most powerful person in the  
25 world and you do nothing, that tells us you want them to

1 succeed.

2 I'm pulling up Plaintiffs' Exhibit 78,  
3 some of the findings from the January 6 committee.

4 And if we go to page 150 -- excuse me,  
5 page 46, Finding 150, which the Court has previously said  
6 was admissible.

7 Evidence from the Committee's  
8 investigation showed that the President, when told that  
9 the crowd was chanting, "Hang Mike Pence," responded that  
10 perhaps Vice President Pence deserved to be hanged. And  
11 President Trump rebuffed pleas from Leader McCarthy to  
12 ask that his supporters leave the Capitol, stating:  
13 Well, Kevin, I guess these people are more upset about  
14 the election than you are.

15 What clearer evidence of specific intent  
16 to incite and aid an insurrection could you ask for?

17 President Trump's defense is that the  
18 First Amendment protects his conduct here. But we've  
19 seen that his conduct was not just incitement, his  
20 conduct was speech adjacent to criminal conduct.  
21 Mobilization, organization.

22 We've also seen that his conduct falls  
23 within the words of the Fourteenth Amendment. And so  
24 Trump's argument appears to be that the First Amendment  
25 displaces the Fourteenth Amendment, but there's no legal

1 authority for that at all. And as we've laid out in the  
2 opposition to President Trump's antiSLAPP motion, that  
3 simply cannot be right.

4           The Fourteenth Amendment does not impose  
5 any criminal penalty. It simply provides an additional  
6 qualification for office, and there is nothing  
7 unconstitutional about enforcing that qualification even  
8 if the insurrection activity comes by word.

9           But in any event, the standard for  
10 incitement is clearly met here.

11           Number one, President Trump advocated,  
12 explicitly or implicitly, unlawful violent action. We've  
13 seen that he called for the crowd to fight, to fight like  
14 hell, to go by a very different set of rules.

15           We've also heard evidence providing  
16 context for what those words meant to Trump and to his  
17 supporters through a long-standing pattern of  
18 call-and-response in which he could speak in coded  
19 language because his supporters would understand exactly  
20 what his coded language meant. That was the testimony  
21 you heard from Professor Simi.

22           And I would direct the Court's attention  
23 to the 7th Circuit case in United States v. White, 610  
24 F.3d 957 [sic], in which the Court said that threats or  
25 incitement need not be in explicit terms; they can be

1 also in coded language that is intended and understood as  
2 a command to violence.

3 And that's exactly what we saw with  
4 President Trump's speech on the Ellipse, and that's  
5 exactly what we saw in his tweet on 2:24.

6 And, of course, the second prong of the  
7 incitement standard is that the speech was likely to  
8 incite imminent lawless action.

9 And of course that was true here. Of  
10 course, you have a crowd of tens of thousands of people,  
11 half of whom refused to go through the magnetometers  
12 because they were armed or carrying prohibited items.  
13 Those are from the findings in the January 6 Report that  
14 we've introduced.

15 This is like summoning a mob out in front  
16 of someone's house where everyone has pitchforks and  
17 torches, and you don't say, "Go burn down the house," but  
18 you give a speech that makes it pretty clear to everybody  
19 exactly what you're telling them to do. That's classic  
20 incitement.

21 So then Trump's last defense is, he didn't  
22 intend it. He incited insurrection accidentally.

23 But, of course, intent can be inferred  
24 from circumstances and from conduct, and the Court  
25 doesn't have to check their common sense at the door when

1 determining what Trump intended by his words and his  
2 deeds. And you have to look at the whole context and not  
3 just take one word of a speech out of context.

4 We heard Professor Simi testify about  
5 Trump's long-standing pattern of encouraging and praising  
6 political violence and cultivating a relationship with  
7 violent extremists.

8 There's a reason we haven't seen political  
9 violence on this magnitude in the US in response to  
10 speeches by President Obama or President George Bush or  
11 Nancy Pelosi or Mitch McConnell. Other leaders don't  
12 talk this way, and they don't keep talking this way when  
13 they see how their violent supporters respond to the  
14 words they utter.

15 Now, we saw Trump retweeting the warning  
16 by a Georgia election official, Gabriel Sterling, about  
17 how someone was going to get killed as a result of his  
18 violent rhetoric and his refusal to call off his  
19 supporters, and we saw that his response to that explicit  
20 warning was to double down. And that's not the action of  
21 someone who is concerned about violence.

22 How else do we know what Trump intended?  
23 He thought Vice President Pence deserved it. Finding 150  
24 that we've previously looked at.

25 We also saw his tweets after the attack on

1 January 6: These are the things that happen when an  
2 election is unceremoniously ripped from his victims. He  
3 was praising the violence, "Remember this day forever,"  
4 because he was in league with the insurrectionists.

5 And we saw what he was saying even years  
6 later, that fraud allowed suspending all rules, including  
7 the Constitution of the United States. That was his  
8 mental state on January 6, and that was his mental state  
9 even years later.

10 He has violated his oath. He engaged in  
11 insurrection.

12 Thank you.

13 MR. GESSLER: Do you want any more  
14 argument from me, Your Honor? I'm not insulted if you  
15 say no.

16 THE COURT: I think we should -- oh, you  
17 want to say something?

18 MR. KOTLARCZYK: If I may, Your Honor.

19 THE COURT: Well, Mr. Kotlarczyk, you have  
20 said so little, unlike some other folks, that I'm going  
21 to give you a chance.

22 MR. KOTLARCZYK: Your Honor, it's just  
23 nice to say something other than my name and "no  
24 questions."

25 Just very briefly, Your Honor.



1 Rule 50 is inconsistent with a 113 action.  
2 The idea behind a 113 is we get an expedited resolution  
3 of this process, we get it all bundled up, and it goes up  
4 on appeal for the Supreme Court to consider whether they  
5 want to hear it or not.

6 I think if you consider how this could  
7 play out if the Court were to entertain a Rule 50, is if  
8 the Court were to grant the Rule 50, we could end up in  
9 the Supreme Court on the three-day expedited appeal.

10 Supreme Court could say, Actually -- you  
11 know, after allowing for briefing and all that, say:  
12 Actually, you know what, we think the district court  
13 erred, it should not have granted the Rule 50. Let's go  
14 back down.

15 We then have a whole half of this case we  
16 would still have to try, and all of a sudden January 5 is  
17 looking really close when the Secretary is going to have  
18 to make a certification decision.

19 So I would point the Court to Rule 81 of  
20 the Colorado Rules of Civil Procedure, which say that  
21 when a special statutory proceeding -- which 113  
22 undoubtedly is -- provides its own procedures and the  
23 Rules of Civil Procedure are inconsistent with the  
24 special statutory proceeding, the Court should follow the  
25 procedures of the special statutory proceeding and not

1 those of the Rules of Civil Procedure.

2 Rule 50 talks about a directed verdict.  
3 There's not a verdict at the end of a 113 action,  
4 Your Honor. There's an order directing substantial  
5 compliance with the election code.

6 So we just think that this Rule 50 motion  
7 is procedurally improper and should be denied on that  
8 ground.

9 Thank you.

10 THE COURT: Okay. I'm going to take it  
11 under advisement and hopefully have something to say in  
12 response when we reconvene at 1:30 today.

13 And, Mr. Gessler, you'll be prepared with  
14 your first witness?

15 MR. GESSLER: Yes, Your Honor.

16 Last housekeeping thing.

17 For tomorrow, we have a witness who needs  
18 to start at 1:00, so if we can just do that as part of  
19 the planning process, I want to give you that well in  
20 advance.

21 (Siren interruption.)

22 THE COURT: Well, you've gotten it three  
23 times already today, your --

24 MR. GESSLER: That's a notice to pay  
25 particular attention to what I'm saying, Your Honor.

1 THE COURT: Okay. Okay. We will -- why  
2 don't we just make it 1:35, we'll be back.

3 MR. GESSLER: Okay.

4 (Recess taken from 12:32 p.m. until  
5 1:40 p.m.)

6 THE COURT: You may be seated.

7 So turning to the motion for directed  
8 verdict, motion for directed verdict may be granted only  
9 when the evidence considered in the light most favorable  
10 to the opposing party compels a conclusion that  
11 reasonable persons could not disagree as to the evidence  
12 or to the inferences which could be drawn from the  
13 evidence and when no evidence has been presented that  
14 could sustain a verdict against the moving party.

15 The Court must consider the evidence and  
16 the reasonable inferences from the evidence in the most  
17 favorable way to the nonmoving party.

18 Here, in this case, I tend to agree  
19 with -- Mr. Kotlarczyk is correct that this -- it would  
20 be inappropriate to grant a Rule 50 motion given the  
21 expedited proceedings.

22 However, even if it was appropriate, I  
23 would deny because the motion brings up significant legal  
24 issues, many of which have never been decided by any  
25 court.

1                   For instance, essentially one of  
2   President Trump's arguments is that the First Amendment  
3   displaces the Fourteenth Amendment, or at the very least,  
4   the Court needs to interpret the Fourteenth Amendment  
5   with a First Amendment overlay.

6                   The petitioners argue that I should apply  
7   the Fourteenth Amendment on its face and that it is not  
8   subject to or somehow a lesser amendment than the  
9   First Amendment.

10                  There is clearly a conflict. On the  
11   one hand, you have people in the 1800s being disqualified  
12   for writing a letter to the editor. Clearly speech. On  
13   the other hand, you have a body of law holding the  
14   standards for finding incitement are very high and the  
15   speech needs to be very specific.

16                  The Court is not prepared today to  
17   reconcile those two bodies of law.

18                  Similarly, on the one hand,  
19   Intervenor Trump argues the Court cannot look at  
20   statements that are in a glacial pace to find incitement.

21                  However, the petitioners argue that I can  
22   look at those statements for context and to infer intent  
23   and the plan for incitement they contend was caused by  
24   the January 6 speech.

25                  Trump argues that the January 6 speech

1 does not meet the standard of incitement, but then I have  
2 Professor Simi stating that based on the relationship  
3 that was built, the words were coded. Petitioners argue  
4 and have cited cases that the Court will look at coded  
5 languages when determining incitement.

6 To be clear, I'm not deciding any of these  
7 issues. I'm denying the motion for directed verdict  
8 because in order to grant the motion for directed  
9 verdict, I would have to decide many legal issues that I  
10 am simply not prepared to decide today.

11 Further, I think I will be better informed  
12 to decide the legal issues when I have more of a factual  
13 context, which I expect I will have after the  
14 presentation of intervenors' case.

15 So I will address the First Amendment  
16 issues brought up in your motion for directed verdict  
17 when I make my final findings of facts, conclusions of  
18 law, and all the other legal arguments that I need to  
19 decide between now and then.

20 Is the intervenors, I think we were going  
21 to start with President Trump? Are they ready to call  
22 their first witness?

23 MR. GESSLER: Yes, Your Honor, we are.

24 Would you like a quick entry of  
25 appearance, or is this morning's entry adequate for you?

1 THE COURT: Do we have new people who need  
2 to enter their appearance?

3 MR. GESSLER: Yes, we do, Your Honor.

4 So on behalf of President Trump,  
5 Mr. Geoffrey Blue will also be here today.

6 THE COURT: Okay.

7 MR. GESSLER: And he and Mr. Shaw will be  
8 handling our witnesses today, Your Honor.

9 THE COURT: Oh, I'm sorry, because we  
10 heard from Mr. Blue yesterday. You mean just they hadn't  
11 entered an appearance today?

12 MR. GESSLER: Yes, Your Honor.

13 THE COURT: And then what about -- are you  
14 calling the witness today that had the issue with the  
15 lawyer needing to be --

16 MR. SHAW: Yes, Your Honor.

17 Mr. Jesse Binnall is on, and I believe he  
18 was admitted -- it was not clear to me whether he was  
19 admitted just by the Supreme Court and waited for you to  
20 admit him or whether you have already admitted him.

21 THE COURT: I think that -- he hadn't  
22 filed a motion, but I think he subsequently filed -- he  
23 did it in exactly the backwards order. He got approval  
24 from the Supreme Court and then he filed a motion, but I  
25 believe that he has been approved by the Supreme Court

1 and that we have granted the motion.

2 MR. SHAW: Great. So he is on the WebEx.

3 THE COURT: Okay. And so is he -- is  
4 it -- your very first witness the one that he's  
5 representing the witness himself?

6 MR. SHAW: Yes, Your Honor.

7 THE COURT: Okay.

8 The witness is going to be on WebEx?

9 MR. SHAW: Yes, Your Honor.

10 THE COURT: Okay. We need to turn the  
11 screen around so the court reporter can see the witness  
12 speak.

13 Will you call your first witness.

14 MR. SHAW: Yes. We would call Kashyap  
15 Patel.

16 (Appearing via WebEx.)

17 THE COURT: And, Mr. Patel, can you  
18 hear us?

19 THE WITNESS: Yes, ma'am, I can.

20 THE COURT: Okay. We're going to need to  
21 turn up some volume majorly. I could hear you but just  
22 barely.

23 THE WITNESS: I'll endeavor to speak up,  
24 Your Honor.

25 THE COURT: Okay. So that amount, which

1 you probably thought were shouting, was just about the  
2 perfect amount, so definitely speak up.

3 THE WITNESS: Will do.

4 MR. SHAW: Did you want to swear the  
5 witness, Your Honor?

6 THE COURT: Yeah.

7 KASHYAP PATEL,  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 THE COURT: Great.

11 DIRECT EXAMINATION

12 BY MR. SHAW:

13 Q. Mr. Patel, thank you for interrupting your  
14 visit with your family to be with us today.

15 Let's briefly discuss your background.

16 Am I correct that you're a recovering  
17 lawyer?

18 A. Yes.

19 THE WITNESS: And, Your Honor, thank you  
20 for letting me appear remotely. I really appreciate the  
21 accommodation. I have not practiced law in maybe close  
22 to a decade.

23 Q. (By Mr. Shaw) Well, did you ever practice  
24 law? You imply you did. When did you practice law?

25 A. When I first graduated law school in 2005,



1 I served as an Assistant Public Defender in and for  
2 Miami-Dade County, and later went on to serve as an  
3 Assistant Public Defender for the Southern District of  
4 Florida.

5 And thereafter, I transitioned to the  
6 Department of Justice's National Security Division, where  
7 I served as a terrorism prosecutor, and served one more  
8 counsel role thereafter on Capitol Hill.

9 Q. Okay. And when you were at -- and when  
10 you were at the Department of Justice, did you also serve  
11 as a legal liaison to the Department of Defense?

12 A. Yeah. My duties while being a terrorism  
13 prosecutor, I was the selected representative to be the  
14 DOJ liaison to a Joint Special Operations command  
15 embedded with Special Forces units to work on  
16 collaborative global targeting operations.

17 THE COURT: So is there any way to get him  
18 to be a little bit louder without making him doing  
19 whatever he just did?

20 MS. BILA: That's what I was trying to do,  
21 Your Honor.

22 THE COURT: Yeah.

23 MS. BILA: And it doesn't seem as if I'm  
24 able to without the feedback.

25 THE COURT: So, Mr. Patel, if you can just

1 kind of lean in --

2 THE WITNESS: Yeah.

3 THE COURT: -- it will be good. You're --  
4 I can hear you, but it's kind of going in and out.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Perfect.

7 Q. (By Mr. Shaw) Okay. How long were you at  
8 the Department of Justice?

9 A. Approximately four years.

10 Q. Okay. And when did you leave the  
11 Department of Justice?

12 A. When I left the Department of Justice, I  
13 went on to serve as senior counsel and the National  
14 Security Advisor to the House Permanent Select Committee  
15 at the United States Congress, where my duties were to  
16 run the counterterrorism platform oversight operations  
17 and also serve as the lead chief investigative counsel  
18 for the investigation into Russian active measures.

19 Q. Okay. And am I correct in thinking you  
20 were with the House from about 2017 to 2019?

21 A. Yes, that's correct, just about early  
22 2019.

23 Q. Okay. And then where did you go after --  
24 or in early 2019?

25 A. Thereafter, I transitioned to the White

1 House's National Security Council.

2 And I would shortly, after going over to  
3 the White House, become the Senior Director for  
4 Counterterrorism, where I ran the counterterrorism policy  
5 platform for then-President Trump, along with the hostage  
6 portfolio, counter-narcotics, counter-human trafficking,  
7 and a slew of other counterterrorism-related matters.

8 Q. Okay. And how long did you stay in that  
9 position?

10 A. On and off for two years, over two years.  
11 The role was broken up by one temporary duty assignment  
12 where I served as the Deputy Director of National  
13 Intelligence over at the Office of the Directorate of  
14 National Intelligence, where our duties were to oversee  
15 the 17 intelligence organizations, along with providing  
16 the presidential daily briefing to the President and his  
17 Cabinet.

18 I would return to the White House after  
19 four or five months at ODNI, and I would finish the  
20 administration's term as Chief of Staff over at the  
21 Department of Defense.

22 Q. And who were you supporting as Chief of  
23 Staff?

24 A. At the time, it was Acting Secretary of  
25 Defense, Christopher C. Miller.

1 Q. And when did you finish up your term as  
2 Chief of Staff to the Acting Secretary of Defense?

3 A. We both had our terms expire on  
4 January 20, 2021, at high noon.

5 Q. And what do you do now?

6 A. I have a multiple -- roles. I'm a  
7 consultant. I have a national security practice. I'm  
8 the senior fellow at the Center for Renewing America and  
9 National Security.

10 I serve on the board of TMTG Technology  
11 Company. I'm the Senior Advisor to President Trump for  
12 national security defense and intel. And I also have a  
13 501(c)(3) charity, where I serve as the President of the  
14 Kash Foundation, where we have multiple lines of efforts  
15 giving away money to those in need.

16 Q. Okay. I'd like to focus on your time as  
17 Chief of Staff to the Acting Secretary of Defense.

18 And I'd like to show you what's been  
19 marked as Exhibit Number 1027, which I believe is either  
20 already in or has not been objected to.

21 MR. SHAW: Is there any objection to that?

22 MR. GRIMSLEY: I believe it's in, but  
23 there's no objection.

24 THE COURT: Okay. 1027 is admitted if it  
25 hadn't already been.

1 (Exhibit 1027 was admitted into evidence.)

2 MR. SHAW: Okay. Could you put that up,  
3 please, Joanna.

4 Colin, can you let me in? Thank you.

5 Q. (By Mr. Shaw) Okay. So looking -- can you  
6 see -- can you see Exhibit 1027, sir?

7 A. I don't think so, unless I'm --

8 THE COURT: I can't see it, either.

9 MS. BILA: One second.

10 A. Now I see it.

11 Q. (By Mr. Shaw) Okay. Great. If you need  
12 it to be scrolled, just let us know.

13 But do you know what that document is?

14 A. It's a part of one of the Department of  
15 Defense's timelines we created encapsulating our  
16 involvement in and around the events of January 6, 2021.

17 Q. Okay. If you would look at the third  
18 bullet point under the heading "Sunday, January 3, 2021."

19 A. Yes.

20 Q. Okay. It reads: "A/SD and CJCS meet with  
21 the President: The President concurs in the activation  
22 of DCNG to support law enforcement."

23 Do you see that?

24 A. Yes, I do, sir.

25 Q. What does the abbreviation A/SD stand for

1 in DOD parlance?

2 A. Acting Secretary of Defense.

3 Q. And that would be Acting Secretary of  
4 Defense Miller for whom --

5 A. Yes, sir.

6 Q. -- you were working at the time?

7 A. Yes.

8 Q. What about CJCS?

9 A. It's the Chairman of the Joint Chiefs of  
10 Staff. And at the time, it was Chairman Mark Milley.

11 Q. And what do you understand DCNG to mean?

12 A. That is the abbreviation for the  
13 Washington, DC National Guard Bureau. Every state has  
14 its own National Guard, and since DC is a federal  
15 complex, they have their own National Guard.

16 Q. Okay. So what do you understand this  
17 entry to be conveying?

18 A. We had a meeting at the White House, as  
19 indicated by the timeline, on January 3 about events  
20 wholly unrelated to this regarding national security.

21 And at that meeting, President Trump  
22 brought up the possibility of utilizing National Guard  
23 forces for the upcoming voting confirmation process, and  
24 that bullet point refers to his authorization, which we  
25 captured in this timeline.

1 Q. And the purpose -- was the purpose of that  
2 to support local authorities and law enforcement?

3 A. The purpose of National Guard has always  
4 been, my understanding, is to support local law  
5 enforcement when a request is made through their chain of  
6 command, which would be the governor, or the mayor since  
7 it's Washington, DC, or the Capitol Police Chief since  
8 we're talking about the Washington -- the Capitol  
9 Building itself in those grounds in Washington, DC.

10 Q. Okay. Now, I'd like to show you  
11 Exhibit 1031, which has also been previously admitted.

12 MR. SHAW: So, Joanna, if you could put  
13 that up, and let's start with the cover page.

14 Q. (By Mr. Shaw) Sir, do you recognize this  
15 as the November 16, 2021 report of the Department of  
16 Defense Inspector General regarding his review of the  
17 Department of Defense's role, responsibilities, and  
18 actions to prepare for and respond to the protests and  
19 its aftermath at the U.S. Capitol campus on January 6,  
20 2021?

21 A. I do.

22 Q. Okay. And since it was prepared  
23 November 16, 2021, that would have been during the Biden  
24 administration, correct?

25 A. That is correct.

1 Q. Okay. Were you interviewed for that  
2 report?

3 A. I was not.

4 Q. Okay. All right.

5 MR. SHAW: Joanna, if you could put up  
6 page 15 now, please. It's actually the numbered page 15,  
7 so it may be different than the 15 on the document.

8 There you go. Thank you.

9 Q. (By Mr. Shaw) So let me direct your  
10 attention to Table 1, starts on page 15, and then we'll  
11 carry on to page 16, which we'll get to in a minute.

12 Do you recognize that as a chronology of  
13 significant events leading up to January 6?

14 A. Yes, in general.

15 Q. Okay. And let me direct your attention to  
16 the second entry for December 31, 2020.

17 Do you see that entry?

18 A. Yeah, I got it.

19 Q. Okay. Does it discuss a DC RFA to the  
20 DCNG for January 5 through 6, 2021, for -- and I'm  
21 paraphrasing -- traffic control and crowd control at  
22 metro stations and response capability?

23 A. Yes, I see that. That's what's reflected  
24 there.

25 Q. Could you please explain what you



1 understand that entry to mean.

2 A. An RFA is a request for assistance, which  
3 is the formal verbiage when an appropriate level officer  
4 or Secretary submits a request for National Guard  
5 assistance.

6 And as is documented here, that RFA went  
7 specifically to the Washington, DC National Guard for the  
8 very specific duties of performing traffic control at  
9 intersections and crowd control at metro stations.

10 When the requests for National Guard are  
11 provided, they are also, as is notified here, granted  
12 with specificity as to what they're requesting, not just  
13 generally people. And that's encapsulated by this bullet  
14 point here.

15 And M.G. Walker at the time was  
16 Major General Walker, the head of the Washington, DC  
17 National Guard.

18 Mr. McCarthy was the Secretary of the Army  
19 at the time. The Secretary of the Army controls the  
20 entire National Guard org structure for the United States  
21 of America.

22 Q. And this RFA, or request for assistance,  
23 was that coming from the DC local government?

24 A. Yeah. That's what all those letters  
25 stand for.

1 Q. Okay. And so if I understand that  
2 correctly, the DC local government was requesting a  
3 limited number of DC National Guard members.

4 Is your recollection about 340; is that --  
5 is that right?

6 A. Specifically, it was 346. The request  
7 came in through Mayor Bowser's office, who was mayor of  
8 Washington, DC at the time, and the specific request was  
9 not just with numbers, but what their assistance was to  
10 be utilized for, which was our practice when receiving a  
11 request. We needed to know how to arm, kit, and man our  
12 troops.

13 And in this instance, they would not be  
14 armed, if I recall correctly. They would be wearing the  
15 bright yellow vest and assisting in traffic duties and  
16 possibly wearing protective gear, but that would be about  
17 it, from my recollection.

18 MR. SHAW: Okay. Now, if you could switch  
19 to page 16, Joanna.

20 Q. (By Mr. Shaw) And I would direct your  
21 attention to the second entry for January 3, 2021, sir.

22 A. I got it.

23 Q. And that entry reads, "Mr. Miller and  
24 General Milley attend a White House meeting. At the end  
25 of the meeting, the President asked about election

1 protest preparations, and Mr. Miller tells him, quotes,  
2 we've got a plan and we've got it covered."

3 Do you see that?

4 A. Yes, sir.

5 Q. Okay. Do you understand that to be the  
6 same January 3 meeting discussed in the Department of  
7 Defense timeline we reviewed a few minutes ago?

8 A. It's one and the same.

9 Q. And did you attend that meeting?

10 A. I did.

11 Q. Okay. Did you attend in your capacity as  
12 the Acting Secretary's Chief of Staff?

13 A. I did.

14 Q. Was it common practice for you to attend  
15 meetings at the White House when the Acting Secretary  
16 attended?

17 A. Almost every one.

18 Q. Do you remember where that meeting took  
19 place?

20 A. In the Oval Office.

21 Q. Can you tell us what was discussed at that  
22 meeting?

23 A. Mostly no, because it was involving a  
24 matter of national security that I'm not at liberty to  
25 discuss here, but it had nothing to do with these events.

1                   And then at the back end, as this timeline  
2                   notates, there was a discussion briefly about National  
3                   Guard forces and the upcoming protest.

4                   Q.     And so according to the timeline we just  
5                   looked at, the Acting Secretary told the President,  
6                   "We've got a plan, and we've got it covered."

7                   Was there any other --

8                   A.     Yes.

9                   Q.     -- or any further detail discussed at that  
10                  meeting?

11                  A.     Yeah. I don't remember exactly the  
12                  verbiage, but having -- as you walk through prior to  
13                  January 3, specifically on December 30 and 31, requests  
14                  for National Guard coming in, our practice under the law,  
15                  as we understood it, was we needed presidential  
16                  authorizations for it.

17                  During this conversation, the President  
18                  authorized 10- to 20,000 National Guardsmen and women to  
19                  be utilized, if necessary, around the country to provide  
20                  assistance to local law enforcement.

21                  Q.     So as of that January 3 meeting, was there  
22                  any doubt in your mind that the President was on board  
23                  with DOD using whatever National Guard resources were  
24                  needed in its discretion?

25                  MR. GRIMSLEY: Objection. Leading.

1           A.    No, he authorized it.

2           THE COURT:   Sustained.

3           Why don't you ask the question again,  
4 please.

5           MR. SHAW:    Sure.

6           THE COURT:   And, Mr. Patel, you need to --  
7 before answering, if there's been an objection -- which  
8 you may not have heard -- you need to let me rule, okay?

9           THE WITNESS:   I'm sorry, ma'am, I didn't  
10 hear that.   Okay.

11          THE COURT:   I think you need to -- in  
12 order for him to hear your objection, you're going to  
13 have to move the speaker over so he can --

14          MR. SHAW:    The mic, she means.

15          Q.    (By Mr. Shaw)   Did you have any doubt, as  
16 you left that January 3 meeting, that the President was  
17 on board with DOD using whatever National Guard resources  
18 were needed in its discretion?

19          MR. GRIMSLEY:   Objection.   Leading.

20          THE COURT:    Sustained.   Try again.

21          Q.    (By Mr. Shaw)   At the conclusion of that  
22 January 3 meeting, what was your impression of the  
23 President's position on the use of the National Guard?

24          MR. GRIMSLEY:   Objection --

25          A.    We had all --

1 MR. GRIMSLEY: Objection. Calls for  
2 speculation to the President's intent.

3 THE COURT: He can -- he can respond to  
4 the extent he had an impression.

5 Objection --

6 THE WITNESS: Yes, Judge.

7 THE COURT: -- overruled.

8 THE WITNESS: Sorry.

9 A. My understanding from that meeting was  
10 that the President had authorized the National Guard  
11 troops we needed, and under the law as we understood it  
12 for National Guard purposes, we had Step 1 of a two-step  
13 process.

14 And so we had everything we needed --  
15 because this is what we do all the time -- to go execute  
16 Step 2 of the plan while leaving, which is why Secretary  
17 of Defense Chris Miller said, "We've got a plan, and  
18 we've got it covered." That's what we do. We do reps  
19 and sets.

20 Q. (By Mr. Shaw) To your knowledge, did  
21 anyone at DOD over the coming days or certainly at -- let  
22 me strike that.

23 To your knowledge, did anyone in DOD  
24 leadership over the coming days ever suggest more or  
25 different authority was needed from President Trump in

1 order to utilize the National Guard troops?

2 MR. GRIMSLEY: Objection. Lacks  
3 foundation.

4 MR. SHAW: I asked about his knowledge,  
5 Your Honor.

6 THE COURT: Overruled.

7 You can answer if you have an answer.

8 A. Under our practice, we would consult with  
9 the Office of the General Counsel at the Department of  
10 Defense, along with the White House Counsel's Office, for  
11 any legal requirements we might need.

12 But from my perspective and my  
13 conversations with the Secretary of Defense and the  
14 Chairman and the Secretary of the Army, we had what we  
15 needed to initiate under the law the first 0, 1, 2,  
16 3 phases, as we call them, for the employment,  
17 deployment, and activation of the National Guard.

18 Q. (By Mr. Shaw) At that meeting, did you  
19 understand President Trump to have limited DOD's  
20 authority to deploy National Guard troops in support of  
21 the civil authorities in any way?

22 A. No. Just that the number was 10- to  
23 20,000, so if by chance we needed more, we would have  
24 gone back to the Commander in Chief.

25 Q. Let's go back to Exhibit 1031, page 16,

1 which I think we were already on.

2 And let me direct you to the third entry  
3 from the bottom, which reads: January 5, 2021 -- I'm  
4 sorry.

5 Okay. "January 5, 2021, during the  
6 evening, the President calls Mr. Miller to discuss the  
7 upcoming rallies. Mr. Miller told us that the President  
8 told him to, quotes, do what's required to protect the  
9 American people."

10 Do you understand that to be referring to  
11 deploying National Guard troops?

12 A. Yes.

13 Q. Was there anything else you can think of  
14 that might have been referring to?

15 A. No, because Secretary of Defense  
16 Christopher Miller and I spoke about that conversation  
17 and we --

18 MR. GRIMSLEY: Objection. Hearsay.

19 THE COURT: Sustained.

20 Q. (By Mr. Shaw) When you and  
21 Secretary Miller spoke about that conversation, was it in  
22 order to take a course of action?

23 A. We didn't need to take a further course of  
24 action. We had already implemented our processes under  
25 the President's authorization under the law as we



1 operated.

2 So this was just another presidential  
3 statement, but we didn't need it. We had what we needed.

4 Q. Were detailed operational plans for  
5 deployment of the National Guard discussed with the  
6 President?

7 A. No. That's -- I can't think of a time  
8 where we ever would do that.

9 Q. Why not?

10 A. While the President is the Commander in  
11 Chief of the armed forces, the duties through multiple,  
12 what we call fragos, fragmentary orders and the like, are  
13 delegated down to the SecDef, which is the National  
14 Command Authority, down to further delegations to the  
15 Secretary of the Army.

16 The President is -- we go to the President  
17 for authorizations we need and keep him abreast of any  
18 issues we think important that rise to his attention, but  
19 we have career professionals in place to perform those  
20 logistical preparatory works, such as activating the  
21 National Guard and running drills.

22 Q. Between January 3 and January 6, were you  
23 personally paying attention to the National Guard issue?

24 A. Yes.

25 Q. In what way?

1           A.    Well, as the individual charged with not  
2 just being the Chief of Staff for the Assistant Secretary  
3 of Defense but for the entire Department of Defense, and  
4 his office, I was directly responsible underneath the  
5 Secretary to ensure any orders he gave were followed.

6                    And I was in, maybe not every single  
7 meeting, but probably close to all of them regarding  
8 National Guard forces, their employment, deployment, and  
9 activation.

10           Q.    Did you attend meetings with law  
11 enforcement agencies at which the topic was discussed?

12           A.    I think I was at the FBI Washington field  
13 office one time with then-acting -- or then- -- excuse  
14 me, then-Deputy Director Mark D'Antuono, if I recall  
15 correctly.

16           Q.    Were you aware of and following  
17 communications with the local authorities about the  
18 subject of the National Guard?

19           A.    What we did, because the Secretary of the  
20 Army is our point person, Secretary McCarthy was the  
21 direct liaison in the field with law enforcement and  
22 Mayor Bowser's office. That was our established  
23 practice. That was the established practice going back  
24 to the summer of 2020 specifically and before that, and  
25 that was his job.

1                   So there was no need for us to directly  
2 engage. We had our appropriate military personnel and  
3 their staffs coordinating directly with local law  
4 enforcement.

5                   Q. Okay. And so just to close this out, to  
6 your knowledge, did any senior DOJ leader ever state, in  
7 words or substance, that they felt they needed more or  
8 different authorization from President Trump before they  
9 could deploy National Guard troops to keep the peace on  
10 January 6?

11                  A. No.

12                  Q. Okay. So Department of Defense, based on  
13 what you're telling us, felt they had authority to use  
14 National Guard troops, and President Trump had been clear  
15 that he wanted DOD to do what was necessary to protect  
16 the American people.

17                         So why didn't we have 10,000 National  
18 Guard troops suited up and armed, guarding the Capitol on  
19 the morning of January 6?

20                  A. Well, there's a multitude of reasons, but  
21 namely under the law as was -- as the Department of  
22 Defense was operating under pursuant to guidance by the  
23 Office of General Counsel and the White House Counsel's  
24 Office and probably the last hundred years of National  
25 Guard authorities, step one was a Commander in Chief's

1 authorization, which we had.

2 Step two was a request by the governing  
3 body, the local governing body, which is usually  
4 governor. But in this instance, it's the mayor since  
5 it's Washington, DC, and/or the heads of the Capitol  
6 Police Bureau because we're talking about the Capitol  
7 Building.

8 Absent those requests, we were under the  
9 advisement of our legal counsel's offices that we could  
10 not activate the National Guard.

11 We could and did everything we could up to  
12 the legal limit to try to begin the processes of getting  
13 these folks ready in case that request came in. And what  
14 I mean by that is people forget the National Guard is  
15 very part-time military. They're doctors, they're  
16 lawyers, they're teachers, they're husbands, they're  
17 wives, they're fathers, in the community. We have to go  
18 get them.

19 And then after the request is made, we can  
20 do that and bring the authorities in that we have in the  
21 Office of the Secretary of Defense to bear. But absent  
22 the request, we could not fully launch that process.

23 Q. Did part of the process involve reaching  
24 out to the local authorities to see if they wanted  
25 National Guard involvement?

1 MR. GRIMSLEY: Objection. Leading.

2 THE COURT: Overruled.

3 A. Normally, no. Normally, the request would  
4 come in.

5 But in this instance, the Secretary and I,  
6 along with others, felt this matter was important enough  
7 that we ordered the Secretary of the Army, after that  
8 authorization came in on January 3, to begin engagements  
9 with Mayor Bowser and the Capitol Police, who he had  
10 already been speaking to on other matters that we've  
11 discussed here.

12 And we wanted to make them aware that the  
13 President authorized 10- to 20,000 National Guard, and we  
14 wanted to ask them if they had a request. It was sort of  
15 a -- it was a proactive, preemptive measure. If they  
16 needed it, we could begin that big lift; that is, moving  
17 thousands of human beings across the country.

18 Q. (By Mr. Shaw) And why is -- what is your  
19 understanding of why DOD is reluctant to deploy National  
20 Guard without a request from local authorities?

21 A. My understanding is historically, how the  
22 Department is operated is they do not want to deploy  
23 uniformed military officers into and around the  
24 United States without the appropriate legal authorities  
25 because one of the bedrock principles of having a

1 civilian in charge of the military is that there is no  
2 military sort of hijacking of local governmental offices  
3 and powers.

4 And I think that's the way, from my  
5 understanding, that the departments -- Department of  
6 Defense has operated its National Guard with that history  
7 in mind.

8 Q. And if the local authorities explicitly  
9 tell DOD that they don't want the National Guard  
10 deployed, what would DOD's reaction be?

11 A. We, under the advice of our general  
12 counsel's office, the White House Counsel's Office, along  
13 with other agencies and departments who all agreed, that  
14 absent a request, we would not move the National Guard  
15 process forward because we had -- or our lawyers had made  
16 the determination that based in history and law and  
17 precedent, that that would not be an appropriate maneuver  
18 for the Department to undertake unilaterally.

19 Q. So the Secretary of the Army had reached  
20 out to local authorities, both in the DC government and  
21 at the U.S. Capitol Police. What was the response?

22 A. I'm paraphrasing, but I think the  
23 documents have been made public. Mayor Bowser wrote a  
24 letter herself approximately January 4 or 5 -- I don't  
25 have the exact day -- declining further requests for

1 National Guard services outside of the 346 National  
2 Guardsmen we had already sent her.

3 And as far the Capitol Police go, it's  
4 encapsulated in multiple people's timelines, including  
5 the Chiefs -- or excuse me, testimonies from the Chiefs  
6 of the Capitol Police and the Capitol Police timeline  
7 itself, where the Sergeant at Arms declined the chief of  
8 police's request for a National Guard request.

9 And, thus, those two were our answers, as  
10 we understood it, from the two governing authorities as  
11 far as January 5 and into January 6 from a timeline  
12 perspective.

13 Q. Okay.

14 MR. SHAW: Could you put up Exhibit 1028,  
15 please.

16 And I believe this is another one to which  
17 there's been no objection, but I do not believe it's yet  
18 been admitted, so I would like to move that this one be  
19 admitted if it hasn't yet been.

20 MR. GRIMSLEY: No objection.

21 THE COURT: 1028 is admitted.

22 (Exhibit 1028 was admitted into evidence.)

23 Q. (By Mr. Shaw) And, Mr. Patel, I would ask  
24 you if you recognize this letter?

25 A. I do.

1 Q. And what is it?

2 A. It's a letter from -- excuse me, if you  
3 can just scroll down. One second. I just want to  
4 confirm the bottom.

5 MR. SHAW: If you could scroll down.

6 A. Okay, thank you.

7 It's the letter I referenced from  
8 Mayor Bowser, I believe on January 5, to the Department  
9 of Defense, where she specifically stated, "We would not  
10 be requesting any additional National Guardsmen and  
11 Women."

12 And that was her letter to us. That was  
13 the declination of a request, and so we were on standby.

14 Q. (By Mr. Shaw) Okay. Did there come a time  
15 when the local authorities asked that the National Guard  
16 troops be deployed?

17 A. When you say "local authorities," can I  
18 just ask for clarification: Do you mean the mayor or --  
19 or line-level agents?

20 Q. Well, if that's an important distinction  
21 from your perspective, why don't you explain what you  
22 mean.

23 A. Well, sure. We always listen to our  
24 operators in the field, our partners in the field; here,  
25 police officers, both at Metropolitan Police Department,



1 which is DC, and the Capitol Police Department. We've  
2 known these folks for a long time, worked with them for  
3 decades.

4 And so we always have these personal  
5 relationships where we're getting our own communications,  
6 saying -- and a lot of those folks said, you know, We  
7 would really like National Guard assistance, but there's  
8 a chain of command.

9 And as this letter speaks to the top of  
10 the chain of command for the mayor and, conversely, the  
11 Capitol Police timeline, and the Chiefs' testimony speaks  
12 for them, there was a declination by the commanding  
13 authorities respectively, even though the will of the  
14 folks doing the work on the ground was slightly  
15 different.

16 Q. Okay. Well, did there come a time when  
17 the commanding authorities for the -- for DC local  
18 government and/or the Capitol Police requested National  
19 Guard support?

20 A. It was on the afternoon of January 6, and  
21 I believe you have the timeline which has some of the  
22 delineation specifically.

23 MR. SHAW: Well, let's -- let's put up  
24 that timeline.

25 Q. (By Mr. Shaw) And you can point us to

1 anything on there that you think is useful.

2 MR. SHAW: So if you put up page 16 --

3 Q. (By Mr. Shaw) Which timeline do you want?

4 Do you want the DOD timeline?

5 A. There's another one with times on it, but  
6 I can -- I think the D- --

7 MR. SHAW: Go to the other timeline.

8 A. Yeah, the DOD one. Sorry. If you just  
9 scroll down a little.

10 MR. SHAW: Scroll down.

11 A. Yeah, there you go.

12 So that is the -- not everything that  
13 happened, of course, but some of the highlights that were  
14 happening during the day.

15 And you can see specifically at 1422, at  
16 2:22 in the afternoon, the Secretary of the Army had a  
17 phone call with Mayor Bowser and her deputy mayor and MPD  
18 leadership to assess and discuss the current situation on  
19 the ground. There was no forthcoming request at that  
20 time.

21 And then Mayor Bowser, later in that  
22 afternoon, would make such a request. And as soon as  
23 that request was made, it was relayed back to the Office  
24 of Secretary of Defense, but we had already preemptively  
25 delegated authorities out to expedite the process.

1                   But what most people don't understand is,  
2 we can't just have thousands of men and women ready  
3 immediately to deploy and employ and activate.

4                   So once we got that go, we had,  
5 thankfully, already staged to the limit of the law where  
6 we could, and so we probably cut the time down by half.  
7 And essentially what ended up happening was the fastest  
8 cold start of the United States Military domestically  
9 since World War II.

10                  So while we always wish to have done it  
11 faster, the timeline in which we did it was pretty  
12 amazing given what the men and women had to do on the  
13 ground.

14                  Q. (By Mr. Shaw) Some people now say that the  
15 National Guard should have been deployed earlier.

16                  Was any delay in deploying the National  
17 Guard attributable, in your mind, to a need for  
18 additional or different authority from President Trump?

19                  A. No.

20                  Q. Why not?

21                  A. Well, the President has a piece of it, and  
22 we had that piece. And so as I said, we -- we acted on  
23 that piece proactively, went to the Mayor, went to the  
24 Capitol Police. We discussed the responses.

25                  You know, Monday morning quarterback, of

1 course, we -- we wish we had gotten those requests  
2 earlier and, you know, things like no-climb fence  
3 structures could have been put in ahead of time. But  
4 those authorities -- I think it's important to note that  
5 the head law enforcement authority of the day was DOJ,  
6 not the Department of Defense.

7 It should never be the Department of  
8 Defense domestically. And them, along with DHS and the  
9 Capitol Police, have measures, such as no-climb fences,  
10 that they could have installed, and, you know, I don't  
11 know why; those questions have to be asked of them.

12 Q. Okay. And given President Trump's  
13 statement to Acting Secretary Miller the evening before  
14 that he should do what's required to protect the American  
15 people, was there any doubt in your mind about what  
16 President Trump wanted done?

17 A. No.

18 MR. GRIMSLEY: Objection. Leading.

19 THE WITNESS: Sorry.

20 THE COURT: Sustained.

21 Q. (By Mr. Shaw) Given that statement, were  
22 you uncertain about what needed to be done or what  
23 President Trump wanted done?

24 A. No. I knew exactly what needed to be  
25 done, and we did it.

1 Q. Was there, to your knowledge, any  
2 uncertainty among DOD leadership about what the President  
3 wanted done?

4 A. No.

5 Q. Did anyone in senior DOD leadership or  
6 anyone at all at DOD, to your knowledge, convey to the  
7 President any request that afternoon for more or  
8 additional authority or authorization or say there was a  
9 problem that required his attention to get National Guard  
10 troops deployed?

11 A. To my knowledge, no, but we wouldn't have  
12 needed to have done that. We had the 20,000  
13 authorization, so anything inside of a numbers count for  
14 20,000 -- just to give you an example, the DC National  
15 Guard comprised of 2,500 soldiers, give or take 50. So  
16 we would bring in the rest from other regions in the  
17 country.

18 But even the amount of soldiers we put  
19 into Washington, DC, it was the largest uniformed  
20 occupation of DC since the Civil War. So I didn't think  
21 we were going above 20,000.

22 Q. Did you testify before the January 6  
23 Select Committee?

24 A. I did.

25 Q. Were you questioned in a public hearing?

1           A.    No.  They declined my request for a public  
2 hearing.

3           Q.    And what sort of hearing were you  
4 questioned in?

5           A.    What we call closed-door.  Attorneys,  
6 members of the Committee, my counsel.  That's it.

7           Q.    Was your testimony public when given?

8           A.    No.

9           Q.    Did you tell them what you've told us  
10 today about the President and the deployment of National  
11 Guard troops?

12          A.    I believe so.

13          Q.    Did the Committee ever call you to testify  
14 about those issues in public session?

15          A.    No.

16          Q.    Did you ever review the Committee's final  
17 report?

18          A.    In large part, but not -- I don't think I  
19 could say I read every single page.

20          Q.    Okay.  Did you look to see if you were  
21 mentioned in the report?

22          A.    With me and my counsel -- a little  
23 background.  We had an agreement with the Committee that  
24 my testimony -- since I was the first individual  
25 subpoenaed by the January 6 Committee, we felt it

1 appropriate that the transcript should be made public at  
2 some point.

3 And after months-long negotiations, they  
4 refused to do so and published their final report, and to  
5 my memory, it had been excluded. And our counsel took  
6 that up with the January 6 Committee staff as to why the  
7 agreement had been violated, and I think on the eve of  
8 the dissolution of the Committee, my transcript was the  
9 last one released.

10 MR. SHAW: I have no further questions for  
11 you, sir. Thank you very much.

12 CROSS-EXAMINATION

13 BY MR. GRIMSLEY:

14 Q. Good afternoon, Mr. Patel.

15 A. Hello, sir.

16 Q. I started my career as a federal public  
17 defender as well, so . . .

18 I want to start with the day, January 6.

19 You were not at the White House on  
20 January 6?

21 A. I believe the entirety of the day, we were  
22 in the Pentagon.

23 Q. You were at the Department of Defense,  
24 correct?

25 A. Yes, the Office of the Secretary of

1 Defenses.

2 Q. And you didn't speak with President Trump  
3 on January 6?

4 A. I'm sorry?

5 Q. You did not speak with President Trump on  
6 January 6?

7 A. I don't believe I did.

8 Q. You did not attempt to reach out to  
9 President Trump that day?

10 A. I don't recall doing that.

11 Q. President Trump, to your knowledge, did  
12 not try to reach out to you or others at the Department  
13 of Defense?

14 A. He did not -- well, try, I'm not sure, but  
15 he may have spoken to other DOD leadership that day.

16 Q. To your knowledge, though, you have no  
17 knowledge of any such communication?

18 A. I don't believe so.

19 Q. You are aware that President Trump knew of  
20 the attack on the Capitol by 1:21 p.m. on the afternoon  
21 of January 6, correct?

22 A. Well, I'm not really sure when he knew of  
23 it. We didn't exchange communications on it.

24 Q. Well, you reviewed the January 6 report;  
25 is that correct, sir?



1 A. Some of it, yes.

2 Q. And you saw in the January 6 report,  
3 Finding 315, that the Committee found that  
4 President Trump knew the attack was underway as of  
5 1:21 p.m. that evening?

6 A. Well, that's what the Committee found, but  
7 that doesn't mean that's what I said or I --

8 Q. You have no -- you have no reason to  
9 dispute that, though, do you, sir?

10 A. The -- well, I don't know what your  
11 reference -- can you show me that piece?

12 Q. Yes.

13 Can you see my screen. Or no?

14 A. I see you, sir. I don't see . . .

15 Q. How about now?

16 A. Okay. Okay.

17 Q. And you see there Finding -- it's actually  
18 316: "By 1:21 p.m., President Trump was informed that  
19 the Capitol was under attack."

20 Do you see that?

21 A. I see it.

22 Q. You have no basis to dispute that, do you,  
23 sir?

24 A. Nor confirm it. I will just accept what  
25 is written.

1 Q. And you said you had no communications  
2 that you recall with President Trump that day?

3 A. As best as I can recall.

4 Q. And you don't know who President Trump may  
5 have spoken to that day, do you?

6 A. No.

7 Q. You don't know -- so you can't say that  
8 President Trump reached out at any point in time to DHS  
9 that day while the Capitol was under attack?

10 A. "To DHS." Like the Secretary, or just  
11 anyone over there?

12 Q. Well, to your knowledge, during the  
13 attack, President Trump didn't make any calls to DHS,  
14 FBI, DOJ, MPD, Capitol Police, correct?

15 A. When you say "any" -- yeah, "any calls,"  
16 I'm not sure.

17 If leadership was called, I would have  
18 been notified because we would have been on the call.

19 Q. But leadership was not called; you were  
20 not notified of any such call by President Trump to any  
21 of those other federal law enforcement authorities?

22 A. That I'm aware of.

23 Q. And during the attack, President Trump  
24 didn't attempt, to your knowledge, to speak with  
25 Secretary of Defense Christopher Miller?

1           A.    I don't -- maybe there was a phone call,  
2   but I'm not sure.  We were -- we were occupied executing  
3   the deployment of the National Guard.

4           Q.    Sir, you have no basis for saying that  
5   there was a call between President Trump and  
6   Christopher Miller that day?

7           A.    I don't know that there was or there  
8   wasn't.

9           Q.    Now, there was nothing preventing  
10  President Trump from sending out a tweet between  
11  1:21 p.m. and 4:17 p.m. telling supporters who were at  
12  the Capitol to go home, was there?

