

Exhibit 3

Transcript of August 28 Hearing,
Part 2 of 2

1 (After a recess, the proceedings continued at
2 3:05 p.m. as follows:)

3 THE COURT: Can we shut that back door and have
4 everybody seated, please.

5 Can I get the Marshals to close the back door. I
6 need everybody seated. On a chair or bench.

7 Thank you.

8 Are you ready to call your first witness?

9 MS. CROSS: Yes, Your Honor. Thank you.

10 The State of Georgia calls Mr. Kurt Hilbert.

11 THE COURT: Are you representing Mr. Hilbert?

12 MR. BRICKMAN: Yes, sir.

13 THE COURT: Let's do this. Obviously you're
14 representing him for a reason. If something's said, you don't
15 want him to answer, do you need to get closer to him or
16 sitting right there is fine? Do you want to get closer or
17 sitting where you're at is going to be okay?

18 MR. BRICKMAN: Is there a space there, Judge?

19 THE COURT: We'll find you one, because if there's a
20 question asked, I'd rather you make your objection here rather
21 than back there.

22 MR. BRICKMAN: If there is a spot, I'd be happy to
23 take it.

24 THE COURT: All right. Come on up.

25 COURTROOM DEPUTY CLERK: Would you raise your right

1 hand, please.

2 KURT ROBERT HILBERT

3 Having been duly sworn, testified as follows:

4 *****

5 COURTROOM DEPUTY CLERK: Have a seat. And if you can
6 please state and spell your name for the record.

7 THE WITNESS: Sure. My name is Kurt Robert Hilbert.
8 K-U-R-T. R-O-B-E-R-T. Hilbert is H-I-L-B-E-R-T.

9 THE COURT: Counsel, bear with me one second.

10 There will be questions asked of you by the State's
11 counsel and probably questions asked of you by Mr. Meadow's
12 counsel. You have your counsel here. If at any point in time
13 you think you need to talk to your counsel, you ask the judge,
14 I'd like to speak to my counsel, and you turn around and say
15 something.

16 Once you answer the question, the question's been
17 answered. Okay? Do you understand?

18 THE WITNESS: I understand, Your Honor.

19 THE COURT: And you make your objections. You've
20 done this before, so you know when to do it, okay?

21 MR. BRICKMAN: Yes, sir.

22 THE COURT: All right. You may proceed.

23 MS. CROSS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. CROSS:

1 Q. Mr. Hilbert, can you tell the Court, please, what is your
2 occupation? What do you do?

3 A. I'm an attorney here in the State of Georgia.

4 Q. Are you licensed in Georgia?

5 A. I am indeed.

6 Q. How long have you been licensed in Georgia?

7 A. Since 2002, a little over 20 years.

8 Q. Okay. And without getting into too much detail can you
9 explain just a little bit about what your practice area is?

10 A. Sure. I have basically four buckets. I do business
11 corporate, real estate, employment and constitutional
12 litigation.

13 Q. And do you own your own firm? Do you work for a
14 different firm? How does that work?

15 A. I have my own small boutique firm in Roswell, Georgia.

16 Q. I want to direct your attention, please, Mr. Hilbert, to
17 the December 2020/January 2021 time period, okay?

18 A. Okay.

19 Q. You're still an attorney working in Georgia?

20 A. Yes, ma'am.

21 Q. Practice areas as you've just described them for us?

22 A. Yes, ma'am.

23 Q. Office still in Roswell?

24 A. Yes, ma'am.

25 Q. All right. December 2020, do you have any acquaintance

1 with the defendant, Mr. Meadows?

2 A. Acquaintance with Mr. Meadows? No, I didn't have any
3 acquaintance with Mr. Meadows.

4 Q. All right. Had you ever met him prior to December 2020?

5 A. I don't believe I've ever met Mr. Meadows in person.

6 Q. Okay. Ever spoken to him on the phone?

7 A. Yes.

8 Q. Prior to December of 2020?

9 A. No.

10 Q. Tell me what, if any, relationship you had with the
11 reelection campaign for, during this time period, then
12 President Trump?

13 A. I'm sorry, could you rephrase? I didn't --

14 Q. I could.

15 What, if any, relationship did you have with the
16 reelection campaign of Donald Trump in December 2020?

17 A. I represented the campaign in Fulton County litigation.

18 Q. Okay. The campaign, I described it as the Trump
19 reelection campaign. Is that how you would describe it?

20 A. Donald J. Trump For President, Inc., which was, I
21 believe, the campaign name at the time.

22 Q. Okay. All right. But if I talk about the Trump campaign
23 and you talk about the Trump campaign, can we agree that we're
24 talking about that entity that you just described?

25 A. Yes, ma'am.

1 Q. Okay. What about in his individual capacity, did you
2 represent Donald J. Trump in his individual capacity?

3 A. I represented Donald J. Trump as Candidate for President.

4 Q. As candidate?

5 A. Yes.

6 Q. All right. And I'm going to show you --

7 MS. CROSS: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MS. CROSS:

10 Q. -- State's Exhibit Number 2. And I'm going to ask you to
11 take a look at that and you tell me if you recognize it,
12 please.

13 A. I do recall what this is, yes.

14 Q. Okay. And upon your review of State's Exhibit Number 2
15 is it a fair and accurate representation of what you believe
16 State's Exhibit Number 2 to be?

17 A. Yes. This is my entry of appearance for the petitioners
18 in the Fulton County court case that I signed.

19 Q. All right.

20 MS. CROSS: Your Honor, at this time we'd move
21 State's Exhibit Number 2 into evidence.

22 THE COURT: Any objections?

23 MR. MORAN: None, Your Honor.

24 THE COURT: All right. It's admitted without
25 objection, State's 2.

1 BY MS. CROSS:

2 Q. All right. Mr. Hilbert, you answered that last question
3 with the Fulton County litigation, this is your entry of
4 appearance in the Fulton County litigation. And I want you to
5 take a look at that and we'll see if we can save some time.

6 That was Civil Action 2020CV343355 -- I'm sorry -- 3255;
7 is that correct?

8 A. 2020CV343255, yes.

9 Q. Thank you.

10 All right. And who did you file an entry of appearance
11 on behalf of in that litigation?

12 A. Donald J. Trump in His Capacity as Candidate for
13 President; Donald J. Trump for President, Inc.; and David J.
14 Shaffer in His Capacity as a Registered Voter and Presidential
15 Elector Pledged to Donald Trump for President.

16 Q. And if we are talking about the November 3rd, 2020,
17 election, did you represent these parties in the Fulton County
18 litigation and other litigation?

19 A. Okay. If you could rephrase the question. I didn't
20 quite understand.

21 Q. It wasn't a very good question.

22 In the post-election period in November, December 2020,
23 what entities or persons did you represent in any election
24 contest litigation?

25 A. Okay. So there was one actual election contest that was

1 filed. That was the Fulton County Superior Court case. I
2 represented Donald J. Trump in his Capacity as Candidate for
3 President, Donald J. Trump for President, Inc., David J.
4 Shaffer in His Capacity as a Registered Voter and Presidential
5 Elector Pledged to Donald Trump for President as part of the
6 election contest.

7 Q. Okay. And was Mr. Shaffer at that time also the Chair of
8 the Georgia GOP party?

9 A. Yes, he was.

10 Q. Okay. I'm sorry, I think I interrupted you. Was there
11 other litigation that was ongoing?

12 A. Yeah. So I just want to make sure that the time frame is
13 correct. I made my entry of appearance December 7th. So
14 before, in November, I was not doing anything with the
15 campaign or the President or anything like that.

16 There was subsequent litigation as well that I brought in
17 the Federal District Court, that was brought before this
18 court. Not this particular Court, but the Federal District
19 Court.

20 Q. Okay. And you represented the same entities in that
21 litigation?

22 A. I believe they were different. The federal case was just
23 *Donald J. Trump*, I believe, *v. Kemp*, *Brian Kemp*.

24 Q. Okay.

25 A. Governor Kemp.

1 Q. Did you ever represent the federal government in any
2 election-related litigation?

3 A. No, ma'am.

4 Q. Who, if anyone else, was on your litigation team
5 assisting in the representation of Donald J. Trump personally
6 and the Trump campaign?

7 A. Goodness. Several people.

8 Alex Kaufman was on my team.

9 Q. Who's Alex Kaufman?

10 A. Alex Kaufman is a colleague, a lawyer as well here in
11 Georgia. At the time he was counsel for the Georgia
12 Republican Party, I believe. He also was counsel for David
13 Shaffer in some capacity, either corporate or individual, I
14 don't really know.

15 But he's just a friend, a colleague. And I do a lot of
16 cases with him as co-counsel.

17 Q. I didn't see Mr. Kaufman have an entry of appearance into
18 the litigation that you've described for us this afternoon.
19 Was Mr. Kaufman counsel of record?

20 A. No. He was never counsel of record.

21 Q. In what capacity, then, did he assist in the litigation
22 efforts?

23 A. He was a consultant, independent contractor, attorney.

24 Q. Okay. Anyone else on your litigation team?

25 A. Yes. Christopher Gardner, who is an attorney who came

1 down from Virginia.

2 There were several others as well. I can try to remember
3 all of them.

4 Patrick Witt as well. He was not a practicing attorney,
5 but he was a graduate from Harvard Law.

6 In addition to that there was Courtney Kramer.

7 In addition to that there was a team of lawyers from Fox
8 Rothschild that was participating in the cases as well.

9 Q. For the court reporter, that was Fox Rothschild?

10 A. Yes.

11 Q. And was that a firm that Mr. Kaufman was then associated
12 with?

13 A. Correct. Yes. At the time, yes.

14 So there was a team of folks there, and I honestly do not
15 recall all of their names.

16 And I think, to the best of my knowledge, that is all of
17 the lawyers that were on my team at the time if I can recall.

18 Q. What about Cleta Mitchell?

19 A. Cleta Mitchell as well, yes. Yes. She was also a
20 consultant. Thank you for reminding me, yes.

21 Q. And what was Ms. Mitchell's role in the litigation that
22 you oversaw?

23 A. She was originally the one who found me to bring -- you
24 know, act as counsel in this case to litigate these matters.
25 So she was a consultant as well, similar to what Alex was

1 doing.

2 Q. Did you have a relationship with Ms. Mitchell that
3 predated your involvement in this litigation?

4 A. I did not, no.

5 Q. Okay. So it was a cold call from Ms. Mitchell to you?

6 A. Yes.

7 Q. Some --

8 A. Yes.

9 Q. Not based on a prior relationship?

10 A. Correct.

11 Q. Was Ms. Mitchell -- what did you understand
12 Ms. Mitchell's role as a consultant to be?

13 A. She would give legal advice. She would render opinions
14 on various documents. I think she did review a few things
15 throughout the litigation.

16 But, generally speaking, she was a consultant. If we
17 needed an opinion of -- or a liaison between my office and
18 what was going on in the Office of the President and such, I
19 would usually typically go through her as the liaison to the
20 White House.

21 Q. Did Ms. Mitchell have a contact or a relationship with
22 someone in the West Wing that made that communication?

23 A. I wouldn't have personal knowledge of that. I don't
24 know. I just knew that she was able to contact who she needed
25 to contact up there. I didn't know those relationships.

1 Q. Did you know who she was contacting?

2 A. I do know that she had contacted Mark Meadows in certain
3 instances.

4 Q. Do you recall what those incidences were?

5 A. Not offhand. I mean, there were -- I mean, over a course
6 of a month, I -- this is over two-and-a-half years ago, I
7 couldn't tell you the specifics.

8 Q. Okay. Well, let me ask it a different way then,
9 Mr. Hilbert.

10 If you as the representative for Donald Trump in his
11 personal capacity and the Trump campaign in the reelection
12 efforts, if you needed to get a message to your client,
13 Mr. Trump, how would you achieve that?

14 A. I would go through Cleta Mitchell.

15 Q. Okay. Cleta Mitchell.

16 You would say -- and I'm being colloquial, so I'm not
17 ascribing these actual words to you. But you would say
18 something along the lines of, oh, Cleta, I got to get some
19 clarification on something. I need to advise President Trump
20 on where I'm going, want to make it okay. That was
21 information you communicated to Ms. Mitchell?

22 A. To Ms. Mitchell and potentially others, whoever might
23 have been on that e-mail chain.

24 Q. Okay. And Ms. Mitchell then would, in some form or
25 fashion, you believe, get the message to President Trump,

1 would then get direction in that?

2 A. To my knowledge. That's a yes. Yeah.

3 Q. Okay. All right. And I'm just wondering, Mr. Hilbert,
4 could you pick up the phone and get President Trump on the
5 line?

6 A. I did not have his personal phone number, no. No.

7 Q. Okay. Did you coordinate your representation of
8 Mr. Trump or the Trump campaign with any person at the
9 Department of Justice?

10 A. No, I did not speak with anyone at the Department of
11 Justice.

12 Q. At no time?

13 A. At no time.

14 Q. Did you coordinate your representation of Donald Trump or
15 the Trump campaign with any person in the Office of the White
16 House Counsel?

17 A. I spoke with some White House counsel over the period of
18 that month.

19 Q. Who was it that you spoke with?

20 A. I want to say Eric Herschmann.

21 Q. Did you reach out to Mr. Herschmann or did Mr. Herschmann
22 reach out to you?

23 A. I don't recall if I called him or he called me, but it
24 was in context. There were several attorneys on the phone at
25 the time.

1 Q. Do you recall the subject matter of the conversation you
2 had with Mr. Herschmann?

3 A. I don't. It had to do with the federal litigation.

4 Q. The federal litigation that you were spearheading here in
5 Georgia?

6 A. Yes.

7 Q. All right. I want to direct your attention now to
8 January 2nd, 2021.

9 A. Okay.

10 Q. January 2nd, 2021, do you recall any involvement that
11 you had in a phone conversation between Mr. Trump and then
12 Secretary of State Raffensperger?

13 A. I was on a call.

14 Q. Tell me how you came to get on the call.

15 A. So I was working at my office. I believe January 2nd was
16 a Saturday. We were preparing for a hearing that was -- we
17 were thinking was going to be upcoming in front of Judge Cohen
18 here in federal court that next Monday or Tuesday. I was
19 working on preparing for that hearing, working on briefing and
20 things of that nature.

21 And someone on my legal team -- I was in the conference
22 room of my law firm. Someone from my team came down the
23 hallway and came into my room. I believe it was Alex Kaufman
24 who was the person who did that. Came into my conference room
25 and said, I -- there's going to be a call.

1 Q. Who did you understand the call to be between?

2 A. My understanding was that the call was involving the
3 President. I don't know how else to put it.

4 Q. Okay. Your associate or someone comes to you and says
5 there's going to be a call, you know it's going to be the
6 President. Does the President want to talk to you?

7 A. I have no idea.

8 Q. What do you do?

9 A. Well, I don't know if this gets into attorney/client
10 privilege.

11 Q. I don't want to do that. None of my questions -- so
12 thank you for flagging it for me. None of my questions are
13 intended to go in that direction. So if you let me know that,
14 I'm going to ask a different question.

15 A. Okay. Okay.

16 Q. All right. Did you have a phone conversation with anyone
17 between the time that your associate came down the hall saying
18 the President wants to have the call and the time you actually
19 got on the call with Secretary Raffensperger?

20 A. And your question was did I have a call?

21 Q. Yeah. I want to know if you talked to anybody in between
22 that period.

23 A. Yes, I did.

24 Q. Who did you talk to in between that period?

25 A. I talked to the President. I talked to Mark Meadows. I

1 talked to Cleta Mitchell.

2 Q. Anyone other than the four of you on the phone?

3 A. Yes. My legal team, several members of my legal team
4 were on that call.

5 Q. Mr. Kaufman included?

6 A. I believe he was on the call, yes.

7 Q. Okay. Were you lead counsel for the litigation efforts
8 here in Georgia on behalf of Mr. Trump and the Trump campaign?

9 A. So I did not file the lawsuit. I did not draft the
10 lawsuit. I was brought in to litigate the lawsuit. When I
11 came in to litigate the lawsuit, I took over as lead counsel
12 to do the litigation aspect of the lawsuit.

13 Q. Okay. All right. So from -- I think the date of your
14 entry of appearance was somewhere around December 7th?

15 A. Yes.

16 Q. You did not initiate the lawsuit? You did not draft the
17 lawsuit.

18 A. That is correct.

19 Q. Okay. But from December 7th on, if somebody had to get a
20 question answered about the litigation, you were the one who
21 called the shots?

22 A. That is correct. That was my understanding.

23 Q. Okay. All right. Mr. Hilbert, did you initiate the
24 call between then President Trump and Secretary of State
25 Raffensperger?

1 A. No, I did not.

2 Q. Did you direct anyone else to initiate the call between
3 then President Trump and Secretary of State Raffensperger?

4 A. No, I did not.

5 Q. Was it part of your litigation strategy to have a call
6 between the two litigants, your client, Mr. Trump, and the
7 defendant in the lawsuit, Mr. Raffensperger?

8 A. I think that gets into mental impressions of counsel and
9 litigation strategy. I don't know if I can answer that
10 question.

11 Q. Okay. I'll ask it another way.

12 Did you make any effort to arrange a direct communication
13 between Mr. Trump and Mr. Raffensperger?

14 A. I did not.

15 Q. How long did the conversation between yourself,
16 Mr. Trump, Mr. Meadows and Ms. Mitchell last, and the other
17 members of your team as you've described?

18 A. From my recollection, it was minutes.

19 Q. And how long after that conversation did the call take
20 place? And when I say "the call," I mean the call between
21 Mr. Trump and Secretary of State Raffensperger.

22 A. It was virtually immediately thereafter.

23 Q. Okay.

24 A. Yeah.

25 Q. All right. You get notified there's going to be a call,

1 you have a conversation, there's still going to be a call at
2 the end of that conversation, and then you move into the call
3 between the President and Secretary of State?

4 A. That's to the best of my recollection how it happened,
5 yes.

6 Q. Okay. Prior to this conversation with Mr. Meadows that
7 you let us know you were both on, on that pre-Raffensperger
8 call, was that the first time you had talked to Mr. Meadows?

9 A. To the best of my recollection, yes.

10 Q. Were you on the phone for the entirety of the call
11 between President Trump and Secretary of State Raffensperger
12 to your knowledge?

13 A. So just to clarify, are you asking about the actual call?

14 Q. The actual call.

15 A. I was on for the entirety of the call, yes.

16 Q. And your role and participation in that call was as the
17 attorney for the Trump reelection campaign and Mr. Trump
18 personally; correct?

19 A. And David Shaffer, yes.

20 Q. And David Shaffer, correct, who was another litigant.

21 A. Correct. Yes.

22 Q. And litigation was ongoing at this time, correct, on
23 January 2nd, 2021?

24 A. Yes.

25 Q. The substance of the call, did you speak?

1 A. I did speak.

2 Q. What, if you could describe for us, was -- outside your
3 participation, what was the substance of the call?

4 A. I don't know if I can testify to the substance of the
5 call because that would be in violation of Rule 408 for
6 purpose of settlement compromise. I don't believe I can get
7 into the substance of the call.

8 Q. Okay. That's your position. I don't agree with your
9 position that -- but I want to make sure we flesh it out for
10 the record.

11 Are you testifying, Mr. Hilbert, that you believe the
12 entirety of that conversation was in furtherance of settlement
13 negotiations?

14 A. Yes.

15 Q. Okay. Recognizing that we're not going to agree on that
16 point and there's no reason to litigate it further, did you
17 have any role on the conversation -- did you have any role
18 in that conversation that was not derived from your
19 representation of Mr. Trump personally or the campaign?

20 A. No, ma'am.

21 THE COURT: Can I jump in here, Counsel, for one
22 second.

23 What made you thought this was for settlement
24 negotiations? What made you thought this telephone
25 conversation was for settlement negotiations?

1 THE WITNESS: There were two pending cases, Your
2 Honor, one in federal court and one in state court. There
3 would be no purpose to have a call with the President and a
4 litigant in the case without having it for purpose of
5 settlement compromise.

6 THE COURT: Never?

7 THE WITNESS: Well, at least that's my opinion, Your
8 Honor.

9 THE COURT: Well, no, that's what I'm asking you. In
10 your opinion, you never called another party unless it was
11 settlement negotiations?

12 THE WITNESS: No. Of course you would have other
13 conversations about other things, but when it deals with
14 issues that are directly related to litigation, and especially
15 when I knew that Ryan Germany, who was general counsel for
16 Secretary of State, was going to be on the call as well,
17 there's no reason to have any phone call other than outside
18 the scope of a Rule 408 protected conversation.

19 THE COURT: Without saying it was settlement
20 negotiations -- well, you would have to say.

21 THE WITNESS: Thank you, Your Honor.

22 MS. CROSS: I'm comfortable not getting into that
23 fight anymore.

24 THE COURT: Yes.

25 BY MS. CROSS:

1 Q. Mr. Hilbert, settlement negotiation or not, this was not
2 a call that you initiated; correct?

3 A. Correct.

4 Q. This was not part of your litigation strategy, to have
5 the two litigants speak to each other; correct?

6 A. I believe, again, that gets into mental impressions and
7 litigation strategies of counsel. I don't think I can testify
8 to that.

9 Q. Would you -- as part of your representation of Mr. Trump
10 personally or the Trump reelection campaign, would you consult
11 with Mr. Meadows about any step that you were going to take in
12 that litigation?

13 A. If I'm understanding what you said, would I have
14 consulted with Mr. Meadows about steps that I took in the
15 litigation?

16 Q. Let me ask you a different question.

17 Did you feel the need to consult with Mr. Meadows about
18 settlement negotiations in your ongoing litigation on behalf
19 of President Trump or the Trump campaign?

20 A. No.

21 Q. Who was -- you referenced Mr. Germany. Mr. Germany was
22 the general counsel for the Secretary of State's office;
23 correct?

24 A. That's correct.

25 Q. Mr. Germany was not representing the Secretary of State

1 in the litigation that you had; correct?

2 A. He had hired outside counsel, Chris Anulewicz.

3 Q. And was Mr. Anulewicz on the call?

4 A. He was not.

5 Q. Did you make any effort to get Mr. Anulewicz on the call?

6 A. Mr. Anulewicz was outside litigation counsel. Ryan
7 Germany was general counsel. The ethical rules say that as
8 long as there's counsel on the phone, that's all that's
9 required, not a specific type of counsel.

10 So from my perspective, if Mr. Anulewicz needed to be on
11 that call, then Ryan Germany should have reached out to him to
12 bring him into that phone call.

13 Q. That's not quite my question.

14 My question was, did you make any effort to get the
15 counsel of record for the Secretary of State's office in a
16 litigation that you were pursuing, did you make any effort to
17 get counsel of record on the phone call?

18 A. No. I relied on Ryan Germany.

19 Q. Did at any time you ask Ryan Germany if he was
20 representing the Secretary of State's office for purposes of
21 settlement?

22 A. He stated -- well, I was informed that he was counsel.
23 That's the best I can say.

24 Q. Okay. Well, that wasn't quite my question.

25 At any time did you confirm with Mr. Germany that he was

1 representing the Secretary of State's office for purposes of
2 the settlement conversation that you thought you were having?

3 A. I believe -- I don't know if I can get into that because
4 it's part of the attorney/client privileged communications and
5 part of that call.

6 THE COURT: Well, it's going to be up to you whether
7 you want to press the point or not. If you don't want to
8 press the point, we move on.

9 MS. CROSS: I'll move on.

10 BY MS. CROSS:

11 Q. Mr. Hilbert, outside the phone conversations that we've
12 talked about, did you ever speak with Mr. Meadows again?

13 A. I don't believe I spoke to Mr. Meadows ever again, no.

14 MS. CROSS: Thank you. Those are all the questions I
15 have.

16 THE WITNESS: Thank you.

17 THE COURT: Your witness, Mr. Moran.

18 MR. MORAN: Your Honor, at this time under Rule 26.2
19 we'd move for production of all statements by the witness from
20 the State.

21 MS. CROSS: The State's position, Your Honor, is 26.2
22 doesn't contemplate discovery in a removal hearing. It's very
23 specific what Rule 26.2 applies to, trials, sentencings,
24 probation revocations, a series of delineated proceedings of
25 which federal removal is not one of them. So I don't believe

1 that act applies.

2 MR. MORAN: It does include preliminary hearings,
3 Your Honor.

4 THE COURT: Excuse me?

5 MR. MORAN: It does include preliminary hearings.
6 Under the rule it says, This rule applies at trial, at a
7 suppression hearing under Rule 12, and to the extent specified
8 in the following rules: Rule 5.1 for preliminary hearings;
9 Rule 32(i)(2) for sentencing hearings; 32.1(e) for hearings to
10 revoke or modify probation; Rule 46(j) for detention hearings;
11 and Rule 8 governing proceedings under 2255.

12 THE COURT: I don't think this hearing falls under
13 any of those.

14 MR. MORAN: Well, Your Honor, I also say that --
15 that's fine if that's the Court's ruling. We asked for these
16 on Wednesday. We were not provided these statements then
17 either. They would go to potential impeachment evidence
18 that --

19 THE COURT: You give me a statute, a case that you're
20 supposed to get them right now, I'll tell them to give them to
21 you right now. But right now all the things you've stated
22 does not give me reason to order them to turn them over. So
23 they're not going to be turned over.

24 You may proceed to question this witness.

25 CROSS-EXAMINATION

1 BY MR. MORAN:

2 Q. Good afternoon, Mr. Hilbert. My name is John Moran. I'm
3 an attorney with McGuireWoods representing Mr. Meadows.

4 A. Good afternoon.

5 Q. Good to meet you.

6 A. Nice to meet you, too.

7 Q. Before we get into the substance, am I right, have you
8 previously testified in any setting about these matters?

9 MS. CROSS: I'm going to object to the phrase "about
10 these matters." If we could define that a little more
11 closely, that would probably address my objection.

12 BY MR. MORAN:

13 Q. Let me start, Mr. Hilbert.

14 Did you testify before the Georgia special purpose grand
15 jury?

16 A. I was subpoenaed to testify before the Georgia special
17 purpose grand jury. Yes, I did testify.

18 Q. And have you been interviewed by the Fulton County
19 District Attorney's Office or their agents separately from
20 that grand jury testimony?

21 A. No, sir.

22 Q. Have you been interviewed or have you testified in any
23 federal proceeding or federal law enforcement interview in
24 relation to these same matters?

25 A. No, sir.

1 Q. Okay. Thank you.

2 Mr. Hilbert, am I right that you testified that you
3 participated in the January 2nd call with Secretary of State
4 Raffensperger because you were a lawyer representing President
5 Trump as a candidate, his reelection campaign and David
6 Shaffer; is that right?

7 A. That is correct.

8 Q. And would you agree that Mr. Mark Meadows was not a
9 lawyer for those clients?

10 A. I don't know the status of Mark Meadows, whether he's a
11 lawyer or not. I don't know.

12 Q. But he was not part of your legal team?

13 A. He was not part of my legal team, no.

14 Q. And on the call is it true that he introduced himself as
15 the Chief of Staff?

16 THE WITNESS: Your Honor, for the same reason, I
17 don't think I can testify to what the content of the call was.

18 THE COURT: If you want to press the matter, we'll
19 press it. If not, we'll move on.

20 MR. MORAN: I won't press the matter, Your Honor.

21 BY MR. MORAN:

22 Q. In preparation for the call, Mr. Hilbert, did you
23 understand that Mr. Meadows was going to be participating
24 because he was the Chief of Staff?

25 A. That was my understanding, yes.

1 MR. MORAN: Thank you, Your Honor. No further
2 questions.

3 THE COURT: Redirect?

4 MS. CROSS: I have nothing, Your Honor.

5 THE COURT: Thank you, sir.

6 Let the record reflect the attorney representing him
7 for this purpose is Mr. Jeff Brickman. Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: May this witness be excused?

10 MS. CROSS: Yes, Your Honor.

11 MR. MORAN: Yes, Your Honor.

12 (Witness excused.)

13 MR. BRICKMAN: Good to see you, Judge.

14 THE COURT: Good to see you, Mr. Brickman.

15 Call your next witness, please.

16 MS. CROSS: State of Georgia calls Secretary of State
17 Raffensperger.

18 THE COURT: All right.

19 Counsel, you're doing a great job. If you would slow
20 down a little bit on the speaking. The court reporter can't
21 keep up with you. If they don't write it down, when I get to
22 read it, it's not there. Other than that, you're doing fine.

23 MS. CROSS: I appreciate that. Thank you. I'm
24 sorry.

25 THE COURT: Secretary Raffensperger, right up here.

1 Come on up, sir.

2 How you doing today?

3 THE WITNESS: Fine, Your Honor.

4 THE COURT: If you would raise your right hand,
5 Ms. Wright is going to administer the oath to you.

6 *****

7 BRAD RAFFENSPERGER

8 having been duly sworn, testified as follows:

9 *****

10 COURTROOM DEPUTY CLERK: Thank you. Have a seat,
11 please.

12 DIRECT EXAMINATION

13 BY MS. CROSS:

14 Q. Good afternoon, Secretary Raffensperger. How are you?

15 A. Great.

16 Q. Can you spell your name, please, for the court reporter.

17 A. R-A-F-F-E-N-S-P-E-R-G-E-R.

18 Q. And my name is Anna Cross. We hadn't met before today;
19 is that correct?

20 A. Correct.

21 Q. To the best of your recollection?

22 A. Best of my recollection.

23 Q. And mine, too. All right.

24 THE COURT: Hold on one second.

25 Secretary Raffensperger, is the gentleman standing in

1 the back your attorney?

2 THE WITNESS: Yes, he is.

3 THE COURT: All right.

4 Sir, would you come have a seat up here.

5 And, again, Secretary Raffensperger, if any one of
6 the lawyers asks you a question that you felt unsure whether
7 you should answer or not, turn to your attorney and he will
8 tell you whether to answer or not. And then I'll have the
9 final word on whether you should answer or not.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right.

12 MS. CROSS: Thank you, Your Honor.

13 THE COURT: Your name, sir?

14 MR. SHARMAN: Jack Sharman, S-H-A-R-M-A-N.

15 THE COURT: Jack Sharman, for the record,
16 representing the Secretary of State.

17 MS. CROSS: Thank you, Your Honor.

18 BY MS. CROSS:

19 Q. Secretary Raffensperger, can you let us know, what's your
20 current employment?

21 A. Secretary of State, State of Georgia.

22 Q. How long have you served as the Secretary of State for
23 the State of Georgia?

24 A. Since January 2019.

25 Q. Can you describe for us in broad terms what the

1 responsibilities of the Secretary of State in Georgia are
2 regarding election administration?

3 A. Chief election official for the State of Georgia.

4 Q. And what does that entail?

5 A. Well, we have elections from time to time in our cycle.
6 And it's going through the process of making sure that the
7 elections -- people follow the law, follow the Constitution,
8 and then we certify the results.

9 Q. Am I correct in summarizing the system that we have in
10 Georgia in that the individual counties actually carry out the
11 elections; is that correct?

12 A. Yes, that's correct.

13 Q. And what, then, is the role of your office after the
14 counties administer -- I'm sorry -- after the counties conduct
15 the elections per the state?

16 A. The counties report the results that occurred in their
17 county. We then tabulate that for all 159 counties, verify
18 their tabulations. And then at that point we're in a position
19 that we can certify the results of an election.

20 Q. What role, if any, does the federal government play in
21 the administration of the elections in Georgia?

22 A. None, other than what is spelled out in, you know,
23 federal law, but...

24 Q. Who do you send the certifications to?

25 A. Well, actually, I send them to the governor. And then

1 the governor would certify them.

2 Q. But as you as the Secretary of State are administering
3 elections and preparing to certify an election, is there
4 anyone in the federal government that you coordinate that
5 action with?

6 A. No.

7 Q. Is there anyone in the federal government that you
8 consult about the appropriateness of certifying any specific
9 election?

10 A. No.

11 Q. Anyone in the executive branch -- that's a slightly
12 different question.

13 Anyone in the executive branch that you consult with in
14 the administration or certification of the election results in
15 Georgia?

16 A. No.

17 Q. What about the President of the United States, does the
18 President of the United States at any given time have any role
19 in the administration of the election activity administration
20 in Georgia?

21 A. Not from my understanding.

22 Q. Does the President of the United States have any role
23 in the certification of the Georgia elections in your
24 understanding as the Secretary of State?

25 A. No.

1 Q. All right. I want to direct your attention, Secretary
2 Raffensperger, to the November 3rd, 2020, presidential
3 election.

4 Were you aware that after that election that you were
5 sued as part of -- you were sued by the Trump campaign and
6 Donald J. Trump individually?

7 A. Yes.

8 Q. And what was your understanding of that litigation?

9 A. The Trump campaign/the candidate, Donald J. Trump, sued
10 us making several allegations. They did not agree with the
11 results that were reported.

12 Q. December 4th, 2020, does that date sound familiar as the
13 initiation of that lawsuit?

14 A. I can't recall exactly what date. I was very familiar
15 that we had lawsuits.

16 Q. More than one?

17 A. Yes.

18 Q. Where are election challenges by a campaign required to
19 be filed in Georgia; do you know?

20 A. Not specifically.

21 Q. All right. Assume for the purpose of my question that
22 December 4th, 2020, was the initiation of the election contest
23 brought on behalf of Mr. Trump personally and the campaign for
24 his reelection.

25 December 4th, 2020, at that time the election had taken

1 place; correct?

2 A. Correct.

3 Q. The election was November 3rd, 2020?

4 A. Correct.

5 Q. Okay. Had there been a hand recount of the presidential
6 ballots?

7 A. By that time I believe so.

8 Q. Who ordered that?

9 A. The hand recount?

10 Q. Yes.

11 A. The hand retally I ordered. And then obviously President
12 Trump, once that election result was certified, then he could
13 ask for a recount. The retally and recount are two separate
14 functions. But the hand retally was something that I ordered.

15 Q. All right. And if I suggest to you that November 11th,
16 2020, was the date that you ordered that hand recount, does
17 that sound consistent with your memory?

18 A. Yes, it does.

19 Q. Certification of the vote in Georgia for the presidential
20 election in 2020, do you recall if that took place on or about
21 November 20th, 2020?

22 A. Don't remember the specific date but that would sound in
23 that order.

24 Q. And then you referenced a recount, the Trump campaign
25 requested a recount; is that correct?

1 A. Correct.

2 Q. And that recount can be requested after the certification
3 of the vote; correct?

4 A. Correct.

5 Q. What was the result of the recount?

6 A. President Trump still came up short.

7 Q. All right. When you say "came up short," does that mean
8 he lost the election?

9 A. He lost the election in the State of Georgia.

10 Q. Who won?

11 A. President -- now President Biden.

12 Q. We've heard testimony prior to your arrival today,
13 Secretary Raffensperger, that there was a signature audit in
14 Cobb County. Are you familiar with that?

15 A. Yes.

16 Q. Can you explain to me, please, how the signature audit in
17 Cobb County came to be?

18 A. It was the one area that we had received credible
19 evidence that the signature match audit was not done as part
20 of the absentee ballot verification process. And so we
21 instituted a verification of the signature matches in Cobb
22 County, taking a selected sample, about 10 percent, of the
23 total absentee ballots.

24 Q. Were there other allegations of election fraud or
25 wrongdoing that were made associated with the November 3rd,

1 2020, election?

2 A. Yes.

3 Q. Did you investigate those?

4 A. Yes.

5 Q. At the time of the signature audit in Cobb County on or
6 about December 22nd, 2020, were there any other issues related
7 to allegations of election fraud that you considered
8 outstanding?

9 A. It was a process, an ongoing process. In other words,
10 there were allegations that there were thousands of dead
11 people that voted, and we were in the process of verifying
12 what that was. We wrapped that up at some point.

13 Q. When you say -- I'm sorry, I don't mean to interrupt you,
14 but when you say you "wrapped that up," did you resolve that?

15 A. We resolved that at the time, up until January 2021, we
16 had found two dead people.

17 Q. Were all of the allegations -- again, I want to put aside
18 for a moment the signature audit in Cobb County. Were all of
19 the other allegations that you investigated, were they
20 resolved in such a way that you were confident that the
21 results of the election were not in question?

22 A. Yes.

23 Q. Are you certain of that?

24 A. Yes. Absolutely.

25 Q. Were you certain of that at the time of the

1 December 22nd, 2020, signature audit?

2 A. Yes.

3 Q. Am I understanding your testimony correctly to be that
4 that remained the one potential avenue that couldn't -- that
5 wasn't wrapped up at that time?

6 A. Yes.

7 Q. Broadly speaking, what's involved in a signature audit?
8 Who's involved and what are they -- what's their goal, what's
9 the intent?

10 A. When we did the signature audit in Cobb County, we had
11 one of our POST certified officers, along with two GBI agents,
12 we had approximately ten teams. And that was really -- the
13 GBI assisted us so we could get through the number of people.
14 It was about 15,000 absentee ballot applications that we had
15 to review.

16 Q. Okay. And just for clarification for the record you said
17 "POST certified." Does that mean to you that it's someone
18 with arrest powers after having gone through certification in
19 Georgia law enforcement?

20 A. Correct.

21 Q. And who was that person in your office who had arrest
22 powers who was present at the signature audit in Cobb County?

23 A. Frances Watson.

24 Q. Ms. Watson was the chief investigator at that time --

25 A. Yes.

1 Q. -- for your office?

2 A. Yes.

3 Q. All right. What role, if any, Secretary Raffensperger,
4 did the federal government have in the signature audit that
5 you were conducting in Cobb County on or about December 22nd,
6 2020?

7 A. None.

8 Q. Are you aware that Mr. Mark Meadows, a defendant in this
9 case, was physically present in the Cobb County Civic Center
10 at the time that the audit was ongoing?

11 A. Yes, I am.

12 Q. Did you invite him?

13 A. No.

14 Q. Did you solicit input from either Mr. Meadows or then
15 President Trump?

16 A. No.

17 Q. Were you aware at the time of the signature audit -- I'll
18 take that back.

19 At the time of the signature audit on or about
20 December 22nd, 2020, had you personally ever spoken to the
21 then President, Mr. Trump?

22 A. No.

23 Q. Had you personally, by December 22nd, 2020, ever spoken
24 to the Chief of Staff at that time, Mr. Meadows?

25 A. No.

1 Q. At that time, December 22nd, 2020, are you aware of any
2 effort or any outreach on behalf of Mr. Trump to you related
3 to the allegations of fraud in the November 3rd, 2020,
4 election?

5 A. From President Trump directly?

6 Q. From anyone on his behalf.

7 A. A person purporting to be Mr. Meadows did send me a text
8 in November.

9 Q. In November 2020?

10 A. Yes.

11 Q. What was the content of the text; do you recall?

12 A. To the effect of -- it came from -- it was a text but it
13 said nccongressman@gmail.com. But it said, Mr. Secretary,
14 this is Mark Meadows, your voicemail is full, give me a call.

15 Q. Did you return that call from Mr. Meadows?

16 A. No.

17 Q. Why didn't you return the call from Mr. Meadows?

18 A. Several reasons. One, he didn't leave a phone number.

19 Two, I first held elected office in the City of Johns
20 Creek. And what was told to us in very strong terms is that
21 we never, as city council members, got involved in policing
22 investigations. This was, in effect, an ongoing investigation
23 with POST certified officers. And I did not feel it was
24 appropriate for me to weigh in or to have other outside forces
25 weighing in to anything that could look like a conflict of

1 interest. I didn't see what good could come out of it.

2 Q. I understand.

3 Are you aware of any other outreach, either before the
4 signature audit -- well, let me ask -- let me back up a
5 moment.

6 The signature audit, what were the results of that audit?

7 A. I believe it was two, perhaps four individuals, it was --
8 their signatures were not correct. One was a spouse signing
9 for another spouse member. Another one was another similar
10 type situation.

11 But what -- we conclusively proved that there was not
12 fraud. We sent -- we dispatched our investigators with GBI.
13 And Frances Watson could go into detail on that. But we went
14 out there and we talked, face-to-face interviews, with these,
15 you know, questionable ones. It was less than five.

16 Q. Less than five.

17 And in the presidential election ballots that were
18 submitted in the November 2020 election, I'm not going to ask
19 you for a specific number, was the five potentially
20 problematic ballots that you --

21 A. Out of, say, 15,000. So extrapolate that out to -- the
22 150,000, and extrapolate it out, it would never rise to the
23 level of overturning the results of the race.

24 Q. Too small of a number to have affected the results from
25 Cobb County?

1 A. Right. We did interview those people and we could get
2 answers on all that. So, in effect, we reduced it down to
3 just, I believe, two.

4 Q. Are you aware, Secretary of State Raffensperger, or were
5 you aware at the time that there was a December 27th text from
6 Defendant Meadows to an employee of yours related to signature
7 verification in Fulton County? Were you aware of that text?

8 A. Not that I recall, but perhaps.

9 Q. Did you ever conduct a signature audit in Fulton County
10 related to the November 2020 election?

11 A. Not prior to January. We never had really any
12 credible -- we had lots of allegations, but none of it ever
13 was credible.

14 We had a fellow that -- named Carter Jones that was there
15 as part of our consent agreement with Fulton County. And he
16 was verifying that they did -- Fulton County did do signature
17 match.

18 Q. Okay. So despite the allegation, it was insufficient
19 information for you to pursue a signature audit in Fulton
20 County?

21 A. Correct.

22 Q. All right. I want to -- are you aware of any other --
23 I'm going to orient you a little bit to January 2nd, 2021.
24 I'm going to ask you some questions about that.

25 But right now, prior to January 2nd, 2021, you talked

1 about the text message from Mr. Meadows in November. You
2 talked about Mr. Meadows arriving uninvited at the Cobb County
3 signature verification. What other outreach from either
4 Donald Trump or someone acting on his behalf are you aware of?

5 A. Mr. Meadows sent me another text apparently in December,
6 and he wanted me to give him a call. And this time he said
7 call the White House switchboard. And he left a number there.

8 Q. Did you return that call?

9 A. No.

10 Q. Did you ever speak with Mr. Meadows after -- as a result
11 of any of these outreaches?

12 A. No.

13 Q. Are you aware of any other -- you talked about what you
14 received personally. Are you aware of any other communication
15 or efforts that were made to contact your staff on behalf of
16 either Mr. Meadows or the then President Trump?

17 A. I'm not aware of -- can't recollect. I know you
18 mentioned he reached out to one of our staff members back in
19 November. I don't know -- I can't recall something in
20 December.

21 Q. Is it something that you can't recall the details at this
22 time? Were you aware at the time of other outreach?

23 A. Nothing specific.

24 Q. If there's been testimony that Mr. Meadows had attempted
25 to leave a voice message for you over the period of a week or

1 two before the January 2nd, 2021, call, is that consistent
2 with your recollection as far as the number of times
3 Mr. Meadows reached out to you personally?

4 A. Can you say that again, please.

5 Q. That was a bad one.

6 If there was testimony prior to your arrival today that
7 Mr. Meadows reached out to you personally at least once in
8 the week or two weeks prior to the January 2nd call, is that
9 consistent with your recollection?

10 A. I believe that -- my recollection is that I believe he
11 called the Secretary of State's office and left a voicemail in
12 the general mailbox. But we were swamped with calls and it
13 just never got picked up.

14 Q. All right.

15 Let me direct your attention then to the call on
16 January 2nd, 2021. Did you initiate that call?

17 A. No.

18 Q. How did you come to learn that there was a call that your
19 presence was requested on?

20 A. My Deputy Secretary of State reached out to me.

21 Q. Who's that?

22 A. Jordan Fuchs.

23 And she said the White House called, and they want to
24 talk to you.

25 Q. To your understanding did Ms. Fuchs have a

1 relationship -- not a personal relationship. Did she know
2 anyone or have a contact in the President's office?

3 A. It was Mr. Meadows that reached out to her.

4 Q. And what did you understand the purpose of the outreach
5 to be?

6 A. That the President wanted to talk to me.

7 Q. Were you aware at that time of what the President wanted
8 to talk to you about?

9 A. The election of 2020.

10 Q. Is that the information that was relayed to you, or was
11 that your best guess based on the events that had preceded it?

12 A. I think it went along the lines of, the President wants
13 to talk to you. He heard you on Cavuto this morning.

14 Q. What's Cavuto?

15 A. Neil Cavuto, Fox News. I was interviewed by Neil Cavuto.
16 And I don't believe the President cared for my comments. It
17 was about data points and why he came up short.

18 Q. Did any of the interview that you're describing for us,
19 did that interview at least air on the morning of
20 January 2nd, 2020 [sic]?

21 A. Yes, it did.

22 Q. The information that was relayed to you was that the
23 President had seen it?

24 A. Yes.

25 Q. The President had some things he wanted to talk to you

1 about --

2 A. Yes.

3 Q. -- as a result of that interview?

4 A. Yes.

5 Q. And that was why the outreach was occurring on that day?

6 A. Yes.

7 Q. You had resisted efforts at contact prior to January 2nd,
8 2021, is that correct?

9 A. Correct.

10 Q. Why was it that you decided to accept the call on
11 January 2nd?

12 A. I didn't at first. I told the deputy, I don't think
13 that's, you know, in our best interest. I don't have an
14 interest.

15 And so we hung up. And she called back, and she said
16 that -- and this is my recollection, that she called back
17 then. And then it was relayed that, no, we needed to have
18 this call.

19 And I said, If we're going to have this call, it can't
20 just be by myself. We have ongoing litigation from the
21 campaign, that I need to have general counsel on the call with
22 us.

23 So they even said, you know, we have our lawyers on the
24 phone call.

25 Q. Who was your general counsel for the Secretary of State's

1 office in December, January of 2021?

2 A. Ryan Germany.

3 Q. Were you able to get Mr. Germany?

4 A. Yes.

5 Q. Anyone else on your end that was on the call?

6 A. Jordan Fuchs who facilitated the call.

7 Q. The second when -- what was your understanding of who was
8 communicating with Ms. Fuchs in the second contact? As I'm
9 understanding your testimony -- let me ask a better question.

10 As I'm understanding your testimony, Mr. Meadows reached
11 out to Ms. Fuchs to reach out to you to arrange a call;
12 correct?

13 A. Right.

14 Q. You declined to participate at that time; correct?

15 A. Right.

16 Q. You relayed that to Ms. Fuchs; correct?

17 A. Correct. I believe she called back to Mark Meadows and
18 said, well, we need to have this call. So that came back to
19 me. So we ended up having the call.

20 THE COURT: Was this call -- do I understand that
21 this call was solely to deal with the 2020 election?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Was it to deal with anything else, COVID
24 or anything like that?

25 THE WITNESS: No. The 2020 election.

1 BY MS. CROSS:

2 Q. The 2020 election that the federal government didn't have
3 a role in certifying; correct?

4 A. Correct.

5 Q. The 2020 election that the federal government didn't have
6 a role in administering; correct?

7 A. Correct.

8 Q. The 2020 election that Mr. Trump personally and the
9 campaign was suing you and your office to challenge; correct?

10 A. Correct.

11 Q. At this point, January 2nd, 2021, the certification in
12 Georgia had taken place; correct?

13 A. Correct.

14 Q. At least two certifications?

15 A. The race gets certified once.

16 Q. How, then, does it work with the recount?

17 A. The results were consistent when we did the 100 percent
18 rescan of the ballots, so there wasn't anything to review.

19 And it had been certified.

20 THE COURT: Let me interrupt again.

21 Is it my understanding at this point in time Governor
22 Kemp had certified the election?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: So this call on January 2nd, the election
25 was certified by Governor Kemp?

1 THE WITNESS: Your Honor?

2 THE COURT: You already got a certification from
3 Governor Kemp on the election? He had certified?

4 THE WITNESS: Yes. Yes, Your Honor.

5 THE COURT: Once the election is certified by the
6 Governor, can anything change it?

7 THE WITNESS: We haven't crossed that bridge yet,
8 Your Honor.

9 THE COURT: Well, I hope you don't bring it to court
10 to me.

11 THE WITNESS: I wouldn't think so, but I'm not a
12 lawyer, I'm an engineer.

13 THE COURT: But you're Secretary of State?

14 THE WITNESS: I am. I'm not aware of anything that
15 could cause that.

16 THE COURT: In your history -- this is your second
17 term as Secretary of State?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: In your term as Secretary of State has it
20 ever occurred before once the governor certifies the election
21 anything changed?

22 THE WITNESS: No, Your Honor.

23 BY MS. CROSS:

24 Q. There were no recounts pending at this time, January 2nd;
25 correct?

1 A. None to my recollection.

2 Q. Was your job with respect to the certification --

3 THE COURT: Let me interrupt you again.

4 Would there have been anything to settle at this
5 time, any compromise and settlement that could be done?

6 THE WITNESS: I don't believe, Your Honor, there was.

7 THE COURT: Go ahead. I'm sorry.

8 MS. CROSS: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 BY MS. CROSS:

11 Q. I'm going to approach you, Secretary Raffensperger, with
12 what has been marked as State's Exhibit Number 3. I want you
13 to take a look at it for me, please, and see if you recognize
14 it?

15 A. It's a recording of the phone call I had with the
16 President and my signature.

17 Q. Okay.

18 Your signature is on the envelope that -- State's Exhibit
19 Number 3 is the actual USB drive. And you have reviewed that
20 prior to your testimony today; correct?

21 A. Correct.

22 Q. And your signature on that means it is true and accurate
23 to the best of your recollection?

24 A. Yes.

25 Q. State's Exhibit Number 3, is that a full and complete

1 recording of the conversation, at least the portion where you
2 were on the line and Mr. Trump is on the line?

3 A. Yes.

4 MS. CROSS: Your Honor, at this time we move State's
5 Exhibit Number 3 into evidence.

6 MR. FRANCISCO: No objection, Your Honor.

7 THE COURT: Admitted without objection.

8 MS. CROSS: Thank you.

9 BY MS. CROSS:

10 Q. Secretary of State Raffensperger, in your experience up
11 to this time as Secretary of State, was this outreach from a
12 campaign, was that normal?

13 A. I've seen candidates lose and come up short and have a
14 recount, but outreach to this extent was extraordinary.

15 Q. What about public statements, public statements made by
16 then President Trump or the campaign making allegations of
17 fraud in Georgia, was that something that was typical in your
18 experience of a losing candidate?

19 A. No, it was extraordinary.

20 Q. Had you personally been the target of some of these
21 public statements, Secretary Raffensperger?

22 A. Several.

23 Q. What, if any, consequence did you see as a result of
24 public statements alleging that you personally were involved
25 in fraud?

1 A. From a personal standpoint, you know, we had multiple
2 threats, myself, my wife. We also saw throughout Georgia
3 election workers being threatened and other situations like
4 that. Nationally you saw just tremendous social disruption.
5 People were spun up. And so that's why we went through
6 diligently, thoughtfully and checked out every single
7 allegation so we could report back to the people of Georgia
8 and to the campaigns here are what the results were.

9 Q. As you continued to go throughout the processes of
10 certification, recounts, signature verification, as you
11 reported those events and the results of your investigation,
12 what, if any, effect did you see in the public statements
13 coming from then President Trump or the Trump campaign?

14 A. I didn't see any change in tone or behavior.

15 Q. Who, to your knowledge, was on -- you told us who was
16 on the phone call from your side, who you arranged to have
17 present on the call. Who was on the call from the Trump side
18 if you knew or as you knew it at the time?

19 A. I never really knew who all the people were. I assumed
20 they were all up in the -- up in the Oval Office. But he
21 mentioned Alex, which turned out to be Alex Kaufman. Kurt,
22 which turned out to be Hilbert. I think that's his name. And
23 then I knew Mark Meadows was on there. The President. And --

24 Q. How did you know Mr. Meadows was on the phone?

25 A. Because he started the call.

1 MS. CROSS: Your Honor, with the permission of the
2 Court, we have excerpts from State's Exhibit Number 3 that we
3 play and then -- with the Court's permission.

4 THE COURT: Any objections?

5 MR. FRANCISCO: You're talking about playing audio
6 excerpts?

7 MS. CROSS: Correct.

8 MR. FRANCISCO: That's fine.

9 THE COURT: No objection?

10 MR. FRANCISCO: No objection.

11 THE COURT: You may proceed.

12 (Clip Number 1 was published in open court.)

13 BY MS. CROSS:

14 Q. That excerpt that we heard, we'll call it Clip Number 1,
15 is that consistent with your recollection of the introduction
16 to the call made by Mr. Meadows?

17 A. Yes.

18 Q. You didn't hear Mr. Meadows say that anyone from DOJ was
19 involved; correct?

20 A. Correct.

21 Q. You didn't hear Mr. Meadows say that anyone from the
22 Office of Legal Counsel was involved; correct?

23 A. Correct.

24 Q. Did you understand this call to be between the Trump
25 individually and the Trump campaign in their individual

1 capacities?

2 A. Those were Trump campaign lawyers, so I felt that it was
3 a campaign call.

4 Q. When Mr. Meadows mentioned finding a less litigious path
5 referencing the litigation, what litigation did you understand
6 him to be referring to?

7 A. That somehow we could resolve this.

8 Q. Which lawsuit could you resolve was your understanding?

9 A. I believe that was the Trump v. Kemp versus -- and
10 Raffensperger.

11 Q. The election challenges?

12 A. The election challenge.

13 MS. CROSS: Can we play Clip Number 2, please. Thank
14 you.

15 (Clip Number 2 was published in open court.)

16 BY MS. CROSS:

17 Q. Secretary Raffensperger, to your knowledge, at that time
18 when Mr. Meadows was referring to the litigation, and I want
19 to -- we can play it again if you need to hear it, but I
20 heard, We believe that not every vote or fair vote and legal
21 vote was counted, among other things.

22 Do you recall hearing that?

23 A. Yes.

24 Q. Who did you understand Mr. Meadows to be referring to
25 when he said "we"?

1 A. President Trump and himself and the Trump campaign.

2 MS. CROSS: Can we play Clip Number 3, please.

3 (Clip Number 3 published in open court.)

4 BY MS. CROSS:

5 Q. Secretary of State Raffensperger --

6 A. Uh-huh.

7 Q. -- did then President Trump win the State of Georgia in
8 the 2020 election campaign by more than half a million votes?

9 A. No, he did not.

10 Q. Did then President Trump lose the election in Georgia?

11 A. He lost the election in the State of Georgia.

12 Q. That was known to you by January 2nd, 2021?

13 A. Yes.

14 Q. The allegations that were specifically made in that clip
15 and throughout the call by then President Trump, you
16 investigated all of them; correct?

17 A. Correct.

18 Q. Were you able to substantiate?

19 A. Yes.

20 Q. What?

21 A. Well, they alleged in their lawsuit that 66,000 underaged
22 voters had voted in the State of Georgia. In Georgia you can
23 register to vote when you're 17-and-a-half. We had the
24 information day, month, year. They just had a year. So it
25 could have looked from their perspective that these were

1 underaged voters. We verified day, month, year. And every
2 single voter had turned 18 by election day.

3 They allege in their lawsuit 10,000 dead voters that had
4 voted. In the conversation I had with President Trump, he
5 said 5,000. Be that as it may. We had found at that time
6 [sic].

7 Subsequent to that I spoke to the January 6th committee,
8 I told them to correct the record, we found two more. So we
9 have four dead people that voted in the State of Georgia.

10 As it related to the number of felons, they alleged in
11 their lawsuit over -- about 2,050. What we found is no more
12 than 74, total potential of 74 voters that could have still
13 been under felony sentence. All the others were lawful
14 voters.

15 Then they also talked about non-registers voters. I
16 think it was 2,423. There were zero.

17 They talked about out-of-state voters in that range also,
18 in that range of 4,500, something like that. That is a
19 difficult thing to prove, and we understand that, because it
20 goes to residency. But we went through that and realized it
21 was less than that number. And I don't recall exactly what
22 that was.

23 But you add that all up, none of it was sufficient to
24 come to anywhere near that total of 11,779, which would have
25 changed the outcome of the election for the State of Georgia.

1 Q. And were those facts and the results of your
2 investigation that you just described for us, were those
3 things that you tried to convey to then President Trump and
4 Mr. Meadows on that call?

5 A. Yes. When we got the opportunity to speak, we spoke the
6 truth.

7 Q. Did it appear to you that your words were accepted?

8 A. No.

9 MS. CROSS: Can we play the final clip, please.

10 (Clip Number 4 was published in open court.)

11 BY MS. CROSS:

12 Q. Secretary Raffensperger, that was a fairly lengthy clip.
13 At the beginning do you recall hearing Mr. Meadows talk, and
14 I'm going to quote to make sure, they were asking for access
15 to data; do you recall?

16 A. Yes, I do.

17 Q. Was a remedy that the campaign litigation was seeking,
18 was that access to the Secretary of State voter data?

19 A. Yes, it was.

20 Q. At that time, January 2nd, 2021, was there any effort
21 that you're aware of by the federal government to get
22 Secretary of State voter data?

23 A. Nothing specific. In other words, I know that at some
24 point the US Attorney of the Northern District, BJ Pak,
25 resigned and Bobby Christine took over that role. But I

1 believe that was January 3rd or somewhere in that range.

2 But we had been talking to the FBI and had talked to them
3 about State Farm Arena, I know that -- that infamous tape that
4 was done. And they had looked at it along with GBI and along
5 with our people. But nothing specific as related on to this
6 call if that's what your question was.

7 Q. Okay.

8 So when Mr. Meadows references we need access to the data
9 or we want access to the data, who were you understanding
10 wanted access to the data?

11 A. The Trump campaign.

12 MS. CROSS: Thank you, Secretary Raffensperger. I
13 have no further questions of you, but I believe the other side
14 may.

15 THE COURT: Your witness, sir.

16 MR. FRANCISCO: Thank you. Good afternoon, Your
17 Honor.

18 To preserve the record we would start by making the
19 same Rule 26.2 request that you previously ruled on and ask
20 that we be given immediate access to those documents as to
21 Mr. Raffensperger.

22 MS. CROSS: The State's response is the same, Your
23 Honor. They haven't cited any authority that would entitle
24 them to that information at this time. That's the State's
25 position.

1 THE COURT: I'll overrule your objections. Well, not
2 overrule her objections. I'll affirm her objections. I'll
3 note your objections for the record.

4 CROSS-EXAMINATION

5 BY MR. FRANCISCO:

6 Q. Good afternoon, Secretary Raffensperger.

7 I would like to start out by talking a little bit about
8 federal election law. I assume in your role as Secretary of
9 State you're quite familiar with federal election laws?

10 A. Yes.

11 Q. Are there a number of federal election laws that apply to
12 aspects of election administration that your office conducts?

13 A. Yes.

14 Q. And so when we talk about election fraud, as that term is
15 commonly used, that can refer to both a violation of state law
16 or a violation of federal law when it comes to voting?

17 A. Correct.

18 Q. In the 2020 federal election there were numerous federal
19 executive branch agencies that were involved in the process of
20 Georgia administering its election, is that accurate?

21 A. From the standpoint of -- like for cyber security and
22 resources like that that the federal government brought --
23 made available to the states?

24 What specifically are you asking?

25 Q. I think -- you know, was SISA for cyber security involved

1 in monitoring Georgia's election or being involved with what
2 you were administering?

3 A. They've been involved in that for several years now.

4 Q. That's through the Department of Homeland Security?

5 A. Yes.

6 Q. You mentioned BJ Pak and the US Attorneys. Were they
7 involved in investigating election fraud?

8 A. Yes. Post-election November 2020.

9 Q. And then the FBI, you're talking about the federal FBI
10 was also investigating these allegations about the State Farm
11 Arena?

12 A. Yes.

13 Q. So it's actually quite common for the federal government
14 to be involved with -- in post-election matters in Georgia; is
15 that correct?

16 A. If there's a reason for them to be.

17 Q. It's not as if Georgia runs the election and the federal
18 government has no role or -- no role to play whatsoever?

19 A. No. They have their role per statute.

20 Q. Post-election challenges happen quite commonly when we
21 have elections in this country; is that correct?

22 A. They happen from time to time, particularly in close
23 elections.

24 Q. And when you took office, was there -- were there
25 post-election challenges, this was before 2020, that were

1 pending?

2 A. Stacey Abrams lost the gubernatorial race of 2018 by
3 55,000 votes. And when I took office, we had multiple
4 lawsuits from Stacey Abrams and her allied groups relating to
5 the 2018 race.

6 Q. And in general terms, those lawsuits challenged the
7 number of votes or alleged voter fraud and various things that
8 they wanted to change the result of the election?

9 A. It was her allegation about voter suppression. And, you
10 know, that was all entailed. And so that was litigated. It
11 took several years. Four years to be exact. And we won in
12 court on every single count.

13 Q. I suspect the judge is familiar with at least one of
14 those cases quite well.

15 THE COURT: Yeah.

16 Q. The timing of those cases, those cases weren't all
17 resolved before that election was certified; is that correct?

18 A. Correct.

19 Q. So candidates -- it's happened before where a major
20 statewide candidate had litigation, was challenging an
21 election in Georgia, and that challenge extended beyond the
22 certification of the results?

23 A. Well, in the case of Stacey Abrams, it's really about the
24 process, you know, was there actually voter suppression where
25 people were removed off voter rolls, things like that.

1 Q. But it did happen? There were a number of lawsuits and
2 they --

3 A. Correct.

4 Q. -- were resolved by mid-December, whenever certification
5 tends to occur?

6 I would like to ask a couple questions about the Cobb
7 County signature audit that you-all were doing. And I know
8 you've previously explained this process in helpful detail.

9 But as to Mr. Meadows, it's true, isn't it, that he
10 didn't express any objections as far as you're aware to how
11 that audit was being conducted when he visited Cobb County?

12 A. Correct.

13 Q. In fact, Mr. Meadows didn't ask for anything be done
14 differently when he visited that audit as far as you were
15 aware?

16 A. Correct.

17 Q. And is it fair to say that Mr. Meadows' observation when
18 he was gathering information in that audit consisted primarily
19 of him looking through a glass panel of a door to observe the
20 process?

21 A. Correct.

22 Q. And candidates occasionally will ask to reach out to your
23 office or watch part of the process after election night, to
24 have observers; is that true?

25 A. Correct.

1 Q. Mr. Meadows was the Chief of Staff for President Trump in
2 this time. Were you -- just generally in the fall of 2020
3 were you aware that Mr. Meadows was the Chief of Staff?

4 A. Yes, I was.

5 Q. And, you know, I think we just heard a clip of the call
6 that's been discussed at some length. Mr. Meadows, you
7 remember, he announced himself as Chief of Staff on that call?

8 A. Yes.

9 Q. And you testified in some detail about going back and
10 forth with Ms. Fuchs -- I probably said her name
11 incorrectly -- about that, setting up the call. But when
12 Mr. Meadows reached out through Ms. Fuchs, you understood that
13 he was acting on behalf of the President as Chief of Staff?

14 A. I understood he was acting on behalf of the President.

15 Q. So as far as you were concerned, before the call started
16 you knew Mr. Meadows was the Chief of Staff, you knew that he
17 set up the call on behalf of the President, and you knew that
18 he announced himself as Chief of Staff early on in the call?

19 A. Correct.

20 Q. I would like to ask you some questions about the call
21 itself and what transpired on that. I understand it's quite a
22 long call. We heard chunks of it, but there's a lot that we
23 didn't hear.

24 And, you know, there was a lot of statements made on the
25 call by former President Trump. But Mr. Meadows' speaking

1 roles were quite limited. In fact, I believe we just listened
2 to virtually all of Mr. Meadows' statements on that call.

3 Do you think it's fair to say that Mr. Meadows was making
4 requests about letting the lawyers get together and resolving
5 things in some fashion, but he wasn't making specific voter
6 fraud allegations?

7 A. Correct.

8 Q. Others on the call certainly may have, but Mr. Meadows
9 was not speaking on those issues?

10 A. Correct.

11 Q. In fact, Mr. Meadows is seeking some sort of agreement is
12 what it sounds like on the call to me. And when he says he's
13 hopeful there's some sort of agreement that can be reached,
14 where the parties can look at the data, is there anything
15 inappropriate with that request?

16 A. I didn't take it as inappropriate.

17 Q. You didn't think it was inappropriate. Okay.

18 We talked a little bit about types of election fraud
19 claims in your testimony and whether it would change the
20 results of the election, but I noticed that you said there
21 were two dead voters that were discovered at the time of this
22 call and then two subsequently discovered?

23 A. Uh-huh.

24 Q. Did your office do anything with those discoveries?

25 A. Pardon me?

1 Q. Did your office do anything with those discoveries of
2 dead voters?

3 A. Yes. They came before the State Election Board, and they
4 were prosecuted.

5 Q. Okay. So there's a law enforcement function that occurs
6 when you discover voter fraud, even if it's only a couple
7 votes?

8 A. Correct.

9 Q. Even if it doesn't change the outcome of the election?

10 A. Yes.

11 Q. So it's legitimate for the State of Georgia, your office
12 or others, to investigate allegations, credible allegations of
13 voter fraud even after an election may be settled?

14 A. Correct.

15 Q. And to take action?

16 A. Correct.

17 Q. Would it also be appropriate for the federal law
18 enforcement agencies to do likewise?

19 A. That's a federal issue. I would assume so.

20 Q. But you don't have any reason to believe that the federal
21 government would have less interest in pursuing election fraud
22 after an election than the state government?

23 A. No. I assume everyone should want fair and honest
24 elections.

25 MR. FRANCISCO: Pardon me, Your Honor, reviewing my

1 notes.

2 THE COURT: Take your time.

3 BY MR. FRANCISCO

4 Q. Mr. Meadows' statements on the call, which, again, we
5 just refreshed the whole world's, or at least the people in
6 this courtroom's, memory about what he said. I just want to
7 clarify that he didn't make any requests that you change vote
8 totals in that call, Mr. Meadows himself?

9 A. Correct.

10 Q. And that's consistent with your memory of this endeavor?

11 A. Correct.

12 Q. To go back to the numbers of dead voter's thing, just
13 real briefly, I know that Mr. Meadows disagreed with your
14 statement that there were two dead voters on the call. But as
15 we sit here today, it's actually accurate that there were more
16 than two dead voters that you subsequently discovered?

17 A. We found four. Recently I read in a newspaper that
18 someone thought there was 25, but 25 is a whole lot closer to
19 four.

20 MR. FRANCISCO: One moment, Your Honor.

21 THE COURT: Yes, sir.

22 MR. FRANCISCO: Nothing further, Your Honor.

23 THE COURT: Redirect?

24 MS. CROSS: Just one.

25 REDIRECT EXAMINATION

1 BY MS. CROSS:

2 Q. Secretary Raffensperger, you were asked some questions on
3 cross-examination about some of the roles potentially that the
4 federal government might have in investigating allegations of
5 fraud; correct?

6 A. Correct.

7 Q. When the federal government is investigating allegations
8 of fraud, in your experience do they ask you to provide
9 information to a campaign?

10 A. No.

11 Q. When DOJ or another federal agency is investigating
12 allegations of impropriety or fraud in an election, to your
13 experience who do you deliver that information to?

14 A. The actual FBI agents or US Attorney.

15 MS. CROSS: Thank you. That's all.

16 THE COURT: Any recross?

17 MR. FRANCISCO: Nothing further, Your Honor.

18 THE COURT: Thank you, Secretary Raffensperger.

19 Is he free to go?

20 MS. CROSS: Yes, Your Honor.

21 THE COURT: Excused?

22 MR. FRANCISCO: Yes.

23 THE COURT: Thank you.

24 You're released. Thank you.

25 (Witness excused.)

1 THE COURT: Any further witnesses?

2 MS. CROSS: No further witnesses from the State, Your
3 Honor.

4 THE COURT: Any rebuttal?

5 MR. TERWILLIGER: No, Your Honor.

6 THE COURT: We'll do closings. I'll give you-all
7 30 minutes each. It is 4:30. Let's take a 15-minute break
8 and we'll start closings at 4:45. And we'll finish them
9 today.

10 COURT SECURITY OFFICER: All rise.

11 (After a recess, the proceedings continued at 4:48
12 p.m. as follows:)

13 THE COURT: As you-all know, this hearing is being
14 conducted in federal court, which means we're proceeding under
15 federal procedure, which means, defense counsel, you-all carry
16 the burden. You have 30 minutes. You can use all your
17 30 minutes, or you can reserve time for rebuttal. But, as you
18 know, your rebuttal has to be based on the scope of what was
19 said in their closing, so I don't -- I know you guys do this
20 every day, but I have to put it on the record.

21 For the State, your whole 30 minutes has to be used
22 at one time.

23 Last thing, who will be arguing for the defense?

24 MR. TERWILLIGER: I will, Your Honor.

25 THE COURT: The clock on the left is your clock.

1 MR. TERWILLIGER: I probably will reserve maybe five
2 minutes.

3 THE COURT: However you want to do it.

4 MR. TERWILLIGER: We'll see.

5 THE COURT: Okay.

6 MR. TERWILLIGER: If needed.

7 To start out, Your Honor, not that you need any
8 validation from me in the Court's observations, but Your
9 Honor, of course, correctly laid out this morning what is
10 before the Court in terms of the determinations to be made in
11 connection with removal.

12 I will say, without meaning to be critical at all of
13 our adversaries, that it was hard to tell from what they
14 presented that that was the issue. It felt a lot more like
15 Mr. Meadows was being tried for the violations the state has
16 alleged.

17 And, of course, it's axiomatic in the case law for
18 removal that even provable existence of the state law
19 violation will not defeat removal because if it was, there
20 wouldn't be removal cases.

21 If the state -- if there's a shooting by a federal
22 officer, however unfortunate that might be, and the state says
23 homicide, and the federal officer says self-defense in the
24 line of duty, the state saying homicide doesn't defeat his and
25 presenting facts concerning why it might be a homicide. And

1 we've seen that applied in a lot of different circumstances.

2 But I would like to try to go to the heart of what I
3 think is the issue in front of Your Honor. If, however, you
4 have questions for me, I, of course, would welcome them.

5 THE COURT: I'll hold my questions to the end so I
6 won't be interrupting you or State's counsel.

7 MR. TERWILLIGER: All right. Thank you, Your Honor.

8 So I would really like to discuss two aspects of the
9 three parts of the test you mentioned.

10 The first test you mentioned was is Mr. Meadows a
11 federal officer? Well, I don't think that's in dispute.

12 The second part is is there a causal connection to --
13 of the alleged violations to his role, in the performance of
14 his role as a federal officer? And, if so even, is there a
15 colorable federal defense that has been laid out?

16 So I'm going to talk about two aspects of number two.

17 First of all, the evidentiary burden -- and I think
18 there can be no dispute and should be no dispute that the
19 evidentiary burden on us for removal at this point is about
20 the lowest evidentiary burden one can imagine.

21 I will not bore Your Honor with quoting the Eleventh
22 Circuit about the outer perimeter and the extremely low
23 threshold. We all recognize, I hope, that that's what the
24 burden is and the reason for it because the case law and the
25 underlying statute, the Federal Officer Removal statute, in

1 fact, favor removal. A tie doesn't go to the state because of
2 the Supremacy Clause. A tie goes to the federal interest.

3 So that then leaves the second part of the test, the
4 causal connection. And that burden is also very, very low at
5 this point, requiring only some kind of a relation or
6 connection to the duties. And I'll talk about this at some
7 greater length, but I'll go to what I think, frankly, Your
8 Honor, is an easy bottom line for you here following an
9 evidentiary hearing. And that is that Mr. Meadows' testimony,
10 if believed, and there's every -- there's no reason not to
11 find it credible, clearly establishes that causal connection.
12 And I'll take what might be the aspect the State leaned on the
13 hardest; that is, the January 2nd call.

14 Nothing Mr. Raffensperger says informs Your Honor in
15 any way whatsoever about what Mr. Meadows was doing and why at
16 the time. He has no idea. He can have his impression. And I
17 can understand why he would have the impression he had and
18 say, well, I think "we" means Trump and the campaign, and that
19 sort of thing.

20 But Mr. Meadows explained in his testimony to you
21 that, first of all, he overuses the "we" and it's a weakness
22 in his rhetoric. But more importantly he explained in some
23 detail why he was trying to force that matter to closure.

24 And that's probably the critical -- at least one
25 critical aspect of his testimony. He was trying to force that

1 to closure because, as he put it, he was trying to land the
2 plane by January 6th, to have this over, have the
3 certification completed and get on with the rest of the
4 transition and a peaceful transfer of power.

5 So let me go back to some of the law, if I can, Your
6 Honor. The Eleventh Circuit has made clear that as to the
7 connection it only requires an association or some relation to
8 the officer's duty.

9 And the Eleventh Circuit has noted, as I'm sure Your
10 Honor has seen in the cases, and in 2011 when Congress revised
11 the statute, they actually broadened that even further and,
12 thus, making the burden at this stage of the case to show that
13 connection even less.

14 So I would submit to you, Your Honor, that
15 Mr. Meadows clearly meets all three parts of the test that you
16 mentioned. It clearly -- the things that he did that the
17 state complains of were connected or associated with his job
18 as Chief of Staff.

19 Even the most questionable, unquestionable or
20 universally applicable state laws, according to the Eleventh
21 Circuit in *Denson*, is not sufficient to overcome the principle
22 that states cannot use their law to define the parameters of a
23 federal officer's proper role.

24 And that's exactly what the State is trying to do
25 here. The State is attempting through the enforcement

1 mechanism of an indictment in a criminal case to define Mr.
2 Meadows' role as the Chief of Staff.

3 Now, they claim that he can't avail himself of
4 this -- really I think this goes as much to immunity and we're
5 beyond the removal question, but I'll address it anyway --
6 that he can't do that because he violated the Hatch Act, and
7 he can't undertake his duties in violation of federal law; or
8 as we put it in our responsive papers, that there's some kind
9 of a, quote, political exception to the scope of his duties as
10 the Chief of Staff to the President or the White House Chief
11 of Staff. And I think Your Honor can see through that quite
12 easily.

13 One of the reasons we spent as much time as we did in
14 his testimony regarding the political affairs that he gets
15 involved in is for two reasons:

16 One, the State doesn't get to define the parameters
17 of the Hatch Act. And, frankly, Your Honor, with all due
18 respect, the Court isn't even empowered at this stage to
19 adjudicate, as the State suggested, whether or not there's
20 been a Hatch Act violation. Certainly for purposes of removal
21 that that's beyond the pale.

22 But the second reason we did it was to help Your
23 Honor understand the true nature of the position. I would
24 expect that very, very few people who have not worked at the
25 top levels of government -- and I, frankly, include our

1 adversaries in that -- the top levels of the federal
2 government really understand what the workings of the
3 government are like at that level and why something like even
4 the Hatch Act provision they point to would not apply.

5 This just came to me today. I'll give you an
6 illustration of it. There was testimony both on direct and
7 cross and maybe in some other parts about Mr. Barr's now
8 infamous visit to the Oval Office. And he said a couple of
9 things in that visit that are now in the record in that case,
10 including telling the President that the Justice Department
11 had, in fact, investigated allegations of fraud in a couple
12 different places and found them wanting, I'll use that term.

13 And the President, according to the testimony we've
14 heard, pushed back on that, and there was talk of the Attorney
15 General resigning and so forth. And so the Attorney General
16 was pushing very hard for the outcome of the election to be at
17 that point that Biden won. Was that the Attorney General
18 using his office to affect an outcome of an election? At
19 least on a very technical sense, yes, it was, because he's
20 telling the President of the United States the outcome of this
21 election as it stands now is that Joe Biden won, and we need
22 to back up, and he wasn't going to do certain things.

23 But as importantly what that testimony shows, despite
24 the State's contention of trying to minimize, if not
25 eliminate, a federal role in post-election matters, the

1 federal government has a huge role in post-election matters
2 and has a huge role in the administration of elections as we
3 have found out in great detail right up through January 6th
4 when the certification takes place.

5 So what does Mr. Meadows tell the Court the relevance
6 of that is to the exercise of his duties as Chief of Staff and
7 his various touch points along the way here to matters --
8 post-election matters that are political? There's not one
9 iota of evidence, Your Honor, that he was in any way, shape or
10 form doing anything in his post as the Chief of Staff to try
11 and effectuate a certain result of that election.

12 What he told you, and I submit to you what he told
13 you credibly, was I was trying to bring these things to
14 closure. I needed to check the box I think was a term he used
15 at one point. Get this off the plate. He went to Atlanta --
16 I'm sorry. He went to the Cobb County Civic Center to observe
17 and did that for the reason that he would be able to report
18 back to the President, anticipating that the President would
19 be fired up about this, that these people are doing a great
20 job and if there's any fraud there, they will find it.

21 We also produced evidence on this record, Your Honor,
22 to show that not just is it within the Chief of Staff's job to
23 do the kinds of things that he did, but that he did those
24 things as part of the function of the Executive Office of the
25 President overall, which is not at all divorced from political

1 matters.

2 When he says he needs to know what's going on, I
3 can't imagine a more simple but elegant explanation of what
4 the Chief of Staff's relationship with the President and the
5 President's own execution of his duties are than the necessity
6 to stay on top of everything, see around the corner and work
7 to manage and advise the President on matters as they arose.

8 The third element of the testimony that I think is
9 important is if -- as so often happens when legal cases sort
10 of come to the fore, particularly in keen public attention,
11 the world thinks the only thing that was going on inside the
12 White House and in Mr. Meadows' world at that time is the
13 President's concern about fraud in the election.

14 As far as he was concerned, as he testified, that was
15 a very small part of what was going on. It might have been a
16 big part in terms of actually managing the President and the
17 office and trying to get to a peaceful transition, but for him
18 there were a whole lot of other things going on. And when
19 he's trying to manage the work necessary to get those things
20 done and get them addressed, matters of the most incredible
21 import to the people of the United States, he has to be aware
22 of what's going on and try to get some of these other things
23 off the board as he went along.

24 Turning to the law a little further, Your Honor,
25 courts have been very consistent in how these cases are

1 handled. I don't think -- I can't recall an Eleventh Circuit
2 case that hasn't -- for removal that the circuit has had on
3 appeal that has not resulted in removal.

4 And the reason for that is very important. The
5 overarching issue that's really laid before this Court here is
6 no small one. The overarching issue really is can the
7 District Attorney of Fulton County, Georgia, use the
8 enforcement power of the State to affect what the Chief of
9 Staff of the President of the United States does in his job?
10 Not just this Chief of Staff, he's obviously gone, but the
11 currently Chief of Staff.

12 Going back to this Hatch Act point for a minute. I
13 think Mr. Meadows mentioned this in his testimony, but I'm
14 sure the Court has seen the newspapers. The current Press
15 Secretary to the President just got called out on a Hatch Act
16 violation.

17 Think about it for a second with the logical
18 extension of the theory that's being presented here. If that
19 statement was somehow related to something that some DA
20 somewhere in the country thinks is a state law violation,
21 according to the State here, they could issue a complaint and
22 get an arrest warrant and go arrest the current Press
23 Secretary.

24 The reason for this law is it's seminal in our
25 constitutional system. It goes back to *McCulloch v. Maryland*

1 when Chief Justice Marshall said we can't have a state taxing
2 a national bank that could tax it out of existence.

3 It continued in the infamous oleo case in Ohio where
4 the state wanted to -- this is *Ohio v. Thompson* in 1899. The
5 state wanted to sanction a federal officer who was serving
6 oleo margarine in his federal facility, I think it was a home
7 for people, and didn't have a sign up saying "Oleo is Served
8 Here," which was a violation of state law. And that case was
9 removed all the way to the Supreme Court.

10 In *Johnson v. Maryland*, which involved a postal
11 service driver, the Court said the entire -- recognized the
12 entire absence of power on the part of the state to touch the
13 instrumentalities of the United States. It's just off limits
14 to state authority. And that principle is what underlies
15 these removal cases.

16 But I have a case I want to share with Your Honor.
17 And I've tried not to get into quotes. This case was relied
18 on by the Eleventh Circuit in *Baucham v. Martin*, an Eleventh
19 Circuit decision. But this is actually a case from the Ninth
20 Circuit. It's called *Clifton v. Cox*. It's a Ninth Circuit
21 case.

22 I'll share, if I may, just a little something with
23 you, Your Honor. One of the reasons I loved being a lawyer
24 when I first went to law school was actually getting into the
25 cases. And some of the young people that are here with me can

1 tell you I detest the word search method of legal research and
2 string cites. If I may get a little personal, Judge, you and
3 I are a little closer to each other --

4 THE COURT: We had to learn how to do it through the
5 books.

6 MR. TERWILLIGER: That's right.

7 And so one of the things I really enjoyed because
8 this law is so basic and fundamental as a constitutional
9 matter between the state and federal government was looking
10 into this a little bit.

11 And if I may, I would just like to read you from this
12 Clifton decision.

13 The Court said -- this is the Ninth Circuit -- the
14 Court said, It is well settled that a federal official cannot
15 be held personally liable in a civil suit for acts committed
16 in the outer perimeter of his duty. It's only necessary that
17 the action bear some reasonable relation to those federal
18 duties.

19 But the Court then went on and had a discussion,
20 which I would command to Your Honor's attention, and said
21 that, the Supreme Court, I'm quoting here, in *Bar v. Matteo*
22 gives approval to the task in turn propounded by Judge Learned
23 Hand, an eminent jurist to be sure, as follows: What is meant
24 by saying that the officer must be acting within his power
25 cannot be more than the occasion must be, such that would have

1 justified the act if he had been using his power for any of
2 the purposes on whose account it was vested.

3 And the Ninth Circuit goes on to say, the Court
4 concludes the fact that the petitioner is not required by
5 law or direction of his superiors to act as he did is not
6 controlling because the same considerations which underlie the
7 recognition of the privilege as to acts done in connection
8 with a mandatory duty apply with equal force to discretionary
9 acts at those levels of government where the concept of duty
10 encompasses the sound exercise of discretionary authority.

11 I think that case, frankly, Your Honor, should be
12 more helpful to you --

13 THE COURT: What is the citation of that again for my
14 people?

15 MR. TERWILLIGER: Yes. Yes. It's -- let me get the
16 first page. It's *Clifton v. Cox*. It's 549 F.2d 722, a 1977
17 decision of the Ninth Circuit.

18 THE COURT: Thank you.

19 MR. TERWILLIGER: I think that case should be more
20 helpful to you perhaps than any others because all of these
21 cases in a way are sort of sui generis, but this one is in
22 particular.

23 There's never been a case dealing with the
24 discretionary authority of an official at this level of
25 government. And what, based on Judge Hand's test, the Ninth

1 Circuit said here is, As that discretion gets wider -- as that
2 discretion gets wider, so does the burden for showing the
3 relationship of the acts complained of to the conduct get
4 lower because we can't have the state interfering with the
5 exercise of that discretion.

6 Now, some people may decide that they disagree with
7 some of the judgments Mr. Meadows said about how to execute
8 his role. I'll bet if he went to the people that run that
9 advisory office on the Hatch Act, should he have been on the
10 call with Brad Raffensperger, they would have said no. I
11 don't know that, but I bet they would have. But even a
12 mistake on his part is not enough to defeat his entitlement
13 to removal, even a mistake as to federal law, unless it was
14 malicious and done willfully. And I think you heard from the
15 testimony that it wasn't even close to that.

16 Thank you, Your Honor.

17 THE COURT: Let me ask you one question here.

18 Is there any limitations on what Mr. Meadows could
19 have done -- not just Mr. Meadows. Is there any limitations
20 on what a Chief of Staff can do if it's not negligence per se?

21 MR. TERWILLIGER: If it's not --

22 THE COURT: I mean criminal per se.

23 MR. TERWILLIGER: Yes.

24 THE COURT: What?

25 MR. TERWILLIGER: Well, for example, I don't think

1 for various and sundry reasons it would be criminal per se for
2 him to say, you know, I'm here because I think the policies of
3 the Trump administration were just as good as they possibly
4 could be and were good for the American people, and I hope the
5 American people will recognize that when they go to the polls.
6 That may be a Hatch Act violation. And that -- the Hatch Act
7 may in that circumstance put a limit on.

8 But if in the exercise of his judgment he didn't
9 think that was a Hatch Act violation, it wasn't malicious and
10 it wasn't willful, that doesn't place a limitation on his role
11 for purposes of removal. And probably not for immunity
12 either, but we're only here on removal today.

13 THE COURT: State's counsel through at least three
14 questions emphasized, as I interpreted it, what Mr. Meadows
15 was doing had nothing to do with the operation of the federal
16 government. What do you have to say to that?

17 They're arguing that the intent of this statute is
18 not being met by what Mr. Meadows was doing.

19 MR. TERWILLIGER: The intent of what statute?

20 THE COURT: It's important to understand the statute
21 regarding interference, 14-42. In other words, the removal
22 aspect of it. They said you're using -- saying here's a
23 federal official doing their job, and here's a state
24 prosecutor trying to prosecute this federal official for doing
25 their job.

1 From at least three questions asked by the district
2 attorney or assistant district attorney, it's her position --
3 she can speak for herself, of course -- that this does not
4 meet the intent of the statute because it's not interfering
5 with federal operations.

6 MR. TERWILLIGER: But that's not the test.
7 Interference with federal operations is not the test. He is
8 federal operations. He is the alter ego of the one person,
9 the one person under our constitutional system in which the
10 executive branch is embodied, so what he's doing by definition
11 is in that role.

12 Now, if he went out and shot a demonstrator in
13 Lafayette Park and said, Oh, it was part of my role, that
14 would obviously be outside the scope of his duties. But
15 when -- there's not one thing that is -- that is specified in
16 this indictment that is not at least colorably in the scope of
17 his duties. And his duties are federal operations.

18 He doesn't have to say, Oh, I'm doing this because
19 of, you know, it's a matter of Justice Department interest, or
20 I'm doing this because there's a cyber security issue with the
21 Department of Homeland Security. It is enough for purposes of
22 removal, Your Honor, I respectfully submit, that he is doing
23 it because he's the Chief of Staff, like going to the Cobb
24 County counting center there, anticipating that his principal,
25 the President, is going to ask him what are they doing down

1 there? So he gets ahead of the curve, he goes down there and
2 looks. And this is in the federal indictment for goodness
3 sake of Donald Trump -- he turns around and says,
4 Mr. President, they're doing a great job and if there's any
5 fraud there, they'll find it. That is squarely within his
6 duties.

7 Thank you, Your Honor.

8 THE COURT: Thank you, sir.

9 Counsel, I've been asked to have the attorneys, when
10 you get ready to argue, to state your name so the people in
11 the overflow courtrooms know who is speaking.

12 MR. WAKEFORD: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. WAKEFORD: My name is Donald Wakeford. I
15 introduced myself at the beginning of this hearing, but we've
16 been here a good while at this point, so...

17 THE COURT: I remember. The people on 23rd floor...

18 MR. WAKEFORD: Well, I appreciate the opportunity to
19 introduce myself again. And I think -- I think that opposing
20 counsel answered the first question Your Honor asked but
21 perhaps not in the way that he intended, because one of the
22 first -- the first question you asked was is there a limit to
23 the scope of what Mr. Meadows could do as Chief of Staff?

24 And it took a little while, but opposing counsel
25 eventually said he is federal operations. Mr. Meadows is the

1 embodiment of federal authority and, therefore, there is no
2 boundary and no scope of duties for him. It is limitless. It
3 has no horizon, it never ends.

4 So then he proceeds to say they're disclaiming their
5 burden entirely. They don't really have to show you anything
6 because as the Chief of Staff he can simply come in here and
7 say, of course, I did it, I was the Chief of Staff.

8 Everything I do is federal because I am federal authority and,
9 therefore, what are we even talking about?

10 We didn't hear anything from the witness or from his
11 attorney that indicates there is a limit to the scope of his
12 duties. And the first question Your Honor has to answer in
13 order to determine whether removal is proper is whether he
14 acted under color of his office.

15 They haven't offered a scope of duties for which Your
16 Honor can use to determine that. They have simply said that
17 there is no limit to what he can do.

18 Finally, they talked about the purpose of removal.
19 And we say in our brief, very clearly, that there's one
20 particular district court case that sums it up pretty nicely.
21 And it says that federal removal is about protecting federal
22 authority. And in that case, just like in this one, there is
23 no federal authority to protect.

24 There has not been a citation of a single duty of the
25 President that would authorize Mr. Meadows to participate in

1 that phone call.

2 There is not a single citation, reference or any
3 other kind of connection presented to this Court under Article
4 II or any applicable statute about why Mr. Meadows can text a
5 state official and say, How about if the campaign kicks in
6 some money, could things speed up?

7 There is nothing, and this is especially important,
8 that has been cited to to demonstrate in any kind of way, much
9 less a detailed way, which is actually the burden placed upon
10 the defendant in trying to remove a criminal case, that would
11 demonstrate what federal authority would countenance allow or
12 authorize the Chief of Staff to arrange or attempt to arrange
13 the organization of fake electors throughout the state. And
14 yet we had an e-mail admitted into the record here today that
15 demonstrated that Mr. Meadows played a role in doing exactly
16 that.

17 He used -- he had to be reminded of the e-mail's
18 existence after saying, I didn't do anything about that. If
19 there was anything about the organization of that, I just
20 referred it to the campaign.

21 But we understand why that wasn't the case because he
22 doesn't see a distinction that matters between him and the
23 campaign. We learned from Mr. Meadows that he doesn't even
24 think the word "we" can really be applied in the way that the
25 word "we" is always applied when he uses it.

1 It came up in multiple situations today where
2 Mr. Meadows discussed the word "we," and it never meant what
3 the word "we" actually means. He said, Well, the campaign but
4 not me and the campaign, as if that is somehow possible. This
5 happened on the phone call and it happened in the e-mail.

6 It also happened in a different place other than just
7 Mr. Meadows' words where President Trump on the phone call is
8 saying, We just need to do this, we just need to do that.
9 Mark, wouldn't you agree? And Mr. Meadows is chiming in and
10 agreeing, yes, yes, right.

11 Mr. Meadows came before the Court today unprepared to
12 define the scope of his duties or to define what his burden
13 actually is. And he has not presented the Court anything,
14 anything that is sufficient to show he was acting within any
15 allowable scope of duties as Chief of Staff.

16 I'll turn first to an important distinction that I
17 think the Court should highlight.

18 THE COURT: Okay.

19 MR. WAKEFORD: In their reply brief, and here again
20 at the hearing, the defendant is saying that we are asking
21 this Court to apply some kind of political activity exception
22 to the rules of removal. It's quite the opposite.

23 They are asking for this Court to find a whole host
24 of exceptions and find that certain aspects of federal law
25 either don't apply to the Chief of Staff, unlike every other

1 executive branch employee, or that in this case they shouldn't
2 apply because -- because of the way he went about them.

3 Whereas the district attorney in the State of Georgia is
4 asking this Court to simply look at the law and apply it.

5 If you look at what is actually prohibited by federal
6 law -- we're not asking for an exception. We are not asking
7 for some kind of determination of mandatory and discretionary
8 actions. We're asking the Court look at prohibited actions,
9 because the Hatch Act and the applicable regulations actually
10 place a hard outer boundary to what the scope of duties can be
11 for any federal official, including the Chief of Staff. And
12 they say that you cannot use your job title and engage in
13 federal activity -- I mean in political activity. That is at
14 5 CFR 734.302.

15 We know that political activity -- despite the fact
16 in their reply brief that they say we have never defined
17 political or political activity, yes, we did. We referred
18 specifically to 5 CFR 734.101. Political activity means an
19 activity directed towards the success or failure of a
20 political party, candidate for partisan political office or
21 partisan political group. That is not authorized federal
22 activity for any executive branch employee.

23 And then, finally, of course, we had reference to --
24 we had reference to -- apologies -- the requirement that no
25 executive branch employee can use his official authority or

1 influence for the purpose of interfering with or affecting the
2 results of an election.

3 Over and over today that is what we have seen. The
4 reason the State put up evidence was to demonstrate that that
5 was precisely what was happening, at least on that phone call,
6 but also every time Mr. Meadows took actions which were
7 described in the indictment and some which were not because
8 the e-mail is not in the indictment. We had to bring it
9 before Your Honor today to demonstrate that there were
10 activities that Mr. Meadows was taking which cannot have any
11 application, have any authority under federal law and could
12 only be either an effort to influence or affect the result of
13 an election, or to engage in political activity, meaning to
14 try to support a candidate for political office. There is no
15 statute or law that he has cited.

16 And in looking at this hard prohibition, we see that
17 the scope is defined for him. The scope of federal duties
18 ends when you reach political activity. That is not something
19 that they have addressed. Instead what they say is that it
20 just doesn't apply because there is no end to the scope. They
21 just move right past it and just assume the question has
22 already been answered.

23 This is despite the fact that we have him referring
24 to the inclusive "we" to himself and the campaign in
25 multiple -- in multiple settings. This is despite the fact

1 that we have him offering campaign resources and trying to
2 broker deals on behalf of the campaign. This is not activity
3 where we are asking for an exception or some kind of novel
4 application of federal law. We are simply asking for the
5 Court to look to these regulations and laws to show that there
6 was no federal authority under which Mr. Meadows could have
7 been traveling when he took these activities.

8 The first question -- if Your Honor will bear with me
9 for a moment because I want to say it exactly right.

10 The first question that has to be answered, the
11 defendant has to show this Court that the prosecution arises
12 out of the acts done by him under color of federal authority
13 and in enforcement of federal law. He cannot be categorically
14 proceeding under federal authority if he is engaging in
15 prohibited political activity or seeking to affect the results
16 of an election. Those two things cannot be true at the same
17 time.

18 And this is one thing that has not been mentioned yet
19 today, which is equally important. The defendant has not even
20 tried to act like -- has not even tried to explain why he said
21 all of his activity was political activity.

22 As we pointed out in our response, in his motion to
23 dismiss he says, Oh, look, everything in the indictment,
24 everything alleged, everything he did is political activity
25 and tries to connect it to the First Amendment concerns.

1 First Amendment, by the way, the Supreme Court has
2 found that the First Amendment does not bar any application of
3 the Hatch Act, so that question can be set aside.

4 But there is nothing -- there is nothing that
5 indicates how Mr. Meadows could simultaneously be engaging
6 in these activities, concede to this Court that they are
7 political activities and still be acting under color of
8 federal authority and enforcement of federal law.

9 He can't be acting under color of federal authority
10 if he's taking activities which federal law specifically says
11 he cannot take in the scope of his duties. And he cannot be
12 acting to enforce federal law when he identifies no federal
13 law that applies.

14 We cited in our brief, Your Honor, *Thompson v. Trump*.

15 THE COURT: Got it.

16 MR. WAKEFORD: Got it. Understood.

17 There are a couple of points in that case where the
18 judge in that case said there has been no citation to a role
19 for the President in the administration of -- or in the
20 counting and certification of electoral votes because there is
21 none.

22 The judge in that case also goes on to say there has
23 been no authority cited for how exhorting state-level
24 non-executive branch officials to act a certain way could be
25 applicable -- could be authorized by the Take Care Clause

1 because the President cannot exhort non-executive officials to
2 do anything under the Take Care Clause.

3 But I'm going into specifics. I am looking for an
4 authority that Mr. Meadows could point to to say that he is
5 enforcing federal law. And all he can point to is to say, I
6 was doing what the President asked me to do, and I am federal
7 authority. That's as far as we've gotten.

8 There have been references to FEMA, there have been
9 references to COVID, neither of which was discussed on that
10 call or anywhere else in this case.

11 There's been no demonstration of what role the
12 President would play in the activities in which Mr. Meadows
13 inserted himself.

14 And there's been no indication how Mr. Meadows'
15 participation in a criminal conspiracy seeking to overturn the
16 election can be explained as a necessity of his duties.

17 And I think that's the next thing, is that we sort of
18 zoomed past the first question when opposing counsel was up
19 here and started talking about Mr. Meadows' good faith belief
20 in what he was doing. He was out there just trying to do what
21 he thought was the right thing to do. But we understand that
22 there's requirements.

23 First of all, he still has to be acting under the
24 scope of his duties before we even get to the question of a
25 colorable federal defense. So we have to answer that question

1 first. But even if we get to it, it still has to be his
2 belief in what he's doing has to be objectively reasonable.

3 Mr. Meadows is familiar with the Hatch Act. He was a
4 congressman before he was the Chief of Staff. How can he have
5 an objectively reasonable belief that the activities he took
6 in this case were authorized, were reasonable, were necessary
7 and proper under his duties when the Hatch Act explicitly
8 forbids him from doing them?

9 But we know the answer to that question, we've
10 received it already. It's because he doesn't think anything
11 he does can be touched by the Hatch Act. Everything he does
12 is within the scope of his duties despite what anything else
13 may say.

14 The origin of the rule in the Hatch Act actually came
15 from an executive order of Teddy Roosevelt in 1907. That was
16 where the language first appeared -- pardon me. That was
17 where the language first appeared that said that federal
18 officers could not use their authority or influence for the
19 purpose of interfering with an election or affecting the
20 result thereof. That language is 100 and -- I can't do the
21 math, I'm a lawyer. It was enacted in 1907 and has been with
22 us for over a century.

23 That is what the defendant is coming before Your
24 Honor to say is a non sequitur, a red herring, it shouldn't
25 apply. And that all that really should happen is you should

1 just look at who he works for, that that answers all
2 questions.

3 Finally, I want to talk about the sound exercise of
4 discretionary authority in light of what we just talked about
5 with regard to an objectively reasonable belief. Mr. Meadows
6 had to have an objectively reasonable belief that what he was
7 doing was necessary and proper to do his job.