13          A.    I don't know --

14               MR. SHAW:  Objection.  Foundation.

15          A.    -- how his Twitter account works.

16               THE COURT:  I'm sorry, I couldn't hear  
17  your objection.

18               MR. SHAW:  Objection.  Foundation.

19               MR. GRIMSLEY:  I'll rephrase.

20          Q.    (By Mr. Grimsley)  There's no authority  
21  you're aware of, sir, that would have prevented  
22  President Trump from sending out a tweet between  
23  1:21 p.m. and 4:17 p.m. telling the people to go home  
24  from the Capitol?

25          A.    Not being the social media genius, I guess

1 he could tweet.

2 Q. And you're aware of no authority that  
3 would prevent him from doing that, correct?

4 A. No, but I'm not the legal expert.

5 Q. Well, you testified earlier a little bit  
6 about the history of the Department of Defense and how  
7 they utilize the DC National Guard, and you said -- I  
8 wrote it down: All the time and decades, they had done  
9 it this way.

10 Did you say that?

11 A. Yes, I've -- that's what the record  
12 reflects.

13 Q. Prior to November 9, 2020, you had never  
14 worked at the Department of Defense?

15 A. That's not true.

16 Q. When did you work at the Department of  
17 Defense, sir?

18 A. That was my third tour at DOD over my  
19 government career.

20 Q. You had never been in the position of  
21 Chief of Staff to the Secretary of Defense before,  
22 had you?

23 A. No, I only served that role once.

24 Q. You had never been responsible for  
25 deploying the National Guard?

1 A. Prior to what date?

2 Q. November 9, 2020.

3 A. I had not, no, right.

4 Q. So you were at the -- you were at the  
5 Defense Department as Chief of Staff from November 9,  
6 2020, and that was after the election, correct?

7 A. Yes.

8 Q. That was after the election had been  
9 called by media outlets for President Biden, correct?

10 A. I think most media had.

11 Q. And then you stayed at the Department of  
12 Defense only until January 20, 2021, right?

13 A. Yes.

14 Q. So you had less than three months in the  
15 position Chief of Staff at the Department of Defense,  
16 correct?

17 A. Yeah.

18 Q. Now, I want to talk about your testimony  
19 about 10- to 20,000 troops being authorized.

20 You testified during direct that you  
21 attended a meeting in the Oval Office on, you say now,  
22 January 3, where President Trump, you say, authorized 10-  
23 to 20,000 National Guard troops.

24 Is that right?

25 A. Yeah, it's about -- it's about January 3,

1 but I think the timeline is accurate on it.

2 Q. And then you said -- you also testified  
3 that after the meeting, DOD, somebody reached out to  
4 Mayor Bowser and Capitol Police saying, We've got all  
5 these people we can deploy, do you want them?

6 A. That would have been the Secretary of the  
7 Army, yeah.

8 Q. So you didn't do that, did you?

9 A. No. We gave the instruction.

10 Q. You didn't witness the Secretary of the  
11 Army do that, did you?

12 A. Witness him do what? Sorry.

13 Q. Reach out to anybody at the Mayor's office  
14 or the Capitol Police.

15 A. No, I didn't witness him. He went and  
16 then reported back to us.

17 Q. He reported back to you that he actually  
18 had talked to them?

19 A. Yeah. That's how the chain of command  
20 works.

21 Q. Finally, you testified that Mayor Bowser  
22 and the Capitol Police rejected the offer, and you point  
23 to that January 5 letter.

24 Right?

25 A. For Mayor Bowser, yes.

1 Q. I want to dig into each one of those,  
2 first starting with the meeting where you say 10- to  
3 20,000 troops were authorized.

4 A. Okay.

5 Q. And you said definitively that it was on  
6 January 3. I think you even pointed to a bullet point at  
7 one point saying it was January 3.

8 Is that correct?

9 A. Yeah, in the timeline.

10 Q. Well, let's pull that up.

11 And this is Exhibit 1027.

12 This is the timeline?

13 A. Yep.

14 Q. And you pointed to that third bullet on  
15 January 3, correct?

16 A. I think counsel did, but yeah, okay, sure.

17 Q. And you've already testified that you  
18 provided testimony, and it was deposition testimony to  
19 the January 6 Committee?

20 A. Yes.

21 Q. That was under oath?

22 A. Yeah.

23 Q. Much closer in time to the actual events  
24 than we are here today?

25 A. Yeah.

1 Q. And you had actually brought with you to  
2 that deposition the DOD timeline.

3 Do you remember that?

4 A. Well, there's multiple DOD timelines that  
5 I brought, yes.

6 Q. Yes. But this was one of them, and you  
7 brought another one, too, correct?

8 A. At least one other, yes.

9 Q. And you remember you were asked about when  
10 a meeting or -- when a meeting took place where you said  
11 that 10- to 20,000 troops were authorized?

12 A. Right, yeah.

13 Q. Do you remember what you said?

14 A. Not off the top of my head.

15 Q. I want to take you to page 43 of your  
16 deposition.

17 A. Uh-huh.

18 Q. And go to line 12.

19 A. Yeah.

20 Q. Sorry. Go to 38. Go to line 2.

21 A. Yeah.

22 Q. And you're discussing there an article  
23 from Vanity Fair; is that right?

24 A. They were asking about it.

25 Q. And according to the article: "We're



1 like, 'We're going to provide any National Guard support  
2 that the District requests,'" Miller responded. "And  
3 [Trump] goes, 'You're going to need 10,000 people.' No,  
4 I'm not talking bullshit, he said that."

5 A. Okay.

6 Q. And then you answer: Oh, so you remember  
7 stuff like that.

8 So going off just memory -- and we can go  
9 back to the article when you bring it up -- there was a  
10 meeting with the President of the United States, Acting  
11 Secretary Miller, and some others. And then you couldn't  
12 even remember who else was at the meeting, could you?

13 A. I could definitively tell you, as I did  
14 them, what Cabinet officers were there. I thought that  
15 was the important thing.

16 Q. Yeah, but I think you talked about the  
17 Joint -- Chairman of the Joint Chiefs of Staff being  
18 there earlier today?

19 A. Yeah.

20 Q. Yeah. And you were asked these questions  
21 in your deposition.

22 Did you remember the Chairman of the Joint  
23 Chiefs of Staff even being at that meeting?

24 A. Yeah.

25 Q. No. What does it say here:

1 "And some others I can't recall off the  
2 top of my head"?

3 A. So you're specifically pointing to a line  
4 of questioning about the article. The article doesn't  
5 encapsulate the broadness of your question.

6 I specifically stated at least five other  
7 times in that deposition that the Chairman of the Joint  
8 Chiefs of Staff was present, along with the Secretary of  
9 Defense, the Chief of Staff, the President of the United  
10 States, myself and White House Counsel, and others.

11 Q. Let's go to page 43 of your deposition,  
12 line 12:

13 "Do you remember if General Milley was at  
14 that conversation?"

15 "Sorry, which one?"

16 "The January 5, this conversation  
17 regarding the 10,000 troops."

18 "To the best of my memory, we usually were  
19 in the Oval Office meetings with a number of folks, so it  
20 was -- he could have been. I just don't recall."

21 Were you asked that question and did you  
22 give that answer?

23 A. Yeah, for a January 5 meeting.

24 Q. So you're saying that there was a  
25 January 3 meeting and a January 5 meeting now where

1 10,000 to 20,000 troops were discussed?

2 A. No. I'm saying there was multiple  
3 meetings in the Oval Office during that week and before,  
4 and this individual is reading, again, from either an  
5 article or a date he picked.

6 As I said in the previous document you  
7 showed me, I said specifically it was January 4th or 3rd  
8 or 5th at that time; that was the best I could recall.

9 Q. So you had the timeline then. This was at  
10 the end of 2021. You were talking about dates.

11 You couldn't remember whether it was the  
12 3rd, the 4th, the 5th; and now you're saying  
13 definitively it was the 3rd that corresponds to that  
14 bullet point?

15 A. I'm saying there was a meeting on the  
16 3rd definitively. I'm saying you can't correspond it  
17 to a specific bullet point because you're citing media  
18 articles that this prosecutor was asking me about at a  
19 specific time and setting.

20 Q. I want to go back to the timeline, sir.

21 There's no mention of 10- to 20,000 troops  
22 anywhere in that timeline, is there?

23 A. No.

24 Q. There's no mention of 10- to 20,000 troops  
25 anywhere in that IG report you discussed, correct?

1 A. Not that I'm aware.

2 Q. Well, you looked through it both before  
3 your deposition and presumably today, no?

4 A. I looked through some of the timeline. I  
5 didn't read the entire 600-page IG report.

6 Q. Well, you think your lawyers or the people  
7 asking you questions would have looked for that if it  
8 were in there?

9 A. You can ask them.

10 Q. They didn't ask you about that, though,  
11 did they?

12 A. I'm not going to tell you what I talked to  
13 my lawyers about.

14 Q. Okay. Now -- well, Mr. Trump's lawyers  
15 are not your lawyers, right?

16 A. No.

17 Q. Did you prepare with them?

18 A. I prepared with my counsel.

19 Q. You didn't talk to them at all?

20 A. My counsel had discussions with them.

21 Q. So let's look at that third bullet point,  
22 January 3, 2021.

23 You say that, that bullet point:

24 "President concurs in activation of the DC National Guard  
25 to support law enforcement."

1                   That refers --

2                   A.    Yes.

3                   Q.    -- to 10- to 20,000 troops?

4                   A.    In part, yeah.

5                   Q.    Well, you know that the DC National Guard  
6 doesn't have 10- to 20,000 troops?

7                   A.    Right. Thank you for making my point.

8                   Q.    Yeah. And it says, "the activation of the  
9 DC National Guard," not other National Guard units,  
10 correct?

11                  A.    Yeah.

12                  Q.    And there was a request, though, that had  
13 come in on December 31, as you can see in that timeline,  
14 for DC National Guard assistance, right?

15                  A.    346 people for traffic control.

16                  Q.    Traffic control, and there was a 40-person  
17 quick reaction force as well, right?

18                  A.    Yeah, the QRF is staged off-site.

19                  Q.    And that's mentioned on December 31, 2020,  
20 that entry, the request?

21                  A.    I don't see the QRF in this timeline, but  
22 if it's there in a different place, it's there.

23                  Q.    And you see then that January 3, after  
24 that, refers to the President concurring in the  
25 activation of the DC National Guard, and the 340 troops

1 and 40 quick reaction force would have been with the DC  
2 National Guard?

3 A. Yeah.

4 Q. And then January 4, it talks about  
5 340 troops and a quick reaction force as well?

6 A. Uh-huh.

7 Q. You see that?

8 No mention --

9 A. Yeah.

10 Q. -- of 10- to 20,000 National Guard troops?

11 A. No.

12 Q. Now, is there any documentation anywhere  
13 that you can point to at all, official documentation  
14 saying that 10- to 20,000 troops were authorized?

15 A. I don't have it on me, but it's in the  
16 internal DOD memorandums delegating authorities to the  
17 Secretary of the Army, the DC National Guard, and our  
18 Adjutant Generals and the Major General in charge of the  
19 entire National Guard force. I don't have those  
20 memorandums.

21 Q. Where is that document, sir?

22 A. It's not one document. They're at the  
23 Department of Defense.

24 Q. And was that produced to the January 6  
25 Committee?

1           A.    I asked them to get it.  They didn't get  
2    it.

3           Q.    You've seen no public documentation  
4    anywhere at any point in time that's out and available to  
5    the public that says 10- to 20,000 troops were  
6    authorized?

7           A.    When you say "documentation," by whom?

8           Q.    By anyone.

9           A.    I've seen lots of media articles saying  
10   that that is exactly what happened.

11          Q.    Well, you've seen media articles quoting  
12   yourself, sir.

13          A.    I'm not the only one they quote.  You  
14   asked the question if I've seen it in anyone and  
15   anywhere, and I've seen it with dozens of people and  
16   scores of articles.

17          Q.    Do you have any of those articles on you,  
18   sir?

19          A.    No, but if you've got the Internet, we can  
20   look it up.

21          Q.    Now, you remember the Vanity Fair article  
22   we talked about?

23          A.    In part.

24          Q.    I'm showing you what's been marked as  
25   Exhibit 292.

1 Do you see that article there, sir?

2 A. Yes, sir.

3 Q. Is that the Vanity Fair article?

4 A. Yeah, I'll take your word for it. I  
5 can't -- it's kind of like --

6 MR. SHAW: Objection, Your Honor. This  
7 was not timely disclosed to us as a cross-examination  
8 exhibit.

9 MR. GRIMSLEY: I believe it was. We have  
10 it marked as an exhibit.

11 MR. SHAW: This was not on the list given  
12 to us by the deadline on Sunday. We received it this  
13 morning apparently.

14 MR. GRIMSLEY: Well, you all have  
15 supplemented the exhibit list quite a number of times  
16 shortly before, so --

17 THE COURT: This is for impeachment.  
18 Overruled.

19 Q. (By Mr. Grimsley) Now, there was a  
20 reporter from Vanity Fair who was actually embedded with  
21 you all for some period of time in the transition?

22 A. Yeah.

23 Q. And that reporter then wrote an article  
24 that was published shortly after the Biden administration  
25 took over; is that right?



1           A.    I'll let the article reflect the date.  I  
2    don't have it off the top of my head.

3           Q.    And there is a discussion of when there  
4    was a meeting where you say 10- to 20,000 people were --  
5    were authorized, January 5?

6           A.    That's what it says Christopher Miller  
7    said, according to that report.

8           Q.    Yeah.  And you read that article, and you  
9    didn't correct them at all, did you?

10          A.    I didn't read the article.  When?

11          Q.    When the Vanity Fair article came out with  
12    your name in it about you with a guy embedded, you didn't  
13    read the Vanity Fair article?

14          A.    I had my Office of Communications read the  
15    article, but we -- we get 1,000 articles a day.  No, I  
16    can't read them all.  I'm sorry.

17          Q.    You get 1,000 articles a day about you  
18    from Vanity Fair?

19          A.    Not me, but I'm not the important part.  
20    I've got bigger functions to do at the Department of  
21    Defense, like Operation Warp Speed, the no-fail mission,  
22    withdrawing out of Afghanistan, saving American hostages,  
23    and securing our border.  I don't care what Vanity Fair  
24    says.

25          Q.    Well, sir, you, to be fair, were not at

1 the Department of Defense when the Vanity Fair article  
2 came out?

3 A. I don't know. You keep showing me a piece  
4 of the article, I have no idea when it came out.

5 Q. Well, the reason January 5 is kind of  
6 important is Mayor Bowser sent her letter on the 5th,  
7 didn't she?

8 A. Okay.

9 Q. And you say that there was this meeting  
10 where stuff was authorized, 10- to 20,000 troops, there's  
11 no record of it. You then -- somebody went from the  
12 Department of Defense to Mayor Bowser's office to the  
13 Capitol Police requesting if they need some assistance.  
14 And then on January 5, Mayor Bowser writes a letter back.

15 Right?

16 A. You say there's no record of it, but okay.

17 Q. Okay.

18 A. The rest is there.

19 Q. Writes a letter back on January 5.

20 Do you know what time of day she wrote  
21 that letter back, sir?

22 A. I don't.

23 Q. Let's look at Exhibit 1031.

24 In the DOD IG report, it says that she  
25 wrote the letter at 2:27 p.m.

1 Do you have any reason to dispute that?

2 A. No.

3 Q. And in the Vanity Fair article we just  
4 looked at, it says in the evening -- where you say 10- to  
5 20,000 troops were authorized, it was in the evening of  
6 January 5?

7 MR. SHAW: Objection. Mischaracterizes  
8 the testimony.

9 A. Also, it's Christopher Miller in the  
10 article, not me.

11 THE COURT: Hold on.

12 THE WITNESS: Sorry.

13 THE COURT: Overruled.

14 A. The paragraph you showed me in Vanity Fair  
15 was Christopher Miller speaking.

16 Q. (By Mr. Grimsley) Yeah. And it says, "On  
17 the evening of January 5 . . . ."

18 A. Right. Then it says, "Miller recalled";  
19 "Miller said." It doesn't say I said.

20 Q. So you think Mr. Miller's talking about a  
21 different meeting?

22 A. I don't know. You can ask him.

23 Q. Is there any record, public record that  
24 you've seen documenting a request or an offer from  
25 President Trump or the Department of Defense to

1 Mayor Bowser or the Capitol Police of 10- to  
2 20,000 troops?

3 A. We would not have made the request. We  
4 would have presented them with the authorization, which  
5 we did through the Secretary of the Army.

6 Q. And it's -- there's no record of that in  
7 any of the timelines we looked at, sir, 1031, 1027?

8 A. Of Secretary Army going there?

9 Q. Yeah. And offering 10- to 20,000 troops.

10 A. I don't know if that's in the timeline or  
11 not, but he went there and reported back to us, and  
12 that's why we didn't mobilize.

13 Q. There's no record of that, though, in the  
14 timeline, correct, sir?

15 A. In the timeline -- yeah, the timeline  
16 speaks for itself. But it's not exhaustive. That was  
17 never the purpose of the timeline.

18 Q. So it's not exhaustive, but you put in  
19 stuff about 340 troops but not 10- to 20,000 troops?

20 A. No, because at the time, that was the  
21 specificity with numbers at which we had for actual  
22 deployment.

23 Q. Now, you've said that this meeting took  
24 place now on January 3, maybe it's on January 5, there's  
25 two meetings.

1                   But you've also been out there talking  
2 about how there was a meeting on January 4, haven't you,  
3 sir?

4                   A.    Yeah.  As I've said, I've testified to the  
5 best of my ability.  We had a lot going on.  If I'm off  
6 by a day, you know, sue me.  But I'm telling you what  
7 happened to the best of my ability.

8                   That doesn't change the fact that the  
9 authorization came in before and it was relayed to the  
10 appropriate officials in DC and the Capitol Police.  It  
11 was declined, and we acted when their request finally  
12 came in on January 6.

13                   So if you want to argue with me about  
14 January 3, 4, and 5, I guess we can keep doing this.

15                   Q.    Well, sir, it's kind of important because  
16 you're pointing to a timeline and saying it was on  
17 January 3.  Then there's an article saying it was  
18 January 5.  Then there's something else saying it's  
19 January 4.  You on interviews.  And then there's a letter  
20 that's sent on January 5, which you say is a response to  
21 a request or an offer from DOD.

22                   So the timing does matter, sir.

23                   MR. SHAW:  Objection.

24                   Q.    (By Mr. Grimsley)  Doesn't it?

25                   MR. SHAW:  Objection.  That question

1 mischaracterizes testimony and mischaracterized the  
2 article. It was argumentative.

3 THE COURT: You can redirect on all those.  
4 Overruled.

5 A. Maybe it's important to you. That's why  
6 you're asking about it.

7 Q. (By Mr. Grimsley) Do you recall what  
8 Secretary Miller said about whether there had been  
9 10,000 troops ordered to be deployed?

10 A. There were never 10,000 troops ordered to  
11 be deployed.

12 Q. Just authorized?

13 A. Right.

14 Q. But you do recall that Christopher Miller  
15 said there was no such order?

16 A. I don't -- I don't understand what you're  
17 asking. When would Christopher Miller, this Acting  
18 Secretary of Defense -- if you can point me to a time  
19 saying this statement about an order for 10,000 people.

20 Q. I'm going to show you the January 6  
21 report. This is page 95 of the report.

22 A. Uh-huh.

23 Q. And there's a finding specifically on this  
24 issue:

25 "Some have suggested that President Trump

1 gave an order to have 10,000 troops ready for  
2 January 6th. The Select Committee found no evidence of  
3 this. In fact, President Trump's Acting Secretary of  
4 Defense Christopher Miller directly refuted this when he  
5 testified under oath:"

6 "Committee Staff: To be crystal clear,  
7 there was no direct order from President Trump to put  
8 10,000 troops to be on the ready for January 6th,  
9 correct?"

10 "No" --

11 A. Right.

12 Q. -- "Yeah. That's correct. There was no  
13 direct -- there was no direct order."

14 A. That's absolutely right. There was no  
15 order because that would have been unlawful as we  
16 understood it.

17 There was an authorization. There is a  
18 huge difference.

19 Q. Okay. Now, sir, you're the current --  
20 what's your current job for President Trump?

21 A. I'm a Senior Advisor for National -- for  
22 National Security and Defense.

23 Q. And how long have you been in that  
24 position?

25 A. About a year.

1 Q. You're advising President Trump on what he  
2 might do during a second administration?

3 A. On policy and other matters.

4 Q. And are you paid by the Trump  
5 organization?

6 A. No.

7 Q. Nothing?

8 A. The Trump organization does not pay me.

9 Q. Sorry. Are you paid by President Trump or  
10 any representative of his?

11 A. I can work with my counsel on who exactly  
12 pays me, but I don't think those are -- either of those  
13 two are them.

14 Q. Does any organization affiliated with  
15 President Trump currently pay you?

16 A. Yes.

17 Q. What?

18 A. It's one of his PACs.

19 Q. What PAC?

20 A. I believe it's Save America.

21 Q. How much does President Trump's Save  
22 America PAC pay you per month?

23 A. 15,000.

24 Q. How much has President Trump's Save  
25 America PAC paid you since you began working?



1           A.    It's been maybe a year, maybe just under,  
2   so whatever that adds up to be.

3           Q.    Over \$200,000?

4           A.    If it's over a year, yeah, but I don't  
5   think so.  I would have to check the math.

6           Q.    And you'd get a position in the second  
7   Trump administration, do you think?

8           A.    I don't know.

9           Q.    Have you discussed that with him?

10          A.    Not really.

11          Q.    Now, you have written a few books, haven't  
12   you?

13          A.    A children's book and a new book, yes.

14          Q.    And the children's book is actually about  
15   President Trump?

16          A.    Yes, in part.

17          Q.    And what's the name of that book?

18          A.    It's a series called "The Plot Against the  
19   King."

20          Q.    And Trump is the "King," "King Donald"?

21          A.    Yeah.  It takes place in medieval times.  
22   It's about Russiagate for kids.

23          Q.    And the first book, the villain is  
24   Hillary Queenton?

25          A.    Yeah.

1 Q. King Trump is accused of being a shifty  
2 knight -- or accused by a shifty knight of --

3 A. Right.

4 Q. -- cheating to get the throne.

5 You're in the story, you're a wizard who  
6 protects --

7 A. Yes.

8 Q. -- Donald Trump?

9 A. I think it's more portrayed as protecting  
10 the truth, but, sure, it's a children's book. Go for it.

11 Q. And Trump said he wants to put that book  
12 in every school in America?

13 A. I think he posted about it, yes, if that's  
14 what you have the quotes to being.

15 Q. And you actually have a website,  
16 fightwithkash.com?

17 A. It's one of my websites.

18 Q. And you sell swag on that site?

19 A. I do it for charitable giving.

20 Q. And I just want to look at some of those.

21 And you sell various swag, I think you  
22 sell OMB, or "Orange Man Bad," swag there?

23 A. Yeah, when you say "swag," merchandise.

24 Q. Merchandise.

25 A. Yeah.

1 Q. What does "Orange Man Bad" stand for?

2 A. It's just one of the things you see on the  
3 media describing President Trump, so we thought it would  
4 be a good way to make money and give it away. We've  
5 given away hundreds of thousand of dollars to children  
6 and veterans and active-duty military in need.

7 Q. And "Orange Man Bad" refers to liberals  
8 who don't like President Trump, right?

9 A. I think that's one way -- well, you can  
10 tell me, I don't know.

11 Q. And you wrote another book called  
12 "Government Gangsters"; is that right?

13 A. I did.

14 Q. And "Government Gangsters" is about your  
15 view that there's a cabal or deep state out there that is  
16 trying to ruin our country?

17 A. It's not my view. In the book, it's  
18 outlined per their actions.

19 Q. And you write the book about the deep  
20 state, right?

21 A. In part.

22 Q. Is this proceeding part of the deep state?

23 A. No. It's a law enforcement proceeding.

24 Q. Am I part of the deep state?

25 A. I don't know. I don't really know you.

1 Q. Is the Judge part of the deep state?

2 A. I think the Judge is beyond reproach, but  
3 if you want to get into it, we can.

4 Q. Frankly, sir, you think that all liberals  
5 or liberal leadership are evil, right?

6 A. That's -- that's outrageous. I worked  
7 more in the Department of Justice for Deputy Attorney  
8 General Sally Yates than I ever did in a Republican  
9 administration. We've meted out wonderful cases in the  
10 National Security Administration. I worked as a public  
11 defender for eight years executing due process.

12 So if you want to make that globalization  
13 because the cameras are on, you can go right ahead. But  
14 I don't believe that.

15 (Video playing.)

16 Q. (By Mr. Grimsley) And that was you in an  
17 interview, sir?

18 A. Yeah, talking about specific leadership,  
19 not everybody.

20 Q. Now, you also serve currently on the board  
21 of directors for the Trump Media Group; is that right?

22 A. I do.

23 Q. And how long have you served in that  
24 position?

25 A. Probably a year and change, maybe.

1 Q. And the Trump Media and Technology Group  
2 owns and runs Trump's social media platform, Truth  
3 Social?

4 A. I think, yeah, in part.

5 Q. And how much are you paid as a director on  
6 the board of directors for Trump Media and Technology  
7 Group?

8 A. Zero.

9 Q. Who else is on that board with you?

10 A. If I could just ask my counsel if I'm  
11 allowed to publicly relay that. I don't know if that  
12 documentation is public or not. If I am, I'm happy to  
13 tell you.

14 Q. I'll tell you that it's in the Secretary  
15 of State filings from Florida.

16 A. Okay. If it's public, then it's myself,  
17 Dan Scavino, Donald Trump, Jr., and I think former  
18 President Trump, I think, if my memory serves me.

19 Q. And former President Trump is the chairman  
20 of the board?

21 A. I think that's his title.

22 Q. Devin Nunes is President and CEO, correct?

23 A. Yeah.

24 Q. How often do you all meet?

25 A. As needed.

1 Q. When is the last time you met?

2 A. Maybe a month ago. I'm not really sure.

3 Q. Now, you had testified on direct that the  
4 FBI could have sent troops out to protect the Capitol on  
5 January 6; is that right?

6 A. Well, not troops, but 1811 agents, federal  
7 law --

8 Q. So federal law enforcement officers,  
9 right?

10 A. Right.

11 Q. And the FBI reports ultimately up to the  
12 President?

13 A. To the DOJ as Attorney General, and then  
14 to the President.

15 Q. So up to the President, though?

16 A. Well, every Cabinet Secretary does.

17 Q. And you're not aware of the President  
18 making any phone calls to DOJ to authorize release to the  
19 FBI or FBI agents on January 6?

20 A. No. What my concern was, was that  
21 Director Christopher Wray was on none of the leadership  
22 calls and that DOJ had been designated the lead law  
23 enforcement agency for January 6 and was not taking the  
24 appropriate preemptive measures to secure the Capitol  
25 grounds.

1                   So we were working internally to try to  
2 get them there, but unfortunately they never did. The --  
3 us, the DOD, did not have that primary role.

4                   Q.    And Christopher Wray is one of the members  
5 of the deep state that you identify in "Government  
6 Gangsters," right?

7                   A.    I think Christopher Wray is one of the  
8 members, as a director of the FBI, that we've caught  
9 lying, so yes, in part.

10                  Q.    And who are the other members of the deep  
11 state that you've identified in "Government Gangsters"?

12                  MR. SHAW:  Objection, Your Honor.  At some  
13 point, this is just irrelevant.

14                  THE COURT:  Why don't you move on,  
15 Mr. Grimsley.

16                  MR. GRIMSLEY:  Thank you.

17                  Nothing further, Your Honor.

18                  THE COURT:  Does the Colorado Republican  
19 Party have any questions?

20                  MS. RASKIN:  No, Your Honor, we do not.

21                  MR. KOTLARCZYK:  Not for the Secretary,  
22 Your Honor.

23                  THE COURT:  Any redirect, Mr. Shaw?

24                  MR. SHAW:  Just a couple of quick  
25 questions, Your Honor.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. SHAW:

4 Q. Mr. Patel, to your mind, is there anything  
5 inconsistent with the President telling you on January 3  
6 that he thought that he was authorizing 10- to 20,000  
7 troops and then telling you on January 5 that you're  
8 going to need 10,000 troops?

9 A. No.

10 Q. To your understanding, would Department of  
11 Defense typically, when it reaches out to local  
12 authorities, offer a specific number of troops? Or would  
13 it offer to provide what local authorities need?

14 A. Well, that's part of the conversation. We  
15 would say: Here's the -- here's the cap so far. What  
16 are you having? A Super Bowl? A parade? A protest?  
17 What are you anticipating? What's the threat analysis,  
18 intelligence landscape? And then we work back and forth.

19 And if it superseded the threshold, we'd  
20 go back and get the appropriate authorization.

21 So there's always a back-and-forth.

22 MR. SHAW: I don't have any further  
23 questions for you, sir. Thank you very much for your  
24 time.

25 THE WITNESS: Thank you.



1 THE COURT: Mr. Patel, thank you for your  
2 testimony today. You're released.

3 THE WITNESS: Thank you, Your Honor.

4 MR. SHAW: So our next witness is also on  
5 WebEx, Your Honor.

6 THE COURT: Okay.

7 MR. SHAW: We just need to get her lined  
8 up, unless the Court wants to take a short break.

9 THE COURT: Well, is she on standby?

10 MS. BILA: She's logging in right now,  
11 Your Honor.

12 MR. SHAW: She's logging in right now.

13 THE COURT: Okay. Great. Let's just do  
14 at least the direct of her unless -- yeah, let's at least  
15 get her started.

16 And who is this witness?

17 MR. SHAW: This would be Katrina Pierson,  
18 Your Honor.

19 THE COURT: Okay.

20 MR. SHAW: P-i-e-r-s-o-n.

21 MR. OLSON: Your Honor, while we're  
22 waiting, there's one issue.

23 We've been informed that somebody is  
24 live-streaming the Court proceedings on the Internet  
25 without permission to record it and sort of doing

1 commentary as it goes. They're beyond the scope of who's  
2 there.

3 I mean, I don't know how to get in touch  
4 with them, but maybe an admonition, and if they're  
5 watching, that they can't do that without permission  
6 might be appropriate.

7 THE COURT: And we know that they're not  
8 part of the expanded media coverage?

9 MR. OLSON: Yes, yes.

10 THE COURT: Do we know what organization  
11 it is?

12 MR. OLSON: It appears to be an  
13 individual, Your Honor, but there were like 7,000 people  
14 watching them.

15 Ms. Tierney informed us it is now 8600.  
16 It's Ashley Epp.

17 THE COURT: Ashley Depp?

18 MR. OLSON: Epp, E-p-p.

19 THE COURT: Well, so I -- I want to make  
20 it clear that there are very specific statutes and rules  
21 in place in the state of Colorado for videotaping  
22 proceedings, and there's a process. It only applies to  
23 actual media outlets, and you need to request and be  
24 granted permission to record any proceedings.

25 So to the extent that there's anybody

1 currently recording proceedings, you are in violation of  
2 the Court's orders, and if you continue to do so, you  
3 will be in further violation of the Court's orders.

4 MR. SHAW: Your Honor, I assume you don't  
5 mind if I don't show up on the video feed.

6 THE COURT: No, that's fine.

7 MR. SHAW: Okay.

8 THE COURT: But is Ms. Pierson on?

9 MS. BILA: Doesn't appear yet. She has  
10 said she is logging in.

11 THE COURT: Okay.

12 Any word on status?

13 MS. BILA: She's trying.

14 MR. SHAW: We live in an age of miracles.  
15 Okay. I believe she's on the screen.

16 THE COURT: Do we have a way of making her  
17 be the --

18 MR. SHAW: Now we're taxing my  
19 technological capabilities.

20 So, Joanna, do we have a way of making her  
21 central?

22 MS. BILA: I believe she'll go central  
23 once she starts speaking.

24 THE COURT: Ms. Pierson, can you hear us?

25 THE WITNESS: Yes, I can hear you.

1 THE COURT: There we go.

2 Ms. Pierson, can you raise your right  
3 hand, please.

4 KATRINA PIERSON,  
5 having been first duly sworn, was examined and  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SHAW:

9 Q. Ms. Pierson, would you please tell us a  
10 little bit about your background.

11 A. Yes. I'm originally from Texas. I have a  
12 biology degree from UT Dallas. I worked in healthcare  
13 for about 14 years, wrapping that up as a neuroscience  
14 administrator for a Level I trauma hospital. And then  
15 made my way into politics.

16 Q. And how did you make your way into  
17 politics?

18 A. I started out on the ground as a  
19 grassroots organizer here locally in Texas and became one  
20 of the original founders of the Tea Party movement, which  
21 grew into a broader array of political activities at the  
22 local level, the state level, and the federal level.

23 And then began to do larger events, in  
24 electing congressmen, senators, and ultimately  
25 United States President.

1 Q. And who is that United States President?

2 A. Donald John Trump.

3 Q. How did you first become aware of  
4 Mr. Trump as a political figure?

5 A. Well, a little-known fact about Mr. Trump  
6 is that he had spoken to Tea Party rallies about  
7 five years before he actually ran for President. So I've  
8 known about him for a while.

9 I saw him in South Carolina in 2015 or --  
10 at the end of January, and I told him that I heard a  
11 rumor that he was thinking about running. And I told him  
12 then that if he did, I would help him, and he would win.

13 And that's how it all began.

14 Q. And what happened next in terms of your  
15 involvement with his campaign?

16 A. Well, from there, I saw him a couple of  
17 times, and then over the summer when he officially filed,  
18 he began calling me after my media appearances. I had  
19 been doing national television for about seven years at  
20 that point.

21 He would just call and thank me for his  
22 support, ultimately asked me to join his 2016 campaign as  
23 his spokesperson, so I officially joined the team in 2015  
24 as one of the Trump originals.

25 Q. So you served as the campaign spokesman

1 for the first Trump campaign; is that correct?

2 A. That's correct, the national spokesperson.

3 Q. And did you serve in that role through the  
4 election?

5 A. I did, yes.

6 Q. Did you then enter the administration in  
7 any capacity?

8 A. I did not. I was offered Deputy Press  
9 Secretary but decided to stay out to help the President's  
10 outside super PAC before being called in to the  
11 reelection campaign.

12 Q. In what capacity did you join the  
13 reelection campaign?

14 A. Just as senior advisor. I helped to  
15 oversee comms, media, and coalitions.

16 Q. And what do you mean by "coalitions"?

17 A. Coalitions is basically grassroots.  
18 Different organizations and entities that have a common  
19 purpose typically get together for one cause, and we call  
20 those coalitions.

21 Q. Did you have any responsibility for  
22 vetting people who wanted to be officially associated  
23 with the campaign?

24 A. There was actually a process for vetting  
25 because each coalition, the bigger ones, had boards, and

1 individuals who wanted to be formally associated with the  
2 campaign had to go through a vetting process to serve on  
3 one of those boards.

4 The vetting process did not extend outside  
5 those boards, but to -- those who were officially  
6 associated with the campaign did have to go through  
7 vetting.

8 Q. And what was the purpose of vetting people  
9 who wanted to be officially associated with the campaign?

10 A. Well, in politics, every group has their,  
11 what we call fringe, and they seemed to -- a lot of them  
12 seemed to come out and join the MAGA movement, many for  
13 their own purposes, and we just needed to make sure that  
14 we weren't elevating those people in official capacities.

15 So we were very tight on our vetting  
16 process for members who were officially associated with  
17 the campaign.

18 Q. Can you stop those people from supporting  
19 the candidate?

20 A. No. I wish we could.

21 Q. But what can you do?

22 A. Well, all you can do is to -- excuse me --  
23 to make sure that, you know, they are not formally  
24 associated or affiliated.

25 If they are, we take measures to -- excuse

1 me -- to even issue a cease and desist at some point. Or  
2 if you catch them, you know, using the name, whether it's  
3 on TV or social media, you take those steps and call a  
4 producer and you say, "This person is not affiliated with  
5 us, please don't associate them with us."

6           You go out of your way to try and prevent  
7 them from taking, you know, any platform or stage with  
8 any of your principals.

9           Q. Is it easy to -- to police the -- the  
10 people who are affiliated with the campaign?

11           A. It's -- it's easy when, you know, you have  
12 a set system in place. Typically in a campaign, there  
13 are processes and protocols in place.

14           Can you catch everything all the time?  
15 No, but it is specifically designed for that reason, just  
16 to make sure that you are protecting your principals.

17           Q. So what did you do after the 2020  
18 election?

19           A. I went home. I went home back to Texas.  
20 I had just lost an aunt, my mother's only sister, I  
21 hadn't seen my family in several years, so I had gone  
22 home.

23           Q. What did you do for a living at that  
24 point?

25           A. Well, at that point, they were still, you



1 know, challenging some of the results, waiting for  
2 recounts and such, so through the remainder of December,  
3 I was still advising communications coalitions and such  
4 for the campaign.

5 But I do have my own media company where I  
6 do engage with press, do communications, as well as  
7 broadcast television.

8 Q. In that connection, did you do any work  
9 for a group called Women for America First?

10 A. I did not do any work for them. I do know  
11 them, and they reached out to me with some of the  
12 grievances that they were having during their planning of  
13 continued protests.

14 Q. What is the group, Women for America  
15 First?

16 A. That's a group that's run by Amy Kremer  
17 with the help of her daughter, Kylie Kremer, and I've  
18 known them for more than a decade, and that's one of the  
19 reasons why they reached out to me with their grievances.

20 Q. Was that one of the fringe groups that you  
21 worked to keep away from the President and his campaign?

22 A. No. In fact, it's quite the opposite. As  
23 I mentioned, I have worked with them for years. They're  
24 pros. I knew they were doing what they were supposed to  
25 be doing, and I trusted that they would continue to -- to

1 be pros and -- which is likely why they reached out to me  
2 for help.

3 Q. Were they part of something -- sorry,  
4 excuse me. Strike that.

5 Was there a group part of what has  
6 sometimes been called the Stop the Steal movement?

7 A. So it depends on how you're asking that  
8 question, if I may. There was a hashtag with "Stop the  
9 Steal" that was made up of a much broader coalition of  
10 really anybody who wanted to participate. And then there  
11 was a separate physical entity called Stop the Steal that  
12 was an organization run by Ali Alexander.

13 So I would say that they were a part of  
14 the broader coalition hashtag group, but not the actual  
15 Stop the Steal organization.

16 Q. Did everybody in the broader coalition get  
17 along and agree with each other?

18 A. No. Anytime you're dealing with  
19 grassroots, any professional will tell you it's like  
20 herding cats, and no, they were essentially fighting each  
21 other, and it was pretty intense.

22 Q. Can you elaborate on that a little bit?

23 A. Well, there's different ways to approach  
24 what was happening at the time. There -- a lot of people  
25 were upset. There were emotions involved, and, you know,

1 some groups were using more inflammatory rhetoric than  
2 others.

3                   You know, for example, you have the  
4 Ali Alexander/Alex Jones faction who are typically known  
5 for being over the top in their rhetoric, whether it be  
6 conspiracy or just outright chaos.

7                   And then you have those like on the  
8 Kremers' side who were just wanting to follow the  
9 constitutional process, which is what we've done forever,  
10 and encourage people to do what they can in their states  
11 to talk to their legislatures.

12                   There was even some discussion about some  
13 of those states having recall statutes. I mean, actually  
14 following the process that was given to us by our  
15 founders.

16                   Q. Did the Kremers' group, Women for America  
17 First, create something called the March for Trump?

18                   A. Yes. That was their -- so let me back up  
19 a little bit.

20                   Because this broader coalition that was  
21 fighting with each other, the Kremers then decided to  
22 split off from that group because they were just out of  
23 control, and they went on their own path and did bus  
24 tours, because that's what they had done for years, and  
25 their bus tour was called March for Trump.

1 Q. And where geographically was that bus tour  
2 located?

3 A. I wouldn't know. There's -- there was a  
4 schedule, I recall, just going across the country. But I  
5 don't recall. You may have it, but I don't recall --

6 Q. I didn't mean specifics.

7 What I was going for, was it sort of a  
8 nationwide or across-the-country --

9 A. Yes.

10 Q. -- thing?

11 A. Yes, it was across the country.

12 Q. And was it your understanding that it was  
13 supposed to culminate in a -- I guess a demonstration at  
14 the Ellipse on January 6?

15 A. Yes, that's correct. They had did  
16 two previous events the same way, except the Ellipse was  
17 not a part of the process for the first two events that  
18 they held.

19 Q. Did Ms. Kremer or the Kremers ask you to  
20 help out with the January 6 event in any way?

21 A. So when I was speaking with the Kremers,  
22 it was more of them, you know, filling me in on what had  
23 been going on, what was happening, less of helping.

24 I wasn't asked to help, really, until  
25 Caroline Wren had reached out to me after the fact and

1 asked to help because she didn't feel like she was  
2 receiving the support that she needed.

3 Q. Who was Caroline Wren?

4 A. Caroline Wren is a fundraiser. She was a  
5 fundraiser for Republicans, and she was fundraising for  
6 President Trump at the time.

7 Q. And what was the issue that she brought up  
8 with you?

9 A. She had grievances with the Kremers. She  
10 insisted that they weren't being team players. She was  
11 very upset with them.

12 She knew that I knew them personally, so  
13 she reached out to me to see if I could help sort of  
14 mediate what she was trying to do.

15 Q. And what was Ms. Wren trying to do?

16 A. Well, initially, she said that they were  
17 blocking her speakers from talking or not wanting to work  
18 together and just being complicated and difficult.

19 And then when I spoke to the Kremers about  
20 that, they informed me that the people that she wanted to  
21 work with were the Ali Alexanders and those crew.

22 So when I reached back out to Caroline, I  
23 agreed with the Kremers, and I told her that it's a  
24 nonstarter.

25 Q. And by a "nonstarter," what do you mean?

1           A.     Meaning that these two groups were not  
2 going to be working together. And the problem was, there  
3 were so many people who wanted to speak, and the Kremers  
4 had permits for January 5 and 6.

5                     So in an attempt to try and quell all of  
6 the chaos in a very diplomatic way, working with  
7 Caroline Wren, who was representing her people, and  
8 Amy Kremer and Kylie, who were representing their people,  
9 came to an agreement to split up those days so that  
10 everybody had an opportunity to exercise their  
11 constitutional rights.

12           Q.     Was President Trump expected or at least  
13 be considered -- strike that.

14                     Was there an expectation or a hope that  
15 President Trump would speak at the event on the Ellipse  
16 on the 6th?

17           A.     I think it's always a hope and an  
18 expectation when you're in DC at that time to at least  
19 see President Trump, and the fact that he, you know, flew  
20 over one of the rallies and drove past another, I think  
21 it was fair for people to want to see him in some  
22 capacity. But not necessarily to speak until he actually  
23 tweeted about it.

24           Q.     And when was that?

25           A.     I don't recall the specific date.

1 Q. And so if I understand what you're saying,  
2 the dates were split up with the Kremers and their group  
3 getting one date, which was the 6th, and Ms. Wren and her  
4 group getting -- getting the 5th; is that correct?

5 A. That's correct.

6 Q. And which date was -- did the President  
7 decide he was going to speak on?

8 A. On January 6.

9 Q. So the President announced that he would  
10 be speaking to the Kremer group; is that right?

11 A. That's correct.

12 Q. And what was the reaction among the -- the  
13 other group that you thought -- well, what was the  
14 reaction among the other faction?

15 A. Well, they were very upset, but as soon as  
16 he tweeted that he was going to, you know, see you there,  
17 I just told everyone involved that whatever they were  
18 planning was not happening.

19 We just needed to figure out, you know, at  
20 what capacity he was going to be, if he was going to be  
21 speaking. I didn't know at that point what was  
22 happening, but I told everybody that if the President is  
23 now going to be involved, then everybody's plans are  
24 scrapped.

25 The people who were moved to the 5th did

1 not take it very well, primarily because Caroline  
2 continued to let them believe that they were going to be  
3 speaking on the 6th and -- because they had been  
4 tweeting and posting pictures, talking about sharing the  
5 stage with the President.

6 So I knew that she was misleading the  
7 people that were moved to the 5th. So it's fair to say  
8 that they were not happy.

9 Q. And what about the people on the 6th,  
10 what was the situation with them?

11 A. Well, it was very similar because I could  
12 not guarantee anyone a spot on the President's stage  
13 because, again, once the President is involved at an  
14 event, it becomes his event.

15 And I expressed that to the Kremers as  
16 well. They were a little, you know, hurt about it  
17 because they had their own people who have been very  
18 supportive of the President who wanted to speak, and I  
19 just could not guarantee that they were going to be able  
20 to speak.

21 So they were a little disenheartened  
22 because everybody wanted to, you know, share with the  
23 President that day, but they understood because that's  
24 just how it is when a President is involved. And they  
25 just waited for instruction.



1 Q. So did you take it upon yourself to try to  
2 vet the -- the group that would be appearing on the 6th  
3 at this point?

4 A. Well, at that point, as soon as I learned  
5 that Caroline wanted to put Alex Jones, Ali Alexander,  
6 Roger Stone on the stage on the 6th, I immediately began  
7 raising red flags because she was telling me that this  
8 was approved and it was fine, and I knew that couldn't  
9 have been right.

10 So my initial response was to flag it for  
11 the Chief of Staff.

12 Q. When you say the "Chief of Staff," who do  
13 you mean?

14 A. Mark Meadows.

15 Q. And what did you tell Mr. -- did you reach  
16 out to Mr. Meadows?

17 A. I did. I texted him and asked him to call  
18 me because I felt like things were getting a little out  
19 of hand --

20 Q. And approximately --

21 A. -- and I needed guidance.

22 Q. -- when was this?

23 A. That was, again, I don't recall the  
24 specific date, but it was maybe January 2, 2 or 3,  
25 somewhere in there.

1 Q. Okay. And what was your concern at this  
2 point?

3 A. Well, at this point, she had led me to  
4 believe that somebody in the White House had approved  
5 that, and I just -- I couldn't accept that.

6 So I reached out to the Chief of Staff to  
7 raise that flag. And he did call me, and I expressed to  
8 him my concerns about it. And then I was shocked because  
9 he, first of all, didn't even know who Caroline Wren was,  
10 and then told me that no one had been spoken to about  
11 January 6 and he hadn't approved anything.

12 And so I was a little taken back by that,  
13 and that's when he asked me to just take this -- this  
14 thing over to make sure that it goes off well. And  
15 that's when I got more formally involved.

16 Q. Okay. So let me see if I -- if I  
17 understand this correctly.

18 A. Uh-huh.

19 Q. So you had seen an -- indications that  
20 Ms. Wren was announcing or telling people that her people  
21 would be appearing on the stage with President Trump on  
22 the 6th; is that what you're saying?

23 A. That is correct.

24 Q. And you thought that was not acceptable;  
25 is that right?

1           A.    It was not acceptable because she even  
2    leaked it to a conservative media outlet that actually  
3    ran her list of people.  I even tried to get them to  
4    retract it, but they refused.

5           Q.    And your understanding is that she was  
6    telling these -- the media and others that -- that this  
7    had been approved by the White House?

8           A.    Yes.

9           Q.    And that was what led you to contact Chief  
10   of Staff Mark Meadows; is that right?

11          A.    That's correct.

12          Q.    And that was on or around the 2nd,  
13   correct?

14          A.    That's correct.

15          Q.    Okay.  And so Mr. Meadows responded, if I  
16   understand you correctly, by saying that nobody at the  
17   White House had approved this, to his knowledge, and he  
18   asked you to step in and sort things out.

19                    Is that correct?

20          A.    That's correct.

21          Q.    Okay.  So what did you do?

22          A.    Well, I went in to -- I don't know, I  
23   guess I call it campaign mode at that point.  The Chief  
24   of Staff had asked me to take it over, and that's exactly  
25   what I did.

1 I told everyone, meaning Caroline Wren and  
2 Amy Kremer and their crew, to tell everyone that no one  
3 is speaking.

4 We tried to get together and come up with  
5 a reasonable list to submit to the White House, and  
6 Caroline just kept pushing for people that I just didn't  
7 think were appropriate. And then when she kept pushing  
8 and I told her to tell me who approved this at the  
9 White House, because I told her that I was going to call  
10 the White House, she had mentioned that Scavino knew.

11 So I was very upset with Dan Scavino. I  
12 just couldn't believe that he would approve something  
13 like that. So I reached out to the Chief of Staff once  
14 again and said, "I'm done." I said, "I'm not going to  
15 participate in embarrassing the President, and I'm just  
16 out."

17 And when I told him that she said that  
18 Scavino approved, he said, "Well, then you should  
19 probably reach out to Dan."

20 And that's what I did, I reached out to  
21 Dan and found out that that was also a lie, and then I  
22 felt bad for getting mad at Dan Scavino.

23 Q. Well, let me just back up for a moment.

24 A. Uh-huh.

25 Q. Who was Dan Scavino?

1           A.    Dan Scavino, I think at that point, was  
2 Deputy Chief of Staff. He was doing social media for the  
3 President, but I think there at the end, he was Deputy  
4 Chief of Staff.

5           Q.    Okay. So you were being told by  
6 Caroline Wren that her people were being approved by the  
7 White House, and you initially thought that there might  
8 be some truth to that, so you reached out to Mr. Meadows;  
9 is that right?