8 In what realm would it be necessary or proper for
9 the Chief of Staff to identify himself as such and then
10 participate in calls directed solely at the success of
11 Mr. Trump as a campaign -- as a candidate for political
12 office, or to offer campaign resources to a state official, or
13 to try to coordinate the activity of fake electors in several
14 states.

15 This is what he is suggesting is the sound exercise
16 of discretionary authority despite the fact that all he had to
17 do was look at the law, something that he asked Your Honor to
18 pay no attention to today.

19 I think in the end the district attorney is not
20 asking to insert itself using the powers -- the prosecuting
21 powers of the State of Georgia into the operations of the
22 federal government. Once again, Mr. Meadows has it backwards.
23 This case is about removing the improper assertion of
24 authority from people in DC into the State of Georgia, trying
25 to tell federal officials -- I mean state officials how they

1 should conduct their election, how they should determine their
2 election, how they should use their authority and who should
3 win.

4 And this wasn't done in order to enforce a law or
5 seeing that justice was done. It wasn't done to -- for the
6 marshalling of the common defense or to see that the laws of
7 the executive branch are followed. It was done so that Donald
8 Trump could be declared the winner of the 2020 election
9 despite the fact that he was not.

10 THE COURT: I have a few questions for you.

11 MR. WAKEFORD: Yes, sir.

12 THE COURT: First of all, are you conceding that
13 Mr. Meadows is a federal officer?

14 MR. WAKEFORD: At the time of the activities relevant
15 in the indictment he was employed as the Chief of Staff, yes.

16 THE COURT: He was a federal officer?

17 MR. WAKEFORD: At the time, yes, sir.

18 THE COURT: Okay. In Act 9 of the indictment
19 Mr. Meadows indicated, I think it was on direct, that he did
20 not recall being in the meeting. This is the meeting of the
21 Pennsylvania people.

22 I'm not saying one way or the other who I believe or
23 disbelieve at this point. Let's say he was not in that
24 meeting, would it be any type of violation? In other words,
25 you-all are saying he was in the meeting. He testified he was

1 not in the meeting.

2 MR. WAKEFORD: Would it be a violation of state law?

3 THE COURT: Right.

4 MR. WAKEFORD: Well, that is a jury question, but we
5 know that under Georgia RICO law proving each and every one of
6 those overt acts is not necessary. Actually, all that the
7 state has to show to get a conviction -- well, actually, Your
8 Honor, just one overt act, but that Mr. Meadows was associated
9 with that criminal enterprise.

10 What the evidence has shown today by an enormous --
11 what the enormous quantity of evidence has shown today is that
12 he was associated with that enterprise. He actually doesn't
13 dispute that he was.

14 So to finish up, yes, Your Honor, if that's not
15 proven, it still doesn't negate the state's case or mean that
16 he has a total defense.

17 THE COURT: You probably have the same answer for the
18 next question. In Act 19 he says he did not tell Mr. McEntee
19 to write the memo. Again, I'm not saying what I believe at
20 this point or what I don't believe at this point. But let's
21 say if he did not tell him to write the memo, where are we at
22 on --

23 MR. WAKEFORD: Where are we at on where?

24 THE COURT: Is there a state violation?

25 MR. WAKEFORD: Once again, we would have to marshal

1 evidence at a trial to show that -- to show that he did
2 participate in ordering Mr. McEntee to do that.

3 THE COURT: And you still say that all you have to
4 prove is one of the acts?

5 MR. WAKEFORD: That's correct. And not even by
6 Mr. Meadows.

7 THE COURT: Yeah. By any of the --

8 MR. WAKEFORD: By any of the co-conspirators in the
9 RICO enterprise, that's correct, Your Honor.

10 THE COURT: Last question. Well, maybe the last
11 question. It depends on how you answer this question.

12 The things relating to it's broad and requires only a
13 connection or an association between the act in question and
14 federal office, this has been said to be a low bar, a broad
15 bar. Mr. Terwilliger has even gone as far as saying there's
16 no Eleventh Circuit case that's ever said you shouldn't
17 remove. What do you say?

18 MR. WAKEFORD: I wonder if there's ever been a case
19 anywhere where the defendant asked for his case to be removed
20 where he admits all of his activity was political and,
21 therefore, cannot possibly fall within the scope of his
22 duties. That's what Mr. Meadows has done here. So I agree,
23 this is an exceptional case.

24 THE COURT: Is it so broad as they indicate,
25 Mr. Meadows and his team is indicating, saying, Judge, this

1 is a low bar and it's so broad there's not even a question
2 here? They're not saying it quite that way but, you know, in
3 so many words.

4 MR. WAKEFORD: The case law is out there. The courts
5 have defined what the bar is. But there still is a bar to
6 clear.

7 Just taking activity while you are a federal
8 officer -- and there's many cases that say this. Just being a
9 federal officer while you do the activity in question is not
10 enough. But that is all Mr. Meadows has given us today. He
11 is federal authority. End of inquiry. But that's not enough.

12 He has to show, to quote the standard again, that he
13 was acting under federal authority and to enforce federal law.
14 He can't be possibly acting under federal authority because he
15 acknowledges that he was taking political activities which are
16 expressly forbidden to a person in his position.

17 THE COURT: My last question. Can Mr. Meadows have
18 federal authority if former President Trump didn't have
19 federal authority?

20 MR. WAKEFORD: I cannot see a scenario where that
21 could be the case.

22 THE COURT: You've got five minutes left, but if you
23 want to stop -- you know, when Abraham Lincoln gave the
24 Gettysburg Address, it took him less than five minutes. It
25 took Edward Everett two hours. Now which one do we remember

1 in history?

2 MR. WAKEFORD: Well, Your Honor, speaking of high
3 bars, I think you're putting me up against somebody with a
4 pretty tough reputation.

5 THE COURT: You've done well. You've done well.

6 MR. WAKEFORD: I will take the hint, Your Honor, and
7 sit down. Thank you.

8 THE COURT: Thank you, sir.

9 MR. WAKEFORD: Thank you.

10 THE COURT: How much time do the defendants have
11 left?

12 COURTROOM DEPUTY CLERK: About six and a half.

13 MR. TERWILLIGER: First of all, on behalf of myself
14 and my colleagues who are here pro hac, we thank you for the
15 privilege of appearing in your court.

16 I want to answer your last question to counsel. The
17 answer to that is definitely yes, that the President -- the
18 Chief of Staff has a range of authority and -- it's not so
19 much authority, it's role that is quite distinct from the
20 President's.

21 Now, he may take direction from the President. He
22 may advise the President. But the President is in a different
23 position, particularly when it comes to election matters
24 because he is running not just as the President but as a
25 candidate as well. The Chief of Staff is never the candidate.

1 Is never, as he said, in the campaign. So I think the answer
2 to your question is definitely yes.

3 I hate to put it this way, Your Honor, and I -- but
4 the State's closing argument, their legal points are an
5 invitation to reversible error for you.

6 They want to credit their allegations over Mr.
7 Meadows' testimony as to what his role is. The cases don't
8 permit that. It just -- I hate to do this to our friends in
9 the press, and I don't think we've used much Latin all day but
10 I have to. The State's case really boils down to ipse dixit.
11 It's a classic thing. They're going to set the standard,
12 which is the Hatch Act in essence, that's what they're telling
13 you, and then say, Oh, so he can't meet the test to have a
14 colorable federal defense because the Hatch Act would prevent
15 it.

16 That's not been adjudicated. That hasn't even been
17 pled with any -- in any convincing way. And most importantly
18 that just simply isn't before you. Maybe that comes up in the
19 context of immunity after removal, but it's not here now.

20 So ipse dixit really does sort of capture it.

21 Your Honor, I have one last thing. I know Your Honor
22 has worked hard all day today to get us here today. The State
23 continues to move a pace down the street. We are entitled to
24 a prompt determination. Even if the Court rules for removal
25 and puts the immunity question off for a while, we

1 respectfully ask the Court to as soon as it practically can
2 reach this issue so that we know what we're doing from here.

3 THE COURT: All right. You bring up a good point,
4 and I would like to address that point. Thank you, sir.

5 MR. TERWILLIGER: Thank you, Your Honor.

6 THE COURT: The Court will try to act as fast as
7 possible. This is a case that does not have a lot of case law
8 out there for the Court to follow, so the Court's got to give
9 this case thorough consideration. It's a very important case
10 in a lot of different ways. And some of the things I may rule
11 on may set precedent for future cases.

12 Therefore, as you indicated, I've indicated two
13 orders that the State case proceeds and Mr. Meadows is subject
14 to the State case.

15 I was informed at lunch today that the district
16 attorney has set -- well, not the district attorney. The
17 Superior Court Judge McAfee has set a September 6th
18 arraignment. If I do not issue an order to the district
19 attorney or to Judge McAfee by September 6th removing this
20 case to federal court, Mr. Meadows needs to show up at that
21 arraignment on September 6th.

22 Any questions?

23 MR. WAKEFORD: No, Your Honor.

24 THE COURT: And, again, I can't give you-all a time,
25 date when I'm going to issue this ruling. I'll do it as quick

1 as possible. But up until that time, thank you all and have a
2 great week.

3 MS. CROSS: Thank you, Your Honor.

4 (PROCEEDINGS REPORTED WERE CONCLUDED AT 5:41 P.M.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 28TH day of August, 2023.

/s/Viola S. Zborowski _____

VIOLA S. ZBOROWSKI,
RDR, FAPR, CMR, CRR, RPR, CRC
OFFICIAL COURT REPORTER TO
THE HONORABLE STEVE C. JONES

/S/PENNY PRITTY COUDRIET _____

PENNY PRITTY COUDRIET,
RMR, CRR
OFFICIAL COURT REPORTER TO
THE HONORABLE JEAN-PAUL BOULEE

/	2			549 [1] - 236:16 55 [1] - 2:5 55,000 [1] - 217:3 5:41 [1] - 258:4 5TH [1] - 67:17
/S/PENNY [1] - 259:14 /S/VIOLA [1] - 259:10	2 [17] - 42:20, 43:6, 43:20, 68:15, 97:17, 100:25, 101:25, 103:10, 117:2, 117:3, 164:10, 164:14, 164:16, 164:21, 164:25, 210:13, 210:15 2,050 [1] - 212:11 2,423 [1] - 212:16 20 [6] - 14:14, 56:19, 57:7, 57:15, 85:25, 162:7 2000 [1] - 106:14 2002 [1] - 162:7 2011 [1] - 228:10 2013 [1] - 9:22 2018 [2] - 217:2, 217:5 2019 [1] - 187:24 2020 [62] - 9:25, 11:17, 27:7, 56:19, 57:7, 57:15, 65:18, 68:19, 76:15, 78:4, 78:10, 79:23, 81:2, 85:25, 89:7, 90:8, 91:13, 101:25, 134:5, 140:10, 142:13, 142:15, 142:24, 144:18, 162:25, 163:4, 163:8, 163:16, 165:16, 165:22, 190:2, 190:12, 190:22, 190:25, 191:3, 191:16, 191:20, 191:21, 193:1, 193:6, 194:1, 195:6, 195:20, 195:23, 196:1, 196:3, 196:9, 197:18, 198:10, 201:9, 201:20, 203:21, 203:25, 204:2, 204:5, 204:8, 211:8, 215:18, 216:8, 216:25, 219:2, 251:8 2020/JANUARY [1] - 162:17 2020CV343255 [1] - 165:8 2020CV343355 [1] - 165:6 2021 [30] - 10:3, 11:18, 85:25, 97:17, 100:25, 103:10, 106:15, 119:19, 120:10, 120:13, 128:14, 128:20,	131:14, 134:13, 139:24, 140:11, 162:17, 172:8, 172:10, 176:23, 193:15, 198:23, 198:25, 200:1, 200:16, 202:8, 203:1, 204:11, 211:12, 213:20 2023 [7] - 1:12, 5:13, 6:9, 6:10, 6:13, 43:7, 259:7 20TH [5] - 10:2, 57:12, 150:5, 150:18, 191:21 21 [6] - 43:4, 43:9, 46:18, 56:18, 65:13, 65:18 21ST [1] - 67:14 22 [7] - 47:20, 68:15, 76:14, 78:3, 79:23, 81:2, 87:13 2255 [1] - 182:11 22ND [6] - 193:6, 194:1, 195:5, 195:20, 195:23, 196:1 23 [2] - 6:13, 89:7 23RD [1] - 240:17 24 [2] - 49:10, 75:2 24-HOUR [1] - 12:1 24/7 [1] - 14:19 25 [4] - 6:15, 68:19, 222:18 26.2 [4] - 181:18, 181:21, 181:23, 214:19 27 [1] - 91:13 27TH [2] - 90:8, 198:5 28 [4] - 1:12, 6:8, 6:9, 157:13 28TH [1] - 259:7 2:55 [1] - 159:17 2ND [37] - 105:12, 119:19, 120:7, 120:8, 120:10, 120:13, 123:20, 128:13, 128:20, 128:25, 131:14, 134:13, 139:24, 149:2, 149:20, 150:6, 151:1, 155:1, 172:8, 172:10, 172:15, 176:23, 184:3, 198:23, 198:25, 200:1, 200:8, 200:16, 201:20, 202:7, 202:11, 204:11, 204:24, 205:24,	211:12, 213:20, 227:13	3
1			3 [10] - 63:18, 156:15, 156:24, 206:12, 206:19, 206:25, 207:5, 209:2, 211:2, 211:3 30 [8] - 8:8, 14:14, 32:8, 142:18, 224:7, 224:16, 224:17, 224:21 32(I)(2) [1] - 182:9 32.1(E) [1] - 182:9 3255 [1] - 165:6 35 [1] - 116:14 3:00 [2] - 159:17, 159:24 3:05 [1] - 160:2 3RD [7] - 32:8, 165:16, 190:2, 191:3, 192:25, 196:3, 214:1	6
1 [13] - 11:6, 11:10, 141:10, 141:13, 141:14, 141:23, 142:2, 142:7, 144:5, 144:9, 145:8, 209:12, 209:14 1-2 [1] - 145:2 10 [2] - 3:1, 192:22 10,000 [1] - 212:3 100 [5] - 26:24, 27:17, 31:5, 204:17, 249:20 11 [1] - 14:20 11,779 [1] - 212:24 11,780 [1] - 7:20 11/20/2020 [1] - 144:2 1101 [1] - 157:17 112 [2] - 54:15, 54:20 11TH [1] - 191:15 12 [1] - 182:7 12:50 [1] - 117:3 13 [1] - 5:13 14 [2] - 7:14, 43:7 14-42 [1] - 238:21 1455 [1] - 6:8 1455(B)(5) [1] - 157:23 14TH [1] - 7:9 15 [2] - 5:24, 30:8 15,000 [2] - 194:14, 197:21 15-MINUTE [1] - 224:7 150,000 [1] - 197:22 159 [1] - 188:17 16 [1] - 6:8 16-14-4(C) [1] - 5:18 16TH [1] - 6:3 17-AND-A-HALF [1] - 211:23 1746 [1] - 157:13 17TH [1] - 159:21 18 [1] - 212:2 1899 [1] - 234:4 18TH [1] - 159:21 19 [5] - 5:14, 49:11, 49:12, 75:2, 252:18 1907 [2] - 249:15, 249:21 1977 [1] - 236:16 1:23-CV-03621-SCJ [1] - 1:6 1:23-CV-3621-SCJ [1] - 4:19 1ST [1] - 7:9			4	7 [3] - 12:5, 12:23, 14:20 7-DAY-A-WEEK [1] - 12:2 722 [1] - 236:16 734.101 [1] - 244:18 734.302 [1] - 244:14 74 [2] - 212:12 7:30 [1] - 12:6 7TH [3] - 166:13, 174:14, 174:19
1			4 [3] - 156:15, 156:24, 213:10 4,500 [1] - 212:18 40 [1] - 116:14 404-215-1479 [1] - 1:25 408 [2] - 177:5, 178:18 40TH [1] - 15:2 41-COUNT [1] - 5:14 44 [5] - 51:15, 53:13, 76:5, 76:6, 89:1 45 [2] - 53:22, 90:1 46(J) [1] - 182:10 4:11 [2] - 142:13, 145:16 4:18 [1] - 144:17 4:30 [1] - 224:7 4:34 [1] - 145:9 4:39 [1] - 142:15 4:45 [1] - 224:8 4:48 [1] - 224:11 4TH [4] - 67:17, 190:12, 190:22, 190:25	8
1			5	9
1			5 [5] - 43:25, 44:4, 56:18, 244:14, 244:18 5,000 [1] - 212:5 5.1 [1] - 182:8 50 [5] - 54:14, 54:16, 97:11, 97:13, 97:14	9 [6] - 2:4, 12:24, 47:20, 48:5, 68:16, 251:18 902(5) [1] - 158:10 92 [3] - 51:18, 51:21, 76:5 93 [4] - 53:12, 53:14, 89:2, 89:4 96 [4] - 53:23, 54:1, 89:25, 95:24
A				A
				A.M [1] - 3:1 ABILITY [2] - 93:7, 139:19 ABLE [31] - 29:8, 37:2, 45:2, 49:1, 52:18, 52:19, 63:5, 77:22,

78:14, 81:10, 82:4, 92:1, 92:15, 92:25, 96:20, 96:24, 97:1, 110:1, 111:10, 128:5, 128:8, 134:22, 135:1, 150:1, 150:14, 155:11, 155:15, 169:24, 203:3, 211:18, 231:17 ABRAHAM ^[1] - 254:23 ABRAMS ^[3] - 217:2, 217:4, 217:23 ABSENCE ^[1] - 234:12 ABSENTEE ^[3] - 192:20, 192:23, 194:14 ABSOLUTELY ^[7] - 54:7, 57:5, 118:9, 118:22, 139:14, 149:3, 193:24 ACCEPT ^[4] - 71:4, 158:20, 158:21, 202:10 ACCEPTED ^[2] - 77:14, 213:7 ACCESS ^[12] - 24:10, 35:7, 35:11, 35:14, 95:4, 95:9, 213:14, 213:18, 214:8, 214:9, 214:10, 214:20 ACCESSIBLE ^[1] - 87:9 ACCOMPANIES ^[1] - 87:25 ACCOMPLISHED ^[2] - 147:25, 148:1 ACCORDING ^[3] - 228:20, 230:13, 233:21 ACCOUNT ^[2] - 94:10, 236:2 ACCOUNTS ^[3] - 94:5, 94:18, 94:24 ACCURATE ^[20] - 59:7, 59:19, 59:23, 65:3, 65:7, 72:12, 88:24, 91:19, 96:10, 96:19, 101:8, 110:3, 110:6, 131:18, 136:14, 141:18, 164:15, 206:22, 215:20, 222:15 ACCURATELY ^[1] - 78:2 ACHIEVE ^[1] - 170:13 ACKNOWLEDGE ^[7] - 65:17, 65:18, 68:18, 76:14, 89:6, 90:7, 97:15 ACKNOWLEDGED ^[2] - 88:25, 140:7 ACKNOWLEDGES ^[1] - 254:15 ACQUAINTANCE ^[3] - 162:25, 163:2, 163:3 ACT ^[71] - 5:18, 7:23, 29:2, 30:25, 39:8, 39:14, 40:2, 40:14, 41:14, 42:13, 43:24, 44:4, 46:19, 47:20, 48:5, 49:11, 49:12, 51:21, 53:12, 53:14, 54:1, 54:15, 54:20, 56:18, 65:13, 68:16, 75:2, 76:5, 89:2, 89:25, 95:24, 135:7, 135:13, 135:17, 135:22, 135:23, 136:3, 137:1, 137:14, 137:21, 138:6, 138:9, 138:11, 138:16, 139:18, 140:2, 140:6, 140:10, 148:23, 149:1, 154:1, 229:6, 229:17, 229:20, 230:4, 233:12, 233:15, 237:9, 238:6, 238:9, 244:9, 247:3, 249:3, 249:7, 249:11, 249:14, 251:18, 252:18, 256:12, 256:14 ACT ^[13] - 6:23, 7:15, 51:17, 89:3, 168:24, 182:1, 236:1, 236:5, 246:20, 247:24, 252:8, 253:13, 257:6 ACTED ^[2] - 53:3, 241:14 ACTING ^[18] - 6:20, 31:7, 85:3, 85:4, 113:2, 114:18, 114:19, 199:4, 219:13, 219:14, 235:24, 243:14, 247:7, 247:9, 247:12, 248:23, 254:13, 254:14 ACTION ^[2] - 4:18, 165:6 ACTION ^[9] - 7:3, 19:22, 33:18, 49:17, 58:18, 77:16, 189:5, 221:15, 235:17 ACTIONS ^[4] - 33:7, 244:8, 245:6 ACTIVELY ^[1] - 39:21 ACTIVITIES ^[13] - 39:23, 47:23, 65:8, 93:22, 245:10, 246:7, 247:6, 247:7, 247:10, 248:12, 249:5, 251:14, 254:15 ACTIVITY ^[36] - 7:25, 44:2, 46:22, 48:4, 48:6, 49:14, 49:16, 51:20, 53:17, 53:18, 53:25, 54:1, 54:19, 54:20, 56:12, 78:3, 189:19, 243:21, 244:13, 244:15, 244:17, 244:18, 244:19, 244:22, 245:13, 245:18, 246:2, 246:15, 246:21, 246:24, 250:13, 253:20, 254:7, 254:9 ACTS ^[9] - 7:14, 56:7, 235:15, 236:7, 236:9, 237:3, 246:12, 252:6, 253:4 ACTUAL ^[7] - 52:11, 165:25, 170:17, 176:13, 176:14, 206:19, 223:14 ADAM ^[1] - 1:15 ADD ^[1] - 212:23 ADDED ^[1] - 110:23 ADDITION ^[7] - 12:22, 13:23, 29:21, 33:6, 62:9, 168:6, 168:7 ADDITIONAL ^[5] - 46:25, 79:11, 134:1, 139:7, 156:9 ADDRESS ^[1] - 254:24 ADDRESS ^[9] - 13:21, 18:1, 18:2, 27:4, 29:23, 150:15, 183:11, 229:5, 257:4 ADDRESSED ^[5] - 21:11, 65:16, 158:17, 232:20, 245:19 ADDRESSING ^[3] - 12:21, 27:18, 35:20 ADHERED ^[1] - 3:25 ADJUDICATE ^[2] - 148:25, 229:19 ADJUDICATED ^[1] - 256:16 ADMINISTER ^[3] - 9:6, 186:5, 188:14 ADMINISTERING ^[4] - 189:2, 204:6, 215:20, 216:2 ADMINISTRATION ^[21] - 28:10, 45:24, 46:2, 46:10, 49:24, 64:20, 69:22, 83:4, 83:25, 85:14, 150:14, 152:1, 188:2, 188:21, 189:14, 189:19, 215:12, 231:2, 238:3, 247:19 ADMISSIBILITY ^[1] - 157:16 ADMISSION ^[4] - 11:6, 156:10, 156:20, 157:7 ADMIT ^[1] - 65:17 ADMITS ^[1] - 253:20 ADMITTED ^[12] - 11:9, 43:10, 43:12, 43:15, 43:19, 142:2, 143:12, 158:2, 158:4, 164:24, 207:7, 242:14 ADMONISH ^[1] - 123:2 ADVANCE ^[2] - 114:19 ADVANCED ^[5] - 59:4, 60:24, 74:12, 109:22, 109:23 ADVANCING ^[7] - 73:25, 81:7, 110:3, 113:19, 113:22, 115:3, 115:18 ADVERSARIES ^[4] - 30:14, 30:19, 225:13, 230:1 ADVICE ^[13] - 19:25, 20:1, 33:20, 41:24, 44:25, 45:2, 45:8, 45:10, 46:14, 81:17, 84:6, 136:17, 169:13 ADVISE ^[9] - 52:13, 63:5, 82:4, 82:7, 92:25, 122:11, 170:19, 232:7, 255:22 ADVISED ^[3] - 82:10, 85:9, 85:12 ADVISING ^[1] - 38:24 ADVISOR ^[1] - 34:3 ADVISOR ^[2] - 24:4, 24:6 ADVISORY ^[1] - 237:9 ADVOCATE ^[1] - 39:16 ADVOCATING ^[3] - 39:17, 112:22, 112:24 AFFAIRS ^[2] - 45:14, 229:14 AFFECT ^[5] - 61:7, 230:18, 233:8, 245:12, 246:15 AFFECTED ^[2] - 88:24, 197:24 AFFECTING ^[2] - 245:1, 249:19 AFFIDAVIT ^[1] - 158:15 AFFIDAVITS ^[1] - 158:1 AFFIRM ^[1] - 215:2 AFFIRMATIVELY ^[1] - 75:16 AFGHANISTAN ^[8] - 20:10, 26:15, 26:17, 28:17, 30:24, 86:15, 86:16, 86:25 AFORESAID ^[1] - 259:7 AFRICA ^[1] - 33:9 AFTERNOON ^[9] - 156:8, 167:18, 183:2, 183:4, 186:14, 214:16, 215:6, 240:12, 240:13 AG ^[1] - 23:23 AGENCIES ^[5] - 81:25, 127:14, 151:23, 215:19, 221:18 AGENCY ^[4] - 83:3, 85:17, 149:10, 223:11 AGENTS ^[3] - 183:19, 194:11, 223:14 AGO ^[2] - 40:8, 170:6 AGREE ^[23] - 63:14, 64:17, 78:8, 78:10, 78:23, 79:1, 113:19, 114:18, 114:22, 114:23, 128:22, 131:5, 132:22, 138:5, 158:9, 163:23, 177:8, 177:15, 184:8, 190:10, 243:9, 253:22 AGREED ^[2] - 79:8, 127:15 AGREEING ^[1] - 243:10 AGREEMENT ^[3] - 198:15, 220:11, 220:13 AGRICULTURE ^[4] - 17:9, 17:11, 17:24,
--

<p>19:4 AHEAD [13] - 62:24, 67:6, 70:20, 86:21, 86:22, 92:5, 95:2, 96:2, 108:6, 149:18, 159:3, 206:7, 240:1 AID [4] - 15:22, 24:1, 118:16, 154:8 AIR [1] - 33:11 AIR [1] - 201:19 AIRLINE [2] - 18:6, 21:15 AL [1] - 81:4 ALEX [10] - 107:16, 109:3, 121:2, 167:8, 167:9, 167:10, 168:25, 172:23, 208:21 ALEXANDER [1] - 43:8 ALLEGATION [14] - 7:21, 40:15, 52:7, 78:13, 90:2, 129:9, 132:3, 132:13, 134:19, 136:7, 155:16, 198:18, 208:7, 217:9 ALLEGATIONS [65] - 35:18, 36:6, 38:4, 38:5, 38:7, 44:21, 56:22, 64:4, 66:8, 77:9, 78:9, 78:11, 79:3, 79:6, 79:12, 80:2, 80:5, 80:21, 108:11, 126:5, 126:11, 127:17, 127:24, 127:25, 128:9, 128:14, 128:16, 128:17, 129:5, 129:12, 129:20, 130:5, 131:4, 131:6, 132:1, 132:7, 133:2, 133:7, 133:13, 133:14, 134:7, 134:18, 151:4, 152:7, 152:16, 190:10, 192:24, 193:7, 193:10, 193:17, 193:19, 196:3, 198:12, 207:16, 211:14, 216:10, 220:6, 221:12, 223:4, 223:7, 223:12, 230:11, 256:6 ALLEGE [2] - 7:23, 212:3 ALLEGED [11] - 7:14, 7:17, 7:19, 40:2,</p>	<p>56:12, 211:21, 212:10, 217:7, 225:16, 226:13, 246:24 ALLEGING [1] - 207:24 ALLIED [1] - 217:4 ALLOCATE [1] - 27:19 ALLOCATED [1] - 15:5 ALLOW [10] - 7:24, 35:21, 42:2, 60:8, 96:23, 150:23, 151:8, 153:16, 158:23, 242:11 ALLOWABLE [1] - 243:15 ALLOWED [2] - 39:14, 39:25 ALLOWING [1] - 42:6 ALLUDED [1] - 21:14 ALMOST [3] - 16:9, 41:6, 135:5 ALTER [1] - 239:8 AMENDMENT [4] - 7:9, 246:25, 247:1, 247:2 AMERICA [3] - 24:12, 61:7, 115:9 AMERICAN [11] - 15:24, 23:13, 24:15, 27:24, 34:15, 34:16, 60:23, 93:14, 93:16, 238:4, 238:5 AMERICANS [2] - 59:16, 60:17 AMID [1] - 87:12 AMOUNT [1] - 154:16 ANDY [1] - 36:10 ANNA [1] - 1:15 ANNA [2] - 5:8, 186:18 ANNIVERSARY [1] - 15:2 ANNOUNCED [2] - 219:7, 219:18 ANSWER [46] - 17:6, 48:1, 59:13, 60:1, 60:5, 62:1, 74:21, 83:16, 86:23, 94:14, 96:1, 114:4, 114:12, 114:13, 114:15, 115:14, 115:23, 122:24, 123:2, 123:4, 123:8, 123:10, 127:2, 128:16, 130:15, 130:16, 131:21, 134:12, 137:20, 160:15, 161:16, 175:9, 187:7, 187:8,</p>	<p>187:9, 241:12, 248:25, 249:9, 252:17, 253:11, 255:16, 255:17, 256:1 ANSWERED [10] - 62:22, 81:15, 115:22, 115:24, 161:17, 165:2, 174:20, 240:20, 245:22, 246:10 ANSWERING [2] - 41:19, 95:19 ANSWERS [3] - 121:10, 198:2, 250:1 ANTICIPATE [2] - 34:4, 77:19 ANTICIPATING [3] - 52:9, 231:18, 239:24 ANULEWICZ [5] - 180:2, 180:3, 180:5, 180:6, 180:10 ANYWAY [2] - 76:10, 229:5 AP [2] - 131:15, 131:21 APARTMENT [1] - 12:25 APOLOGIES [2] - 61:21, 244:24 APOLOGIZE [1] - 143:3 APPEAL [1] - 233:3 APPEAR [3] - 143:21, 143:22, 213:7 APPEARANCE [6] - 164:17, 165:4, 165:10, 166:13, 167:17, 174:14 APPEARANCES [1] - 1:13 APPEARED [3] - 133:23, 249:16, 249:17 APPEARING [1] - 255:15 APPLICABLE [4] - 228:20, 242:4, 244:9, 247:25 APPLICATION [3] - 245:11, 246:4, 247:2 APPLICATIONS [1] - 194:14 APPLIED [6] - 135:13, 135:22, 140:7, 226:1, 242:24, 242:25 APPLIES [8] - 135:23, 138:17, 138:18, 138:20, 181:23,</p>	<p>182:1, 182:6, 247:13 APPLY [16] - 60:22, 136:3, 138:10, 138:20, 138:21, 140:11, 157:18, 215:11, 230:4, 236:8, 243:21, 243:25, 244:2, 244:4, 245:20, 249:25 APPOINTED [1] - 10:22 APPRECIATE [6] - 131:17, 141:21, 155:25, 159:19, 185:23, 240:18 APPROACH [9] - 10:7, 42:17, 42:23, 117:19, 141:7, 156:16, 164:7, 206:8, 206:11 APPROACHES [1] - 157:21 APPROACHING [1] - 131:24 APPROPRIATE [8] - 12:3, 103:17, 118:3, 157:5, 158:2, 159:7, 196:24, 221:17 APPROPRIATENES S [1] - 189:8 APPROPRIATIONS [1] - 154:21 APPROVAL [2] - 24:3, 235:22 APPROVED [2] - 23:14, 24:17 ARABIA [1] - 55:1 ARCHIVES [1] - 94:7 AREA [9] - 24:23, 37:25, 52:3, 52:4, 64:20, 76:10, 96:23, 162:9, 192:18 AREAS [4] - 84:5, 123:13, 148:13, 162:21 ARENA [2] - 214:3, 216:11 ARGUE [1] - 240:10 ARGUING [2] - 224:23, 238:17 ARGUMENT [2] - 8:13, 256:4 ARGUMENTS [2] - 8:9, 19:7 ARISES [1] - 246:11 AROSE [1] - 232:7 ARRAIGNMENT [2] - 257:18, 257:21 ARRANGE [11] - 89:7,</p>	<p>99:21, 102:14, 102:21, 102:25, 104:7, 110:21, 175:12, 203:11, 242:12 ARRANGED [2] - 77:3, 208:16 ARRANGEMENTS [1] - 105:22 ARRANGING [2] - 7:16, 66:12 ARREST [4] - 194:18, 194:21, 233:22 ARRIVAL [2] - 192:12, 200:6 ARRIVE [1] - 77:3 ARRIVED [2] - 76:23, 79:21 ARRIVING [1] - 199:2 ARTICLE [23] - 84:9, 84:11, 84:12, 84:14, 84:17, 84:18, 84:19, 109:22, 109:24, 110:1, 110:4, 110:5, 111:6, 152:23, 153:1, 153:3, 153:4, 153:5, 153:6, 154:24, 242:3 ARTICLE [1] - 85:6 ASCERTAIN [1] - 134:22 ASCRIBING [1] - 170:17 ASIDE [3] - 28:7, 193:17, 247:3 ASPECT [4] - 174:12, 227:12, 227:25, 238:22 ASPECTS [9] - 27:8, 84:21, 105:16, 110:1, 126:12, 215:12, 226:8, 226:16, 243:24 ASSEMBLING [1] - 48:24 ASSERTION [1] - 250:23 ASSESSMENT [5] - 78:9, 78:11, 78:23, 127:16, 128:23 ASSIST [2] - 59:2, 167:21 ASSISTANCE [2] - 92:16, 92:20 ASSISTANT [4] - 10:22, 13:9, 47:5, 239:2 ASSISTANTS [2] - 19:14, 21:4 ASSISTED [1] -</p>
---	---	--	---	---

<p>194:13 ASSISTING [1] - 167:5 ASSISTS [1] - 91:16 ASSOCIATE [2] - 173:4, 173:17 ASSOCIATED [10] - 69:19, 70:1, 71:15, 143:7, 144:10, 168:11, 192:25, 228:17, 252:8, 252:12 ASSOCIATION [3] - 121:21, 228:7, 253:13 ASSUME [15] - 8:24, 25:15, 42:21, 43:14, 47:17, 59:20, 94:23, 95:5, 109:4, 145:7, 190:21, 215:8, 221:19, 221:23, 245:21 ASSUMED [2] - 131:3, 208:19 ASSUMING [2] - 52:1, 74:1 ASSUMPTION [1] - 149:6 AT [2] - 3:1, 258:4 AT-HOME [1] - 29:5 ATLANTA [5] - 52:2, 52:4, 76:10, 231:15 ATLANTA [2] - 1:2, 1:24 ATMOSPHERICS [1] - 11:20 ATTACHMENT [5] - 143:17, 143:24, 144:4, 144:6, 144:10 ATTEMPT [5] - 77:6, 103:4, 104:23, 120:6, 242:12 ATTEMPTED [5] - 102:9, 102:14, 102:21, 102:25, 199:24 ATTEMPTING [1] - 228:25 ATTEMPTS [6] - 100:17, 100:21, 102:3, 102:5, 104:20, 105:3 ATTEND [4] - 16:5, 20:17, 21:8, 57:19 ATTENDANCE [1] - 37:8 ATTENTION [29] - 28:4, 28:9, 34:23, 43:3, 43:9, 43:24, 45:7, 46:18, 47:20, 49:10, 51:15, 53:12,</p>	<p>53:22, 54:5, 54:14, 68:16, 75:1, 76:4, 83:19, 95:12, 97:15, 119:18, 162:16, 172:7, 190:1, 200:15, 232:10, 235:20, 250:18 ATTORNEY [20] - 5:10, 5:11, 6:12, 7:11, 37:9, 39:3, 78:4, 79:2, 79:9, 79:20, 127:5, 127:16, 128:22, 213:24, 223:14, 230:14, 230:15, 230:17, 233:7 ATTORNEY [33] - 4:12, 8:14, 8:19, 50:25, 56:6, 70:2, 70:3, 78:5, 88:11, 105:20, 111:7, 122:2, 148:23, 149:15, 162:3, 162:19, 167:23, 167:25, 168:4, 176:17, 183:3, 185:6, 187:1, 187:7, 239:2, 241:11, 244:3, 250:19, 257:16, 257:19 ATTORNEYS [1] - 183:19 ATTORNEYS [1] - 149:5 ATTORNEY/CLIENT [3] - 88:12, 173:9, 181:4 ATTORNEYS [50] - 5:25, 6:18, 8:21, 40:16, 71:20, 82:18, 82:20, 82:24, 91:8, 94:14, 94:16, 97:25, 98:3, 98:25, 99:16, 99:22, 99:24, 99:25, 100:4, 107:13, 107:15, 107:16, 107:22, 107:24, 108:15, 108:21, 108:24, 109:3, 109:6, 109:11, 109:14, 109:16, 110:14, 110:15, 120:24, 121:1, 121:14, 122:17, 123:13, 131:12, 132:24, 139:24, 149:25, 155:12, 155:13, 155:14, 171:24, 240:9 ATTORNEYS [1] -</p>	<p>216:6 AUDIENCE [1] - 3:9 AUDIO [1] - 209:5 AUDIT [36] - 76:16, 76:18, 77:7, 77:11, 77:13, 77:16, 79:23, 80:11, 80:14, 81:8, 82:9, 85:4, 127:13, 134:10, 192:13, 192:16, 192:19, 193:5, 193:18, 194:1, 194:7, 194:10, 194:22, 195:4, 195:10, 195:17, 195:19, 197:4, 197:6, 198:9, 198:19, 218:7, 218:11, 218:14, 218:18 AUDITS [1] - 104:1 AUGUST [1] - 1:12 AUGUST [9] - 5:13, 5:24, 6:3, 6:8, 6:9, 6:13, 6:15, 43:7, 259:7 AUL [1] - 1:22 AUL [1] - 4:25 AUTHENTICATING [1] - 158:12 AUTHORITY [35] - 93:7, 109:22, 128:9, 128:11, 214:23, 234:14, 236:10, 236:24, 241:1, 241:8, 241:22, 241:23, 242:11, 244:25, 245:11, 246:6, 246:12, 246:14, 247:8, 247:9, 247:23, 248:4, 248:7, 249:18, 250:4, 250:16, 250:24, 251:2, 254:11, 254:13, 254:14, 254:18, 254:19, 255:18, 255:19 AUTHORIZATION [2] - 29:2, 30:25 AUTHORIZATIONS [2] - 129:4, 132:10 AUTHORIZE [2] - 241:25, 242:12 AUTHORIZED [3] - 244:21, 247:25, 249:6 AVAIL [1] - 229:3 AVAILABLE [5] - 66:17, 92:20, 93:10, 137:11, 215:23</p>	<p>AVENUE [1] - 194:4 AVERTED [1] - 18:5 AVOID [1] - 136:18 AWARE [59] - 15:8, 16:11, 16:12, 16:14, 19:16, 19:23, 20:5, 20:14, 34:12, 35:4, 39:7, 44:23, 45:6, 58:11, 63:24, 66:9, 68:1, 77:19, 81:25, 85:16, 87:20, 89:12, 106:14, 120:9, 124:18, 124:20, 124:23, 130:3, 136:25, 139:17, 139:18, 140:9, 142:25, 143:1, 153:1, 153:21, 157:23, 190:4, 195:8, 195:17, 196:1, 197:3, 198:4, 198:5, 198:7, 198:22, 199:4, 199:13, 199:14, 199:17, 199:22, 201:7, 205:14, 213:21, 218:10, 218:15, 219:3, 232:21 AWARENESS [2] - 34:25, 35:2 AWKWARD [1] - 136:21 AXIOMATIC [1] - 225:17</p>	<p>79:21, 127:6 BARR'S [6] - 78:9, 78:23, 79:16, 127:16, 128:23, 230:7 BARS [1] - 255:3 BASED [9] - 73:1, 75:19, 78:7, 79:17, 95:23, 169:9, 201:11, 224:18, 236:25 BASIC [1] - 235:8 BASIS [8] - 14:10, 14:15, 14:16, 17:18, 32:6, 39:3, 66:18, 149:12 BATHROOM [1] - 24:12 BAUCHAM [1] - 234:18 BEACH [3] - 24:24, 25:1, 40:5 BEAR [3] - 161:9, 235:17, 246:8 BECOME [1] - 35:4 BEEF [2] - 17:13, 17:20 BEFORE [1] - 1:11 BEG [3] - 23:19, 107:10, 123:9 BEGINNING [3] - 109:17, 213:13, 240:15 BEHALF [18] - 91:22, 93:6, 113:2, 122:19, 136:7, 165:11, 174:8, 179:18, 190:23, 196:2, 196:6, 199:4, 199:15, 219:13, 219:14, 219:17, 246:2, 255:13 BEHALF [2] - 1:14, 1:18 BEHAVIOR [1] - 208:14 BEHIND [2] - 5:10, 67:22 BELIEF [10] - 85:5, 90:15, 107:3, 107:4, 152:6, 248:19, 249:2, 249:5, 250:5, 250:6 BELONGS [1] - 3:20 BENCH [1] - 160:6 BERNIE [1] - 69:13 BEST [28] - 14:10, 16:24, 38:15, 48:11, 55:16, 73:21, 81:4, 91:19, 91:20, 94:22,</p>
B				
<p>BACKGROUND [1] - 144:25 BACKWARDS [1] - 250:22 BAD [1] - 200:5 BADGERING [1] - 62:22 BALLOT [2] - 192:20, 194:14 BALLOTS [6] - 52:21, 191:6, 192:23, 197:17, 197:20, 204:18 BANK [1] - 234:2 BANKRUPT [1] - 18:7 BAR [1] - 235:21 BAR [6] - 247:2, 253:14, 253:15, 254:1, 254:5 BARR [12] - 37:9, 37:15, 37:16, 38:17, 39:4, 78:5, 79:2, 79:9, 79:10, 79:15,</p>				

<p>94:23, 101:22, 104:6, 104:12, 104:15, 126:3, 126:16, 132:11, 141:18, 168:16, 176:4, 176:9, 180:23, 186:21, 186:22, 201:11, 202:13, 206:23 BET [4] - 131:22, 144:24, 237:8, 237:11 BETTER [7] - 9:24, 32:14, 103:8, 109:8, 133:15, 203:9 BETWEEN [43] - 7:5, 7:13, 12:5, 12:23, 17:24, 18:21, 21:5, 30:15, 50:16, 66:12, 89:7, 97:17, 98:2, 98:15, 99:1, 112:6, 113:8, 119:19, 120:17, 120:20, 121:7, 136:25, 142:9, 142:13, 142:17, 169:17, 172:11, 173:1, 173:17, 173:21, 173:24, 174:24, 175:2, 175:6, 175:13, 175:15, 175:20, 176:3, 176:11, 209:24, 235:9, 242:22, 253:13 BEYOND [8] - 12:14, 60:4, 60:7, 72:16, 133:10, 217:21, 229:5, 229:21 BIDEN [11] - 22:14, 29:25, 39:19, 39:21, 134:23, 146:24, 147:3, 192:11, 230:17, 230:21 BIG [8] - 11:1, 11:2, 11:3, 23:12, 24:16, 50:15, 154:14, 232:16 BIGGEST [1] - 50:8 BILLIONS [1] - 24:17 BIT [16] - 18:17, 18:20, 25:23, 130:17, 130:18, 135:6, 136:8, 151:17, 154:25, 155:8, 162:9, 185:20, 198:23, 215:7, 220:18, 235:10 BITTMAN [1] - 4:25 BJ [2] - 213:24, 216:6</p>	<p>BLOCKS [1] - 154:15 BLUNT [1] - 68:4 BLUNTLY [7] - 13:3, 20:23, 21:1, 28:12, 85:9, 139:12, 148:3 BOARD [2] - 83:9, 232:23 BOARD [1] - 221:3 BOBBY [1] - 213:25 BODY [1] - 49:25 BOILS [1] - 256:10 BONO [1] - 105:21 BOOKS [1] - 235:5 BORDERING [1] - 62:22 BORE [1] - 226:21 BOTTOM [2] - 144:9, 227:8 BOULEE [1] - 259:16 BOUNDARY [2] - 241:2, 244:10 BOUTIQUE [1] - 162:15 BOX [3] - 81:13, 152:14, 231:14 BRAD [3] - 5:21, 7:15, 237:10 BRAD [2] - 2:10, 186:7 BRANCH [10] - 21:14, 189:11, 189:13, 215:19, 239:10, 244:1, 244:22, 244:25, 247:24, 251:7 BRANCHES [1] - 34:20 BREAK [8] - 55:20, 55:21, 55:23, 116:17, 116:20, 117:3, 224:7 BREAKING [1] - 117:14 BREAKS [1] - 3:13 BRENNAN [1] - 145:1 BRIAN [1] - 166:23 BRICKMAN [2] - 185:7, 185:14 BRICKMAN [5] - 160:12, 160:18, 160:22, 161:21, 185:13 BRIDGE [1] - 205:7 BRIEF [5] - 6:14, 241:19, 243:19, 244:16, 247:14 BRIEFING [3] - 12:7, 32:7, 172:19 BRIEFINGS [5] - 22:12, 22:13, 22:14, 30:2, 30:10</p>	<p>BRIEFLY [6] - 9:20, 10:20, 51:24, 55:14, 155:1, 222:13 BRIEFS [1] - 7:1 BRING [20] - 11:3, 18:8, 19:21, 20:24, 38:10, 44:12, 52:10, 63:11, 132:23, 149:22, 149:23, 154:12, 159:22, 168:23, 180:12, 205:9, 231:13, 245:8, 257:3 BRINGING [3] - 18:10, 122:10, 130:1 BRINGS [1] - 8:2 BROAD [9] - 12:17, 13:23, 34:2, 90:25, 187:25, 253:12, 253:14, 253:24, 254:1 BROADEN [1] - 110:2 BROADENED [1] - 228:11 BROADER [1] - 45:5 BROADLY [5] - 13:11, 13:12, 39:23, 81:11, 194:7 BROKER [1] - 246:2 BROUGHT [9] - 39:3, 87:1, 148:13, 150:8, 166:16, 166:17, 174:10, 190:23, 215:22 BS [1] - 78:25 BUCKETS [1] - 162:10 BUILDING [3] - 13:21, 13:25, 45:20 BULLSHIT [2] - 38:22, 79:4 BURDEN [12] - 6:18, 224:16, 226:17, 226:19, 226:20, 226:24, 227:4, 228:12, 237:2, 241:5, 242:9, 243:12 BUREAU [1] - 52:19 BUSINESS [2] - 12:16, 162:10 BUST [1] - 63:9 BUT.. [1] - 188:23 BY [72] - 9:12, 10:17, 11:13, 18:13, 25:13, 33:13, 41:11, 43:2, 43:23, 51:14, 55:11, 56:5, 57:6, 60:13, 61:15, 62:3, 63:1, 71:2, 72:23, 75:25, 78:22, 83:22, 85:2, 87:6, 88:16, 92:18,</p>	<p>95:10, 95:18, 96:4, 114:3, 114:9, 114:17, 115:11, 115:16, 116:1, 116:11, 117:13, 117:21, 123:7, 126:22, 127:3, 131:23, 135:20, 141:11, 142:5, 143:15, 147:11, 147:18, 149:19, 153:20, 155:5, 161:25, 164:9, 165:1, 178:25, 181:10, 183:1, 183:12, 184:21, 186:13, 187:18, 204:1, 205:23, 206:10, 207:9, 209:13, 210:16, 211:4, 213:11, 215:5, 222:3, 223:1</p>	<p>116:5, 120:24, 121:1, 122:12, 122:19, 122:21, 122:22, 123:11, 138:23, 139:1, 139:2, 139:3, 139:8, 139:9, 139:10, 139:20, 139:21, 139:22, 139:25, 140:3, 140:14, 140:15, 140:16, 140:21, 141:1, 141:2, 142:23, 143:8, 146:1, 146:3, 146:14, 147:21, 148:4, 148:12, 148:20, 163:11, 163:16, 163:17, 163:18, 163:19, 163:21, 163:22, 163:23, 166:15, 167:6, 170:11, 171:8, 171:15, 174:8, 176:17, 177:19, 179:10, 179:19, 184:5, 190:5, 190:18, 190:23, 191:24, 202:21, 204:9, 207:12, 207:16, 208:13, 209:25, 210:2, 210:3, 211:1, 211:8, 213:17, 214:11, 223:9, 227:18, 242:5, 242:20, 242:23, 243:3, 243:4, 245:24, 246:1, 246:2, 250:11, 250:12, 256:1 CAMPAIGN'S [1] - 56:21 CAMPAIGN-RELATED [4] - 93:17, 113:24, 122:12, 140:3 CAMPAIGN/THE [1] - 190:9 CAMPAIGNING [1] - 113:1 CAMPAIGNS [3] - 93:22, 123:17, 208:8 CANDIDATE [3] - 164:3, 165:12, 166:2 CANDIDATE [12] - 39:17, 40:9, 164:4, 184:5, 190:9, 207:18, 217:20, 244:20, 245:14, 250:11, 255:25</p>
C				
<p>CABINET [10] - 12:14, 14:1, 16:17, 19:2, 21:5, 21:23, 48:16, 48:23, 69:2, 69:12 CALENDAR [2] - 57:10, 130:19 CAMPAIGN [164] - 27:16, 31:19, 31:20, 31:22, 31:25, 32:1, 32:15, 35:1, 35:25, 36:25, 39:21, 57:21, 66:4, 66:8, 69:19, 70:1, 70:4, 71:14, 81:1, 87:17, 88:1, 88:2, 91:16, 91:23, 92:10, 92:17, 92:19, 92:22, 92:24, 93:6, 93:10, 93:17, 95:20, 96:12, 96:14, 97:3, 97:6, 98:6, 100:1, 100:6, 103:20, 103:23, 103:24, 104:1, 104:21, 104:22, 105:24, 106:4, 106:5, 106:7, 107:22, 107:24, 109:12, 109:13, 109:16, 112:20, 113:2, 113:4, 113:5, 113:8, 113:10, 113:14, 113:15, 113:20, 113:22, 113:24, 114:19, 115:3, 115:7, 115:8, 115:9, 115:17, 115:18, 116:3,</p>				