10          A.    Yes.

11          Q.    And he -- and you thought Dan Scavino was  
12 the person that was approving this?

13          A.    That's correct.

14          Q.    And Mr. Meadows put you in contact with  
15 Mr. Scavino; is that right?

16          A.    Well, he asked me to reach out to Dan, and  
17 I reached out to Dan, yes.

18          Q.    Okay. And when was that?

19          A.    That was either the 2nd or the 3rd.

20 This was all happening very quickly, in a matter of a  
21 couple of days, so all of this happened around the 2nd  
22 and 3rd and 4th.

23          Q.    Okay. So if the 3rd was a Sunday, would  
24 that -- would it have been a Sunday or the Monday that  
25 you talked with Mr. Scavino?

1           A.    I believe it would have been Sunday  
2 because when he told me with all certainty that that just  
3 was not true and he hadn't approved anything from anyone,  
4 he suggested that I meet with the President the following  
5 day, which would have been that Monday before he left for  
6 the Georgia rally.

7           Q.    Okay.  And where were you when you had  
8 this conversation with Mr. Scavino?

9           A.    At home in Texas.  I was really bedridden  
10 because I had hurt my back.  My age is catching up with  
11 me.

12          Q.    So -- so did you go to Washington, DC on  
13 the Monday?

14          A.    I did.  I managed to get on a flight that  
15 next morning.  I felt like it was important enough to  
16 actually sit down with the President to find out exactly  
17 what he expected to come from the rally on the 6th, and  
18 so I flew right in and went to a meeting.

19          Q.    Okay.  Now, if Mr. Meadows and  
20 Mr. Scavino -- well, let me ask you this:

21                    Did you express your concerns about these  
22 speakers to Mr. Meadows and Mr. Scavino?

23          A.    Oh, absolutely.  I expressed my concerns  
24 to anyone who would listen.

25          Q.    Okay.  What did you tell Mr. Meadows and

1 Mr. Scavino were your concerns about these speakers?

2 A. I mean, I think Alex Jones, I mean, the  
3 name itself is a problem. I think I believe I sent  
4 some -- either some tweets or some articles where there  
5 was some incendiary language that Ali Alexander was  
6 specifically using.

7 I had seen some video clips of some of the  
8 previous rallies or protests that he was speaking at, and  
9 it was very inflammatory as well.

10 So I just sort of listed off a couple of  
11 my concerns, and they just essentially agreed with me,  
12 and, I mean, it's a problem.

13 And then that's why Dan was like, "Just  
14 come sit with the President and figure out what he  
15 wants." And the primary reason you do that is because  
16 once the President makes a decision, it's done. At least  
17 that's how it should be.

18 Q. Okay. And just -- I got your concerns  
19 with some individual speakers.

20 But more -- more generically, what was  
21 your concern about having the kind of speakers you  
22 disapproved of on the stage with the President?

23 A. So there -- I had mentioned before that  
24 there were two previous events leading up to the one at  
25 January 6 that the Kremers had informed me that there

1 were issues.

2 For example, you know, there were media  
3 reports after the first -- I think they called it the  
4 "Million MAGA" whatever they called it, and there were  
5 reports of fights or violence that had been there. You  
6 know, we had just spent, you know, several years of Trump  
7 supporters being attacked.

8 Then there was also a situation regarding  
9 Alex Jones himself, who tried to rush the stage at one of  
10 their previous events, and my concern was whether they  
11 tried to cause any problems or -- you know, these guys  
12 don't care. They just, they want attention, they want  
13 notoriety, they just want the chaos, and I was just  
14 concerned with emotions being high and the number of  
15 people that were likely going to be there, that we needed  
16 to be on alert.

17 Q. So if I understand you correctly, you just  
18 wanted to keep these kind of troublemakers off the stage  
19 with the President; is that your -- is that what I'm  
20 understanding?

21 A. Not only did I not want them on the stage,  
22 I didn't want them anywhere around. I just think that  
23 those -- those actors are really bad actors. They're in  
24 this for, you know, their own personal, selfish reasons,  
25 and they just don't care about the damage that they



1     cause.

2                     Turns out I was right.

3             Q.     Okay.  So you had had this discussion with  
4     Mr. Meadows, and did he share your concerns?

5             A.     He did.  I mean, I think that's why he  
6     told me to just take it over.

7             Q.     Okay.

8             A.     You know, it was just too much to even  
9     deal with at that point, so . . .

10            Q.     And you had a similar discussion with  
11    Mr. Scavino; is that correct?

12            A.     That's correct.

13            Q.     And did he share your concerns?

14            A.     He did, yes.

15            Q.     And so he -- did he help you set up a  
16    meeting with the President for the next day?

17            A.     Yes.  Dan set me up to go see the  
18    President that afternoon, the following afternoon.

19            Q.     Okay.  So where was the meeting you had  
20    with the President?

21            A.     It was in the President's dining room,  
22    which is right off the Oval Office.

23            Q.     Okay.  And about what time was that?

24            A.     That was probably around 3:00, 3:30,  
25    because I know he was leaving for the Georgia rally after

1 the meeting.

2 Q. Okay. And about how long did that meeting  
3 last?

4 A. Maybe a half hour, maybe 45 minutes. I  
5 think I was out of there by 4:00, so . . .

6 Q. Okay. Can you describe the scene?

7 A. If -- it's -- it's a small room with a  
8 long table. There are two entries coming into the  
9 President's dining room: One from the Oval, one from the  
10 hallway. And the President was sitting at the head of  
11 the table working on papers. He had folders and he was  
12 making calls.

13 I came in and sat to his right. So the  
14 entry from the Oval Office and the hallway were out of my  
15 field of vision because I was facing him at the head of  
16 the table.

17 And then at that point, I believe  
18 Max Miller had come and sat across from me. Bobby Peety  
19 had come in through the hallway door because I turned and  
20 saw him. I knew they were getting ready to go to the  
21 rally.

22 And then there was just people that come  
23 in and out, whether they're bringing the President  
24 something or picking up something to -- to finish off for  
25 the day.

1 Q. Okay. Who were the main participants in  
2 the -- in the meeting?

3 A. Myself, the President, and Max Miller sat  
4 across from me. We were the only ones at the table.

5 Occasionally people would come in through  
6 the hallway and make comments. I don't remember who all  
7 came through. It was just a typical day at the  
8 White House.

9 Q. Okay. Who was Max Miller?

10 A. Max Miller worked for advance for the  
11 President. I don't know his title there at the end,  
12 though.

13 Q. Okay. And if I understand what you've  
14 been saying earlier, the -- from your perspective, the  
15 purpose of the meeting was to get the President's input  
16 on -- on who he wanted at the event on the 6th and, you  
17 know, what kind of event he wanted; is that fair?

18 A. That's fair.

19 Q. Okay. Did you come in there with, I don't  
20 know, an agenda, talking points, anything like that?

21 A. I did make an agenda for the meeting, just  
22 to make sure that I covered the points that I wanted to  
23 cover.

24 Anytime you meet with the President, you  
25 can get off topic and talk about other things. So it was

1 my way of having my little bullets to make sure that I  
2 was able to communicate clearly what I thought.

3 Q. Did you wind up using that set of talking  
4 points in that meeting?

5 A. I didn't use all of the talking points. I  
6 use it as a guide in our discussion. But I did express  
7 my concerns.

8 Q. Okay. And what was the President's  
9 reaction to your expression of concern?

10 A. Well, it's -- it actually was not as  
11 difficult as I thought because I thought I was going to  
12 have to run through everything. I didn't have to because  
13 the moment that I showed him a list of people that, you  
14 know, wanted to speak, he just didn't want everybody to  
15 speak.

16 And so before I could even get to my  
17 concerns, he had already essentially nixed everyone from  
18 the list, including his family, so that told me, as  
19 someone who knows him and his mind and his heart, that he  
20 was looking for more of an official event.

21 So it was -- it was more of a, you know,  
22 hybrid of an official event. He was speaking at  
23 the Ellipse on White House grounds as the President, but  
24 he still wanted the rally feel because he just wanted  
25 music so people could sing and dance and be happy, like a

1 rally. So it just turned into a hybrid event, which  
2 actually made me relieved.

3 Q. So did you discuss with them any of the  
4 people that you were specifically concerned about?

5 A. I did. I waited until the end because he  
6 himself looked through a list and just ultimately decided  
7 that he didn't want anybody to speak.

8 So by the end, he just decided that the  
9 permit holder could speak, I could introduce them. He  
10 wanted elected officials to speak. Again, that official  
11 feel of that part of his event.

12 And then at the end, because he was  
13 just -- he just seemed shocked that everybody wanted to  
14 speak, and I just had to keep explaining to him, "Of  
15 course, everybody wants to be on your stage."

16 And so at the end, I did ask him  
17 specifically if he wanted Rudy Giuliani. He said, "No,  
18 he needs to be preparing."

19 I said, "Did you want Roger Stone?" And  
20 he said, "No."

21 And I asked, "Do you want Ali Alexander?"  
22 And his response was, "Who?" So he didn't even know who  
23 Ali was at that point.

24 And I had never brought up Alex Jones  
25 because, again, that was just a nonstarter.

1                   That was just my way of confirming that  
2                   Caroline had been lying, and I was just relieved now that  
3                   I have the President's decision that I can now take back  
4                   to everyone and hopefully shut it all down.

5                   Q.     So what else was discussed during this  
6                   meeting?

7                   A.     After that, he had asked me, you know, if  
8                   people were going to the Capitol because the previous  
9                   marches, he wasn't aware of, and he was kind of  
10                  frustrated that nobody had told him about the previous  
11                  marches because wherever his people are, he wants to be  
12                  there.

13                  That's just something that's always been a  
14                  thing for him, even when he was initially assigned Secret  
15                  Service. I remember the first couple of times, he just  
16                  walked straight to the crowd to take pictures and selfies  
17                  and sign autographs. Secret Service had a heart attack.

18                  So, you know, he did the flyover and the  
19                  driveby on the first two. This time, he expressed  
20                  wanting to speak to them and asked me if they were going  
21                  to the Capitol.

22                  I let him know that there were some groups  
23                  that were going to the Capitol, that had been planning to  
24                  go to the Capitol, and I had told him there were some  
25                  that weren't, but the one thing that both groups agreed

1 on is they wanted to see him.

2 And he said, "Well, you know, are we  
3 expecting any trouble?"

4 And I said, "Well, there have been some  
5 incidents at some of the previous rallies."

6 And he said, "Well, we should call the  
7 National Guard."

8 And Max Miller said, "Well, we should only  
9 call the National Guard, you know, if we expect a  
10 problem."

11 And he said, "No, we need to call the  
12 Guard to make sure there isn't a problem," and then he  
13 looked up and said, "Let's get 10,000 National Guard."

14 And I don't know who was standing behind  
15 me, but he was speaking to somebody. He goes, "That's  
16 it." He goes, "Let's just have 10,000 National Guard,  
17 and then that way, we won't have any problems."

18 Q. Did you give any testimony to the  
19 January 6 Select Committee?

20 A. I did, yes. I spent a total of probably  
21 around 19 to 20 hours through interviews, as well as  
22 sworn testimony.

23 Q. Did you give public testimony?

24 A. I did not.

25 Q. So was it -- it was in private session?

1 A. Yes, that's correct.

2 Q. During your interviews in a private  
3 session, did you discuss the -- the matters we've talked  
4 about today?

5 A. Yes.

6 Q. Did you talk specifically about your  
7 meeting with the President?

8 A. Absolutely, yes.

9 Q. Did you talk about his willingness and  
10 decision to exclude problematic speakers from the event  
11 on the Ellipse?

12 A. Yes.

13 MR. OLSON: Objection. Leading and  
14 mischaracterize testimony.

15 THE COURT: Sustained.

16 Q. (By Mr. Shaw) Did you talk about your  
17 discussion with him about excluding people like  
18 Ali Alexander from the speaker list?

19 A. Did I discuss it with the Committee?

20 MR. OLSON: Objection. Leading.

21 Q. (By Mr. Shaw) Yes.

22 A. Yes.

23 THE COURT: Sustained.

24 Try to not ask leading questions.

25 Q. (By Mr. Shaw) Did you talk about the --



1 about his mentioning 10,000 National Guard troops?

2 MR. OLSON: Leading.

3 THE COURT: Sustained.

4 Why don't you ask her what you talked --  
5 what she talked about.

6 MR. SHAW: Well -- well, I've already  
7 asked, did -- did she testify about the matters we've  
8 discussed today, and she said yes. So I guess that  
9 covers that.

10 Q. (By Mr. Shaw) Did the Committee call you  
11 to testify at any public hearing?

12 A. No.

13 Q. To your knowledge, does the Committee's  
14 report include any of the information you provided about  
15 those topics in its findings?

16 A. Not to my knowledge.

17 MR. SHAW: I have no further questions for  
18 you at this time. Thank you.

19 THE COURT: Ms. Pierson, we are going to  
20 take a break, so can you make sure you're available again  
21 in 15 minutes, at 4:10 in Colorado?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: We're in recess.

24 (Recess taken from 3:55 p.m. until  
25 4:10 p.m.)

1 THE COURT: You may be seated.

2 So we're getting all sorts of complaints,  
3 like I have any control, that people can't hear on  
4 C-SPAN, so . . .

5 But I have trouble hearing you, Mr. Shaw,  
6 so if everybody can try to speak up. I think the issue  
7 is that maybe only the lawyers are on -- are -- actually  
8 have the microphone, but anyway, we'll do what we can do.

9 Are you still there, Ms. Pierson?

10 THE WITNESS: Yes, Your Honor, I'm here.

11 THE COURT: Great.

12 So you're still under oath.

13 And it looks like you should be able to  
14 see Mr. Olson; is that correct?

15 THE WITNESS: Which one is -- yes.

16 THE COURT: He'll be asking you questions.

17 THE WITNESS: Yes, yes, yes.

18 THE COURT: He'll be asking you questions,  
19 okay?

20 THE WITNESS: Thank you.

21 MR. OLSON: May I proceed, Your Honor?

22 THE COURT: Yes, you may.

23 MR. OLSON: Great. Thank you very much.

24 /////

25 CROSS-EXAMINATION

1 BY MR. OLSON:

2 Q. Good afternoon, Ms. Pierson.

3 A. Good afternoon.

4 Q. I want to talk with you about, you  
5 mentioned a couple times Ali Alexander and Alex Jones.

6 Do you sometime refer to them as "the  
7 crazies"?

8 A. I absolutely do.

9 Q. Okay. And you know that -- or you said  
10 that Trump likes the crazies, right?

11 A. Yes, and I also defined "crazies" as being  
12 those who viciously defend him in public.

13 Q. Right. Which includes Alex Jones and Ali  
14 Alexander, right?

15 A. You could put them in that group, I  
16 suppose.

17 Q. Great.

18 Now, Trump went on Alex Jones' radio show  
19 shortly after he announced his candidacy for President,  
20 right?

21 A. I don't know. It's possible.

22 Q. Okay. Trump gave Alex Jones a VIP pass to  
23 his selection at the Republican National Committee -- at  
24 the Republican Convention when he was the Republican  
25 nominee, correct?

1 A. Not that I'm aware of.

2 Q. Okay. But you still have a great deal of  
3 loyalty to Trump, don't you?

4 A. Define "loyalty."

5 Q. Well, you would never betray him, would  
6 you?

7 A. Well, I wouldn't betray anyone.

8 Q. You call yourself one of "the believers,"  
9 right?

10 A. Absolutely.

11 Q. Okay.

12 A. Everybody on the 2016 primary campaign  
13 were the believers, yes.

14 Q. Okay. And you view your job in that role  
15 as protecting the President, right?

16 A. You protect your principal regardless of  
17 who it is, yes.

18 Q. Yeah, so your job is to protect -- your  
19 job is to protect the President, right?

20 A. Yes.

21 Q. Now, I want to talk about this claimed  
22 conversation about the National Guard.

23 Now, was Kash Patel in that conversation?

24 A. No.

25 Q. Okay. Was the Chairman of the Joint

1 Chiefs of Staff in that conversation?

2 A. No.

3 Q. Was Mark Meadows in that conversation?

4 A. No.

5 Q. Okay. Was any senior leadership from the  
6 Department of Defense in that conversation?

7 A. Not that I'm aware of.

8 Q. Okay. But Max Miller was in that  
9 conversation, right?

10 A. Yes.

11 Q. Okay. And you said that day, that you and  
12 Max Miller killed the National Guard, right?

13 A. That is incorrect.

14 Q. Let me show you a tweet -- or a text  
15 message exchange between you and Mr. Miller.

16 MR. OLSON: Plaintiffs' Exhibit 265,  
17 Your Honor. I need to share my screen first.

18 I'm sorry, Ms. Pierson.

19 THE WITNESS: I've got nothing but time.

20 MR. OLSON: And I guess I need permission  
21 to share my screen.

22 Thank you very much.

23 THE COURT: We're getting better at this  
24 as we proceed, so . . .

25 MR. OLSON: I'm still getting the same

1 message.

2 THE CLERK: Try now.

3 MR. OLSON: Yes.

4 Q. (By Mr. Olson) Do you see on the screen,  
5 Ms. Pierson, a text of Monday, January 4, 4:08 p.m.?

6 A. Yes.

7 Q. Okay. And if we go down to the bottom,  
8 you can see -- and I'll call it out so you can see it:

9 There's a GPO stamp saying it's  
10 authorized -- "Authenticated U.S. Government  
11 Information."

12 Do you see that?

13 A. Yes.

14 Q. And I'll represent to you this is from  
15 Mr. Miller's phone that he turned over as part of the  
16 January 6 investigation.

17 And you'll see at the top, it's Monday  
18 January 4.

19 Do you see that?

20 A. Yes.

21 Q. And then because -- do you have an iPhone?  
22 Do you know how it works, the text colors?

23 A. I do, yes.

24 Q. Okay. So if this is from his phone, your  
25 statements are on the left in gray and his are on the

1 right in blue, right?

2 A. Correct.

3 Q. Okay. So he says to you, "You did a great  
4 job killing some of those speakers."

5 What you talked about earlier, right?

6 A. Correct.

7 Q. And now let's go down, and you say,  
8 "Hallelujah, praise the Lord Jesus, amen."

9 Mr. Miller says, "Haha, question, but man,  
10 he thinks a million people are coming."

11 Right? You had that exchange?

12 A. Yes, I see it.

13 Q. And then you say, "I tried to help manage  
14 expectations."

15 And then he says, and I'll highlight it  
16 here: "You did, and just glad we killed the National  
17 Guard."

18 Do you see that?

19 A. I see that.

20 Q. And then you heart-emoji'd that statement,  
21 right?

22 A. Yes.

23 Q. You didn't say, "No, we didn't," did you?

24 A. No.

25 Q. You just said, "Didn't get a picture"?

1 A. Yes.

2 Q. Right?

3 And then this text exchange goes on for a  
4 little bit. We'll come back to it in a little bit.

5 But now I want to turn to the security  
6 concerns that you mentioned in your direct testimony.

7 But I was kind of surprised because I  
8 didn't hear you say that the security concerns you were  
9 worried about were risks to Trump supporters. That was  
10 your security concern, wasn't it?

11 A. That was one of my concerns, yes.

12 Q. Well, in your interview with the January 6  
13 Committee -- which that transcript's been made public,  
14 right; you know that?

15 A. That's correct.

16 Q. No one's keeping it a secret, are they?

17 A. Not that I'm aware of.

18 Q. Okay. The only security concern you  
19 mentioned was security concerns to Trump supporters,  
20 right?

21 A. I think -- I believe I mentioned concerns  
22 generally, but when they asked for an example, that is  
23 one that I gave.

24 Q. Well, let's look at that, Ms. Pierson.

25 I'm going to pull up your interview that



1 you had with representative of the January 6 Committee,  
2 this public interview.

3 Now, but before I do that, before you did  
4 that, you knew that it was unlawful to provide false  
5 information to Congress, right?

6 A. That is correct.

7 Q. Okay. So you're under oath here today.

8 You had a similar obligation at that time,  
9 right?

10 A. That is correct.

11 Q. Okay. So I'm pulling up page 124 of  
12 Exhibit 264, and I'm going to bring the screen out.

13 Is that big enough for you to read?

14 A. Yes, it is.

15 Q. So the question that you were asked was,  
16 talking about the National Guard. It says:

17 "What specifically did you tell the  
18 President or Mr. Miller about security concerns that you  
19 had for that day -- for the day?"

20 Right? Do you see that?

21 A. Yes.

22 Q. And then if we go down, you have two  
23 paragraph of answers.

24 A. Uh-huh.

25 Q. And you talk about some physical assaults

1 there were, conflicts between Black Lives Matter and  
2 those other guys, I don't even remember who they all  
3 were, countless reports --

4 A. Yes.

5 Q. -- of people being attacked at some of  
6 these marches or rallies or whatever you want to call  
7 them.

8 Now, were you referring here to the  
9 November and December rallies you talked about briefly?

10 A. Yes.

11 Q. The ones where Trump either visited in a  
12 motorcade to express his support and then the other one,  
13 he flew over in Marine One and did two laps, right,  
14 around --

15 A. Yes.

16 Q. -- over the protest and everyone --

17 A. I don't know how many laps, but he flew  
18 over --

19 Q. Yeah.

20 A. -- yes.

21 Q. But everyone in the protest thought that  
22 was pretty great that the President expressed support  
23 that way, didn't they?

24 A. Yes.

25 Q. Okay. And then so going back to your

1 answer, you say:

2 "There is high potential that on top of  
3 all the previous encounters that specifically Trump  
4 supporters have run into with being attacked pretty much  
5 anywhere."

6 Right?

7 A. Uh-huh.

8 Q. Did you --

9 A. Correct.

10 Q. -- identify any other concern, security  
11 concern, other than Trump supporters?

12 A. I spoke to the Committee investigators on  
13 more than one occasion, so I had expressed all of my  
14 concerns, yes.

15 Q. Okay. That wasn't quite my question,  
16 Ms. Pierson.

17 Are you telling us that there's a written  
18 record of you telling people under oath that you  
19 expressed concerns about the security of the Capitol?

20 A. I didn't have anything to do with the  
21 Capitol, so I don't know what you're referring to.

22 Q. Okay. I'm just asking what you testified  
23 to.

24 Have you ever testified under oath that --  
25 or being in trouble for lying like you are to Congress,

1 that you had security concerns about the Capitol?

2 A. I had concern -- security concerns about  
3 the rally.

4 Q. Okay. So that's a no, you have never told  
5 anyone that you had security concerns about the Capitol,  
6 did you?

7 A. I mentioned the bad actors who had  
8 previously caused concerns at other capitols.

9 And why I was concerned generally and  
10 specifically, if you go to the next line where you  
11 highlighted, it says:

12 "So there was concern that, you know,  
13 people would come and try to start trouble."

14 And that was my concern. That is a  
15 general concern.

16 MR. OLSON: Your Honor, I move to strike  
17 as nonresponsive.

18 THE COURT: Overruled.

19 Q. (By Mr. Olson) But can you -- I want to  
20 ask a very simple question, Ms. Pierson:

21 Have you ever testified that you had a  
22 security concern about the Capitol where you mentioned  
23 the Capitol?

24 A. I don't recall specifically because my  
25 concerns were general.

1 Q. Okay. Now, did the White House tell  
2 anyone publicly that Trump was going to call on people to  
3 march with him to the Capitol on the Ellipse speech?

4 A. Did the White House say publicly that he  
5 was? I'm not aware.

6 Q. Okay. In fact, you knew that Ms. Kremer  
7 did not have a permit to march to the Capitol, right?

8 A. That is correct.

9 Q. And that because of that, if the National  
10 Park Service found out about a march to the Capitol, she  
11 would get in trouble, right?

12 A. That is what she expressed to me, yes.

13 Q. Yeah. And, in fact, you've never seen a  
14 permit to march to the Capitol, have you?

15 A. I have not. I was not involved in the  
16 permitting process.

17 Q. And you've never seen any written proof at  
18 the time that any agency outside of the White House knew  
19 of Trump's plan to tell the crowd to march to the  
20 Capitol, do you?

21 A. I'm not aware of the White House plans.

22 Q. Okay. But you've never seen anything  
23 yourself?

24 A. No.

25 Q. Okay. Now, on -- I want to turn to events

1 later in the day on January 6.

2 In the moment, what you said was, "Trump  
3 asked for a Civil War," right?

4 A. Note that I'm aware of.

5 Q. Well, let's look at your texts.

6 And what I want to do, this is a text  
7 between you and Brad Parscale. It's Exhibit 263.

8 Do you see that?

9 A. I do, yes.

10 Q. And you see the date here, I'll just  
11 highlight one.

12 Is it big enough for you to read, by the  
13 way?

14 A. Yes, sir.

15 Q. Okay. So this is January 6 in the  
16 evening, right?

17 A. Correct.

18 Q. And there's -- it goes back and forth. I  
19 want to give a little context to make sure we get your  
20 text exactly right.

21 What Mr. -- and who is Mr. Parscale at  
22 this time?

23 A. He's the former 2020 campaign manager.

24 Q. Right. But he had a pretty good idea of  
25 how Trump communicated to his supporters, right?

1 MR. SHAW: Objection. Foundation.

2 A. I can't speak for Brad Parscale.

3 THE COURT: Overruled.

4 Q. (By Mr. Olson) Well, Mr. Trump put him in  
5 charge of his campaign, right?

6 A. Actually, he fired Brad Parscale.

7 Q. Well, a lot of people have been fired by  
8 Mr. -- by Mr. Trump.

9 But at some point, Mr. Trump put  
10 Mr. Parscale in charge of his campaign, right?

11 A. Correct.

12 Q. Okay. And so what Mr. Parscale says to  
13 you on January 6 is:

14 "That was a sitting President asking for a  
15 Civil War."

16 Right? That's what he says?

17 A. That's what he says.

18 Q. And then you talk about -- you say:

19 "Lincoln actually suspended habeas  
20 corpus."

21 And it's kind of hard to follow the thread  
22 because it looks like you're each texting to each  
23 other -- this happens to all of us, right -- you're  
24 texting while someone else is responding, so it doesn't  
25 always match up. But I want to make sure you see the

1 full exchange.

2 "A sitting President asking for a Civil  
3 War."

4 You respond:

5 "This one?"

6 And then you say:

7 "Lincoln actually suspended habeas  
8 corpus."

9 And then Mr. Parscale says:

10 "Well, he better be right."

11 And then let's turn to see what you say on  
12 the next page. You say:

13 "He asked for a Civil War."

14 You see that?

15 A. Do you see what I said after that? "Don't  
16 overdramatize."

17 Q. Right. But you said, "He asked for a  
18 Civil War," right?

19 A. Responding to Brad Parscale, yes, that's  
20 correct.

21 Q. Yeah. Now, we can all agree that  
22 President Lincoln never asked for a Civil War, did he?

23 A. Did he ask for it? Or did he actually do  
24 it?

25 Q. Ask for it.



1 A. What's your question?

2 I don't know. I wasn't around back in  
3 Lincoln's time.

4 Q. Okay. But the "he" you're referring to  
5 right here, when you say, "He asked for Civil War," that  
6 is Trump, right? What you're saying is Trump asked for a  
7 Civil War, right?

8 A. No. What I'm saying is Brad was  
9 overdramatizing by saying he asked for a Civil War. You  
10 have to read the entire text, sir.

11 Q. Well, that's what we're doing.

12 A. Well, you're not doing it because you stop  
13 at, "He asked for a Civil War." You completely ignore  
14 the rest of the text in that line.

15 Q. I'm just -- I'm just putting your words in  
16 context.

17 A. But you can't put my words in context --

18 Q. Excuse me --

19 A. -- unless you're --

20 Q. Excuse me --

21 A. -- using --

22 Q. Ms. Pierson --

23 A. -- the actual text.

24 Q. I'm sorry, I didn't mean to interrupt, but  
25 I want to make sure we're efficient.

1                   And I'm showing everybody your text, we're  
2 talking about your whole text. If there's anything else  
3 you want me to show, I'm happy to do it.

4                   But you said on January 6, "He asked for a  
5 Civil War, don't overdramatize," right?

6                   A. Yes.

7                   Q. Okay.

8                   A. In response to his text.

9                   Q. Now, also on January 6, while the  
10 insurrection was underway, you knew full well that the  
11 mob's purpose was to come for the Capitol, right?

12                  A. I don't know that I would know their  
13 purpose. I wasn't in on their plans.

14                  Q. Well, you said --

15                  A. But it was pretty clear, watching it  
16 unfold, what was happening.

17                  Q. Right. But you said on January 6 that the  
18 mob came for the Capitol, right?

19                  A. Do you have that to show me?

20                  Q. Sure.

21                  A. I would need to see the context.

22                         MR. OLSON: This is Exhibit 258,

23 Your Honor.

24                  Q. (By Mr. Olson) And this is a text with you  
25 and Taylor Budowich.

1                   And I'm pronouncing that name right? Or  
2 can you pronounce so I get it right?

3                   A.    Yes.  That's correct.

4                   Q.    "Budowich"?

5                   A.    That's correct.

6                   Q.    Okay.  And you're texting back and forth  
7 during the insurrection on January 6, right?

8                   A.    During the protest, that's correct.

9                   Q.    Is -- and Taylor, at 2:08, says to you:  
10                    "Get out of the city, night is going to be  
11 tough."

12                   Do you see that?

13                   A.    I do see that, yes.

14                   Q.    And then you respond, there's another text  
15 on the next page, but the first part of your text is:

16                    "I don't think they'll riot."

17                   And then you say:

18                    "They came for the Capitol."

19                   Do you see that?

20                   A.    And then I say:

21                    "So crazy."

22                   Q.    Yeah.

23                   A.    Yes, I see it.

24                   Q.    And -- and then I want to talk about a  
25 text exchange you had with Mr. Miller.

1                   And within 24 hours of these events  
2                   occurring, you knew pretty quickly that police officers  
3                   were injured and someone had been killed, right, in this  
4                   attack on the Capitol?

5                   A.    I wouldn't have known until it was  
6                   reported.

7                   Q.    But you knew that day, right, like most  
8                   Americans, that someone had been killed?

9                   A.    Yes, later that evening, yes.

10                  Q.    Okay.

11                  A.    I did hear.

12                  Q.    And so the next day, after you knew that  
13                  someone had been killed and many police officers had been  
14                  injured, you were making jokes about the insurrection,  
15                  weren't you?

16                  A.    I don't recall.

17                  Q.    Well, let's look at --

18                  A.    It was all --

19                  Q.    -- what you said.

20                  A.    -- so surreal.

21                  Q.    This is back on your text exchange with  
22                  Mr. Miller.

23                                   And if we see here, again you're in gray  
24                                   on the left?

25                  A.    Uh-huh.

1 Q. And this is -- this is a picture that you  
2 sent, where you say:

3 "Definitely not a Trump supporter, no  
4 chance."

5 And now I want to talk about the exchange  
6 on January 7 in the morning, right?

7 So the morning after the Capitol was  
8 attacked, you sort of posted a meme, right:

9 "2020 is finally over. That was the  
10 craziest year ever. 2021, but wait, there's more."

11 And remind me, that's an infomercial guy,  
12 Bob somebody, what's his name?

13 A. I don't remember his name, but yes.

14 Q. He's the guy that sells you stuff on late  
15 night TV, right?

16 A. Yes.

17 Q. Okay. So this is what you said,  
18 unprompted to Mr. Miller.

19 And then the next day -- or sorry, the  
20 text consider -- exchanges, and he says:

21 "Never too soon."

22 And then you send the picture of -- now --  
23 of someone carrying out a Capitol -- you say -- and you  
24 say:

25 "You have to admit that seeing Nancy

1 Pelosi's lectern being carried out, carried away by a  
2 Trump supporter is pretty damn funny."

3 Right?

4 A. Yes, it was hysterical.

5 Q. And this was less than 24 hours after our  
6 Capitol had been attacked, after a speech by Mr. Trump,  
7 right?

8 A. That's correct.

9 MR. OLSON: No further questions.

10 THE COURT: Mr. Shaw, do you have any  
11 redirect?

12 MR. SHAW: No, Your Honor, I have no  
13 further questions.

14 THE COURT: Thank you for your testimony,  
15 Ms. Pierson. You are released.

16 THE WITNESS: Thank you, Your Honor.

17 MR. OLSON: Actually, Your Honor, can we  
18 move in a couple of exhibits, I'm sorry.

19 It's the text exchange, is Exhibit 265 and  
20 263.

21 THE COURT: Any objection?

22 MR. SHAW: No, Your Honor.

23 THE COURT: 263 and 265 are admitted.

24 (Exhibits 263 and 265 were admitted into  
25 evidence.)

1 MR. BLUE: Your Honor, our next witness  
2 is -- sorry, Amy Kremer. I had to get my head around it.

3 And she's on the East Coast. She is  
4 available now if you would like to -- would like to  
5 proceed, but she would prefer to go first thing in the  
6 morning because it's now 6:30 her time.

7 THE COURT: And you have another --

8 MR. BLUE: No.

9 THE COURT: -- witness?

10 MR. BLUE: No, she would be the only -- we  
11 would be breaking if we did not bring her up, call her  
12 now.

13 THE COURT: We have -- you have a pretty  
14 long witness list, and I just want to make sure that  
15 we're going to wrap up and take into account that  
16 Mr. Heaphy also needs to testify.

17 So I'm willing to go to 5:30 as -- as  
18 planned, but I just want to -- I don't want to be told  
19 tomorrow or Friday that we're not going to finish because  
20 we are breaking early on a bunch of days.

21 MR. BLUE: Your Honor, I understand. We  
22 think we'll be -- we'll be able to finish by then, but if  
23 you're concerned about it, I do not mind putting her on  
24 now.

25 THE COURT: I really leave it to you

1 because I have no idea how long you'll take or -- with  
2 any of your witnesses.

3 MR. BLUE: So can you just give me  
4 two minutes and I'll get back to you?

5 THE COURT: Okay.

6 MR. OLSON: I just want to confirm with  
7 Mr. Gessler since he is lead counsel, but I'm pretty sure  
8 he's fine with this. But let me check.

9 (A pause occurred in the proceedings.)

10 MR. SHAW: Your Honor, if we could go off  
11 the record for a moment?

12 THE COURT: I'm not sure what that means  
13 given that we're on TV, but okay.

14 (Discussion off the record.)

15 MR. BLUE: Your Honor, we're not concerned  
16 about finishing. We should be able to finish the four  
17 fact witnesses tomorrow that we have left: Kremer,  
18 Bjorklund, van -- Flein -- thank you -- Flein, and Buck,  
19 Congressman Buck. And then that should be easily done  
20 tomorrow.

21 And then on Friday, we expect to have our  
22 expert in the morning. And we would be done at that  
23 point.

24 THE COURT: Okay. I'm sorry, you said  
25 Flein, Bjorklund, Buck, and --



1 MR. BLUE: Kremer.

2 THE COURT: Kremer.

3 So are you not calling Congressman Nehls?

4 MR. BLUE: No, we actually have -- we're  
5 not going to be calling Congressman Nehls, and we're not  
6 calling Mr. van der Veen.

7 THE COURT: Oh, okay. Well, sounds like  
8 we should be in good shape, then.

9 MR. BLUE: Yeah, I think we'll be in fine  
10 shape.

11 THE COURT: Okay. So we will recess for  
12 the day and reconvene tomorrow at 8:00 a.m.

13 MR. BLUE: Thank you, Your Honor.

14 (WHEREUPON, the within proceedings were  
15 adjourned at the approximate hour of 4:39 p.m. on the 1st  
16 day of November, 2023.)

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	255:1, 8	<b>1201</b>	<b>18-</b>
	264:8	134:11	15:18
\$	295:13, 16	<b>1204</b>	<b>1800</b>
	297:1	162:23	29:19
<b>\$100</b>	<b>10-</b>	<b>124</b>	<b>1800s</b>
48:17, 21	212:18	305:11	196:11
<b>\$200,000</b>	215:22	<b>12:30</b>	<b>1811</b>
257:3	221:13	182:15	262:6
	237:19, 22	<b>12:32</b>	<b>1828</b>
0	239:2 240:11	195:4	30:16
	243:21, 24	<b>14</b>	<b>1840s</b>
0	245:3, 6	20:24 113:5	57:17
215:15	246:10, 14	144:19	<b>1848</b>
	247:5 249:4	268:13	31:16
1	250:10 251:4	<b>14-year</b>	<b>1850s</b>
	252:1, 9, 19	133:5	34:7
1	264:6	<b>1422</b>	<b>1860s</b>
8:1 11:13, 19	<b>1027</b>	226:15	15:18
15:12, 13, 25	204:19, 24	<b>144</b>	<b>1861</b>
58:15 92:18	205:1, 6	17:23	32:20 33:15
93:5, 14, 15	239:11 252:7	<b>15</b>	<b>1862</b>
208:10	<b>1028</b>	182:12	32:8 73:13
214:12	223:14, 21, 22	208:6, 7, 10	<b>1865</b>
215:15	<b>1031</b>	297:21	21:12 57:2
<b>1,000</b>	207:11	<b>15,000</b>	87:8
249:15, 17	215:25	256:23	<b>1866</b>
<b>1-1-107</b>	250:23 252:7	<b>150</b>	86:24
95:24	<b>105</b>	188:4, 5	<b>1867</b>
<b>1-1-113</b>	171:8	191:23	38:11, 17
93:3, 7, 12	<b>107</b>	<b>150th</b>	39:6 47:12
95:10	105:20, 21	17:3	48:15 49:8
101:15, 22	<b>10:15</b>	<b>158</b>	<b>1868</b>
103:5	88:4, 7	124:24, 25	23:13 46:17
<b>1-4-120-</b>	<b>11</b>	143:25	47:14, 15
134:11	117:21	<b>16</b>	58:9, 24 67:4
<b>1-4-1201</b>	<b>113</b>	207:15, 23	70:23 86:24
134:10	92:21 146:5	208:11	<b>1869</b>
<b>1-4-1204</b>	147:14	210:19	24:13, 25
98:23	148:25	215:25 226:2	43:19 79:5
<b>1.5</b>	150:2, 13, 21	<b>162</b>	<b>1870</b>
95:25	151:15	13:24	24:6, 24
<b>10</b>	162:22	<b>17</b>	54:24
66:6	193:1, 2, 21	136:5 203:15	<b>1870s</b>
<b>10,000</b>	194:3	<b>1794</b>	61:18
219:17 241:3	<b>12</b>	27:17	<b>1871</b>
242:17 243:1	134:7, 8, 12	<b>1799</b>	44:7
254:9, 10, 19	240:18	28:11	
	242:12		

<b>1872</b> 25:15 61:19, 22 66:7,14, 16 67:13 68:3,7 87:9	215:15 240:20 281:24	<b>2018</b> 17:4	<b>25</b> 134:18
<b>1876</b> 61:19	<b>2,500</b> 229:15	<b>2019</b> 129:14 202:20,22,24	<b>258</b> 314:22
<b>1880s</b> 15:18	<b>20</b> 11:7 182:11 184:17 204:4 237:12 295:21	<b>2020</b> 12:6,10,16 60:13 110:8 111:4,13 119:15,25 120:20,21 129:10,14 149:9 208:16 218:24 236:13 237:2,6 245:19 272:17 310:23 317:9	<b>263</b> 310:7 318:20,23,24
<b>1890s</b> 15:21	<b>20,000</b> 212:18 215:23 221:13 229:12,14,21 237:19,23 239:3 240:11 243:1,21,24 245:3,6 246:10,14 247:5 249:4 250:10 251:5 252:2,9,19 264:6	<b>2021</b> 12:12 16:21, 22 204:4 205:16,18 207:15,20,23 208:20 210:21 216:3,5 237:12 243:10 244:22 317:10	<b>264</b> 305:12
<b>1894</b> 79:6	<b>2000</b> 98:10	<b>2023</b> 8:1 107:12 110:23 117:21 321:16	<b>265</b> 301:16 318:19,23,24
<b>18th</b> 46:8	<b>2005</b> 89:22 200:25	<b>2024</b> 97:8 112:13 160:1	<b>292</b> 247:25
<b>19</b> 295:21	<b>2006</b> 89:19	<b>203</b> 43:14	<b>2:08</b> 315:9
<b>1973</b> 170:14	<b>2011</b> 106:6	<b>22</b> 10:17,18	<b>2:22</b> 226:16
<b>19th</b> 11:22,25 14:11 15:2, 8,9,21 18:20 46:8 57:15	<b>2012</b> 108:23 137:17 142:18 151:24	<b>227</b> 66:5	<b>2:24</b> 185:24 190:5
<b>1:00</b> 194:18	<b>2013</b> 89:10	<b>24</b> 316:1 318:5	<b>2:27</b> 250:25
<b>1:21</b> 232:20 233:5,18 235:11,23	<b>2015</b> 269:9,23		<b>2nd</b> 283:12 285:19,21
<b>1:30</b> 182:15 194:12	<b>2016</b> 98:12 152:12 269:22 300:12		<hr/> <b>3</b> <hr/>
<b>1:35</b> 195:2	<b>2017</b> 202:20		<b>3</b> 10:14 11:20 12:4,7,16, 17,25 13:8, 12,15,18 14:19 16:12, 14,19,21 20:17,23 21:2,4,7 22:8,10 23:2,15 24:8,10,12, 15 25:2,16, 23 26:13 36:8,12,14, 21,24 37:2 39:1,11,14 40:15 41:16 42:22 47:16,
<b>1:40</b> 195:5			
<b>1st</b> 321:15			
<hr/> <b>2</b> <hr/>			
<b>2</b> 11:19 15:5 109:17 143:25 214:16			

18,19 48:3,5 49:7,12,14 50:2,16,18 51:19 52:3, 13 53:19 54:9,17 55:11,25 57:3 59:18, 23 60:2,5,24 61:2,5 62:1, 8,18,20 63:9,17 65:9,13 66:1,18,19 67:5,11,18, 25 68:1,5,7, 14 69:9 70:3 71:23 72:4 73:17,20 74:3,6,21,23 75:2 76:24 78:1 79:7 80:8 83:5 84:5 86:7 118:23 163:1,5 164:6 205:18 206:19 210:21 211:6 212:13,21 213:16,22 215:16 217:22 221:8 237:22,25 239:6,7,15 242:25 244:22 245:23 252:24 253:14,17 264:5 281:24	245:13,19 <b>315</b> 233:3 <b>316</b> 233:18 <b>340</b> 210:4 245:25 246:5 252:19 <b>346</b> 210:6 223:1 245:15 <b>35</b> 113:4 133:5 138:7,8,22 144:18 172:11 <b>38</b> 240:20 <b>39th</b> 29:15 <b>3:00</b> 289:24 <b>3:30</b> 289:24 <b>3:55</b> 297:24 <b>3rd</b> 243:7,12,13, 16 285:19, 22,23	242:11 <b>442</b> 56:16 <b>45</b> 290:4 <b>46</b> 188:5 <b>463</b> 46:3 <b>465</b> 46:19 <b>477</b> 59:24 <b>488</b> 58:6 <b>4:00</b> 186:18 290:5 <b>4:08</b> 302:5 <b>4:10</b> 297:21,25 <b>4:17</b> 235:11,23 <b>4:39</b> 321:15 <b>4th</b> 243:7,12 285:22	7,8,13 194:2,6 195:20 229:15 <b>501(c)(3)</b> 204:13 <b>553</b> 34:13 <b>594</b> 35:2 <b>5:30</b> 319:17 <b>5th</b> 243:8,12 250:6 279:4, 25 280:7
	<hr/> <b>4</b> <hr/>	<hr/> <b>5</b> <hr/>	<hr/> <b>6</b> <hr/>
<b>30</b> 69:13 212:13 <b>300</b> 168:6 <b>31</b> 208:16 212:13	<b>4</b> 14:25 16:5 98:19 134:8 222:24 246:4 253:2,14,19 302:5,18 <b>40</b> 246:1 <b>40-person</b> 245:16 <b>414</b> 171:8 <b>43</b> 240:15	97:9 145:12 193:16 208:20 216:3,5 222:24 223:11 224:8 238:23 242:16,23,25 249:5 250:5, 14,19 251:6, 17 252:24 253:14,18,20 264:7 278:4 <b>50</b> 162:6 193:1,	16:22 124:14 160:25 161:8,20 162:14 163:12,13 164:3,16 165:3 169:19 177:18 178:4 180:16,18, 19,20,23 183:3,5,9 184:3,11 185:18 186:17 188:3 190:13 192:1,8 196:24,25 205:16 207:19 208:13,20 217:22 219:10,19 223:11 225:20 229:22 230:25 231:6,18,20 232:3,6,21,

24 233:2	<b>702</b>	<b>903</b>	178:11
239:19	8:15 20:21	172:4	255:14
246:24	<b>747</b>	<b>95</b>	286:23 296:8
253:12	31:13	254:21	299:8 300:10
254:20	<b>750</b>	<b>957</b>	<b>absorb</b>
262:5,19,23	32:14	189:24	171:1
276:14,20	<b>752</b>	<b>9:54</b>	<b>academic</b>
278:4 279:8	32:25	88:6	11:15
282:11	<b>78</b>		<b>accept</b>
287:25	188:2		116:3 142:2,
295:19	<b>785</b>	<b>A</b>	6 163:8
302:16	30:17		173:12
304:12 305:1	<b>788</b>	<b>a.m.</b>	175:17 177:6
310:1,15	38:7	8:3 88:6,7	178:19
311:13	<b>797</b>	321:12	233:24 282:5
314:4,9,17	53:17	<b>A/sd</b>	<b>acceptable</b>
315:7	<b>7th</b>	205:20,25	282:24 283:1
<b>600-page</b>	189:23	<b>abbreviation</b>	<b>acceptance</b>
244:5		205:25	97:17,25
<b>604</b>	<b>8</b>	206:12	<b>accepted</b>
172:5		<b>abdicated</b>	173:14
<b>610</b>		49:22	<b>accepting</b>
189:23	<b>800</b>	<b>ability</b>	162:11,12
<b>64</b>	40:18	253:5,7	<b>access</b>
91:7	<b>804</b>	<b>able</b>	90:19 91:19
<b>683</b>	41:23	64:4 84:12	96:4,9,11
168:6	<b>81</b>	136:4,23	97:10,11,14
<b>698</b>	193:19	177:19,20	99:2 104:4,7
170:2	<b>811</b>	201:24	105:13
<b>6:30</b>	59:11	280:19 292:2	106:2,10,15
319:6	<b>815</b>	298:13	109:1,13
<b>6th</b>	42:11	319:22	110:4
161:18	<b>8600</b>	320:16	111:19,22
255:2,8	266:15	<b>above</b>	112:6
278:16 279:3	<b>869</b>	113:23	116:14,23,24
280:3,9	54:19	229:21	118:10
281:2,6	<b>8:00</b>	<b>abreast</b>	119:11
282:22	321:12	217:17	120:13
286:17	<b>8:20</b>	<b>abrogation</b>	129:22
291:16	8:3	33:10	130:1,8
		<b>absence</b>	137:10
<b>7</b>		181:6	139:16
	<b>9</b>	<b>absent</b>	144:14
<b>7</b>	<b>9</b>	169:10,15	145:1,2
317:6	236:13	220:8,21	151:8 153:10
<b>7,000</b>	237:2,5	222:14	155:7,15,18
266:13		<b>absolutely</b>	157:7,25
		177:17	

<b>accessing</b>	253:11	41:7 59:13	<b>adjacent</b>
97:1	<b>Acting</b>	73:9 169:9	188:20
<b>accidentally</b>	203:24	182:25	<b>adjourned</b>
190:22	204:2,17	<b>actual</b>	321:15
<b>accommodation</b>	206:2,3	28:21 29:1	<b>Adjutant</b>
200:21	211:12,15	71:3 78:23	246:18
<b>accompanying</b>	212:5 228:13	94:18 239:23	<b>administering</b>
174:22	241:10	252:21	91:16
<b>account</b>	254:17 255:3	266:23	<b>administratio</b>
17:21 235:15	<b>action</b>	274:14	<b>n</b>
319:15	24:7 81:20	313:23	90:25 95:19
<b>accuracy</b>	118:14 187:2	<b>Adams'</b>	102:21
80:6	189:12 190:8	30:6	116:15,20
<b>accurate</b>	191:20 193:1	<b>add</b>	207:24
18:15 19:10	194:3	157:8	248:24 256:2
115:10 145:4	216:22,24	<b>adding</b>	257:7 260:9,
238:1	<b>actions</b>	22:4	10 270:6
<b>accused</b>	102:8 163:17	<b>additional</b>	<b>administratio</b>
47:4 70:12	164:4,7,14	42:3 100:13,	<b>n's</b>
71:5 258:1,2	165:9 207:18	14 102:12	203:20
<b>achieve</b>	259:18	115:6 116:16	<b>administrativ</b>
151:8 187:22	<b>activate</b>	117:3 161:5,	<b>e</b>
<b>across</b>	220:10 227:3	8 187:16	13:20
221:17	<b>activating</b>	189:5 224:10	<b>administrator</b>
276:4,11	217:20	227:18 229:8	268:14
290:18 291:4	<b>activation</b>	<b>address</b>	<b>admiration</b>
<b>across-the-</b>	205:21	45:6,20	77:21
<b>country</b>	215:17 218:9	48:25 53:12	<b>admissibility</b>
276:8	244:24	59:18 86:13,	161:18
<b>act</b>	245:8,25	19 111:5,11	162:13
37:24 40:24,	<b>active</b>	157:9 197:15	<b>admissible</b>
25 41:5	30:21 202:18	<b>addressed</b>	161:2,21
42:15 43:9,	<b>active-duty</b>	24:14 35:24,	188:6
23 44:8	259:6	25 58:22	<b>admission</b>
45:17 49:18	<b>activities</b>	65:16 81:12	105:19
61:19 68:6	16:2 163:15,	153:23	<b>admit</b>
71:6 73:7,	19,21,25	<b>addresses</b>	20:16 124:18
12,19 74:2	165:23	155:14	198:20
81:8,9,15,18	268:21	<b>addressing</b>	317:25
82:2,3 95:2,	<b>activity</b>	13:21 44:4	<b>admitted</b>
11 150:9	45:18 124:3,	51:21 52:4	20:23
160:3 181:2	14 189:8	56:4	105:20,21
182:21	<b>actors</b>	<b>adds</b>	124:24,25
187:5,6,8,	288:23 308:7	84:14 257:2	161:5
12,13,19	<b>acts</b>	<b>adequate</b>	198:18,19,20
<b>acted</b>	38:12,15	197:25	204:24 205:1
41:3 227:22	39:13 40:1		207:11

223:18,19, 21,22 318:23,24 <b>admonition</b> 174:23 266:4 <b>adopted</b> 57:4 <b>adoption</b> 21:2 58:13 <b>advance</b> 180:16 183:9 184:12 194:20 291:10 <b>advancement</b> 84:14 <b>advice</b> 139:6 222:11 <b>advise</b> 119:8 139:4 <b>advised</b> 106:23 153:9 <b>advisement</b> 194:11 220:9 <b>advising</b> 256:1 273:3 <b>advisor</b> 183:24 202:14 204:11 255:21 270:14 <b>advocate</b> 169:1 <b>advocated</b> 46:24 189:11 <b>advocates</b> 168:25 169:13 <b>affect</b> 36:11 <b>affected</b> 86:10 <b>affidavit</b> 98:3 104:16, 22 115:9 128:23	129:1,2 133:8 135:15,18 136:1 146:13 147:25 <b>affidavit- plus-fee</b> 128:16 <b>affiliated</b> 100:3,17 256:14 271:24 272:4,10 <b>affiliation</b> 89:23 109:6 <b>affirm</b> 113:23 114:18 <b>affirmation</b> 113:20,21 114:3,4,7, 10,20,21 115:1,6 117:23 118:5,6 144:12,25 <b>affirmations</b> 114:24 <b>affirmative</b> 99:15 104:17 138:2,15,20 147:12 187:5,6 <b>affirmatively</b> 106:20 <b>affirmed</b> 92:11 108:17,19 <b>affirming</b> 133:8 <b>affirms</b> 144:17 <b>Afghanistan</b> 249:22 <b>afoot</b> 73:14	<b>afraid</b> 130:20 <b>aftermath</b> 16:22 207:19 <b>afternoon</b> 225:20 226:16,22 229:7 231:14 232:20 289:18 299:2,3 <b>afterwards</b> 83:23 150:24 <b>age</b> 12:1 99:25 102:8 113:3 133:6 267:14 286:10 <b>agencies</b> 13:13 218:11 222:13 <b>agency</b> 262:23 309:18 <b>agenda</b> 291:20,21 <b>agents</b> 224:19 262:6,19 <b>ago</b> 11:11 45:9 99:10 109:12 115:12 117:4 122:21 152:24 211:7 262:2 <b>agree</b> 64:16 66:21 72:19 73:2, 5,21 76:23 77:7 78:11 80:4,5,10 82:1 84:8 132:15 159:7,11,23 195:18 274:17 312:21	<b>agreed</b> 127:12 222:13 277:23 287:11 294:25 <b>agreement</b> 36:1 230:23 231:7 278:9 <b>ahead</b> 102:24 129:14 149:9,11 228:3 260:13 <b>aid</b> 46:18 47:2 48:1,19 49:4 83:7 188:16 <b>aiding</b> 42:15 <b>Alas</b> 72:15 <b>alert</b> 288:16 <b>Alex</b> 281:5 287:2 288:9 293:24 299:5,13,18, 22 <b>Alexander</b> 27:20 274:12 281:5 287:5 293:21 296:18 299:5,14 <b>Alexander/ alex</b> 275:4 <b>Alexanders</b> 277:21 <b>Ali</b> 274:12 275:4 277:21 281:5 287:5 293:21,23 296:18 299:5,13
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<b>Aliens</b> 15:12	48:7 49:9	<b>amount</b> 76:25 99:25	128:1 223:9
<b>allege</b> 165:4,6	55:14 56:12	100:18	305:23
<b>alleging</b> 93:24	57:4 58:4, 13,15,18	176:18	<b>anticipated</b> 127:25
<b>allow</b> 61:24 64:19 92:17 140:23,24 145:18 151:1,4 158:16	60:7 61:16 67:18 68:15 69:5 70:2,24 76:24 81:1 85:5,8,14,19 115:17 116:3 156:4 157:9 159:1,5 162:9 163:2 164:9 168:19 169:6 175:18 181:15 182:3,23 188:18,23, 24,25 189:4 196:2,3,4,5, 7,8,9 197:15	182:14 199:25 200:2 229:18	<b>anticipating</b> 264:17
<b>allowed</b> 22:25 39:2 192:6 261:11	<b>Amendment's</b> 20:7	<b>Amy</b> 273:16 278:8 284:2 319:2	<b>antique</b> 18:21
<b>allowing</b> 24:8 193:11	<b>America</b> 204:8 209:21 256:20,22,25 258:12 273:9,14 275:16	<b>analysis</b> 13:15 85:12 175:18 178:8 264:17	<b>antislapp</b> 189:2
<b>alter</b> 176:5	<b>America's</b> 16:8	<b>analytical</b> 78:6	<b>anybody</b> 28:22 67:6 158:5 160:8 238:13 266:25 274:10 293:7
<b>alternatively</b> 146:5	<b>American</b> 10:25 11:2 27:15 79:5 216:9 219:16 228:14 249:22	<b>analyze</b> 78:13	<b>anyone</b> 59:17 60:22 69:10 90:3 126:3 214:21,23 229:5,6 234:11 247:8,14 280:12 286:3,24 300:7 308:5 309:2
<b>amazing</b> 227:12	<b>Americans</b> 316:8	<b>and/or</b> 220:5 225:18	<b>apologize</b> 32:25 54:20
<b>ambiguity</b> 19:13	<b>amnesty</b> 25:1,9,11, 14,16,20 26:1,6 61:6, 7,8,12,17, 18,20,21,23 62:6 67:19 68:3,5,6 87:9	<b>Andrew</b> 40:10 56:11 57:7,14 67:3 70:22	<b>anniversary</b> 17:3
<b>ambiguous</b> 71:24 72:20		<b>angry</b> 27:19 178:15	<b>announced</b> 279:9 299:19
<b>amen</b> 303:8		<b>anniversary</b> 17:3	<b>announcing</b> 282:20
<b>amendment</b> 10:14 11:10, 13,17,20 12:4,18 13:6,18,20 14:19 15:3, 5,12,23,25 16:4,19 17:4,6 19:18,19,20 20:3,17,24 21:4 23:11 24:15 25:5 26:4,5,10,17 33:16 38:22 39:1,7,9,11, 14 40:15		<b>anniversary</b> 17:3	<b>anytime</b> 274:18 291:24
		<b>announced</b> 279:9 299:19	<b>Apart</b> 127:12
		<b>announcing</b> 282:20	<b>apologize</b> 32:25 54:20
		<b>another's</b> 77:22	<b>apparently</b> 248:13
		<b>answer</b> 50:10 81:12 82:8 127:8 141:7 157:4 159:17 215:7 241:6 242:22 307:1	<b>appeal</b> 193:4,9
		<b>answered</b> 155:3	<b>Appeals</b> 13:10
		<b>answering</b> 213:7	<b>appearance</b> 8:24 197:25 198:2,11
		<b>answers</b> 127:7,9,25	<b>appearances</b> 269:18

<b>appearing</b> 199:16 281:2 282:21	<b>appreciate</b> 154:5 200:20	<b>argue</b> 165:8 196:6, 21 197:3 253:13	<b>arms</b> 35:6 41:20 42:23,25 45:1,4,15 50:8,11 223:7
<b>appears</b> 117:25 121:8 188:24 266:12	<b>approach</b> 15:15 135:9 274:23	<b>argued</b> 163:7	<b>Army</b> 23:20 34:17 39:3,21,25 42:1,2,9 48:18,23 209:18,19 215:14 217:15 218:20 221:7 222:19 226:16 238:7,11 246:17 252:5,8
<b>appendix</b> 30:17 31:14 32:14 34:14 35:2 38:8 40:19 41:23 43:14 46:3, 19 53:17 54:19 56:16 58:7 59:11, 24	<b>appropriate</b> 195:22 209:3 219:2 221:24 222:17 231:1 253:10 262:24 264:20 266:6 284:7	<b>argues</b> 196:19,25	<b>arose</b> 29:18 30:4
<b>applicability</b> 164:9 166:3 176:21	<b>approval</b> 119:5 144:3, 6 148:3 153:12 198:23	<b>argument</b> 47:1 54:6,12 55:21 66:14, 15,21 68:1 71:8,9,23 72:19 73:2, 7,10,16,21 79:2 80:1,21 163:5,9 168:7 173:2 176:25 178:25 180:10,24 188:24 192:14	<b>around</b> 9:6 11:25 61:2,18 91:21 98:10, 14 152:4 153:2 199:11 205:16 212:19 221:23 283:12 285:21 288:22 289:24 295:21 306:14 313:2 319:2
<b>applicability</b> 164:9 166:3 176:21	<b>approve</b> 122:22 284:12	<b>arguments</b> 64:7 68:17, 20 77:15 162:22,24 177:1 196:2 197:18	<b>array</b> 268:21
<b>applicable</b> 107:8	<b>approved</b> 39:18 42:8 145:5 148:4 198:25 281:8 282:4,11 283:7,17 284:8,18 285:6 286:3	<b>arm</b> 210:11	<b>arrived</b> 46:17 186:20
<b>applicant's</b> 113:20 117:22 118:5,13	<b>approves</b> 123:5	<b>armed</b> 27:22 28:5, 23 184:14 190:12 210:14 217:11 219:18	<b>article</b> 12:15 13:9, 15 14:20,21 16:6,7,14 19:6,7,10 54:7 60:13
<b>application</b> 77:25 96:14 128:24	<b>approving</b> 285:12	<b>Armies</b> 40:4	
<b>applications</b> 25:5	<b>approximate</b> 321:15		
<b>applied</b> 34:21 68:7 72:23	<b>approximately</b> 202:9 222:24 281:20		
<b>applies</b> 99:19 266:22	<b>arbiter</b> 108:5,8 148:15,22		
<b>apply</b> 23:9 25:7 42:22,24 66:20 72:7 99:2 162:16 168:3 169:4 196:6	<b>area</b> 11:4 134:25 160:2		
<b>applying</b> 26:1 48:3 72:4 140:12	<b>areas</b> 149:25 153:16		

63:22,23 64:25 65:4,7 68:13 84:2,4 87:4 95:25 98:19 134:7, 8 163:1 240:22,25 241:9 242:4 243:5 247:21 248:1,3,23 249:1,8,10, 11,13,15 250:1,4 251:3,10 253:17 254:2	297:7 304:22 305:15 310:3 312:13,17,22 313:5,6,9,13 314:4 <b>asking</b> 76:18 94:24 140:7,9 173:25 181:15 240:24 243:18 244:7 254:6,17 274:7 298:16,18 307:22 311:14 312:2	218:2 <b>assisting</b> 210:15 <b>associate</b> 32:24 272:5 <b>associated</b> 270:22 271:1,6,9, 16,24 <b>assume</b> 67:25 145:17 161:20 267:4 <b>assuming</b> 80:4 99:13 177:1 <b>attach</b> 67:11 <b>attachment</b> 144:1 <b>attack</b> 185:24 186:1 191:25 232:20 233:4,19 234:9,13,23 294:17 316:4 <b>attacked</b> 27:23 288:7 306:5 307:4 317:8 318:6 <b>attempt</b> 31:3 33:22, 23 35:12 135:9 232:8 234:24 278:5 <b>attend</b> 210:24 211:9,11,14 218:10 <b>attendance</b> 173:20 <b>attended</b> 172:12 211:16 237:21 <b>attention</b> 36:8 37:16	40:18 60:8 107:2 113:13 189:22 194:25 208:10,15 210:21 217:18,23 229:9 288:12 <b>attorney</b> 9:15 38:4, 11,14 39:16 40:1,11,13, 16,20 41:13 42:1,4,12 43:1,9,12 44:2,12 52:9 53:12,17,24 75:2 82:8 125:25 260:7 262:13 <b>attorneys</b> 24:8 230:5 <b>attributable</b> 227:17 <b>audience</b> 170:7 172:25 176:2,10 <b>audiences</b> 177:13 <b>aunt</b> 272:20 <b>Authenticated</b> 302:10 <b>author</b> 20:1 34:25 <b>authoritative</b> 20:2 27:7 33:14 34:21, 25 40:12 46:6 <b>authorities</b> 164:2 207:2 215:21 218:17 219:25 220:20,24 221:20,24 222:8,20
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

223:10	<b>autographs</b>	238:16,17	107:8,18,23
224:15,17	294:17	241:9 243:20	108:23
225:13,17	<b>available</b>	250:14,19,21	109:1,13
226:25 228:4	247:4 297:20	252:11	110:4
234:21	319:4	264:18,20	111:19,22
246:16	<b>average</b>	272:19	112:6 115:11
264:12,13	74:19	275:18	116:14,18,
<b>authority</b>	<b>aware</b>	277:22	23,24
21:22 28:2	44:15 82:25	282:12	118:10,15
30:21 56:13	93:9 112:7	284:23	119:11
70:8 83:20	113:9 124:1	286:10 294:3	120:13
96:1 120:11	218:16	304:4 306:25	122:20
129:22 130:4	221:12	310:18 313:2	123:12
137:3 164:13	232:19	315:6 316:21	128:10,14
187:17 189:1	234:22	320:4	129:22
214:25	235:21 236:2	<b>back-and-</b>	130:1,8
215:20	244:1 262:17	<b>forth</b>	132:17,24
217:14	269:3 294:9	264:21	135:6 137:10
219:13	300:1 301:7	<b>backdrop</b>	138:4,9,18
227:18 228:5	304:17	49:11	139:16
229:8 235:20	309:5,21	<b>background</b>	144:14
236:2	310:4	14:6 29:20	145:1,2,9,11
<b>authorization</b>	<b>awareness</b>	200:15	146:8 147:3,
206:24	82:12	230:23	5,16 148:16
216:25 219:8	<b>awfully</b>	268:10	149:6
220:1 221:8	170:9	<b>backs</b>	150:19,23
229:8,13		185:1	151:8,10,11,
252:4 253:9		<b>backwards</b>	21 152:1,5,
255:17		198:23	10,22,25
264:20		<b>bad</b>	153:10
<b>authorization</b>	<b>back</b>	258:22	154:20
<b>s</b>	36:7 39:5	259:1,7	155:7,15,18
212:16	50:4 52:23	284:22	156:15,18,
217:17	53:16 60:22	288:23 308:7	20,21,23
<b>authorize</b>	75:5 79:17,	<b>ballot</b>	157:7,25
262:18	25 95:17	90:19 91:5,	158:4,17
<b>authorized</b>	111:23	19 96:4,8,	<b>ballots</b>
212:18 213:1	131:13	12,16,20,23	151:25
214:10	133:24	97:1,5,6,10,	<b>Banks</b>
221:13	140:15	11,15 98:15,	164:1
237:19,22	141:23	18 99:2,6,	<b>banning</b>
239:3 240:11	143:13 147:8	12,16 100:7	169:10
246:14 247:6	165:19	101:6 102:1,	<b>Barack</b>
249:5 250:10	184:24	3,15,24	116:8 117:8
251:5 254:12	193:14 195:2	103:2,9,12,	137:17,21
302:10	212:1	21 104:4,7,	156:5,13
<b>authorizing</b>	215:24,25	19 105:1,9,	157:16
264:6	218:23	13 106:8	
	226:23		

<b>barely</b> 199:22	<b>bears</b> 54:15	232:7,18	16:24 20:4
<b>Barrett</b> 43:16	<b>bedridden</b> 286:9	248:9 256:20	58:9,24 59:9
<b>based</b> 78:14 97:3	<b>bedrock</b> 221:25	260:14	67:12
102:1 107:24	<b>began</b> 89:18 106:9	267:15,22	<b>Bingham's</b> 17:2 58:12
109:8 115:10	183:22	280:2 282:4	<b>Binnall</b> 198:17
152:10	256:25	284:12 286:1	<b>biography</b> 11:12 14:14
154:3,15	268:23	287:3 290:17	16:15
156:14	269:13,18	304:21	<b>biology</b> 268:12
184:20 197:2	281:6	<b>believers</b> 300:8,13	<b>bit</b> 12:22 15:7
219:12	<b>begin</b> 220:12	<b>Belknap</b> 70:12	18:10 24:12
222:16	221:8,16	<b>best</b> 17:9 113:25	25:1 27:11
<b>basically</b> 15:21 16:8	<b>Beginning</b> 134:10	139:4 234:3	32:5 33:1
17:20 21:11	183:19	242:18 243:8	34:2 39:5
25:7 27:23	<b>behalf</b> 9:5,10,13	253:5,7	46:13 47:18
31:3 36:1	198:4	<b>betray</b> 300:5,7	50:15 56:8,
40:2 41:5	<b>behave</b> 160:6	<b>better</b> 29:14 53:5	19 57:24
45:12,16	<b>behavior</b> 166:10,21	64:10,11	61:1,15
47:25 62:23	169:4 172:14	88:23 182:8	72:22,24
67:16 70:18	<b>behind</b> 15:24 28:24	197:11	76:21 79:9
85:18 92:1	62:8 137:13	301:23	88:4 99:17
162:10	193:2 295:14	312:10	101:18 128:8
164:15 168:8	<b>beings</b> 221:17	<b>Biden</b> 207:23 237:9	146:14 161:3
270:17	<b>believe</b> 65:23 79:8	248:24	170:22 174:9
<b>basis</b> 8:17 39:20	97:9 125:14	<b>big</b> 178:14	201:18 236:5
42:9 47:9,21	151:16	221:16	268:10
49:3 77:11	152:23	305:13	274:22
133:11,12	162:18	310:12	275:19 304:4
134:13	170:13	<b>bigger</b> 249:20	<b>Bjorklund</b> 320:18,25
135:25	175:12,13	270:25	<b>Black</b> 306:1
183:24	198:17,25	<b>BILA</b> 201:20,23	<b>Blackman</b> 65:1,17
233:22 235:4	204:19,22	205:9 265:10	69:15 77:4,
<b>Baude</b> 36:4 65:19	223:16,17	267:9,13,22	19 78:22
78:18	224:8 225:21	<b>Bill</b> 15:8	84:22
<b>Beall</b> 9:16 126:6	230:12	<b>binding</b> 137:2,5,7	<b>blameworthy</b> 62:24
127:5,20,23	231:21	<b>Bingham</b> 11:12 14:15	<b>block</b> 170:4
128:1			<b>blocking</b> 277:17
<b>bear</b> 220:21			
<b>bearing</b> 51:11			

<b>blue</b> 113:15 198:5,10 303:1 319:1, 8,10,21 320:3,15 321:1,4,9,13	<b>books</b> 11:6,9 12:2 14:10 17:20 29:15 257:11	<b>branch</b> 83:8	<b>brings</b> 178:10 195:23
<b>Boag</b> 31:17	<b>border</b> 249:23	<b>branches</b> 83:5	<b>broad</b> 47:23 72:6 95:20
<b>board</b> 11:1 204:10 212:22 213:17 260:20 261:6,9,20	<b>born</b> 146:4 148:9	<b>Brandenburg</b> 162:8 163:3 164:23 166:1 168:15 181:11	<b>broadcast</b> 273:7
<b>boards</b> 270:25 271:3,5	<b>boss</b> 59:16	<b>breach</b> 95:1 150:8, 15	<b>broader</b> 65:8 268:21 274:9,14,16 275:20
<b>Bob</b> 317:12	<b>bottom</b> 110:11,12 120:25 121:5,6,20 122:5 216:3 224:4 302:7	<b>break</b> 88:4 131:7 182:14 265:8 297:20	<b>broadly</b> 37:23
<b>Bobby</b> 290:18	<b>bout</b> 140:19	<b>breaking</b> 319:11,20	<b>broadness</b> 242:5
<b>bodies</b> 196:17	<b>Bowl</b> 264:16	<b>brief</b> 170:10	<b>broken</b> 22:20 62:12 203:11
<b>body</b> 87:5 160:3 165:1,2,10, 18 196:13 220:3	<b>Bowser</b> 221:9 222:23 224:8 226:17,21 238:4,21,25 250:6,14 252:1	<b>briefed</b> 181:18 184:12	<b>brought</b> 98:22 150:13 151:9,13,14 197:16 206:22 240:1,5,7 277:7 293:24
<b>bolded</b> 113:16	<b>Bowser's</b> 210:7 218:22 250:12	<b>briefing</b> 193:11 203:16	<b>Brown</b> 46:14,15,23 47:2,7,8,22 48:2 49:6
<b>bona</b> 97:18,23 119:9 122:23 123:1 128:23 144:7,23 145:24	<b>box</b> 106:13 132:3,5 145:5,6	<b>briefly</b> 14:5,10,25 54:5 71:22 77:18 85:24 86:21 155:5 166:1 192:25 200:15 212:2 306:9	<b>Buchanan</b> 57:19
<b>bonds</b> 42:19	<b>boxes</b> 115:4 130:16,24 133:8 135:11 144:16 145:7 157:18	<b>bright</b> 210:15	<b>Buck</b> 320:18,19,25
<b>book</b> 14:17 20:5 79:19 257:13,14, 17,23 258:10,11 259:11,17,19	<b>Boys</b> 165:5 181:21	<b>bring</b> 24:8 129:9 133:24 181:22 220:20 229:16 241:9 305:12 319:11	<b>Budowich</b> 314:25 315:4
	<b>Brad</b> 310:7 311:2, 6 312:19 313:8	<b>bringing</b> 290:23	<b>Building</b> 207:9 220:7
			<b>built</b> 197:3
			<b>bullet</b> 205:18 206:24 209:13 239:6,14 243:14,17 244:21,23

<b>bullets</b>	226:17	271:2,6,9,17	135:10,15
292:1	230:5,13	272:10,12	136:12,23
<b>bullshit</b>	234:18,20	273:4,21	137:11
241:4	235:1,5	283:23	138:2,3,7,8,
<b>bunch</b>	269:21	300:12	16,17,21
319:20	270:19	310:23	140:16,20
<b>bundled</b>	271:11 272:3	311:5,10	141:21
193:3	281:17 282:7	<b>campaigning</b>	142:1,14,16,
<b>Bureau</b>	283:23 284:9	67:14	17 143:24
206:13 220:6	295:6,9,11	<b>campaigns</b>	144:5,7,13,
<b>burn</b>	297:10 300:8	136:25	17,23 145:8,
190:17	302:8 306:6	<b>campus</b>	23,25 146:1,
<b>bus</b>	309:2 319:11	207:19	17,25
275:23,25	<b>call-and-</b>	<b>candidacy</b>	147:16,24
276:1	<b>response</b>	66:7 299:19	148:4,15
<b>Bush</b>	167:17	<b>candidate</b>	149:5,11,15
116:8 117:8	184:20	91:19 93:20	151:1,2,7,
156:5,13	189:18	96:8 97:17,	10,19,20
191:10	<b>called</b>	18,23 99:6,	152:1,6,14
<b>Bushrod</b>	28:1,10 30:1	15,24	153:3,7
16:15 79:19	31:7 34:5,7	100:13,16,22	154:19
	56:21 144:2	101:10,23	155:23
	167:7 189:13	102:2,11,19,	271:19
	234:17,19	24 103:1,6,	<b>candidate's</b>
	237:9 257:18	8,11,19,21,	91:23 101:2
	259:11	23 104:19,25	102:5 114:8
	270:10 273:9	105:7 106:3,	118:20
	274:6,11	10,25 107:19	121:13
	275:17,25	108:2,9	123:10
	288:3,4	109:13,23	144:24
<b>C</b>	<b>calling</b>	110:2 111:12	145:24 151:2
	198:14	112:7,20	158:4
<b>C-SPAN</b>	269:18	114:2,4,17,	<b>candidates</b>
298:4	321:3,5,6	25 115:1,4,	96:17,22,24
<b>cabal</b>	<b>calls</b>	11 116:5,18	97:12,14
259:15	214:1 216:6	117:6,13	98:17 99:2,
<b>Cabinet</b>	234:13,15	118:5,15	12,18,20,22
39:19 203:17	262:18,22	119:8,9	100:7,21
241:14	290:12	121:4,11	101:25
262:16	<b>Calwell</b>	122:14,15,	104:12,14
<b>calendar</b>	163:18,22	16,18,23	107:7,17,22
91:25	<b>cameras</b>	123:2,5,11,	108:25
<b>call</b>	260:13	15,18	109:1,6,8
8:21 9:20	<b>campaign</b>	128:10,22,24	111:18,21
60:7 161:11	67:13 121:9,	129:3,4	114:24
178:13,19	14 269:15,	130:24	116:13 135:6
179:21	22,25 270:1,	133:2,3	136:14,25
181:6,16	11,13,23	134:16,17,24	137:6,9
184:19			
186:14			
191:18			
197:21			
199:13,14			
215:16			
217:12			

144:5 145:11	<b>capitols</b>	123:20 124:7	<b>cats</b>
146:21	308:8	148:17,22	274:20
147:6,20	<b>captured</b>	158:25	<b>caught</b>
148:6,7,10,	206:25	161:23	263:8
11 149:8	<b>care</b>	162:18,19	<b>caused</b>
<b>cap</b>	249:23	164:24,25	196:23 308:8
264:15	288:12,25	165:11 168:7	<b>cease</b>
<b>capabilities</b>	<b>career</b>	169:21	272:1
267:19	17:2 217:19	170:6,8,13	<b>Center</b>
<b>capability</b>	231:16	172:1,2,6,10	17:1 204:8
208:22	236:19	173:6,15	<b>central</b>
<b>capacities</b>	<b>careful</b>	175:4	9:11 22:9
271:14	173:24	176:11,17,18	37:9 52:20
<b>capacity</b>	<b>Carolina</b>	177:5 178:10	53:22
211:11	24:14,17,22	185:10,11,	267:21,22
270:7,12	43:17 44:7	12,20 189:23	<b>centrally</b>
278:22	52:23 269:9	193:15	20:6
279:20	<b>Caroline</b>	195:18	<b>centuries</b>
<b>Capitol</b>	276:25	197:14	46:8
163:16,19,25	277:3,4,22	220:13	<b>century</b>
165:8 178:22	278:7 280:1	<b>cases</b>	11:22,25
183:6,10	281:5 282:9	15:14,16	14:11 15:2,
185:4,7,25	284:1,6	17:18 18:3	8,9,21 18:20
186:6 188:12	285:6 294:2	24:13,22	57:15
201:8 207:7,	<b>carried</b>	26:7 29:17	<b>CEO</b>
8,19 219:18	165:7 318:1	32:4,5,9,10	261:22
220:5,6	<b>carry</b>	34:3 43:11,	<b>certain</b>
221:9 222:21	208:11	17 44:4,11,	36:19 87:13
223:3,6	<b>carrying</b>	17,18,21,23	138:3 167:1
225:1,11,18	190:12	45:6,10	168:11
227:24 228:9	317:23	48:13 49:21	<b>certainly</b>
232:20	<b>case</b>	52:25 72:11	125:20
233:19	18:12 19:17	82:10,11	157:25
234:9,14	20:13 29:19	85:15 102:23	170:21
235:12,24	30:1,4 33:25	170:12	173:17
238:4,14,22	34:5,8	177:12 185:9	179:18
250:13 252:1	43:15,18	197:4 260:9	180:22
253:10	44:6 46:13	<b>catch</b>	187:14
262:4,24	47:1,6,12	272:2,14	214:21
294:8,21,23,	48:2,15,25	<b>catchall</b>	<b>certainty</b>
24 307:19,21	49:7 54:6	114:21,23	100:11 286:2
308:1,5,22,	59:7 63:4,14	<b>catching</b>	<b>certification</b>
23 309:3,7,	76:11 78:19	286:10	97:7 101:7
10,14,20	79:14 101:8,	<b>Catron</b>	118:18
314:11,18	11 102:10	32:23 33:2,	144:22
315:18 316:4	105:10,13	24	145:14,15,
317:7,23	108:12,15,16	<b>Catron's</b>	16,24 146:13
318:6	110:25	34:9	



147:13,15 150:20 151:11 186:8,15,19 193:18 <b>certified</b> 101:7 147:2 151:19 <b>certify</b> 91:4,5,11 96:16,23 99:16 102:2 103:8,20 105:9 108:9 115:10 116:17 122:19 123:11,17 135:5 145:8, 11,16 146:8, 19,21 147:5, 10,15 149:5 150:23 152:21 156:23 158:4 <b>certifying</b> 91:20 96:19 101:25 107:17 118:15 150:19 <b>cetera</b> 18:5 <b>chain</b> 207:5 225:8, 10 238:19 <b>chair</b> 121:10 122:2 <b>chairman</b> 206:9,10 215:14 241:17,22 242:7 261:19 300:25 <b>challenge</b> 45:24 92:17, 22 95:7 101:12	103:3,13 115:13 118:19 123:10 145:18 148:18,24 150:23 151:1 <b>challenged</b> 46:17 48:18 101:21 102:1 108:9 148:21 156:19 <b>challenges</b> 95:10 101:23 150:21 151:4,6,9, 13,14 <b>challenging</b> 19:2 92:14 106:16 273:1 <b>chance</b> 21:9 22:25 63:4 64:5 192:21 215:23 317:4 <b>change</b> 33:11 36:17 79:21 128:4 141:7 253:8 260:25 <b>changed</b> 12:20,22 82:18 86:10, 16 111:1 112:16 119:25 155:12 <b>changes</b> 111:7 155:11,17 <b>changing</b> 68:24 <b>chanting</b> 183:15 188:9 <b>chaos</b> 275:6 278:6 288:13	<b>Chapters</b> 14:17 <b>characteristi c</b> 166:10 <b>characteristi cs</b> 167:5 <b>characterize</b> 40:9 63:15 <b>charge</b> 32:11,15,18, 19,23 34:9 54:23 55:10 173:14 222:1 246:18 311:5,10 <b>charged</b> 49:21 93:19, 24 150:7 218:1 <b>charges</b> 32:13 34:8 55:4 <b>charitable</b> 43:24 258:19 <b>charity</b> 41:9 204:13 <b>Charlottesvil le</b> 165:23 <b>chart</b> 165:13 <b>Chase</b> 79:14 <b>Chase's</b> 78:25 <b>chat</b> 130:10,12 <b>chatted</b> 77:18 <b>cheating</b> 258:4 <b>check</b> 106:12 130:15 144:17 148:8	157:18 190:25 257:5 320:8 <b>checkbox</b> 157:8 <b>checkboxes</b> 136:13 <b>checked</b> 133:8 145:6, 7 <b>checks</b> 115:4 130:24 136:13 <b>Cherokee</b> 15:22 <b>chief</b> 56:25 57:18, 20 74:15 79:14 91:2 202:17 203:20,22 204:2,17 207:7 211:12 215:24 217:11 218:2 223:7 236:21 237:5,15 242:9 281:11,12 282:6 283:9, 23 284:13 285:2,4 <b>Chief's</b> 219:25 <b>Chiefs</b> 206:9 223:5 241:17,23 242:8 301:1 <b>Chiefs'</b> 225:11 <b>children</b> 259:5 <b>children's</b> 257:13,14 258:10 <b>Choate</b> 127:18
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>choose</b> 97:20	106:13 113:5 133:5 137:22 144:18	<b>clear</b> 23:8 39:12 45:3 50:24 60:14 67:20 79:11 82:8, 21,25 83:2 99:1 102:23 117:1 166:5, 12,20 167:23 168:12 169:7 171:21 174:13,17 186:14,17,18 190:18 197:6 198:18 219:14 255:6 266:20 314:15	170:4 270:25 274:9,14,16 275:20
<b>chose</b> 152:9	<b>citizenship</b> 15:11,13 137:16	<b>clearer</b> 188:15	<b>coalitions</b> 270:15,16, 17,20 273:3
<b>Chris</b> 9:8 214:17	<b>city</b> 30:23 315:10	<b>clearly</b> 189:10 196:10,12 292:2	<b>Coast</b> 319:3
<b>Christopher</b> 9:16 203:25 216:16 234:25 235:6 249:6 251:9, 15 254:14,17 255:4 262:21 263:4,7	<b>civil</b> 22:16 23:3,5 24:7 27:4,9 29:16 30:21 34:4,17,22 35:9 44:21, 24 45:20 46:23 50:12, 19 56:25 60:8 62:22 82:15,16 83:20 193:20,23 194:1 215:21 229:20 310:3 311:15 312:2,13,18, 22 313:5,7, 9,13 314:5	<b>clerk</b> 90:18 302:2	<b>code</b> 34:16 93:20, 25 194:5
<b>chronology</b> 208:12	<b>civilian</b> 222:1	<b>clerks</b> 91:6	<b>coded</b> 171:17 189:18,20 190:1 197:3, 4
<b>Circuit</b> 13:10 32:20 54:24 168:6 189:23	<b>CJCS</b> 205:20 206:8	<b>Clinton</b> 157:17,22	<b>cold</b> 227:8
<b>circulate</b> 97:22,24	<b>claimed</b> 300:21	<b>clips</b> 287:7	<b>Colin</b> 205:4
<b>circumstances</b> 32:17 153:2 171:24 173:23 187:19 190:24	<b>claims</b> 183:20,22,25	<b>close</b> 33:15 74:4 181:12 193:17 200:21 218:7 219:5	<b>collaborative</b> 201:16
<b>citation</b> 98:20 134:5	<b>clarification</b> 224:18	<b>closed-door</b> 230:5	<b>colleague</b> 72:11
<b>citations</b> 18:3,4 170:1	<b>clarifying</b> 120:19	<b>closely</b> 78:23	<b>colleagues</b> 172:17
<b>cite</b> 69:16 170:3 176:18	<b>class</b> 36:19	<b>closer</b> 101:18 177:14 239:23	<b>collect</b> 27:24 28:18
<b>cited</b> 13:8,9,12,15 66:3 92:22 170:13 177:10 197:4	<b>classic</b> 185:7 190:19	<b>coalition</b>	<b>collection</b> 28:3
<b>cites</b> 63:22 73:6 176:17 185:9	<b>clause</b> 15:11,13		<b>collectors</b> 27:23
<b>citing</b> 68:13 243:17	<b>clean</b> 161:2		<b>collegial</b> 84:20
<b>citizen</b> 98:12 104:9			<b>colloquy</b> 156:4
			<b>Colorado</b> 87:16 89:6, 9,12 90:25 91:1 92:18 93:2,7 95:24 96:6,12 97:7,12 98:4,9,18,23 99:18 100:1 101:14 103:22 104:3

105:5 115:13	<b>comfortable</b>	233:3,6	<b>companion</b>
119:14	158:15	239:19	144:22
123:15	<b>command</b>	246:25	<b>company</b>
132:4,8,12,	184:22	255:2,6	204:11 273:5
18 133:13	185:14 190:2	295:19	<b>compare</b>
134:19,20,24	201:14 207:6	296:19	31:25 34:9
137:11	217:14	297:10	39:13 43:11
140:21	225:8,10	299:23	44:1
143:12 159:8	238:19	304:13 305:1	<b>compared</b>
193:20	<b>Commander</b>	307:12	74:8 79:5
263:18	215:24	<b>Committee's</b>	<b>comparison</b>
266:21	217:10	188:7 230:16	74:4
297:21	219:25	297:13	<b>compel</b>
<b>Colorado's</b>	<b>commanders</b>	<b>committing</b>	33:10
91:7 104:3	39:21 42:3,	71:5	<b>compels</b>
119:23	10	<b>common</b>	195:10
<b>colors</b>	<b>commanding</b>	41:8 42:16	<b>competent</b>
302:22	185:4	79:16,25	93:23
<b>column</b>	225:12,17	167:5,18	<b>competing</b>
165:8	<b>commemorated</b>	179:15,23	146:1
<b>come</b>	17:3	182:22,25	<b>compilation</b>
28:16 41:2	<b>comment</b>	183:18	18:19
43:6 49:20	64:17	190:25	<b>complains</b>
50:16 59:21	<b>commentary</b>	211:14	148:25
60:22 61:12	12:13 69:1	270:18	<b>complaint</b>
106:7 131:13	79:12 266:1	<b>commonly</b>	146:2
138:19	<b>comments</b>	167:19	<b>complaints</b>
146:2,14	79:17 166:23	<b>comms</b>	137:24 298:2
150:24	167:25	270:15	<b>complete</b>
169:18	172:20,21	<b>communicate</b>	104:17 115:9
177:19,20	291:6	122:18 292:2	123:9 137:11
183:10,13	<b>commit</b>	<b>communicated</b>	145:4,15
221:4 224:14	94:1,11	152:9 310:25	149:10,12
225:16	95:1,12	<b>communication</b>	152:8,10,20
245:13	106:14 150:8	167:7,16,17	153:10
271:12 284:4	<b>committed</b>	168:9,24	154:16
286:17	93:25 94:10	232:17	<b>completed</b>
287:14	95:1,13	<b>communication</b>	133:7 148:3
290:18,19,22	150:8,15	<b>s</b>	149:15
291:5,19	<b>committee</b>	166:10,19	154:19 161:9
304:4 308:13	9:11 11:14	167:5 168:10	<b>completely</b>
314:11	21:20 58:16,	169:1,5	313:13
<b>comes</b>	17 186:17	181:9 218:17	<b>completing</b>
138:6 147:11	188:3 202:14	225:5 232:23	112:8
189:8	229:23	234:1 249:14	<b>complex</b>
<b>comfort</b>	230:6,13,23,	273:3,6	206:15
83:7	25 231:6,8	<b>community</b>	
		220:17	

<b>compliance</b> 155:9 194:5	245:24	<b>conflicts</b> 306:1	<b>consider</b> 17:7 49:10
<b>complicated</b> 79:10 277:18	<b>concurs</b> 205:21 244:24	<b>conforms</b> 92:7	55:21 56:3 63:20 137:24 193:4,6 195:15 317:20
<b>comply</b> 91:8	<b>condemn</b> 165:23	<b>Congress</b> 19:4 21:15 23:24 24:3,6 25:8,13 26:6 29:15 38:12, 17,19,24 39:6 45:20 46:1,7,11 47:6,21 48:25 57:23 58:3 59:2,9 61:5 71:2,6 87:9 134:25 140:20 141:4 159:3,12,25 185:2 186:1, 20 202:15 305:5 307:25	<b>considered</b> 18:1 25:17 36:20 41:9, 15 48:8 49:16 51:18, 22 52:2,21 56:5 61:5 65:11 195:9 278:13
<b>component</b> 180:15,17	<b>conditioned</b> 168:11	<b>Congress's</b> 25:2 39:22	<b>considering</b> 114:7
<b>components</b> 180:14	<b>conduct</b> 41:14 48:8 49:15 86:17 107:18 169:12,17,20 182:24 187:4 188:18,19, 20,22 190:24	<b>congressional</b> 13:14 15:15 17:16 18:4 21:18 25:22 48:12 52:7 58:7 59:25 69:9 71:24 109:2,4 130:13,15,18	<b>considers</b> 107:25
<b>comprised</b> 229:15	<b>conducting</b> 95:6	<b>Confederacy</b> 21:8,14 22:21 24:3 25:19 38:18 39:21 41:2 45:25 46:18 47:11 48:1, 19 49:4 56:14 57:9 82:19 83:21	<b>consistent</b> 33:16,20 35:17 43:13
<b>concern</b> 41:1 262:20 282:1 287:21 288:10 292:9 304:10,18 307:10,11 308:2,12,14, 15,22	<b>Confederate</b> 48:18,23 56:23 66:24 67:21,22,24	<b>Congressman</b> 11:12 320:19 321:3,5	<b>conspiracy</b> 33:4 275:6
<b>concerned</b> 37:6,13 48:8 49:15 191:21 288:14 293:4 308:9 319:23 320:15	<b>Confederates</b> 22:14	<b>congressmen</b> 268:24	<b>constitute</b> 81:10 83:3 163:7 169:5 177:18
<b>concerns</b> 282:8 286:21,23 287:1,11,18 289:4,13 292:7,17 304:6,8,11, 19,21 305:18 307:14,19 308:1,2,5,8, 25	<b>confirm</b> 107:25 114:3 120:11 224:4 233:24 320:6	<b>connected</b> 33:5	<b>constituted</b> 35:3
<b>conclusion</b> 56:1 68:22 69:6 74:22, 25 195:10 213:21	<b>confirmation</b> 206:23	<b>connection</b> 143:16 169:11,16, 17,19 273:8	<b>constitutes</b> 43:21
<b>conclusions</b> 74:8 75:1 187:18 197:17	<b>confirming</b> 155:21 294:1	<b>consensus</b> 61:3	<b>Constitution</b> 17:1 22:19 33:9 36:15, 25 37:4,11, 14,25 49:22 50:22 52:19 53:10 54:8, 10,16 55:14, 25 57:21 62:13 99:18, 20 106:16 113:8,11 115:17 135:4 141:3 187:10,11
<b>concurring</b>	<b>Confiscation</b> 73:7,9,12,19 74:2	<b>conservative</b> 283:2	

192:7	150:23	<b>Convention</b>	110:13
<b>constitutiona</b>	<b>contests</b>	299:24	112:8, 18, 21
<b>l</b>	91:12 96:16	<b>conventions</b>	114:1
10:20, 23	<b>context</b>	38:20 39:3	115:14, 15
11:2, 5, 8	19:16 52:13	<b>conversation</b>	119:25
12:13 13:2, 3	56:19 62:18	126:7, 10	120:1, 10
14:11 15:19,	150:19	212:17	125:25 126:1
20 39:14	174:10	216:16, 21	128:17, 18
74:11, 20	185:13 186:5	242:14, 16	129:6, 11, 12,
99:21 106:21	189:16	264:14 286:8	24, 25 130:8,
109:9 156:14	191:2, 3	300:22, 23	9 132:4, 24
175:23 275:9	196:22	301:1, 3, 6, 9	134:14
278:11	197:13	<b>conversations</b>	136:10, 11, 23
<b>constitutiona</b>	310:19	127:14, 17	137:18
<b>lity</b>	313:16, 17	168:20	138:4, 5
15:17	314:21	215:13	139:6, 7, 10,
<b>constitutiona</b>	<b>contexts</b>	<b>conversely</b>	11, 15, 17
<b>lly</b>	58:19	103:10	141:18, 21
69:16 99:13	<b>contextual</b>	156:17	142:20, 21, 24
105:6, 12	171:25	225:10	144:20 145:9
<b>constitutions</b>	<b>continue</b>	<b>convey</b>	146:7, 23
38:21 74:17	78:4, 13	229:6	147:16, 17
<b>construed</b>	131:11 267:2	<b>conveying</b>	148:12, 19
174:24	273:25	206:17	149:2 153:5
<b>consult</b>	<b>continued</b>	<b>conviction</b>	154:17
215:8	273:13 280:2	67:3	155:9, 19, 24
<b>consultant</b>	<b>contrast</b>	<b>coordinating</b>	156:1, 2
204:7	35:9 70:20	219:3	158:18, 20, 22
<b>contact</b>	<b>contributions</b>	<b>copy</b>	159:1, 2
119:21, 22, 24	41:10 42:17,	98:21	160:17
283:9 285:14	18 43:24	<b>corner</b>	195:19
<b>contacts</b>	63:16	165:16	200:16
185:17	<b>control</b>	<b>corpus</b>	202:19, 21
<b>contained</b>	208:21	311:20 312:8	207:24, 25
113:10 134:7	209:8, 9	<b>correct</b>	231:24
<b>contains</b>	245:15, 16	24:21 41:11,	232:21, 25
144:1	275:23 298:3	12 47:13	234:14 236:3
<b>contemporary</b>	<b>controls</b>	51:2 64:21	237:6, 9, 16
17:19, 20	175:18	65:23 75:15	239:8, 15
52:10	209:19	76:11 77:5,	240:7 243:25
<b>contend</b>	<b>controversies</b>	15, 19 78:15	245:10 249:9
64:6 196:23	137:15	80:18 81:1	252:14
<b>content</b>	<b>controversy</b>	84:6 85:9, 20	255:9, 12
91:4 96:19,	93:18	90:5, 6 92:10	261:22
23 120:15	<b>convened</b>	93:10 99:7, 8	270:1, 2
<b>contents</b>	8:2	105:11	276:15
129:19		106:25	279:4, 5, 11

14,19,20	242:10	167:21	108:10,12,
285:13	244:18,20	170:10 171:9	17,19
289:11,12	256:11	173:9 263:24	123:12,21
296:1 298:14	261:10 320:7	269:16	124:8,15,21,
299:25	<b>counsel's</b>	285:21	24 125:2,18
303:2,6	215:10	287:10	131:9,12,16,
304:15	219:23 220:9	294:15 299:5	22 143:6,8
305:6,10	222:12	318:18	148:21,22
307:9 309:8	<b>count</b>	<b>courage</b>	149:21
310:17	42:19 77:9	180:2 186:3	152:17
311:11	229:13	<b>course</b>	153:16,20,22
312:20	<b>counter-human</b>	9:19 16:22	154:7,10
315:3,5,8	203:6	71:17 158:7	156:20 157:2
318:8	<b>counter-</b>	163:22	158:5,12
<b>correctly</b>	<b>narcotics</b>	164:13	159:8,16
76:13 85:6	203:6	165:17	160:8,13,17,
141:16	<b>counterterror</b>	167:23 177:9	23 161:10,
210:2,14	<b>ism</b>	178:23	17,25 162:3,
218:15	202:16 203:4	181:10	21 163:11
282:17	<b>counterterror</b>	183:15	164:22
283:16	<b>ism-related</b>	190:6,9,10,	168:12
288:17	203:7	23 216:22,23	169:8,23
<b>correspond</b>	<b>counties</b>	226:13 228:1	170:13,19,
100:12	91:7	293:15	22,25 171:3,
102:11	<b>countless</b>	<b>court</b>	5 172:19
243:16	306:3	8:2,5,16,21,	173:9,10,12,
<b>corresponded</b>	<b>country</b>	25 9:4,17,22	18 174:13,
143:1 149:9,	144:19	10:24 13:10,	15,17,19,25
11	178:21	11 15:16	175:1,2,3,7,
<b>correspondenc</b>	184:25	19:23 20:8,	10,17,24
<b>e</b>	212:19	22 29:24	176:1 177:3,
84:17 102:17	221:17	30:7 32:20,	6,7,22,25
<b>corresponding</b>	229:17	21,24 43:21	178:2,5,14,
106:2,9	259:16	53:4 64:15	18 179:7
117:10	276:4,11	74:16 75:11,	180:6 181:4,
152:21	<b>counts</b>	24 76:5	14,16 182:4,
<b>corresponds</b>	178:9	85:15,23	9,18 183:23
243:13	<b>county</b>	87:16,22	188:5 189:24
<b>corruption</b>	90:18,20	88:3,8,10,	190:24
70:12	91:6 201:2	16,21,24	192:16,19
<b>Council</b>	<b>county-facing</b>	92:3,6,8,15	193:4,7,8,9,
203:1	90:22	93:23 94:4,	10,12,19,24
<b>counsel</b>	<b>couple</b>	7,14 95:7	194:10,22
127:23 201:8	25:13 34:20	101:13,17	195:1,6,15,
202:13,17	69:25 83:5	103:3,4,6,	25 196:4,16,
215:9 219:23	89:14 91:13	15,18,22	19 197:4
230:6,22	93:13 149:25	104:2,3,21	198:1,6,9,
231:5 239:16		105:20 107:9	13,19,21,24,
			25 199:3,7,