CANDIDATES ^[3] - 207:13, 217:19, 218:22 CANDIDLY ^[1] - 12:20 CANDOR ^[1] - 116:8 CANNOT ^[12] - 228:22, 235:14, 235:25, 244:12, 245:10, 246:13, 246:16, 247:11, 248:1, 253:21, 254:20 CAPACITIES ^[1] - 210:1 CAPACITY ^[14] - 32:19, 33:4, 44:6, 44:13, 59:1, 71:13, 71:18, 100:5, 140:1, 164:1, 164:2, 167:13, 167:21, 170:11 CAPACITY ^[4] - 165:12, 165:14, 166:2, 166:4 CAPITOL ^[8] - 15:13, 15:14, 27:2, 28:24, 30:15, 34:22, 83:10, 83:11 CAPTURE ^[1] - 256:20 CARE ^[3] - 37:6, 148:5, 153:10 CARE ^[2] - 247:25, 248:2 CARED ^[1] - 201:16 CAREFUL ^[1] - 72:11 CAREFULLY ^[1] - 71:3 CAROLINA ^[7] - 9:16, 9:23, 17:11, 17:12, 47:15, 47:16, 146:19 CARRY ^[2] - 188:10, 224:15 CARTER ^[1] - 198:14 CASE ^[67] - 4:11, 4:16, 5:25, 6:7, 6:13, 6:15, 6:16, 8:1, 8:4, 8:22, 42:21, 54:2, 54:22, 92:17, 117:23, 157:20, 164:18, 166:1, 166:22, 168:24, 178:4, 182:19, 195:9, 217:23, 225:17, 226:24, 228:12, 229:1, 230:9, 233:2, 234:3, 234:8, 234:16, 234:17, 234:19, 234:21, 236:11, 236:19, 236:23, 241:20, 241:22, 242:10, 242:21, 244:1, 247:17, 247:18, 247:22, 248:10, 249:6, 250:23, 252:15, 253:16, 253:18, 253:19, 253:23, 254:4, 254:21, 256:10, 257:7, 257:9, 257:13, 257:14, 257:20, 259:7 CASES ^[17] - 157:25, 167:16, 168:8, 178:1, 217:14, 217:16, 225:20, 228:10, 232:9, 232:25, 234:15, 234:25, 236:21, 254:8, 256:7, 257:11 CASUAL ^[2] - 7:12, 7:25 CATCH ^[1] - 12:20 CATCH-UP ^[1] - 12:20 CATEGORICALLY ^[1] - 246:13 CAUGHT ^[1] - 12:8 CAUSAL ^[4] - 7:4, 226:12, 227:4, 227:11 CAUTIOUS ^[2] - 40:23, 51:6 CAUTIOUSLY ^[1] - 3:16 CAVUTO ^[4] - 201:13, 201:14, 201:15 CENTER ^[3] - 89:17, 152:13, 239:24 CENTER ^[9] - 76:15, 77:2, 79:22, 80:10, 81:7, 89:17, 127:12, 195:9, 231:16 CENTRALIZED ^[1] - 119:2 CENTURY ^[1] - 249:22 CEREMONIAL ^[1] - 11:2 CERTAIN ^[19] - 15:6, 73:6, 73:7, 73:9, 73:18, 73:19, 88:7, 123:24, 128:17, 148:13, 151:6, 151:21, 170:2, 193:23, 193:25, 230:22, 231:11, 243:24, 247:24 CERTAINLY ^[69] - 14:13, 16:17, 19:10, 20:19, 20:21, 21:18, 23:13, 25:18, 26:20, 27:13, 28:3, 31:4, 32:2, 35:2, 36:5, 36:21, 39:24, 44:6, 44:25, 45:3, 45:9, 45:20, 46:9, 46:24, 49:8, 50:12, 51:23, 54:3, 59:6, 59:7, 59:18, 61:8, 63:12, 64:18, 65:7, 67:19, 67:23, 68:11, 70:6, 74:11, 91:11, 92:24, 96:11, 96:19, 98:8, 99:15, 105:14, 106:7, 107:4, 110:2, 110:17, 113:10, 113:15, 123:11, 123:15, 128:8, 128:16, 137:10, 139:16, 146:10, 151:13, 152:1, 152:5, 152:6, 153:3, 154:1, 154:21, 220:8, 229:20 CERTAINTY ^[2] - 67:16, 90:14 CERTIFICATION ^[24] - 64:15, 64:21, 83:4, 83:6, 85:17, 129:14, 130:12, 130:14, 130:20, 150:23, 189:14, 189:23, 191:19, 192:2, 194:18, 204:11, 205:2, 206:2, 208:10, 217:22, 218:4, 228:3, 231:4, 247:20 CERTIFICATIONS ^[2] - 188:24, 204:14 CERTIFIED ^[13] - 120:11, 120:12, 191:12, 194:11, 194:17, 196:23, 204:15, 204:19, 204:22, 204:25, 205:3, 205:5, 217:17 CERTIFIES ^[1] - 205:20 CERTIFY ^[6] - 64:24, 188:8, 188:19, 189:1, 189:3, 259:6 CERTIFYING ^[2] - 189:8, 204:3 CFR ^[2] - 244:14, 244:18 CHAFF ^[1] - 36:20 CHAIN ^[1] - 170:23 CHAIR ^[1] - 160:6 CHAIR ^[1] - 166:7 CHAIRMAN ^[1] - 30:16 CHALLENGE ^[5] - 57:22, 66:5, 204:9, 210:12, 217:21 CHALLENGED ^[1] - 217:6 CHALLENGES ^[6] - 34:25, 35:17, 190:18, 210:11, 216:20, 216:25 CHALLENGING ^[4] - 13:3, 35:9, 36:3, 217:20 CHANCE ^[1] - 159:22 CHANGE ^[6] - 205:6, 208:14, 217:8, 220:19, 221:9, 222:7 CHANGED ^[2] - 205:21, 212:25 CHARACTERIZE ^[1] - 52:15 CHARGE ^[2] - 14:4, 31:22 CHARGED ^[4] - 5:16, 5:17, 5:19, 65:17 CHARGES ^[1] - 6:22 CHAT ^[3] - 65:22, 66:21, 67:11 CHECK ^[4] - 27:24, 144:15, 152:14, 231:14 CHECKED ^[2] - 81:14, 208:6 CHECKING ^[1] - 81:13 CHESEBRO ^[1] - 143:25 CHICKEN ^[1] - 17:13 CHIEF ^[3] - 13:8, 188:3, 194:24 CHIEF ^[151] - 7:3, 7:13, 10:1, 10:4, 10:22, 11:15, 11:16, 11:21, 13:7, 13:8, 13:10, 14:18, 14:21, 15:20, 19:12, 19:14, 21:4, 22:4, 22:13, 27:8, 30:3, 30:7, 39:13, 40:21, 44:3, 44:7, 44:13, 44:24, 44:25, 45:13, 46:23, 46:24, 47:23, 47:25, 48:6, 48:14, 48:18, 48:25, 49:9, 49:16, 49:17, 49:18, 51:22, 51:23, 53:19, 53:20, 54:2, 54:4, 54:9, 54:21, 54:23, 58:7, 62:8, 63:7, 63:10, 66:11, 66:16, 68:8, 74:9, 85:8, 85:13, 85:21, 87:25, 88:7, 88:8, 91:21, 93:21, 100:15, 100:19, 109:18, 110:11, 110:18, 110:20, 111:4, 111:7, 111:15, 111:19, 111:21, 111:25, 112:11, 112:19, 112:25, 113:3, 113:5, 113:17, 113:20, 114:20, 115:7, 115:19, 116:4, 116:6, 118:2, 118:24, 123:12, 124:16, 126:7, 129:17, 132:8, 133:8, 135:12, 135:22, 137:9, 137:25, 138:5, 138:8, 138:10, 138:15, 138:16, 138:18, 139:6, 140:4, 140:5, 140:11, 141:2, 141:4, 146:23, 184:15, 184:24, 195:24, 219:1, 219:3, 219:7, 219:13, 219:16, 219:18, 228:18, 229:2, 229:10, 231:6, 231:10, 231:22, 232:4, 233:8, 233:10, 233:11, 234:1, 237:20, 239:23, 240:23, 241:6, 241:7, 242:12, 243:15, 243:25, 244:11, 249:4, 250:9, 251:15, 255:18, 255:25 CHIEFS ^[1] - 30:17 CHILDREN ^[4] - 52:3, 52:11, 76:12 CHILLING ^[1] - 40:25 CHIMING ^[1] - 243:9 CHRIS ^[1] - 180:2 CHRISTINE ^[1] - 213:25 CHRISTMAS ^[3] - 52:3, 52:10, 98:12 CHRISTOPHER ^[1] - 167:25 CHUCK ^[1] - 145:1 CHUNKS ^[1] - 219:22 CHYRON ^[1] - 40:21 CHÉ ^[1] - 43:8 CIA ^[1] - 12:7 CIPOLLONE ^[2] -				
---	--	--	--	--

<p>51:1, 82:23</p> <p>CIRCUIT [1] - 233:2</p> <p>CIRCUIT [14] - 226:22, 228:6, 228:9, 228:21, 233:1, 234:18, 234:19, 234:20, 235:13, 236:3, 236:17, 237:1, 253:16</p> <p>CIRCUMSTANCE [3] - 112:15, 112:16, 238:7</p> <p>CIRCUMSTANCES [3] - 40:4, 51:25, 226:1</p> <p>CITATION [4] - 236:13, 241:24, 242:2, 247:18</p> <p>CITATIONS [1] - 157:25</p> <p>CITED [5] - 214:23, 242:8, 245:15, 247:14, 247:23</p> <p>CITES [1] - 235:2</p> <p>CITIZENS [1] - 15:24</p> <p>CITY [1] - 196:19</p> <p>CITY [1] - 196:21</p> <p>CIVIC [9] - 76:15, 77:2, 79:22, 80:10, 81:7, 89:17, 127:12, 195:9, 231:16</p> <p>CIVIL [2] - 4:18, 165:6</p> <p>CIVIL [2] - 15:4, 235:15</p> <p>CLAIM [1] - 229:3</p> <p>CLAIMS [4] - 129:2, 150:1, 151:15, 220:19</p> <p>CLARIFICATION [2] - 170:19, 194:16</p> <p>CLARIFY [4] - 54:6, 75:21, 176:13, 222:7</p> <p>CLASSIC [1] - 256:11</p> <p>CLASSIFIED [4] - 15:16, 15:19, 30:4</p> <p>CLAUSE [2] - 7:6, 7:8</p> <p>CLAUSE [3] - 227:2, 247:25, 248:2</p> <p>CLEAR [18] - 21:13, 26:18, 36:17, 58:17, 70:24, 71:23, 91:24, 95:1, 108:2, 108:20, 108:23, 110:12, 110:25, 113:8, 131:15, 144:23, 228:6, 254:6</p> <p>CLEARLY [6] - 112:22, 144:16, 227:11, 228:15, 228:16, 241:19</p> <p>CLERK [1] - 43:8</p>	<p>CLERK [5] - 4:17, 160:25, 161:5, 186:10, 255:12</p> <p>CLETA [11] - 105:13, 105:14, 105:20, 105:22, 168:18, 168:19, 170:14, 170:15, 170:18, 174:1</p> <p>CLIENT [2] - 170:12, 175:6</p> <p>CLIENTS [1] - 184:9</p> <p>CLIFTON [3] - 234:20, 235:12, 236:16</p> <p>CLIP [7] - 209:12, 209:14, 210:13, 210:15, 211:2, 211:3, 213:10</p> <p>CLIP [4] - 211:14, 213:9, 213:12, 219:5</p> <p>CLOCK [3] - 14:19, 224:25</p> <p>CLOSE [12] - 8:8, 19:21, 20:25, 22:10, 44:12, 49:25, 122:15, 122:18, 133:1, 160:5, 216:22, 237:15</p> <p>CLOSED [2] - 96:23, 151:10</p> <p>CLOSELY [1] - 183:11</p> <p>CLOSER [4] - 160:15, 160:16, 222:18, 235:3</p> <p>CLOSING [3] - 8:9, 224:19, 256:4</p> <p>CLOSINGS [2] - 224:6, 224:8</p> <p>CLOSURE [5] - 149:22, 149:23, 227:23, 228:1, 231:14</p> <p>CMR [2] - 1:23, 259:11</p> <p>CO [2] - 167:16, 253:8</p> <p>CO-CONSPIRATORS [1] - 253:8</p> <p>CO-COUNSEL [1] - 167:16</p> <p>COBB [38] - 7:21, 52:5, 52:11, 76:15, 77:1, 77:9, 77:24, 79:22, 80:10, 81:7, 82:8, 85:4, 87:14, 89:16, 90:13, 96:17, 96:20, 96:21, 127:11, 129:6, 130:23, 152:9, 152:12, 192:14, 192:17, 192:21,</p>	<p>193:5, 193:18, 194:10, 194:22, 195:5, 195:9, 197:25, 199:2, 218:6, 218:11, 231:16, 239:23</p> <p>COHEN [1] - 172:17</p> <p>COLD [1] - 169:5</p> <p>COLLEAGUE [2] - 167:10, 167:15</p> <p>COLLEAGUES [3] - 4:24, 5:7, 255:14</p> <p>COLLEGE [1] - 84:21</p> <p>COLLOQUIAL [2] - 58:18, 170:16</p> <p>COLOR [6] - 6:23, 47:11, 241:14, 246:12, 247:7, 247:9</p> <p>COLORABLE [3] - 226:15, 248:25, 256:14</p> <p>COLORABLY [1] - 239:16</p> <p>COLORFUL [1] - 78:24</p> <p>COMFORTABLE [2] - 133:2, 178:22</p> <p>COMING [15] - 7:21, 8:10, 8:15, 12:10, 14:6, 20:6, 24:13, 24:16, 29:3, 30:19, 36:11, 74:22, 107:23, 208:13, 249:23</p> <p>COMMAND [1] - 235:20</p> <p>COMMANDER [1] - 74:8</p> <p>COMMENCED [1] - 117:5</p> <p>COMMENT [3] - 40:11, 40:19, 148:24</p> <p>COMMENTARY [1] - 123:3</p> <p>COMMENTING [1] - 136:23</p> <p>COMMENTS [2] - 39:5, 201:16</p> <p>COMMISSION [5] - 10:21, 10:25, 13:6, 13:10, 90:24</p> <p>COMMISSIONED [1] - 10:5</p> <p>COMMITTED [1] - 235:15</p> <p>COMMITTEE [5] - 25:22, 90:21, 94:12, 142:22, 212:7</p> <p>COMMITTING [1] - 57:14</p>	<p>COMMON [5] - 44:9, 49:17, 98:2, 216:13, 251:6</p> <p>COMMONLY [4] - 22:23, 25:1, 215:15, 216:20</p> <p>COMMUNICATED [4] - 25:15, 27:3, 90:12, 170:21</p> <p>COMMUNICATING [3] - 23:12, 113:14, 203:8</p> <p>COMMUNICATION [8] - 22:11, 24:14, 24:20, 68:6, 68:7, 169:22, 175:12, 199:14</p> <p>COMMUNICATIONS [13] - 21:25, 22:1, 22:3, 22:5, 22:9, 22:21, 23:17, 23:20, 25:14, 36:2, 53:9, 181:4</p> <p>COMPENSATED [2] - 107:24, 107:25</p> <p>COMPLAINED [1] - 237:3</p> <p>COMPLAINS [1] - 228:17</p> <p>COMPLAINT [1] - 233:21</p> <p>COMPLETE [3] - 21:13, 141:18, 206:25</p> <p>COMPLETED [1] - 228:3</p> <p>COMPLETELY [2] - 139:14, 152:11</p> <p>COMPLEX [3] - 15:10, 19:11, 37:25</p> <p>COMPONENT [3] - 27:13, 28:2, 113:18</p> <p>COMPROMISE [6] - 97:25, 108:16, 108:17, 177:6, 178:5, 206:5</p> <p>CONCEDE [3] - 135:12, 135:14, 247:6</p> <p>CONCEDED [2] - 135:16, 135:17</p> <p>CONCEDING [1] - 251:12</p> <p>CONCENTRATE [1] - 4:5</p> <p>CONCEPT [3] - 36:18, 36:19, 236:9</p> <p>CONCERN [7] - 52:6, 77:11, 107:6, 137:13, 150:4,</p>	<p>150:7, 232:13</p> <p>CONCERNED [7] - 18:6, 31:12, 63:23, 64:18, 82:3, 219:15, 232:14</p> <p>CONCERNING [3] - 36:2, 38:5, 225:25</p> <p>CONCERNS [6] - 20:3, 33:3, 52:7, 107:12, 132:1, 246:25</p> <p>CONCLUDED [1] - 258:4</p> <p>CONCLUDES [1] - 236:4</p> <p>CONCLUSION [8] - 79:25, 80:1, 80:2, 80:7, 80:8, 127:15, 127:18, 129:11</p> <p>CONCLUSIONS [1] - 82:8</p> <p>CONCLUSIVELY [1] - 197:11</p> <p>CONDITIONAL [1] - 148:9</p> <p>CONDUCT [9] - 5:22, 44:1, 46:20, 47:22, 65:17, 188:14, 198:9, 237:3, 251:1</p> <p>CONDUCTED [4] - 80:14, 127:13, 218:11, 224:14</p> <p>CONDUCTING [1] - 195:5</p> <p>CONDUCTS [1] - 215:12</p> <p>CONFERENCE [3] - 110:21, 172:21, 172:24</p> <p>CONFIDENCE [1] - 29:8</p> <p>CONFIDENT [2] - 133:23, 193:20</p> <p>CONFIRM [1] - 180:25</p> <p>CONFLICT [1] - 196:25</p> <p>CONFRONTATION [1] - 52:25</p> <p>CONGRESS [18] - 9:23, 15:13, 21:14, 23:14, 24:20, 34:17, 40:12, 45:22, 46:2, 46:12, 46:15, 47:18, 50:6, 83:12, 96:9, 122:3, 154:6, 228:10</p> <p>CONGRESSIONAL [1] - 148:2</p> <p>CONGRESSIONAL [3] - 40:10, 46:4, 46:5</p> <p>CONGRESSMAN [1] -</p>
---	---	--	---	---

<p>249:4 CONJURE [1] - 72:10 CONNECT [1] - 246:25 CONNECTED [2] - 144:10, 228:17 CONNECTION [26] - 7:5, 7:12, 7:25, 15:18, 44:2, 46:22, 47:23, 48:6, 51:21, 53:19, 54:21, 65:5, 102:9, 153:21, 154:9, 225:11, 226:12, 227:4, 227:6, 227:11, 228:7, 228:13, 236:7, 242:3, 253:13 CONNECTIONS [2] - 65:2, 102:25 CONS [1] - 19:6 CONSENT [2] - 156:20, 198:15 CONSEQUENCE [1] - 207:23 CONSIDER [5] - 49:23, 98:11, 111:20, 112:10, 115:19 CONSIDERATION [2] - 157:6, 257:9 CONSIDERATIONS [2] - 87:2, 236:6 CONSIDERED [1] - 193:7 CONSIDERING [1] - 27:12 CONSISTED [1] - 218:18 CONSISTENT [11] - 90:17, 91:17, 132:3, 135:15, 191:17, 200:1, 200:9, 204:17, 209:15, 222:10, 232:25 CONSPIRACY [1] - 248:15 CONSPIRATORS [1] - 253:8 CONSTITUENCY [1] - 24:21 CONSTITUTES [1] - 13:14 CONSTITUTING [1] - 5:22 CONSTITUTION [6] - 84:9, 84:11, 111:6, 152:23, 153:7, 188:7 CONSTITUTIONAL [4] - 162:11, 233:25, 235:8, 239:9</p>	<p>CONSTRAINT [1] - 97:10 CONSTRAINTS [1] - 92:14 CONSULT [4] - 179:10, 179:17, 189:8, 189:13 CONSULTANT [5] - 167:23, 168:20, 168:25, 169:12, 169:16 CONSULTED [1] - 179:14 CONSUMED [1] - 139:15 CONSUMING [2] - 45:6, 152:4 CONT'D [1] - 117:13 CONTACT [16] - 46:9, 47:7, 66:12, 89:15, 89:18, 89:19, 99:8, 120:1, 169:21, 169:24, 169:25, 199:15, 201:2, 202:7, 203:8 CONTACTED [1] - 170:2 CONTACTING [1] - 170:1 CONTACTS [1] - 83:1 CONTEMPLATE [1] - 181:22 CONTENT [6] - 41:24, 90:17, 91:4, 99:5, 184:17, 196:11 CONTENTION [1] - 230:24 CONTEST [4] - 165:24, 165:25, 166:6, 190:22 CONTESTED [2] - 140:20, 141:3 CONTESTING [2] - 63:20, 68:23 CONTEXT [4] - 47:8, 158:3, 171:24, 256:19 CONTINUE [8] - 38:10, 79:12, 79:14, 80:5, 96:25, 150:4, 151:8, 151:22 CONTINUED [12] - 9:24, 28:19, 33:12, 129:20, 150:7, 151:3, 151:15, 152:5, 160:1, 208:9, 224:11, 234:3 CONTINUES [2] - 61:10, 256:23 CONTINUING [2] -</p>	<p>79:19, 80:4 CONTRACTOR [1] - 167:23 CONTRADICTION [1] - 109:10 CONTROL [1] - 18:22 CONTROLLING [1] - 236:6 CONVENTION [1] - 152:12 CONVERSATION [34] - 31:17, 42:10, 90:14, 99:5, 99:20, 105:13, 106:17, 106:20, 106:21, 106:22, 109:23, 120:16, 120:19, 121:6, 121:11, 128:13, 131:24, 155:14, 172:1, 172:11, 173:16, 175:15, 175:19, 176:1, 176:2, 176:6, 177:12, 177:17, 177:18, 177:25, 178:18, 181:2, 207:1, 212:4 CONVERSATIONS [13] - 17:24, 30:18, 31:8, 96:16, 102:22, 105:14, 105:15, 105:18, 106:3, 123:23, 154:19, 178:13, 181:11 CONVEY [1] - 213:3 CONVICTION [1] - 252:7 CONVINCED [1] - 133:20 CONVINCING [1] - 256:17 COOL [1] - 3:3 COOPERATION [1] - 119:3 COORDINATE [5] - 141:4, 171:7, 171:14, 189:4, 250:13 COORDINATED [1] - 148:6 COORDINATING [6] - 118:23, 140:19, 141:3, 145:20, 145:22, 146:2 COORDINATION [1] - 119:14 COPIED [1] - 19:9 COPY [2] - 94:7, 147:14 CORE [1] - 13:24</p>	<p>CORNER [3] - 19:13, 24:6, 232:6 CORPORATE [2] - 162:11, 167:13 CORRECT [187] - 55:15, 57:22, 60:19, 63:14, 63:16, 63:19, 63:21, 64:6, 64:10, 64:16, 64:23, 66:9, 69:9, 69:19, 69:22, 70:1, 70:6, 70:8, 70:11, 71:11, 71:12, 71:16, 71:17, 72:2, 76:12, 76:13, 76:17, 76:19, 80:12, 80:13, 80:15, 85:24, 86:1, 86:2, 86:11, 86:13, 86:17, 87:10, 88:19, 88:22, 90:4, 93:11, 95:25, 98:22, 99:3, 101:3, 102:1, 102:2, 102:3, 102:4, 102:7, 103:10, 103:20, 106:15, 106:16, 107:20, 107:21, 113:9, 118:4, 118:7, 118:9, 118:11, 118:20, 118:24, 119:3, 119:7, 119:25, 120:3, 120:5, 120:7, 120:11, 120:14, 120:15, 124:2, 124:5, 124:7, 125:17, 125:20, 125:23, 125:24, 126:18, 127:16, 134:10, 135:13, 136:1, 136:4, 136:9, 137:2, 138:7, 138:17, 138:25, 139:8, 140:12, 140:13, 140:14, 140:17, 140:18, 142:10, 142:15, 142:16, 142:19, 142:20, 143:5, 143:8, 144:12, 146:4, 146:22, 165:7, 166:13, 168:13, 169:10, 174:18, 174:22, 176:18, 176:20, 176:21, 176:22, 179:2, 179:3, 179:5, 179:23, 179:24, 180:1, 184:7, 186:19, 186:20, 188:9, 188:11, 188:12, 191:1, 191:2, 191:4,</p>	<p>191:25, 192:1, 192:3, 192:4, 194:20, 197:8, 198:21, 202:8, 202:9, 203:12, 203:14, 203:16, 203:17, 204:3, 204:4, 204:6, 204:7, 204:9, 204:10, 204:12, 204:13, 205:25, 206:20, 206:21, 209:7, 209:19, 209:20, 209:22, 209:23, 211:16, 211:17, 212:8, 215:17, 216:15, 216:21, 217:17, 217:18, 218:3, 218:12, 218:16, 218:21, 218:25, 219:19, 220:7, 220:10, 221:8, 221:14, 221:16, 222:9, 222:11, 223:5, 223:6, 253:5, 253:9, 259:6 CORRECTLY [4] - 75:6, 144:22, 194:3, 225:9 COUDRIET [2] - 259:14, 259:15 COUDRIET [1] - 117:4 COUNCIL [1] - 196:21 COUNSEL [4] - 125:5, 171:16, 177:21, 209:22 COUNSEL [51] - 5:8, 41:4, 41:13, 41:25, 42:4, 42:9, 45:2, 123:2, 136:17, 151:15, 154:2, 156:13, 158:16, 161:9, 161:11, 161:12, 161:13, 161:14, 167:11, 167:12, 167:16, 167:19, 167:20, 168:24, 171:17, 174:7, 174:11, 175:8, 178:15, 179:7, 179:22, 180:2, 180:6, 180:7, 180:8, 180:9, 180:15, 180:17, 180:22, 185:19, 202:21, 202:25, 224:15, 226:6, 238:13, 240:9, 240:20, 240:24,</p>
--	---	--	---	---

<p>248:18, 255:16</p> <p>COUNSEL'S ^[5] -</p> <p>42:12, 51:2, 82:22,</p> <p>82:25, 155:6</p> <p>COUNSEL'S ^[5] -</p> <p>124:20, 136:20,</p> <p>137:7, 137:10,</p> <p>137:22</p> <p>COUNT ^[3] - 7:22,</p> <p>52:12, 217:12</p> <p>COUNT ^[4] - 5:16,</p> <p>5:17, 5:18, 154:1</p> <p>COUNTED ^[1] -</p> <p>210:21</p> <p>COUNTENANCE ^[1] -</p> <p>242:11</p> <p>COUNTIES ^[6] -</p> <p>131:2, 188:10,</p> <p>188:14, 188:16,</p> <p>188:17</p> <p>COUNTING ^[4] -</p> <p>52:22, 52:23,</p> <p>239:24, 247:20</p> <p>COUNTRY ^[7] - 14:2,</p> <p>15:24, 27:19, 33:9,</p> <p>33:12, 216:21,</p> <p>233:20</p> <p>COUNTS ^[1] - 59:17</p> <p>COUNTY ^[3] - 80:11,</p> <p>96:22, 188:17</p> <p>COUNTY ^[68] - 5:14,</p> <p>6:1, 6:12, 6:14, 7:21,</p> <p>8:1, 43:8, 52:5, 52:6,</p> <p>52:11, 76:15, 77:2,</p> <p>77:10, 77:24, 79:22,</p> <p>80:10, 81:7, 82:8,</p> <p>85:4, 87:14, 89:16,</p> <p>90:13, 96:17, 96:20,</p> <p>96:22, 103:13,</p> <p>103:17, 107:5,</p> <p>108:8, 127:12,</p> <p>129:4, 129:6, 129:7,</p> <p>129:19, 130:23,</p> <p>132:5, 134:20,</p> <p>152:10, 152:12,</p> <p>163:17, 164:18,</p> <p>165:3, 165:4,</p> <p>165:17, 166:1,</p> <p>183:18, 192:14,</p> <p>192:17, 192:22,</p> <p>193:5, 193:18,</p> <p>194:10, 194:22,</p> <p>195:5, 195:9,</p> <p>197:25, 198:7,</p> <p>198:9, 198:15,</p> <p>198:16, 198:20,</p> <p>199:2, 218:7,</p> <p>218:11, 231:16,</p> <p>233:7, 239:24</p> <p>COUNTY'S ^[2] - 91:14,</p>	<p>132:9</p> <p>COUPLE ^[12] - 3:5,</p> <p>16:2, 26:9, 30:22,</p> <p>33:15, 45:15,</p> <p>152:23, 218:6,</p> <p>221:6, 230:8,</p> <p>230:11, 247:17</p> <p>COURSE ^[18] - 5:1,</p> <p>14:8, 64:14, 66:7,</p> <p>87:7, 88:17, 120:9,</p> <p>133:3, 144:3,</p> <p>146:21, 170:5,</p> <p>178:12, 225:9,</p> <p>225:17, 226:4,</p> <p>239:3, 241:7, 244:23</p> <p>COURT ^[74] - 4:17,</p> <p>5:25, 6:1, 6:2, 6:3,</p> <p>6:5, 6:8, 6:14, 6:17,</p> <p>6:19, 7:17, 7:18, 8:1,</p> <p>8:3, 9:14, 10:20,</p> <p>11:19, 13:14, 16:8,</p> <p>22:2, 25:23, 26:11,</p> <p>39:13, 40:4, 43:8,</p> <p>44:1, 47:11, 50:20,</p> <p>51:6, 51:24, 67:16,</p> <p>90:5, 117:4, 157:6,</p> <p>157:12, 158:20,</p> <p>158:23, 159:6,</p> <p>162:1, 166:1,</p> <p>166:17, 166:18,</p> <p>166:19, 209:2,</p> <p>225:10, 229:18,</p> <p>231:5, 233:5,</p> <p>233:14, 234:9,</p> <p>234:11, 235:13,</p> <p>235:14, 235:19,</p> <p>235:21, 236:3,</p> <p>242:3, 243:11,</p> <p>243:13, 243:17,</p> <p>243:21, 243:23,</p> <p>244:4, 244:8, 246:5,</p> <p>246:11, 247:1,</p> <p>247:6, 256:24,</p> <p>257:1, 257:6, 257:8,</p> <p>257:17</p> <p>COURT ^[25] - 58:16,</p> <p>61:22, 62:2, 67:7,</p> <p>89:22, 148:10,</p> <p>157:15, 164:18,</p> <p>166:18, 168:9,</p> <p>172:18, 178:2,</p> <p>185:20, 186:16,</p> <p>205:9, 209:12,</p> <p>210:15, 211:3,</p> <p>213:10, 217:12,</p> <p>224:14, 241:20,</p> <p>255:15, 257:20</p> <p>COURT ^[231] - 1:1,</p> <p>1:23, 1:24, 3:1, 3:2,</p> <p>4:21, 5:3, 5:5, 5:12,</p>	<p>8:14, 8:19, 8:25, 9:4,</p> <p>10:9, 10:13, 10:16,</p> <p>11:7, 11:9, 17:6,</p> <p>22:25, 23:2, 23:15,</p> <p>23:17, 23:20, 25:6,</p> <p>25:8, 32:21, 32:23,</p> <p>41:3, 41:9, 41:22,</p> <p>42:2, 42:7, 42:14,</p> <p>42:18, 42:23, 43:1,</p> <p>43:10, 43:12, 43:15,</p> <p>43:19, 50:10, 50:15,</p> <p>51:9, 51:12, 55:5,</p> <p>55:8, 55:21, 55:25,</p> <p>56:3, 57:3, 59:11,</p> <p>59:14, 59:25, 60:4,</p> <p>60:7, 60:10, 61:6,</p> <p>61:25, 62:23, 70:20,</p> <p>72:20, 75:23, 78:16,</p> <p>78:18, 78:20, 83:18,</p> <p>84:8, 84:14, 84:16,</p> <p>84:19, 84:23, 84:25,</p> <p>86:23, 88:12, 92:5,</p> <p>95:2, 95:16, 96:3,</p> <p>114:2, 114:11,</p> <p>114:15, 115:1,</p> <p>115:15, 115:24,</p> <p>116:9, 116:13,</p> <p>116:16, 116:24,</p> <p>117:6, 117:10,</p> <p>117:20, 122:25,</p> <p>123:4, 126:20,</p> <p>126:24, 127:1,</p> <p>131:21, 135:16,</p> <p>141:8, 141:24,</p> <p>142:2, 143:13,</p> <p>147:8, 149:7,</p> <p>149:14, 149:18,</p> <p>153:15, 155:4,</p> <p>155:20, 155:23,</p> <p>156:1, 156:4, 156:7,</p> <p>156:12, 156:17,</p> <p>156:21, 157:11,</p> <p>158:23, 159:3,</p> <p>159:5, 159:9,</p> <p>159:12, 159:17,</p> <p>159:20, 159:25,</p> <p>160:3, 160:11,</p> <p>160:13, 160:19,</p> <p>160:24, 161:9,</p> <p>161:19, 161:22,</p> <p>164:8, 164:22,</p> <p>164:24, 177:21,</p> <p>178:6, 178:9,</p> <p>178:19, 178:24,</p> <p>181:6, 181:17,</p> <p>182:4, 182:12,</p> <p>182:19, 184:18,</p> <p>185:3, 185:5, 185:9,</p> <p>185:14, 185:18,</p> <p>185:25, 186:4,</p> <p>186:24, 187:3,</p>	<p>187:11, 187:13,</p> <p>187:15, 203:20,</p> <p>203:23, 204:20,</p> <p>204:24, 205:2,</p> <p>205:5, 205:9,</p> <p>205:13, 205:16,</p> <p>205:19, 206:3,</p> <p>206:7, 206:9, 207:7,</p> <p>209:4, 209:9,</p> <p>209:11, 214:15,</p> <p>215:1, 217:15,</p> <p>222:2, 222:21,</p> <p>222:23, 223:16,</p> <p>223:18, 223:21,</p> <p>223:23, 224:1,</p> <p>224:4, 224:6,</p> <p>224:10, 224:13,</p> <p>224:25, 225:3,</p> <p>225:5, 226:5, 235:4,</p> <p>236:13, 236:18,</p> <p>237:17, 237:22,</p> <p>237:24, 238:13,</p> <p>238:20, 240:8,</p> <p>240:13, 240:17,</p> <p>243:18, 247:15,</p> <p>251:10, 251:12,</p> <p>251:16, 251:18,</p> <p>252:3, 252:17,</p> <p>252:24, 253:3,</p> <p>253:7, 253:10,</p> <p>253:24, 254:17,</p> <p>254:22, 255:5,</p> <p>255:8, 255:10,</p> <p>257:3, 257:6,</p> <p>257:24, 259:3,</p> <p>259:12, 259:16</p> <p>COURT'S ^[5] - 55:19,</p> <p>182:15, 209:3,</p> <p>225:8, 257:8</p> <p>COURTEOUS ^[4] -</p> <p>4:1, 26:4, 26:5,</p> <p>74:23</p> <p>COURTHOUSE ^[1] -</p> <p>152:10</p> <p>COURTNEY ^[1] -</p> <p>168:6</p> <p>COURTROOM ^[4] -</p> <p>160:25, 161:5,</p> <p>186:10, 255:12</p> <p>COURTROOM ^[6] -</p> <p>3:6, 3:17, 3:19, 3:20,</p> <p>3:24, 4:4</p> <p>COURTROOM'S ^[1] -</p> <p>222:6</p> <p>COURTROOMS ^[1] -</p> <p>240:11</p> <p>COURTS ^[4] - 157:21,</p> <p>157:25, 232:25,</p> <p>254:4</p> <p>COVID ^[29] - 13:3,</p>	<p>15:13, 17:13, 18:5,</p> <p>23:7, 28:21, 29:6,</p> <p>29:12, 30:25, 48:19,</p> <p>48:20, 48:22, 49:3,</p> <p>67:17, 69:8, 73:10,</p> <p>74:8, 74:13, 86:11,</p> <p>86:13, 87:9, 118:20,</p> <p>118:24, 125:16,</p> <p>125:20, 154:13,</p> <p>203:23, 248:9</p> <p>COX ^[2] - 234:20,</p> <p>236:16</p> <p>CRC ^[2] - 1:23, 259:11</p> <p>CREATED ^[1] - 35:16</p> <p>CREDIBILITY ^[2] -</p> <p>50:20, 134:20</p> <p>CREDIBLE ^[5] -</p> <p>192:18, 198:12,</p> <p>198:13, 221:12,</p> <p>227:11</p> <p>CREDIBLY ^[1] -</p> <p>231:13</p> <p>CREDIT ^[2] - 96:8,</p> <p>256:6</p> <p>CREEK ^[1] - 196:20</p> <p>CRIMINAL ^[8] - 6:22,</p> <p>157:19, 229:1,</p> <p>237:22, 238:1,</p> <p>242:10, 248:15,</p> <p>252:9</p> <p>CRISES ^[1] - 18:5</p> <p>CRISIS ^[1] - 17:12</p> <p>CRITICAL ^[4] - 82:4,</p> <p>225:12, 227:24,</p> <p>227:25</p> <p>CRITICALLY ^[1] - 34:3</p> <p>CROSS ^[2] - 5:9,</p> <p>186:18</p> <p>CROSS ^[137] - 1:15,</p> <p>2:5, 2:8, 2:11, 10:11,</p> <p>10:15, 11:8, 41:16,</p> <p>41:24, 42:5, 43:18,</p> <p>55:9, 55:10, 55:11,</p> <p>56:1, 56:4, 56:5,</p> <p>57:5, 57:6, 60:3,</p> <p>60:12, 60:13, 61:15,</p> <p>62:3, 62:25, 63:1,</p> <p>71:2, 72:22, 72:23,</p> <p>75:24, 75:25, 78:22,</p> <p>83:21, 83:22, 85:1,</p> <p>85:2, 87:6, 88:14,</p> <p>88:16, 92:18, 95:10,</p> <p>95:17, 95:18, 96:4,</p> <p>114:3, 114:9,</p> <p>114:14, 114:17,</p> <p>115:11, 115:13,</p> <p>115:16, 115:23,</p> <p>116:1, 116:11,</p> <p>116:14, 117:9,</p> <p>117:13, 117:19,</p>
---	---	--	---	--

117:21, 123:6, 123:7, 126:21, 126:22, 127:2, 127:3, 131:23, 135:19, 135:20, 141:7, 141:9, 141:11, 141:22, 142:4, 142:5, 143:11, 143:14, 143:15, 147:6, 147:14, 149:8, 149:16, 153:13, 155:22, 156:19, 156:25, 158:8, 159:8, 159:14, 159:19, 160:9, 161:23, 161:25, 164:7, 164:9, 164:20, 165:1, 178:22, 178:25, 181:9, 181:10, 181:14, 181:21, 182:25, 183:9, 185:4, 185:10, 185:16, 185:23, 186:13, 187:12, 187:17, 187:18, 204:1, 205:23, 206:8, 206:10, 207:4, 207:8, 207:9, 209:1, 209:7, 209:13, 210:13, 210:16, 211:2, 211:4, 213:9, 213:11, 214:12, 214:22, 215:4, 222:24, 223:1, 223:15, 223:20, 224:2, 258:3 CROSS [9] - 36:15, 55:22, 95:14, 116:13, 157:3, 157:7, 158:18, 223:3, 230:7 CROSS- EXAMINATION [3] - 55:10, 182:25, 215:4 CROSS- EXAMINATION [5] - 55:22, 157:3, 157:7, 158:18, 223:3 CROSS- EXAMINATION..... [1] - 2:5 CROSS- EXAMINATION..... 183 [1] - 2:8 CROSS- EXAMINATION..... 215 [1] - 2:11 CROSSED [1] - 205:7 CRR [4] - 1:23, 117:4, 259:11, 259:15 CURRENT [3] - 187:20, 233:14, 233:22 CURVE [1] - 240:1 CUSHMAN [1] - 51:2 CUT [1] - 60:8 CYBER [4] - 84:6, 215:21, 215:25, 239:20 CYBERSECURITY [1] - 154:3 CYCLE [1] - 188:5 D D'ANYA [1] - 1:16 DA [2] - 151:14, 233:19 DAILY [6] - 12:7, 14:10, 14:15, 15:23, 22:12, 30:6 DATA [8] - 201:17, 213:15, 213:18, 213:22, 214:8, 214:9, 214:10, 220:14 DATE [20] - 38:12, 57:13, 57:14, 58:20, 67:14, 68:21, 68:22, 79:13, 79:17, 81:3, 142:14, 144:1, 144:3, 150:21, 174:13, 190:12, 190:14, 191:16, 191:22, 257:25 DAUGHTER'S [1] - 15:3 DAVID [6] - 165:13, 166:3, 167:12, 176:19, 176:20, 184:5 DAYS [6] - 15:6, 28:11, 30:8, 31:6, 128:5, 148:2 DAYSHA [1] - 5:11 DAYSHA [1] - 1:16 DC [2] - 150:24, 250:24 DEAD [9] - 193:10, 193:16, 212:3, 212:9, 220:21, 221:2, 222:12, 222:14, 222:16 DEADLINE [1] - 143:25	DEAL [10] - 23:24, 35:18, 36:9, 46:1, 49:22, 110:11, 110:12, 128:2, 203:21, 203:23 DEALING [7] - 7:21, 8:21, 31:2, 33:10, 46:17, 128:4, 236:23 DEALS [3] - 84:14, 178:13, 246:2 DEALT [9] - 11:22, 16:18, 20:4, 36:22, 46:5, 78:14, 99:14, 111:2, 128:4 DECEMBER [47] - 36:8, 38:16, 76:14, 78:3, 79:23, 81:1, 81:5, 87:13, 89:6, 90:8, 91:13, 106:14, 120:12, 130:17, 130:18, 130:21, 140:10, 142:13, 142:15, 142:24, 144:18, 152:9, 162:17, 162:25, 163:4, 163:8, 163:16, 165:22, 166:13, 174:14, 174:19, 190:12, 190:22, 190:25, 193:6, 194:1, 195:5, 195:20, 195:23, 196:1, 198:5, 199:5, 199:20, 203:1, 218:4 DECIDE [1] - 237:6 DECIDED [2] - 6:6, 202:10 DECISION [6] - 26:18, 26:22, 27:12, 234:19, 235:12, 236:17 DECLARATION [2] - 157:13, 157:14 DECLARATIONS [4] - 156:11, 157:2, 158:1, 158:15 DECLARED [1] - 251:8 DECLINED [1] - 203:14 DECORUM [1] - 3:25 DEEM [2] - 42:3, 93:23 DEEPER [1] - 35:2 DEFAULT [1] - 96:7 DEFEAT [3] - 225:19, 225:24, 237:12 DEFENDANT [2] - 1:9, 1:18 DEFENDANT [9] - 163:1, 175:7, 195:8,	242:10, 243:20, 246:11, 246:19, 249:23, 253:19 DEFENDANT [2] - 159:12, 198:6 DEFENDANTS [1] - 255:10 DEFENSE [14] - 6:25, 7:8, 7:10, 20:5, 20:6, 43:6, 224:15, 224:23, 225:23, 226:15, 248:25, 251:6, 252:16, 256:14 DEFENSE [7] - 29:2, 30:24, 42:20, 43:6, 43:20, 68:15, 156:14 DEFENSES [1] - 7:7 DEFERENCE [1] - 147:24 DEFERENTIAL [1] - 53:4 DEFINE [6] - 183:10, 228:22, 229:1, 229:16, 243:12 DEFINED [3] - 244:16, 245:17, 254:5 DEFINING [1] - 106:1 DEFINITELY [2] - 255:17, 256:2 DEFINITION [2] - 135:17, 239:10 DEFINITIVE [1] - 93:2 DEGREE [2] - 46:21, 135:24 DELAYING [1] - 50:5 DELEGATION [3] - 48:15, 69:9, 72:2 DELINEATED [1] - 181:24 DELIVER [1] - 223:13 DEMAND [2] - 19:17, 27:15 DEMANDS [1] - 33:6 DEMOCRAT [1] - 24:22 DEMONSTRATE [4] - 242:8, 242:11, 245:4, 245:9 DEMONSTRATED [1] - 242:15 DEMONSTRATION [1] - 248:11 DEMONSTRATOR [1] - 239:12 DENIED [1] - 6:5 DENOMINATED [2] - 43:24, 46:19 DENSON [1] - 228:21 DEPARTMENT [12] -	59:23, 64:18, 82:2, 84:4, 124:23, 125:1, 171:9, 171:10, 216:4, 230:10, 239:19, 239:21 DEPENDE [1] - 146:22 DEPLOYED [1] - 154:17 DEPUTY [3] - 22:9, 31:14, 202:12 DEPUTY [5] - 5:10, 5:11, 19:14, 21:4, 200:20 DEPUTY [5] - 4:17, 160:25, 161:5, 186:10, 255:12 DERIVED [1] - 177:18 DESCRIBE [4] - 9:20, 163:19, 177:2, 187:25 DESCRIBED [23] - 44:1, 46:21, 47:22, 48:5, 49:14, 51:21, 53:18, 54:1, 54:20, 57:15, 66:13, 75:10, 81:21, 82:12, 88:1, 119:12, 162:21, 163:18, 163:24, 167:18, 175:17, 213:2, 245:7 DESCRIBING [2] - 85:20, 201:18 DESCRIPTION [2] - 13:13, 16:2 DESIGNEE [1] - 15:21 DESIRED [1] - 107:13 DESK [1] - 44:17 DESPITE [8] - 198:18, 230:23, 244:15, 245:23, 245:25, 249:12, 250:16, 251:9 DETAIL [8] - 22:23, 77:3, 162:8, 197:13, 218:8, 219:9, 227:23, 231:3 DETAILED [1] - 242:9 DETAILS [3] - 105:17, 122:5, 199:21 DETENTION [1] - 182:10 DETERMINATION [5] - 80:23, 135:1, 150:2, 244:7, 256:24 DETERMINATIONS [1] - 225:10 DETERMINE [4] - 132:13, 241:13, 241:16, 251:1
--	---	--	---	--

<p>DETERMINED [2] - 6:4, 158:1</p> <p>DETEST [1] - 235:1</p> <p>DHS [1] - 154:3</p> <p>DIFFERENCE [1] - 50:16</p> <p>DIFFERENCES [1] - 138:19</p> <p>DIFFERENT [28] - 13:5, 20:7, 20:12, 29:17, 34:18, 45:16, 56:16, 83:23, 98:13, 103:8, 112:7, 118:4, 126:12, 129:22, 152:8, 157:21, 159:2, 162:14, 166:22, 170:8, 173:14, 179:16, 189:12, 226:1, 230:12, 243:6, 255:22, 257:10</p> <p>DIFFERENTIATION [1] - 113:8</p> <p>DIFFERENTLY [2] - 91:3, 218:14</p> <p>DIFFICULT [3] - 11:4, 16:13, 212:19</p> <p>DILIGENTLY [1] - 208:6</p> <p>DINGED [5] - 40:1, 136:8, 136:11, 136:14, 153:9</p> <p>DINING [2] - 37:24, 37:25</p> <p>DINNER [1] - 121:25</p> <p>DIRECT [6] - 2:4, 2:8, 2:11, 9:11, 161:24, 186:12</p> <p>DIRECT [32] - 27:24, 28:4, 31:4, 35:7, 43:3, 43:9, 49:10, 54:14, 62:7, 65:16, 68:16, 69:6, 75:4, 76:4, 78:6, 86:4, 88:25, 92:19, 93:24, 95:12, 97:15, 119:18, 152:19, 162:16, 172:7, 175:2, 175:12, 190:1, 200:15, 230:6, 251:19</p> <p>DIRECTED [5] - 77:15, 77:18, 152:20, 244:19, 250:10</p> <p>DIRECTING [8] - 34:23, 43:24, 46:18, 47:20, 51:15, 53:12, 53:22, 54:5</p> <p>DIRECTION [21] - 32:12, 70:13, 70:15,</p>	<p>70:22, 71:4, 102:22, 103:1, 104:6, 110:12, 110:17, 111:13, 111:20, 111:24, 112:9, 112:17, 128:9, 171:1, 173:13, 236:5, 255:21</p> <p>DIRECTIONS [1] - 20:7</p> <p>DIRECTLY [9] - 31:2, 35:21, 100:7, 108:1, 109:12, 123:23, 128:1, 178:14, 196:5</p> <p>DIRECTOR [2] - 22:9, 22:10</p> <p>DISAGREE [3] - 62:23, 128:22, 237:6</p> <p>DISAGREED [2] - 79:9, 222:13</p> <p>DISASTER [2] - 118:16, 119:8</p> <p>DISBELIEVE [1] - 251:23</p> <p>DISCERN [1] - 73:6</p> <p>DISCLAIMING [1] - 241:4</p> <p>DISCOVER [1] - 221:6</p> <p>DISCOVERED [3] - 220:21, 220:22, 222:16</p> <p>DISCOVERIES [2] - 220:24, 221:1</p> <p>DISCOVERY [1] - 181:22</p> <p>DISCRETION [5] - 18:18, 152:21, 237:1, 237:2, 237:5</p> <p>DISCRETIONARY [7] - 33:18, 236:8, 236:10, 236:24, 244:7, 250:4, 250:16</p> <p>DISCUSS [5] - 116:19, 116:21, 116:25, 157:9, 226:8</p> <p>DISCUSSED [5] - 111:19, 113:11, 219:6, 243:2, 248:9</p> <p>DISCUSSING [4] - 38:10, 39:2, 64:5, 88:10</p> <p>DISCUSSION [6] - 72:5, 88:13, 133:19, 144:12, 145:14, 235:19</p> <p>DISCUSSIONS [6] - 16:19, 72:7, 152:24, 154:7, 154:22, 154:25</p> <p>DISINGENUOUS [1] -</p>	<p>113:18</p> <p>DISMISS [1] - 246:23</p> <p>DISPATCHED [1] - 197:12</p> <p>DISPERSED [1] - 14:1</p> <p>DISPERSING [1] - 119:6</p> <p>DISPOSED [1] - 78:14</p> <p>DISPUTE [8] - 65:25, 68:7, 72:24, 73:1, 226:11, 226:18, 252:13</p> <p>DISPUTES [1] - 7:12</p> <p>DISRUPTING [1] - 50:5</p> <p>DISRUPTION [1] - 208:4</p> <p>DISTANCE [1] - 49:6</p> <p>DISTINCT [1] - 255:19</p> <p>DISTINCTION [6] - 18:17, 18:20, 136:25, 138:13, 242:22, 243:16</p> <p>DISTINGUISH [1] - 94:4</p> <p>DISTRICT [12] - 148:23, 149:5, 149:15, 157:21, 239:1, 239:2, 241:20, 244:3, 250:19, 257:15, 257:16, 257:18</p> <p>DISTRICT [6] - 1:1, 1:1, 1:11, 1:24, 259:3, 259:4</p> <p>DISTRICT [14] - 5:10, 5:11, 6:2, 6:12, 6:17, 7:11, 9:23, 166:17, 166:18, 183:19, 213:24, 233:7</p> <p>DIVISION [1] - 1:2</p> <p>DIVORCED [1] - 231:25</p> <p>DIXIT [2] - 256:10, 256:20</p> <p>DO-OUTS [2] - 58:11, 58:17</p> <p>DOCKET [1] - 1:5</p> <p>DOCTOR [1] - 111:5</p> <p>DOCTORS [1] - 18:10</p> <p>DOCUMENT [2] - 10:18, 142:6</p> <p>DOCUMENTS [4] - 94:11, 94:17, 169:14, 214:20</p> <p>DOJ [7] - 36:24, 59:24, 80:6, 82:2, 106:11, 209:18, 223:11</p> <p>DOLLARS [3] - 24:17, 93:14, 93:16</p>	<p>DOMAIN [2] - 143:4, 143:7</p> <p>DOMINATE [1] - 23:8</p> <p>DON'T.. [1] - 137:4</p> <p>DONALD [24] - 5:6, 7:3, 7:19, 10:23, 163:16, 163:20, 164:2, 164:3, 165:12, 165:13, 165:15, 166:2, 166:3, 166:5, 166:23, 167:5, 170:10, 171:14, 190:6, 190:9, 199:4, 240:3, 240:14, 251:7</p> <p>DONALD [1] - 1:16</p> <p>DONALDTRUMP.COM [1] - 143:5</p> <p>DONE [39] - 11:25, 12:9, 22:13, 22:15, 28:15, 28:25, 29:3, 29:13, 29:15, 52:17, 52:24, 70:23, 70:25, 77:12, 77:23, 128:7, 129:8, 135:5, 150:9, 150:18, 151:7, 152:15, 161:20, 192:19, 206:5, 214:4, 218:13, 232:20, 236:7, 237:14, 237:19, 246:12, 251:4, 251:5, 251:7, 253:22, 255:5</p> <p>DOOR [5] - 28:21, 69:12, 160:3, 160:5, 218:19</p> <p>DOS [1] - 12:9</p> <p>DOUBT [5] - 34:6, 79:16, 83:10, 115:5, 141:20</p> <p>DOWN [34] - 8:17, 12:10, 12:11, 14:6, 17:1, 21:9, 24:7, 48:14, 48:23, 49:3, 62:2, 67:17, 73:9, 74:7, 86:15, 116:18, 122:13, 123:18, 140:9, 148:25, 151:23, 155:24, 168:1, 172:22, 173:17, 185:20, 185:21, 198:2, 239:25, 240:1, 255:7, 256:10, 256:23, 259:6</p> <p>DOZEN [1] - 14:14</p> <p>DRAFT [2] - 174:9, 174:16</p> <p>DRAFTS [1] - 29:20</p>	<p>DRAIN [1] - 92:13</p> <p>DRAWING [1] - 129:11</p> <p>DRIVE [2] - 12:25, 206:19</p> <p>DRIVER [1] - 234:11</p> <p>DRUG [2] - 18:10, 115:4</p> <p>DUE [2] - 158:24, 229:17</p> <p>DULY [3] - 9:9, 161:3, 186:8</p> <p>DURATION [1] - 124:12</p> <p>DURING [18] - 14:11, 14:13, 18:5, 45:24, 46:6, 67:18, 72:24, 79:18, 118:24, 132:2, 133:3, 133:19, 135:25, 137:8, 139:20, 143:8, 154:13, 163:11</p> <p>DUTIES [32] - 7:4, 27:18, 35:23, 87:12, 111:25, 112:18, 129:17, 150:17, 154:3, 227:6, 229:7, 229:9, 231:6, 232:5, 235:18, 239:14, 239:17, 240:6, 241:2, 241:12, 241:15, 243:12, 243:15, 244:10, 245:17, 247:11, 248:16, 248:24, 249:7, 249:12, 253:22</p> <p>DUTY [7] - 110:18, 225:24, 228:8, 235:16, 236:8, 236:9, 241:24</p>
E				
<p>E-MAIL [24] - 13:21, 27:3, 27:4, 27:5, 27:6, 93:25, 94:1, 94:5, 94:7, 94:9, 94:10, 95:3, 141:17, 142:9, 143:2, 143:4, 143:18, 143:20, 144:11, 146:4, 170:23, 242:14, 243:5, 245:8</p> <p>E-MAIL'S [1] - 242:17</p> <p>E-MAILS [5] - 95:5, 95:8, 142:12, 142:17, 145:5</p> <p>EAR [3] - 17:3, 35:6, 37:3</p> <p>EARLY [8] - 38:16,</p>				

<p>41:6, 46:16, 72:1, 122:14, 130:17, 130:18, 219:18 EASIER [3] - 61:23, 67:7, 128:11 EASILY [1] - 229:12 EASY [2] - 66:3, 227:8 EDWARD [1] - 254:25 EFFECT [5] - 41:1, 196:12, 196:22, 198:2, 208:12 EFFECTS [1] - 40:15 EFFECTUATE [1] - 231:11 EFFORT [7] - 175:12, 180:5, 180:14, 180:16, 196:2, 213:20, 245:12 EFFORTS [7] - 141:3, 141:5, 167:22, 170:12, 174:7, 199:15, 202:7 EGO [1] - 239:8 EIGHT [2] - 5:16, 5:19 EISENHOWER [3] - 13:21, 13:25, 45:20 EITHER [22] - 8:4, 13:20, 18:18, 18:19, 19:25, 26:11, 35:24, 45:19, 45:20, 89:18, 102:12, 128:22, 167:13, 182:17, 195:14, 197:3, 199:3, 199:16, 238:12, 243:25, 245:12 ELECT [1] - 29:25 ELECTED [4] - 12:15, 21:23, 46:6, 196:19 ELECTION [2] - 28:5, 221:3 ELECTION [144] - 25:24, 27:7, 27:15, 28:7, 32:7, 34:24, 34:25, 35:12, 36:3, 37:10, 37:15, 38:3, 38:4, 38:7, 38:18, 56:22, 57:22, 58:3, 59:8, 59:18, 63:13, 63:17, 63:20, 63:23, 64:9, 64:21, 65:7, 66:4, 66:9, 78:10, 80:3, 82:3, 83:4, 85:21, 86:5, 88:18, 88:22, 88:24, 105:17, 110:6, 120:10, 121:16, 121:17, 121:18, 122:15, 123:17, 127:8, 133:21,</p>	<p>134:5, 139:20, 165:17, 165:22, 165:23, 165:25, 166:6, 167:2, 188:2, 188:3, 188:19, 189:3, 189:9, 189:14, 189:19, 190:3, 190:4, 190:18, 190:22, 190:25, 191:3, 191:12, 191:20, 192:8, 192:9, 192:24, 193:1, 193:7, 193:21, 196:4, 197:17, 197:18, 198:10, 201:9, 203:21, 203:25, 204:2, 204:5, 204:8, 204:22, 204:24, 205:3, 205:5, 205:20, 208:3, 210:11, 210:12, 211:8, 211:10, 211:11, 212:2, 212:25, 215:8, 215:9, 215:11, 215:12, 215:14, 215:18, 215:20, 216:1, 216:7, 216:8, 216:14, 216:17, 216:20, 216:25, 217:8, 217:17, 217:21, 218:23, 220:18, 220:20, 221:9, 221:13, 221:21, 221:22, 223:12, 230:16, 230:18, 230:21, 230:25, 231:1, 231:8, 231:11, 232:13, 245:2, 245:13, 246:16, 248:16, 249:19, 251:1, 251:2, 251:8, 255:23 ELECTION-RELATED [1] - 167:2 ELECTIONS [33] - 59:19, 59:22, 60:18, 62:12, 63:4, 64:15, 82:1, 83:9, 84:1, 84:2, 84:10, 84:20, 85:15, 85:17, 110:3, 110:10, 153:22, 153:23, 154:9, 154:17, 188:5, 188:7, 188:11, 188:15, 188:21, 189:3, 189:23, 216:21, 216:23,</p>	<p>221:24, 231:2 ELECTOR [2] - 165:15, 166:5 ELECTOR [1] - 148:9 ELECTORAL [2] - 84:20, 154:1 ELECTORAL [1] - 247:20 ELECTORS [7] - 140:20, 145:20, 145:22, 148:6, 148:11, 242:13, 250:13 ELECTORS'S [1] - 140:24 ELEGANT [1] - 232:3 ELEMENT [1] - 232:8 ELEVATED [1] - 24:20 ELEVENTH [9] - 9:23, 226:21, 228:6, 228:9, 228:20, 233:1, 234:18, 253:16 ELIMINATE [2] - 35:11, 230:25 ELLIS [3] - 70:17, 71:10 ELMO [1] - 9:1 ELSEWHERE [1] - 31:3 EMBODIED [1] - 239:10 EMBODIMENT [1] - 241:1 EMERGENCY [2] - 119:7, 137:21 EMILY [1] - 4:25 EMILY [1] - 1:21 EMINENT [1] - 235:23 EMPHASIZED [1] - 238:14 EMPLOYED [1] - 251:15 EMPLOYEE [14] - 70:6, 71:11, 106:9, 106:10, 106:13, 113:9, 135:25, 136:3, 138:21, 139:19, 198:6, 244:1, 244:22, 244:25 EMPLOYEES [5] - 71:24, 74:15, 113:11, 135:24, 138:20 EMPLOYMENT [5] - 56:13, 69:18, 142:25, 162:11, 187:20 EMPOWERED [1] -</p>	<p>229:18 ENACTED [1] - 249:21 ENCOMPASSES [1] - 236:10 ENCOURAGE [1] - 158:20 END [13] - 11:17, 40:7, 42:9, 69:22, 132:16, 150:14, 151:12, 176:2, 203:5, 226:5, 245:20, 250:19, 254:11 ENDEAVOR [1] - 222:10 ENDED [9] - 14:25, 16:12, 17:19, 17:25, 119:21, 121:5, 124:1, 124:7, 203:19 ENDING [1] - 124:4 ENDS [2] - 241:3, 245:18 ENERGY [1] - 19:5 ENERGY [1] - 89:17 ENFORCE [3] - 247:12, 251:4, 254:13 ENFORCEMENT [8] - 183:23, 194:19, 221:5, 221:18, 228:25, 233:8, 246:13, 247:8 ENFORCING [1] - 248:5 ENGAGE [3] - 5:22, 244:12, 245:13 ENGAGED [9] - 43:25, 46:20, 47:21, 48:4, 49:14, 51:20, 53:17, 53:25, 54:19 ENGAGING [3] - 26:15, 246:14, 247:5 ENGINEER [1] - 205:12 ENGLERT [1] - 1:20 ENGLERT [1] - 5:1 ENJOYED [1] - 235:7 ENORMOUS [2] - 252:10, 252:11 ENTAIL [1] - 188:4 ENTAILED [1] - 217:10 ENTERED [1] - 6:8 ENTERPRISE [3] - 252:9, 252:12, 253:9 ENTIRE [6] - 3:7, 3:8, 3:10, 124:12, 234:11, 234:12 ENTIRELY [1] - 241:5 ENTIRETY [5] - 124:9, 124:12, 176:10,</p>	<p>176:15, 177:12 ENTITIES [4] - 80:17, 80:19, 165:23, 166:20 ENTITLE [1] - 214:23 ENTITLED [3] - 14:22, 15:6, 256:23 ENTITLEMENT [1] - 237:12 ENTITY [2] - 92:13, 163:24 ENTRY [6] - 164:17, 165:3, 165:10, 166:13, 167:17, 174:14 ENVELOPE [1] - 206:18 EOP [3] - 13:20, 13:21, 45:18 EQUAL [2] - 34:20, 236:8 EQUALLY [1] - 246:19 EQUIVALENCE [1] - 158:13 ERB [1] - 1:21 ERIC [2] - 51:1, 171:20 ERROR [1] - 256:5 ESCORT [1] - 73:11 ESPECIALLY [2] - 178:14, 242:7 ESQ [12] - 1:15, 1:15, 1:16, 1:16, 1:17, 1:17, 1:19, 1:20, 1:20, 1:21, 1:21, 1:22 ESSENCE [1] - 256:12 ESTABLISHES [1] - 227:11 ESTABLISHMENT [1] - 21:17 ESTATE [1] - 162:11 ET [1] - 81:4 ETHICAL [1] - 180:7 ETHICS [3] - 40:16, 136:17 EVENING [2] - 44:8, 58:24 EVENT [2] - 41:4, 76:21 EVENTS [2] - 201:11, 208:11 EVENTUALLY [1] - 240:25 EVERETT [1] - 254:25 EVERYWHERE [1] - 26:3 EVIDENCE [22] - 7:18, 8:6, 8:7, 8:8, 8:13, 11:11, 43:21, 79:24,</p>
--	--	--	--	--

<p>141:23, 158:21, 159:11, 159:13, 164:21, 182:17, 192:19, 207:5, 231:9, 231:21, 245:4, 252:10, 252:11, 253:1 EVIDENCE [1] - 157:18 EVIDENTIARY [8] - 6:6, 6:9, 157:15, 157:22, 226:17, 226:19, 226:20, 227:9 EVIDENTIARY [1] - 1:10 EX [1] - 69:16 EX-NEW [1] - 69:16 EXACT [3] - 105:22, 151:13, 217:11 EXACTLY [12] - 92:7, 98:7, 100:14, 114:24, 132:7, 149:23, 152:11, 190:14, 212:21, 228:24, 242:15, 246:9 EXAMINATION [10] - 55:22, 75:5, 78:6, 86:4, 93:25, 157:3, 157:7, 157:19, 158:18, 223:3 EXAMINATION [8] - 9:11, 55:10, 147:10, 161:24, 182:25, 186:12, 215:4, 222:25 EXAMINATION..... [1] - 2:4 EXAMINATION..... [1] - 2:5 EXAMINATION.....183 [1] - 2:8 EXAMINATION.....215 [1] - 2:11 EXAMINATION.....161 [1] - 2:8 EXAMINATION.....186 [1] - 2:11 EXAMINATION.....147 [1] - 2:5 EXAMINATION.....222 [1] - 2:12 EXAMPLE [14] - 25:21, 26:7, 31:18, 109:2, 112:2, 112:12, 112:13, 112:14, 113:24, 113:25, 119:12,</p>	<p>119:16, 139:23, 237:25 EXAMPLES [3] - 28:16, 118:13, 118:21 EXCEPTION [4] - 229:9, 243:21, 244:6, 246:3 EXCEPTIONAL [1] - 253:23 EXCEPTIONS [1] - 243:24 EXCERPT [1] - 209:14 EXCERPTS [3] - 158:10, 209:2, 209:6 EXCHANGE [2] - 142:9, 146:4 EXCLUSION [1] - 82:24 EXCUSE [7] - 17:5, 23:15, 29:4, 67:6, 70:19, 102:15, 182:4 EXCUSED [6] - 156:3, 157:9, 185:9, 185:12, 223:21, 223:25 EXECUTE [1] - 237:7 EXECUTED [1] - 153:11 EXECUTION [2] - 39:13, 232:5 EXECUTIVE [25] - 13:20, 16:19, 16:20, 19:14, 21:4, 21:14, 27:12, 29:14, 29:16, 47:5, 62:13, 81:11, 81:24, 150:17, 189:11, 189:13, 215:19, 239:10, 244:1, 244:22, 244:25, 247:24, 248:1, 249:15, 251:7 EXECUTIVE [8] - 13:15, 13:16, 14:4, 45:13, 45:18, 49:21, 152:25, 231:24 EXECUTIVES [2] - 18:6, 21:15 EXERCISE [6] - 231:6, 236:10, 237:5, 238:8, 250:3, 250:15 EXHIBIT [21] - 11:6, 11:10, 42:20, 43:6, 43:20, 141:9, 141:12, 141:14, 141:23, 144:5, 144:9, 145:8, 164:10, 164:14, 164:16, 164:21, 206:12, 206:18,</p>	<p>206:25, 207:5, 209:2 EXHIBIT [9] - 10:7, 10:10, 43:4, 117:15, 143:2, 143:24, 147:13, 147:16, 147:19 EXHIBITS [1] - 156:15 EXHORT [1] - 248:1 EXHORTING [1] - 247:23 EXISTENCE [3] - 225:18, 234:2, 242:18 EXPECT [2] - 47:16, 229:24 EXPECTED [1] - 85:13 EXPEDITE [1] - 97:8 EXPEDITED [3] - 31:6, 95:21, 96:11 EXPERIENCE [6] - 101:12, 112:16, 207:10, 207:18, 223:8, 223:13 EXPERIENCED [1] - 117:1 EXPERT [1] - 114:8 EXPLAIN [8] - 13:14, 31:19, 51:24, 104:5, 155:7, 162:9, 192:16, 246:20 EXPLAINED [4] - 218:8, 227:20, 227:22, 248:16 EXPLANATION [1] - 232:3 EXPLICITLY [1] - 249:7 EXPRESS [1] - 218:10 EXPRESSED [1] - 127:6 EXPRESSING [1] - 107:12 EXPRESSION [1] - 34:6 EXPRESSLY [1] - 254:16 EXTENDED [1] - 217:21 EXTENSION [1] - 233:18 EXTENT [14] - 43:25, 46:20, 47:21, 48:4, 49:14, 51:20, 53:17, 53:25, 54:19, 56:12, 108:3, 108:25, 182:7, 207:14 EXTRAORDINARY [2] - 207:14, 207:19 EXTRAPOLATE [2] - 197:21, 197:22</p>	<p>EXTREMELY [3] - 40:23, 136:21, 226:22 F F-U-C-H-S [1] - 89:23 F.2D [1] - 236:16 FACE [2] - 197:14 FACE-TO-FACE [1] - 197:14 FACILITATE [3] - 97:8, 99:10, 110:18 FACILITATED [1] - 203:6 FACILITATING [1] - 119:3 FACILITY [1] - 234:6 FACING [1] - 6:22 FACT [23] - 35:11, 53:5, 56:19, 57:18, 79:4, 87:7, 88:21, 94:21, 109:5, 133:21, 136:6, 143:4, 218:13, 220:1, 220:11, 227:1, 230:11, 236:4, 244:15, 245:23, 245:25, 250:16, 251:9 FACT-FINDING [1] - 53:5 FACTS [2] - 213:1, 225:25 FACTUAL [1] - 149:12 FAILURE [1] - 244:19 FAIR [16] - 59:7, 59:18, 64:12, 82:3, 84:23, 84:25, 86:10, 110:3, 132:14, 135:19, 151:9, 164:15, 210:20, 218:17, 220:3, 221:23 FAIRLY [2] - 126:13, 213:12 FAITH [1] - 248:19 FAITHFULLY [1] - 153:11 FAKE [2] - 242:13, 250:13 FALL [2] - 219:2, 253:21 FALLS [1] - 182:12 FAMILIAR [11] - 41:18, 42:22, 66:6, 75:18, 153:10, 190:12, 190:14, 192:14, 215:9, 217:13, 249:3 FANI [2] - 6:11, 7:12</p>	<p>FAPR [2] - 1:23, 259:11 FAR [8] - 147:24, 200:2, 218:10, 218:14, 219:15, 232:14, 248:7, 253:15 FARM [2] - 214:3, 216:10 FASHION [2] - 170:25, 220:5 FAST [1] - 257:6 FAVOR [1] - 227:1 FBI [4] - 214:2, 216:9, 223:14 FDA [1] - 23:9 FEC [2] - 122:6, 122:7 FEDERAL [197] - 5:22, 6:25, 7:2, 13:11, 21:17, 24:1, 31:3, 39:7, 45:16, 58:1, 59:4, 59:6, 59:20, 59:21, 59:22, 60:21, 60:23, 61:7, 61:10, 61:13, 61:18, 62:5, 62:18, 62:19, 64:14, 64:22, 65:1, 65:2, 65:4, 65:5, 68:8, 69:18, 70:6, 71:11, 71:15, 71:24, 73:24, 74:6, 74:9, 74:13, 74:17, 81:6, 81:19, 81:23, 81:25, 83:3, 83:7, 83:8, 83:9, 83:12, 83:25, 84:2, 84:3, 84:7, 85:8, 85:16, 86:13, 93:7, 93:10, 93:12, 94:8, 106:9, 106:10, 106:13, 110:8, 110:9, 113:9, 113:11, 115:5, 115:6, 116:6, 118:16, 118:23, 119:2, 119:6, 125:19, 135:24, 135:25, 136:3, 138:20, 138:21, 139:19, 142:24, 146:21, 151:23, 153:22, 154:4, 154:5, 154:16, 157:15, 166:22, 167:1, 172:3, 172:4, 172:18, 178:2, 181:25, 183:23, 188:20, 188:23, 189:4, 189:7, 195:4, 204:2, 204:5, 213:21, 215:8,</p>
---	---	--	---	--

<p>215:9, 215:11, 215:16, 215:18, 215:22, 216:9, 216:13, 216:17, 221:17, 221:19, 221:20, 223:4, 223:7, 223:11, 224:14, 224:15, 225:21, 225:23, 226:11, 226:14, 226:15, 227:2, 228:23, 229:7, 230:1, 230:25, 231:1, 234:5, 234:6, 235:9, 235:14, 235:17, 237:13, 238:15, 238:23, 238:24, 239:5, 239:7, 239:8, 239:17, 240:2, 240:25, 241:1, 241:8, 241:21, 241:23, 242:11, 243:24, 244:5, 244:11, 244:13, 244:21, 245:11, 245:17, 246:4, 246:6, 246:12, 246:13, 246:14, 247:8, 247:9, 247:10, 247:12, 248:5, 248:6, 248:25, 249:17, 250:22, 250:25, 251:13, 251:16, 253:14, 254:7, 254:9, 254:11, 254:13, 254:14, 254:18, 254:19, 256:14, 257:20</p> <p>FEDERAL [3] - 166:17, 166:18, 226:25</p> <p>FELLOW [1] - 198:14</p> <p>FELONS [1] - 212:10</p> <p>FELONY [1] - 212:13</p> <p>FELT [18] - 17:1, 24:11, 29:7, 35:18, 36:23, 52:9, 52:24, 53:5, 77:23, 96:17, 103:16, 122:17, 132:3, 134:6, 149:24, 187:6, 210:2, 225:14</p> <p>FEMA [10] - 23:24, 24:3, 118:16, 119:5, 119:6, 119:10, 119:14, 125:21, 125:22, 248:8</p> <p>FEW [5] - 55:18,</p>	<p>55:20, 169:14, 229:24, 251:10</p> <p>FIGHT [1] - 178:23</p> <p>FIGURE [1] - 129:2</p> <p>FIGURES [1] - 31:3</p> <p>FIGURING [1] - 136:21</p> <p>FILE [2] - 165:10, 174:9</p> <p>FILED [6] - 5:25, 6:12, 6:14, 43:7, 166:1, 190:19</p> <p>FINAL [6] - 29:1, 142:14, 150:13, 150:22, 187:9, 213:9</p> <p>FINALLY [3] - 241:18, 244:23, 250:3</p> <p>FINANCIAL [7] - 91:21, 91:25, 92:13, 92:14, 92:16, 93:4, 97:10</p> <p>FINANCIALLY [1] - 91:16</p> <p>FINDINGS [1] - 82:12</p> <p>FINE [13] - 40:11, 42:14, 55:24, 55:25, 56:1, 74:21, 88:15, 145:17, 160:16, 182:15, 185:22, 186:3, 209:8</p> <p>FINISH [14] - 3:12, 13:1, 59:10, 59:12, 59:14, 61:20, 86:23, 96:3, 122:24, 123:2, 123:4, 128:5, 224:8, 252:14</p> <p>FINISHED [3] - 123:8, 123:10, 150:23</p> <p>FIRE [1] - 231:19</p> <p>FIRM [5] - 162:13, 162:14, 162:15, 168:11, 172:22</p> <p>FIRST [3] - 246:25, 247:1, 247:2</p> <p>FIRST [38] - 11:14, 18:24, 27:10, 43:4, 48:1, 75:3, 99:1, 99:7, 100:25, 126:8, 138:14, 143:17, 143:18, 144:8, 159:18, 160:8, 176:8, 196:19, 202:12, 226:10, 226:17, 227:21, 234:24, 236:16, 240:20, 240:22, 241:12, 243:16, 246:8, 246:10, 248:18, 248:23, 249:1, 249:16,</p>	<p>249:17, 251:12, 255:13</p> <p>FIRST-IN-TIME [1] - 143:18</p> <p>FIVE [7] - 159:15, 197:15, 197:16, 197:19, 225:1, 254:22, 254:24</p> <p>FLAGGING [1] - 173:12</p> <p>FLAVOR [1] - 26:11</p> <p>FLESH [1] - 177:9</p> <p>FLOOR [1] - 159:21</p> <p>FLOOR.. [1] - 240:17</p> <p>FLOW [1] - 159:23</p> <p>FLOWED [1] - 12:19</p> <p>FLows [1] - 98:10</p> <p>FLYING [1] - 18:7</p> <p>FOCUS [2] - 61:10, 87:9</p> <p>FOCUSED [2] - 29:13, 145:3</p> <p>FOLKS [1] - 168:14</p> <p>FOLLOW [7] - 26:21, 36:25, 61:4, 144:21, 188:7, 257:8</p> <p>FOLLOWED [5] - 3:25, 8:6, 8:7, 74:10, 251:7</p> <p>FOLLOWING [5] - 32:11, 61:4, 61:5, 182:8, 227:8</p> <p>FOLLOWS [6] - 9:9, 160:2, 161:3, 186:8, 224:12, 235:23</p> <p>FOR [1] - 1:1</p> <p>FORBIDDEN [1] - 254:16</p> <p>FORBIDS [1] - 249:8</p> <p>FORCE [1] - 33:11</p> <p>FORCE [3] - 227:23, 227:25, 236:8</p> <p>FORCES [1] - 196:24</p> <p>FORE [1] - 232:10</p> <p>FOREGOING [1] - 259:6</p> <p>FORGET [1] - 73:14</p> <p>FORM [4] - 56:24, 72:18, 170:24, 231:10</p> <p>FORMAL [1] - 14:17</p> <p>FORMALLY [1] - 13:7</p> <p>FORMER [4] - 50:1, 126:4, 219:25, 254:18</p> <p>FORMS [3] - 22:6, 22:7, 111:1</p> <p>FORTH [4] - 90:20, 112:5, 219:10, 230:15</p>	<p>FORTUNATELY [1] - 18:4</p> <p>FORWARDED [1] - 148:20</p> <p>FOUR [10] - 9:25, 19:1, 20:12, 162:10, 174:2, 197:7, 212:9, 217:11, 222:17, 222:19</p> <p>FOX [3] - 168:7, 168:9, 201:15</p> <p>FRAME [1] - 166:12</p> <p>FRAMED [1] - 11:2</p> <p>FRANCES [3] - 54:9, 194:23, 197:13</p> <p>FRANCIS [1] - 4:25</p> <p>FRANCIS [2] - 1:16, 1:22</p> <p>FRANCISCO [1] - 4:24</p> <p>FRANCISCO [13] - 1:21, 207:6, 209:5, 209:8, 209:10, 214:16, 215:5, 221:25, 222:3, 222:20, 222:22, 223:17, 223:22</p> <p>FRANK [1] - 138:19</p> <p>FRANKLY [6] - 25:24, 115:7, 227:7, 229:17, 229:25, 236:11</p> <p>FRAUD [49] - 38:7, 44:21, 56:22, 64:4, 64:20, 65:8, 66:8, 77:9, 77:25, 78:1, 78:9, 79:3, 79:12, 79:18, 80:3, 80:5, 80:21, 105:17, 108:9, 108:11, 108:13, 126:5, 126:11, 126:12, 127:7, 134:7, 151:4, 152:16, 192:24, 193:7, 196:3, 197:12, 207:17, 207:25, 215:14, 216:7, 217:7, 220:6, 220:18, 221:6, 221:13, 221:21, 223:5, 223:8, 223:12, 230:11, 231:20, 232:13, 240:5</p> <p>FRAUDULENT [2] - 64:19, 126:13</p> <p>FREE [4] - 59:17, 65:7, 82:3, 223:19</p> <p>FREQUENTLY [1] - 133:9</p> <p>FRIEND [1] - 167:15</p>	<p>FRIENDS [2] - 121:24, 256:8</p> <p>FRONT [16] - 7:18, 24:23, 44:17, 56:8, 57:10, 65:11, 68:14, 75:2, 76:5, 76:7, 117:15, 117:16, 117:22, 142:7, 172:17, 226:3</p> <p>FUCHS [23] - 77:5, 89:18, 89:19, 89:22, 90:4, 90:10, 90:16, 90:20, 91:13, 91:18, 95:20, 96:16, 97:9, 99:14, 200:22, 200:25, 203:6, 203:8, 203:11, 203:16, 219:10, 219:12</p> <p>FUCHS' [1] - 90:11</p> <p>FULFILL [1] - 15:18</p> <p>FULL [6] - 9:13, 66:23, 67:1, 123:4, 196:14, 206:25</p> <p>FULLY [3] - 11:24, 11:25, 134:22</p> <p>FULTON [33] - 5:13, 6:1, 6:12, 6:14, 8:1, 43:8, 52:5, 77:10, 91:14, 96:22, 103:13, 103:16, 107:5, 108:8, 129:4, 129:7, 129:18, 132:5, 132:9, 134:20, 163:17, 164:18, 165:3, 165:4, 165:17, 166:1, 183:18, 198:7, 198:9, 198:15, 198:16, 198:19, 233:7</p> <p>FUNCTION [3] - 13:11, 221:5, 231:24</p> <p>FUNCTIONS [3] - 22:20, 113:9, 191:14</p> <p>FUNDAMENTAL [1] - 235:8</p> <p>FUNDING [1] - 154:22</p> <p>FUNDS [7] - 92:20, 92:22, 93:7, 93:10, 97:7, 119:7, 125:22</p> <p>FURTHERANCE [2] - 85:5, 177:12</p> <p>FUTURE [5] - 63:5, 81:11, 81:23, 136:19, 257:11</p> <p>FUZZY [1] - 48:12</p>
				G
				GANDER [2] - 158:7,

158:8 GARDNER [1] - 167:25 GATEKEEPER [2] - 35:9, 45:3 GATHERING [1] - 218:18 GBI [9] - 52:19, 77:5, 77:23, 80:18, 82:13, 194:11, 194:13, 197:12, 214:4 GENERAL [20] - 30:7, 30:16, 37:9, 37:15, 37:16, 38:17, 39:4, 78:5, 78:8, 78:23, 79:2, 79:9, 79:20, 127:6, 127:16, 128:23, 230:15, 230:17 GENERAL [17] - 11:15, 11:22, 16:3, 34:24, 35:2, 60:17, 64:20, 81:20, 82:22, 86:8, 178:15, 179:22, 180:7, 200:12, 202:21, 202:25, 217:6 GENERALLY [8] - 12:22, 19:23, 39:1, 39:8, 110:13, 137:18, 169:16, 219:2 GENERIS [1] - 236:21 GENTLEMAN [2] - 53:3, 186:25 GEORGE [1] - 4:22 GEORGE [1] - 1:19 GEORGIA [83] - 4:7, 4:18, 5:8, 5:21, 6:2, 6:11, 6:17, 7:11, 52:19, 80:15, 80:21, 81:1, 81:4, 83:5, 84:1, 85:18, 88:19, 88:22, 91:22, 93:11, 96:23, 97:7, 104:2, 105:16, 120:10, 122:14, 126:6, 129:14, 130:4, 130:7, 133:21, 134:5, 134:17, 134:24, 160:10, 162:3, 162:4, 162:6, 162:15, 162:19, 166:8, 167:11, 172:5, 174:8, 183:14, 183:16, 185:16, 187:21, 187:23, 188:1, 188:3, 188:10, 188:21, 189:15,	189:20, 189:23, 190:19, 191:19, 192:9, 194:19, 204:12, 207:17, 208:2, 208:7, 211:7, 211:10, 211:11, 211:22, 212:9, 212:25, 215:20, 216:14, 216:17, 217:21, 221:11, 233:7, 244:3, 250:21, 250:24, 252:5 GEORGIA [4] - 1:1, 1:4, 1:24, 259:4 GEORGIA'S [2] - 5:18, 216:1 GERMANY [13] - 99:17, 124:13, 178:15, 179:21, 179:25, 180:7, 180:11, 180:18, 180:19, 180:25, 203:2, 203:3 GETTYSBURG [1] - 254:24 GIULIANI [9] - 57:18, 58:24, 68:25, 69:17, 69:25, 70:7, 70:25, 71:4 GIVEN [14] - 14:7, 14:21, 15:1, 15:5, 18:23, 20:9, 112:17, 118:13, 148:7, 158:19, 159:2, 189:18, 214:20, 254:10 GLASS [1] - 218:19 GLOVE [1] - 52:20 GMAIL [1] - 94:10 GOAL [11] - 96:18, 103:20, 103:25, 113:24, 114:19, 115:3, 115:4, 115:17, 115:18, 194:8 GOALS [1] - 116:3 GOODNESS [2] - 167:7, 240:2 GOOSE [1] - 158:6 GOP [1] - 166:8 GOVERN [1] - 153:22 GOVERNED [3] - 138:6, 138:8, 138:9 GOVERNING [1] - 182:11 GOVERNMENT [39] - 21:16, 31:3, 34:20, 58:1, 59:22, 64:14, 64:22, 71:15, 77:14,	92:13, 92:14, 118:23, 119:6, 146:21, 158:11, 167:1, 188:20, 189:4, 189:7, 195:4, 204:2, 204:5, 213:21, 215:22, 216:13, 216:18, 221:21, 221:22, 223:4, 223:7, 229:25, 230:2, 230:3, 231:1, 235:9, 236:9, 236:25, 238:16, 250:22 GOVERNMENT'S [1] - 11:10 GOVERNOR [8] - 21:21, 21:22, 166:25, 204:21, 204:25, 205:3, 205:6 GOVERNOR [3] - 188:25, 189:1, 205:20 GOVERNORS [2] - 23:21, 23:22 GRACE [1] - 139:13 GRADUATE [1] - 168:5 GRAND [4] - 5:13, 183:14, 183:17, 183:20 GREAT [10] - 15:24, 82:13, 82:14, 132:21, 185:19, 186:15, 231:3, 231:19, 240:4, 258:2 GREATER [2] - 52:4, 227:7 GREEN [1] - 1:15 GRIFFITH [1] - 36:10 GROUND [1] - 98:2 GROUP [10] - 13:19, 17:19, 40:14, 57:11, 68:19, 68:23, 72:5, 88:7, 108:1, 244:21 GROUPS [4] - 41:7, 78:15, 149:24, 217:4 GUBERNATORIAL [1] - 217:2 GUESS [8] - 11:3, 15:4, 78:25, 81:4, 95:23, 142:1, 156:22, 201:11 GUIDING [1] - 138:12 GUY [1] - 69:16 GUYS [1] - 224:19	HABIT [1] - 148:1 HAC [1] - 255:14 HALF [4] - 106:6, 170:6, 211:8, 255:12 HALL [2] - 48:14, 173:17 HALLWAY [2] - 19:12, 172:23 HALT [1] - 28:22 HAND [10] - 10:13, 52:20, 156:15, 161:1, 186:4, 191:5, 191:9, 191:11, 191:14, 191:16 HAND [1] - 235:23 HAND'S [1] - 236:25 HANDLE [3] - 26:2, 36:16, 98:4 HANDLED [2] - 78:14, 233:1 HANDLING [1] - 26:1 HAPPY [3] - 88:14, 156:15, 160:22 HARD [7] - 146:13, 146:14, 225:13, 230:16, 244:10, 245:16, 256:22 HARDEST [1] - 227:13 HARVARD [1] - 168:5 HATCH [44] - 7:23, 39:8, 39:14, 40:2, 40:14, 41:14, 42:13, 135:7, 135:13, 135:17, 135:22, 135:23, 136:3, 137:1, 137:14, 137:21, 138:6, 138:9, 138:11, 138:16, 139:18, 140:2, 140:6, 140:10, 148:23, 149:1, 229:6, 229:17, 229:20, 230:4, 233:12, 233:15, 237:9, 238:6, 238:9, 244:9, 247:3, 249:3, 249:7, 249:11, 249:14, 256:12, 256:14 HATE [2] - 256:3, 256:8 HEAD [3] - 49:22, 50:2, 66:1 HEADLINE [1] - 41:8 HEADLINES [1] - 38:9 HEAR [9] - 3:21, 4:7, 21:6, 126:20, 209:18, 209:21, 210:19, 219:23, 241:10	HEARD [14] - 34:6, 99:1, 127:25, 128:1, 132:9, 133:9, 192:12, 201:13, 209:14, 210:20, 219:5, 219:22, 230:14, 237:14 HEARING [18] - 6:6, 6:9, 26:25, 52:14, 61:16, 73:18, 157:22, 172:16, 172:19, 181:22, 182:7, 182:12, 210:22, 213:13, 224:13, 227:9, 240:15, 243:20 HEARINGS [10] - 83:10, 83:11, 154:10, 154:25, 182:2, 182:5, 182:8, 182:9, 182:10 HEARSAY [4] - 41:16, 42:1, 157:4, 158:5 HEART [1] - 226:2 HELD [4] - 3:1, 6:6, 196:19, 235:15 HELP [6] - 33:21, 34:15, 55:2, 73:11, 110:18, 229:22 HELPFUL [3] - 218:8, 236:12, 236:20 HELPS [2] - 47:11, 63:8 HEREBY [1] - 259:6 HERRING [1] - 249:24 HERSCHMANN [6] - 82:23, 125:7, 171:20, 171:21, 172:2 HERSELF [1] - 239:3 HHS [2] - 23:11, 31:14 HI [1] - 156:7 HIGH [1] - 255:2 HIGHEST [1] - 21:20 HIGHLIGHT [1] - 243:17 HIGHLY [1] - 121:13 HILBERT [3] - 2:7, 132:18, 161:2 HILBERT [26] - 107:19, 108:21, 109:3, 121:5, 124:4, 132:18, 132:19, 132:20, 160:10, 160:11, 161:7, 161:8, 162:1, 162:16, 165:2, 170:9, 171:3, 174:23, 177:11, 179:1, 181:11,
		H		
		H-I-L-B-E-R-T [1] - 161:8		

183:2, 183:13, 184:2, 184:22, 208:22 HILBERT [1] - 109:6 HILBRIN [1] - 132:17 HILL [7] - 15:13, 15:14, 27:2, 28:24, 34:22, 83:10, 83:11 HIMSELF [10] - 96:12, 184:14, 211:1, 219:7, 219:18, 222:8, 229:3, 245:24, 248:13, 250:9 HINT [1] - 255:6 HIRED [1] - 180:2 HISTORY [2] - 205:16, 255:1 HIT [1] - 13:4 HITTING [1] - 36:14 HOLD [19] - 41:22, 59:11, 61:25, 83:18, 114:2, 114:11, 122:25, 149:7, 186:24, 226:5 HOLD [1] - 122:25 HOLE [1] - 36:13 HOLIDAY [1] - 76:11 HOME [6] - 17:7, 29:5, 29:10, 29:11, 67:18, 234:6 HOMELAND [5] - 59:23, 82:2, 84:4, 216:4, 239:21 HOMICIDE [3] - 225:23, 225:24, 225:25 HONEST [2] - 51:6, 221:23 HONESTLY [3] - 18:3, 41:8, 168:14 HONOR [171] - 4:20, 5:4, 5:6, 8:12, 8:16, 8:23, 9:2, 9:3, 10:8, 10:11, 10:15, 11:5, 11:8, 16:8, 17:5, 20:1, 21:2, 22:17, 25:10, 32:25, 35:6, 41:6, 41:16, 42:5, 42:16, 42:17, 42:25, 43:11, 43:22, 47:2, 48:10, 51:1, 51:11, 52:2, 55:4, 55:6, 55:9, 55:24, 56:2, 56:25, 59:12, 60:12, 62:21, 75:19, 83:20, 85:1, 87:5, 92:8, 95:15, 110:25, 114:6, 115:21, 117:9, 117:19, 126:21, 130:19, 135:15, 141:7, 141:22, 141:25, 142:1, 143:11, 147:9, 149:9, 149:17, 150:16, 153:8, 153:13, 153:18, 153:19, 155:3, 155:18, 155:19, 155:22, 156:5, 156:8, 156:19, 156:25, 157:8, 157:12, 157:23, 158:25, 159:11, 160:9, 161:18, 161:23, 164:7, 164:20, 164:23, 178:2, 178:8, 178:21, 181:18, 181:21, 182:3, 182:14, 184:16, 184:20, 185:1, 185:4, 185:8, 185:10, 185:11, 186:3, 187:10, 187:12, 187:17, 203:22, 204:23, 205:1, 205:4, 205:8, 205:18, 205:22, 206:6, 206:8, 207:4, 207:6, 209:1, 214:17, 214:23, 221:25, 222:20, 222:22, 223:17, 223:20, 224:3, 224:5, 224:24, 225:7, 225:9, 226:3, 226:7, 226:21, 227:8, 227:14, 228:6, 228:10, 228:14, 229:11, 229:17, 229:23, 231:9, 231:21, 232:24, 234:16, 234:23, 236:11, 237:16, 239:22, 240:7, 240:12, 240:20, 241:12, 241:16, 245:9, 246:8, 247:14, 249:24, 250:17, 252:8, 252:14, 253:9, 255:2, 255:6, 256:3, 256:21, 257:5, 257:23, 258:3 HONOR'S [2] - 109:24, 235:20 HONORABLE [4] - 1:11, 1:23, 259:12, 259:16 HOPE [6] - 3:3, 117:6, 159:18, 205:9, 226:23, 238:4 HOPEFUL [2] - 155:13, 220:13 HOPEFULLY [4] - 110:14, 132:22, 132:24, 150:3 HOPING [4] - 107:7, 155:7, 155:8, 155:10 HORIZON [1] - 241:3 HOSPITAL [2] - 24:19 HOSPITALS [1] - 31:13 HOST [1] - 243:23 HOSTAGE [1] - 33:9 HOURL [1] - 126:17 HOURS [4] - 11:21, 14:17, 15:6, 254:25 HOUSE [2] - 46:7, 88:11 HOUSE [47] - 11:20, 15:9, 22:15, 22:22, 24:23, 24:25, 25:4, 25:22, 27:5, 41:12, 41:25, 42:11, 45:1, 45:21, 46:11, 47:2, 47:4, 51:2, 66:18, 68:20, 74:10, 74:15, 82:22, 82:25, 94:9, 95:3, 95:5, 95:8, 99:15, 105:2, 105:7, 105:10, 105:11, 124:20, 125:5, 136:20, 137:6, 137:10, 137:22, 151:3, 169:20, 171:16, 171:17, 199:7, 200:23, 229:10, 232:12 HOUSED [2] - 45:17, 45:19 HUGE [2] - 231:1, 231:2 HUM [1] - 71:6 HUNDREDS [1] - 14:15 HUNG [1] - 202:15 HURTING [2] - 28:1, 28:2 HYPOTHETICAL [1] - 114:7 I IDEA [7] - 8:4, 11:19, 29:18, 98:22, 99:20, 173:7, 227:16 IDENTIFICATION [1] - 156:14 IDENTIFIED [2] - 67:11, 109:17 IDENTIFIES [1] - 247:12 IDENTIFY [3] - 30:18, 43:4, 250:9 IGNORE [1] - 139:14 II [19] - 84:9, 84:11, 84:13, 84:14, 84:17, 84:19, 109:22, 109:24, 110:1, 110:4, 110:5, 111:6, 152:23, 153:1, 153:4, 153:5, 153:6, 242:4 III [3] - 1:19, 84:18, 110:6 ILLUSTRATION [1] - 230:6 IMAGINE [4] - 16:13, 146:23, 226:20, 232:3 IMMEDIATE [1] - 214:20 IMMEDIATELY [2] - 41:6, 175:22 IMMUNITY [4] - 229:4, 238:11, 256:19, 256:25 IMPEACHMENT [1] - 182:17 IMPLEMENTED [1] - 116:5 IMPLICATION [1] - 34:11 IMPLICATIONS [2] - 28:23, 34:13 IMPORT [1] - 232:21 IMPORTANT [14] - 3:18, 3:21, 3:24, 4:6, 34:3, 87:3, 232:9, 233:4, 238:20, 242:7, 243:16, 246:19, 257:9 IMPORTANTLY [3] - 227:22, 230:23, 256:17 IMPRESSION [2] - 227:16, 227:17 IMPRESSIONS [2] - 175:8, 179:6 IMPRESSIVE [1] - 96:17 IMPROPER [1] - 250:23 IMPROPRIETY [1] - 223:12 IN [1] - 3:1 IN-HOUSE [1] - 88:11 IN-PERSON [1] - 25:17 INAPPROPRIATE [4] - 93:23, 220:15, 220:16, 220:17 INAUGURATION [1] - 28:5 INC [3] - 163:20, 165:13, 166:3 INCIDENCES [1] - 170:4 INCLUDE [4] - 94:13, 182:2, 182:5, 229:25 INCLUDED [2] - 84:4, 174:5 INCLUDING [4] - 33:19, 153:22, 230:10, 244:11 INCLUSIVE [1] - 245:24 INCOMING [4] - 26:3, 26:12, 36:11, 94:8 INCORRECTLY [1] - 219:11 INCREASE [1] - 26:17 INCREDIBLE [1] - 232:20 INDEED [3] - 77:20, 91:12, 162:5 INDEPENDENT [1] - 167:23 INDICATE [8] - 53:2, 77:2, 87:2, 97:9, 101:4, 109:10, 147:21, 253:24 INDICATED [9] - 7:1, 7:6, 7:9, 92:9, 101:25, 130:25, 251:19, 257:12 INDICATES [3] - 13:6, 241:11, 247:5 INDICATING [2] - 16:25, 253:25 INDICATION [1] - 248:14 INDICTMENT [31] - 5:14, 5:16, 7:14, 42:21, 43:7, 43:25, 46:19, 47:21, 49:10, 50:8, 51:15, 51:21, 53:12, 56:7, 56:8, 56:18, 65:10, 68:14, 75:2, 75:14, 76:5, 77:2, 117:15, 229:1, 239:16, 240:2, 245:7, 245:8, 246:23, 251:15, 251:18 INDIVIDUAL [9] - 17:17, 25:18, 72:8, 108:20, 164:1, 164:2, 167:13,