10,11,17,20, 25 200:6,10 201:17,22,25 202:3,6 204:24 205:8 213:2,6,11, 20 214:3,7 215:6 216:19 221:2 223:21 228:20 235:16 248:17 251:11,13 254:3 263:14,18,23 264:1 265:1, 6,8,9,13,19, 24 266:7,10, 17,19 267:6, 8,11,16,24 268:1 296:15,23 297:3,19,23 298:1,11,16, 18,22 301:23 308:18 311:3 318:10,14, 21,23 319:7, 9,13,25 320:5,12,24 321:2,7,11	207:13 291:23 <b>coverage</b> 266:8 <b>covered</b> 25:16 50:1 54:2 55:25 56:2 59:18 67:25 68:1, 4,16 211:2 212:6 214:18 291:22 <b>covers</b> 87:12 297:9 <b>crazies</b> 299:7,10,11 <b>craziest</b> 317:10 <b>crazy</b> 315:21 <b>create</b> 25:14 31:4 56:13 130:1, 5 275:17 <b>created</b> 24:7 110:3 119:10 129:10 130:8 149:16 155:16 179:14 184:1 205:15 <b>creates</b> 111:20 <b>creating</b> 74:3 111:18 135:11 <b>crew</b> 277:21 284:2 <b>crime</b> 32:8 71:5 <b>criminal</b> 73:12 74:1 188:20 189:5 <b>criteria</b> 101:4 138:12 140:2,9,12,	13 <b>criticize</b> 67:6 <b>cross-check</b> 19:5 <b>cross-examination</b> 64:18 76:5,8 125:6 143:9 149:23 231:12 248:7 298:25 <b>cross-examine</b> 75:25 <b>cross-examined</b> 125:14 <b>crowd</b> 172:15,24 174:4 178:15,16 188:9 189:13 190:10 208:21 209:9 294:16 309:19 <b>crystal</b> 255:6 <b>culminate</b> 276:13 <b>culmination</b> 179:16 <b>cultivating</b> 191:6 <b>current</b> 14:2 98:15 226:18 255:19,20 <b>cut</b> 110:16 122:6 227:6 <b>CV</b> 14:1,10 15:1 16:1 <b>cycle</b> 111:13 152:25	<hr/> <b>D</b> <hr/> <b>D'ANTUONO</b> 218:14 <b>D-</b> 226:6 <b>daily</b> 203:16 <b>Dallas</b> 268:12 <b>damage</b> 288:25 <b>damn</b> 318:2 <b>Dan</b> 16:20 261:17 284:11,19, 21,22,25 285:1,11,16, 17 287:13 289:17 <b>dance</b> 292:25 <b>danger</b> 186:2 <b>database</b> 101:3 102:6 <b>databases</b> 19:3 148:8 <b>date</b> 119:19 145:14 147:7,15 150:20 237:1 243:5 249:1 278:25 279:3,6 281:24 310:10 <b>dates</b> 243:10 279:2 <b>daughter</b> 273:17 <b>Dave</b> 121:25
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>David</b> 70:5	<b>DCNG</b> 205:22	71:24 94:18	<b>deeds</b> 49:19 191:2
<b>Davis</b> 25:18 61:1, 4, 8, 12, 24 62:3 67:17, 19, 20 78:19	206:11 208:20	140:18, 19 197:9, 10, 12, 19 279:7	<b>deemed</b> 83:13 173:21
<b>day</b> 34:24 146:22 182:2 192:3 222:25 226:14 228:5 231:18, 21 232:9, 15 234:2, 5, 9 235:6 249:15, 17 250:20 253:6 280:23 286:5 289:16 290:25 291:7 301:11 305:19 310:1 316:7, 12 317:19 321:12, 16	<b>deadline</b> 96:15 97:6 101:7 118:18 145:16 146:19 147:10 151:11 248:12	<b>decided</b> 25:13 43:18 92:9 156:21 195:24 270:9 275:21 293:6, 8	<b>deep</b> 259:15, 19, 22, 24 260:1 263:5, 10
<b>days</b> 55:3 214:21, 24 278:9 285:21 319:20	<b>deal</b> 289:9 300:2	<b>decides</b> 92:8	<b>defect</b> 102:8
<b>DC</b> 183:13 206:13, 14 207:7, 9 208:19 209:7, 16, 23 210:2, 3, 8 220:5 222:20 225:1, 17 229:14, 19, 20 236:7 244:24 245:5, 9, 14, 25 246:1, 17 253:10 278:18 286:12	<b>deadlines</b> 92:21 110:9 146:12, 14 147:5	<b>deciding</b> 75:15 197:6	<b>defend</b> 54:8, 16 55:24 187:11 299:12
	<b>deals</b> 99:5	<b>decision</b> 48:6 52:24 53:2 72:14 77:11 92:1, 3, 5, 6, 7, 10, 14, 17 95:4, 7, 8 101:9, 12 102:2, 22 103:1, 3, 11, 13 108:8 123:12, 25 139:2 141:10, 12 146:24 148:25 193:18 287:16 294:3 296:10	<b>defender</b> 201:1, 3 231:17 260:11
	<b>debate</b> 23:8 59:22 60:2, 22 61:17, 19 63:17 65:8 80:6	<b>decisions</b> 15:16 27:7 38:3 46:7 52:10 77:8 91:18 101:21 103:24 104:3	<b>defense</b> 187:1 188:17 190:21 201:11 203:21, 25 204:2, 12, 17 206:2, 4 207:16 211:7 214:17 215:10, 13 216:15 218:3 219:12, 22 220:21 222:6 224:9 226:24 228:6, 8 231:23 232:13 234:25 236:6, 14, 17, 21 237:5, 12, 15 242:9 246:23 249:21 250:1, 12 251:25 254:18 255:4, 22 264:11 301:6
	<b>debates</b> 17:16 52:7 61:2, 13 62:16 69:9 74:6	<b>declination</b> 224:13 225:12	<b>Defense's</b> 205:15
	<b>decade</b> 70:1 200:22 273:18	<b>declined</b> 223:7 230:1 253:11	
	<b>decades</b> 125:15 225:3 236:8	<b>declining</b> 222:25	
	<b>December</b> 12:10, 16 208:16 212:13 245:13, 19 273:2 306:9	<b>deed</b> 182:21	
	<b>decide</b> 24:4 47:6		



207:17	<b>delegating</b>	225:1 228:6,	9:15 89:5
<b>Defenses</b>	246:16	7 231:23	90:8 117:2,
232:1	<b>delegations</b>	232:12	10 118:11
<b>define</b>	217:14	236:6,14,16	126:6 127:5
30:18 52:13	<b>delineation</b>	237:5,11,15	138:10,13,25
72:22 300:4	225:22	246:23	139:1,3,8,
<b>defined</b>	<b>delivers</b>	249:20	12,17,19
30:20 31:8	172:20	250:1,12	140:3,25
33:2 72:25	<b>demand</b>	251:25 260:7	141:9,12
73:13 299:11	180:2 186:7	264:10 301:6	158:1 203:12
<b>defining</b>	<b>demanding</b>	<b>departments</b>	226:17 260:7
32:4 80:24	178:17	222:5,13	270:8 285:2,
<b>definitely</b>	<b>demands</b>	<b>depended</b>	3
105:3 200:2	186:4,5	166:20,21	<b>der</b>
317:3	<b>democracy</b>	<b>depending</b>	321:6
<b>definition</b>	11:24	92:20 96:25	<b>descend</b>
31:8,11,22,	<b>Democratic</b>	171:24	183:5
24 35:24	66:17 90:1	<b>depends</b>	<b>describe</b>
36:14,18	<b>demonstrated</b>	145:10 174:9	61:25 63:7
44:9 81:6	21:22 22:24	274:7	90:23 107:14
163:4	<b>demonstrating</b>	<b>deploy</b>	126:10,21
<b>definitions</b>	187:18	215:20 219:9	130:21 153:1
30:14 33:17	<b>demonstration</b>	221:19,22	290:6
<b>definitively</b>	276:13	227:3 238:5	<b>described</b>
239:5 241:13	<b>demonstrative</b>	<b>deployed</b>	30:5 35:10
243:13,16	92:24 98:22	222:10	40:23 58:25
<b>degree</b>	<b>Denamore</b>	224:16	80:2 95:20
14:7,8 31:5	152:15,19	227:15	143:14,18
82:11 93:11	154:14	229:10	144:12
268:12	<b>denied</b>	254:9,11	145:19
<b>Delahunty</b>	8:17 194:7	<b>deploying</b>	147:12
63:4,12,19,	<b>deny</b>	216:11	172:10
22 64:10,11,	195:23	227:16	<b>describes</b>
21,25 73:6	<b>denying</b>	236:25	51:8,9 58:10
75:18 76:1	197:7	<b>deployment</b>	<b>describing</b>
87:1	<b>Department</b>	215:17 217:5	71:14 259:3
<b>Delahunty's</b>	201:6,10,11	218:8 230:10	<b>description</b>
63:16 64:7,8	202:8,11,12	235:3 252:22	116:3,20
66:3,11	203:21	<b>deposition</b>	<b>deserved</b>
68:13 69:19	205:14	239:18	21:9,23
71:23 72:19	207:15,17	240:2,16	188:10
73:2 75:5	211:6 215:9	241:21	191:23
<b>delay</b>	218:3	242:7,11	<b>designated</b>
227:16	219:12,21	244:3	153:16
<b>delegated</b>	221:22	<b>Depp</b>	159:17
217:13	222:5,18	266:17	262:22
226:25	224:8,25	<b>deputy</b>	<b>designation</b>
			135:19

<b>designed</b> 272:15	10,13	277:18	<b>director</b> 89:6 90:8
<b>desist</b> 272:1	<b>dialogue</b> 102:17,18 117:6,7	292:11	127:18
<b>desperate</b> 184:1	<b>dicta</b> 70:17	<b>dig</b> 239:1	203:3,12
<b>detail</b> 212:9	<b>dictionaries</b> 27:6	<b>dimensions</b> 25:25	218:14 261:5 262:21 263:8
<b>detailed</b> 217:4	<b>dictionary</b> 30:14,16,18 31:10,16,24 32:1 33:17	<b>dining</b> 289:21 290:9	<b>Directorate</b> 203:13
<b>determination</b> 92:2,12 115:13 118:20 123:14 141:14 148:21 151:5 156:16,20 222:16	<b>differences</b> 55:17 69:2	<b>diplomatic</b> 278:6	<b>directors</b> 260:21 261:6
<b>determination</b> <b>s</b> 104:7	<b>differ</b> 147:5	<b>direct</b> 10:1 40:18, 23 41:5 88:17 107:2 150:3 155:22 156:3 169:11,16, 17,19 171:16 189:22 200:11 208:9,15 210:20 216:2 218:21 237:20 255:7,13 262:3 265:14 268:7 304:6	<b>disability</b> 25:3,23 26:9 159:4,13
<b>determine</b> 100:13 102:14 106:18 148:8	<b>difference</b> 30:25 56:2 74:1,10 167:20 255:18	<b>directed</b> 161:14,19,22 162:5,23 163:2,10 177:13 181:13 194:2 195:7,8 197:7,8,16	<b>disagree</b> 78:4 163:9 195:11
<b>determined</b> 156:12	<b>differences</b> 80:12 89:11, 12,15,20 128:25 134:25 164:14 172:15 184:18 185:22 189:14 208:7 214:25 219:8 225:15 227:18 245:22 251:21 270:18 274:23	<b>directing</b> 194:4	<b>disagreed</b> 44:12 65:16
<b>determines</b> 101:2 102:4 103:6,18	<b>different</b> 11:19 12:2 19:13 23:18 28:12,13 31:9 57:9 59:5 72:5	<b>direction</b> 38:23 173:19 178:16	<b>disagreement</b> 35:20
<b>determining</b> 53:22 108:1 155:23 191:1 197:5	<b>determining</b> 172:15 184:18 185:22 189:14 208:7 214:25 219:8 225:15 227:18 245:22 251:21 270:18 274:23	<b>directions</b> 172:14	<b>disagreements</b> 77:25 78:5
<b>developed</b> 178:25 184:21	<b>determines</b> 101:2 102:4 103:6,18	<b>directive</b> 39:22 177:12	<b>disagrees</b> 95:5 101:9, 11 102:25 103:10
<b>developing</b> 168:9	<b>determined</b> 156:12	<b>directly</b> 218:4 219:1, 3 255:4	<b>Disapprove</b> 145:6
<b>development</b> 15:20 168:14,21	<b>determines</b> 101:2 102:4 103:6,18		<b>disapproved</b> 287:22
<b>Devin</b> 261:22	<b>determining</b> 53:22 108:1 155:23 191:1 197:5		<b>disavowed</b> 171:20
<b>DHS</b> 228:8 234:8,	<b>developed</b> 178:25 184:21		<b>disclosed</b> 248:7
	<b>developing</b> 168:9		<b>discourse</b> 167:18,19
	<b>development</b> 15:20 168:14,21		<b>discretion</b> 212:24 213:18
	<b>Devin</b> 261:22		<b>discuss</b> 32:12 44:16 126:11 127:4 161:11 200:15 208:19 211:25 216:6 226:18 293:3
	<b>DHS</b> 228:8 234:8,		
	<b>differentiate</b> <b>d</b> 31:9		
	<b>difficult</b> 176:20		

296:3,19	<b>disorder</b>	<b>distinguishable</b>	213:17
<b>discussed</b>	170:17	185:10	214:21,23
22:3 32:9	171:12	<b>distinguished</b>	219:15
44:20 50:5	<b>displaces</b>	67:15	221:19 222:9
61:15 75:13	188:25 196:3	<b>district</b>	226:4,8
101:15	<b>dispositive</b>	13:11 93:23	229:2,5,6
126:12,17,18	172:2,7	99:24 100:17	232:15
158:19	<b>dispute</b>	102:7 193:12	236:18 238:3
211:6,21	152:4 181:6	201:3 241:2	240:2,4
212:9 217:5	233:9,22	<b>division</b>	246:16
218:11	251:1	90:17,22	250:24
221:11	<b>disqualificat</b>	110:5 117:2	253:21 263:3
227:24	<b>ion</b>	119:12	<b>DOD's</b>
243:1,25	41:3 42:20	120:14	215:19
257:9 294:5	43:7 48:13	139:4,5,9	222:10
297:8	<b>disqualified</b>	201:6	<b>doing</b>
<b>discusses</b>	25:6 38:25	<b>doctor</b>	17:5 27:25
96:1	46:2 47:11,	175:6,7,8,9	37:7 38:19
<b>discussing</b>	22 50:7,11	<b>doctorate</b>	47:5 48:20
19:11 29:18	51:5,13	175:11	82:17 83:1
49:18 147:18	82:22 109:8	<b>doctors</b>	201:18
240:22	149:16	220:15	225:14
<b>discussion</b>	159:10	<b>document</b>	232:10 236:3
35:14 41:7	196:11	18:22,24	253:14
43:8,12	<b>disqualify</b>	105:23	265:25
50:13 66:6	22:14 43:4	109:18 119:1	269:19
68:12 69:14	47:24	124:19	273:24,25
71:17	<b>disqualifying</b>	144:2,21,22	285:2
126:19,20	45:21 48:9	205:13 208:7	313:11,12
138:25	49:5,16	243:6	<b>DOJ</b>
141:1,9	<b>disrupted</b>	246:21,22	201:14 219:6
212:2 249:3	186:19	<b>documentation</b>	228:5 234:14
275:12	<b>disrupting</b>	246:12,13	262:13,18,22
289:3,10	186:15	247:3,7	<b>dollars</b>
292:6 296:17	<b>disruptive</b>	261:12	259:5
320:14	173:19	<b>documented</b>	<b>domain</b>
<b>discussions</b>	<b>dissenting</b>	209:6	111:4 119:18
61:23 78:4	19:23	<b>documenting</b>	<b>domestically</b>
244:20	<b>dissolution</b>	251:24	227:8 228:8
<b>disenheartened</b>	231:8	<b>documents</b>	<b>Donald</b>
280:21	<b>distilleries</b>	17:17 18:19	117:15,25
<b>Disloyal</b>	27:19	27:5 52:8	120:24 121:2
43:3	<b>distinction</b>	144:9 161:5	257:20 258:8
<b>dismissal</b>	53:5 67:10	222:23	261:17 269:2
162:18	224:20	<b>DOD</b>	<b>door</b>
<b>dismissed</b>		206:1 212:23	167:8 190:25
123:20			290:19

<b>door/back</b> 167:8	<b>dug</b> 60:20	<b>easily</b> 320:19	46:16 47:24 48:16
<b>doors</b> 186:6	<b>duly</b> 9:24 88:14	<b>East</b> 319:3	<b>elected</b> 140:22 141:5 293:10
<b>double</b> 191:20	200:8 268:5	<b>easy</b> 178:8 272:9, 11	<b>electing</b> 268:24
<b>doublespeak</b> 167:8,12	<b>duties</b> 90:14 95:21	<b>edit</b> 79:20 120:12	<b>election</b> 42:2 66:7 68:3 91:2, 21,24 95:6, 15 97:13 101:24 105:4 106:3 108:23 112:13 124:3,11 142:18 143:17 149:9,12,17 150:14,22 152:1,13,25 160:1 183:19,21,22 184:4 188:14 191:16 192:2 194:5 210:25 237:6,8 270:4 272:18
<b>doubt</b> 183:17 212:22 213:15 228:15	201:12 202:15 203:14 209:8 210:15 217:11	<b>editor</b> 46:22 47:3 196:12	
<b>dozens</b> 247:15	<b>duty</b> 49:22 93:19, 24 95:2 147:15 150:7,9,16, 22 187:5,6, 7,12,13,19 203:11	<b>editorial</b> 48:1	
<b>draft</b> 12:9 13:1 16:11 36:3,5 65:10,18,20, 22 68:23,24 69:2,7 84:11,14 86:6,10		<b>editors</b> 11:1	
<b>drafted</b> 12:6 41:2		<b>education</b> 55:5	
<b>drafter</b> 11:13 58:14		<b>educational</b> 14:6	
<b>drafting</b> 69:4		<b>effect</b> 33:5 39:17 55:21 56:21 60:11 94:18 107:8 133:19 183:8	
<b>drafts</b> 68:14,22 69:2,7 155:6		<b>efficient</b> 313:25	
<b>draw</b> 37:16 53:5 68:22 69:6 74:7,22,25 75:1 186:10		<b>effort</b> 186:21	
<b>drawn</b> 195:12		<b>efforts</b> 204:14	
<b>drills</b> 217:21		<b>eight</b> 260:11	
<b>driveby</b> 294:19		<b>either</b> 30:10 58:1,3 84:1 86:20 108:9 127:4 146:3 204:19 205:8 243:4 256:12 285:19 287:4 306:11	
<b>drove</b> 278:20		<b>elaborate</b> 274:22	
<b>due</b> 100:7 260:11		<b>elect</b> 23:25 45:23	
	<b>E</b>		
	<b>E-P-P</b> 266:18		
	<b>earlier</b> 14:23 16:9, 11 34:5 43:17 44:19 45:22 52:25 53:15 65:19, 21 68:14 69:7 75:13 127:1 128:8 129:21 138:1 143:24 147:18 148:13 227:15 228:2 236:5 241:18 291:14 303:5		
	<b>early</b> 27:15 43:11 46:23 67:2 68:22 69:2 88:4 145:13 202:21,24 319:20		
			<b>elections</b> 21:11 38:20, 24 39:2,23 89:6 90:8, 17,25 91:3, 7,11,16,25 92:21 95:19 96:2 99:4 107:18 110:5 111:4 117:2 119:12 120:14 127:18 147:25
			<b>elector</b> 93:22 146:2
			<b>elements</b> 20:6
			<b>elevate</b> 116:19

<b>elevating</b> 271:14	<b>embarrassing</b> 284:15	<b>end</b> 18:20 72:5	102:16
<b>eligibility</b> 13:21 99:21	<b>embedded</b> 201:15	87:14 165:13	117:6,7
100:15	248:20	179:11,17	163:6,8
101:4,10,21,	249:12	183:1 193:8	219:2 273:6
23 102:13	<b>Emmon</b> 55:12	194:3 210:24	<b>engaged</b> 22:22 23:16
103:24	<b>emotions</b> 274:25	212:1 243:10	37:17,20
106:19	288:14	269:10 285:3	40:21 41:20
107:22	<b>emphasize</b> 179:7	291:11	42:13 44:9,
108:6,8	<b>emphasized</b> 179:4,5	293:5,8,12,	13 45:2,4,16
116:25 117:5	<b>employ</b> 227:3	16	50:23 51:1,4
130:16 135:7	<b>employee</b> 53:6	<b>endeavor</b> 199:23	73:3 83:12,
155:23	<b>employment</b> 215:16 218:8	<b>ended</b> 21:12 40:14	14 86:17
156:19	<b>enacted</b> 25:15 26:8	227:7	102:18 165:9
<b>eligible</b> 62:3 67:22	68:6 73:13	<b>endorse</b> 20:20	182:20
93:22 102:6	<b>enactment</b> 24:23	<b>ends</b> 187:22	192:10
103:7 105:12	<b>encapsulate</b> 242:5	<b>endorse</b> 20:20	<b>engagement</b> 184:23
107:7 108:2	<b>encapsulated</b> 209:13 223:4	<b>enemies</b> 83:8	<b>engagements</b> 221:8
123:14 135:5	<b>encapsulating</b> 205:15	<b>enforce</b> 24:7 25:22	<b>engaging</b> 22:20 43:21
148:16	<b>encounters</b> 307:3	26:5	62:13 81:10
<b>eliminated</b> 98:11	<b>encourage</b> 169:9,14	<b>enforced</b> 23:15	167:12
<b>eliminates</b> 36:19	185:6 275:10	<b>enforcement</b> 24:14,16	<b>English</b> 31:17
<b>Ellipse</b> 177:22	<b>encouraged</b> 45:18 173:3	26:7 47:19	<b>ensure</b> 91:7,10
178:11	<b>encouragement</b> 182:25	186:13	111:2 145:4,
184:7,12	<b>encourages</b> 169:14	205:22	5 218:5
190:4	<b>encouraging</b> 45:5 173:11	207:2,5	<b>ensuring</b> 107:7,21
276:14,16	191:5	212:20	<b>enter</b> 46:25 198:2
278:15		218:11,21	270:6
292:23		219:4 228:5	<b>entered</b> 198:11
296:11 309:3		234:21	<b>entertain</b> 193:7
<b>em</b> 172:17,18,22		244:25	<b>entire</b> 63:25 165:1,
173:5,6,7,10		259:23	2,10 170:9
174:3,6,22,		262:8,23	209:20 218:3
23 177:5		<b>enforcing</b> 23:20,23,25	244:5 246:19
178:15,18		24:11 39:3	313:10
185:11		189:7	<b>entirely</b> 164:24,25
<b>em. '</b> 174:24		<b>engage</b> 37:23 43:6	
<b>email</b> 111:5,10		73:15 81:7,	
119:18		14,17 83:8	

<b>entirety</b> 231:21	<b>essentially</b> 21:16 32:2	268:23	195:9,11,13,
<b>entities</b> 270:18	34:10 44:3	276:16,17	15,16 205:1
<b>entitled</b> 15:10	46:22 58:17	287:24	223:22 255:2
<b>entity</b> 274:11	79:7 130:8	288:10	318:25
<b>entries</b> 8:24 14:18	196:1 227:7	309:25 316:1	<b>evil</b> 260:5
290:8	274:20	<b>Eventually</b> 28:1	<b>exact</b> 90:12 174:7
<b>entry</b> 14:4,14	287:11	<b>everybody</b> 187:23	222:25
16:23	292:17	190:18	<b>exactly</b> 176:25
197:24,25	<b>established</b> 218:22,23	260:19	189:19
206:17	<b>establishes</b> 102:12	274:16	190:3,5,19
208:16,17	<b>establishing</b> 56:22 135:10	278:10	198:23
209:1	<b>estimation</b> 157:20	279:22	212:11
210:21,23	<b>et</b> 18:5	280:22	228:24
216:2 245:20	<b>evaluate</b> 75:5 139:14,	292:14	247:10
290:14	20 140:4,10	293:13,15	256:11
<b>Epp</b> 266:16,18	142:23,25	298:6 300:12	283:24
<b>equivalent</b> 148:7	<b>eve</b> 231:7	314:1	286:16
<b>era</b> 47:25	<b>evening</b> 216:6 228:13	<b>everybody's</b> 279:23	310:20
<b>Eric</b> 9:2 16:8	233:5 251:4,	<b>everyone</b> 8:5 61:7	<b>examination</b> 10:1 86:1
<b>erred</b> 193:13	5,17 310:16	170:7 190:16	88:17 155:1,
<b>error</b> 18:24	316:9	279:17	22 156:3
<b>escalate</b> 102:21	<b>event</b> 45:14 189:9	284:1,2	157:1 158:8
116:14 117:1	276:20	292:17 294:4	200:11 264:2
138:10	278:15	306:16,21	268:7
140:25 141:9	280:14	<b>evidence</b> 37:19 49:24	<b>examined</b> 9:24 88:14
156:7,11	291:16,17	51:10,20	200:8 268:5
158:1	292:20,22	52:5 54:14	<b>examples</b> 27:3,10,11
<b>escalated</b> 118:11	293:1,11	71:21 87:5	29:12,22
<b>escalating</b> 156:9	296:10	105:21	30:10 33:20
<b>Essays</b> 14:18	<b>events</b> 17:2 22:5	109:16	57:23 69:21
	23:3,4	124:20,25	72:3,11
	187:14	136:2 138:7,	95:14
	205:16	20,21,22,24	<b>excerpt</b> 58:7 60:12
	206:19	139:2 161:6	<b>excerpts</b> 59:25
	208:13	162:12,16	<b>exchange</b> 232:23
	211:25	163:11,14	301:15
	239:23	165:2 170:14	303:11 304:3
		180:13,19	312:1 315:25
		181:3,19,20,	316:21 317:5
		22 183:7	
		186:16	
		188:7,15	
		189:15	

318:19	252:16,18	<b>expedite</b>	<b>express</b>
<b>exchanges</b>	<b>exhibit</b>	226:25	286:21 292:6
317:20	13:24 17:23,	<b>expedited</b>	306:12
<b>exciting</b>	24 66:5	193:2,9	<b>expressed</b>
60:14	105:17,18,21	195:21	280:15 282:7
<b>exclude</b>	109:14,17	<b>experience</b>	286:23
8:13,14	118:24	95:9 154:18	294:19
21:21 23:16	124:24,25	<b>expert</b>	306:22
69:10 99:12	143:25 188:2	10:11,13	307:13,19
102:24	204:19	13:17,19	309:12
296:10	205:1,6	18:1 20:16,	<b>expression</b>
<b>excluded</b>	207:11	23 63:3,5,	292:9
62:10 231:5	215:25	13,20 64:1,	<b>expressly</b>
<b>excluding</b>	223:14,22	2,8,10,11	67:14
60:23 296:17	239:11	66:3 75:23	<b>extend</b>
<b>exclusion</b>	247:25	81:2 85:7	271:4
48:13	248:8,10,15	87:1 159:18	<b>extent</b>
<b>excuse</b>	250:23	236:4 320:22	32:22 64:16
81:4 84:25	301:16	<b>expertise</b>	107:21
188:4 218:13	305:12 310:7	20:19 64:8,	159:17 214:4
223:5 224:2	314:22	18	266:25
271:22,25	318:19	<b>experts</b>	<b>extremist</b>
274:4	<b>exhibits</b>	63:8 64:12	166:11,13,19
313:18,20	160:25	<b>expire</b>	183:14
<b>execute</b>	318:18,24	204:3	<b>extremists</b>
214:15	<b>exist</b>	<b>explain</b>	164:18
<b>executing</b>	26:11	38:16 73:8	166:22,25
235:2 260:11	<b>existed</b>	97:11 98:7	167:2,21
<b>execution</b>	26:9	208:25	174:4 175:21
26:23 27:2	<b>existing</b>	224:21	183:10 191:7
30:22 33:9,	12:17	<b>explained</b>	
23	<b>expanded</b>	56:13 74:15	<b>F</b>
<b>executive</b>	266:8	<b>explaining</b>	
56:21,25	<b>expect</b>	293:14	<b>F.3d</b>
57:18,20	102:1 126:13	<b>explanation</b>	168:6 172:4
58:1,2,10	197:13 295:9	74:5	189:24
59:1,6,7,16	320:21	<b>explicit</b>	<b>face</b>
71:12,14,15	<b>expectation</b>	177:7 189:25	115:9 165:18
<b>exercise</b>	184:2	191:19	196:7
55:5 278:10	278:14,18	<b>explicitly</b>	<b>facing</b>
<b>exercises</b>	<b>expectations</b>	141:3 168:21	290:15
150:22	303:14	174:21	<b>fact</b>
<b>exercising</b>	<b>expected</b>	178:25	19:9 22:4
83:20	278:12	189:12 222:8	62:20 74:23
<b>exhaustive</b>	286:17	<b>exposition</b>	78:17 79:18,
114:16	<b>expecting</b>	20:2	21 106:24
135:13	295:3		130:14

137:22	291:17,18	<b>fastest</b>	<b>felt</b>
144:25	<b>fairly</b>	227:7	21:19 219:7,
158:3,14,22	93:8	<b>fathers</b>	13 221:6
159:12,24	<b>faith</b>	220:17	230:25
171:18,19	176:21	<b>favorable</b>	281:18
176:2,23	<b>fall</b>	195:9,17	284:22
184:13 186:9	16:14 54:17	<b>FBI</b>	286:15
187:17 253:8	<b>falls</b>	218:12	<b>fence</b>
255:3 269:5	188:22	234:14	228:2
273:22	<b>false</b>	262:4,11,19	<b>fences</b>
276:25	15:19 184:1	263:8	228:9
278:19	305:4	<b>federal</b>	<b>fide</b>
309:6,13	<b>familiar</b>	13:11 24:7,	97:18,23
320:17	29:21 54:11	23 27:19,21,	119:9 122:23
<b>faction</b>	63:10 65:4	23 28:14,16	123:1 128:23
275:4 279:14	68:17 77:18	29:4 44:6	144:7,23
<b>factor</b>	78:20 83:24,	54:24 55:20	145:24
77:12,13	25 93:6,8	91:3,5 96:2,	<b>field</b>
<b>facts</b>	104:2 115:16	11 107:8	218:12,21
72:8,24	130:14	108:1 109:1,	224:24
197:17	137:15	8 111:21	290:15
<b>factual</b>	<b>familiarity</b>	132:17	<b>fifth</b>
197:12	63:7	133:19 134:1	186:12
<b>factually</b>	<b>family</b>	148:6	<b>fight</b>
181:7	200:14	155:23,25	166:15
<b>Fail</b>	272:21	156:14	171:23
15:8	292:18	186:13	178:20
<b>failed</b>	<b>famous</b>	206:14	179:22,24
106:21	31:21	231:16	183:11,15
149:10,12	<b>far</b>	234:21	184:16
152:7	65:14 163:12	262:6,8	185:20,21
180:11,25	164:18	268:22	189:13
<b>failure</b>	167:20	<b>fee</b>	<b>fighting</b>
152:10	168:14	97:19 98:3	274:20
154:15	177:13	128:24	275:21
<b>fair</b>	223:3,11	129:1,2	<b>fight</b>
78:1,3 84:22	264:15	144:8 153:8	288:5
104:6	<b>far-right-</b>	<b>feed</b>	<b>fightwithkash</b>
114:20,22	<b>wing</b>	267:5	<b>.com</b>
131:5 133:1	166:11	<b>feedback</b>	258:16
171:2 240:23	<b>farmers</b>	201:24	<b>figure</b>
247:21	27:18,22	<b>feel</b>	72:7 269:4
248:3,20	28:5,13,23	158:14 167:9	279:19
249:11,13,	29:6	277:1 292:24	287:14
18,23,25	<b>faster</b>	293:11	<b>figures</b>
250:1 251:3,	227:11	<b>fellow</b>	166:16
14 278:21		204:8	
280:7			



<b>file</b> 106:22,24 146:5	<b>finder</b> 186:10	93:6 94:4 97:16 107:5, 15 110:1	306:13,17
<b>filed</b> 147:14 157:20 198:22,24 269:17	<b>finding</b> 131:10 187:4 188:5 191:23 196:14 233:3,17 254:23	155:13,16 157:5 161:11 162:9 168:19 169:5 175:18 180:15	<b>flight</b> 286:14
<b>files</b> 93:22 148:25	<b>findings</b> 161:1,8 184:10 186:17 187:17 188:3 190:13 197:17 297:15	181:15 182:3 188:18,24 194:14 196:2,5,9 197:15,22 199:4,13 200:8,25 215:15	<b>Florida</b> 201:4 261:15
<b>filing</b> 96:10 97:19 98:3 128:22 129:1 144:7 153:8	<b>fine</b> 132:2 142:5 154:9 157:4 182:16 267:6 281:8 320:8 321:9	230:24 239:2 257:23 268:5 269:3 270:1 273:9,15 275:17 276:17 282:9 288:3	<b>flyover</b> 294:18
<b>filings</b> 261:15	<b>finish</b> 94:7 153:22 203:19 204:1 290:24 319:19,22 320:16	294:15,19 301:17 315:15 319:5	<b>focus</b> 10:19,20 12:2 22:15 176:13 204:16
<b>fill</b> 106:11 132:9,11 133:3 140:17,20	<b>finished</b> 180:21	<b>firsthand</b> 17:21	<b>focused</b> 162:6 163:2, 3 178:16
<b>filled</b> 110:2 117:13 120:16 137:9 174:4	<b>finishing</b> 320:16	<b>fit</b> 64:7	<b>focuses</b> 15:12 174:15
<b>filling</b> 122:9 276:22	<b>fired</b> 311:6,7	<b>five</b> 11:6 14:12 172:15 173:5 174:3,5 178:16 203:19 242:6 269:7	<b>focusing</b> 15:21
<b>final</b> 63:1 68:23 69:2,7 74:9 102:22 108:5,7 123:9 141:14 148:15,22,25 197:17 230:16 231:4	<b>first</b> 8:24 9:24 18:13 19:15 21:5 22:12 23:5 26:1,13 32:5 34:20 50:24 51:7 53:16 60:12 63:11 69:25 70:14 72:3 73:25 79:10 81:1 85:5,7, 14,19 88:14 89:16 91:15	<b>fixing</b> 178:1	<b>folders</b> 290:11
<b>finally</b> 24:6 186:25 238:21 253:11 317:9	<b>financial</b> 27:20	<b>flag</b> 281:10 282:7	<b>folks</b> 192:20 220:13 225:2,6,14 242:19
<b>find</b> 29:15 78:14 196:20 286:16		<b>flags</b> 281:7	<b>follow</b> 71:6 75:14 138:13 139:5 149:25 155:5,20 193:24 275:8 311:21
		<b>Flein</b> 320:18,25	<b>follow-up</b> 154:2 158:6
		<b>flew</b> 278:19 286:18	<b>follow-ups</b> 160:9
			<b>followed</b> 75:18 151:8 218:5
			<b>following</b> 8:3 56:14 143:15 218:16 275:14 286:4 289:18

<b>follows</b> 9:25 88:15 155:22 200:9 268:6	132:9,11 133:2,7,15, 17,23 135:11,19 136:7,8,11, 19 140:16,21 144:6 145:19 147:13,22 148:3 153:5 155:13,16,18	<b>foundation</b> 204:14 215:3 235:14,18 311:1	<b>Francis</b> 34:19,23 35:15 70:7
<b>Foner</b> 16:8		<b>founders</b> 268:20 275:15	<b>frankly</b> 124:6 260:4
<b>force</b> 26:21,22 27:1,2 176:3 184:4 245:17 246:1,5,19	<b>formal</b> 137:23 209:3	<b>four</b> 11:18 202:9 203:19 320:16	<b>fraud</b> 183:25 184:18 192:6
<b>forced</b> 41:10	<b>formally</b> 271:1,23 282:15	<b>Fourteenth</b> 10:14 11:10, 13,16 12:4, 18 13:5,18 14:19 15:3, 5,22,25 16:4,19 17:4,6 19:18 20:3,6,17,24 21:4 23:11 24:15 25:5 26:10,17 33:16 38:22 39:1,7,11 40:15 48:7 49:9 56:12 57:4 58:4, 13,18 60:7 61:16 67:18 68:15 69:5 70:2,24 76:24 159:1, 5 163:1 164:9 182:23 188:23,25 189:4 196:3, 4,7	<b>Free</b> 170:3
<b>forces</b> 201:15 206:23 212:3 217:11 218:8	<b>forming</b> 18:11 20:12 38:2		<b>frequently</b> 101:20,21
<b>forever</b> 192:3 275:9	<b>forms</b> 23:19 55:17 110:24 111:16,18,20 112:6 136:16,21, 22,24 137:1, 2,5 144:11 147:19,24 155:4,7,8, 11,12 167:16		<b>Friday</b> 63:3 64:3 160:22 161:16 319:19 320:21
<b>forget</b> 220:14	<b>formulations</b> 59:5		<b>Fries</b> 30:4 34:6,8
<b>forgiveness</b> 21:23	<b>forth</b> 57:11 95:22, 24 134:12 264:18 310:18 315:6		<b>Fries's</b> 28:11,20 29:9,18 30:4 33:21 34:6
<b>form</b> 39:24 98:1 100:23 110:1,3,6,8, 12 111:6,8, 15,23,25 112:17 113:14,25 114:3,14,15, 19 115:5 117:12,14, 17,24 118:4, 9 119:5,6,7, 10,13,18 120:2,5,12, 16,22 121:3, 6,7,12,24 122:5,8,13, 17,19 127:3 128:23 129:9,10,19, 22 130:2,5, 7,13,15,18 131:2,4,8, 10,19,22,25	<b>forthcoming</b> 14:20 226:19		<b>fringe</b> 271:11 273:20
	<b>forward</b> 92:11 222:15		<b>front</b> 131:19 167:8,12 180:6 190:15
	<b>foul</b> 177:12		<b>frustrated</b> 294:10
	<b>found</b> 18:21 31:11 161:2 233:3, 6 255:2 284:21 309:10	<b>Fourth</b> 13:10 185:23	<b>full</b> 130:4 312:1 314:10
		<b>fragmentary</b> 217:12	<b>full-scale</b> 30:11
		<b>fragos</b> 217:12	<b>full-time</b> 89:18
		<b>framework</b> 169:3 175:17	<b>fully</b> 133:7 137:11 152:10,20 161:21 220:22
		<b>Frances</b> 35:3	<b>fun</b> 16:16

<b>function</b> 93:19	40:1,4,11, 13,16,21	<b>genius</b> 235:25	192:13
<b>functions</b> 96:5 249:20	41:13 42:1, 4,12 43:2	<b>Geoffrey</b> 198:5	194:13,15,24 195:3 197:23 198:3,7,12 320:7
<b>fundamentally</b> 185:10,22	44:2,12 52:9 53:12,17,21, 24 61:18	<b>geographicall y</b> 276:1	<b>getting</b> 177:24 220:12 225:5 279:3,4 281:18 284:22 290:20 298:2 301:23,25
<b>fundraiser</b> 277:4,5	68:6 74:13, 21 87:9 95:3 105:3 106:3 109:12 111:16 151:25 152:13 207:16 208:14 209:16	<b>George</b> 116:8 117:8 156:5,13 191:10	<b>Gilded</b> 12:1
<b>fundraising</b> 277:5	210:24 215:9 219:23 222:11 242:13 246:18 260:8 262:13 308:15,25	<b>Georgia</b> 13:11,21 76:11 165:23 191:16 286:6 289:25	<b>Giuliani</b> 293:17
<b>funny</b> 318:2		<b>Gerard</b> 9:20,23 10:5	<b>give</b> 10:13 11:3 12:16 25:9 48:21 61:7 82:8 107:8 116:20 133:19 180:1 182:8 190:18 192:21 194:19 229:14,15 242:22 259:4 295:18,23 310:19 320:3
<b>furtherance</b> 37:24 41:14 43:10 44:8 182:21		<b>Gessler</b> 8:11 9:5,7 20:18 63:24 64:6,22 75:9,20 76:7,9 81:4, 5 84:25 85:3,21 94:3,5,12 124:4 125:7, 19,20,21 131:6,11,14, 15,17,18,23, 24 132:2,3 140:15,17 142:7,9 143:4 154:1, 9,12,25 155:4 156:8 158:7,9 159:21 160:7 161:10,13 162:2,4 169:25 170:19,21,23 171:2,4,7 175:5,9,12 177:24 178:1,3,6 179:9 182:11	<b>given</b> 13:4,17 46:18 47:25 48:17,19 49:4 61:21 62:5 157:21 158:2 182:7 195:20 227:12 228:12,21 230:7 248:11 259:5 275:14 320:13
<b>furthering</b> 42:16			<b>giving</b> 32:11 61:20 127:25 204:15
<b>future</b> 23:9 159:13 160:4			
<b>G</b>	<b>General's</b> 9:15 43:9,12 75:2 82:9		
<b>Gabriel</b> 191:16	<b>generally</b> 37:12 58:18 90:15,16,23 91:10 93:9 95:15,23 96:4 101:16, 24 102:10 104:5,8 107:14 108:16,25 109:3 112:5 115:18,20,25 126:12 127:6 152:3 155:6 209:13 304:22 308:9		
<b>gain</b> 137:10	<b>Generals</b> 246:18		
<b>gamut</b> 17:15	<b>generically</b> 287:20		
<b>Gangsters</b> 259:12,14 263:6,11			
<b>gave</b> 13:19 16:14 25:15 58:24 67:12 127:8 183:18 218:5 238:9 255:1 299:22 304:23			
<b>gear</b> 210:16			
<b>general</b> 11:3 23:6 25:14 38:4, 11,14 39:17			

258:19	194:10	50:8,12	13 170:6
<b>glacial</b>	197:20	56:23 83:21	199:2 200:10
168:13	199:8,20	209:23 210:2	205:11
196:20	202:4 203:2	222:20	265:13
<b>glad</b>	213:12	225:18	298:11,23
303:16	218:23	236:19	299:17 300:2
<b>global</b>	229:21	259:12,14	303:3 306:22
201:16	241:1,3,8	263:5,11	<b>Greeley</b>
<b>globalization</b>	244:12 252:8	302:10	66:8,14,16,
260:12	253:5 254:20	<b>governmental</b>	24 67:13,15,
<b>Globe</b>	264:8 276:4,	222:2	21,24 68:4,9
58:7 59:25	7,23 278:2	<b>governments</b>	86:25
<b>goes</b>	279:7,16,20,	56:14 57:12	<b>Greene</b>
25:25 151:3	23 280:2,19	<b>governor</b>	13:22
193:3 241:3	284:9,14	207:6 220:4	<b>grew</b>
266:1 282:14	288:15	<b>GPO</b>	268:21
295:15,16	292:11	302:9	<b>grievances</b>
304:3 310:18	294:8,20,23	<b>Graber</b>	273:12,19
<b>going</b>	297:19	36:5 65:20	277:9
13:1 15:6	304:25	<b>graduated</b>	<b>Grimsley</b>
16:17 55:6	305:12	200:25	9:2 204:22
63:24 91:13	306:25 309:2	<b>grand</b>	212:25
92:25 94:14,	315:10	32:19,22	213:19,24
17 96:3	319:15,19	54:23 55:3	214:1 215:2
98:21 102:21	321:5	<b>grant</b>	216:18 221:1
105:16	<b>good</b>	40:3 56:15	223:20
106:11 107:2	8:5 9:12	193:8 195:20	228:18
109:13,14	10:3 87:25	197:8	231:13
113:13 115:8	88:19 89:4	<b>Grant's</b>	235:19,20
120:18	125:8,9,11,	67:14	248:9,14,19
124:4,15	12 143:11	<b>granted</b>	251:16
125:13	162:3 202:3	26:6 193:13	253:24 254:7
127:1,21	231:14 259:4	195:8 199:1	260:16
130:21,23	299:2,3	209:11	263:15,16
134:16	310:24 321:8	266:24	<b>Griswold</b>
137:13	<b>gov</b>	<b>granting</b>	120:21
139:22 141:2	111:3	61:6	<b>ground</b>
154:1 161:15	<b>govern</b>	<b>grassroots</b>	46:17 171:13
166:1,2	57:12	268:19	194:8 225:14
170:8,10	<b>governing</b>	270:17	226:19
176:18	220:2,3	274:19	227:13
179:12	223:10	<b>gray</b>	268:18
180:1,2	<b>government</b>	302:25	<b>grounds</b>
181:24	13:13 18:16	316:23	48:19 56:24
186:7,8,14,	27:21 28:3,	<b>great</b>	66:18 162:6
19 191:17	16 31:3,4	8:21 9:17	182:1 207:9
192:20	33:8,18,22	88:16 160:7,	262:25
193:17	35:6,13 45:1		292:23

<b>group</b> 26:22 28:12 260:21 261:1,7 271:10 273:9,14,16 274:5,14 275:16,22 279:2,4,10, 13 281:2 299:15	9,12,13,16 297:1 300:22 301:12 303:17 305:16	<b>half</b> 121:20 190:11 193:15 227:6 290:4	285:21
<b>groups</b> 166:11,13 167:3 273:20 275:1 278:1 294:22,25	<b>guarding</b> 219:18	<b>half-time</b> 181:17	<b>happening</b> 226:14 227:7 274:24 276:23 279:18,22 285:20 314:16
<b>guarantee</b> 280:12,19	<b>Guardsmen</b> 212:18 223:2 224:10	<b>halfway</b> 113:14	<b>happy</b> 180:5 182:6 261:12 280:8 292:25 314:3
<b>Guard</b> 164:3 206:13,14, 15,22 207:3 209:4,7,10, 17,20 210:3 212:3,14,23 213:17,23 214:10,12 215:1,17,20 216:11 217:5,21,23 218:8,18 219:9,14,18, 25 220:10, 14,25 221:13,20 222:6,9,14 223:1,8 224:15 225:7,19 227:15,17 229:9,15 230:11 235:3 236:7,25 237:23 241:1 244:24 245:5,9,14, 25 246:2,10, 17,19 295:7,	<b>guess</b> 170:24 188:13 235:25 253:14 276:13 283:23 297:8 301:20	<b>Hallelujah</b> 303:8	<b>hard</b> 33:1 74:19 157:24 311:21
	<b>guidance</b> 42:3 102:22 103:23 116:16 117:3,9 123:21 136:23,24 138:11,14 139:17 141:13 158:2 219:22 281:21	<b>Hamilton's</b> 27:20	<b>hard-to-read</b> 54:21
	<b>guide</b> 72:11 292:6	<b>hand</b> 30:25 82:10 88:12 144:10 196:11,13,18 268:3 281:19	<b>hashtag</b> 274:8,14
	<b>guy</b> 146:3 249:12 317:11,14	<b>handful</b> 173:19	<b>Hassan</b> 105:14 106:2,7,9, 20,23 108:11 109:7 141:15,16
	<b>guys</b> 288:11 306:2	<b>handle</b> 159:20	<b>Hassan's</b> 106:18 108:22
		<b>handling</b> 198:8	<b>He'll</b> 298:16,18
	<b>H</b>	<b>Hang</b> 188:9	<b>head</b> 134:23 165:7 166:7 209:16 228:5 240:14 242:2 249:2 290:10,15 319:2
	<b>habeas</b> 311:19 312:7	<b>hanged</b> 188:10	<b>heading</b> 205:18
	<b>Haha</b> 303:9	<b>Hanway</b> 34:7,9	<b>heads</b> 220:5
	<b>Halbohn</b> 9:8	<b>happen</b> 62:5 192:1	<b>healthcare</b> 268:12
		<b>happened</b> 17:10 21:17 23:18 27:17 49:14 62:24 70:23 95:16 100:16 103:25 105:3 163:16,19 172:23 226:13 247:10 253:7 269:14	<b>Heaphy</b> 160:22 161:8,15

319:16	<b>help</b>	<b>Hilary</b>	13:2,20
<b>hear</b>	136:14	88:1,13 89:5	14:11 15:2,3
85:6 88:21,	269:12 270:9	<b>Hill</b>	16:3 20:17,
23 153:17	273:17 274:2	201:8	23 24:12
193:5	276:20,24	<b>Hillary</b>	25:1,20
199:18,21	277:1,13	257:24	27:15 60:15,
202:4	289:15	<b>hinder</b>	16 63:17,20
213:10,12	303:13	26:22 33:8	65:8 75:14
235:16	<b>helped</b>	<b>Hinds'</b>	78:23 81:12
267:24,25	79:20 270:14	46:5,9	222:6,16
298:3 304:8	<b>helpful</b>	<b>historian</b>	236:6
316:11	115:22	16:9 19:12	<b>Hodges</b>
<b>heard</b>	130:19 131:3	<b>Historians</b>	163:14,25
63:11 163:21	<b>helping</b>	11:1	<b>hold</b>
164:12	276:23	<b>historical</b>	22:23 38:20
172:19	<b>Hemel</b>	10:25 15:9	50:19 60:8
176:14	16:21	17:5 18:7,10	89:11 115:25
182:19	<b>herding</b>	19:14 20:11	139:22 141:4
189:15,21	274:20	21:3,24 22:7	144:25 159:9
191:4 198:10	<b>Hess</b>	23:1 25:21	251:11
213:8 269:10	170:12	26:15,20,24	<b>holder</b>
<b>hearing</b>	171:6,7,9	27:3,10,11	293:9
124:16	<b>Hey</b>	29:10 33:1	<b>holding</b>
168:10	146:3	35:23 36:11	159:4 196:13
229:25	<b>high</b>	37:1,19	<b>home</b>
230:2,3	62:17 71:5	38:1,13	186:25
297:11 298:5	196:14 204:4	40:10 42:7	235:12,23
<b>Hearsay</b>	288:14 307:2	46:4 49:11,	272:19,22
216:18	<b>higher-level</b>	17,24 50:5	286:9
<b>heart</b>	62:23	51:10,20	<b>Honestly</b>
292:19	<b>highest</b>	52:5,12	142:14
294:17	62:14	54:14,21	<b>Honor</b>
<b>heart-emoji'd</b>	<b>highlight</b>	55:8 62:7	8:10,11,20,
303:20	15:1 16:18	68:20 69:21	23 9:5,13
<b>heated</b>	26:13 161:4	72:2 73:22	20:18,21,25
61:17	303:15	75:5,7,13,	63:24 64:2,
<b>hedged</b>	310:11	15,23 78:13,	6,14,23
174:8	<b>highlighted</b>	18 80:7	75:9,20 76:2
<b>held</b>	308:11	84:5,9	85:1,24
21:11 89:8,	<b>highlighting</b>	85:12,18	87:15,21,25
14 107:9	161:9	87:5	94:12 104:23
181:1 276:18	<b>highlights</b>	<b>historically</b>	120:17
<b>hell</b>	226:13	31:8,9 37:21	124:4,18
185:21	<b>highly</b>	94:16 221:21	125:5 131:6
189:14	159:10	<b>history</b>	143:5 149:22
<b>Hello</b>	<b>hijacking</b>	10:14,21,23	153:14,25
231:15	222:2	11:2,5,8,10,	154:1 158:7
		16,19,22	159:14