188:10, 209:25 INDIVIDUALLY [2] - 190:6, 209:25 INDIVIDUALS [18] - 4:5, 5:14, 5:15, 26:25, 27:21, 31:8, 31:9, 46:10, 47:1, 48:25, 49:7, 49:18, 54:25, 67:11, 73:10, 113:11, 157:2, 197:7 INDULGENCE [2] - 42:24, 155:3 INDUSTRY [2] - 17:25, 18:11 INFAMOUS [3] - 214:3, 230:8, 234:3 INFLUENCE [3] - 245:1, 245:12, 249:18 INFORM [1] - 81:10 INFORMAL [2] - 17:23 INFORMATION [22] - 23:3, 30:5, 64:2, 66:13, 79:24, 80:23, 89:15, 103:18, 127:20, 128:22, 132:12, 134:13, 157:4, 170:21, 198:19, 201:10, 201:22, 211:24, 214:24, 218:18, 223:9, 223:13 INFORMED [9] - 45:2, 52:12, 73:9, 81:10, 85:9, 101:1, 158:17, 180:22, 257:15 INFORMS [1] - 227:14 INFRINGE [1] - 50:19 INITIALS [1] - 145:6 INITIATE [6] - 119:24, 121:7, 174:16, 174:23, 175:2, 200:16 INITIATED [5] - 97:20, 98:22, 99:20, 132:12, 179:2 INITIATING [2] - 151:16, 151:18 INITIATION [3] - 98:5, 190:13, 190:22 INITIATIVE [1] - 77:6 INPUT [2] - 104:23, 195:14 INQUIRE [1] - 92:19 INQUIRY [1] - 254:11 INSERT [1] - 250:20 INSERTED [1] - 248:13 INSIDE [2] - 35:24, 232:11	INSIGHTFUL [1] - 25:7 INSOFAR [2] - 69:8, 149:9 INSTANCES [1] - 170:3 INSTEAD [4] - 16:23, 52:13, 96:13, 245:19 INSTITUTED [1] - 192:21 INSTRUCTIONS [1] - 4:15 INSTRUMENTALITIE S [1] - 234:13 INSUFFICIENT [2] - 132:12, 198:18 INTENDED [3] - 158:16, 173:13, 240:21 INTENT [4] - 194:9, 238:17, 238:19, 239:4 INTERACT [4] - 24:7, 32:2, 32:3, 32:5 INTERACTING [3] - 113:4, 113:15, 123:11 INTERACTION [5] - 23:12, 24:2, 75:13, 84:5, 140:3 INTERACTIONS [4] - 31:21, 46:16, 82:21, 118:15 INTERCONNECTION [1] - 83:13 INTEREST [24] - 60:18, 61:18, 62:6, 62:19, 63:13, 64:9, 64:11, 64:13, 68:9, 73:24, 81:23, 88:18, 113:20, 113:23, 114:20, 115:18, 146:6, 197:1, 202:13, 202:14, 221:21, 227:2, 239:19 INTERESTED [3] - 64:10, 88:23, 101:9 INTERESTING [2] - 63:11, 82:6 INTERESTS [4] - 62:18, 81:6, 81:19, 81:20 INTERFERENCE [2] - 238:21, 239:7 INTERFERING [4] - 237:4, 239:4, 245:1, 249:19 INTERPRETATION [1] - 111:12	INTERPRETED [1] - 238:14 INTERRUPT [5] - 25:8, 157:9, 193:13, 204:20, 206:3 INTERRUPTED [1] - 166:10 INTERRUPTING [3] - 23:15, 52:10, 226:6 INTERSECT [1] - 27:20 INTERSECTED [1] - 27:9 INTERSECTION [1] - 27:20 INTERVIEW [10] - 40:5, 40:7, 40:9, 40:17, 41:14, 183:23, 198:1, 201:18, 201:19, 202:3 INTERVIEWED [3] - 183:18, 183:22, 201:15 INTERVIEWS [2] - 41:1, 197:14 INTIMATELY [2] - 22:19, 29:4 INTRODUCE [6] - 4:13, 109:5, 109:11, 124:17, 240:19 INTRODUCED [8] - 48:24, 69:10, 109:2, 126:7, 126:8, 184:14, 240:15 INTRODUCTION [1] - 209:15 INTRODUCTIONS [1] - 58:10 INVALID [1] - 80:22 INVESTED [1] - 88:21 INVESTIGATE [2] - 193:3, 221:12 INVESTIGATED [6] - 80:6, 134:2, 134:22, 193:19, 211:16, 230:11 INVESTIGATING [5] - 216:7, 216:10, 223:4, 223:7, 223:11 INVESTIGATION [1] - 52:20 INVESTIGATION [12] - 79:7, 79:12, 127:18, 127:22, 130:4, 130:8, 131:3, 132:4, 133:4, 196:22, 208:11, 213:2 INVESTIGATIONS [4] - 79:14, 79:19,	128:25, 196:22 INVESTIGATOR [1] - 194:24 INVESTIGATOR [1] - 54:9 INVESTIGATORS [2] - 52:19, 197:12 INVITATION [1] - 256:5 INVITE [1] - 195:12 INVITED [2] - 16:8, 76:21 INVOLVE [1] - 103:4 INVOLVED [39] - 3:23, 7:24, 21:25, 22:1, 22:19, 29:5, 39:24, 44:15, 45:14, 62:18, 62:19, 83:3, 100:5, 103:2, 105:24, 106:2, 106:3, 106:7, 108:24, 109:1, 109:14, 110:13, 120:24, 123:24, 149:6, 194:7, 194:8, 196:21, 207:24, 209:19, 209:22, 215:19, 215:25, 216:1, 216:3, 216:7, 216:14, 229:15, 234:10 INVOLVEMENT [6] - 31:1, 31:4, 69:1, 73:23, 169:3, 172:10 INVOLVES [1] - 110:10 INVOLVING [1] - 173:2 IOTA [1] - 231:9 IPSE [2] - 256:10, 256:20 IRREGULARITIES [2] - 38:8, 38:18 ISSUE [29] - 19:2, 23:7, 28:12, 28:13, 30:13, 37:6, 85:10, 87:3, 93:4, 93:5, 98:4, 98:9, 122:12, 129:3, 130:13, 132:24, 140:25, 148:20, 155:17, 221:19, 225:14, 226:3, 233:5, 233:6, 233:21, 239:20, 257:2, 257:18, 257:25 ISSUES [27] - 16:19, 21:10, 23:25, 30:23, 35:17, 35:20, 38:8, 38:11, 63:5, 85:10, 93:17, 96:25,	123:17, 128:3, 128:4, 128:8, 151:2, 151:25, 152:3, 154:7, 155:9, 158:2, 178:14, 193:6, 220:9 ITEM [1] - 19:22 ITEMS [4] - 58:18, 151:16, 151:18 ITSELF [3] - 157:4, 219:21, 250:20 IV [1] - 1:16 J JACK [2] - 187:14, 187:15 JAN [1] - 91:15 JANUARY [70] - 9:22, 10:2, 11:17, 11:18, 25:21, 28:6, 30:9, 30:14, 30:21, 50:6, 85:25, 90:21, 90:24, 94:12, 97:17, 100:25, 101:25, 103:10, 105:12, 106:14, 119:19, 120:7, 120:8, 120:10, 120:13, 123:20, 128:13, 128:20, 128:25, 131:14, 134:13, 139:24, 140:10, 140:11, 149:2, 149:20, 150:5, 150:6, 150:18, 150:20, 150:22, 151:1, 155:1, 172:8, 172:10, 172:15, 176:23, 184:3, 187:24, 193:15, 198:11, 198:23, 198:25, 200:1, 200:8, 200:16, 201:20, 202:7, 202:11, 203:1, 204:11, 204:24, 205:24, 211:12, 212:7, 213:20, 214:1, 227:13, 228:2, 231:3 JASON [3] - 142:10, 142:21, 142:22 JEAN [1] - 259:16 JEAN-PAUL [1] - 259:16 JEFF [1] - 185:7 JERSEY [1] - 21:22 JM [2] - 145:4, 145:5 JOB [35] - 7:13, 7:24, 11:25, 12:2, 14:24, 15:9, 16:3, 16:11,
--	---	--	--	--

21:25, 27:8, 31:1, 34:12, 52:24, 53:6, 77:24, 82:13, 82:14, 111:9, 111:10, 115:7, 116:6, 128:2, 134:10, 185:19, 206:2, 228:17, 231:20, 231:22, 233:9, 238:23, 238:25, 240:4, 244:12, 250:7 JOBS [4] - 4:2, 7:5, 35:8, 60:10 JOE [2] - 146:24, 230:21 JOG [2] - 73:3, 76:2 JOHN [2] - 1:17, 1:20 JOHN [2] - 4:24, 183:2 JOHNNY [1] - 51:7 JOHNS [1] - 196:19 JOHNSON [1] - 234:10 JOINED [1] - 5:8 JOINT [1] - 30:17 JOINT [1] - 50:5 JONES [2] - 159:14, 198:14 JONES [3] - 1:11, 1:23, 259:12 JONES' [1] - 118:14 JORDAN [4] - 89:19, 90:16, 200:22, 203:6 JOSEPH [1] - 5:1 JOSEPH [1] - 1:20 JUDGE [4] - 161:13, 217:13, 247:18, 247:22 JUDGE [1] - 1:11 JUDGE [13] - 8:20, 8:21, 118:14, 159:14, 160:18, 172:17, 185:13, 235:2, 235:22, 236:25, 253:25, 257:17, 257:19 JUDGES [2] - 3:20, 97:25 JUDGMENT [1] - 238:8 JUDGMENTS [1] - 237:7 JUMP [1] - 177:21 JURIST [1] - 235:23 JURY [5] - 5:13, 183:15, 183:17, 183:20, 252:4 JUSTICE [1] - 251:5 JUSTICE [8] - 64:18, 124:23, 125:1, 171:9, 171:11,	230:10, 234:1, 239:19 JUSTIFICATION [1] - 108:10 JUSTIFIED [1] - 236:1 JUSTIN [2] - 144:25, 145:2 K K-U-R-T [1] - 161:8 KAUFMAN [15] - 107:17, 108:21, 109:3, 109:6, 121:5, 124:7, 167:8, 167:9, 167:10, 167:17, 167:19, 168:11, 172:23, 174:5, 208:21 KEEN [1] - 232:10 KEEP [11] - 15:5, 49:5, 49:6, 52:12, 60:15, 84:6, 85:9, 107:23, 121:1, 159:21, 185:21 KEEPING [1] - 93:3 KELLEY [1] - 1:21 KELLEY [1] - 5:1 KEMP [7] - 166:23, 166:25, 204:22, 204:25, 205:3, 210:9 KEPT [7] - 24:13, 81:9, 91:10, 129:16, 129:18, 130:1 KERIK [2] - 69:13, 69:18 KERIK [1] - 69:15 KICKS [1] - 242:5 KIDS [1] - 15:1 KIND [30] - 12:2, 12:3, 19:12, 22:2, 22:3, 23:17, 29:10, 40:6, 44:11, 47:17, 50:25, 51:7, 52:25, 56:11, 58:17, 80:9, 103:7, 108:16, 109:18, 119:20, 128:9, 136:8, 150:22, 227:5, 229:8, 242:3, 242:8, 243:21, 244:7, 246:3 KINDS [8] - 16:4, 20:20, 26:3, 28:14, 93:22, 111:1, 154:24, 231:23 KING [1] - 54:25 KIRK [2] - 107:17, 109:3 KLAIN [1] - 30:3 KNOW.. [1] - 101:19	KNOWING [3] - 34:16, 47:13, 67:21 KNOWLEDGE [23] - 69:20, 87:16, 91:19, 91:20, 94:22, 94:23, 97:6, 97:9, 98:18, 103:25, 106:2, 108:13, 125:6, 125:8, 125:14, 129:7, 129:15, 168:16, 169:23, 171:2, 176:12, 208:15, 210:17 KNOWN [4] - 15:20, 39:8, 121:22, 211:12 KNOWS [5] - 3:19, 25:16, 25:20, 41:21, 50:20 KRAMER [1] - 168:6 KURT [2] - 2:7, 161:2 KURT [4] - 121:2, 160:10, 161:7, 208:21 L LACK [1] - 32:14 LAFAYETTE [1] - 239:13 LAID [3] - 225:9, 226:15, 233:5 LAND [4] - 128:2, 132:23, 150:10, 228:1 LANDING [1] - 150:12 LANGUAGE [3] - 249:16, 249:17, 249:20 LARGE [2] - 27:20, 157:4 LARGELY [1] - 27:25 LAST [12] - 28:11, 28:20, 30:8, 99:23, 165:2, 175:16, 224:23, 253:10, 254:17, 255:16, 256:21 LATE [1] - 44:8 LATIN [1] - 256:9 LAW [1] - 168:5 LAW [45] - 34:19, 61:1, 172:22, 183:23, 188:7, 188:23, 194:19, 215:8, 215:15, 215:16, 221:5, 221:17, 225:17, 225:18, 226:24, 228:5, 228:22, 229:7, 232:24, 233:20, 233:24,	234:8, 234:24, 235:8, 236:5, 237:13, 243:24, 244:4, 244:6, 245:11, 245:15, 246:4, 246:13, 247:8, 247:10, 247:12, 247:13, 248:5, 250:17, 251:4, 252:2, 252:5, 254:4, 254:13, 257:7 LAWFUL [1] - 212:13 LAWS [7] - 153:10, 153:22, 215:9, 215:11, 228:20, 246:5, 251:6 LAWSUIT [16] - 63:24, 109:1, 109:15, 174:9, 174:10, 174:11, 174:12, 174:16, 174:17, 175:7, 190:13, 210:8, 211:21, 212:3, 212:11 LAWSUITS [4] - 190:15, 217:4, 217:6, 218:1 LAWYER [11] - 39:10, 60:10, 86:3, 153:16, 167:10, 184:4, 184:9, 184:11, 205:12, 234:23, 249:21 LAWYERLY [1] - 56:11 LAWYERS [12] - 3:21, 4:2, 51:2, 98:6, 116:21, 117:1, 168:7, 168:17, 187:6, 202:23, 210:2, 220:4 LEAD [3] - 4:12, 174:7, 174:11 LEADER [1] - 154:19 LEADER [2] - 65:21, 66:21 LEADERS [3] - 12:16, 17:25, 18:11 LEADING [2] - 44:19, 153:14 LEANED [1] - 227:12 LEARN [4] - 98:14, 100:9, 200:18, 235:4 LEARNED [1] - 235:22 LEARNED [3] - 79:23, 109:25, 242:23 LEARNING [1] - 99:7 LEAST [19] - 66:5, 101:15, 101:16, 120:6, 129:1,	132:22, 178:7, 200:7, 201:19, 204:14, 207:1, 217:13, 222:5, 227:24, 230:19, 238:13, 239:1, 239:16, 245:5 LEAVE [11] - 3:13, 14:21, 15:5, 21:12, 26:6, 37:4, 102:6, 149:14, 156:1, 196:18, 199:25 LEAVES [1] - 227:3 LEAVING [1] - 28:7 LEE [1] - 1:21 LEEWAY [1] - 153:15 LEFT [11] - 4:25, 9:25, 31:6, 100:22, 110:13, 148:1, 199:7, 200:11, 224:25, 254:22, 255:11 LEGAL [1] - 209:22 LEGAL [12] - 35:20, 35:25, 169:13, 172:21, 174:3, 184:12, 184:13, 210:20, 232:9, 235:1, 256:4 LEGISLATE [1] - 115:10 LEGISLATION [9] - 46:17, 56:21, 62:11, 63:6, 81:11, 81:24, 110:9, 154:8 LEGISLATIVE [5] - 57:11, 153:4, 154:7, 154:13, 154:23 LEGISLATORS [6] - 23:23, 44:16, 64:6, 68:12, 68:19, 68:24 LEGISLATURE [3] - 65:22, 66:22, 67:12 LEGISLATURE [4] - 44:22, 57:8, 68:24, 148:10 LEGITIMATE [3] - 36:14, 36:19, 221:11 LENGTH [2] - 219:6, 227:7 LENGTHY [2] - 126:14, 213:12 LESS [16] - 14:11, 14:13, 16:20, 41:1, 98:4, 107:8, 107:9, 107:11, 197:15, 197:16, 210:4, 212:21, 221:21, 228:13, 242:9, 254:24
--	---	--	---	---

<p>LETTING [1] - 220:4</p> <p>LEVEL [5] - 116:6, 197:23, 230:3, 236:24, 247:23</p> <p>LEVELS [4] - 26:17, 229:25, 230:1, 236:9</p> <p>LEVEN [1] - 145:1</p> <p>LIABLE [1] - 235:15</p> <p>LIAISON [4] - 46:4, 46:5, 169:17, 169:19</p> <p>LICENSED [2] - 162:4, 162:6</p> <p>LIFE [1] - 9:18</p> <p>LIGHT [2] - 138:12, 250:4</p> <p>LIKEWISE [1] - 221:18</p> <p>LIMIT [7] - 35:11, 35:13, 35:21, 238:7, 240:22, 241:11, 241:17</p> <p>LIMITATION [1] - 238:10</p> <p>LIMITATIONS [2] - 237:18, 237:19</p> <p>LIMITED [1] - 220:1</p> <p>LIMITLESS [1] - 241:2</p> <p>LIMITS [1] - 234:13</p> <p>LINCOLN [1] - 254:23</p> <p>LINE [12] - 25:8, 30:20, 113:10, 124:15, 140:9, 148:25, 152:11, 171:5, 207:2, 225:24, 227:8</p> <p>LINES [2] - 170:18, 201:12</p> <p>LIST [2] - 147:5, 150:4</p> <p>LISTEN [3] - 58:12, 111:2, 155:15</p> <p>LISTENED [1] - 220:1</p> <p>LITIGANT [2] - 176:20, 178:4</p> <p>LITIGANTS [2] - 175:6, 179:5</p> <p>LITIGATE [4] - 168:24, 174:10, 174:11, 177:16</p> <p>LITIGATED [1] - 217:10</p> <p>LITIGATION [65] - 58:1, 63:25, 66:6, 81:1, 81:4, 99:22, 99:24, 100:2, 103:11, 105:24, 106:4, 106:5, 106:6, 106:7, 110:7, 110:10, 110:13, 110:22, 120:25, 121:17, 122:7, 148:8, 162:12,</p>	<p>163:17, 165:3, 165:4, 165:11, 165:18, 165:24, 166:11, 166:16, 166:21, 167:2, 167:4, 167:18, 167:21, 167:24, 168:21, 169:3, 169:15, 172:3, 172:4, 174:7, 174:12, 174:20, 175:5, 175:9, 176:22, 178:14, 179:4, 179:7, 179:12, 179:15, 179:18, 180:1, 180:6, 180:16, 190:8, 202:20, 210:5, 210:18, 213:17, 217:20</p> <p>LITIGIOUS [5] - 98:4, 107:8, 107:9, 107:11, 210:4</p> <p>LIVE [2] - 9:15, 52:4</p> <p>LIVES [1] - 13:5</p> <p>LOCAL [2] - 21:16, 84:3</p> <p>LOGICAL [1] - 233:17</p> <p>LOGISTIC [1] - 3:5</p> <p>LOGISTICS [2] - 33:3, 34:4</p> <p>LOOK [30] - 36:24, 51:16, 53:13, 68:15, 76:25, 89:2, 90:1, 141:13, 142:6, 143:23, 144:8, 150:1, 150:4, 152:13, 155:16, 156:21, 156:22, 164:11, 165:5, 196:25, 206:13, 220:14, 244:4, 244:5, 244:8, 246:5, 246:23, 250:1, 250:17</p> <p>LOOKED [8] - 52:22, 77:14, 122:14, 133:10, 134:7, 149:21, 211:25, 214:4</p> <p>LOOKING [15] - 24:1, 24:10, 24:21, 59:15, 81:12, 91:20, 93:1, 96:1, 130:22, 138:14, 143:23, 218:19, 235:9, 245:16, 248:3</p> <p>LOOKS [6] - 10:21, 10:23, 117:7, 142:9, 142:17, 240:2</p>	<p>LOOP [2] - 104:21, 104:23</p> <p>LOOPING [1] - 104:22</p> <p>LOSE [2] - 207:13, 211:10</p> <p>LOSING [1] - 207:18</p> <p>LOST [5] - 64:10, 192:8, 192:9, 211:11, 217:2</p> <p>LOVE [2] - 131:21, 139:10</p> <p>LOVED [1] - 234:23</p> <p>LOW [4] - 226:22, 227:4, 253:14, 254:1</p> <p>LOWER [1] - 237:4</p> <p>LOWERING [1] - 115:4</p> <p>LOWEST [1] - 226:20</p> <p>LUNCH [8] - 3:12, 116:17, 117:3, 117:6, 117:7, 117:14, 119:21, 257:15</p>	<p>MAJORITY [3] - 14:12, 46:7, 126:10</p> <p>MALICIOUS [2] - 237:14, 238:9</p> <p>MAN [1] - 49:25</p> <p>MANAGE [4] - 12:17, 61:9, 232:7, 232:19</p> <p>MANAGEMENT [4] - 59:2, 61:17, 62:4, 81:19</p> <p>MANAGER [1] - 61:12</p> <p>MANAGING [1] - 232:16</p> <p>MANDATORY [2] - 236:8, 244:7</p> <p>MANNER [3] - 77:4, 98:4, 105:21</p> <p>MANPOWER [1] - 93:5</p> <p>MARCH [3] - 9:25, 11:17, 85:25</p> <p>MARGARET [1] - 145:1</p> <p>MARGARINE [1] - 234:6</p> <p>MARIA [1] - 145:1</p> <p>MARK [14] - 5:15, 9:3, 9:15, 16:25, 17:12, 170:2, 173:25, 184:8, 184:10, 195:8, 196:14, 203:17, 208:23, 243:9</p> <p>MARK [1] - 4:18</p> <p>MARK [3] - 1:8, 2:3, 9:8</p> <p>MARKED [6] - 11:10, 42:20, 43:20, 141:9, 156:14, 206:12</p> <p>MARSHAL [1] - 252:25</p> <p>MARSHALL [1] - 234:1</p> <p>MARSHALLING [1] - 251:6</p> <p>MARSHALS [1] - 160:5</p> <p>MARSHALS [1] - 4:4</p> <p>MARTIN [1] - 234:18</p> <p>MARYLAND [2] - 233:25, 234:10</p> <p>MATCH [2] - 192:19, 198:17</p> <p>MATCHES [1] - 192:21</p> <p>MATCHING [1] - 132:13</p> <p>MATH [1] - 249:21</p> <p>MATTEO [1] - 235:21</p> <p>MATTER [18] - 3:18,</p>	<p>14:9, 38:6, 39:15, 57:1, 64:3, 118:17, 122:4, 150:6, 151:10, 151:11, 152:21, 172:1, 184:18, 184:20, 227:23, 235:9, 239:19</p> <p>MATTERS [25] - 3:5, 6:19, 27:9, 28:7, 28:9, 33:14, 82:23, 110:13, 122:7, 122:8, 122:9, 168:24, 183:8, 183:10, 183:24, 216:14, 230:25, 231:1, 231:7, 231:8, 232:1, 232:7, 232:20, 242:22, 255:23</p> <p>MATTHEW [1] - 1:20</p> <p>MC [1] - 1:16</p> <p>MCAFFEE [2] - 257:17, 257:19</p> <p>MCCULLOCH [1] - 233:25</p> <p>MCENTEE [1] - 75:8</p> <p>MCENTEE [10] - 49:20, 49:22, 50:4, 50:22, 51:7, 75:5, 75:7, 75:9, 252:18, 253:2</p> <p>MCGUIRE [1] - 4:22</p> <p>MCGUIREWOODS [1] - 183:3</p> <p>MEADOWS [1] - 161:11</p> <p>MEADOWS [3] - 1:8, 2:3, 9:8</p> <p>MEADOWS [174] - 4:6, 4:18, 4:23, 5:2, 5:15, 5:17, 5:24, 6:15, 6:18, 7:1, 7:21, 8:7, 8:11, 9:3, 9:4, 9:5, 9:15, 9:17, 10:14, 10:18, 11:14, 16:3, 17:1, 41:7, 42:2, 42:20, 43:3, 47:21, 55:12, 56:6, 56:19, 57:7, 60:14, 65:11, 68:18, 74:20, 78:3, 78:16, 83:16, 85:20, 87:16, 88:17, 89:1, 91:12, 93:24, 95:13, 95:19, 101:10, 109:21, 111:12, 113:19, 114:18, 116:12, 116:18, 116:19, 117:10, 117:14, 118:1,</p>
M				
<p>MA'AM [41] - 56:10, 56:15, 57:17, 58:15, 65:12, 68:17, 76:3, 76:6, 76:8, 76:18, 76:20, 85:23, 86:2, 86:7, 86:9, 86:12, 86:14, 87:11, 87:15, 89:5, 89:9, 89:24, 97:19, 111:22, 117:17, 117:20, 119:22, 125:18, 131:10, 135:8, 136:5, 142:11, 143:9, 143:22, 144:20, 162:20, 162:22, 162:24, 163:25, 167:3, 177:20</p> <p>MAIL [24] - 13:21, 27:3, 27:4, 27:5, 27:6, 93:25, 94:1, 94:5, 94:7, 94:9, 94:10, 95:3, 141:17, 142:9, 143:2, 143:4, 143:18, 143:20, 144:11, 146:4, 170:23, 242:14, 243:5, 245:8</p> <p>MAIL'S [1] - 242:17</p> <p>MAILBOX [1] - 200:12</p> <p>MAILS [5] - 95:5, 95:8, 145:5</p> <p>MAINTAIN [1] - 34:24</p> <p>MAJOR [1] - 217:19</p>				

123:8, 125:16, 126:23, 127:4, 135:5, 135:21, 138:22, 140:19, 141:12, 143:16, 145:10, 145:25, 146:6, 147:7, 155:23, 163:1, 163:2, 163:3, 163:5, 170:2, 173:25, 175:16, 176:6, 176:8, 179:11, 179:14, 179:17, 181:12, 181:13, 183:3, 184:8, 184:10, 184:23, 195:8, 195:14, 195:24, 196:7, 196:14, 196:15, 196:17, 198:6, 199:1, 199:2, 199:5, 199:10, 199:16, 199:24, 200:3, 200:7, 201:3, 203:10, 203:17, 208:23, 208:24, 209:16, 209:18, 209:21, 210:4, 210:18, 210:24, 213:4, 213:13, 214:8, 218:9, 218:13, 219:1, 219:3, 219:6, 219:12, 219:16, 220:3, 220:8, 220:11, 222:8, 222:13, 225:15, 226:10, 227:15, 227:20, 228:15, 231:5, 233:13, 237:7, 237:18, 237:19, 238:14, 238:18, 240:23, 240:25, 241:25, 242:4, 242:15, 242:23, 243:2, 243:9, 243:11, 245:6, 245:10, 246:6, 247:5, 248:4, 248:12, 249:3, 250:5, 250:22, 251:13, 251:19, 252:8, 253:6, 253:22, 253:25, 254:10, 254:17, 257:13, 257:20 MEADOWS' [12] - 7:24, 218:17, 219:25, 220:2, 222:4, 227:9, 229:2, 232:12, 243:7,	248:14, 248:19, 256:7 MEAN [77] - 11:1, 14:10, 14:15, 14:19, 15:11, 15:19, 18:20, 24:12, 25:16, 26:2, 27:11, 28:1, 28:17, 31:6, 31:23, 34:9, 34:14, 34:17, 36:4, 36:17, 37:14, 40:7, 41:6, 47:12, 59:21, 61:1, 63:22, 64:18, 70:19, 70:22, 70:24, 73:2, 73:14, 74:23, 87:3, 87:21, 93:14, 94:21, 95:23, 97:25, 98:23, 99:6, 99:7, 100:22, 102:16, 110:2, 111:2, 112:12, 124:17, 125:21, 129:13, 131:18, 137:10, 137:18, 137:19, 138:9, 139:14, 139:15, 139:23, 146:5, 148:3, 150:10, 154:1, 154:10, 155:8, 155:12, 170:5, 175:20, 192:7, 193:13, 194:17, 237:22, 244:13, 250:25, 252:15 MEAN.. [2] - 99:9, 141:20 MEANING [4] - 122:1, 139:22, 225:12, 245:13 MEANS [9] - 25:15, 34:10, 124:1, 206:22, 224:14, 224:15, 227:18, 243:3, 244:18 MEANT [3] - 147:21, 235:23, 243:2 MECHANISM [1] - 229:1 MEDIA [1] - 3:7 MEET [15] - 15:12, 21:16, 32:9, 44:9, 46:11, 48:21, 49:1, 56:19, 57:7, 58:10, 68:20, 183:5, 183:6, 239:4, 256:13 MEETING [88] - 12:14, 12:15, 12:16, 16:9, 16:15, 16:21, 18:5, 18:19, 18:23, 20:1, 20:2, 20:13, 20:24, 21:7, 21:13, 21:22,	33:17, 37:9, 37:11, 37:13, 37:16, 37:19, 38:1, 38:2, 38:12, 38:23, 38:25, 39:6, 44:7, 44:12, 44:14, 44:20, 44:24, 48:10, 48:12, 48:13, 49:5, 49:8, 57:11, 57:15, 58:8, 58:19, 58:22, 58:25, 59:3, 59:5, 60:24, 61:2, 61:6, 62:7, 62:16, 62:20, 64:3, 64:4, 66:12, 69:3, 69:8, 72:2, 72:8, 72:12, 72:17, 72:25, 73:8, 73:20, 73:22, 73:23, 74:1, 74:17, 78:4, 79:2, 79:15, 79:18, 79:20, 92:6, 98:11, 108:14, 126:6, 127:5, 145:19, 251:20, 251:24, 251:25, 252:1 MEETINGS [23] - 12:18, 16:3, 16:4, 16:7, 16:16, 16:17, 18:14, 19:9, 19:18, 19:24, 20:17, 20:20, 21:12, 22:2, 25:17, 25:18, 32:10, 36:5, 37:14, 44:10, 49:9, 63:7, 63:9 MEETS [2] - 7:2, 228:15 MEMBER [12] - 9:22, 40:11, 45:22, 46:2, 46:15, 47:14, 47:18, 83:12, 102:10, 122:3, 154:6, 197:9 MEMBERS [14] - 12:14, 14:1, 15:12, 16:17, 19:2, 21:13, 24:20, 56:20, 57:8, 77:5, 174:3, 175:17, 196:21, 199:18 MEMO [8] - 50:25, 51:8, 75:10, 143:25, 144:1, 144:4, 252:19, 252:21 MEMORANDUM [1] - 50:4 MEMORY [5] - 73:4, 76:2, 191:17, 222:6, 222:10 MEMOS [1] - 49:19 MENTAL [2] - 175:8, 179:6 MENTION [1] - 36:18 MENTIONED [40] -	13:6, 13:13, 14:6, 15:13, 16:2, 21:13, 23:23, 25:14, 28:17, 30:23, 32:13, 33:14, 36:18, 37:21, 44:8, 48:16, 69:13, 72:6, 81:22, 82:21, 85:8, 86:11, 93:24, 108:21, 118:6, 147:23, 148:8, 151:14, 154:2, 154:11, 154:18, 199:18, 208:21, 210:4, 216:6, 226:9, 226:10, 228:16, 233:13, 246:18 MERIT [1] - 132:14 MERITS [4] - 26:4, 36:23, 37:7, 38:21 MESS [1] - 42:13 MESSAGE [11] - 25:4, 25:18, 90:3, 90:4, 90:8, 91:17, 100:23, 170:12, 170:25, 199:1, 199:25 MESSAGES [10] - 25:16, 25:19, 25:21, 25:24, 26:19, 36:4, 90:19, 91:5, 91:7, 102:6 MET [14] - 18:8, 21:18, 37:9, 55:14, 55:15, 56:23, 56:25, 57:4, 77:4, 118:8, 163:4, 163:5, 186:18, 238:18 METED [1] - 52:8 METHOD [1] - 235:1 METING [1] - 129:1 MICHAEL [3] - 4:24, 47:5 MICHAEL [1] - 1:21 MICHIGAN [15] - 44:21, 56:20, 57:8, 57:11, 57:22, 58:2, 63:13, 63:21, 64:5, 64:6, 64:9, 64:15, 64:21, 72:8, 83:2 MID [1] - 218:4 MID-DECEMBER [1] - 218:4 MIDDLE [3] - 130:21, 137:18, 137:22 MIDWAY [1] - 145:18 MIGHT [25] - 12:21, 14:7, 15:16, 16:5, 16:6, 19:1, 20:11, 27:9, 33:23, 36:12, 58:18, 58:20, 67:22, 70:25, 78:25, 106:1,	145:2, 152:8, 158:18, 170:22, 223:4, 225:22, 225:25, 227:12, 232:15 MILITARY [2] - 15:22, 16:18 MILLER [14] - 141:17, 142:10, 142:18, 142:21, 142:22, 142:24, 143:3, 144:11, 144:17, 144:24, 145:5, 145:12 MILLER'S [1] - 143:4 MILLEY [2] - 30:7, 30:16 MILLION [2] - 20:7, 211:8 MIND [11] - 17:4, 31:18, 112:14, 117:18, 118:22, 135:4, 145:19, 152:7, 154:12 MINE [4] - 24:7, 51:4, 93:20, 186:23 MINIMIZE [1] - 230:24 MINIMUM [1] - 158:6 MINUTE [5] - 18:14, 55:19, 58:14, 116:14, 233:12 MINUTE'S [1] - 12:13 MINUTES [15] - 8:6, 8:8, 55:20, 116:15, 142:18, 144:17, 159:15, 175:18, 224:7, 224:16, 224:17, 224:21, 225:2, 254:22, 254:24 MISCELLANEOUS [1] - 157:18 MISSED [2] - 99:23, 104:9 MISSING [1] - 145:2 MISTAKE [2] - 237:12, 237:13 MITCHELL [37] - 105:13, 105:14, 105:19, 105:20, 105:22, 105:23, 106:9, 106:21, 106:22, 107:2, 107:16, 108:22, 121:11, 121:13, 121:16, 121:18, 121:21, 121:23, 122:11, 122:13, 123:15, 123:22, 124:1, 126:7,
--	---	--	---	--

<p>168:18, 168:19, 169:2, 169:5, 169:11, 169:21, 170:14, 170:15, 170:21, 170:22, 170:24, 174:1, 175:16 MITCHELL [1] - 106:18 MITCHELL'S [3] - 123:19, 168:21, 169:12 MNUCHIN [3] - 29:3, 29:4, 154:20 MODE [1] - 53:5 MODIFY [1] - 182:10 MOMENT [12] - 4:10, 28:8, 51:16, 55:4, 141:25, 155:18, 156:6, 157:10, 193:18, 197:5, 222:20, 246:9 MONDAY [1] - 1:12 MONDAY [1] - 172:18 MONEY [4] - 31:12, 31:15, 154:16, 242:6 MONITORING [1] - 216:1 MONTANA [1] - 123:16 MONTH [5] - 14:8, 170:6, 171:18, 211:24, 212:1 MONTHLY [1] - 14:16 MONTHS [3] - 11:18, 85:22, 106:24 MORAN [5] - 4:24, 156:6, 156:7, 181:17, 183:2 MORAN [17] - 1:20, 156:8, 156:13, 157:12, 158:25, 159:4, 164:23, 181:18, 182:2, 182:5, 182:14, 183:1, 183:12, 184:20, 184:21, 185:1, 185:11 MORNING [19] - 3:2, 4:20, 4:21, 4:23, 5:3, 5:6, 5:12, 9:5, 12:6, 30:15, 55:12, 55:13, 55:14, 68:5, 113:12, 118:1, 201:13, 201:19, 225:9 MOST [18] - 13:8, 18:8, 20:1, 30:17, 44:16, 44:20, 45:16, 46:15, 47:2, 50:25, 82:21, 86:7, 132:9,</p>	<p>133:9, 137:25, 228:19, 232:20, 256:17 MOSTLY [1] - 126:5 MOTION [3] - 5:25, 6:4, 246:22 MOTIVATIONS [2] - 149:10, 149:12 MOVE [17] - 11:5, 19:18, 42:15, 88:14, 95:16, 141:22, 152:16, 156:10, 164:20, 176:2, 181:8, 181:9, 181:19, 184:19, 207:4, 245:21, 256:23 MOVING [2] - 43:10, 43:12 MR [135] - 4:20, 4:22, 5:4, 5:6, 8:12, 8:16, 8:23, 9:2, 9:12, 10:7, 10:12, 10:17, 11:5, 11:12, 11:13, 18:13, 25:10, 25:13, 33:13, 41:11, 41:20, 41:23, 42:6, 42:17, 42:19, 42:24, 43:2, 43:11, 43:14, 43:17, 43:22, 43:23, 51:10, 51:13, 51:14, 55:4, 55:6, 56:2, 56:24, 59:12, 62:21, 72:18, 83:19, 114:6, 115:21, 122:24, 123:1, 135:14, 141:25, 147:9, 147:11, 147:13, 147:15, 147:18, 149:11, 149:17, 149:19, 153:18, 153:20, 155:3, 155:5, 155:18, 156:5, 156:8, 156:13, 157:8, 157:12, 158:25, 159:4, 159:11, 160:12, 160:18, 160:22, 161:21, 164:23, 181:18, 182:2, 182:5, 182:14, 183:1, 183:12, 184:20, 184:21, 185:1, 185:11, 187:14, 207:6, 209:5, 209:8, 209:10, 214:16, 215:5, 221:25, 222:3, 222:20, 222:22, 223:17,</p>	<p>223:22, 224:5, 224:24, 225:1, 225:4, 225:6, 226:7, 235:6, 236:15, 236:19, 237:21, 237:23, 237:25, 238:19, 239:6, 240:12, 240:14, 240:18, 243:19, 247:16, 251:11, 251:14, 251:17, 252:2, 252:4, 252:23, 252:25, 253:5, 253:8, 253:18, 254:4, 254:20, 255:2, 255:6, 255:9, 255:13, 257:5, 257:23 MS [130] - 10:11, 10:15, 11:8, 41:16, 41:24, 42:5, 43:18, 55:9, 55:11, 56:1, 56:4, 56:5, 57:5, 57:6, 60:3, 60:12, 60:13, 61:15, 62:3, 62:25, 63:1, 71:2, 72:22, 72:23, 75:24, 75:25, 78:22, 83:21, 83:22, 85:1, 85:2, 87:6, 88:14, 88:16, 92:18, 95:10, 95:17, 95:18, 96:4, 114:3, 114:9, 114:14, 114:17, 115:11, 115:13, 115:16, 115:23, 116:1, 116:11, 116:14, 117:9, 117:13, 117:19, 117:21, 123:6, 123:7, 126:21, 126:22, 127:2, 127:3, 131:23, 135:19, 135:20, 141:7, 141:9, 141:11, 141:22, 142:4, 142:5, 143:11, 143:14, 143:15, 147:6, 147:14, 149:8, 149:16, 153:13, 155:22, 156:19, 156:25, 158:8, 159:8, 159:14, 159:19, 160:9, 161:23, 161:25, 164:7, 164:9, 164:20, 165:1, 178:22, 178:25, 181:9, 181:10, 181:14,</p>	<p>181:21, 183:9, 185:4, 185:10, 185:16, 185:23, 186:13, 187:12, 187:17, 187:18, 204:1, 205:23, 206:8, 206:10, 207:4, 207:8, 207:9, 209:1, 209:7, 209:13, 210:13, 210:16, 211:2, 211:4, 213:9, 213:11, 214:12, 214:22, 222:24, 223:1, 223:15, 223:20, 224:2, 258:3 MULTIPLE [8] - 14:11, 14:14, 56:25, 208:1, 217:3, 243:1, 245:25 MUNDANE [1] - 32:10 MUST [2] - 235:24, 235:25 MYAPOLOGIES [1] - 83:20 MYOPIC [3] - 87:3, 87:8, 87:9 MYOPICALLY [1] - 29:13</p>	<p>NECESSARILY [3] - 67:22, 136:23, 138:12 NECESSARY [11] - 62:7, 68:7, 110:19, 111:21, 118:14, 232:19, 235:16, 249:6, 250:7, 250:8, 252:6 NECESSITY [2] - 232:5, 248:16 NEED [35] - 3:25, 4:9, 6:6, 17:14, 19:5, 25:11, 27:1, 33:19, 44:23, 55:20, 55:21, 55:23, 91:11, 95:16, 117:23, 122:5, 145:20, 145:22, 146:1, 152:16, 156:22, 160:6, 160:15, 161:13, 170:19, 179:17, 202:21, 203:18, 210:19, 214:8, 225:7, 230:21, 243:8 NEEDED [16] - 34:5, 79:6, 79:12, 122:17, 132:4, 134:1, 134:7, 134:21, 169:17, 169:24, 170:12, 180:10, 202:17, 225:6, 231:14 NEEDING [1] - 33:15 NEEDS [2] - 232:2, 257:20 NEFARIOUS [1] - 65:8 NEGATE [1] - 252:15 NEGATIVELY [1] - 27:25 NEGLIGENCE [1] - 237:20 NEGOTIATING [2] - 15:15, 154:14 NEGOTIATION [1] - 179:1 NEGOTIATIONS [6] - 177:13, 177:24, 177:25, 178:11, 178:20, 179:18 NEIL [2] - 201:15 NEVER [19] - 15:24, 31:25, 121:25, 145:19, 167:20, 178:6, 178:10, 196:21, 197:22, 198:11, 200:13, 208:19, 236:23, 241:3, 243:2, 244:16, 255:25, 256:1</p>
N				
<p>NAME [16] - 9:13, 69:24, 143:4, 143:7, 153:25, 161:6, 161:7, 163:21, 183:2, 186:16, 186:18, 187:13, 208:22, 219:10, 240:10, 240:14 NAMED [1] - 198:14 NAMES [2] - 126:9, 168:15 NARROW [1] - 83:24 NATHAN [1] - 5:9 NATHAN [1] - 1:17 NATIONAL [9] - 16:18, 28:19, 30:1, 30:9, 30:23, 33:25, 55:3, 145:3, 234:2 NATIONAL [4] - 24:4, 24:6, 29:2, 30:24 NATIONALLY [1] - 208:4 NATURAL [1] - 157:17 NATURE [7] - 33:24, 33:25, 46:3, 153:14, 172:20, 229:23 NCCONGRESSMAN @GMAIL.COM [1] - 196:13 NEAR [1] - 212:24</p>				

<p>NEW [5] - 21:21, 21:22, 31:13, 69:16, 118:6</p> <p>NEW [3] - 79:24, 87:8, 152:1</p> <p>NEWER [1] - 46:15</p> <p>NEWS [1] - 201:15</p> <p>NEWSPAPER [1] - 222:17</p> <p>NEWSPAPERS [1] - 233:14</p> <p>NEXT [11] - 16:24, 53:22, 89:25, 115:15, 123:5, 144:16, 156:4, 172:18, 185:15, 248:17, 252:18</p> <p>NEXUS [5] - 59:20, 59:21, 65:5, 115:5, 115:6</p> <p>NEY [1] - 1:15</p> <p>NICE [2] - 3:3, 183:6</p> <p>NICELY [1] - 241:20</p> <p>NIGHT [3] - 137:18, 137:23, 218:23</p> <p>NINTH [6] - 234:19, 234:20, 235:13, 236:3, 236:17, 236:25</p> <p>NO [1] - 1:5</p> <p>NOBODY [1] - 18:7</p> <p>NON [4] - 212:15, 247:24, 248:1, 249:24</p> <p>NON-EXECUTIVE [2] - 247:24, 248:1</p> <p>NON-REGISTERS [1] - 212:15</p> <p>NONE [9] - 164:23, 173:11, 173:12, 188:22, 195:7, 198:12, 206:1, 212:23, 247:21</p> <p>NOON [1] - 11:18</p> <p>NORMAL [4] - 30:9, 58:10, 207:12</p> <p>NORMALLY [4] - 12:5, 13:4, 111:4, 147:24</p> <p>NORTH [6] - 9:23, 17:10, 17:11, 47:14, 47:16, 146:19</p> <p>NORTHERN [4] - 6:2, 6:17, 33:9, 213:24</p> <p>NORTHERN [2] - 1:1, 259:4</p> <p>NOTARIZATION [1] - 157:6</p> <p>NOTE [3] - 158:4, 159:5, 215:3</p> <p>NOTED [1] - 228:9</p>	<p>NOTES [1] - 222:1</p> <p>NOTHING [12] - 61:11, 185:4, 199:23, 213:23, 214:5, 222:22, 223:17, 227:14, 238:15, 242:7, 247:4</p> <p>NOTICE [1] - 12:13</p> <p>NOTICED [1] - 220:20</p> <p>NOTIFIED [2] - 3:22, 175:25</p> <p>NOVEL [1] - 246:3</p> <p>NOVEMBER [29] - 28:5, 32:8, 36:8, 56:19, 57:7, 57:12, 57:15, 63:18, 65:18, 67:14, 67:17, 68:18, 165:16, 165:22, 166:14, 190:2, 191:3, 191:15, 191:21, 192:25, 196:3, 196:8, 196:9, 197:18, 198:10, 199:1, 199:19, 216:8</p> <p>NUANCES [1] - 24:3</p> <p>NUMBER [24] - 141:10, 141:13, 141:14, 141:23, 142:7, 144:5, 144:9, 145:8, 164:10, 164:14, 164:16, 164:21, 206:12, 206:19, 206:25, 207:5, 209:2, 209:12, 209:14, 210:13, 210:15, 211:2, 211:3, 213:10</p> <p>NUMBER [51] - 15:6, 15:14, 22:19, 23:24, 24:11, 26:16, 29:17, 30:23, 31:7, 31:14, 32:11, 32:17, 35:7, 35:16, 36:6, 38:8, 47:9, 52:18, 65:20, 66:15, 79:6, 89:21, 90:11, 100:13, 111:3, 122:17, 126:5, 127:24, 129:5, 129:20, 133:7, 134:18, 136:22, 150:8, 150:17, 151:2, 171:6, 194:13, 196:18, 197:19, 197:24, 199:7, 200:2, 212:10, 212:21, 215:11, 217:7, 218:1, 226:16</p> <p>NUMBERS [7] - 46:25, 47:10, 47:19, 66:17,</p>	<p>68:11, 68:13, 222:12</p> <p>NUMEROUS [2] - 158:5, 215:18</p> <p>O</p> <p>O'CLOCK [2] - 12:24, 117:2</p> <p>OATH [5] - 5:20, 5:23, 9:6, 117:11, 186:5</p> <p>OBAMA [3] - 45:24, 46:10, 46:13</p> <p>OBJECT [10] - 41:16, 42:1, 56:24, 62:21, 114:6, 115:13, 149:8, 153:13, 157:7, 183:9</p> <p>OBJECTING [2] - 156:23, 156:24</p> <p>OBJECTION [25] - 11:6, 11:8, 11:9, 41:18, 43:18, 43:19, 72:18, 114:12, 115:21, 115:25, 135:14, 142:2, 149:7, 156:20, 156:25, 158:22, 159:1, 159:5, 160:20, 164:25, 183:11, 207:6, 207:7, 209:9, 209:10</p> <p>OBJECTIONS [11] - 11:7, 141:24, 158:14, 161:19, 164:22, 209:4, 215:1, 215:2, 215:3, 218:10</p> <p>OBJECTIVELY [4] - 249:2, 249:5, 250:5, 250:6</p> <p>OBJECTIVES [2] - 116:4, 116:5</p> <p>OBLIGATION [2] - 153:6, 158:20</p> <p>OBSERVATION [1] - 218:17</p> <p>OBSERVATIONS [3] - 53:9, 82:7, 225:8</p> <p>OBSERVE [10] - 52:15, 53:5, 77:7, 77:16, 79:22, 80:10, 85:3, 127:12, 218:19, 231:16</p> <p>OBSERVED [4] - 52:13, 52:16, 96:17, 98:11</p> <p>OBSERVER [6] - 16:10, 18:17, 18:21, 18:25, 19:18, 20:2</p> <p>OBSERVERS [1] - 218:24</p>	<p>OBSERVING [2] - 76:16, 81:7</p> <p>OBSTACLES [1] - 152:3</p> <p>OBTAINING [1] - 66:12</p> <p>OBVIOUSLY [11] - 15:23, 18:7, 22:8, 27:7, 74:6, 126:4, 155:12, 160:13, 191:11, 233:10, 239:14</p> <p>OCCASION [2] - 47:10, 235:25</p> <p>OCCASIONALLY [1] - 218:22</p> <p>OCCUPATION [1] - 162:2</p> <p>OCCUPIED [1] - 28:8</p> <p>OCCUPYING [1] - 86:17</p> <p>OCCUR [1] - 218:5</p> <p>OCCURRED [4] - 37:20, 126:6, 188:16, 205:20</p> <p>OCCURRING [2] - 44:15, 202:5</p> <p>OCCURS [1] - 221:5</p> <p>OF [6] - 1:1, 1:4, 1:10, 1:14, 1:18, 259:4</p> <p>OFFENSE [2] - 5:23, 20:5</p> <p>OFFER [6] - 39:4, 91:22, 91:25, 93:7, 157:25, 250:12</p> <p>OFFERED [1] - 241:15</p> <p>OFFERING [1] - 246:1</p> <p>OFFHAND [1] - 170:5</p> <p>OFFICE [65] - 5:23, 6:23, 12:5, 14:12, 19:13, 22:10, 24:6, 41:12, 42:12, 48:14, 48:18, 48:22, 51:3, 53:6, 54:3, 80:15, 82:14, 82:22, 82:25, 91:22, 93:11, 96:15, 97:7, 98:3, 98:12, 107:14, 124:17, 127:14, 130:4, 130:22, 134:9, 146:8, 149:5, 162:23, 169:17, 172:15, 179:22, 180:15, 180:20, 181:1, 188:13, 194:21, 195:1, 196:19, 200:11, 201:2, 203:1, 204:9, 215:12, 216:24, 217:3, 218:23,</p>	<p>220:24, 221:1, 221:11, 230:18, 232:17, 237:9, 241:14, 244:20, 245:14, 250:12, 253:14</p> <p>OFFICE [28] - 13:15, 13:16, 14:4, 19:11, 37:10, 37:23, 44:10, 45:13, 45:18, 48:17, 49:21, 56:21, 57:9, 72:13, 124:21, 125:4, 136:20, 137:7, 137:10, 137:22, 152:25, 169:18, 171:15, 183:19, 208:20, 209:22, 230:8, 231:24</p> <p>OFFICER [2] - 159:25, 224:10</p> <p>OFFICER [1] - 226:25</p> <p>OFFICER [16] - 5:20, 5:22, 6:20, 6:21, 7:2, 10:5, 225:22, 225:23, 226:11, 226:14, 234:5, 235:24, 251:13, 251:16, 254:8, 254:9</p> <p>OFFICER'S [2] - 228:8, 228:23</p> <p>OFFICERS [4] - 46:1, 194:11, 196:23, 249:18</p> <p>OFFICES [2] - 45:12, 158:12</p> <p>OFFICIAL [3] - 1:23, 259:12, 259:16</p> <p>OFFICIAL [28] - 13:10, 14:3, 23:21, 27:18, 32:19, 33:4, 33:7, 35:22, 39:17, 39:22, 44:13, 46:6, 58:7, 59:1, 66:11, 93:25, 129:14, 129:17, 139:2, 188:3, 235:14, 236:24, 238:23, 238:24, 242:5, 244:11, 244:25, 250:12</p> <p>OFFICIALS [25] - 12:15, 21:14, 21:16, 21:19, 21:21, 21:23, 21:24, 23:13, 23:18, 24:2, 24:10, 54:25, 84:3, 113:14, 113:15, 118:3, 118:8, 118:15, 118:17, 119:13, 247:24, 248:1,</p>
---	--	--	--	--

<p>250:25 OFTEN [7] - 14:6, 15:11, 20:1, 49:19, 62:10, 147:24, 232:9 OFTENTIMES [12] - 12:12, 16:21, 18:25, 20:19, 21:18, 23:5, 32:4, 32:9, 37:1, 51:3, 68:12, 94:6 OHIO [2] - 234:3, 234:4 OLD [1] - 40:10 OLEO [2] - 234:3, 234:6 OLEO [1] - 234:7 ON [2] - 1:14, 1:18 ONCE [12] - 4:11, 12:11, 99:19, 151:21, 161:16, 191:12, 200:7, 204:15, 205:5, 205:20, 250:22, 252:25 ONE [3] - 5:16, 5:17, 33:11 ONE [131] - 4:3, 5:12, 5:15, 6:20, 7:8, 14:25, 15:3, 17:4, 17:9, 17:23, 18:3, 18:4, 20:2, 20:10, 22:10, 24:3, 24:16, 26:15, 27:23, 28:18, 29:7, 29:20, 31:18, 33:8, 33:20, 34:20, 35:8, 36:5, 37:1, 40:16, 41:6, 44:11, 45:12, 49:25, 50:17, 50:21, 51:2, 54:6, 57:2, 57:3, 58:23, 60:22, 61:25, 65:1, 69:21, 72:10, 80:24, 83:6, 86:18, 86:19, 88:9, 89:18, 90:15, 95:15, 96:23, 102:8, 112:3, 114:11, 115:9, 118:6, 118:10, 118:19, 118:20, 125:7, 133:8, 139:7, 141:25, 142:14, 144:16, 148:11, 152:20, 153:9, 154:15, 155:6, 155:15, 155:18, 156:24, 159:20, 159:22, 160:19, 161:9, 165:25, 168:23, 174:20, 177:21, 178:2, 181:25, 186:24,</p>	<p>187:5, 190:16, 192:18, 194:4, 194:11, 196:18, 197:8, 197:9, 199:18, 200:5, 217:13, 222:20, 222:24, 224:22, 226:20, 227:24, 229:13, 229:16, 231:8, 231:15, 233:6, 234:23, 235:7, 236:21, 237:17, 239:8, 239:9, 239:15, 240:21, 241:19, 241:22, 246:18, 251:22, 252:5, 252:8, 253:4, 254:25, 256:21 ONE-ON-ONE [2] - 20:2, 36:5 ONES [2] - 24:16, 197:15 ONGOING [22] - 58:2, 64:1, 66:6, 77:7, 77:17, 79:14, 80:11, 81:1, 81:8, 100:2, 127:18, 127:22, 128:25, 129:1, 131:3, 166:11, 176:22, 179:18, 193:9, 195:10, 196:22, 202:20 OPEN [1] - 3:1 OPEN [12] - 97:1, 130:4, 130:8, 135:4, 150:23, 151:7, 151:15, 152:5, 209:12, 210:15, 211:3, 213:10 OPENING [6] - 8:5, 8:6, 132:16, 132:20, 132:21, 149:22 OPERATION [2] - 52:16, 238:15 OPERATIONS [10] - 13:11, 16:18, 59:21, 61:7, 239:5, 239:7, 239:8, 239:17, 240:25, 250:21 OPERATOR [2] - 36:12, 37:5 OPINE [2] - 74:17, 84:24 OPINING [1] - 37:6 OPINION [14] - 52:17, 79:5, 79:8, 79:11, 79:13, 80:20, 114:8, 134:14, 134:21, 137:3, 138:19,</p>	<p>169:17, 178:7, 178:10 OPINIONS [1] - 169:13 OPPONENTS [1] - 42:21 OPPORTUNITY [3] - 133:1, 213:5, 240:18 OPPOSING [4] - 158:16, 240:19, 240:24, 248:18 OPPOSITE [3] - 13:22, 149:3, 243:22 OPPOSITION [1] - 158:5 OPTION [1] - 62:9 ORDER [12] - 6:8, 29:16, 91:15, 134:22, 150:9, 150:10, 182:22, 191:23, 241:13, 249:15, 251:4, 257:18 ORDERED [4] - 191:8, 191:11, 191:14, 191:16 ORDERING [1] - 253:2 ORDERLY [1] - 3:15 ORDERS [9] - 16:20, 27:12, 29:14, 62:13, 81:11, 81:24, 150:17, 257:13 ORGANIZATION [2] - 242:13, 242:19 ORIENT [3] - 130:17, 130:18, 198:23 ORIGIN [1] - 249:14 ORIGINAL [1] - 10:25 ORIGINALLY [2] - 29:9, 168:23 OTHER.. [1] - 40:22 OTHERS [1] - 145:2 OTHERWISE [3] - 20:17, 53:3, 55:14 OUGHT [1] - 26:16 OUT-OF-STATE [1] - 212:17 OUTCOME [9] - 63:13, 88:19, 88:22, 152:8, 212:25, 221:9, 230:16, 230:18, 230:20 OUTCOMES [1] - 88:24 OUTER [5] - 21:2, 21:3, 21:6, 37:23, 47:6 OUTER [3] - 226:22, 235:16, 244:10 OUTREACH [12] -</p>	<p>54:3, 118:17, 119:13, 122:19, 196:2, 197:3, 199:3, 199:22, 201:4, 202:5, 207:11, 207:14 OUTREACHES [1] - 199:11 OUTS [2] - 58:11, 58:17 OUTSIDE [30] - 15:9, 19:11, 19:13, 21:3, 21:15, 21:16, 35:24, 36:1, 60:22, 64:20, 74:13, 81:19, 106:1, 111:14, 111:18, 111:24, 112:10, 112:18, 112:21, 112:24, 113:2, 113:20, 114:20, 177:2, 178:17, 180:2, 180:6, 181:11, 196:24, 239:14 OUTSTANDING [8] - 77:24, 129:3, 129:6, 129:9, 129:10, 129:13, 130:13, 193:8 OVAL [18] - 19:11, 21:2, 21:3, 21:6, 37:10, 37:23, 37:24, 44:10, 44:18, 47:6, 48:16, 56:21, 57:9, 72:13, 208:20, 230:8 OVAL [1] - 12:12 OVERALL [1] - 231:25 OVERARCHING [2] - 233:5, 233:6 OVERCOME [1] - 228:21 OVERFLOW [1] - 240:11 OVERRULE [3] - 115:25, 215:1, 215:2 OVERRULED [1] - 62:24 OVERSAW [1] - 168:22 OVERSEE [1] - 13:11 OVERSEEING [1] - 64:15 OVERT [2] - 252:6, 252:8 OVERTIME [1] - 92:12 OVERTURN [1] - 248:15 OVERTURNING [1] - 197:23 OVERUSES [1] -</p>	<p>227:21 OVERVIEW [1] - 22:3 OWN [9] - 24:21, 32:1, 139:11, 152:21, 153:14, 162:13, 162:15, 232:5</p>
P				
<p>P.M [8] - 117:3, 142:13, 142:15, 144:17, 145:9, 160:2, 224:12 P.M [1] - 258:4 PA [1] - 65:21 PACE [1] - 256:23 PACKAGE [3] - 28:21, 154:13, 154:14 PACKAGES [1] - 23:14 PAGE [1] - 2:2 PAGE [30] - 43:3, 43:9, 46:18, 47:20, 49:10, 51:15, 53:13, 53:22, 54:14, 54:16, 56:17, 65:13, 68:15, 75:1, 76:5, 76:6, 89:1, 89:25, 90:1, 97:11, 97:12, 142:6, 143:11, 143:16, 144:8, 144:9, 145:18, 236:16 PAGES [2] - 142:8, 259:6 PAID [1] - 31:25 PAK [2] - 213:24, 216:6 PALE [1] - 229:21 PANDEMIC [3] - 86:13, 118:24, 125:20 PANEL [1] - 218:19 PAPER [1] - 76:25 PAPERS [1] - 229:8 PARAMETERS [2] - 228:22, 229:16 PARAMOUNT [1] - 28:13 PARDON [8] - 23:19, 43:11, 69:21, 107:10, 123:9, 220:25, 221:25, 249:16 PARDONS [1] - 29:14 PARK [1] - 239:13 PART [74] - 7:4, 9:24, 12:21, 16:10, 18:24, 19:17, 20:15, 21:25, 33:18, 34:12, 35:22, 37:24, 38:24, 45:17,</p>				

<p>45:18, 45:24, 50:22, 58:10, 59:1, 61:12, 62:15, 63:6, 69:9, 72:4, 72:6, 74:5, 74:16, 74:18, 77:16, 82:5, 83:11, 91:14, 99:23, 110:10, 110:23, 111:9, 113:15, 113:16, 115:9, 116:6, 119:13, 130:21, 138:6, 138:14, 139:15, 142:23, 154:4, 154:11, 154:13, 154:14, 154:20, 157:4, 166:5, 175:5, 179:4, 179:9, 181:4, 181:5, 184:12, 184:13, 190:5, 192:19, 198:15, 218:23, 226:12, 227:3, 231:24, 232:15, 232:16, 234:12, 237:12, 239:13</p> <p>PARTICIPANT^[3] - 18:16, 18:21, 44:19</p> <p>PARTICIPATE^[11] - 72:16, 73:21, 110:20, 125:2, 125:5, 139:19, 139:21, 203:14, 241:25, 250:10, 253:2</p> <p>PARTICIPATED^[4] - 56:12, 69:8, 73:19, 184:3</p> <p>PARTICIPATING^[4] - 139:23, 151:1, 168:8, 184:23</p> <p>PARTICIPATION^[8] - 60:24, 62:20, 73:25, 99:22, 125:12, 176:16, 177:3, 248:15</p> <p>PARTICULAR^[50] - 7:15, 14:25, 16:15, 19:1, 19:2, 20:13, 23:7, 23:8, 26:14, 31:11, 38:9, 39:17, 44:7, 47:7, 47:13, 47:14, 48:8, 48:10, 48:20, 48:24, 50:2, 52:1, 53:8, 58:23, 63:8, 63:25, 66:24, 67:14, 67:20, 72:10, 78:12, 79:5, 80:6, 80:21, 85:10, 90:15, 91:25, 92:10, 92:13, 92:15, 96:20,</p>	<p>119:16, 132:24, 132:25, 134:2, 144:3, 166:18, 236:22, 241:20</p> <p>PARTICULARLY^[8] - 25:24, 39:12, 44:10, 44:15, 107:6, 216:22, 232:10, 255:23</p> <p>PARTIES^[3] - 21:15, 165:17, 220:14</p> <p>PARTISAN^[2] - 244:20, 244:21</p> <p>PARTS^[5] - 45:20, 46:7, 226:9, 228:15, 230:7</p> <p>PARTY^[4] - 8:5, 166:8, 178:10, 244:20</p> <p>PARTY^[1] - 167:12</p> <p>PAST^[2] - 245:21, 248:18</p> <p>PAT^[1] - 51:1</p> <p>PATH^[1] - 210:4</p> <p>PATRICK^[1] - 168:4</p> <p>PATROL^[1] - 73:16</p> <p>PAUL^[1] - 259:16</p> <p>PAY^[3] - 92:11, 93:22, 250:18</p> <p>PAYING^[2] - 93:16, 95:21</p> <p>PEACEFUL^[5] - 29:22, 96:24, 128:6, 228:4, 232:17</p> <p>PEBBLE^[3] - 24:24, 25:1, 40:5</p> <p>PEBBLES^[1] - 24:24</p> <p>PELOSI^[1] - 154:19</p> <p>PENALTY^[1] - 157:14</p> <p>PENDING^[5] - 57:22, 103:11, 178:1, 205:24, 217:1</p> <p>PENNSYLVANIA^[10] - 47:18, 48:13, 65:20, 65:21, 66:8, 66:22, 67:12, 68:19, 68:24, 251:21</p> <p>PENNY^[1] - 117:4</p> <p>PENNY^[1] - 259:15</p> <p>PEOPLE^[70] - 13:17, 13:19, 13:24, 13:25, 16:22, 17:16, 17:19, 19:20, 22:17, 23:13, 24:15, 26:16, 26:24, 27:24, 28:1, 29:8, 31:15, 31:21, 34:15, 34:17, 35:7, 35:24, 36:1, 36:2, 46:11, 48:19, 48:22, 49:23, 52:14, 70:4, 72:9,</p>	<p>88:8, 93:19, 109:19, 111:5, 121:5, 124:18, 131:21, 140:3, 147:25, 158:17, 167:7, 188:7, 193:11, 193:16, 194:13, 198:1, 208:5, 208:7, 208:19, 212:9, 214:5, 217:25, 222:5, 229:24, 231:19, 232:21, 234:7, 234:25, 236:14, 237:6, 237:8, 238:4, 238:5, 240:10, 240:17, 250:24, 251:21</p> <p>PEOPLE'S^[1] - 13:5</p> <p>PER^[5] - 188:15, 216:19, 237:20, 237:22, 238:1</p> <p>PERCENT^[5] - 26:24, 27:17, 31:5, 192:22, 204:17</p> <p>PERFORM^[1] - 111:10</p> <p>PERFORMANCE^[1] - 226:13</p> <p>PERHAPS^[10] - 14:10, 83:16, 126:19, 126:25, 136:25, 158:16, 197:7, 198:8, 236:20, 240:21</p> <p>PERIMETER^[2] - 226:22, 235:16</p> <p>PERIOD^[22] - 25:24, 28:4, 31:19, 34:24, 35:12, 36:7, 37:10, 85:20, 86:5, 92:7, 101:18, 101:24, 139:20, 142:18, 143:8, 162:17, 163:11, 165:22, 171:17, 173:22, 173:24, 199:25</p> <p>PERIODS^[1] - 9:21</p> <p>PERJURY^[1] - 157:14</p> <p>PERMISSION^[4] - 55:19, 143:12, 209:1, 209:3</p> <p>PERMIT^[1] - 256:8</p> <p>PERMITS^[1] - 158:10</p> <p>PERMITTED^[2] - 137:1, 140:4</p> <p>PERRY^[2] - 47:17, 65:19</p> <p>PERSON^[17] - 4:4, 6:20, 23:2, 25:17, 47:7, 52:13, 58:24,</p>	<p>93:3, 163:5, 171:8, 171:15, 172:24, 194:21, 196:7, 239:8, 239:9, 254:16</p> <p>PERSONAL^[23] - 27:5, 63:13, 64:8, 64:11, 64:13, 70:2, 71:18, 76:10, 79:7, 79:11, 88:18, 93:25, 94:6, 111:2, 121:24, 139:25, 146:6, 169:23, 170:11, 171:6, 201:1, 208:1, 235:2</p> <p>PERSONALLY^[28] - 22:21, 23:4, 55:2, 71:14, 88:21, 94:9, 100:1, 102:7, 102:8, 109:15, 130:24, 135:2, 155:10, 155:11, 167:5, 176:18, 177:19, 179:10, 190:23, 195:20, 195:23, 199:14, 200:3, 200:7, 204:8, 207:20, 207:24, 235:15</p> <p>PERSONNEL^[6] - 49:22, 50:2, 50:23, 50:24, 136:17, 140:4</p> <p>PERSONS^[1] - 165:23</p> <p>PERSPECTIVE^[5] - 129:3, 129:10, 129:12, 180:10, 211:25</p> <p>PETITIONER^[1] - 236:4</p> <p>PETITIONERS^[1] - 164:17</p> <p>PHASE^[1] - 121:17</p> <p>PHONE^[73] - 12:25, 13:1, 24:11, 24:13, 26:20, 30:12, 36:4, 46:25, 47:9, 54:24, 57:19, 66:14, 68:11, 68:13, 89:21, 90:11, 90:22, 91:4, 99:6, 99:12, 99:17, 99:18, 100:5, 100:15, 102:9, 102:21, 106:18, 106:23, 107:7, 108:15, 109:23, 110:16, 120:19, 120:21, 120:23, 123:19, 123:20, 124:9, 124:11, 124:14, 125:2, 125:5,</p>	<p>125:12, 125:15, 126:10, 128:13, 132:15, 132:16, 133:3, 134:14, 163:6, 171:4, 171:6, 171:24, 172:11, 173:16, 174:2, 176:10, 178:17, 180:8, 180:12, 180:17, 181:11, 196:18, 202:24, 206:15, 208:16, 208:24, 242:1, 243:5, 243:7, 245:5</p> <p>PHONETIC^[1] - 132:17</p> <p>PHOTOCOPY^[1] - 10:21</p> <p>PHRASE^[3] - 71:3, 153:10, 183:9</p> <p>PHRASED^[1] - 41:17</p> <p>PHRASING^[2] - 91:24, 149:8</p> <p>PHYSICALLY^[1] - 195:9</p> <p>PHYSICIAN^[1] - 111:3</p> <p>PICK^[3] - 8:20, 23:7, 171:4</p> <p>PICKED^[1] - 200:13</p> <p>PICKING^[2] - 8:17, 69:5</p> <p>PICTURE^[1] - 24:25</p> <p>PIECES^[1] - 66:6</p> <p>PLACE^[18] - 22:20, 29:24, 33:7, 53:1, 74:11, 74:14, 108:10, 109:18, 150:19, 154:22, 175:20, 191:1, 191:20, 204:12, 231:4, 238:10, 243:6, 244:10</p> <p>PLACED^[5] - 97:23, 108:22, 109:21, 153:6, 242:9</p> <p>PLACES^[1] - 230:12</p> <p>PLAINTIFF^[2] - 1:5, 1:14</p> <p>PLANE^[5] - 128:2, 132:23, 150:10, 150:12, 228:2</p> <p>PLANNING^[1] - 21:8</p> <p>PLANS^[1] - 152:1</p> <p>PLASTERED^[1] - 24:12</p> <p>PLATE^[3] - 19:6, 139:7, 231:15</p> <p>PLAUSIBLE^[1] - 6:25</p> <p>PLAY^[9] - 20:5, 188:20, 209:3,</p>
--	--	---	--	---

<p>210:13, 210:19, 211:2, 213:9, 216:18, 248:12 PLAYED [1] - 242:15 PLAYING [1] - 209:5 PLED [1] - 256:17 PLEGGED [2] - 165:15, 166:5 PLUG [1] - 36:12 PODIUM [2] - 8:24, 9:1 POINT [47] - 23:8, 24:5, 24:14, 29:25, 38:9, 41:2, 48:20, 48:24, 50:2, 63:11, 63:17, 66:24, 78:12, 79:5, 79:11, 80:6, 81:5, 94:10, 128:18, 128:21, 131:18, 133:1, 134:2, 140:24, 161:12, 177:16, 181:7, 181:8, 188:18, 193:12, 204:11, 204:21, 213:24, 226:19, 227:5, 230:4, 230:17, 231:15, 233:12, 240:16, 248:4, 248:5, 251:23, 252:20, 257:3, 257:4 POINTED [1] - 246:22 POINTS [4] - 201:17, 231:7, 247:17, 256:4 POLICE [1] - 69:16 POLICIES [6] - 18:10, 27:11, 34:21, 59:16, 61:11, 238:2 POLICING [1] - 196:21 POLICY [16] - 16:19, 26:14, 33:24, 34:6, 34:11, 49:22, 50:3, 59:4, 59:7, 59:8, 60:22, 60:23, 62:6, 81:6, 154:7 POLITE [1] - 67:8 POLITICAL [41] - 7:24, 27:9, 27:13, 28:2, 28:22, 31:2, 33:14, 33:24, 34:11, 34:13, 40:25, 45:8, 45:10, 45:14, 46:1, 46:3, 113:18, 149:6, 229:9, 229:14, 231:8, 231:25, 243:21, 244:13, 244:15, 244:17, 244:18, 244:20, 244:21, 245:13, 245:14, 245:18, 246:15, 246:21,</p>	<p>246:24, 247:7, 250:11, 253:20, 254:15 POLITICALLY [2] - 27:22, 33:19 POLITICS [2] - 34:7, 34:21 POLLS [1] - 238:5 POMPEO [3] - 10:24, 30:7, 30:16 POOL [1] - 25:3 POP [1] - 20:22 PORK [1] - 17:13 PORTION [7] - 72:1, 72:16, 72:25, 77:7, 79:22, 127:12, 207:1 POSED [1] - 92:23 POSITION [19] - 9:24, 9:25, 10:1, 10:2, 10:4, 15:17, 19:1, 38:18, 41:13, 146:21, 177:8, 177:9, 181:21, 188:18, 214:25, 229:23, 239:2, 254:16, 255:23 POSITIONS [2] - 9:18, 9:20 POSITIVE [3] - 28:23, 48:19, 49:3 POSITIVELY [2] - 27:25 POSSESSION [1] - 91:5 POSSIBLE [8] - 3:16, 4:1, 4:2, 72:16, 72:19, 243:4, 257:7, 258:1 POSSIBLY [3] - 238:3, 253:21, 254:14 POST [3] - 194:11, 194:17, 196:23 POST [19] - 25:24, 26:10, 34:24, 35:12, 37:10, 37:15, 85:21, 86:5, 121:17, 139:20, 165:22, 216:8, 216:14, 216:20, 216:25, 230:25, 231:1, 231:8, 231:10 POST-2020 [1] - 121:18 POST-ELECTION [16] - 25:24, 34:24, 35:12, 37:10, 37:15, 85:21, 121:17, 139:20, 165:22, 216:8, 216:14, 216:20, 216:25,</p>	<p>230:25, 231:1, 231:8 POSTAL [1] - 234:10 POSTURE [1] - 158:19 POTENTIAL [16] - 36:2, 44:21, 62:13, 64:4, 81:11, 81:23, 81:24, 86:16, 99:1, 136:7, 137:13, 154:8, 182:17, 194:4, 212:12 POTENTIALLY [9] - 62:18, 64:9, 95:21, 112:1, 119:13, 152:8, 170:22, 197:19, 223:3 POTUS [1] - 65:22 POULTRY [1] - 17:20 POWER [11] - 29:22, 85:6, 96:25, 128:6, 150:13, 151:19, 228:4, 233:8, 234:12, 235:24, 236:1 POWERS [4] - 194:18, 194:22, 250:20, 250:21 PRACTICAL [1] - 87:10 PRACTICALLY [1] - 257:1 PRACTICE [2] - 162:9, 162:21 PRACTICING [1] - 168:4 PRE [2] - 26:10, 176:7 PRE- RAFFENSPERGER [1] - 176:7 PRECEDED [1] - 201:11 PRECEDENT [1] - 257:11 PRECISE [1] - 101:20 PRECISELY [1] - 245:5 PREDATED [1] - 169:3 PREGNANCY [1] - 29:11 PRELIMINARY [4] - 157:19, 182:2, 182:5, 182:8 PREPAID [1] - 14:25 PREPARATION [2] - 131:9, 184:22 PREPARED [2] - 11:24, 12:1 PREPARING [3] - 172:16, 172:19, 189:3</p>	<p>PRESCRIPTION [2] - 18:10, 115:4 PRESENCE [3] - 62:7, 123:19, 200:19 PRESENT [7] - 8:13, 59:5, 72:24, 73:8, 194:22, 195:9, 208:17 PRESENTED [4] - 225:14, 233:18, 242:3, 243:13 PRESENTING [2] - 159:13, 225:25 PRESERVE [1] - 214:18 PRESIDENT [3] - 133:18, 192:11, 240:4 PRESIDENT [296] - 7:3, 7:19, 10:1, 10:22, 12:10, 12:11, 12:21, 12:23, 13:9, 13:15, 13:16, 14:3, 14:4, 14:6, 14:8, 14:24, 15:12, 15:21, 16:9, 16:17, 16:22, 16:23, 16:25, 17:2, 17:15, 19:9, 19:19, 19:25, 20:8, 20:17, 22:14, 24:10, 26:17, 26:21, 29:15, 29:18, 29:25, 32:4, 32:9, 32:14, 32:15, 33:1, 33:2, 33:11, 33:20, 34:4, 34:18, 35:1, 35:6, 35:10, 35:12, 35:25, 37:10, 38:9, 38:18, 38:25, 39:1, 39:2, 39:19, 39:21, 44:19, 45:1, 45:3, 45:8, 45:10, 45:13, 45:18, 46:13, 46:25, 47:4, 47:9, 47:12, 48:21, 49:2, 49:6, 49:21, 50:1, 52:9, 52:13, 53:10, 53:21, 54:24, 56:20, 57:8, 58:10, 58:20, 61:9, 62:10, 63:5, 63:12, 63:20, 64:5, 64:8, 66:15, 66:21, 67:5, 67:11, 68:10, 69:21, 71:18, 74:7, 74:14, 75:11, 77:10, 77:12, 77:15, 77:21, 78:5, 79:2, 79:21, 81:9, 81:10, 81:16, 82:1, 82:11, 82:15, 84:9, 84:20, 85:6, 85:7, 87:25, 88:18, 88:23,</p>	<p>89:8, 89:12, 92:25, 93:18, 93:19, 93:21, 96:12, 97:17, 98:8, 98:15, 98:16, 98:19, 98:23, 99:2, 99:3, 99:7, 99:16, 99:19, 100:1, 100:7, 100:17, 100:23, 101:1, 101:4, 101:25, 102:23, 103:2, 103:15, 104:5, 104:15, 105:5, 105:21, 106:4, 106:19, 107:6, 107:12, 108:1, 108:8, 109:4, 109:7, 109:12, 110:11, 110:16, 110:24, 111:8, 111:10, 111:14, 111:20, 111:23, 112:6, 112:9, 112:17, 112:22, 119:19, 119:24, 120:17, 120:24, 121:7, 122:11, 123:14, 123:23, 124:11, 126:4, 126:11, 127:25, 128:12, 129:12, 129:17, 130:2, 130:5, 131:4, 131:25, 133:3, 133:19, 134:4, 134:16, 134:23, 139:25, 140:15, 146:7, 146:15, 147:3, 148:18, 150:7, 153:1, 153:6, 155:12, 163:12, 163:20, 164:3, 165:13, 165:15, 166:3, 166:5, 166:15, 169:18, 170:19, 170:25, 171:4, 173:3, 173:6, 173:18, 173:25, 174:24, 175:3, 176:3, 176:11, 178:3, 179:19, 184:4, 189:17, 189:18, 189:22, 191:11, 192:6, 192:11, 195:15, 195:21, 196:5, 199:16, 201:6, 201:7, 201:12, 201:16, 201:23, 201:25, 206:16, 207:16, 208:13, 208:23, 211:1,</p>
--	---	--	--	--

<p>211:7, 211:10, 211:15, 212:4, 213:3, 219:1, 219:13, 219:14, 219:17, 219:25, 229:10, 230:10, 230:13, 230:20, 231:18, 231:25, 232:4, 232:7, 232:16, 233:9, 233:15, 239:25, 241:25, 243:7, 247:19, 248:1, 248:6, 248:12, 254:18, 255:17, 255:21, 255:22, 255:24</p> <p>PRESIDENT'S [26] - 19:16, 19:17, 27:16, 31:20, 32:11, 35:6, 37:3, 44:17, 45:6, 49:24, 61:17, 62:4, 81:20, 106:6, 110:21, 111:2, 129:3, 139:16, 150:4, 152:4, 152:7, 152:25, 201:2, 232:5, 232:13, 255:20</p> <p>PRESIDENTIAL [21] - 12:7, 15:18, 22:12, 58:2, 64:21, 66:9, 78:10, 80:3, 84:1, 84:2, 104:1, 127:7, 133:21, 134:5, 153:3, 153:23, 190:2, 191:5, 191:19, 197:17</p> <p>PRESIDENTIAL [2] - 165:14, 166:4</p> <p>PRESS [2] - 233:14, 233:22</p> <p>PRESS [9] - 22:8, 39:20, 145:3, 181:7, 181:8, 184:18, 184:19, 184:20, 256:9</p> <p>PRESUME [1] - 27:3</p> <p>PRETTY [11] - 8:3, 15:20, 21:19, 26:18, 47:3, 47:9, 66:18, 88:21, 113:8, 241:20, 255:4</p> <p>PREVAIL [1] - 148:12</p> <p>PREVENT [1] - 256:14</p> <p>PREVIOUS [6] - 17:10, 100:15, 100:17, 102:21, 102:25, 104:20</p> <p>PREVIOUSLY [7] -</p>	<p>47:24, 68:25, 100:16, 136:9, 183:8, 214:19, 218:8</p> <p>PRICES [1] - 115:4</p> <p>PRIMARILY [2] - 31:5, 218:18</p> <p>PRIMARY [2] - 83:1, 89:19</p> <p>PRINCIPAL [13] - 16:10, 16:15, 18:21, 18:24, 18:25, 19:8, 20:3, 20:20, 31:7, 32:16, 44:9, 110:4, 239:24</p> <p>PRINCIPALS [2] - 29:19, 31:10</p> <p>PRINCIPLE [2] - 228:21, 234:14</p> <p>PRIORITIES [1] - 27:23</p> <p>PRIORITIZE [1] - 33:21</p> <p>PRIORITY [2] - 13:5, 28:9</p> <p>PRITTY [2] - 259:14, 259:15</p> <p>PRIVATE [3] - 19:25, 110:7, 110:21</p> <p>PRIVILEGE [4] - 91:9, 173:10, 236:7, 255:15</p> <p>PRIVILEGED [1] - 181:4</p> <p>PRO [2] - 105:21, 255:14</p> <p>PROBABLE [1] - 121:13</p> <p>PROBATION [2] - 181:24, 182:10</p> <p>PROBLEM [3] - 3:14, 4:8, 115:9</p> <p>PROBLEMATIC [1] - 197:20</p> <p>PROCEDURAL [1] - 148:19</p> <p>PROCEDURE [8] - 8:10, 8:15, 77:12, 77:13, 83:2, 92:21, 103:2, 224:15</p> <p>PROCEED [9] - 3:15, 8:22, 10:16, 51:12, 142:3, 159:13, 161:22, 182:24, 209:11</p> <p>PROCEEDING [3] - 183:23, 224:14, 246:14</p> <p>PROCEEDINGS [7] - 117:5, 157:19, 160:1, 181:24,</p>	<p>182:11, 224:11, 259:6</p> <p>PROCEEDINGS [2] - 1:10, 258:4</p> <p>PROCEEDS [2] - 241:4, 257:13</p> <p>PROCESS [21] - 29:16, 29:19, 52:8, 52:12, 52:22, 76:18, 76:19, 129:14, 150:21, 151:22, 152:13, 188:6, 192:20, 193:9, 193:11, 215:19, 217:24, 218:8, 218:20, 218:23</p> <p>PROCESSES [2] - 29:17, 208:9</p> <p>PRODUCED [3] - 94:11, 94:17, 231:21</p> <p>PRODUCTION [1] - 181:19</p> <p>PROFESSIONAL [6] - 9:17, 17:18, 52:16, 52:24, 121:15, 122:1</p> <p>PROFILE [1] - 21:20</p> <p>PROGRAMS [1] - 30:25</p> <p>PROGRESS [2] - 23:10, 23:11</p> <p>PROHIBITED [4] - 137:1, 244:5, 244:8, 246:15</p> <p>PROHIBITION [2] - 135:13, 245:16</p> <p>PROHIBITIONS [1] - 138:6</p> <p>PROMPT [1] - 256:24</p> <p>PROMPTED [1] - 39:5</p> <p>PRONOUNCING [1] - 75:6</p> <p>PROPER [14] - 49:6, 52:17, 62:8, 68:7, 78:15, 81:17, 110:20, 111:21, 158:18, 228:23, 241:13, 249:7, 250:7, 250:8</p> <p>PROPOUNDED [1] - 235:22</p> <p>PROS [1] - 19:6</p> <p>PROSECUTE [1] - 238:24</p> <p>PROSECUTED [1] - 221:4</p> <p>PROSECUTING [1] - 250:20</p> <p>PROSECUTION [2] - 149:10, 246:11</p> <p>PROSECUTOR [3] -</p>	<p>5:9, 5:10, 238:24</p> <p>PROTECT [2] - 74:14, 241:23</p> <p>PROTECTED [1] - 178:18</p> <p>PROTECTING [2] - 74:6, 241:21</p> <p>PROTEIN [1] - 17:13</p> <p>PROTOCOL [2] - 26:1, 74:13</p> <p>PROTOCOLS [3] - 74:10, 74:11</p> <p>PROVABLE [1] - 225:18</p> <p>PROVE [2] - 212:19, 253:4</p> <p>PROVED [1] - 197:11</p> <p>PROVEN [2] - 127:7, 252:15</p> <p>PROVIDE [2] - 91:4, 223:8</p> <p>PROVIDED [5] - 79:24, 89:16, 90:21, 91:7, 182:16</p> <p>PROVIDES [1] - 157:13</p> <p>PROVIDING [1] - 154:8</p> <p>PROVING [1] - 252:5</p> <p>PROVISION [1] - 230:4</p> <p>PROVISIONAL [3] - 148:9, 148:11, 148:20</p> <p>PUBLIC [16] - 3:19, 3:20, 3:21, 4:1, 5:20, 5:22, 5:23, 9:18, 33:22, 39:5, 207:15, 207:21, 207:24, 208:12, 232:10</p> <p>PUBLICATIONS [1] - 158:11</p> <p>PUBLICLY [1] - 37:8</p> <p>PUBLISH [1] - 143:12</p> <p>PUBLISHED [4] - 209:12, 210:15, 211:3, 213:10</p> <p>PURPORTING [2] - 157:2, 196:7</p> <p>PURPORTS [1] - 144:6</p> <p>PURPOSE [18] - 93:8, 97:23, 103:9, 103:12, 103:14, 109:5, 110:8, 177:6, 178:3, 178:4, 183:14, 183:17, 185:7, 190:21, 201:4, 241:18, 245:1, 249:19</p>	<p>PURPOSES [11] - 76:15, 91:11, 103:10, 156:14, 157:15, 180:20, 181:1, 229:20, 236:2, 238:11, 239:21</p> <p>PURSUE [1] - 198:19</p> <p>PURSUING [2] - 180:16, 221:21</p> <p>PUSHBACK [1] - 34:16</p> <p>PUSHED [1] - 230:14</p> <p>PUSHING [2] - 28:24, 230:16</p> <p>PUT [15] - 4:3, 74:11, 81:5, 87:23, 98:9, 117:22, 151:22, 173:3, 193:17, 224:20, 228:1, 229:8, 238:7, 245:4, 256:3</p> <p>PUTS [2] - 7:17, 256:25</p> <p>PUTTING [3] - 8:17, 17:19, 255:3</p>
Q				
<p>QUANTIFY [1] - 14:7</p> <p>QUANTITY [1] - 252:11</p> <p>QUESTION'S [1] - 161:16</p> <p>QUESTIONABLE [2] - 197:15, 228:19</p> <p>QUESTIONING [3] - 25:9, 119:21, 127:5</p> <p>QUESTIONS [62] - 8:10, 8:16, 11:14, 18:19, 33:23, 51:10, 55:7, 55:18, 56:7, 56:14, 56:25, 61:20, 75:3, 76:1, 77:19, 83:15, 83:16, 86:4, 86:6, 87:4, 91:9, 95:19, 113:12, 114:4, 114:7, 116:22, 118:14, 127:9, 134:25, 135:7, 135:9, 136:22, 147:6, 149:13, 149:14, 150:23, 151:3, 151:7, 151:15, 155:6, 155:19, 161:10, 161:11, 173:11, 173:12, 181:14, 185:2, 198:24, 214:13, 218:6, 219:20,</p>				

<p>223:2, 226:4, 226:5, 238:14, 239:1, 250:2, 251:10, 257:22 QUICK [2] - 20:22, 257:25 QUICKLY [4] - 17:19, 74:20, 93:2, 96:1 QUIET [1] - 8:17 QUITE [16] - 4:1, 115:7, 154:25, 165:20, 180:13, 180:24, 215:9, 216:13, 216:20, 217:14, 219:21, 220:1, 229:11, 243:22, 254:2, 255:19 QUOTE [8] - 13:13, 54:11, 95:23, 157:18, 213:14, 229:9, 254:12 QUOTES [1] - 234:17 QUOTING [3] - 78:24, 226:21, 235:21</p>	<p>237:10 RAFFENSPERGER [2] - 2:10, 186:7 RAISE [4] - 6:24, 35:17, 160:25, 186:4 RAISED [12] - 6:24, 30:13, 66:8, 131:4, 131:6, 132:1, 132:6, 133:13, 136:7, 140:25, 151:3, 151:5 RAISING [1] - 130:6 RALLIES [1] - 32:15 RALLY [1] - 33:5 RAMP [1] - 27:1 RAMPED [1] - 28:25 RANDALL [2] - 4:18, 9:15 RANDALL [3] - 1:8, 2:3, 9:8 RANGE [4] - 212:17, 212:18, 214:1, 255:18 RATHER [2] - 160:20 RDR [2] - 1:23, 259:11 REACH [29] - 23:9, 23:10, 53:21, 79:24, 80:1, 80:2, 98:25, 99:19, 99:21, 99:23, 100:11, 100:14, 100:17, 100:18, 102:6, 103:3, 103:4, 118:3, 125:1, 125:4, 134:14, 171:21, 171:22, 203:11, 218:22, 245:18, 257:2 REACHED [12] - 80:7, 80:8, 105:8, 180:11, 199:18, 200:3, 200:7, 200:20, 201:3, 203:10, 219:12, 220:13 REACHING [7] - 46:5, 54:9, 54:10, 96:14, 123:12, 123:15, 125:11 READ [12] - 53:2, 75:14, 76:25, 91:14, 101:6, 114:24, 131:19, 144:21, 145:12, 185:22, 222:17, 235:11 READILY [1] - 66:17 READING [3] - 41:8, 52:14, 144:22 READY [9] - 3:4, 117:7, 117:9, 159:13, 159:15, 159:18, 160:8, 240:10</p>	<p>REAL [7] - 28:20, 31:12, 134:8, 143:25, 154:21, 162:11, 222:13 REALIZED [1] - 212:20 REALLY [24] - 11:24, 13:4, 20:4, 28:2, 40:25, 92:16, 134:3, 151:10, 167:14, 194:12, 198:11, 208:19, 217:23, 226:8, 229:4, 230:2, 233:5, 233:6, 235:7, 241:5, 242:24, 249:25, 256:10, 256:20 REALM [1] - 250:8 REALTIME [2] - 30:17, 33:10 REASON [24] - 33:17, 33:23, 50:21, 65:25, 77:24, 79:15, 92:2, 117:23, 125:13, 141:20, 160:14, 177:16, 178:17, 182:22, 184:16, 216:16, 221:20, 226:24, 227:10, 229:22, 231:17, 233:4, 233:24, 245:4 REASONABLE [6] - 235:17, 249:2, 249:5, 249:6, 250:5, 250:6 REASONING [1] - 67:22 REASONS [7] - 76:11, 118:4, 196:18, 229:13, 229:15, 234:23, 238:1 REAUTHORIZATION [1] - 30:24 REBUTTAL [3] - 224:4, 224:17, 224:18 RECEIVE [1] - 36:1 RECEIVED [10] - 11:10, 43:20, 69:21, 77:10, 90:24, 94:12, 142:13, 192:18, 199:14, 249:10 RECEIVING [2] - 25:23, 158:1 RECENTLY [3] - 35:3, 39:20, 222:17 RECESS [2] - 160:1, 224:11 RECOGNITION [1] - 236:7</p>	<p>RECOGNIZE [8] - 10:18, 88:17, 141:14, 141:16, 164:11, 206:13, 226:23, 238:5 RECOGNIZED [1] - 234:11 RECOGNIZING [1] - 177:15 RECOLLECT [3] - 104:6, 104:15, 199:17 RECOLLECTION [38] - 38:17, 48:11, 50:9, 55:16, 69:1, 69:7, 72:1, 72:15, 73:1, 73:21, 89:20, 90:3, 90:6, 90:9, 90:18, 101:22, 103:8, 125:9, 125:10, 125:11, 126:3, 126:16, 126:18, 132:11, 133:18, 141:19, 175:18, 176:4, 176:9, 186:21, 186:22, 200:2, 200:9, 200:10, 202:16, 206:1, 206:23, 209:15 RECOMMENDATION S [5] - 26:9, 26:13, 50:23, 62:11, 62:12 RECOMMENDED [2] - 30:20, 53:20 RECORD [24] - 18:15, 43:5, 43:16, 58:17, 94:8, 135:15, 144:23, 159:5, 161:6, 167:19, 167:20, 177:10, 180:15, 180:17, 185:6, 187:15, 194:16, 212:8, 214:18, 215:3, 224:20, 230:9, 231:21, 242:14 RECORDING [2] - 206:15, 207:1 RECORDS [3] - 90:22, 91:4, 107:14 RECOUNT [14] - 92:9, 129:14, 191:5, 191:9, 191:13, 191:16, 191:24, 191:25, 192:2, 192:5, 204:16, 207:14 RECOUNTED [1] - 53:10</p>	<p>RECOUNTS [2] - 205:24, 208:10 RECROSS [2] - 155:21, 223:16 RED [1] - 249:24 REDACTED [1] - 143:2 REDIRECT [3] - 147:8, 185:3, 222:23 REDIRECT [4] - 2:5, 2:12, 147:10, 222:25 REDUCED [1] - 198:2 REELECT [1] - 142:22 REELECTED [1] - 146:22 REELECTION [13] - 31:20, 63:16, 63:18, 140:16, 146:7, 163:11, 163:16, 163:19, 170:11, 176:17, 179:10, 184:5, 190:24 REFER [6] - 22:23, 24:23, 29:10, 117:23, 157:12, 215:15 REFERENCE [3] - 242:2, 244:23, 244:24 REFERENCED [7] - 99:25, 118:10, 118:16, 119:5, 136:18, 179:21, 191:24 REFERENCES [3] - 214:8, 248:8, 248:9 REFERENCING [1] - 210:5 REFERRED [6] - 25:1, 86:15, 96:6, 140:25, 242:20, 244:17 REFERRING [7] - 119:15, 145:25, 146:3, 210:6, 210:18, 210:24, 245:23 REFLECT [2] - 18:15, 185:6 REFRESHED [1] - 222:5 REGARD [2] - 39:12, 250:5 REGARDING [4] - 56:21, 188:2, 229:14, 238:21 REGARDLESS [2] - 26:4, 36:23 REGISTER [1] - 211:23 REGISTERED [2] -</p>
<p style="text-align: center;">R</p> <p>R-A-F-F-E-N-S-P-E-R -G-E-R [1] - 186:17 R-O-B-E-R-T [1] - 161:8 RACE [4] - 197:23, 204:15, 217:2, 217:5 RAFFENSPERGER [56] - 5:21, 7:16, 97:18, 98:16, 98:20, 99:2, 99:8, 99:17, 99:21, 100:18, 101:2, 101:5, 102:1, 103:1, 104:8, 104:14, 106:19, 119:20, 119:25, 120:18, 131:25, 133:20, 172:12, 173:19, 174:25, 175:3, 175:7, 175:13, 175:21, 176:7, 176:11, 184:4, 185:17, 185:25, 186:14, 186:25, 187:5, 187:19, 190:2, 192:13, 195:3, 198:4, 206:11, 207:10, 207:21, 210:10, 210:17, 211:5, 213:12, 214:12, 214:21, 215:6, 223:2, 223:18, 227:14,</p>				