160:10,11, 12,19,20 161:2,13,24 162:4 170:2, 21 171:2 173:24 181:14 182:3,6,16 192:14,18, 22,25 194:4, 15,25 197:23 198:3,8,12, 16 199:6,9, 24 200:5,19 201:21 215:5 248:6 263:12,17, 20,22,25 265:3,5,11, 18,21 266:13 267:4 297:22 298:10,21 301:17 308:16 314:23 318:12,16, 17,22 319:1, 21 320:10,15 321:13	318:5 <b>house</b> 16:16 24:3,4 25:12 45:23 46:1,5,16 47:23 190:16,17 202:14,20 203:3,18 206:18 210:24 211:15 215:10 219:23 222:12 231:19 242:10 282:4 283:7,17 284:5,9,10 285:7 291:8 292:23 309:1,4,18, 21 <b>House's</b> 203:1 <b>housekeeping</b> 124:17 194:16 <b>Houses</b> 23:24 46:7, 11 <b>huge</b> 255:18 <b>human</b> 221:17 <b>humanity</b> 41:8 <b>hundred</b> 25:17 219:24 <b>hundreds</b> 28:7,23 61:21 173:20 259:5 <b>hurt</b> 173:6,7 174:6,22,23, 24 280:16 286:10	<b>husbands</b> 220:16 <b>hybrid</b> 292:22 293:1 <b>hypothetical</b> 138:23 140:5,8 173:25 174:7 <b>hypotheticals</b> 141:8 157:25 <b>hysterical</b> 318:4 <hr/> <b>I</b> <hr/> <b>idea</b> 21:19 62:20 193:2 250:4 310:24 320:1 <b>identical</b> 32:2 34:10 39:15 <b>identically</b> 87:6 <b>identified</b> 49:13 55:7 62:8 69:15 185:13 263:11 <b>identify</b> 41:14 136:14,16 263:5 307:10 <b>identifying</b> 183:5 <b>IG</b> 243:25 244:5 250:24 <b>ignore</b> 313:13 <b>II</b> 54:7 227:9 <b>illegal</b> 15:12 169:12,17,20 <b>illegally</b> 24:10	<b>immediate</b> 16:22 <b>immediately</b> 183:21 227:3 281:6 <b>imminence</b> 168:14,17 177:16 178:8 180:16 <b>imminent</b> 168:23 169:2,11,16, 20 170:17 171:12 177:15 190:8 <b>impact</b> 171:23 <b>impeachment</b> 58:23 67:3 70:11,21 248:17 <b>implement</b> 39:22 <b>implementatio n</b> 20:7 <b>implemented</b> 216:24 <b>implementing</b> 24:24 39:25 71:25 <b>implicate</b> 146:24 <b>implication</b> 174:20 <b>implicit</b> 184:19 <b>implicitly</b> 173:2,11,13, 21 189:12 <b>imply</b> 200:24 <b>import</b> 170:15 171:16 <b>importance</b> 70:9
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>important</b> 55:18 167:15 217:18 221:6 224:20 228:4 241:15 249:19 250:6 253:15 254:5 286:15	163:4,7 173:16,17 174:11,14, 15,18,21 176:13 177:7,10,18 178:19,22 180:9 181:1, 12 182:2,24 185:8 188:19 189:10,25 190:7,20 196:14,20,23 197:1,5	<b>Incorporation</b> 15:7 <b>incorrect</b> 104:18 147:13 301:13 <b>incorrectly</b> 78:25 79:3, 8,11 92:9 <b>incredibly</b> 74:18 <b>indeed</b> 162:2 <b>index</b> 17:25 18:2 <b>Indiana</b> 10:9,15 170:12 171:6,7 <b>Indians</b> 15:11 <b>indicate</b> 110:14 <b>indicated</b> 206:19 <b>indication</b> 69:8 <b>indications</b> 282:19 <b>indirect</b> 42:18 <b>individual</b> 23:24 24:3 25:15 46:7, 11 49:21 50:6 51:13 218:1 230:24 243:4 266:13 287:19 <b>individuals</b> 26:7 30:6 61:6 96:11 271:1 <b>ineligibility</b> 67:11 100:8 108:17,18,20	<b>ineligible</b> 24:18 61:4 62:14 66:18 67:21 99:15 103:19 105:6 106:24 138:16 156:13 <b>infer</b> 196:22 <b>inference</b> 170:15 <b>inferences</b> 186:10 195:12,16 <b>inferred</b> 190:23 <b>inflammatory</b> 275:1 287:9 <b>influence</b> 15:24 <b>info</b> 147:19 <b>infomercial</b> 317:11 <b>inform</b> 33:12 35:15 127:20 <b>informally</b> 146:3 <b>information</b> 69:4 72:13 84:15 96:14, 22 97:4 100:13,14, 23,24 102:12 104:15,18 105:12 112:1,6,12 113:25 119:21,22,24 121:5,6 137:8,24 138:15 139:14,20 140:4,10 141:6
<b>importantly</b> 164:7			
<b>impose</b> 189:4			
<b>impossible</b> 160:3			
<b>impression</b> 213:22 214:4	<b>inciting</b> 173:15		
<b>improper</b> 64:1 79:24 194:7	<b>include</b> 37:23 55:18, 22 62:22 73:4,17 80:22 112:6 134:21 135:3 136:8 144:16 297:14		
<b>inaction</b> 49:20 50:1 81:11 181:1 187:2,3,20	<b>included</b> 33:7 40:7 73:20 74:7 148:18 153:11		
<b>inappropriate</b> 195:20	<b>includes</b> 182:24 299:13		
<b>incendiary</b> 287:5	<b>including</b> 25:18 37:25 59:9 61:12 73:14 86:25 89:22 150:15 182:24 186:16 192:6 223:4 292:18		
<b>incidents</b> 295:5	<b>inclusion</b> 136:13 145:9 149:5		
<b>incite</b> 73:15,17,19 74:6 80:19 85:5 173:21 180:22 188:16 190:8	<b>inconclusive</b> 68:21		
<b>incited</b> 43:5 45:17 162:8 164:20,21 180:18 184:6 185:23 190:22	<b>inconsistent</b> 193:1,23 264:5		
<b>incitement</b> 37:25 44:13 45:7,11 74:24 80:17, 22,25 85:12			



147:12,23,25 164:16 297:14 302:11 305:5	<b>insisted</b> 62:4 277:10	34:6 35:4,5, 9,11,16,21, 24 36:9,14, 18,23,24 37:13,17,20, 23,24 40:22 41:14,21 42:13,17 44:9,10,14, 20 45:2,5 49:19 50:23 51:1,4 62:13 72:20,22,25 73:3,13 80:21 81:6, 7,10,15,18, 22 83:1,8, 12,14 86:11, 18 163:6 164:21 182:20,22 183:3,4 186:22 187:21,22 188:16 189:8 190:22 192:11 314:10 315:7 316:14	136:14 170:16 171:11,19 184:22 186:11 187:21,22 190:1 191:1, 22
<b>informative</b> 31:11 48:9	<b>Inspector</b> 207:16		<b>intense</b> 274:21
<b>informed</b> 26:25 27:5, 12 197:11 233:18 265:23 266:15 277:20 287:25	<b>installed</b> 228:10		<b>intent</b> 40:24 41:6 42:15 82:6, 9,21 83:3,17 98:3 104:22, 23 109:24 111:12 114:25 116:5 129:1,2,10 135:18,22 136:1,3 141:17,20 144:6 156:6 157:17 164:8 166:7,8 171:10,20 179:19 181:5 188:15 190:23 196:22 214:2
<b>informing</b> 48:4	<b>instance</b> 78:17 143:22 149:14 152:24 155:13 168:17 196:1 210:13 220:4 221:5		<b>intention</b> 172:13
<b>informs</b> 29:25	<b>instances</b> 76:15 80:7 151:18		<b>intentions</b> 183:17
<b>inhabitant</b> 130:24 132:4,8,12, 18 134:19 140:21,22	<b>instigated</b> 45:17		<b>interchangeably</b> 31:6
<b>initial</b> 281:10	<b>instigating</b> 45:5		<b>interested</b> 17:11 19:18, 22 60:17 145:18
<b>initially</b> 25:8 277:16 285:7 294:14	<b>instigation</b> 45:7		<b>internal</b> 246:16
<b>initiate</b> 215:15	<b>instruct</b> 139:9		<b>internally</b> 263:1
<b>initiative</b> 98:12	<b>instructing</b> 32:11		<b>Internet</b> 247:19 265:24
<b>initiatives</b> 104:9	<b>instruction</b> 33:24 238:9 280:25	<b>insurrectioni sts</b> 22:1 45:21 192:4	
<b>injured</b> 316:3,14	<b>instructions</b> 39:20,24 40:2,7 42:9	<b>insurrections</b> 27:4,15 30:2 36:20 37:3	
<b>input</b> 291:15	<b>insulted</b> 192:14	<b>intel</b> 204:12	
<b>inquiry</b> 115:6 176:13	<b>insurrection</b> 22:20 23:6, 9,17 26:14, 16,19,21 27:1,12,16 28:6,11,20 29:2,9,10, 13,16,18,19, 25 30:5,19, 25 31:7,23 32:4,9,10,12 33:3,5,19,21	<b>intelligence</b> 203:13,14,15 264:18	
<b>insanity</b> 140:19		<b>intend</b> 113:22 190:22	
<b>inserted</b> 79:8,11,17		<b>intended</b> 21:25 22:2 69:10 114:16 135:12	
<b>inside</b> 229:13			

<b>internship</b> 89:22	29:4	<b>involving</b> 105:14	<b>items</b> 84:9 161:7
<b>interpret</b> 114:13	<b>introduce</b> 10:4 88:19	137:16	190:12
166:23 196:4	89:2 293:9	162:23 172:7	
<b>interpretatio</b>	<b>introduced</b> 184:10	211:23	
<b>n</b> 40:13 77:8	186:16	<b>iphone</b> 302:21	<hr/> <b>J</b> <hr/>
94:13	190:14	<b>irrelevant</b> 56:2 124:7	<b>Jacksonian</b> 11:24
132:16,22	<b>Invaders</b> 15:11	263:13	<b>Jacob</b> 9:7
133:3 162:25	<b>invalid</b> 107:10	<b>isolated</b> 33:25 57:6	<b>James</b> 57:19 168:5
<b>interpreted</b> 75:2 94:10,	<b>invariably</b> 32:12	59:2	169:25
16,25 95:3	<b>investigate</b> 115:9 137:21	<b>issue</b> 45:7,20	<b>Jane</b> 9:9 143:11
166:12	<b>investigation</b> 145:3 188:8	49:20 52:25	<b>January</b> 13:5 16:21,
167:1,24	202:18	53:13 57:23	22 97:9
175:15	302:16	58:20 59:14	124:13,14
176:10 177:3	<b>investigative</b> 202:17	60:1 61:11	145:12
<b>interpreting</b> 38:11,15	<b>investigators</b> 307:12	65:16 70:21	160:25
72:4 104:3	<b>involuntary</b> 81:15	71:3 72:1	161:8,18,20
<b>interrupt</b> 313:24	<b>involve</b> 25:14 36:24	77:1,9 80:12	162:14
<b>interrupting</b> 200:13	220:23	127:15 149:7	163:12,13
<b>interruption</b> 194:21	<b>involved</b> 20:6 28:6,20	162:20	164:3,16
<b>intersections</b> 209:9	29:3 30:6	198:14	165:3 169:19
<b>Intervenor</b> 196:19	35:12 40:4	217:23	177:18 178:4
<b>intervenor</b>	45:25 47:10	254:24	180:16,18,
<b>s</b> 197:14	70:19 81:20	265:22 272:1	19,20,23
<b>interview</b> 167:10	82:22 83:17	277:7 298:6	183:3,5,9
260:17	184:18	<b>issued</b> 27:8 34:17	184:3,11
304:12,25	274:25	39:20 40:2	185:18
305:2	279:17,23	42:1,5 54:24	186:17 188:3
<b>interviewed</b> 208:1	280:13,24	56:11 57:8	190:13
<b>interviews</b> 253:19	282:15	<b>issues</b> 71:16 85:5	192:1,8
295:21 296:2	309:15	92:15 127:4	193:16
<b>intimidation</b> 27:24 28:15	<b>involvement</b> 24:2 46:2	146:9,11	196:24,25
	205:16	181:15	204:4
	220:25	195:24	205:16,18
	269:15	197:7,9,12,	206:19
		16 217:18	207:19
		230:14 288:1	208:13,20
		<b>issuing</b> 56:20 186:11	210:21 211:6
		<b>item</b> 134:19	212:13,21
		178:11	213:16,22
			216:3,5
			217:22
			219:10,19

221:8 222:24 223:11 224:8 225:20 229:22 230:25 231:6,18,20 232:3,6,21, 24 233:2 237:12,22,25 238:23 239:6,7,15, 19 242:16, 23,25 243:7 244:22 245:23 246:4,24 249:5 250:5, 14,19 251:6, 17 252:24 253:2,12,14, 17,18,19,20 254:20 255:2,8 262:5,19,23 264:5,7 269:10 276:14,20 278:4 279:8 281:24 282:11 287:25 295:19 302:5,16,18 304:12 305:1 310:1,15 311:13 314:4,9,17 315:7 317:6	<b>Jennifer</b> 9:14 <b>Jesse</b> 198:17 <b>Jesus</b> 303:8 <b>Joanna</b> 205:3 207:12 208:5 210:19 267:20 <b>job</b> 82:17 83:2 122:1 167:10 218:25 255:20 300:14,18,19 303:4 <b>John</b> 11:12 14:15 16:16,23 17:2 20:4 31:17 32:23 46:14,15 47:2,7 57:17 58:9,12 65:22 67:12 269:2 <b>Johnson</b> 56:11 57:7, 14 67:3 70:22 71:4 <b>Johnson's</b> 40:11 58:23 <b>join</b> 21:8,14 48:18,22 269:22 270:12 271:12 <b>joined</b> 9:14 269:23 <b>joining</b> 22:20 <b>Joint</b> 11:14 21:20 58:16 201:14 206:9	241:17,22 242:7 300:25 <b>jokes</b> 316:14 <b>Jonathan</b> 9:8 <b>Jones</b> 275:4 281:5 287:2 288:9 293:24 299:5,13,22 <b>Jones'</b> 299:18 <b>Joseph</b> 153:4 <b>journal</b> 11:2 12:14 13:2 <b>journals</b> 11:16 <b>Jr</b> 261:17 <b>Judd</b> 127:18,19 <b>Judge</b> 54:24 55:12 214:6 260:1, 2 <b>judges</b> 32:10 44:20 <b>judicial</b> 17:17 19:22 27:7 38:3 43:11 46:12 52:10 71:10 <b>June</b> 110:10,23 <b>juries</b> 32:11 <b>jurisdiction</b> 93:24 <b>jury</b> 32:19,23 54:23 55:3, 20 <b>Justice</b> 32:24 33:2,	24 34:9 74:15 78:25 79:14 201:10 202:8,11,12 260:7 <b>Justice's</b> 201:6 <b>Justices</b> 32:21 <b>justifies</b> 56:24
<hr/> <b>K</b> <hr/>			
			<b>Kash</b> 204:14 300:23 <b>Kashyap</b> 199:14 200:7 <b>Katrina</b> 265:17 268:4 <b>keep</b> 21:7 103:1 138:3,8 156:15,20 176:19 191:12 217:17 219:9 250:3 253:14 273:21 288:18 293:14 <b>keeping</b> 304:16 <b>Kentucky</b> 46:16,25 173:14 <b>kept</b> 100:7 104:25 106:8 154:20 156:18 284:6,7 <b>Kevin</b> 188:13 <b>kids</b> 257:22

<b>killed</b> 28:22 191:17 301:12 303:16 316:3,8,13	<b>knife</b> 165:7	271:23 272:2,7,11 273:1,10 274:25 275:3 276:3,22 278:19 279:16,19,21 280:16,22 282:9 283:22 288:2,6,11, 24 289:8,25 291:11,17,20 292:14,21 293:22 294:7,18,22 295:2,9,14 299:9,21 302:22 304:14 306:17 307:21 308:12 313:2 314:12	225:2 269:8 273:18 275:4 316:5
<b>killling</b> 303:4	<b>knight</b> 258:2	276:3,22 278:19 279:16,19,21 280:16,22 282:9 283:22 288:2,6,11, 24 289:8,25 291:11,17,20 292:14,21 293:22 294:7,18,22 295:2,9,14 299:9,21 302:22 304:14 306:17 307:21 308:12 313:2 314:12	<b>Kotlarczyk</b> 8:19 9:12,13 87:20 149:21,22,24 153:14,25 160:10 192:18,19,22 195:19 263:21
<b>kind</b> 13:3 17:15, 20 19:13,16 22:21 39:17 45:10 48:8 49:15,24 55:4 61:12, 25 62:2,16 67:6 70:17 73:9 87:14 202:1,4 248:5 250:5 253:15 287:21 288:18 291:17 294:9 304:7 311:21	<b>know</b> 18:18 20:3 21:23 23:5 28:23 34:17 53:4 55:19 63:18 67:10, 23 70:5,9 72:12,15,23 74:9,20 76:17 77:20 79:21 82:18 83:19 87:12 90:12 113:6 123:3 127:2 138:12 139:18 140:2,9 146:4 149:9 153:16 157:3,10,22 158:23,25 160:3 165:5, 6 166:8,15 167:7,17 176:25 177:5 179:2,14,15 181:22,23 182:7 184:9 191:22 193:11,12 205:12,13 210:11 225:6 227:25 228:2,10,11 233:10 234:4,7 235:7,13 245:5 250:3, 20 251:22 252:10 253:6 257:8 259:10,25 261:11 266:3,7,10	276:3,22 278:19 279:16,19,21 280:16,22 282:9 283:22 288:2,6,11, 24 289:8,25 291:11,17,20 292:14,21 293:22 294:7,18,22 295:2,9,14 299:9,21 302:22 304:14 306:17 307:21 308:12 313:2 314:12	<b>Kremer</b> 273:16,17 276:19 278:8 279:10 284:2 309:6 319:2 320:17 321:1,2
<b>kinds</b> 11:4 17:6 35:1 50:1 51:5 52:5 86:17 187:18	<b>king</b> 257:19,20 258:1	<b>knowable</b> 158:3,14,22 159:12,24	<b>Kremers</b> 275:21 276:19,21 277:9,19,23 278:3 279:2 280:15 287:25
<b>kit</b> 210:11	<b>Kitsmiller</b> 9:10	<b>knowing</b> 116:12 138:24 184:15	<b>Kremers'</b> 275:8,16
<b>knew</b> 184:21,22 185:5 228:24 232:19,22 233:4 273:24 277:12 280:6 281:8 284:10 290:20 305:4 309:6,18 314:10 316:2,7,12		<b>knowledge</b> 82:12 99:15 104:17 109:9,10 111:8,9 114:1 115:21 116:7,9 124:10 138:2 149:4,18 214:20,23 215:4 219:6 229:1,6,11 232:11,16,17 234:12,24 283:17 297:13,16	<b>Kurt</b> 16:24 68:14 83:25 84:1 86:3
		<b>known</b> 27:16 29:14	<b>Kylie</b> 273:17 278:8
			<hr/> <b>L</b> <hr/>
			<b>lack</b> 126:15
			<b>Lacks</b> 215:2
			<b>laid</b> 20:11 75:6 189:1
			<b>land</b> 62:14

<b>landscape</b> 264:18	33:9,15,23, 25 34:21	200:17	<b>leave</b> 188:12 202:10 319:25
<b>language</b> 23:5 26:12 34:4 36:7, 10,13 37:17 38:25 39:12, 13 40:7,14 44:5 46:20 53:19 59:23 74:13 94:11, 25 95:12,13 112:4 170:15 176:8 177:12 183:12 184:16 189:19,20 190:1 287:5	36:23 38:19 44:17 63:22 79:5 85:19 93:11 96:15, 24 97:14 98:11,16 107:9,21 109:5 113:24 133:13 135:1 137:9 144:13 147:20,23 155:9,23 160:2 168:3 169:21 173:14 176:18 186:13 187:3,18 196:13,17 197:18 200:21,24,25 205:22 207:2,4 212:14,20 214:11 215:15 216:25 218:10,21 219:3,21 222:16 227:5 228:5 234:21 244:25 259:23 262:7,8,22	<b>lawyers</b> 220:16 222:15 244:6,13,14, 15 298:7	<b>lectern</b> 318:1
<b>languages</b> 197:5		<b>lead</b> 171:14 202:17 262:22 320:7	<b>leading</b> 16:9 29:17 34:24 38:5 95:15 183:19 208:13 212:25 213:19 221:1 228:18 287:24 296:13,20,24 297:2
<b>laps</b> 306:13,17		<b>leader</b> 183:3 188:11 219:6	<b>left</b> 21:8,14 202:12 213:16 286:5 302:25 316:24 320:17
<b>large</b> 35:11 230:18		<b>leaders</b> 191:11	<b>legal</b> 10:25 15:14, 16 28:2 34:16,24 39:17 67:11 72:6 89:15 90:4,19 91:8 94:13 97:3 117:2 118:19 137:3,6 155:10,11 158:1 162:17 170:10 187:7,11,13 188:25 195:23 197:9,12,18 201:11 215:11 220:9,12 221:24 236:4
<b>larger</b> 268:23		<b>leadership</b> 214:24 226:18 229:2,5 232:15 234:17,19 260:5,18 262:21 301:5	<b>legislation</b> 24:24 25:12, 22 26:8 46:12 71:25
<b>largest</b> 229:19		<b>leading</b> 16:9 29:17 34:24 38:5 95:15 183:19 208:13 212:25 213:19 221:1 228:18 287:24 296:13,20,24 297:2	<b>legislative</b> 60:15,16 99:18,22
<b>Lash</b> 16:24 17:1 68:14 84:1, 18 86:3,22		<b>leads</b> 56:1	
<b>Lash's</b> 86:6,16		<b>league</b> 192:4	
<b>late</b> 11:25 15:8, 21 182:11 317:14	<b>lawless</b> 190:8	<b>leaked</b> 283:2	
<b>launch</b> 220:22	<b>laws</b> 34:12 35:7 71:11 104:4	<b>lean</b> 89:1 202:1	
<b>law</b> 10:10,16 11:7 13:3 14:8,17 18:3 23:19,22 26:23 27:2,8 30:1,22	<b>lawsuit</b> 157:20	<b>leap</b> 176:20	
	<b>lawsuits</b> 106:16	<b>learned</b> 63:13 185:25 281:4	
	<b>lawyer</b> 58:25 71:1 93:10 198:15		

100:3,7,21	<b>Lieber</b>	25:10 114:16	161:3 170:22
101:2 160:3	34:19,23	135:13,14	174:9 192:20
<b>legislatures</b>	35:3,10,15	136:9,12,18	201:18 226:9
275:11	70:7	248:11,15	230:22 236:5
<b>lesser</b>	<b>lies</b>	283:3 284:5	268:10
173:16 196:8	183:18,23	292:13,18	274:22
<b>letter</b>	<b>lift</b>	293:6 296:18	275:19
46:22 47:3	221:16	319:14	280:16,21
97:17 106:1	<b>light</b>	<b>listed</b>	281:18
107:3,15	37:19 44:24	60:5 95:5	282:12 292:1
141:23	68:15 195:9	113:1,3	304:4 310:19
142:3,7	<b>likes</b>	114:14,15,19	<b>little-known</b>
196:12	299:10	121:4 148:16	269:5
222:24	<b>limit</b>	151:10	<b>live</b>
223:24	36:17 37:6	153:19	267:14
224:2,7,12	158:13	287:10	<b>live-streaming</b>
225:9 238:23	220:12 227:5	<b>listen</b>	265:24
250:6,14,19,	<b>limitation</b>	224:23	<b>lived</b>
21,25 253:19	37:9	286:24	144:18
<b>letters</b>	<b>limited</b>	<b>listener</b>	<b>lives</b>
209:24	23:2,4 37:2	171:24	186:2 306:1
<b>letting</b>	70:9 162:13	176:14	<b>living</b>
200:20	182:23 210:3	<b>listeners</b>	272:23
<b>level</b>	215:19	176:5 177:4	<b>loan</b>
30:11 63:7	<b>limiting</b>	<b>listening</b>	42:18
137:20 209:3	22:13	78:8	<b>local</b>
268:14,22	<b>limits</b>	<b>listing</b>	36:23 207:2,
<b>levied</b>	36:13 158:21	73:14	4 209:23
45:1	<b>Lincoln</b>	<b>lists</b>	210:2 212:20
<b>levying</b>	66:25 311:19	112:19	218:17 219:3
45:4	312:7,22	<b>literally</b>	220:3,24
<b>lexicographer</b>	<b>Lincoln's</b>	55:19	221:20
31:18	57:19 313:3	<b>litigation</b>	222:2,8,20
<b>liaison</b>	<b>line</b>	118:12	224:15,17
201:11,14	54:11 63:25	123:7,20	225:17
218:21	240:18,20	126:16,17,	264:11,13
<b>liberal</b>	242:3,12	21,25	268:22
260:5	308:10	<b>little</b>	<b>locally</b>
<b>liberals</b>	313:14	15:7 19:1	268:19
259:7 260:4	<b>line-level</b>	24:12 27:11	<b>located</b>
<b>liberty</b>	224:19	29:13 33:1	276:2
211:24	<b>lined</b>	39:5 47:18	<b>logging</b>
<b>Library</b>	265:7	50:15 61:15	265:10,12
19:3	<b>lines</b>	76:21 87:11	267:10
<b>lie</b>	204:14	88:4 99:17	<b>logistical</b>
284:21	<b>list</b>	101:18	217:20
	16:2 20:4	116:20 128:8	
		146:14 153:1	

<b>long</b> 10:15 74:18 89:8 110:6 119:13 202:7 203:8 225:2 255:23 260:23 290:2, 8 319:14 320:1	<b>looked</b> 26:25 27:3, 6, 7 28:9 30:13 31:25 32:3 34:11 35:18 38:3, 4, 5 44:2 51:10, 20 52:7, 8, 10 53:15 78:23 85:19 86:22 87:4 130:17 191:24 212:5 244:2, 4, 7 251:4 252:7 293:6 295:13	<b>louder</b> 201:18 <b>Louisiana</b> 24:14, 19, 23 <b>lower-level</b> 62:17, 25 <b>loyal</b> 66:25 <b>loyalty</b> 300:3, 4 <b>lunch</b> 182:8, 10, 15 <b>lying</b> 263:9 294:2 307:25	87:17, 22 164:5 182:20 <b>Magliocca's</b> 20:19 <b>magnetometers</b> 184:14 190:11 <b>magnitude</b> 191:9 <b>mail</b> 98:15 111:2 <b>main</b> 11:12 21:6 52:11, 18 291:1 <b>Maine</b> 60:6 <b>maintain</b> 82:15 <b>major</b> 109:23 111:11 119:23 128:9 143:23 144:5 145:23 146:17, 25 147:2, 6 209:16 246:18 <b>majorly</b> 199:21 <b>make</b> 18:14, 22, 23 19:9 72:14 74:17 77:8, 10 80:3 92:1 95:10 102:22 115:7 123:24 125:18 139:2 141:12 143:13 146:2 161:23 180:10 186:17 193:18 195:2 197:17 221:12 226:22
<b>long-standing</b> 184:20 189:17 191:5 <b>longer</b> 23:21 72:12 <b>look</b> 9:6 17:8, 13, 16, 17, 19 18:23 19:15, 25 31:19 34:18 38:2 44:18, 22 46:9, 10, 19 48:3, 12 50:4 52:6 56:16 58:6 59:11 72:14 77:14 79:6, 12 109:14, 16 120:25 121:19 131:24 135:4, 7 142:3, 4 146:3 155:10 171:15 176:8, 9, 15 177:4 178:14, 24 180:7 191:2 196:19, 22 197:4 205:17 230:20 244:21 247:20 250:23 258:20 304:24 310:5 316:17	<b>looking</b> 17:11 18:14 19:9, 15, 21 30:14 34:15 38:9 41:24 46:21 54:22 55:1 58:8 86:23 87:8 106:15 110:11 160:4 193:17 205:5 292:20 <b>looks</b> 104:15 175:25 298:13 311:22 <b>Lord</b> 303:8 <b>lose</b> 183:21 <b>lost</b> 272:20 <b>lot</b> 60:6 72:6 91:20 124:10 150:25 225:6 253:5 271:11 274:24 311:7 <b>lots</b> 247:9	<hr/> <b>M</b> <hr/> <b>M-A-G-L-I-O- C-C-A</b> 10:7 <b>M.G.</b> 209:15 <b>mad</b> 284:22 <b>made</b> 23:8 45:3 54:6 69:1 79:2 80:1 92:2, 6 93:22 95:4 148:18 149:1 155:17 162:19 167:9 179:9 207:5 220:19 222:15, 23 226:23 231:1 252:3 268:15 274:9 293:2 304:13 <b>MAGA</b> 271:12 288:4 <b>Magliocca</b> 8:15 9:21, 22, 23 10:5 20:16, 22 75:12, 21, 22	

234:13 259:4	309:3,7,10,	<b>mattered</b>	19:2 20:4
260:12	14,19	45:16	22:2,12
266:19	<b>marched</b>	<b>matters</b>	26:19 29:5,
268:16	165:7	8:8,19 203:7	13,15 31:5,
271:13,23	<b>marches</b>	221:10 256:3	21 33:14
272:16	294:9,11	296:3 297:7	37:22 45:12
282:14	306:6	<b>Max</b>	60:12 61:14
291:6,21,22	<b>Marine</b>	290:18	65:10 66:19
292:1 295:12	306:13	291:3,9,10	67:8 69:3,25
297:20	<b>Mario</b>	295:8 301:8,	70:6 72:21,
310:19	9:3	12	23 73:25
311:25	<b>Mark</b>	<b>mayor</b>	79:10,12
313:25	36:5 206:10	207:6 210:7	81:10 83:4
319:14	218:14	218:22 220:4	85:14 86:12,
<b>makes</b>	281:14	221:9 222:23	23 87:6,10
37:12 91:18	283:10 301:3	224:8,18	95:4 96:21
92:3 123:12	<b>marked</b>	225:10	100:12 105:8
190:18	204:19	226:17,21	114:9,13
287:16	247:24	227:23	115:18 123:1
<b>making</b>	248:10	238:4,21,25	126:22
53:6 71:9	<b>Marshall</b>	250:6,12,14	128:20 132:7
73:7 141:10,	74:15	252:1	137:4 142:4
13 201:18	<b>Marshall's</b>	<b>Mayor's</b>	175:20 179:8
245:7 262:18	16:16	238:13	181:6,8,20,
267:16,20	<b>Martha</b>	<b>Mccarthy</b>	21 198:10
290:12	9:3	188:11	206:11 209:1
316:14	<b>marthal</b>	209:18	220:14
<b>Maldonado</b>	23:19,22	218:20	224:18,22
153:4 154:14	38:19	<b>Mcconnell</b>	233:7 266:3
<b>man</b>	<b>Maryland</b>	191:11	270:16
210:11	36:6 48:16	<b>Mccoy</b>	275:13 276:6
258:22	74:16	170:4	277:25
259:1,7	<b>match</b>	<b>Mcculloch</b>	281:13
303:9	311:25	74:16	287:2,12
<b>manage</b>	<b>material</b>	<b>Mckinney</b>	289:5 313:24
303:13	72:22,25	10:10,16	<b>meaning</b>
<b>managed</b>	<b>materials</b>	<b>Mcknight</b>	26:15 29:10
286:14	17:25 18:6	70:6	35:21 52:4
<b>manager</b>	<b>math</b>	<b>Meadows</b>	77:25 80:16
116:23	257:5	281:14,16	127:3 164:6,
310:23	<b>matter</b>	283:10,15	8 171:16,17
<b>maneuver</b>	45:15 72:2	285:8,14	174:23 176:8
222:17	124:17	286:19,22,25	179:21,23
<b>manner</b>	171:22	289:4 301:3	180:8 278:1
139:4 164:20	211:24 221:6	<b>mean</b>	284:1
<b>march</b>	253:22	11:23 17:8	<b>means</b>
178:21	285:20 306:1	18:13,15	37:20 40:21
275:17,25			68:23 85:12



95:6 107:15	291:24	8,10 271:16	<b>met</b>
116:21	<b>meet all</b>	<b>meme</b>	116:25
123:3,4	113:23 115:2	317:8	189:10 262:1
156:10	133:9	<b>memorandums</b>	<b>metaphor</b>
182:21 186:5	<b>meeting</b>	246:16,20	179:23
213:14	206:18,21	<b>memorized</b>	<b>meted</b>
320:12	210:24,25	93:9	260:9
<b>meant</b>	211:6,9,18,	<b>memory</b>	<b>method</b>
42:13 52:13	22 212:10,21	131:1 136:3	20:12 75:8
61:8 71:9	213:16,22	165:18 231:5	168:9
189:16,20	214:9 215:18	241:8 242:18	<b>methodologies</b>
<b>measure</b>	218:7 237:21	261:18	75:13,19,23,
221:15	238:3 239:2	<b>men</b>	25 167:13
<b>measures</b>	240:10	227:2,12	<b>methodology</b>
25:9 38:18	241:10,12,23	<b>mental</b>	18:11 20:11
96:17 101:25	242:23,25	192:8	75:6
202:18 228:9	243:15 249:4	<b>mention</b>	<b>methods</b>
262:24	250:9 251:21	12:3 74:23	97:15 128:8
271:25	252:23 253:2	243:21,24	167:7,16
<b>mechanism</b>	286:18	246:8	<b>metro</b>
24:16	289:16,19	<b>mentioned</b>	208:22 209:9
<b>media</b>	290:1,2	14:23 16:11	<b>Metropolitan</b>
168:5 169:25	291:2,15,21	24:11 27:10	224:25
235:25	292:4 294:6	28:8 30:13	<b>Miami-dade</b>
237:9,10	296:7	32:3 34:5	201:2
243:17	<b>meetings</b>	44:19 45:22	<b>mic</b>
247:9,11	165:5 211:15	49:17 60:5	213:14
259:3 260:21	218:10	65:19 77:3	<b>Michael</b>
261:1,2,6	242:19 243:3	230:21	9:13 36:4
266:8,23	252:25	245:19	<b>microphone</b>
269:18	<b>meets</b>	273:23	101:18
270:15 272:3	101:4 102:19	284:10	125:19 298:8
273:5 283:2,	114:11	287:23 299:5	<b>middle</b>
6 285:2	<b>Melito</b>	304:6,19,21	117:23 118:6
288:2	9:9	308:7,22	<b>midnight</b>
<b>mediate</b>	<b>member</b>	<b>mentioning</b>	64:3
277:14	10:22,24	52:25 297:1	<b>Mike</b>
<b>medieval</b>	11:14 23:25	<b>Meow</b>	9:9 185:24
257:21	25:7 45:23	168:5 169:25	186:3 188:9
<b>meet</b>	46:15 58:15	<b>merchandise</b>	<b>military</b>
102:13	141:4	258:23,24	38:11 50:19
106:21	<b>members</b>	<b>mere</b>	60:9 219:2
114:18	47:24 59:8	41:7 53:6	220:15
135:15 138:2	71:2 125:24	59:7 169:8	221:23
168:19	172:24 176:2	<b>message</b>	222:1,2
180:16 197:1	185:1 186:1,	301:15 302:1	227:8 259:6
205:20	19 210:3		
261:24 286:4	230:6 263:4,		

<b>militia</b>	208:11	<b>mobilize</b>	<b>morning</b>
28:2	<b>minutes</b>	164:2 252:12	8:1,5 9:12
<b>Miller</b>	39:19 109:12	<b>mobilizing</b>	10:3 87:25
203:25 206:4	122:21	183:10	88:19 89:4
210:23 211:1	172:12	<b>mode</b>	125:8,9
214:17	182:5,8,11,	283:23	143:11
216:6,7,16,	12 211:7	<b>model</b>	219:19
21 228:13	290:4 297:21	98:15	227:25
234:25 235:6	320:4	<b>modern</b>	248:13
241:2,11	<b>miracles</b>	85:19	286:15
249:6 251:9,	267:14	<b>modification</b>	317:6,7
15,18,19	<b>mischaracteri</b>	33:11	319:6 320:22
254:8,14,17	<b>ze</b>	<b>modified</b>	<b>morning's</b>
255:4 290:18	296:14	122:9	197:25
291:3,9,10	<b>mischaracteri</b>	<b>modify</b>	<b>Morrill</b>
295:8 301:8,	<b>zed</b>	78:14 129:22	60:6
12,15 303:9	254:1	<b>Moelker</b>	<b>mother's</b>
305:18	<b>mischaracteri</b>	9:10	272:20
315:25	<b>zes</b>	<b>moment</b>	<b>motion</b>
316:22	251:7 254:1	15:20 81:4	8:13,14,16
317:18	<b>misdemeanor</b>	88:2 99:10	20:21 161:19
<b>Miller's</b>	71:5	115:12	162:23
251:20	<b>misleading</b>	120:17 125:1	163:2,10
302:15	280:6	284:23	164:10
<b>Milley</b>	<b>mismatch</b>	292:13 310:2	176:19
206:10	19:13	320:11	177:11
210:24	<b>missed</b>	<b>moments</b>	181:13
242:13	178:5	117:4 152:24	187:14 189:2
<b>million</b>	<b>mission</b>	<b>Monday</b>	194:6 195:7,
288:4 303:10	249:21	227:25	8,20,23
<b>mind</b>	<b>Missouri</b>	285:24	197:7,8,16
60:11 101:17	32:20	286:5,13	198:22,24
212:22 222:7	<b>Mitch</b>	302:5,17	199:1
227:17	191:11	<b>money</b>	<b>motions</b>
228:15 264:4	<b>mixed</b>	15:17 42:19	181:17
267:5 292:19	79:13 89:24	204:15 259:4	<b>motorcade</b>
319:23	90:1	<b>month</b>	306:12
<b>mindful</b>	<b>mob</b>	256:22 262:2	<b>move</b>
170:23	183:4,18	<b>months</b>	20:16 50:13
<b>mine</b>	184:6 185:3,	12:23 185:17	92:11 105:19
113:15 158:6	23 186:6,13,	203:19	124:18,20
<b>Minnesota</b>	14 190:15	237:14	131:12
12:14	314:18	<b>months-long</b>	161:14,22
<b>minority</b>	<b>mob's</b>	231:3	162:5 213:13
65:14 77:5	314:11	<b>moral</b>	222:14
<b>minute</b>	<b>Mobilization</b>	22:21	223:18
38:16 45:9	188:21		263:14
131:7 183:16			308:16



<b>Nehls</b> 321:3,5	<b>no-climb</b> 228:2,9	<b>noted</b> 31:17,21	178:14 185:10
<b>neighborhood</b> 11:7	<b>no-fail</b> 249:21	<b>notice</b> 194:24	
<b>Network</b> 12:8	<b>Noah</b> 31:21 70:7	<b>notified</b> 106:11 124:6 209:11 234:18,20	<hr/> <b>O</b> <hr/>
<b>neuroscience</b> 268:13	<b>nominated</b> 146:17	<b>notion</b> 173:18	<b>oath</b> 22:8,9,17,19 23:17 37:9, 10,15 50:21, 25 51:4 52:19,20 53:7,9,10,22 54:7,9,15 55:12,22,24 62:12 187:9, 10 192:10 239:21 255:5 298:12 305:7 307:18,24
<b>never</b> 42:2 60:11 108:7 137:23 141:16 142:24 148:15 171:18 181:1 195:24 228:7 236:13,20,24 252:17 254:10 263:2 293:24 300:5 308:4 309:13,17,22 312:22 317:21	<b>nominating</b> 97:2 100:4	<b>notoriety</b> 288:13	
<b>news</b> 137:19	<b>nomination</b> 97:16 98:1 119:9 128:15,21 129:5 143:18	<b>November</b> 8:1 142:18 207:15,23 236:13 237:2,5 306:9 321:16	
<b>newspaper</b> 19:8 54:25 55:1 79:12	<b>nominations</b> 93:22	<b>nullify</b> 33:8	<b>oaths</b> 55:11,17
<b>newspapers</b> 17:19 19:1, 3,5 52:10 55:4 57:10	<b>nominee</b> 66:17 299:25	<b>number</b> 22:3 30:22 77:9,10 90:12 92:16 105:2 111:1, 11 119:18 124:22 136:21 137:1 162:22,24 170:1 187:7 189:11 204:19 210:3 215:22 242:19 248:15 264:12 288:14	<b>Obama</b> 116:8 117:8 137:17,21 156:5,13 157:16 191:10
<b>nice</b> 69:3 72:10 192:23	<b>nonmoving</b> 195:17	<b>numbered</b> 208:6	<b>object</b> 63:25 75:9 94:12 124:5
<b>Nicolais</b> 9:3	<b>nonpresidenti al</b> 114:24	<b>numbers</b> 210:9 229:13 252:21	<b>objected</b> 66:17 204:20
<b>night</b> 183:22 215:11 315:10 317:15	<b>nonresponsive</b> 308:17	<b>Nunes</b> 261:22	<b>objection</b> 20:19 61:6 64:16 75:20 124:16 159:14 204:21,23 212:25 213:7,12,19, 24 214:1,5 215:2 216:18 221:1 223:17,20 228:18 235:14,17,18 248:6 251:7 253:23,25
<b>Nikhel</b> 9:3	<b>nonstarter</b> 277:24,25 293:25	<b>Nwanguma</b> 172:3,12 176:21,24	
<b>nixed</b> 292:17	<b>noon</b> 204:4		
	<b>normal</b> 167:6 184:23		
	<b>North</b> 24:14,17,22 43:17 44:7 52:23		
	<b>notable</b> 27:14		
	<b>notarized</b> 114:5 118:1 133:10 153:6		
	<b>notates</b> 212:2		
	<b>note</b> 75:21 228:4 310:4		

263:12	<b>off-site</b>	15 117:17	8,9 138:16
296:13,20	245:18	118:8,10,14	<b>officeholder</b>
311:1 318:21	<b>offer</b>	119:8 120:3	136:10
<b>objective</b>	238:22	122:12	<b>officer</b>
158:3,14,22	251:24	123:7,8,11,	50:21,25
159:11,24	253:21	16,17,22	51:4,22
175:24,25	264:12,13	124:2,10	52:2,4,14,
176:8 177:2	<b>offered</b>	126:3 132:6,	17,22 53:3,
179:20,21	270:8	20 133:9,20	5,8,18,23,25
180:8	<b>offering</b>	134:21	56:5,25
<b>obligation</b>	36:2 252:9	135:5,13,14,	57:15,18,20
55:19 305:8	<b>office</b>	16,23 136:5,	58:1,2,11,20
<b>obscure</b>	9:15 18:21	13,17,20,25	59:1,6,7,8,
29:22	21:8,10,13,	137:21,23	16 65:12,25
<b>obvious</b>	15 22:5,14,	140:24 141:4	69:17 70:17
36:22	23 23:16	142:24	71:1,10,12,
<b>obviously</b>	24:9,18	143:14	14,15
20:20 31:22	38:25 49:16	144:14 145:1	163:14,25
100:1 162:13	50:19 51:11,	147:21,22	209:3
180:4 181:15	12,14,18	149:4,15	<b>officers</b>
<b>occasion</b>	52:5 53:9	151:19	50:14 51:9
59:10 307:13	59:19 60:8	152:21	71:11 93:20
<b>Occasionally</b>	62:14,17	153:18,20	221:23
291:5	65:2 74:4	154:21	224:25
<b>occasions</b>	89:7,9,13,17	155:4,9,21	241:14 262:8
172:16	90:24 92:4,	156:5,12,22	316:2,13
179:25	7,10 94:2,	157:7,13	<b>offices</b>
<b>occupation</b>	10,25 95:3,	158:16	50:14 51:5,8
229:20	4,18 96:6,8,	159:4,19	60:5 91:5
<b>occupied</b>	10,12,16	189:6 203:13	96:11 220:9
235:2	99:13,16	210:7 211:20	222:2
<b>occur</b>	100:2,3,6,	215:9,10	<b>official</b>
23:10	20,22 101:1,	218:4,13,22	18:16,19
<b>occurred</b>	22 102:4	219:23,24	50:25 62:25
17:21 22:6	103:6	220:21	79:18,23
27:4 58:23	104:15,25	222:12	91:2 93:19
85:2 125:3	105:6 106:1,	226:23	121:24 122:1
152:24 320:9	10,18,23	231:25	150:7,14,22
<b>occurring</b>	107:1,12,16,	237:21	191:16
316:2	20,25 108:5,	238:13	246:13
<b>October</b>	7,20 110:7,	242:19 243:3	271:14
117:21	25 111:18,	249:14	292:20,22
<b>odd</b>	20,21 112:1,	250:12	293:10
62:12 79:25	7,11,23	289:22	<b>officially</b>
<b>ODNI</b>	113:22,24	290:14	269:17,23
203:19	114:7,11,12,	<b>office's</b>	270:22
	18 115:2,5,	118:19	271:5,9,16
	8,11 116:11,	132:16,22	
		133:2 135:2,	

Proceedings Day 3  
November 01, 2023

<b>officials</b>	131:14,21	211:5,11	298:14,21,23
21:7 23:22	132:1,7,15	213:8,10	299:1
24:9,16,18	133:1,11,21	216:5 219:5,	301:16,20,25
29:5 62:17,	134:9,11,15	12 223:13	302:3,4
23 124:11	135:2,8,17,	224:6,14	308:16,19
253:10	21,25 136:7,	225:16	311:4
293:10	16,22	228:12	314:22,24
<b>Ohio</b>	137:13,20,25	230:20	318:9,17
164:23 166:1	138:6,12,19	233:16	320:6
<b>okay</b>	139:1,5,8,	239:4,16	<b>OMB</b>
15:7 21:16	12,18 140:2,	241:5 244:14	258:22
23:18 30:7	14,17 141:2,	250:8,16,17	<b>once</b>
32:19 37:5	11,15	255:19	19:7 92:3,6
38:13,16	142:15,19,22	261:16 264:1	94:22 108:19
55:10 71:7	143:3,8	265:6,13,19	173:5 180:12
76:14,17	144:9	267:7,11,15	227:4 236:23
77:3,7,17	145:13,17	282:1,16	267:23
78:3,11,17,	147:8,18	283:15,21	280:13
22 79:4	148:13 149:3	285:5,18,23	284:13
80:10,14	152:12	286:7,19,25	287:16
81:3,14,17,	153:13	287:18	<b>one</b>
23 82:5,14	154:18,24	289:3,7,19,	15:4,6,10
83:11,15,18,	158:5 159:7,	23 290:2,6	16:7,10
24 84:4,17,	21 160:5,13,	291:1,9,13,	18:17,21
20,24 85:10,	23 161:10,25	19 292:8	27:15 29:17
18,21 87:22	166:3 168:3,	298:19	30:25 32:15
88:3,5,25	23 170:17	299:9,22	34:5 35:7
90:23 91:13	171:8 172:13	300:2,11,14,	36:15 37:5,
92:24 95:9,	173:8	25 301:5,8,	14 43:16
17 96:3	174:10,15	11 302:7,24	48:15 49:25
98:21 99:5	175:25	303:3 304:18	52:24 53:14
102:4 104:2,	176:10,16	305:7,11	54:20 56:17,
11 110:18	177:25	306:25	23 58:4
115:20	178:2,6	307:15,22	59:7,9 60:20
117:4,11	180:12	308:4 309:1,	62:15 64:17,
118:22	182:18	6,22,25	24 66:17
119:24	194:10	310:15	77:9,13,21,
120:7,15,22	195:1,3	311:12 313:4	22 78:17
121:15,19	198:6 199:3,	314:7 315:6	81:4 84:21,
122:8,12	7,10,20,25	316:10	25 85:3
123:6 124:1,	201:9 202:7,	317:17	87:10 89:24
21 126:2,14,	10,19,23	320:5,13,24	94:17 96:5
19 127:14,	203:8	321:7,11	97:15 98:7,8
17,20,24	204:16,24	<b>Olson</b>	106:21
128:4,7,13,	205:2,5,11,	8:9 9:2	120:17 125:1
25 129:4,7,	17,20 206:16	265:21	130:23
13,21 130:4,	207:10,22	266:9,12,18	132:23
7,10,20	208:1,4,15,	296:13,20	143:24
	19 210:1,18	297:2	

147:14 149:3	<b>ongoing</b>	20:13 38:4	<b>org</b>
154:2 160:21	118:12,19	40:10 43:4	209:20
164:16,19	168:8 180:25	52:9 53:14	<b>organization</b>
165:21	<b>online</b>	64:20 75:3	188:21
167:13 172:8	18:23	78:14 82:9	256:5,8,14
173:1 174:6	<b>open</b>	<b>opponent</b>	266:10
178:10 187:7	30:21	19:20	274:12,15
189:11 191:3	<b>opening</b>	<b>opportunity</b>	<b>organizations</b>
196:1,11,18	66:9	148:20,23	10:23 203:15
199:4 201:7	<b>operate</b>	153:21 154:5	270:18
203:11	163:10	161:23	<b>organized</b>
205:9,14	<b>operated</b>	278:10	42:2
211:8,17	217:1 221:22	<b>opposed</b>	<b>organizer</b>
218:13	222:6	46:11 67:15	268:19
219:25	<b>operating</b>	145:6 148:6	<b>original</b>
221:25	219:22	174:5	13:9 60:13
223:16,18	<b>Operation</b>	<b>opposing</b>	122:10
224:3 226:5, 8 231:9	249:21	195:10	268:20
239:1,7	<b>operational</b>	<b>opposite</b>	<b>originally</b>
240:6,7,8	217:4	273:22	55:7 268:11
242:15	<b>operations</b>	<b>opposition</b>	<b>originals</b>
246:22	201:14,16	30:22 189:2	269:24
247:13	202:16	<b>option</b>	<b>oust</b>
256:18	<b>operators</b>	98:2	24:9
258:17	224:24	<b>Orange</b>	<b>outcome</b>
259:2,9	<b>opining</b>	258:22	91:24
263:4,7	166:6	259:1,7	108:14,16
265:22	<b>opinion</b>	<b>order</b>	118:21
268:19	19:22,24	41:20 45:1	123:19,24
269:24	33:12 35:15	52:17 56:21	127:2
270:19 271:3	36:2,11	81:7 102:13	<b>outlet</b>
273:18,20	38:2,10,14	132:7 137:10	283:2
278:20 279:3	39:16,18,25	145:8 153:9	<b>outlets</b>
282:10 284:2	40:7 41:13,	154:3 160:22	237:9 266:23
287:24 288:9	25 42:5,6,12	194:4 197:8	<b>outlined</b>
290:9 294:25	43:9,12	198:23	108:24
298:15 300:8	44:12 51:16,	213:12 215:1	259:18
304:11,23	17,25 52:1	216:22	<b>outrageous</b>
306:12,13	53:16,25	254:15,19	260:6
307:13	54:1 55:23	255:1,7,13, 15	<b>outright</b>
310:11 312:5	59:12 64:9	<b>ordered</b>	275:6
<b>one's</b>	68:19 74:16	38:19 221:7	<b>outset</b>
19:3 304:16	75:7 80:15,	254:9,10	92:9
<b>ones</b>	16 86:10,16	<b>orders</b>	<b>outside</b>
14:12 35:25	87:4 128:5	217:12 218:5	18:7 41:15
52:11 270:25	<b>opinions</b>	267:2,3	124:16 223:1
291:4 306:11	18:11 19:23		270:10 271:4

309:18	<b>owns</b>	208:6,10,11	<b>paragraph</b>
<b>Oval</b>	261:2	210:19	107:3 142:12
211:20		215:25 226:2	251:14
237:21		230:19	305:23
242:19 243:3	<hr/> <b>P</b> <hr/>	240:15	<b>paraphrasing</b>
289:22	<b>P-107</b>	242:11	180:4 208:21
290:9,14	105:17 142:8	254:21	222:22
<b>overdramatize</b>	<b>P-158</b>	305:11	<b>pardoned</b>
312:16 314:5	109:14	312:12	28:4
<b>overdramatizing</b>	124:18,23	315:15	<b>pardons</b>
313:9	<b>P-I-E-R-S-O-N</b>	<b>paid</b>	30:6
<b>overlay</b>	265:20	256:4,9,25	<b>Park</b>
196:5	<b>p.m.</b>	261:5	309:10
<b>overrule</b>	195:4,5	<b>painted</b>	<b>parlance</b>
94:14	232:20	184:25	206:1
<b>overruled</b>	233:5,18	<b>panel</b>	<b>Parscale</b>
214:7 215:6	235:11,23	84:2	310:7,21
221:2 248:18	250:25	<b>paper</b>	311:2,6,10,
251:13 254:4	297:24,25	12:6,7 13:1	12 312:9,19
308:18 311:3	302:5 321:15	15:14,17	<b>part</b>
<b>oversaw</b>	<b>PAC</b>	16:11 36:3,5	17:2 27:20
58:4	256:19,22,25	65:18,20,22	28:12 30:3
<b>oversee</b>	270:10	84:11,14,18	33:10 38:23
90:16,19	<b>pace</b>	86:7,10,16	56:24 62:20
91:6 203:14	196:20	87:12	64:1 71:9,13
270:15	<b>PACS</b>	<b>papers</b>	78:5 84:13
<b>overseeing</b>	256:18	12:9 65:10	85:16 99:5
107:18	<b>page</b>	290:11	126:19 134:8
<b>oversight</b>	14:9,25 15:1	<b>paperwork</b>	145:17 152:8
90:18 202:16	16:1,17	96:13,25	176:1 180:22
<b>overt</b>	30:17 31:13	97:4,5	183:2 194:18
40:24 41:5	32:14,25	100:23	205:14
42:15 45:16	34:13 35:2	106:12,22,25	220:23
81:8,9 82:2,	38:7 40:18	110:9 112:8,	230:18 245:4
3 165:9	41:23 42:11	9 116:24	247:23
181:2	43:1,14,20	122:15 123:9	249:19
<b>overthrow</b>	46:3,19	137:11,14	257:16
31:3 33:18,	53:17 54:19	141:17	259:21,22,24
22 35:12	56:16 58:6	142:20,23,25	260:1 261:4
<b>overthrowing</b>	59:11,24	143:17	263:9 264:14
33:7	66:6 69:13	145:3,5,8,13	266:8 274:3,
<b>overturn</b>	109:16	147:9	5,13 276:17
184:3	117:23	149:10,13,15	293:11
<b>overview</b>	118:6,23,24	152:8,11,20	302:15
11:3	121:20 170:2	153:3,4,11,	315:15
	188:4,5	12 154:16,20	<b>part-time</b>
	207:13	<b>parade</b>	220:15
		264:16	



<b>participants</b> 291:1	23 129:5 143:12,18,23	36:4 65:19 78:18	<b>penultimate</b> 179:11,15
<b>participate</b> 32:22 274:10 284:15	144:2,5,6,7, 23 145:5,24, 25 146:1,17, 25 147:6	<b>pause</b> 85:2 125:3 320:9	<b>people</b> 20:1 21:13, 21 22:15,22 25:6,10,11, 16,24 26:1, 22 28:3 29:20 31:5 35:6 38:24 41:1 48:10 55:6,17 61:9,21 62:12,21 63:8 67:9 70:25 71:13 72:4,13 74:19 78:12 92:14 95:9 145:25 167:24 169:4 181:24 188:13 190:10 196:11 198:1 209:13 216:9 219:16 220:14 227:1,14 228:15 235:23 238:5 241:3 244:6 245:15 247:15 249:4 254:19 266:13 270:22 271:8,14,18 272:10 274:24 275:10 277:20 278:3,7,8,21 279:25 280:7,9,17 282:20 283:3 284:6 285:6 288:15 290:22 291:5
<b>participating</b> 41:10	148:3,4	<b>pay</b> 194:24 256:8,15,22	
<b>participation</b> 41:11	153:11,12,19 195:10,14,17 263:19 268:20 269:6	<b>paying</b> 217:23	
<b>particular</b> 10:19 17:22 36:3 37:3 72:7 74:25 92:13,21 93:4 104:10 110:6,10 117:14 122:8 138:21 161:1 166:13 172:21 194:25	<b>party's</b> 144:22	<b>pays</b> 256:12	
<b>particularize</b> <b>d</b> 171:17	<b>pass</b> 25:9,12 299:22	<b>peace</b> 219:9	
<b>parties</b> 95:5 119:23 136:25 145:18 147:2 154:4	<b>passed</b> 24:6 38:17 87:9 98:13	<b>peaceful</b> 178:23 179:1 181:8 184:8	
<b>partisan</b> 100:2 109:6	<b>past</b> 76:25 100:8 103:24 125:15 136:11 278:20	<b>peacefully</b> 172:13 179:2,4,13	
<b>partners</b> 224:24	<b>Patel</b> 199:15,17 200:7,13 201:25 213:6 223:23 231:14 264:4 265:1 300:23	<b>pedantic</b> 166:2 170:9	
<b>parts</b> 91:25	<b>path</b> 275:23	<b>peer-reviewed</b> 12:13	
<b>party</b> 87:17 93:21 97:16,18,23 100:4,17 109:6,23 111:12 112:19 119:4,8,9,20 120:4 121:10,17, 20,23 122:2, 22 123:3,5 128:9,15,20,	<b>patriotic</b> 178:24 179:1 184:9	<b>Peety</b> 290:18	
	<b>patriotically</b> 179:3,5,13	<b>pejorative</b> 165:17	
	<b>pattern</b> 139:23 168:20 169:4 184:20 189:17 191:5	<b>Pelosi</b> 191:11	
	<b>patterns</b> 166:21	<b>Pelosi's</b> 318:1	
	<b>Paulsen</b>	<b>penalty</b> 189:5	
		<b>Pence</b> 180:3 185:1, 24 186:3 188:9,10 191:23	
		<b>pending</b> 49:14 61:16	
		<b>Pennsylvania</b> 13:4 27:17 28:12	
		<b>Pentagon</b> 231:22	

292:13,25	130:15 132:8	66:4 125:25	299:2 301:18
293:4 294:8,	148:9 153:9	160:18	302:5 304:24
11 296:17	158:16	164:24	307:16
298:3 303:10	168:10	178:10	308:20
306:5 307:18	178:17	<b>petitions</b>	313:22
308:13 309:2	187:24	146:13	318:15
311:7	218:20 272:4	<b>phases</b>	<b>pincite</b>
<b>people's</b>	285:12	215:16	170:1
223:4	<b>personal</b>	<b>Philip</b>	<b>Pingeon</b>
<b>Percenter's</b>	43:23 225:4	48:15 49:1	163:24
165:6	288:24	<b>phone</b>	<b>pitchforks</b>
<b>perfect</b>	<b>personality</b>	181:20	190:16
200:2 202:6	168:13	226:17 235:1	<b>pivotal</b>
<b>perform</b>	<b>personally</b>	262:18	52:21 58:17
217:19	44:25 139:13	302:15,24	<b>place</b>
<b>performing</b>	217:23	<b>phonetic</b>	12:8 21:5
209:8	277:12	65:23 152:15	108:22 152:9
<b>period</b>	<b>personnel</b>	<b>phrase</b>	211:19
11:24,25	219:2	26:13 35:21	217:19
12:1 17:22	<b>persons</b>	36:8 72:20	240:10
29:7 39:8	30:22 93:21	73:3	245:22
50:12 86:22	122:9 195:11	<b>phrasing</b>	252:24
87:4,7,13,14	<b>perspective</b>	60:18	257:21
100:5 145:22	73:22 123:4	<b>physical</b>	266:21
146:9,12	163:20	165:9 173:11	272:12,13
149:7 248:21	215:12	274:11	<b>placement</b>
<b>perjury</b>	223:12	305:25	53:6
22:21 106:14	224:21	<b>picked</b>	<b>places</b>
<b>Permanent</b>	291:14	243:5	148:24
202:14	<b>persuasive</b>	<b>picking</b>	<b>placing</b>
<b>permission</b>	69:21 71:21	290:24	107:22
265:25	<b>petition</b>	<b>picture</b>	<b>plain</b>
266:5,24	93:23 97:1,	303:25	176:8
301:20	20,21,22,24	317:1,22	<b>plaintiffs</b>
<b>permit</b>	98:1 128:15	<b>pictures</b>	172:25
293:9 309:7,	146:5 151:3	280:4 294:16	176:24
14	<b>petitioner</b>	<b>piece</b>	178:17
<b>permits</b>	176:24	15:9 16:7,10	185:12
278:4	<b>petitioners</b>	227:21,22,23	<b>Plaintiffs'</b>
<b>permitting</b>	9:1,20 20:15	233:11 250:3	188:2 301:16
309:16	162:11,19	<b>pieces</b>	<b>plan</b>
<b>person</b>	163:7 165:12	117:12	196:23 211:2
24:5,19	177:1 178:24	<b>Pierson</b>	212:6
31:21 43:5	196:6,21	265:17	214:16,17
45:25 50:18	197:3	267:8,24	309:19
93:24 101:4	<b>petitioners'</b>	268:2,4,9	<b>planned</b>
102:6 114:11	13:23 17:23	297:19 298:9	319:18

<b>planning</b>	80:3,11	253:10 272:9	<b>positions</b>
194:19	83:16 85:11	316:2,13	21:22 51:5
273:12	117:8 133:14	<b>police's</b>	89:12,15
279:18	136:4 146:16	223:8	<b>Positives</b>
294:23	147:8 162:18	<b>policies</b>	15:19
<b>plans</b>	186:23	67:1	<b>possibility</b>
217:4 279:23	193:19	<b>policy</b>	206:22
309:21	205:18	203:4 256:3	<b>possible</b>
314:13	206:24	<b>political</b>	141:23
<b>platform</b>	209:14	30:21 67:9	299:21
202:16 203:5	218:20	89:23 112:19	<b>possibly</b>
261:2 272:7	225:25 231:2	119:23 120:3	150:15
<b>plausible</b>	234:8 238:22	166:16	210:16
173:22	239:6,7	167:6,18,19	<b>post</b>
<b>play</b>	243:14,17	179:23	12:9
91:17 96:8,	244:21,23	184:23	<b>posted</b>
19 111:18	245:7 246:13	191:6,8	12:7,15
193:7	247:4 254:18	268:21 269:4	258:13 317:8
<b>players</b>	263:13	<b>politics</b>	<b>posting</b>
277:10	269:20	268:15,17	280:4
<b>playing</b>	272:1,24,25	271:10	<b>posture</b>
260:15	279:21	<b>Populist</b>	24:21 154:4
<b>plays</b>	281:3,4	12:1 15:20	<b>potential</b>
22:8,9	282:2,3	<b>portfolio</b>	116:13 307:2
<b>pleas</b>	283:23 285:1	203:6	<b>potentially</b>
188:11	289:9 290:17	<b>portion</b>	50:1
<b>please</b>	293:23 311:9	35:6 51:8	<b>pounding</b>
10:4 88:12,	320:23	66:10 69:18	186:6
20 89:3	<b>pointed</b>	<b>portions</b>	<b>poured</b>
125:17,22	239:6,14	90:22 163:13	25:5
131:8 133:25	<b>pointedly</b>	<b>portrayed</b>	<b>Powell</b>
140:1,16	23:8	258:9	44:7
142:8,12	<b>pointing</b>	<b>posed</b>	<b>power</b>
205:3 208:6,	242:3 253:16	60:3	15:15 25:2
25 213:4	<b>points</b>	<b>position</b>	47:23 55:20
223:15	80:12	26:5 65:14,	<b>powerful</b>
268:3,9	291:20,22	17 82:16	187:10,24
272:5	292:4,5	89:8,11,12	<b>powers</b>
<b>Plot</b>	<b>police</b>	99:14 107:11	95:21 222:3
257:18	207:7 220:6	108:4 123:6,	<b>practice</b>
<b>plotting</b>	221:9 222:21	9 126:15,20,	79:17 93:11
181:23	223:3,6	22 127:10,13	118:18 135:2
<b>podcast</b>	224:25	203:9 213:23	136:6,7
16:5,8,20,25	225:1,11,18	236:20	139:24
84:3	227:24 228:9	237:15	200:23,24
<b>point</b>	234:14	255:24 257:6	204:7 210:10
29:6 51:6	238:4,14,22	260:24	211:14
	250:13 252:1		

212:14 215:8 218:23 <b>practiced</b> 200:21 <b>praise</b> 303:8 <b>praising</b> 191:5 192:3 <b>pre-civil</b> 44:17 <b>precedent</b> 222:17 <b>precedents</b> 46:5,9,11,12 <b>precipitated</b> 172:14 <b>precise</b> 55:13 <b>predates</b> 85:19 <b>predecessor</b> 57:19 <b>predict</b> 158:15 <b>preemptive</b> 221:15 262:24 <b>preemptively</b> 226:24 <b>prefer</b> 142:4 319:5 <b>preliminary</b> 8:7,19 <b>premise</b> 163:10 <b>prepara-</b> 129:15 <b>preparation</b> 90:5 125:23 129:17 <b>preparations</b> 211:1 <b>preparatory</b> 217:20 <b>prepare</b> 207:18	244:17 <b>prepared</b> 161:25 182:4 185:7 187:16 194:13 196:16 197:10 207:22 244:18 <b>preparing</b> 293:18 <b>preposterous</b> 62:3 <b>prescribed</b> 75:18 113:24 <b>present</b> 90:14 92:15 242:8 <b>presentation</b> 16:13 197:14 <b>presented</b> 162:25 195:13 252:4 <b>presenting</b> 20:12 <b>preserve</b> 54:7 187:10 <b>presided</b> 32:23 <b>presidency</b> 51:12,18 54:1 60:24 65:2 66:20 68:16 69:11 <b>President</b> 9:6 25:19 28:1,4 30:5 51:21 52:2 54:4 55:24 56:4,11,20 57:7,14,17, 19 58:1,10, 20,23 59:5, 15,19 60:4 61:4,9,24 62:4,9 65:11,25	66:16,25 67:16,17 68:8 69:10, 16 70:15,16, 25 71:4 106:4,11 113:10 115:25 116:1,6 137:17,21 157:10,17, 22,23 159:9 162:8 163:6, 17,20 164:2, 4,7,14,20,25 165:4,16,21 166:6,7,12, 17,25 167:24 169:18 171:19,20 172:7,11,15, 20 173:4,8 174:2 177:17 178:13,20 179:1 180:3, 11,21 181:5 182:2 183:2 184:7,11 185:1,9 186:21,25 187:1,9,15 188:8,10,11, 17 189:2,11 190:4 191:10,23 196:2 197:21 198:4 203:16 204:11,13 205:21 206:21 210:25 212:5,17,22 213:16 214:10,25 215:19 216:6,7 217:6,10,16 219:8,14 221:13	227:18,21 228:12,16,23 229:2,7 230:10 232:2,5,9, 11,19 233:4, 18 234:2,4, 8,13,20,23 235:5,10,22 237:9,22 241:10 242:9 244:24 245:24 251:25 254:25 255:3,7,20 256:1,9,15, 21,24 257:15 259:3,8 261:18,19,22 262:12,14, 15,17 264:5 268:25 269:1,7 273:21 277:6 278:12,15,19 279:6,9,22 280:5,13,18, 23,24 282:21 284:15 285:3 286:4,16 287:14,16,22 288:19 289:16,18,20 290:10,23 291:3,11,24 292:23 296:7 299:19 300:15,19 305:18 306:22 311:14 312:2,22 <b>President's</b> 54:7,15 58:25 186:2 213:23 214:2 216:25 270:9 280:12
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

289:21 290:9 291:15 292:8 294:3 <b>presidential</b> 17:17 18:19 27:5 52:8 56:3 66:7 97:7,11,12, 13 98:4,9, 13,17,18 99:4,20 104:11,14,25 108:23,25 109:13,24 110:9 111:12 112:12 116:5 119:4 120:6, 7,19 122:20 123:15 128:9,12,14 133:2,15,17 134:7 142:18 143:17 144:3,4 147:3,6,24 148:11 149:6,16 151:20 152:5,6,25 154:19 160:1 203:16 212:15 217:2 <b>press</b> 270:8 273:6 <b>presumably</b> 112:16 157:21 244:3 <b>pretty</b> 18:15 67:20 77:24 79:16 87:8 169:21 178:7 181:18 190:18 227:11 274:21 306:22 307:4 310:24 314:15 316:2	318:2 319:13 320:7 <b>prevent</b> 26:22 27:2, 24 28:15 236:3 272:6 <b>prevented</b> 235:21 <b>preventing</b> 235:9 <b>previous</b> 8:17 243:6 276:16 287:8,24 288:10 294:8,10 295:5 307:3 <b>previously</b> 14:21 90:9 188:5 191:24 207:11 308:8 <b>primaries</b> 144:4 147:7 <b>primarily</b> 90:21 280:1 <b>primary</b> 17:9,13 97:7,12,13 98:5,9,13, 17,18 99:4 109:13,24 110:9 111:13 112:12 119:5 120:6,7,19 122:20 123:15 128:12,14 129:16 134:7 135:14 143:17 144:3 147:3,24 149:6,12,17 151:25 152:14,25 263:3 287:15 300:12 <b>principal</b> 58:14 300:16	<b>principals</b> 272:8,16 <b>principle</b> 187:3 <b>principles</b> 182:3 221:25 <b>prior</b> 32:8 74:8 82:23 89:14 90:4 151:10 163:23 168:20 177:17 178:3 212:12 236:13 237:1 <b>private</b> 295:25 296:2 <b>proactive</b> 221:15 <b>proactively</b> 227:23 <b>probably</b> 26:3 29:13 34:23 77:13 78:7 81:21 182:14 200:1 218:7 219:24 227:6 260:25 284:19 289:24 295:20 <b>problem</b> 229:9 278:2 287:3,12 295:10,12 <b>problematic</b> 296:10 <b>problems</b> 288:11 295:17 <b>procedural</b> 24:20,21 <b>procedurally</b> 194:7 <b>procedure</b> 143:14 193:20,23	194:1 <b>procedures</b> 193:22,25 <b>proceed</b> 76:6 139:4, 10 149:21 298:21 301:24 319:5 <b>proceeding</b> 13:21 103:4, 5,15,18 123:13 193:21,24,25 259:22,23 <b>proceedings</b> 8:3 85:2 125:3 195:21 265:24 266:22,24 267:1 320:9 321:14 <b>process</b> 78:6 91:17 97:2,10,11 98:16 100:19 101:15 104:13 108:24,25 109:12 128:15,16, 21,22 143:19 146:17 148:7 157:21 168:8,13 193:3 194:19 206:23 214:13 220:22,23 222:15 226:25 260:11 266:22 270:24 271:2,4,16 275:9,14 276:17 309:16
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>processes</b> 98:14 99:10 216:24 220:12 272:13	173:25 174:8 175:6,14 182:20 183:8 189:21 191:4 197:2	<b>prosecuted</b> 28:4	212:19 241:1 264:13 305:4
<b>processing</b> 112:9	<b>professors</b> 12:9 65:1,19 69:15 77:9 78:18,22 84:21	<b>prosecutor</b> 201:7,13 243:18	<b>provided</b> 103:22 104:16 113:25 162:12 209:11 239:18 297:14
<b>proclamation</b> 56:22 57:8	<b>proffered</b> 75:23	<b>prospect</b> 62:1	<b>provides</b> 189:5 193:22
<b>proclamations</b> 56:4,9,10,17 57:10	<b>prohibited</b> 99:13 190:12	<b>protect</b> 49:22 54:7 187:11 216:8 219:15 228:14 262:4 300:16,18,19	<b>providing</b> 189:15 203:15
<b>produce</b> 136:22,24 137:2,5 170:16,17 171:11,12	<b>prompted</b> 21:6	<b>protected</b> 176:4,5	<b>provision</b> 22:13 37:6 39:4 48:11 74:2 95:25 106:16 116:25
<b>produced</b> 246:24	<b>prong</b> 174:15 178:8 190:6	<b>protecting</b> 258:9 272:16 300:15	<b>provisional</b> 56:14
<b>producer</b> 272:4	<b>pronounce</b> 315:2	<b>protective</b> 210:16	<b>provisions</b> 74:11,20 93:14 134:24 150:25 151:4
<b>produces</b> 136:21 137:1	<b>pronounced</b> 80:11	<b>protects</b> 188:18 258:6	<b>provocative</b> 177:11
<b>professional</b> 10:22 16:2 274:19	<b>pronouncing</b> 315:1	<b>protest</b> 27:18 91:23, 24 211:1 212:3 264:16 306:16,21 315:8	<b>public</b> 12:10 26:21 27:1 33:6 55:5 81:20, 21,22 201:1, 3 222:23 229:25 230:1,7,14 231:1,16 247:3,5 251:23 260:10 261:12,16 295:23 297:11 299:12 304:13 305:2
<b>professionals</b> 217:19	<b>pronunciation</b> 65:24	<b>protesters</b> 173:19 178:15	<b>public-facing</b> 90:21
<b>professor</b> 9:20,22 10:3 16:20 17:1 20:16,19,22 29:24 36:3, 4,5 64:7,8, 10,11,19,21, 25 65:20 68:14 71:23 75:5,12,22 76:1 77:19 83:25 84:1, 18 86:3,6, 16,22 87:1, 17,22 164:1, 5,17 165:14 166:4,5 168:1,18 169:3 171:18,21	<b>proof</b> 309:17	<b>protesting</b> 92:1 172:13	
	<b>proper</b> 64:17 102:8 149:13 153:11 154:16,20	<b>protests</b> 207:18 273:13 287:8	
	<b>properly</b> 111:2 118:1 152:8 153:6	<b>protocols</b> 272:13	
	<b>property</b> 28:14,17	<b>Proud</b> 165:5 181:21	
	<b>proposal</b> 20:7 21:20 58:17	<b>prove</b> 100:14	
	<b>proposed</b> 39:10,14 58:4 187:17	<b>provide</b> 90:17 91:9 127:25 128:1 136:23,24 170:9 187:16	
	<b>pros</b> 273:24 274:1		

<b>publicly</b> 261:11 309:2,4	92:24 98:22 161:19 162:10,13 163:8,9 164:10 214:12 271:13	91:23 100:20 102:19 104:14 106:21 108:1 112:10,23 113:1,3,6, 10,23 114:8, 11,13,15,17 115:2,5 118:13 130:11 132:5,23 133:9,19,22 134:6 135:10,13, 14,18 136:12,15 143:2 155:12,25 156:14	95:17 111:16 118:11 120:19 122:4 125:16,22 137:25 139:25 149:3 153:23 156:12 157:15 158:11,12 213:3 242:5, 21 247:14 253:25 274:8 303:9 305:15 307:15 308:20 313:1
<b>published</b> 11:4 12:11, 12 14:13,21 153:5 231:4 248:24	<b>pursuant</b> 24:16 219:22		<b>questioned</b> 166:14 229:25 230:4
<b>pull</b> 13:23 26:12 31:13 34:13 38:7 46:20 66:4 92:25 93:2 105:16 131:7 141:23 142:7 239:10 304:25	<b>pushed</b> 172:25		<b>questioning</b> 63:25 153:15 242:4
<b>pulling</b> 17:23 54:19 59:24 188:2 305:11	<b>pushing</b> 284:6,7		<b>questions</b> 35:1 63:2 75:15 76:3, 18 85:4,22 87:17,18,20 91:14 92:25 93:13 96:4 109:25 116:2,25 117:5,12 125:4,13 127:7 143:4, 6,7 150:6,10 151:18,22 153:21 154:2 155:3 156:9 158:6 174:1 192:24 228:11 231:10 241:20 244:7 263:19,25 264:23 296:24 297:17 298:16,18
<b>punch</b> 165:18	<b>put</b> 21:4 27:20 70:6 103:11 205:2 207:12 208:5 223:14 225:23 226:2 228:3 229:18 252:18 255:7 258:11 281:5 285:14 299:15 311:4,9 313:17	<b>qualified</b> 101:6 107:17 144:25	
<b>punched</b> 173:1	<b>putting</b> 67:9 138:17 313:15 319:23	<b>qualify</b> 82:4 102:14 104:18 132:17 133:3	
<b>punished</b> 171:13		<b>qualifying</b> 50:25	
<b>punishment</b> 21:25 22:3		<b>quality</b> 77:14 80:6 139:2,14,20 140:4	
<b>purchase</b> 42:19		<b>quarterback</b> 227:25	
<b>purpose</b> 42:16 52:21 62:8 81:22 119:6,7 179:15 182:22 183:19 207:1,3 252:17 270:19 271:8 291:15 314:11,13	<hr/> <b>Q</b> <hr/>	<b>Queenton</b> 257:24	
<b>purposes</b> 36:14,21 51:19 52:3 54:9 65:12 66:1 85:10	<b>QRF</b> 245:18,21	<b>quell</b> 278:5	
	<b>qualification</b> 22:5 53:21, 25 54:3 74:3 114:18 118:20 123:10 132:20 135:16 141:4 151:2 189:6, 7	<b>question</b> 24:1 44:24 49:6 51:11, 16 52:22 54:15 59:18 60:3 65:1,11 71:21 75:4 82:7 85:4 94:6,8,21	
	<b>qualification</b> <b>s</b>		

318:9,13	<b>raised</b> 24:1 146:9, 11 162:22	<b>rational</b> 22:10 37:10	<b>reads</b> 205:20 210:23 216:3
<b>quick</b> 95:8 197:24 245:17 246:1,5 263:24	<b>raising</b> 281:7	<b>reach</b> 147:14 232:8,12 238:13 281:15 284:19 285:16	<b>ready</b> 88:9 183:11 197:21 220:13 227:2 255:1,8 290:20
<b>quickly</b> 92:23 154:13 170:24 285:20 316:2	<b>rallies</b> 216:7 269:6 278:20 287:8 295:5 306:6, 9	<b>reached</b> 186:20 222:19 234:8 238:3 273:11,19 274:1 276:25 277:13,22 282:6 284:13,20 285:8,17	<b>real</b> 18:23
<b>quite</b> 12:22 72:21, 24 128:20 136:21 137:1,25 174:11 248:15 273:22 307:15	<b>rally</b> 172:7,9,12 286:6,17 289:25 290:21 292:24 293:1 308:3	<b>reaches</b> 264:11	<b>reason</b> 22:24 24:20 68:24 70:4 71:4,13 72:17 82:13 85:16 156:17 169:10,15 181:19 191:8 233:8 250:5 251:1 272:15 287:15
<b>quo</b> 24:9	<b>ran</b> 66:16 137:17 203:4 269:7 283:3	<b>reaching</b> 220:23	<b>reasonable</b> 186:9 195:11,16 284:5
<b>quotation</b> 170:4	<b>rarely</b> 60:14	<b>react</b> 159:25	<b>reasons</b> 34:20 49:13 69:25 219:20 273:19 288:24
<b>quote</b> 55:14 168:13 172:24 247:13	<b>Raskin</b> 8:12 9:9 87:18 143:7, 10,11 149:19 160:12 263:20	<b>reacted</b> 176:3	<b>rebellion</b> 23:7,17 27:17 30:11 31:1,2,7 35:9,10 36:9 37:14,18 40:24 41:6, 10,15 43:6, 10,22 44:9 47:3 83:9
<b>quoted</b> 78:18	<b>ratification</b> 17:4 20:7 23:14 26:17 39:7,10 48:11 58:5 61:16 69:4 70:1	<b>reaction</b> 176:4 222:10 245:17 246:1,5 279:12,14 292:9	<b>rebuffed</b> 188:11
<b>quotes</b> 211:1 216:8 258:14	<b>ratified</b> 23:12 25:5 26:4,10 33:16 40:14 47:17,19 48:7 49:9 56:12 70:24	<b>read</b> 33:2 107:5 113:21 115:18 118:6 128:19 137:19 170:7 230:19 244:5 249:8,10,13, 14,16 305:13 310:12 313:10	<b>rebuttal</b> 64:4
<b>quoting</b> 180:19 247:11	<b>ratify</b> 38:21	<b>reading</b> 118:4 171:1 243:4	<b>recall</b> 98:19 104:1 108:13,14
<hr/> <b>R</b> <hr/>	<b>rational</b> 170:15		
<b>races</b> 107:19			
<b>Radical</b> 67:1			
<b>radio</b> 299:18			
<b>raise</b> 88:12 268:2 282:7			



109:10	130:17	307:18	167:2
134:5,23	<b>recess</b>	320:11,14	<b>referring</b>
141:22	88:6 195:4	<b>recorded</b>	14:15 104:22
142:14,15	297:23,24	78:25 79:3	170:5 184:16
150:4,10,17	321:11	<b>recording</b>	216:10,14
151:22,24	<b>recognize</b>	267:1	306:8 307:21
152:4,7,19	105:22	<b>records</b>	313:4
210:14	109:20	18:17 101:2	<b>refers</b>
218:14	118:25	102:5	39:10 206:24
232:10	207:14	<b>recounts</b>	245:1,24
234:2,3	208:12	273:2	259:7
242:1,20	223:24	<b>recourse</b>	<b>reflect</b>
243:8 254:7,	<b>recognized</b>	103:12	249:1
14 275:13	20:8 63:8	<b>recovering</b>	<b>reflected</b>
276:4,5	<b>recollection</b>	200:16	208:23
278:25	141:19	<b>RECROSS-</b>	<b>reflects</b>
281:23	210:4,17	<b>EXAMINATION</b>	236:12
308:24	<b>reconcile</b>	154:11	<b>refrain</b>
316:16	196:17	<b>red</b>	138:17
<b>recalled</b>	<b>Reconstructio</b>	281:7	<b>refresh</b>
251:18	<b>n</b>	<b>redirect</b>	131:1
<b>receive</b>	11:14 16:9	85:23 86:1	<b>refusal</b>
95:8 96:13	21:21 27:13	153:22	191:18
111:2 116:24	29:11 35:16,	154:10 155:1	<b>refuse</b>
117:17	20 37:22	254:3 263:23	47:24
143:23 144:4	38:12,15	264:2 318:11	<b>refused</b>
147:9	39:13 40:1	<b>reelection</b>	106:22
<b>received</b>	45:19 51:17,	67:14	142:19 149:5
14:7 68:5	22 52:1	270:11,13	184:13
116:4 117:21	58:16 59:13	<b>reestablishin</b>	186:12
118:9 122:13	67:2 73:1	<b>g</b>	190:11 231:4
124:2 137:23	85:16 86:12	98:13,14	283:4
139:15	<b>reconvene</b>	<b>refer</b>	<b>refusing</b>
145:23 153:3	88:4 194:12	18:22 57:15	71:6
162:16	321:12	82:9 299:6	<b>refuted</b>
163:12,14	<b>record</b>	<b>reference</b>	255:4
169:4 248:12	18:5 21:3,24	59:2 233:11	<b>regard</b>
<b>receives</b>	22:7 23:2	<b>referenced</b>	118:15
100:22	28:22 37:1	65:21 66:8	<b>regarding</b>
143:17	78:13,19,24	224:7	106:18 124:3
147:23	80:7 84:5,10	<b>references</b>	206:20
<b>receiving</b>	85:13,18	57:25 59:4	207:16 218:7
210:10 277:2	161:3 236:11	62:19	242:17 288:8
<b>recent</b>	250:11,16	<b>referred</b>	<b>regions</b>
16:2	251:23	23:6 29:14	229:16
<b>recently</b>	252:6,13	43:17 57:18,	<b>registration</b>
36:1 76:25	265:25	20 87:1	90:20 100:24
84:4 115:19	266:24		

101:3 102:5	<b>reluctant</b>	<b>rendered</b>	<b>reported</b>
<b>regroup</b>	221:19	15:18 80:15	238:16,17
182:5	<b>rely</b>	<b>rendition</b>	252:11 316:6
<b>regulation</b>	133:22	19:10	<b>reporter</b>
129:18	<b>relying</b>	<b>renew</b>	199:11
<b>Reinforcement</b>	136:3	8:12,14	248:20,23
<b>s</b>	<b>remainder</b>	20:20	<b>reporting</b>
186:20	273:2	<b>Renewing</b>	79:23
<b>rejected</b>	<b>remaining</b>	204:8	<b>reports</b>
154:15	61:20	<b>repeal</b>	17:16 52:8
168:21 175:1	<b>remember</b>	33:10	79:18,20
177:3 183:23	42:1 76:13	<b>repeat</b>	262:11
238:22	79:1 86:4	94:20,22	288:3,5
<b>relate</b>	94:21 105:13	125:22	306:3
14:10 15:2	122:24	139:25 180:5	<b>represent</b>
16:3,18 54:1	128:11	<b>repeated</b>	115:24
55:23	141:15	183:4,20	130:23
<b>related</b>	152:1,17	<b>repeatedly</b>	141:2,25
10:23 11:16	165:12	184:7,25	143:12
14:19 34:12	166:14 192:3	<b>repeating</b>	302:14
71:16	211:18	183:22	<b>representatio</b>
<b>relationship</b>	212:11	<b>repentance</b>	<b>n</b>
84:20 166:21	240:3,9,13	21:23	142:2
191:6 197:2	241:6,12,22	<b>rephrase</b>	<b>representativ</b>
<b>relationships</b>	242:13	235:19	<b>e</b>
225:5	243:11	<b>report</b>	13:22 121:9
<b>relay</b>	247:21 291:6	18:1 44:16	134:17 148:4
261:11	294:15 306:2	57:22 63:3,5	153:17
<b>relayed</b>	317:13	64:1,3 66:3,	163:18,22
226:23 253:9	<b>remind</b>	11 68:13	201:13
<b>release</b>	57:1 58:12	69:13,19	256:10 305:1
262:18	317:11	75:6 87:2	<b>representativ</b>
<b>released</b>	<b>remotely</b>	161:18,20	<b>es</b>
231:9 265:2	200:20	162:14	45:23 46:6,
318:15	<b>Removal</b>	163:13	16 93:21
<b>relevance</b>	15:22	164:16 165:3	180:2
29:8 124:8,	<b>remove</b>	180:20	<b>representing</b>
12	24:19 25:2	184:11	199:5 278:7,
<b>relevant</b>	26:11 159:4,	190:13	8
49:11 164:11	13 173:19	207:15 208:2	<b>represents</b>
<b>reliability</b>	<b>removed</b>	230:17,21	123:5
75:7	24:18 178:18	231:4 232:24	<b>reprinted</b>
<b>relies</b>	<b>removing</b>	233:2 243:25	19:6,8 54:25
64:25	26:9	244:5 249:7	55:4 57:10
<b>relieved</b>	<b>render</b>	250:24	<b>reproach</b>
293:2 294:2	64:9 80:16	254:21	260:2
		297:14	

<b>reps</b> 214:18	147:20 148:2 168:15 181:4	<b>resolution</b> 193:2	208:22 222:21
<b>Republican</b> 9:11 67:1 87:16 90:1 143:12 260:8 263:18 299:23,24	216:8 228:14 229:9	<b>resolve</b> 78:5	253:20 281:10 293:22 314:8
<b>Republicans</b> 21:18 277:5	<b>requirement</b> 99:23,25 100:1,15 102:13	<b>resolved</b> 146:10	<b>responses</b> 227:24
<b>request</b> 137:24 148:18 161:17 207:5 209:2,4,22 210:6,8,11 220:2,13,19, 22 221:3,14, 20 222:14 223:8 224:13 226:19,22,23 229:7 230:1 245:12,20 251:24 252:3 253:11,21 266:23	<b>requirements</b> 91:8 97:3 99:22 109:9 132:17 133:4,12,13 134:6,13,16 135:7 136:9, 17,18 137:6 138:3 144:13 215:11	<b>resort</b> 33:11	<b>responsibilit ies</b> 207:17
<b>requested</b> 42:3 225:18	<b>requires</b> 81:8 82:1 96:24 97:14 107:21 130:15 134:20,21 141:3 147:23	<b>resources</b> 212:23 213:17	<b>responsibilit Y</b> 270:21
<b>requesting</b> 209:12 210:2 224:10 250:13	<b>Research</b> 12:8 13:14	<b>respect</b> 76:23 77:22 78:24 79:7 80:7 91:19, 20 95:6 96:2 118:12 126:9,16,21, 23 143:1 158:13 162:7,22,25 164:18	<b>responsible</b> 22:16 62:21 107:6,17,20 218:4 236:24
<b>requests</b> 209:10 212:13 220:8 222:25 228:1	<b>requisite</b> 99:25	<b>respectfully</b> 154:3	<b>rest</b> 229:16 250:18 313:14
<b>requests, '</b> 241:2	<b>Research</b> 12:8 13:14	<b>respectively</b> 225:13	<b>restore</b> 28:2
<b>require</b> 81:8 114:17	<b>researching</b> 60:13	<b>respects</b> 22:11	<b>result</b> 142:22 191:17
<b>required</b> 33:18 41:22 53:9 96:14 106:22 109:5 122:19 132:23 135:5 136:12 137:8,9	<b>reside</b> 99:24 100:16 102:7	<b>respond</b> 64:5 168:11 182:4,13 191:13 207:18 214:3 312:4 315:14	<b>results</b> 91:11,20 123:13 184:3 187:21 273:1
	<b>residence</b> 109:6	<b>responded</b> 188:9 241:2 283:15	<b>retract</b> 283:4
	<b>residency</b> 99:23 100:1, 15 102:11 148:8	<b>responding</b> 101:22 311:24 312:19	<b>return</b> 21:10 203:18
	<b>resident</b> 113:4 133:5	<b>response</b> 60:10 64:4, 20 172:23 186:13 191:9,19 194:12	<b>returned</b> 21:14 153:8
	<b>resist</b> 33:23		<b>returning</b> 21:8
	<b>resistance</b> 28:24		<b>retweeting</b> 191:15
			<b>retweets</b> 183:14
			<b>Reverend</b> 31:17
			<b>review</b> 11:7 14:18 18:3,7 63:5,

23 69:18 79:5 145:3,4 147:22,25 155:17 207:16 230:16 <b>reviewed</b> 66:10 86:6 155:8 211:7 232:24 <b>reviewing</b> 157:22 <b>revise</b> 79:20 120:12 <b>revised</b> 92:19 93:3,7 95:24 98:23 101:14 110:15,20,24 119:16,17 <b>Revisiting</b> 15:15 <b>reworking</b> 160:25 <b>RFA</b> 208:19 209:2,6,22 <b>rhetoric</b> 67:9 185:12 191:18 275:1,5 <b>rifle</b> 165:7 <b>right</b> 25:4,10 26:2 32:7 37:6 51:7 60:15 68:21 70:22 72:5 74:8 79:24 80:20 83:1,5 84:16 85:21 87:7 88:12 93:12 95:7 100:18 110:12 111:23 112:17 117:11 120:9	131:15,18 143:21 144:14,19 146:6 147:21 148:5 154:16 158:21,25 162:1 180:3 185:5 189:3 208:4 210:5 237:3,12,24 238:24 240:12,23 244:15 245:7,14,17 248:25 250:15 251:18 254:13 255:11,14 258:3 259:8, 12,20 260:5, 13,21 262:5, 9,10 263:6 265:10,12 268:2 279:10 281:9 282:25 283:10 285:9,15 286:18 289:2,22 290:13 299:10,13, 14,20 300:9, 15,19 301:9, 12 303:1,5, 11,21 304:2, 14,20 305:5, 9,20 306:13 307:6 309:7, 11 310:3,16, 20,24,25 311:5,10,16, 23 312:10, 17,18 313:5, 6,7 314:5, 11,17,18 315:1,2,7 316:3,7 317:6,8,15	318:3,7 <b>right-wing</b> 164:18 166:11,13, 19,22,25 167:2,20 174:4 175:21 183:14 <b>rights</b> 15:8 278:11 <b>riot</b> 164:21 173:15,16,21 174:14 178:19 180:11 315:16 <b>riotous</b> 174:21 <b>ripped</b> 192:2 <b>rise</b> 30:10 137:20 217:18 <b>rising</b> 30:20 35:5 <b>risks</b> 304:9 <b>Robert</b> 9:10 10:10 63:4,12,15, 19,22 <b>Roger</b> 281:6 293:19 <b>role</b> 22:8,9 58:12 90:7,14,24 91:4,16,22, 24 95:18,20 96:7,18 111:17 201:8 203:11 207:17 236:23 263:3 270:3 300:14 <b>roles</b> 91:14 204:6	<b>room</b> 181:23 289:21 290:7,9 <b>Roth</b> 9:7 <b>roughly</b> 28:5 <b>Rudy</b> 88:1,13 89:5 101:17 124:1 125:8 131:19 143:11 150:1 153:21 154:13 155:3 157:3 158:10 160:15,18 164:12 293:17 <b>ruin</b> 259:16 <b>rule</b> 129:18 162:6 173:13 181:16 182:10 193:1,7,8, 13,19 194:2, 6 195:20 213:8 <b>ruled</b> 181:14 <b>rules</b> 184:18,23 189:14 192:6 193:20,23 194:1 266:20 <b>ruling</b> 8:17 78:25 176:1 <b>rumor</b> 269:11 <b>run</b> 12:14 13:3 17:15 19:3 38:24 91:10 96:12 113:22 140:19,23,24
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p><b>secret</b> 81:18 294:14,17 304:16</p> <p><b>Secretaries</b> 89:24 90:2</p> <p><b>Secretary</b> 8:18,20 9:14,15 40:3 70:11 71:18 87:21 89:6, 9,13,17,20 90:8,24 91:1,15,18 92:2,4,8,14 94:17,24 95:18,21 96:6,8,19 99:11 100:6, 19 101:1,9 102:9 103:1, 5,11,17,20, 23 104:25 105:5 106:17 107:6,12,25 108:4,20 110:7 111:17 114:6,12 115:7,14 116:4,10 117:3,10,16 118:11 119:14 120:3,4,8, 20,21 123:6, 8,16,21 124:2,9 126:3,6 127:1,5,15 138:11,13, 17,25 139:1, 3,8,9,12,13, 17,19 140:3 141:1,10,11, 12 148:14 149:1 150:14,15 151:18</p>	<p>153:18,19 157:6,8,12 158:2 164:13 193:17 203:24 204:2,17 206:2,3 209:4,18,19 211:15 212:5 214:16 215:13,14 216:15,21 217:15 218:2,5,19, 20 220:21 221:5,7 222:19 226:16,24 228:13 231:25 234:10,25 236:21 238:6,10 241:11 242:8 246:17 252:5,8 254:8,18 255:3 261:14 262:16 263:21 270:9</p> <p><b>Secretary's</b> 92:7,9,10,17 96:1 99:14 107:16 108:7,8 111:20 123:17 126:15 127:11 147:15 148:21 151:4 156:19 211:12</p> <p><b>section</b> 10:14 11:13, 19,20 12:4, 7,16,17,25 13:8,12,15,</p>	<p>18 14:19 15:5,12,13, 25 16:5,12, 14,19,21 20:17,23 21:2,4,7 22:8,10 23:2,15 24:8,10,12, 15 25:2,16, 23 26:13 36:8,12,14, 21,24 37:2 39:1,11,14 40:15 41:16 42:22 47:16, 18,19 48:3,5 49:7,12,14 50:2,16,18 51:19 52:3, 13 53:19 54:9,17 55:11,25 57:3 58:15 59:18,23 60:2,5,24 61:2,5 62:1, 8,18,20 63:9,17 65:9,13 66:1,18,19 67:5,11,18, 25 68:1,5,7, 14 69:9 70:3 71:23 72:4 73:17,20 74:3,6,21,23 75:2 76:24 78:1 79:7 80:8 83:5 84:5 86:7 92:21 93:5, 14,15 95:24 112:22 150:2,21 151:15 162:22 163:1,5 164:6</p>	<p><b>secure</b> 262:24</p> <p><b>securing</b> 249:23</p> <p><b>security</b> 201:6 202:14 203:1 204:7, 9,12 206:20 211:24 255:22 260:10 304:5,8,10, 18,19 305:18 307:10,19 308:1,2,5,22</p> <p><b>see</b> 9:6 14:18 15:6 18:2,22 71:18 72:3 88:11 93:15 98:24 102:11 104:9 109:18 110:11,17,20 111:25 112:14,24 115:22 120:23 121:21 122:4,6 130:18,21 131:2,3,18 142:13 146:20 181:19 191:13 199:11 205:6,8,10, 23 208:17,23 211:3 220:24 226:15 230:20 233:13,14, 17,20,21 245:13,21,23 246:7 248:1 259:2 277:13 278:19,21 279:16</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

282:16	<b>Senate</b>	<b>serve</b>	129:18
289:17 295:1	24:4 45:24	201:2,10	243:19
298:14	59:22 62:19	202:13,17	<b>seven</b>
302:4,8,12, 17,19	70:11 134:25	204:10,13	89:22 269:19
303:12,18,19	<b>senator</b>	260:20 270:3	<b>several</b>
305:20	48:16 60:6	271:2	11:23 57:12
310:8,10	<b>senator's</b>	<b>served</b>	90:13 98:10
311:25	60:8	63:3 82:23	272:21 288:6
312:11,14,15	<b>senatorial</b>	84:2 89:21	<b>shape</b>
314:21	109:2,4	116:6,13	321:8,10
315:12,13, 19,23 316:23	<b>senators</b>	158:23	<b>share</b>
<b>seeing</b>	22:3,18 23:7	201:1,7	12:9 84:21
317:25	70:16 268:24	203:12	280:22
<b>seek</b>	<b>send</b>	236:23	289:4,13
102:22	317:22	260:23	301:17,21
106:15 117:9	<b>sending</b>	269:25	<b>shared</b>
139:16	235:10,22	<b>serves</b>	127:6
141:13	<b>senior</b>	261:18	<b>sharing</b>
153:10	202:13 203:3	<b>service</b>	280:4
<b>seeking</b>	204:8,11	13:14 43:23	<b>sharp</b>
25:6 96:11, 12 106:10	219:6 229:5	294:15,17	77:24
109:1 115:3	255:21	309:10	<b>Shaw</b>
119:8 144:14	270:14 301:5	<b>services</b>	9:8 198:7,16
145:1	<b>sense</b>	223:1	199:2,6,9,14
<b>seemingly</b>	12:16 26:8	<b>serving</b>	200:4,12,23
178:24	29:2 37:12	22:15 82:23	202:7 204:21
<b>sees</b>	53:21 62:11	<b>session</b>	205:2,5,11
64:7	79:10 81:19, 21 179:15	8:1 230:14	207:12,14
<b>Select</b>	190:25	295:25 296:3	208:5,9
202:14	<b>sentence</b>	<b>set</b>	210:18,20
229:23 255:2	79:7 107:5, 15	18:20 35:13	213:5,14,15, 21 214:20
295:19	<b>sentiments</b>	50:15 71:7, 11 72:8,24	215:4,18
<b>selected</b>	43:3	73:14 79:13, 23 85:4	216:20
201:13	<b>separate</b>	95:21,23	221:18
<b>selection</b>	35:13 274:11	97:5 106:15	223:14,23
299:23	<b>Sergeant</b>	134:12,25	224:5,14
<b>selfies</b>	223:7	135:7 184:18	225:23,25
294:16	<b>series</b>	187:14	226:2,3,7,10
<b>selfish</b>	17:2 25:9	189:14	227:14
288:24	38:17 73:14	272:12	228:21
<b>sell</b>	134:12	289:15,17	231:10
258:18,21,22	257:18	292:3	235:14,18
<b>sells</b>	<b>serious</b>	<b>sets</b>	248:6,11
317:14	35:20	214:19	251:7
		<b>setting</b>	253:23,25
		21:1 57:11	263:12,23,24
			264:3,22

265:4,7,12, 17,20 267:4, 7,14,18 268:8 296:16,21,25 297:6,10,17 298:5 311:1 318:10,12,22 320:10 <b>she'll</b> 267:22 <b>shed</b> 37:19 44:24 68:15 <b>sheriff</b> 82:14,15 83:12,13 <b>shifty</b> 258:1,2 <b>shocked</b> 282:8 293:13 <b>shop</b> 18:21 <b>short</b> 64:4 149:7 176:19 265:8 <b>shortly</b> 57:3 58:24 145:14 203:2 248:16,24 299:19 <b>shouting</b> 200:1 <b>shoved</b> 172:25 <b>show</b> 101:3 102:6 187:20 204:18 207:10 233:11 254:20 267:5 299:18 301:14 314:3,19 <b>showed</b> 21:9,15	45:23 188:8 243:7 251:14 292:13 <b>showing</b> 169:10,15 184:11 185:17 247:24 250:3 314:1 <b>shown</b> 119:21 <b>shows</b> 164:19 187:21 <b>shut</b> 294:4 <b>sic</b> 163:18 189:24 <b>side</b> 77:9,10 275:8 <b>sign</b> 114:4 115:1 157:19 294:17 <b>signature</b> 113:17 114:5 118:1 <b>signed</b> 117:23 121:9 133:10 153:6 <b>significance</b> 38:14 40:10 42:7 112:3 <b>significant</b> 167:11 195:23 208:13 <b>signs</b> 115:5 135:15 <b>Simi</b> 166:5 168:1, 18 171:18,21 173:25 174:8 175:3,6,14 183:8 189:21	191:4 197:2 <b>Simi's</b> 164:17 165:14 166:4 169:3 175:2 <b>similar</b> 34:4 84:21 103:15,16 114:23 152:19 157:15 163:25 177:1 280:11 289:10 305:8 <b>similarly</b> 119:16 123:19 196:18 <b>simple</b> 308:20 <b>simply</b> 22:4 25:9 35:11 59:16 163:21 173:21 185:11 189:3,5 197:10 <b>sing</b> 292:25 <b>single</b> 218:6 230:19 <b>sir</b> 205:6,24 206:5 207:14 210:21 211:4 231:11,15 232:25 233:9,14,23 235:4,21 236:17 243:20 246:21 247:12,18 248:1,2 249:25 250:21 252:7,14	253:3,15,22 255:19 260:4,17 264:23 310:14 313:10 <b>siren</b> 194:21 <b>sirens</b> 139:23 <b>sister</b> 272:20 <b>sit</b> 136:20 154:22 286:16 287:14 <b>site</b> 258:18 <b>sitting</b> 159:8,24 181:23 290:10 311:14 312:2 <b>situate</b> 65:7 <b>situation</b> 116:11 140:6,8,11 152:18 156:11 158:19 159:10,20 185:22 226:18 280:10 288:8 <b>Sixth</b> 168:6 <b>slam</b> 165:18 <b>slew</b> 203:7 <b>slight</b> 55:16 <b>slightly</b> 225:14
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<b>slow</b> 170:20,25	112:7	<b>speakers</b> 277:17	59:17 60:4
<b>small</b> 290:7	<b>sounds</b> 321:7	286:22	61:11 74:23
<b>social</b> 12:7 235:25 261:2,3 272:3 285:2	<b>source</b> 17:20 19:16 34:19 35:8 41:18 46:4,6 55:8	287:1,19,21 296:10 303:4	96:1,7,18 104:1 133:4 141:22 144:16
<b>Society</b> 10:25	<b>sources</b> 17:7,9,13 18:14 19:14 26:20,24 33:1 34:11 35:18 36:2 38:1,5 49:18 50:5,6 52:12 54:21 64:24 66:3 69:14 75:1 76:22 82:8	<b>speaking</b> 47:20 90:16 95:15,23 101:16 104:8 109:3 221:10 251:15 267:23 276:21 279:10,21 280:3 284:3 287:8 292:22 295:15	150:12 151:20 161:17 162:7 167:1 209:7 210:6 212:13 218:24 224:9 225:22 226:15 242:3,6 243:7 254:23 272:15 287:6 293:4,17 296:6 305:17 307:3 308:10,24
<b>soldiers</b> 229:15,18	<b>South</b> 21:12 269:9	<b>speaks</b> 225:9,11 252:16	<b>specificity</b> 209:12 252:21
<b>sole</b> 132:19	<b>southern</b> 23:21 67:7 82:14 201:3	<b>special</b> 193:21,24,25 201:14,15	<b>specifics</b> 276:6
<b>solemnly</b> 113:23	<b>speak</b> 125:18,24 126:2,13 140:5,7,12 141:8 157:24 159:19 160:6 189:18 199:12,23 200:2 232:2, 5 234:24 278:3,15,22 279:7 280:18,20 292:14,15 293:7,9,10, 14 294:20 298:6 311:2	<b>specially</b> 174:19	<b>speculate</b> 123:23 138:23
<b>someone's</b> 190:16	<b>speaker</b> 19:25 34:25 176:12 213:13 296:18	<b>specific</b> 60:19 74:12, 17 82:6 83:17 95:14 96:25 98:14, 20 99:3 100:5 105:2 117:12 134:5 136:15 151:3 154:23 173:25 181:4 182:25 188:15 196:15 209:8 210:8 243:17,19 260:18 264:12 266:20 278:25 281:24	<b>speculation</b> 214:2
<b>son</b> 48:17,22		<b>specifically</b> 11:9 45:6	<b>speech</b> 43:2,5 58:9, 24 67:13 73:4 163:21 165:1,10,15, 24,25 166:12 167:6 169:9, 11,13,16,20 170:3 172:16 176:4,6 177:23 178:11 179:5,11,16 180:5,13,18, 21,23 181:25 182:1 184:6, 8,12 188:20
<b>sort</b> 11:25 17:21 18:17 19:2,7 25:17 28:2, 24 29:17 34:21 37:9 38:5 45:14 58:16 62:17 67:8,10 70:8 81:6 84:5 85:11 87:5 139:13 165:9,12,17 166:15 167:22 168:8 174:9 176:17 180:12,13 181:16 221:14 222:2 230:3 265:25 276:7 277:13 283:18 287:10 317:8			
<b>sorts</b> 18:6 38:1 298:2			
<b>sought</b>			

190:4,7,18	241:17,23	163:4 164:22	103:17,23
191:3	242:8,9	165:25	107:6,9
196:12,15,	255:6	168:19 169:6	108:1 111:21
24,25 309:3	281:11,12	173:17	115:14,20
318:6	282:6	181:11	116:4 117:3
<b>speeches</b>	283:10,24	196:14	119:4,7,14
164:25	284:13	<b>standby</b>	120:4,8,20
191:10	285:2,4	224:13 265:9	121:10,17,20
<b>Speed</b>	301:1	<b>standing</b>	122:2,22
249:21	<b>staffer</b>	295:14	124:11
<b>spell</b>	89:18	<b>standpoint</b>	130:25
10:6	<b>staffs</b>	68:20 72:2	134:2,3
<b>spelled</b>	219:3	<b>Stanford</b>	135:3 138:13
156:1 172:4	<b>stage</b>	14:8	139:8,19
<b>spent</b>	21:2 167:12	<b>start</b>	140:3 144:2
182:11 288:6	272:7 280:5,	21:1 89:16	147:20,21,
295:20	12 281:6	93:5 125:23	23,24 148:7,
<b>split</b>	282:21	171:5 182:7,	10 155:22
275:22 278:9	287:22	10 194:18	156:1 157:8
279:2	288:9,18,21	197:21	171:13 192:8
<b>spoke</b>	293:15	207:13 227:8	206:13 219:6
172:8,11	<b>stage/back</b>	231:18	259:15,20,
216:16,21	167:12	308:13	22,24 260:1
277:19	<b>staged</b>	<b>started</b>	261:15
307:12	227:5 245:18	180:12,20	263:5,11
<b>spoken</b>	<b>stamp</b>	231:16	266:21
84:18 90:3	302:9	265:15	268:22
232:15 234:5	<b>Stanbery</b>	268:18	<b>State's</b>
269:6 282:10	40:17,21	<b>starting</b>	89:6,9,13,17
<b>spokesman</b>	43:2 44:2	186:22 239:2	90:24 91:16
269:25	53:12,18	<b>starts</b>	92:4 94:25
<b>spokesperson</b>	59:12	208:10	95:18 96:6,8
269:23 270:2	<b>Stanbery's</b>	267:23	99:11 100:6,
<b>spot</b>	44:12 53:24	<b>state</b>	20 101:1,9
280:12	<b>stand</b>	9:11,14,16	103:1,6,11
<b>spring</b>	9:21 76:10	12:17 23:22	104:25 105:6
68:6	165:19	24:11,15,16	106:18
<b>SSRN</b>	181:24 186:7	30:23 36:23	107:12,25
12:16	205:25	38:21 50:20	108:5,20
<b>staff</b>	209:25 259:1	53:10 68:2	110:7 111:17
112:9	<b>standard</b>	82:14 89:24	114:6,12
203:20,23	175:24	90:8 91:2,5	115:7 116:10
204:2,17	177:16 189:9	92:2,14	117:16 120:3
206:10	190:7 197:1	94:17 95:21	123:7,8,16,
211:12 218:2	<b>standards</b>	96:11,15,19	22 124:2,10
231:6 236:21	72:6,8	99:17,22	126:3 151:18
237:5,15	162:9,17	100:2,7,21	153:18,20
		101:2 102:9	157:7,12
			164:13

<b>stated</b> 113:22 224:9 242:6	82:19,20 89:20 113:4 114:10 115:17 134:17 146:4 189:23 192:7 202:15 209:20 221:24 227:8 241:10 242:10 268:25 269:1 275:10,13	<b>stay</b> 181:8 203:8 270:9	<b>strength</b> 77:14
<b>statement</b> 33:15 60:15 70:8 97:22 104:21,23 107:24 109:23 111:12 114:25 116:5 129:10 141:17,20 143:24 144:5 145:23 156:6 157:17 217:3 228:13,21 254:19 303:20	<b>statewide</b> 90:20 91:11 100:24 101:3 102:5	<b>stayed</b> 237:11	<b>strictly</b> 47:19
<b>statements</b> 66:9 70:10, 16,21 71:18 183:9 196:20,22 302:25	<b>stating</b> 127:13 144:6 188:12 197:2	<b>Steal</b> 274:6,9,11, 15	<b>strike</b> 214:22 274:4 278:13 308:16
<b>states</b> 13:10 23:19, 21 26:4 32:20 33:7 34:7 36:16, 25 37:11,12 38:4,10,20 39:9 40:14 44:7 49:15 50:20,21,22 51:1,13,19, 23 52:3,9, 14,17 53:11, 19 54:4,8,10 55:15 56:5, 23,25 57:9, 12,13,16 58:2,11,21 59:1,6,7,8 60:9 61:9 62:4 65:3, 12,25 69:17 70:17 71:1	<b>stations</b> 208:22 209:9	<b>step</b> 50:4 75:4 214:12,16 219:25 220:2 283:18	<b>strong</b> 179:9
	<b>status</b> 267:12	<b>Sterling</b> 191:16	<b>structure</b> 209:20
	<b>statute</b> 39:10 73:13 74:1 92:13, 25 93:3,7 94:13,18 95:5,22 98:20,22,23, 24 99:2,3,5 101:15 133:18,21,24 134:2,3,20 135:3 151:7 156:1	<b>steps</b> 272:3	<b>structures</b> 228:3
	<b>statutes</b> 18:4 74:12, 17 92:16,19 95:25 134:12 151:1 266:20 275:13	<b>Stewart</b> 170:4	<b>studied</b> 26:15
	<b>statutory</b> 133:11,12 134:12 193:21,24,25	<b>stipulated</b> 105:18 109:16 124:19	<b>stuff</b> 165:16 166:25 168:18 178:9 180:15 241:7 250:10 252:19 317:14
		<b>Stokes</b> 36:4	<b>subject</b> 12:4 48:11 159:18 196:8 218:18
		<b>stolen</b> 183:21 184:4	<b>subjects</b> 11:8 12:2
		<b>stomach</b> 173:1	<b>submission</b> 39:9 97:25
		<b>Stone</b> 281:6 293:19	<b>submit</b> 96:22,25 97:17,20,21, 22,25 98:2 121:11 122:16 137:12 142:19 157:17 160:25 161:6 169:21 173:24 176:23 284:5
		<b>stop</b> 180:11,25 186:8,13 271:18 274:6,8,11, 15 313:12	<b>submits</b> 209:4
		<b>story</b> 258:5	
		<b>straight</b> 294:16	
		<b>straightforwa rd</b> 18:16 162:17 169:21	
		<b>streets</b> 166:16	

<b>submitted</b> 39:6 117:14 120:22 121:2, 8, 13, 17, 24 141:16 142:24 156:6 165:25	<b>summarize</b> 14:5 <b>summer</b> 218:24 269:17 <b>summon</b> 186:12 <b>summoned</b> 183:4 <b>summoning</b> 190:15 <b>Sunday</b> 205:18 248:12 285:23, 24 286:1 <b>super</b> 264:16 270:10 <b>superseded</b> 264:19 <b>supplemented</b> 248:15 <b>support</b> 22:19 37:15 49:18 50:22 52:19 53:10 54:9 55:14, 22 90:17, 21 91:9 187:4 205:22 207:2, 4 215:20 225:19 241:1 244:25 269:22 277:2 306:12, 22 <b>supporter</b> 60:6 66:25 67:1, 2 317:3 318:2 <b>supporters</b> 19:19 61:25 183:16 184:2, 13, 17, 21, 22 185:18 186:25	188:12 189:17, 19 191:13, 19 235:11 288:7 304:9, 19 307:4, 11 310:25 <b>supporting</b> 45:17 203:22 271:18 <b>supportive</b> 280:18 <b>suppose</b> 299:16 <b>supposed</b> 185:18 273:24 276:13 <b>Supreme</b> 10:24 15:16 20:8 32:21 52:24 85:15 103:22 104:3 164:22 170:13 193:4, 9, 10 198:19, 24, 25 <b>sure</b> 15:4 18:14, 22, 23 19:9 27:14 50:17 73:11 76:7 116:22 125:18 131:9, 11 141:24 143:13 148:23 153:20 167:9 175:8, 10 183:16 213:5 224:23 232:14, 22 234:16 235:2 239:16 258:10 262:2 271:13, 23 272:16	282:14 291:22 292:1 295:12 297:20 310:19 311:25 313:25 314:20 319:14 320:7, 12 <b>surprised</b> 304:7 <b>surreal</b> 316:20 <b>surrender</b> 56:15 <b>surrounding</b> 65:8 <b>Sus</b> 9:3 <b>suspended</b> 311:19 312:7 <b>suspending</b> 192:6 <b>sustain</b> 64:15 124:15 195:14 <b>Sustained</b> 75:11, 24 213:2, 20 216:19 228:20 296:15, 23 297:3 <b>swag</b> 258:18, 21, 22, 23 <b>swear</b> 200:4 <b>swears</b> 55:24 <b>switch</b> 210:18 <b>swore</b> 37:15 187:9 <b>sworn</b> 9:24 22:19
-------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

88:14 200:8 268:5 295:22 <b>sympathies</b> 43:4 67:7 <b>symposium</b> 13:5 16:10 <b>system</b> 90:20 100:25 272:12 <b>systems</b> 79:23	185:14 195:4 282:12 297:24 <b>takes</b> 107:12 257:21 <b>taking</b> 123:7 262:23 272:7 <b>talk</b> 8:7 13:5 14:4 16:15 57:22 61:1 62:16 64:20 75:24 86:21, 24 99:17,19 110:1 120:15 126:14 127:19 137:13 166:1,2 167:11 168:4 170:10 191:12 237:18 244:19 275:11 291:25 296:6,9,16, 25 299:4 300:21 305:25 311:18 315:24 317:5 <b>talked</b> 165:14 167:6 168:19 177:2 179:10 238:18 241:16 244:12 247:22 285:25 296:3 297:4,5 303:5 306:9 <b>talking</b> 15:23 28:23 84:5 133:15	146:16 147:20 151:25 170:24 176:20 177:10 191:12 207:8 220:6 241:4 243:10 251:20 253:1 260:18 277:17 280:4 291:20 292:3,5 305:16 314:2 <b>talks</b> 194:2 246:4 <b>target</b> 185:1 <b>targeting</b> 201:16 <b>tasked</b> 39:3 <b>tax</b> 27:18,19,23, 24 28:3,13, 14,15,18,25 29:5 <b>taxing</b> 267:18 <b>Taylor</b> 13:22 314:25 315:9 <b>Tea</b> 268:20 269:6 <b>teach</b> 10:9 <b>teachers</b> 220:16 <b>team</b> 89:15 90:4, 20 110:4 116:14,24 117:2 118:10 119:11 120:13 129:22	130:1,8 131:9 139:16 145:2 155:7, 10,15,18 157:7,25 158:1 269:23 277:10 <b>teams</b> 90:16,19 <b>Tears</b> 15:23 <b>technological</b> 267:19 <b>technology</b> 130:21 204:10 261:1,6 <b>television</b> 269:19 273:7 <b>tell</b> 12:4 13:7 14:9 18:10 20:10 21:3, 24 22:7 23:2 24:12 25:1, 20 27:10 28:9 30:14 32:5,17 33:2 34:2,15 35:19 37:1 38:9 40:6 41:18,24 42:21 43:11 46:13 49:25 50:6 53:2 55:5,10 56:8,19 57:23 58:19 62:7 65:15 66:13 68:3,9 75:17 81:12 86:9,15 87:3 96:21 114:9 121:23 126:7 127:9 128:19 134:3 142:9 152:17 211:21 222:9
<hr/> <b>T</b> <hr/>			
<b>table</b> 50:15 208:10 290:8,11,16 291:4 <b>take</b> 21:16 37:10 38:16 39:25 45:4 51:14 53:9 65:24 88:3 95:17 102:9 108:5, 11 131:6,24 142:3,4 155:10 184:24 191:3 194:10 216:22,23 229:15 240:15 248:4 265:8 271:25 272:3 280:1 281:1 282:13 283:24 289:6 294:3,16 297:20 319:15 320:1 <b>taken</b> 41:19 44:25 45:15 48:6 50:8,11,20, 25 51:3 52:19 55:13 88:6 95:11 118:14			

230:9 241:13	<b>term</b>	159:15,16	316:21
244:12	22:22 53:20	163:16,20	317:20
259:10	158:13	164:3,7,8	318:19
261:13,14	171:23	175:3 191:4	<b>texted</b>
268:9 274:19	203:20 204:1	229:22	281:17
281:15	<b>terminology</b>	230:13	<b>texting</b>
284:2,8	73:18	297:7,11	311:22,24
286:25	<b>terms</b>	319:16	315:6
305:17	31:6 39:25	<b>testifying</b>	<b>texts</b>
309:1,19	50:16 57:11	94:15 160:21	310:5
<b>telling</b>	73:14 74:21	161:16,17	<b>thank</b>
185:6,17	103:24 112:9	<b>testimonies</b>	8:25 9:4,17,
187:23	116:1,6,14	223:5	18 20:25
190:19	120:16	<b>testimony</b>	64:13,23
219:13	157:11	8:13,14	76:4,6,20
235:11,23	158:24 176:9	10:13 13:17,	85:22 87:15,
253:6 264:5,	189:25 204:3	19 78:8	19,23,24
7 281:7	269:14	87:23 90:4	88:5 101:19
282:20 283:6	<b>terrorism</b>	94:13 99:10	149:19,22
307:17,18	201:7,12	122:24 124:6	153:25
<b>tells</b>	<b>test</b>	126:2,18	154:25
25:24 42:12	53:7 168:15	127:22	160:7,14,16,
62:8 133:18	180:16	160:14	19 162:4
187:25 211:1	<b>testified</b>	164:10,17	182:17
<b>template</b>	9:25 88:15	165:14	192:12 194:9
122:10	90:7 96:5	166:4,24	200:13,19
<b>temporal</b>	109:11	171:20 183:8	205:4 208:8
168:14,16	115:12 117:4	189:20	224:6 231:11
<b>temporary</b>	122:21	225:11	245:7 263:16
140:19	126:24 127:3	230:7,24	264:23,25
203:11	128:8 141:16	237:18	265:1,3
<b>ten</b>	148:13 150:2	239:18 251:8	269:21
11:11	152:23	254:1 265:2	297:18
<b>tend</b>	155:22 156:6	295:18,22,23	298:20,23
81:24 195:18	163:15,18,	296:14 304:6	301:22
<b>tended</b>	22,24 164:1,	318:14	318:14,16
62:22	6,12 166:6	<b>Texas</b>	320:18
<b>tendency</b>	167:14 168:2	268:11,19	321:13
169:9,14	171:19 200:9	272:19 286:9	<b>thankfully</b>
171:14	236:5 237:20	<b>text</b>	227:5
<b>tender</b>	238:2,21	22:10 52:20	<b>thanks</b>
15:14,16	239:17 253:4	301:14	94:23 125:11
<b>Tennessee</b>	255:5 262:3	302:5,22	<b>then-</b>
54:24	268:6	304:3 310:6,	218:13
<b>tens</b>	307:22,24	20 313:10,	<b>then-acting</b>
184:13	308:21	14,23 314:1,	218:13
190:10	<b>testify</b>	2,8,24	<b>then-deputy</b>
	10:12	315:14,15,25	218:14

<b>then-</b>	117:9 123:23	303:10	128:8 130:15
<b>president</b>	124:10,11	<b>third</b>	132:23
203:5	132:19	70:5 98:2	133:4,12,13
<b>thereof</b>	134:18	107:3 129:2	134:16,22
33:10 126:15	143:18,25	134:19 184:6	135:3,11
<b>thesis</b>	146:3 147:12	205:17 216:2	144:16 161:7
175:2	148:14	236:18	165:6 167:2
<b>thing</b>	154:2,22	239:14	180:12,14
18:13 19:15	155:7 156:8	244:21	181:9 186:24
21:6 52:18	159:15 166:9	<b>Thirdly</b>	194:22
55:18 70:14	169:6 172:1	74:11	237:14
167:15 180:3	182:7,11,13	<b>Thomas</b>	<b>three-day</b>
194:16	192:16	48:16 49:1,2	193:9
241:15	193:6,12	<b>thoroughly</b>	<b>threshold</b>
276:10	194:6	181:18	264:19
282:14	197:11,20	<b>thought</b>	<b>throne</b>
294:14,25	198:21,22	22:16 23:8	258:4
319:5	205:7 213:11	26:2 37:8	<b>tie</b>
<b>things</b>	216:1,13	61:10 62:2	124:13
32:21 36:20	217:7,18	71:6 79:14	<b>tied</b>
50:22 60:16	218:12	184:4 191:23	124:12
70:13 86:25	222:4,22	200:1 241:14	<b>Tierney</b>
87:10,13	226:1,6	259:3 264:6	9:3 87:25
91:20 148:9	228:4 229:20	279:13	88:5,9,18,
155:14	230:18 231:7	282:24	23,25 89:2
163:15,22	237:10 238:1	285:7,11	93:2,4 94:3,
164:15	239:6,16	292:2,11	9,20 101:20
165:20	241:16 244:6	306:21	104:24
166:22	251:20	<b>thoughts</b>	105:16,22
167:17 168:4	256:12	127:9,10,11	109:15,18
170:11	257:5,7	<b>thousand</b>	118:23,25
171:10	258:9,13,21	259:5	120:17,18
173:5,9	259:9 260:2,	<b>thousands</b>	124:9,17,23
192:1 228:2	4 261:4,17,	173:20	125:1,4
259:2 281:18	18,21 263:7	184:13	154:5 155:2
283:18	278:17,20	190:10	156:24
291:25	284:7 285:1,	221:17 227:2	159:14
<b>think</b>	3 287:2,3	<b>thread</b>	160:11,19,24
8:9 25:24	288:3,22	311:21	266:15
26:3 37:12	289:5 290:5	<b>threat</b>	<b>tight</b>
64:12,16	298:6 304:21	26:21 27:1	271:15
66:8 71:8,20	315:16	29:3 264:17	<b>Tillman</b>
72:17 81:24	319:22 321:9	<b>threats</b>	65:1,17
84:1,11	<b>thinking</b>	124:2,11,12	69:15 77:4
94:15 95:14,	15:24 48:10	189:24	78:22 84:21
15 101:24	61:20 202:19	<b>three</b>	<b>time</b>
103:25 104:8	269:11	69:14 97:15	17:22 18:21
116:12,14	<b>thinks</b>		20:15 26:16,

19 27:22	294:19	63:8 76:20	<b>tone</b>
28:14 29:7,	297:18	78:7,9	61:25
21 30:1,19	301:19 305:8	79:22,24	<b>top</b>
32:9,24	309:18	85:7,11	15:4 20:3,4
33:15 40:5,	310:22 313:3	90:4,5	111:5,15,25
16 41:21	319:6	107:12	112:5 117:18
44:5,11,20	<b>timeline</b>	125:10,23	119:20
50:8 52:12	145:11	126:13,18	134:23 225:9
54:2 56:6,12	206:19,25	127:22 128:1	240:14 242:2
57:11 58:21	211:7 212:1,	154:22	249:2 275:5
59:3,17,25	4 223:6,11	159:8,24	302:17 307:2
61:3,15,18	225:11,21,24	172:8 179:12	<b>topic</b>
63:11 68:3	226:3,4,7	182:11	131:12
72:5,20	227:11 238:1	194:12,23	218:11
74:14 79:12	239:9,12	196:16	291:25
82:17 86:12,	240:2 243:9,	197:10	<b>topics</b>
22 87:4,7	20,22 244:4	198:5,8,11,	10:12
99:25 100:5,	245:13,21	14 200:14	126:10,12
18 132:9,10,	252:10,14,	230:10	127:21
13 140:22	15,17 253:16	239:24	297:15
141:5	<b>timelines</b>	241:18 244:3	<b>torches</b>
145:18,20,22	205:15 223:4	265:2 296:4	190:17
146:9,12	240:4 252:7	297:8 305:7	<b>total</b>
149:7 155:16	<b>timely</b>	<b>today's</b>	295:20
156:7 170:23	248:7	35:23	<b>totality</b>
174:6 177:14	<b>times</b>	<b>told</b>	163:12
182:7,14	20:9 58:3	106:20	<b>totally</b>
183:5 185:15	90:11 100:10	183:24	33:8 64:1
203:24	104:7,24	184:17,24	157:4
204:16	125:15	185:3,4	<b>touch</b>
206:6,10	174:3,5	186:2,25	266:3
209:15,19	178:16	188:8 212:5	<b>touched</b>
210:8 214:15	184:17	216:7,8	30:9 45:9
217:7 218:13	194:23 226:5	230:9	<b>touching</b>
224:14	242:7 248:15	269:10,11	173:12
225:2,16	257:21	277:23	<b>tough</b>
226:20 227:6	269:17	279:17,22	315:11
228:3 234:8	294:15 299:5	282:10	<b>tour</b>
236:8 239:23	<b>timing</b>	284:1,8,9,17	236:18
243:8,19	253:22	285:5 286:2	275:25 276:1
247:4 248:21	<b>title</b>	289:6 292:18	<b>tours</b>
250:20	92:18 122:1	294:10,24	275:24
252:20	261:21	308:4 319:18	<b>traffic</b>
254:18 262:1	291:11	<b>tomorrow</b>	208:21 209:8
264:24	<b>TMTG</b>	194:17	210:15
272:14	204:10	319:19	245:15,16
274:24 277:6	<b>today</b>	320:17,20	
278:18	9:7 10:11	321:12	
289:23			



<b>trafficking</b>	219:9,14,18	180:3,11,21	<b>Trump's</b>
203:6	224:16	181:20 182:2	163:17,20
<b>Trail</b>	229:10	183:2,15	164:2,4,7,
15:23	230:11	184:7,11,15	14,25 166:6,
<b>training</b>	237:19,23	185:9,11,17,	7,12 167:24
90:18,21	239:3 240:11	23 186:10,	171:20
91:9 93:10	242:17	12,25 187:9,	173:18 176:3
<b>transcript</b>	243:1,21,24	15 188:11	178:12,13
180:7 231:1,	245:3,6,25	189:11,16	181:5 183:9
8	246:5,10,14	191:1,15,22	186:21 187:1
<b>transcript's</b>	247:5 250:10	196:19,25	188:17,24
304:13	251:5 252:2,	197:21 198:4	189:2 190:4,
<b>transcription</b>	9,19 254:9,	203:5 204:11	21 191:5
18:25	10 255:1,8	206:21	196:2 228:12
<b>transform</b>	262:4,6	214:25	244:14 255:3
176:3	264:7,8,12	215:19	256:21,24
<b>transition</b>	297:1	219:8,14	261:2 309:19
248:21	<b>trouble</b>	227:18	<b>trusted</b>
<b>transitioned</b>	295:3 298:5	228:16,23	273:25
111:3 201:5	307:25	232:2,5,9,	<b>trustworthy</b>
202:25	308:13	11,19 233:4,	19:2
<b>trauma</b>	309:11	18 234:2,4,	<b>truth</b>
268:14	<b>troublemakers</b>	8,13,20,23	17:10 186:4,
<b>treason</b>	288:18	235:5,10,22	5,7 258:10
32:10,11	<b>true</b>	237:22 241:3	261:2 285:8
34:3 44:17,	18:15 114:1	251:25	<b>try</b>
21,23 45:17	190:9 236:15	254:25	17:9 19:8
<b>treated</b>	286:3	255:7,20	124:13
177:14	<b>Trump</b>	256:1,4,8,9,	193:16
<b>treatise</b>	9:6 63:3	15 257:7,15,	213:20
70:9	117:15,25	20 258:1,8,	220:12
<b>treatment</b>	120:24	11 259:3,8	232:12,14
27:8	121:2,9	260:21	263:1 272:6
<b>trial</b>	123:14 159:9	261:1,6,17,	278:5 281:1
58:23 67:3	162:8 163:6	18,19 269:2,	296:24 298:6
70:11,15,18,	164:20	4,5,24 270:1	302:2 308:13
21,25 71:3,	165:4,16,21	275:17,25	<b>trying</b>
19	166:17,25	277:6	17:8 80:3
<b>trials</b>	169:18	278:12,15,19	201:20
32:22	171:19	282:21 288:6	259:16
<b>trick</b>	172:3,4,7,	299:10,18,22	267:13
29:6 122:4	11,15,20	300:3 304:9,	277:14,15
<b>troops</b>	173:4,8	19 306:11	<b>turn</b>
46:24 210:12	174:2	307:3,11	36:8 46:3
214:11	176:22,24	309:2 310:2,	69:13 96:3
215:1,20	177:17	25 311:4,8,9	104:11
216:11	178:20	313:6 317:3	113:13
	179:1,22,25	318:2,6	118:23

199:10,21	157:11	171:8 207:19	<b>underneath</b>
304:5 309:25	158:23	222:21	112:11
312:11	164:15	302:10	113:19 218:4
<b>turned</b>	170:12	<b>Uh-huh</b>	<b>understand</b>
290:19 293:1	196:17	30:8 76:19	19:24 64:12
302:15	203:10 220:2	83:6 110:19	66:13 73:9
<b>turning</b>	223:9,10	125:2 240:17	74:19 81:6
111:23	252:25	246:6 254:22	125:16,21
117:22 195:7	256:13	282:18	128:20
<b>Turns</b>	276:16,17	284:24	132:21
289:2	278:1 287:24	305:24 307:7	143:14,22
<b>TV</b>	290:8 294:19	316:25	144:2 145:21
186:24 272:3	305:22	<b>ultimately</b>	146:15,18
317:15	306:13 320:4	96:15 123:13	159:6 161:15
320:13	<b>two-step</b>	147:14 152:9	176:21
<b>tweet</b>	214:12	262:11	189:19
177:20	<b>two-term</b>	268:24	206:11,16
185:24	158:21	269:22 293:6	209:1 210:1
186:11 190:5	<b>two-thirds</b>	<b>Ulysses</b>	211:5 215:19
235:10,22	25:3,12	40:3	216:10 227:1
236:1 301:14	<b>Tyler</b>	<b>unacceptable</b>	254:16 279:1
<b>tweeted</b>	57:17	61:10	282:17
183:13	<b>type</b>	<b>unaffiliated</b>	283:16
278:23	37:3	100:4 106:3,	288:17
279:16	<b>types</b>	10 142:16,17	291:13
<b>tweeting</b>	17:12 75:13	152:6	319:21
280:4	172:20	<b>unceremonious</b>	<b>understanding</b>
<b>tweets</b>	<b>typical</b>	<b>ly</b>	25:21 26:25
181:7 183:4,	291:7	192:2	27:12 29:10
9 191:25	<b>typically</b>	<b>uncertain</b>	35:16 36:12
287:4	19:6 75:14	228:22	48:4 49:11
<b>Twenty-second</b>	92:21 104:9	<b>uncertainty</b>	73:16 80:14
115:16 116:3	121:14	229:2	147:9 149:6
156:4 157:9	143:23 151:6	<b>unclear</b>	150:20
<b>twice</b>	264:11	83:11 102:20	157:6,12
157:23	270:19	<b>uncomfortable</b>	159:3 160:17
<b>Twitter</b>	272:12 275:4	167:10	161:16 207:4
165:1 235:15		<b>unconstitutio</b>	214:9
<b>two</b>		<b>nal</b>	221:19,21
22:10 24:18	<b>U</b>	71:7,12	222:5 264:10
25:25 27:14	<b>U.S.</b>	189:7	276:12 283:5
38:5 70:10	24:8 33:9	<b>uncovered</b>	288:20
77:21 78:3	38:14 39:16	84:8	<b>understood</b>
84:1 87:10	99:20 106:13	<b>undergraduate</b>	29:2 37:21,
116:1,6	113:5,8,11	14:7	23 41:20
125:15 127:4	135:4 140:19	<b>underlying</b>	42:22 50:7
144:9 154:2	141:3 170:13	77:15	51:12 54:2,
			16 62:10

64:3 66:15	113:4 115:17	274:25	162:5 181:13
74:13 76:2	134:17 146:4	277:11	194:2,3
82:11 86:11	189:23 192:7	279:15	195:8,14
190:1 212:15	202:15	284:11	197:7,9,16
214:11	209:20	<b>urge</b>	<b>verified</b>
223:10	221:24 227:8	173:16	93:23 118:5
255:16	241:10 242:9	<b>urging</b>	<b>verify</b>
280:23	268:25 269:1	174:24	96:13 97:4
<b>undertake</b>	<b>units</b>	<b>USA</b>	100:20,23
100:20	201:15 245:9	186:4,5	104:13
222:18	<b>University</b>	<b>UT</b>	107:21 109:5
<b>underway</b>	10:9,16	268:12	132:10
233:4 314:10	12:14 13:4	<b>utilize</b>	144:24
<b>undoubtedly</b>	36:6	215:1 236:7	147:19,23
193:22	<b>unlawful</b>	<b>utilized</b>	148:2
<b>unfold</b>	42:16 169:9	210:10	<b>verifying</b>
314:16	182:22	212:19	112:10
<b>uniformed</b>	189:12	<b>utilizing</b>	<b>version</b>
221:23	255:15 305:4	206:22	74:8,9 79:5,
229:19	<b>unlike</b>	<b>utter</b>	6 110:10
<b>unilaterally</b>	192:20	191:14	184:16
222:18	<b>unprompted</b>		<b>versus</b>
<b>Union</b>	317:18	<hr/> <b>V</b> <hr/>	62:17 77:10
23:20 34:17	<b>unprotected</b>		95:12 167:11
39:3,21,25	176:4		171:3
42:2,9,23	<b>unrelated</b>	<b>vague</b>	<b>vest</b>
46:24	206:20	60:17	210:15
<b>United</b>	<b>untrustworthy</b>	<b>van</b>	<b>vet</b>
13:10 32:20	22:23	320:18 321:6	281:2
33:7 34:7	<b>unusual</b>	<b>Vanity</b>	<b>veterans</b>
36:15,25	100:12	240:23	259:6
37:11,12	<b>unwanted</b>	247:21	<b>vetting</b>
38:4,10	173:11	248:3,20	270:22,24
40:13 44:7	<b>unwilling</b>	249:11,13,	271:2,4,7,8,
50:19,21,22	177:6	18,23 250:1	15
51:1,13,18,	<b>upcoming</b>	251:3,14	<b>Vice</b>
22 52:2,9,	206:23 212:3	<b>variant</b>	60:4 180:2
14,17 53:11,	216:7	80:19	185:1 186:1
18 54:4,8,10	<b>update</b>	<b>various</b>	188:10
55:15 56:5,	111:1,4	11:8 59:8	191:23
25 57:13,16	<b>updated</b>	91:25 99:9	<b>viciously</b>
58:1,2,11,21	111:5 153:5	258:21	299:12
59:1,6,7,8	<b>updating</b>	<b>Veen</b>	<b>victims</b>
60:9 61:9	155:13	321:6	192:2
62:4 65:3,	<b>upset</b>	<b>verbiage</b>	<b>video</b>
12,25 69:17	21:19 28:13	209:3 212:12	165:1
70:17 71:1	188:13	<b>verdict</b>	172:19,21
82:19,20		161:15,20,23	

181:8 183:14 260:15 267:5 287:7 <b>videotaping</b> 266:21 <b>view</b> 29:6 65:24 72:1 75:18 77:3 80:11, 12 81:7 99:11 114:7 138:16 259:15,17 300:14 <b>viewed</b> 173:11 <b>viewpoint</b> 77:4 <b>views</b> 79:13 <b>villain</b> 257:23 <b>Villalopos</b> 65:23 <b>violated</b> 192:10 231:7 <b>violation</b> 23:17 267:1, 3 <b>violence</b> 28:19,21 29:1,3 33:11 46:24 163:15 164:21 167:22 171:14 173:3 174:12,21 178:13 179:22 180:20,22,25 184:5,19 185:7,14 190:2 191:6, 9,21 192:3 288:5 <b>violent</b> 29:4 45:14	179:19 183:10,12 184:15 185:12 186:1 189:12 191:7,13,18 <b>VIP</b> 299:22 <b>vision</b> 290:15 <b>visit</b> 200:14 <b>visited</b> 306:11 <b>vociferously</b> 179:10 <b>volume</b> 199:21 <b>voluntarily</b> 41:4 <b>voluntary</b> 37:24 41:1,6 42:15,17 43:9,23 44:8 49:18 81:8,9 82:2,3 181:2 182:21,24 <b>vote</b> 25:3,12 39:2 <b>voter</b> 90:20 100:24 101:3 102:5 115:13 <b>voters</b> 136:25 <b>voting</b> 206:23 <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <b>wait</b> 118:21 123:24 127:2 145:14 317:10 <b>waited</b> 181:19	198:19 280:25 293:5 <b>waiting</b> 94:5 265:22 273:1 <b>waiver</b> 25:6 <b>walk</b> 18:2 23:14 35:2 40:20 42:11 45:10 53:17 60:1 109:11 127:24 162:15 212:12 <b>walked</b> 99:9 294:16 <b>Walker</b> 209:15,16 <b>walking</b> 88:2 <b>want</b> 13:23 14:4 18:13 22:13 26:12,13 31:13 34:13 36:8 37:16 38:7 40:18 46:20 50:13 54:5 58:6 63:1 66:2,4 69:13 71:22 76:21 93:5, 13 106:12, 14,15 124:18 130:10,12 131:24 143:13 145:19 155:5,20 158:10 161:4 162:15 166:2 170:9 175:1 176:19 187:25 192:13,17 193:5 194:19	200:4 221:22 222:9 224:3 226:3,4 231:18 237:18 238:5 239:1 240:15 243:20 253:13 258:20 260:3,12 266:19 278:21 288:12,13, 21,22 292:14 293:7,19,21 299:4 300:21 304:5 306:6 308:19 309:25 310:6,19 311:25 313:25 314:3 315:24 317:5 319:14,18 320:6 <b>wanted</b> 21:7 22:15 44:21 94:2,9 149:25 153:17,20 157:8 219:15 220:24 221:12,14 228:16,23 229:3 270:22 271:1,9 274:10 277:20 278:3 280:18,22 281:5 288:18 291:16,17,22 292:14,24 293:10,13,17 295:1 <b>wanting</b> 275:8 277:17 294:20
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>war</b>	79:23 83:2, 22 102:21 128:5 157:7 159:25 164:20 166:13 167:1 168:11 178:20,22 179:8 183:20 184:2 191:12 195:17 201:17 215:21 217:25 222:4 236:9 259:4, 9 267:16,20 268:15,16 272:6 276:16,20 278:6 292:1 294:1 295:17 306:23 310:13	<b>week</b>	292:23 309:1,4,18, 21
21:12,14 22:17 23:3,5 27:4,8,9 29:16 30:11 34:4,12,17, 21,22 35:9 40:3 44:17, 21,24 45:1, 4,20 46:23 50:12 62:22 67:1 70:11 82:15,16,23, 24 227:9 229:20 310:3 311:15 312:3,13,18, 22 313:5,7, 9,13 314:5	<b>Wayne</b>	<b>weigh-in</b>	<b>whoever's</b>
<b>War's</b>	120:9	104:9	157:21
71:18	<b>ways</b>	<b>weighed</b>	<b>wholly</b>
<b>warning</b>	23:15 147:4 274:23	104:6	206:20
191:15,20	<b>weakness</b>	<b>well-</b>	<b>widely</b>
<b>Warp</b>	184:25	<b>established</b>	57:10
249:21	<b>wearing</b>	162:17	<b>wild</b>
<b>warranto</b>	210:14,16	164:22 182:3 187:3	169:19 177:19 183:13
24:9	<b>Webex</b>	<b>well-known</b>	<b>will-call</b>
<b>warrants</b>	199:2,8,16 265:5	29:12	153:19
162:18	<b>website</b>	<b>went</b>	<b>William</b>
<b>Washington</b>	183:14 258:15	35:11 48:17 53:8 55:16 143:24 174:6,7,19 176:1 201:2 202:13 209:6 227:23 238:15 250:11 252:11 272:19 275:23 283:22 286:18 299:18	36:3 70:11
16:15 28:1,4 79:19 206:13 207:7,8,9 209:7,16 210:8 218:12 220:5 229:19 286:12	<b>websites</b>	<b>Whiskey</b>	<b>Williams</b>
<b>watching</b>	258:17	27:16 28:6 29:8,13,16 31:6,7 33:21	120:9 121:25
186:24 266:5,14 314:15	<b>Webster</b>	<b>White</b>	<b>willingness</b>
<b>way</b>	31:21 70:7	189:23 202:25 203:3,18 206:18 210:24 211:15 215:10 219:23 222:12 231:19 242:10 282:4 283:7,17 284:5,9,10 285:7 291:8	296:9
17:9 19:21 22:12,17 30:5 32:21 37:7 49:25 62:5 70:6 71:17 73:18	<b>Webster's</b>		<b>Wilson</b>
	30:16,18,20, 24 31:25		152:2,4,7,19 154:14
	<b>WEDNESDAY</b>		<b>win</b>
	8:1		269:12
			<b>wind</b>
			186:22 292:3
			<b>withdrawing</b>
			249:22
			<b>witness</b>
			8:8,10,22 30:3,8 63:14 64:17 76:10, 14 87:24 88:1 153:19 159:15 160:16,18,21 161:12 194:14,17 197:22 198:14 199:4,5,8, 11,13,19,23 200:3,5,19 202:2,5 213:9 214:6,

<p>8 228:19 238:10,12,15 251:12 264:25 265:3,4,16 267:25 297:22 298:10,15, 17,20 301:19 318:16 319:1,9,14</p> <p><b>witness's</b> 64:17</p> <p><b>witnesses</b> 198:8 320:2, 17</p> <p><b>wives</b> 220:17</p> <p><b>wizard</b> 258:5</p> <p><b>women</b> 212:18 224:11 227:2,12 273:9,14 275:16</p> <p><b>won</b> 67:16</p> <p><b>wonderful</b> 260:9</p> <p><b>wondering</b> 129:8</p> <p><b>word</b> 26:16 55:22 73:17 74:6 80:16 85:5 113:16 182:21 189:8 191:3 248:4 267:12</p> <p><b>wording</b> 55:21 56:2</p> <p><b>words</b> 37:25 44:13 49:19 55:13 60:8 80:22 87:7 146:20</p>	<p>170:16 171:10,16,22 174:22 175:15,25 176:7,12,15 177:3,4 178:13 179:10,20,21 180:7,8 185:13 188:23 189:16 191:1,14 197:3 219:7 313:15,17</p> <p><b>work</b> 10:8 13:7,12 36:4 72:16, 18 131:23 201:15 225:14 236:16 256:11 264:18 273:8,10 277:17,21</p> <p><b>worked</b> 32:21 136:5, 6 225:2 236:14 260:6,10 268:12 273:21,23 291:10</p> <p><b>working</b> 89:16,18 206:6 256:25 263:1 278:2, 6 290:11</p> <p><b>works</b> 11:4 76:17 132:2 217:20 235:15 238:20 302:22</p> <p><b>world</b> 180:13 187:25 227:9</p>	<p><b>worried</b> 304:9</p> <p><b>worst</b> 25:18</p> <p><b>Worthy</b> 43:16,21 52:24 53:2</p> <p><b>wrap</b> 154:10 319:15</p> <p><b>wrapping</b> 268:13</p> <p><b>Wray</b> 262:21 263:4,7</p> <p><b>Wren</b> 276:25 277:3,4,15 278:7 279:3 282:9,20 284:1 285:6</p> <p><b>writ</b> 24:8</p> <p><b>write</b> 16:7 38:21 140:18 259:19</p> <p><b>write-in</b> 129:3,4 131:22,25 133:23 134:16 135:19 136:2 140:16,20 141:21 142:1,13 146:14</p> <p><b>writes</b> 250:14,19</p> <p><b>writing</b> 43:5 64:5 98:3 196:12</p> <p><b>written</b> 8:17 11:6,9, 15 12:3,24 16:6 29:15 74:13,21</p>	<p>78:24 84:2 183:7 233:25 257:11 307:17 309:17</p> <p><b>wrong</b> 21:19 60:23 175:20</p> <p><b>wrongful</b> 95:2 150:9 187:4</p> <p><b>wrote</b> 11:11 20:5 46:23 84:4, 18 222:23 236:8 248:23 250:20,25 259:11</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>Yale</b> 14:8</p> <p><b>Yates</b> 260:8</p> <p><b>yeah</b> 16:25 24:13 34:20 65:18 81:24 84:11 88:10,24 95:16 103:16 108:18 115:23 153:3 200:6 201:12,22 202:2 208:18 209:24 212:11 226:8,11 234:15 237:17,25 238:7,19 239:9,16,22, 25 240:12, 19,21 241:16,19, 20,24 242:23 245:4,8,11,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

18 246:3,9 248:4,22 249:8 251:16 252:9,15 253:4 255:12 257:4,21,25 258:23,25 260:18 261:4,23 265:14 300:18 306:19 309:13 312:21 315:22 321:9	<b>yesterday</b> 8:13 198:10 <b>Young</b> 46:14,15 47:2,7	
	<hr/> <b>Z</b> <hr/>	
<b>year</b> 16:9,15 48:7 49:9 57:1 106:5 111:5 112:12,16 119:16 255:25 257:1,4 260:25 317:10	<b>Zero</b> 261:8	
<b>years</b> 10:17,18 11:11 23:14 25:13 71:19 76:25 79:18, 21 98:10 113:4,5 133:5 134:18 136:5 138:8, 22 144:18,19 163:23 168:20 192:5,9 202:9 203:10 219:24 260:11 268:13 269:7,19 272:21 273:23 275:24 288:6		
<b>yellow</b> 210:15		