165:14, 166:4 REGISTERS ^[1] - 212:15 REGULAR ^[5] - 30:6, 32:6, 39:3, 47:10, 66:18 REGULARLY ^[2] - 21:20, 66:16 REGULATIONS ^[2] - 244:9, 246:5 REIMBURSE ^[1] - 87:17 REIMBURSED ^[3] - 88:2, 88:10, 93:20 REIMBURSEMENT ^[1] - 87:24 REIMBURSING ^[1] - 87:20 REITERATE ^[2] - 77:12, 128:24 RELATE ^[2] - 150:25, 152:9 RELATED ^[19] - 44:3, 51:22, 54:21, 58:2, 93:17, 113:22, 113:24, 122:12, 129:5, 140:3, 167:2, 178:14, 193:6, 196:2, 198:6, 198:10, 212:10, 214:5, 233:19 RELATES ^[5] - 105:16, 107:1, 134:19, 152:11, 154:22 RELATING ^[3] - 6:22, 217:4, 253:12 RELATION ^[5] - 31:20, 183:24, 227:5, 228:7, 235:17 RELATIONSHIP ^[16] - 17:10, 50:1, 70:3, 121:15, 121:16, 122:2, 123:16, 163:10, 163:15, 169:2, 169:9, 169:21, 201:1, 232:4, 237:3 RELATIONSHIPS ^[1] - 169:25 RELAY ^[1] - 53:9 RELAYED ^[6] - 69:8, 103:18, 201:10, 201:22, 202:17, 203:16 RELAYING ^[1] - 64:5 RELEASED ^[2] - 125:23, 223:24 RELEVANCE ^[1] - 231:5	RELEVANT ^[2] - 158:2, 251:14 RELIED ^[2] - 180:18, 234:17 RELIEF ^[9] - 15:15, 23:14, 24:17, 24:18, 28:21, 29:1, 30:25, 118:16, 154:13 RELIES ^[1] - 158:14 RELY ^[1] - 62:6 RELYING ^[2] - 65:6, 158:11 REMAIN ^[5] - 6:13, 6:15, 6:16, 8:1, 9:5 REMAINDER ^[2] - 73:8, 73:19 REMAINED ^[2] - 10:2, 194:4 REMAND ^[1] - 6:5 REMEDY ^[1] - 213:17 REMEMBER ^[19] - 17:9, 31:12, 33:8, 46:8, 50:10, 50:13, 50:23, 72:9, 74:16, 77:21, 91:2, 101:9, 106:25, 107:1, 168:2, 191:22, 219:7, 240:17, 254:25 REMEMBERING ^[1] - 50:16 REMIND ^[1] - 117:10 REMINDING ^[2] - 36:10, 242:17 REMINING ^[1] - 168:20 REMOVAL ^[1] - 226:25 REMOVAL ^[25] - 158:6, 181:22, 181:25, 225:11, 225:18, 225:19, 225:20, 226:19, 227:1, 229:5, 229:20, 233:2, 233:3, 234:15, 237:13, 238:11, 238:12, 238:21, 239:22, 241:13, 241:18, 241:21, 243:22, 256:19, 256:24 REMOVE ^[5] - 4:4, 5:25, 7:20, 242:10, 253:17 REMOVED ^[3] - 217:25, 234:9, 253:19 REMOVING ^[2] - 250:23, 257:19	RENDER ^[1] - 169:13 REPEAT ^[4] - 20:16, 78:20, 104:10 REPEATEDLY ^[1] - 130:6 REPHRASE ^[7] - 72:20, 83:24, 104:9, 135:19, 149:14, 163:13, 165:19 REPLACE ^[1] - 40:10 REPLY ^[3] - 6:14, 243:19, 244:16 REPORT ^[9] - 41:3, 70:22, 78:1, 85:11, 97:3, 131:15, 188:16, 208:7, 231:17 REPORTED ^[7] - 18:4, 37:8, 82:11, 82:15, 106:24, 190:11, 208:11 REPORTED ^[1] - 258:4 REPORTER ^[3] - 1:23, 259:12, 259:16 REPORTER ^[1] - 117:4 REPORTER ^[8] - 58:16, 61:22, 62:2, 67:7, 89:22, 168:9, 185:20, 186:16 REPORTERS ^[6] - 25:1, 25:3, 25:4, 136:22, 136:25, 137:3 REPORTING ^[1] - 117:5 REPORTS ^[3] - 53:2, 101:6, 101:7 REPRESENT ^[9] - 5:7, 9:23, 9:24, 109:3, 109:7, 164:2, 165:17, 165:23, 167:1 REPRESENTATION ^[8] - 108:3, 122:4, 164:15, 167:5, 171:7, 171:14, 177:19, 179:9 REPRESENTATIONS ^[1] - 133:12 REPRESENTATIVE ^[1] - 65:19 REPRESENTATIVE ^[1] - 170:10 REPRESENTATIVES ^[1] - 25:22 REPRESENTED ^[10] - 7:11, 105:20, 108:4, 109:13, 122:2,	139:25, 163:17, 164:3, 166:2, 166:20 REPRESENTING ^[9] - 160:11, 160:14, 179:25, 180:20, 181:1, 183:3, 184:4, 185:6, 187:16 REPRIMAND ^[1] - 6:4 REPUBLICAN ^[2] - 24:22, 167:12 REPUBLICANS ^[1] - 46:7 REPUTATION ^[1] - 255:4 REQUEST ^[7] - 58:20, 66:14, 93:11, 104:6, 123:19, 214:19, 220:15 REQUESTED ^[6] - 7:19, 106:18, 125:23, 191:25, 192:2, 200:19 REQUESTING ^[1] - 5:21 REQUESTS ^[2] - 220:4, 222:7 REQUIRE ^[2] - 61:11, 133:4 REQUIRED ^[8] - 31:1, 31:5, 39:14, 58:12, 88:8, 180:9, 190:18, 236:4 REQUIREMENT ^[2] - 15:17, 244:24 REQUIREMENTS ^[2] - 7:2, 248:22 REQUIRES ^[3] - 88:6, 228:7, 253:12 REQUIRING ^[1] - 227:5 REREAD ^[1] - 131:8 REREADING ^[2] - 131:7, 132:6 RESCAN ^[1] - 204:18 RESEARCH ^[1] - 235:1 RESERVE ^[2] - 224:17, 225:1 RESIDE ^[1] - 9:14 RESIDENCE ^[3] - 12:10, 12:11, 12:23 RESIDENCY ^[1] - 212:20 RESIGN ^[2] - 37:17, 37:21 RESIGNATION ^[1] - 39:4 RESIGNED ^[2] - 10:1, 213:25 RESIGNING ^[1] -	230:15 RESISTED ^[1] - 202:7 RESOLUTION ^[1] - 19:7 RESOLVE ^[7] - 107:11, 140:9, 155:9, 155:17, 193:14, 210:7, 210:8 RESOLVED ^[7] - 98:9, 129:15, 134:25, 193:15, 193:20, 217:17, 218:4 RESOLVING ^[4] - 107:8, 107:9, 155:10, 220:4 RESOURCE ^[3] - 93:4, 137:6, 137:7 RESOURCES ^[4] - 92:23, 215:22, 246:1, 250:12 RESPECT ^[3] - 106:14, 206:2, 229:18 RESPECTFULLY ^[2] - 239:22, 257:1 RESPOND ^[1] - 145:9 RESPONDS ^[1] - 144:24 RESPONSE ^[20] - 6:13, 26:4, 26:5, 41:25, 64:1, 86:13, 91:6, 97:3, 116:3, 118:13, 118:23, 119:7, 119:14, 125:19, 144:16, 144:21, 145:12, 155:6, 214:22, 246:22 RESPONSIBILITIES ^[7] - 87:13, 111:15, 111:25, 112:18, 114:21, 153:3, 188:1 RESPONSIBILITY ^[6] - 12:17, 110:5, 110:6, 139:8, 152:24, 154:3 RESPONSIBLE ^[1] - 31:11 RESPONSIVE ^[5] - 60:1, 78:18, 94:11, 94:17, 229:8 RESPONSIVENESS ^[1] - 115:13 REST ^[3] - 49:8, 73:22, 228:3 RESTRICTIONS ^[1] - 139:18 RESTS ^[1] - 159:12 RESULT ^[15] - 41:3, 42:8, 42:9, 119:7,
--	--	---	---	--

<p>120:10, 155:14, 191:12, 192:5, 199:10, 202:3, 207:23, 217:8, 231:11, 245:12, 249:20 RESULTED [2] - 42:3, 233:3 RESULTS [26] - 35:1, 36:3, 63:21, 63:23, 69:9, 77:13, 83:4, 91:15, 122:15, 188:8, 188:16, 188:19, 189:14, 190:11, 193:21, 197:6, 197:23, 197:24, 204:17, 208:8, 208:11, 213:1, 217:22, 220:20, 245:2, 246:15 RESUMES [1] - 49:23 RETALLY [3] - 191:11, 191:13, 191:14 RETURN [3] - 196:15, 196:17, 199:8 RETURNED [5] - 5:14, 102:12, 102:15, 102:16, 102:19 RETURNING [1] - 13:1 REVERSED [1] - 64:10 REVERSIBLE [1] - 256:5 REVIEW [7] - 29:25, 95:21, 97:8, 164:14, 169:14, 194:15, 204:18 REVIEWED [4] - 6:3, 131:14, 131:15, 206:19 REVIEWING [1] - 221:25 REVISED [1] - 228:10 REVOCATIONS [1] - 181:24 REVOKE [1] - 182:10 RHETORIC [2] - 115:8, 227:22 RHYME [1] - 33:22 RICO [3] - 5:18, 252:5, 253:9 RIGHTFULLY [1] - 24:22 RISE [3] - 159:25, 197:22, 224:10 RISK [1] - 13:5 RMR [2] - 117:4, 259:15 ROADBLOCK [1] -</p>	<p>151:16 ROBERT [2] - 4:25, 161:7 ROBERT [2] - 2:7, 161:2 ROBUST [2] - 67:1, 139:6 ROLE [127] - 11:15, 14:17, 22:3, 31:19, 39:13, 44:3, 46:23, 46:24, 47:23, 48:6, 49:16, 49:18, 49:20, 51:22, 51:23, 53:19, 53:20, 54:2, 54:4, 54:21, 54:23, 58:7, 61:14, 62:8, 63:7, 63:10, 64:14, 64:17, 64:22, 64:25, 65:1, 66:11, 68:8, 74:6, 74:9, 74:13, 74:17, 82:5, 83:7, 83:8, 83:9, 83:25, 84:2, 84:3, 84:7, 84:9, 84:16, 84:19, 85:8, 85:13, 85:16, 88:9, 106:1, 106:13, 108:25, 110:10, 110:20, 111:21, 112:11, 112:25, 113:3, 113:5, 113:9, 113:16, 113:17, 113:20, 115:20, 116:4, 118:2, 119:2, 119:6, 122:10, 122:21, 122:22, 122:23, 123:12, 138:5, 138:8, 138:15, 138:16, 138:17, 138:23, 139:1, 139:2, 139:3, 139:6, 140:5, 140:11, 140:14, 140:16, 140:19, 140:23, 141:2, 154:4, 168:21, 169:12, 176:16, 177:17, 188:13, 188:20, 189:18, 189:22, 195:3, 204:3, 204:6, 213:25, 215:8, 216:18, 216:19, 226:13, 226:14, 228:23, 229:2, 230:25, 231:1, 231:2, 237:8, 238:10, 239:11, 239:13, 242:15, 247:18, 248:11, 255:19, 256:7</p>	<p>ROLES [8] - 45:16, 108:20, 108:23, 109:8, 116:5, 154:5, 220:1, 223:3 ROLLS [1] - 217:25 ROLODEX [1] - 47:3 ROOM [1] - 18:9 ROOM [11] - 21:5, 37:24, 37:25, 48:23, 52:23, 69:2, 69:12, 159:20, 172:22, 172:23, 172:24 ROOMS [1] - 48:16 ROOSEVELT [2] - 18:9, 249:15 ROS WELL [2] - 162:15, 162:23 ROTHSCHILD [2] - 168:8, 168:9 ROUND [1] - 45:3 ROUTE [1] - 36:13 ROUTING [1] - 36:18 RPR [3] - 1:23, 117:4, 259:11 RUDY [1] - 57:18 RULE [6] - 114:11, 148:10, 182:6, 249:14, 257:10 RULE [11] - 157:17, 177:5, 178:18, 181:18, 181:23, 182:7, 182:8, 182:9, 182:10, 182:11, 214:19 RULED [1] - 214:19 RULES [1] - 157:17 RULES [6] - 116:25, 157:18, 180:7, 182:8, 243:22, 256:24 RULING [2] - 182:15, 257:25 RUN [2] - 137:15, 237:8 RUNNING [5] - 31:22, 33:11, 63:16, 63:18, 255:24 RUNS [1] - 216:17 RYAN [6] - 178:15, 180:6, 180:11, 180:18, 180:19, 203:2</p>	<p>SAKE [1] - 240:3 SAMPLE [1] - 192:22 SANCTION [1] - 234:5 SAT [1] - 47:6 SATISFACTION [1] - 127:6 SATURDAY [1] - 172:16 SAUDI [1] - 55:1 SAVE [2] - 8:13, 165:5 SAW [6] - 110:10, 132:16, 132:20, 148:19, 208:2, 208:4 SCENARIO [1] - 254:20 SCHEDULE [10] - 12:3, 13:4, 14:22, 19:10, 19:16, 19:17, 19:20, 20:16, 62:5, 139:16 SCHEDULER [3] - 19:10, 19:14, 19:15 SCHEDULINGS [1] - 32:5 SCHOOL [1] - 234:24 SCHUMER [3] - 31:12, 31:17, 154:20 SCOPE [34] - 45:5, 56:13, 60:4, 60:7, 90:23, 106:2, 108:2, 111:14, 111:19, 111:24, 112:10, 112:18, 112:24, 114:20, 115:19, 178:18, 224:18, 229:9, 239:14, 239:16, 240:23, 241:2, 241:11, 241:15, 243:12, 243:15, 244:10, 245:17, 245:20, 247:11, 248:24, 249:12, 253:21 SCOTT [1] - 65:19 SCREECHING [1] - 28:22 SE [3] - 237:20, 237:22, 238:1 SEARCH [1] - 235:1 SEAT [11] - 3:6, 3:7, 3:8, 3:9, 3:14, 3:16, 3:17, 40:10, 161:5, 186:10, 187:4 SEATED [3] - 3:2, 160:4, 160:6 SECOND [18] - 3:18, 20:15, 42:24, 50:22, 95:15, 114:11, 143:11, 143:16, 161:9, 177:22,</p>	<p>186:24, 203:7, 203:8, 205:16, 226:12, 227:3, 229:22, 233:17 SECRET [1] - 77:3 SECRETARIES [2] - 23:23, 83:8 SECRETARY [103] - 5:21, 7:15, 7:20, 10:24, 17:9, 17:11, 17:24, 19:4, 19:5, 29:4, 30:6, 30:16, 53:6, 54:3, 80:14, 82:13, 91:22, 92:20, 93:11, 96:14, 97:7, 97:18, 98:3, 98:12, 98:15, 98:20, 99:2, 99:8, 99:20, 100:18, 101:2, 101:5, 102:1, 103:1, 104:7, 104:14, 105:8, 106:19, 107:14, 119:20, 119:25, 120:18, 127:14, 130:3, 130:7, 130:22, 131:25, 133:4, 133:20, 134:9, 154:20, 155:12, 172:12, 173:19, 174:24, 175:3, 175:21, 176:3, 176:11, 178:16, 179:22, 179:25, 180:15, 180:20, 181:1, 184:3, 185:16, 185:25, 186:14, 186:25, 187:5, 187:16, 187:21, 187:22, 188:1, 189:2, 189:24, 190:1, 192:13, 195:3, 198:4, 200:11, 200:20, 202:25, 205:13, 205:17, 205:19, 206:11, 207:10, 207:11, 207:21, 210:17, 211:5, 213:12, 213:18, 213:22, 214:12, 215:6, 215:8, 223:2, 223:18, 233:15, 233:23 SECRETARY [12] - 22:8, 29:20, 31:14, 39:20, 100:14, 100:24, 102:7, 102:8, 120:1, 124:13, 187:19, 196:13</p>
		S		
		S-H-A-R-M-A-N [1] - 187:14 SAFE [4] - 49:6, 60:18, 63:4, 111:10 SAFER [1] - 62:12		

SECRETARY'S ^[1] - 96:18 SECTION ^[1] - 157:23 SECURE ^[6] - 29:24, 30:20, 60:18, 63:4, 77:4, 111:10 SECURER ^[1] - 62:13 SECURITY ^[7] - 24:4, 24:6, 59:23, 82:2, 84:4, 216:4, 239:21 SECURITY ^[12] - 12:7, 16:18, 28:19, 30:1, 30:9, 30:23, 33:25, 55:3, 74:8, 215:21, 215:25, 239:20 SECURITY ^[2] - 159:25, 224:10 SEE ^[40] - 5:5, 10:13, 10:14, 13:17, 14:7, 16:22, 16:24, 20:22, 20:23, 24:25, 30:14, 47:12, 52:11, 52:18, 52:19, 54:8, 60:15, 65:14, 73:4, 83:24, 96:5, 140:5, 141:13, 145:10, 165:5, 167:17, 185:13, 185:14, 197:1, 206:13, 207:23, 208:12, 208:14, 225:4, 229:11, 232:6, 242:22, 245:16, 251:6, 254:20 SEEING ^[8] - 16:23, 16:25, 52:21, 64:9, 73:5, 92:23, 142:16, 251:5 SEEK ^[1] - 136:16 SEEKING ^[5] - 46:14, 213:17, 220:11, 246:15, 248:15 SEEM ^[3] - 48:12, 89:20, 142:12 SELECTED ^[1] - 192:22 SELF ^[2] - 158:12, 225:23 SELF-AUTHENTICATING ^[1] - 158:12 SELF-DEFENSE ^[1] - 225:23 SEMINAL ^[1] - 233:24 SENATE ^[1] - 46:8 SENATOR ^[2] - 31:12, 31:17 SEND ^[9] - 27:23, 65:20, 65:23, 91:12, 94:7, 188:24,	188:25, 196:7 SENIOR ^[2] - 14:3, 34:3 SENSE ^[4] - 24:4, 24:5, 110:2, 230:19 SENT ^[13] - 65:19, 66:20, 90:3, 90:4, 90:8, 91:13, 91:17, 95:20, 96:13, 142:12, 143:20, 197:12, 199:5 SENTENCE ^[1] - 212:13 SENTENCING ^[1] - 182:9 SENTENCINGS ^[1] - 181:23 SEPARATE ^[2] - 94:4, 191:13 SEPARATELY ^[1] - 183:19 SEPARATING ^[1] - 36:19 SEPTEMBER ^[3] - 257:17, 257:19, 257:21 SEQUITUR ^[1] - 249:24 SERIES ^[5] - 39:7, 56:6, 56:14, 142:17, 181:24 SERVANTS ^[1] - 15:4 SERVE ^[1] - 11:16 SERVED ^[1] - 234:7 SERVED ^[4] - 11:17, 123:13, 135:21, 187:22 SERVICE ^[2] - 9:18, 234:11 SERVICE ^[1] - 77:3 SERVING ^[3] - 68:10, 110:24, 234:5 SESSION ^[1] - 50:5 SET ^[24] - 12:18, 13:5, 19:6, 20:16, 30:15, 30:20, 54:24, 55:2, 97:21, 97:23, 99:14, 99:15, 104:25, 109:19, 126:6, 148:11, 219:17, 247:3, 256:11, 257:11, 257:16, 257:17 SETTING ^[12] - 6:9, 17:22, 19:10, 22:19, 30:12, 32:10, 49:23, 108:15, 109:20, 110:16, 183:8, 219:11 SETTINGS ^[1] -	245:25 SETTLE ^[3] - 98:1, 108:17, 206:4 SETTLED ^[2] - 221:13, 235:14 SETTLEMENT ^[16] - 103:10, 110:7, 110:21, 110:23, 177:6, 177:12, 177:23, 177:25, 178:5, 178:11, 178:19, 179:1, 179:18, 180:21, 181:2, 206:5 SEVEN ^[1] - 144:17 SEVERAL ^[14] - 37:14, 90:19, 105:3, 131:6, 167:7, 168:2, 171:24, 174:3, 190:10, 196:18, 207:22, 216:3, 217:11, 250:13 SHAFFER ^[7] - 165:14, 166:4, 166:7, 167:13, 176:19, 176:20, 184:6 SHAKING ^[1] - 66:1 SHAPE ^[1] - 231:9 SHARE ^[3] - 131:25, 234:16, 234:22 SHARED ^[3] - 82:18, 91:10, 156:13 SHARING ^[1] - 17:5 SHARMAN ^[1] - 187:14 SHARMAN ^[2] - 187:14, 187:15 SHARPEN ^[1] - 18:17 SHEET ^[1] - 15:5 SHOOTING ^[1] - 225:21 SHORT ^[6] - 55:22, 147:5, 192:6, 192:7, 201:17, 207:13 SHORTLY ^[1] - 40:13 SHOT ^[1] - 239:12 SHOTS ^[1] - 174:21 SHOW ^[17] - 19:6, 42:19, 108:10, 141:12, 158:18, 164:6, 228:12, 231:22, 241:5, 243:14, 246:5, 246:11, 252:7, 253:1, 254:12, 257:20 SHOWING ^[2] - 6:19, 237:2 SHOWN ^[2] - 252:10,	252:11 SHOWS ^[1] - 230:23 SHUT ^[1] - 160:3 SIC ^[1] - 201:20 SIC ^[1] - 212:6 SIDE ^[7] - 4:12, 8:8, 69:12, 124:14, 208:16, 208:17, 214:13 SIDES ^[1] - 122:18 SIGN ^[2] - 145:5, 234:7 SIGNATURE ^[56] - 52:6, 76:16, 76:18, 77:7, 77:16, 79:23, 80:11, 81:8, 82:8, 85:4, 91:15, 95:21, 96:19, 96:21, 98:2, 103:12, 103:15, 103:16, 104:1, 107:5, 108:8, 108:9, 127:12, 129:4, 129:19, 130:23, 132:5, 132:9, 132:13, 133:9, 134:10, 192:13, 192:16, 192:19, 192:21, 193:5, 193:18, 194:1, 194:7, 194:10, 194:22, 195:4, 195:17, 195:19, 197:4, 197:6, 198:6, 198:9, 198:16, 198:19, 199:3, 206:16, 206:18, 206:22, 208:10, 218:7 SIGNATURES ^[3] - 131:1, 134:20, 197:8 SIGNED ^[3] - 10:23, 164:18 SIGNING ^[2] - 34:19, 197:8 SIMILAR ^[4] - 22:17, 47:17, 168:25, 197:9 SIMPLE ^[2] - 32:4, 232:3 SIMPLEST ^[1] - 32:5 SIMPLY ^[5] - 241:6, 241:16, 244:4, 246:4, 256:18 SIMULTANEOUSLY ^[1] - 247:5 SINGLE ^[5] - 208:6, 212:2, 217:12, 241:24, 242:2 SISA ^[1] - 215:25 SIT ^[11] - 3:13, 22:10, 67:4, 68:1, 69:7,	75:17, 80:25, 116:18, 159:4, 222:15, 255:7 SITTING ^[6] - 3:8, 3:9, 72:9, 138:11, 160:16, 160:17 SITUATION ^[2] - 4:3, 197:10 SITUATIONS ^[2] - 208:3, 243:1 SIX ^[1] - 255:12 SIZE ^[1] - 10:25 SKATE ^[1] - 33:22 SLIGHTLY ^[4] - 56:16, 98:13, 126:16, 189:11 SLOW ^[1] - 185:19 SMALL ^[4] - 162:15, 197:24, 232:15, 233:6 SO.. ^[5] - 69:20, 101:11, 108:19, 131:16, 240:16 SOCIAL ^[1] - 208:4 SOLELY ^[6] - 113:19, 113:22, 114:19, 115:17, 203:21, 250:10 SOLICIT ^[1] - 195:14 SOLICITATION ^[1] - 5:19 SOLICITING ^[1] - 5:20 SOMEONE ^[20] - 20:23, 47:12, 69:25, 70:18, 71:10, 96:14, 136:20, 137:14, 137:21, 140:8, 145:20, 145:22, 146:2, 169:22, 172:21, 172:22, 173:4, 194:17, 199:4, 222:18 SOMETHING'S ^[1] - 160:14 SOMETIME ^[4] - 38:16, 57:12, 120:13, 130:21 SOMETIMES ^[8] - 17:6, 18:15, 18:16, 21:7, 47:7, 58:21, 73:14 SOMEWHERE ^[3] - 174:14, 214:1, 233:20 SOON ^[1] - 257:1 SORRY ^[38] - 22:24, 25:6, 25:8, 41:23, 42:16, 48:2, 51:17, 51:18, 59:10, 60:6, 60:16, 66:2, 67:6,
---	---	--	--	---

<p>67:8, 69:15, 71:9, 86:22, 89:3, 89:19, 95:14, 96:2, 100:18, 104:9, 121:17, 123:1, 129:24, 145:15, 145:16, 157:8, 163:13, 165:6, 166:10, 185:24, 188:14, 193:13, 206:7, 231:16</p> <p>SORT [9] - 14:23, 97:8, 220:11, 220:13, 227:19, 232:9, 236:21, 248:17, 256:20</p> <p>SORTS [2] - 11:22, 14:25</p> <p>SOUND [8] - 75:18, 107:19, 190:12, 191:17, 191:22, 236:10, 250:3, 250:15</p> <p>SOUNDED [1] - 148:21</p> <p>SOUNDS [4] - 57:12, 107:20, 139:6, 220:12</p> <p>SOUTH [1] - 9:15</p> <p>SPACE [1] - 160:18</p> <p>SPEAKER [1] - 154:19</p> <p>SPEAKER [2] - 65:21, 66:21</p> <p>SPEAKING [11] - 39:1, 59:6, 93:5, 136:18, 169:16, 185:20, 194:7, 219:25, 220:9, 240:11, 255:2</p> <p>SPEAKS [1] - 93:17</p> <p>SPEARHEADING [1] - 172:4</p> <p>SPECIAL [7] - 5:9, 41:4, 42:3, 42:8, 183:14, 183:16</p> <p>SPECIFIC [26] - 16:4, 16:8, 38:5, 56:7, 68:22, 69:4, 71:25, 72:21, 81:3, 85:5, 90:9, 106:20, 106:22, 107:1, 132:1, 146:15, 153:5, 180:9, 181:23, 189:8, 191:22, 197:19, 199:23, 213:23, 214:5, 220:5</p> <p>SPECIFICALLY [18] - 28:4, 33:8, 33:14, 34:23, 42:4, 68:6, 72:4, 109:25,</p>	<p>120:22, 121:12, 121:22, 128:17, 148:4, 190:20, 211:14, 215:24, 244:18, 247:10</p> <p>SPECIFICITY [1] - 69:23</p> <p>SPECIFICS [6] - 18:12, 87:4, 104:18, 104:19, 170:7, 248:3</p> <p>SPECIFIED [2] - 182:7, 239:15</p> <p>SPECULATE [10] - 61:13, 61:16, 67:24, 71:21, 71:22, 74:18, 95:7, 112:13, 149:10</p> <p>SPECULATING [1] - 149:11</p> <p>SPECULATION [1] - 52:14</p> <p>SPEED [3] - 91:14, 92:1, 242:6</p> <p>SPELL [2] - 161:6, 186:16</p> <p>SPELLED [3] - 89:22, 153:1, 188:22</p> <p>SPEND [1] - 19:19</p> <p>SPENT [2] - 51:3, 229:13</p> <p>SPIRIT [1] - 130:19</p> <p>SPOKEN [3] - 163:6, 195:20, 195:23</p> <p>SPOT [1] - 160:22</p> <p>SPOUSE [2] - 197:8, 197:9</p> <p>SPUN [1] - 208:5</p> <p>SQUARELY [1] - 240:5</p> <p>STACEY [3] - 217:2, 217:4, 217:23</p> <p>STACKS [1] - 52:21</p> <p>STAFF [142] - 7:3, 7:13, 10:1, 10:4, 10:22, 11:15, 11:16, 11:21, 13:7, 13:9, 13:10, 14:18, 14:21, 15:20, 19:12, 19:14, 21:4, 22:4, 22:13, 27:9, 30:3, 30:7, 39:13, 40:21, 44:3, 44:7, 44:13, 44:24, 44:25, 45:13, 46:23, 46:24, 47:23, 47:25, 48:6, 48:14, 48:18, 48:25, 49:9, 49:16, 49:18, 51:22, 51:23, 53:19, 53:20, 54:2, 54:4, 54:21, 54:23, 58:7, 62:8, 63:10, 66:11, 66:16, 68:8,</p>	<p>85:8, 85:13, 85:21, 87:25, 88:7, 88:8, 91:21, 93:21, 100:15, 100:19, 109:18, 110:11, 110:18, 110:20, 111:4, 111:7, 111:15, 111:19, 111:21, 111:25, 112:11, 112:19, 112:25, 113:3, 113:6, 113:17, 113:21, 115:8, 116:4, 116:7, 118:2, 118:25, 123:12, 126:7, 129:17, 132:8, 133:8, 135:12, 135:22, 137:9, 138:1, 138:5, 138:8, 138:10, 138:15, 138:16, 138:18, 139:6, 140:4, 140:5, 140:12, 141:2, 141:4, 146:23, 184:15, 184:24, 195:24, 219:1, 219:3, 219:7, 219:13, 219:16, 219:18, 228:18, 229:2, 229:10, 229:11, 231:6, 231:10, 233:9, 233:10, 233:11, 237:20, 239:23, 240:23, 241:6, 241:7, 242:12, 243:15, 243:25, 244:11, 249:4, 250:9, 251:15, 255:18, 255:25</p> <p>STAFF [10] - 12:16, 12:17, 13:13, 13:23, 29:20, 33:2, 46:11, 102:9, 199:15, 199:18</p> <p>STAFFS [6] - 63:7, 114:20, 115:20, 124:17, 231:22, 232:4</p> <p>STAFFING [1] - 151:25</p> <p>STAGE [3] - 112:20, 228:12, 229:18</p> <p>STAND [3] - 4:12, 9:3, 158:22</p> <p>STANDARD [2] - 254:12, 256:11</p> <p>STANDING [2] - 9:6, 186:25</p>	<p>STANDPOINT [11] - 28:24, 33:2, 34:11, 39:24, 59:18, 61:8, 122:20, 154:21, 154:23, 208:1, 215:21</p> <p>STANDS [1] - 230:21</p> <p>START [13] - 3:4, 24:18, 29:18, 29:23, 40:24, 117:2, 143:16, 159:24, 183:13, 214:18, 215:7, 224:8, 225:7</p> <p>STARTED [7] - 17:23, 22:15, 129:8, 151:20, 208:25, 219:15, 248:19</p> <p>STARTS [1] - 107:17</p> <p>STARVE [1] - 17:16</p> <p>STATE [106] - 4:7, 4:18, 5:8, 5:21, 6:11, 7:11, 7:15, 7:20, 8:7, 8:15, 10:14, 10:24, 56:20, 57:8, 57:11, 96:22, 97:18, 98:15, 98:20, 99:2, 99:8, 99:21, 100:18, 101:2, 101:5, 102:1, 103:1, 104:7, 104:14, 106:19, 119:20, 119:25, 120:18, 130:4, 130:7, 131:25, 133:5, 133:20, 134:4, 134:23, 155:13, 156:14, 158:4, 158:11, 158:14, 160:10, 162:3, 172:12, 174:24, 175:3, 175:21, 176:3, 176:11, 178:16, 179:25, 181:20, 184:3, 185:16, 187:16, 187:21, 187:22, 187:23, 188:1, 188:3, 189:2, 189:24, 192:9, 198:4, 200:20, 205:13, 205:17, 205:19, 207:10, 207:11, 211:5, 211:7, 211:11, 211:22, 212:9, 212:25, 213:18, 213:22, 214:3, 215:9, 216:10, 221:3, 221:11, 224:2, 224:21, 227:12, 228:24,</p>	<p>228:25, 229:16, 229:19, 233:8, 233:21, 244:3, 245:4, 250:21, 250:24, 256:22, 257:13, 257:14</p> <p>STATE [67] - 9:13, 12:15, 21:16, 21:18, 21:20, 23:13, 23:18, 23:21, 23:22, 24:2, 24:10, 44:16, 47:13, 47:14, 54:24, 64:25, 65:1, 68:11, 68:23, 83:8, 84:3, 84:10, 84:20, 92:10, 118:3, 118:8, 118:15, 118:17, 119:3, 119:13, 131:2, 145:23, 161:6, 178:2, 188:15, 212:17, 215:15, 221:22, 225:15, 225:18, 225:21, 225:22, 225:24, 227:1, 228:17, 228:20, 233:20, 234:1, 234:4, 234:5, 234:8, 234:12, 234:14, 235:9, 237:4, 238:23, 240:10, 242:5, 242:13, 247:23, 250:12, 250:25, 252:2, 252:7, 252:24</p> <p>STATE [1] - 1:4</p> <p>STATE'S [47] - 53:6, 54:3, 80:15, 82:14, 91:22, 92:21, 93:11, 96:15, 97:7, 98:3, 98:12, 107:14, 127:14, 130:22, 134:9, 141:9, 141:12, 141:14, 141:23, 142:2, 142:7, 144:5, 144:9, 145:8, 161:10, 164:10, 164:14, 164:16, 164:21, 164:25, 179:22, 180:15, 180:20, 181:1, 181:21, 200:11, 202:25, 206:12, 206:18, 207:4, 209:2, 214:22, 214:24, 226:6, 230:24, 256:4, 256:10</p> <p>STATE'S [3] - 206:25, 238:13, 252:15</p> <p>STATE-BY-STATE [2]</p>
--	--	--	---	--

<p>- 64:25, 65:1 STATE-LEVEL [1] - 247:23 STATEMENT [4] - 8:6, 147:20, 222:14, 233:19 STATEMENTS [11] - 8:5, 181:19, 182:16, 207:15, 207:21, 207:24, 208:12, 219:24, 220:2, 222:4 STATES [4] - 1:1, 1:11, 1:24, 259:3 STATES [9] - 118:6, 118:10, 140:20, 141:3, 145:21, 154:9, 215:23, 228:22, 250:14 STATES [29] - 6:1, 6:12, 6:16, 6:21, 10:5, 12:8, 33:21, 34:18, 38:25, 62:10, 65:19, 66:15, 68:10, 74:7, 92:25, 98:8, 107:6, 110:17, 110:24, 112:23, 129:18, 148:18, 189:17, 189:18, 189:22, 230:20, 232:21, 233:9, 234:13 STATEWIDE [1] - 217:20 STATING [1] - 75:16 STATUS [1] - 184:10 STATUTE [13] - 39:7, 135:23, 182:19, 216:19, 226:25, 228:11, 238:17, 238:19, 238:20, 239:4, 242:4, 245:15 STATUTES [1] - 39:8 STAY [4] - 8:17, 12:22, 146:8, 232:6 STEP [2] - 155:23, 179:11 STEPS [1] - 179:14 STEVE [3] - 1:11, 1:23, 259:12 STICKING [1] - 18:14 STILL [32] - 26:25, 28:18, 30:2, 33:6, 56:8, 65:10, 79:16, 85:12, 89:1, 108:14, 111:9, 117:10, 117:15, 128:25, 129:1, 129:5, 129:9, 129:10, 129:13, 130:13, 130:22, 162:19, 162:23,</p>	<p>176:1, 192:6, 212:12, 247:7, 248:23, 249:1, 252:15, 253:3, 254:5 STOP [6] - 50:15, 55:23, 58:13, 116:16, 150:11, 254:23 STOPPED [1] - 52:23 STRATEGIES [1] - 179:7 STRATEGY [4] - 50:5, 175:5, 175:9, 179:4 STREET [1] - 256:23 STRING [1] - 235:2 STRONG [1] - 196:20 STRUCTURE [2] - 32:1, 70:5 STUFF [1] - 36:14 STUMBLING [1] - 154:15 STYLE [1] - 20:8 SUBJECT [11] - 26:20, 38:6, 57:1, 64:2, 64:3, 118:17, 122:4, 144:25, 157:3, 172:1, 257:13 SUBJECTS [1] - 40:18 SUBMIT [3] - 228:14, 231:12, 239:22 SUBMITTED [1] - 197:18 SUBPOENA [4] - 90:24, 91:6, 94:12, 95:5 SUBPOENAED [3] - 90:22, 90:23, 183:16 SUBSEQUENT [2] - 166:16, 212:7 SUBSEQUENTLY [2] - 220:22, 222:16 SUBSTANCE [8] - 82:15, 126:2, 144:4, 176:25, 177:3, 177:4, 177:7, 183:7 SUBSTANTIATE [1] - 211:18 SUCCESS [2] - 244:19, 250:10 SUDDEN [2] - 21:8, 40:18 SUED [3] - 190:5, 190:9 SUFFICIENT [6] - 79:24, 128:21, 157:14, 212:23, 228:21, 243:14 SUGGEST [4] - 98:16, 109:4, 113:17, 191:15</p>	<p>SUGGESTED [1] - 229:19 SUGGESTING [4] - 83:13, 83:15, 98:19, 250:15 SUGGESTION [3] - 98:14, 132:20, 159:1 SUI [1] - 236:21 SUING [1] - 204:9 SUIT [1] - 235:15 SUM [1] - 82:14 SUMMARIZE [1] - 126:2 SUMMARIZING [1] - 188:9 SUMMARY [1] - 6:5 SUMS [1] - 241:20 SUNDRY [1] - 238:1 SUNSET [1] - 9:15 SUPERIOR [6] - 6:1, 6:14, 8:1, 43:8, 166:1, 257:17 SUPERIORS [1] - 236:5 SUPERVISED [1] - 32:1 SUPERVISION [2] - 70:10, 71:11 SUPERVISOR [1] - 71:5 SUPPORT [3] - 27:1, 158:5, 245:14 SUPPORTING [2] - 35:25, 85:7 SUPPOSED [4] - 40:17, 40:19, 111:7, 182:20 SUPPRESSION [3] - 182:7, 217:9, 217:24 SUPREMACY [2] - 7:6, 7:8 SUPREMACY [1] - 227:2 SUPREME [3] - 234:9, 235:21, 247:1 SURPRISE [3] - 50:8, 50:21, 75:15 SURPRISED [2] - 87:23, 87:24 SURPRISING [1] - 95:8 SUSPECT [4] - 137:20, 137:23, 217:13 SWAMPED [1] - 200:12 SWINE [1] - 17:20 SWITCHBOARD [9] - 47:2, 47:4, 55:3, 66:18, 99:16, 105:2,</p>	<p>105:10, 105:11, 199:7 SWORN [4] - 9:9, 9:22, 161:3, 186:8 SYSTEM [4] - 9:1, 188:9, 233:25, 239:9</p>	<p>94:8, 96:10, 96:11, 98:2, 105:17, 112:22, 118:8, 123:11, 127:18, 139:13, 150:21, 151:6, 154:3, 187:25, 196:20, 217:6, 225:10, 232:16 TERWILLIGER [4] - 4:22, 113:13, 135:10, 253:15 TERWILLIGER [79] - 1:19, 4:20, 4:22, 5:4, 8:12, 8:23, 9:2, 9:12, 10:7, 10:12, 10:17, 11:5, 11:12, 11:13, 18:13, 25:10, 25:13, 33:13, 41:11, 41:20, 41:23, 42:6, 42:17, 42:19, 42:24, 43:2, 43:11, 43:14, 43:17, 43:22, 43:23, 51:10, 51:13, 51:14, 55:4, 55:6, 56:2, 56:24, 59:12, 62:21, 72:18, 114:6, 115:21, 122:24, 123:1, 135:14, 141:25, 147:9, 147:11, 147:13, 147:15, 147:18, 149:11, 149:17, 149:19, 153:18, 153:20, 155:3, 155:5, 155:18, 156:5, 157:8, 159:11, 224:5, 224:24, 225:1, 225:4, 225:6, 226:7, 235:6, 236:15, 236:19, 237:21, 237:23, 237:25, 238:19, 239:6, 255:13, 257:5 TEST [10] - 29:11, 49:3, 226:9, 226:10, 227:3, 228:15, 236:25, 239:6, 239:7, 256:13 TESTIFIED [15] - 9:9, 69:1, 82:12, 108:24, 138:23, 147:19, 149:20, 161:3, 183:8, 183:22, 184:2, 186:8, 219:9, 232:14, 251:25 TESTIFY [8] - 42:2, 43:13, 177:4, 179:7, 183:14, 183:16, 183:17, 184:17</p>
---	---	--	---	--

TESTIFYING ^[1] - 177:11 TESTIMONY ^[48] - 62:6, 62:17, 64:3, 65:16, 67:4, 67:10, 68:5, 69:6, 73:7, 73:22, 75:4, 76:9, 81:22, 82:15, 89:1, 94:2, 97:16, 98:5, 102:6, 103:11, 110:19, 110:23, 116:19, 116:21, 116:25, 119:23, 129:13, 131:8, 183:20, 192:12, 194:3, 199:24, 200:6, 203:9, 203:10, 206:20, 220:19, 227:9, 227:20, 227:25, 229:14, 230:6, 230:13, 230:23, 232:8, 233:13, 237:15, 256:7 TESTING ^[1] - 48:20 TESTS ^[2] - 29:5, 87:9 TEXAS ^[2] - 21:22, 118:11 TEXT ^[29] - 25:16, 25:18, 25:19, 25:20, 25:23, 26:19, 36:4, 65:19, 65:23, 66:13, 66:20, 90:2, 90:4, 90:8, 90:17, 90:19, 91:5, 91:7, 91:13, 96:13, 97:4, 196:7, 196:11, 196:12, 198:5, 198:7, 199:1, 199:5, 242:4 TEXTS ^[2] - 90:23, 95:20 THE ^[294] - 1:1, 1:4, 1:11, 1:14, 1:18, 1:23, 3:2, 4:17, 4:21, 5:3, 5:5, 5:12, 8:14, 8:19, 8:25, 9:4, 10:9, 10:13, 10:16, 11:7, 11:9, 17:6, 17:8, 22:25, 23:1, 23:2, 23:5, 23:15, 23:16, 23:17, 23:19, 23:20, 23:22, 25:6, 25:7, 25:8, 32:21, 32:22, 32:23, 32:25, 41:3, 41:5, 41:9, 41:10, 41:22, 42:2, 42:7, 42:11, 42:14, 42:16, 42:18, 42:23, 43:1, 43:10, 43:12, 43:15, 43:19, 50:10, 50:12,	50:15, 50:18, 51:9, 51:12, 55:5, 55:8, 55:21, 55:24, 55:25, 56:3, 57:3, 59:11, 59:14, 59:15, 59:25, 60:4, 60:6, 60:7, 60:9, 60:10, 60:11, 61:6, 61:8, 61:25, 62:23, 70:20, 70:21, 72:20, 75:23, 78:16, 78:17, 78:18, 78:19, 78:20, 83:18, 84:8, 84:11, 84:14, 84:15, 84:16, 84:17, 84:19, 84:22, 84:23, 84:24, 84:25, 86:23, 86:24, 88:12, 92:5, 92:6, 95:2, 95:3, 95:16, 96:3, 114:2, 114:11, 114:15, 115:1, 115:2, 115:15, 115:24, 116:9, 116:10, 116:13, 116:16, 116:23, 116:24, 117:6, 117:10, 117:12, 117:20, 122:25, 123:4, 126:20, 126:24, 126:25, 127:1, 131:21, 131:22, 135:16, 141:8, 141:24, 142:2, 143:13, 147:8, 149:7, 149:14, 149:18, 153:15, 153:19, 155:4, 155:20, 155:23, 155:25, 156:1, 156:4, 156:7, 156:12, 156:17, 156:21, 157:11, 158:23, 159:3, 159:5, 159:9, 159:12, 159:17, 159:20, 160:3, 160:11, 160:13, 160:19, 160:24, 161:7, 161:9, 161:18, 161:19, 161:22, 164:8, 164:22, 164:24, 177:21, 178:1, 178:6, 178:7, 178:9, 178:12, 178:19, 178:21, 178:24, 181:6, 181:16, 181:17, 182:4, 182:12, 182:19, 184:16, 184:18, 185:3, 185:5, 185:8, 185:9, 185:14,	185:18, 185:25, 186:3, 186:4, 186:24, 187:2, 187:3, 187:10, 187:11, 187:13, 187:15, 203:20, 203:22, 203:23, 203:25, 204:20, 204:23, 204:24, 205:1, 205:2, 205:4, 205:5, 205:7, 205:9, 205:11, 205:13, 205:14, 205:16, 205:18, 205:19, 205:22, 206:3, 206:6, 206:7, 206:9, 207:7, 209:4, 209:9, 209:11, 214:15, 215:1, 217:15, 222:2, 222:21, 222:23, 223:16, 223:18, 223:21, 223:23, 224:1, 224:4, 224:6, 224:13, 224:25, 225:3, 225:5, 226:5, 235:4, 236:13, 236:18, 237:17, 237:22, 237:24, 238:13, 238:20, 240:8, 240:13, 240:17, 243:18, 247:15, 251:10, 251:12, 251:16, 251:18, 252:3, 252:17, 252:24, 253:3, 253:7, 253:10, 253:24, 254:17, 254:22, 255:5, 255:8, 255:10, 257:3, 257:6, 257:24, 259:12, 259:16 THEMSELVES ^[1] - 4:13 THEORY ^[1] - 233:18 THEREAFTER ^[1] - 175:22 THEREFORE ^[6] - 7:25, 241:1, 241:9, 253:21, 257:12 THEREIN ^[4] - 44:1, 47:22, 49:15, 53:18 THEREOF ^[1] - 249:20 THEY'VE ^[2] - 54:10, 216:3 THINKING ^[1] - 172:17 THINKS ^[5] - 8:3, 19:4, 19:5, 232:11, 233:20 THIRD ^[3] - 120:6,	120:8, 232:8 THOMPSON ^[2] - 234:4, 247:14 THOROUGH ^[1] - 257:9 THOUGHTFULLY ^[1] - 208:6 THOUSANDS ^[2] - 14:16, 193:10 THREATENED ^[1] - 208:3 THREATS ^[8] - 12:8, 15:23, 15:25, 28:19, 30:1, 84:6, 208:2 THREE ^[19] - 6:19, 6:24, 7:2, 7:7, 19:1, 20:12, 34:19, 40:8, 48:19, 48:22, 49:1, 73:12, 100:4, 107:16, 157:25, 226:9, 228:15, 238:13, 239:1 THRESHOLD ^[1] - 226:23 THROUGHOUT ^[6] - 14:1, 169:15, 208:2, 208:9, 211:15, 242:13 TIE ^[2] - 227:1, 227:2 TIGHTLY ^[1] - 145:3 TIMELINE ^[2] - 78:7, 151:6 TIMING ^[1] - 217:16 TITLE ^[3] - 13:7, 39:22, 244:12 TO ^[3] - 1:23, 259:12, 259:16 TO-DO ^[2] - 12:21, 58:18 TO-DOS ^[1] - 12:9 TODAY ^[35] - 3:4, 4:14, 6:9, 8:2, 28:12, 75:20, 85:12, 91:11, 102:6, 107:4, 111:19, 131:9, 135:6, 186:2, 186:18, 192:12, 200:6, 206:20, 222:15, 224:9, 230:5, 238:12, 242:14, 243:1, 243:11, 245:3, 245:9, 246:19, 250:18, 252:10, 252:11, 254:10, 256:22, 257:15 TODD ^[1] - 145:1 TOGETHER ^[9] - 17:19, 17:21, 98:10, 121:25, 132:16,	132:25, 147:21, 149:24, 220:4 TOMORROW ^[3] - 144:12, 145:3, 145:14 TONE ^[1] - 208:14 TOOK ^[20] - 14:24, 41:13, 77:6, 108:10, 132:21, 148:3, 154:22, 174:11, 179:14, 191:20, 213:25, 216:24, 217:3, 217:11, 240:24, 245:6, 246:7, 249:5, 254:24, 254:25 TOP ^[6] - 28:13, 142:14, 148:21, 229:25, 230:1, 232:6 TOPIC ^[5] - 20:9, 20:10, 40:6, 86:8, 136:23 TOPICS ^[3] - 20:12, 21:19, 49:19 TOTAL ^[4] - 192:23, 212:12, 212:24, 252:16 TOTALLY ^[2] - 40:6, 130:20 TOTALS ^[1] - 222:8 TOUCH ^[2] - 231:7, 234:12 TOUCHED ^[1] - 249:11 TOUGH ^[1] - 255:4 TOWARDS ^[4] - 69:22, 96:24, 150:4, 244:19 TRAIL ^[1] - 115:7 TRANSCRIPT ^[1] - 1:10 TRANSCRIPT ^[3] - 131:7, 131:8, 259:6 TRANSCRIPTS ^[2] - 158:5, 159:1 TRANSFER ^[6] - 29:22, 97:6, 128:6, 150:13, 151:19, 228:4 TRANSITION ^[7] - 29:22, 96:24, 150:19, 151:8, 151:20, 228:4, 232:17 TRANSPARENT ^[1] - 130:20 TRANSPIRED ^[2] - 123:21, 219:21 TRASH ^[2] - 73:14, 73:16 TRAVEL ^[14] - 15:11,
---	---	---	--	--

<p>15:12, 15:18, 15:21, 16:1, 32:13, 32:14, 32:18, 76:15, 87:17, 88:1, 93:19, 93:21</p> <p>TRAVELING [4] - 33:1, 33:10, 93:18, 246:7</p> <p>TRAVELS [1] - 15:22</p> <p>TREMENDOUS [1] - 208:4</p> <p>TRIAL [2] - 182:6, 253:1</p> <p>TRIALS [1] - 181:23</p> <p>TRIED [10] - 26:3, 35:2, 48:25, 100:13, 103:3, 213:3, 225:15, 234:17, 246:20</p> <p>TRIES [2] - 59:22, 246:25</p> <p>TRIP [3] - 52:11, 127:11, 134:12</p> <p>TRIPS [1] - 15:14</p> <p>TROOP [1] - 26:17</p> <p>TROUBLE [1] - 32:22</p> <p>TROXLER [2] - 17:25, 23:24</p> <p>TRUE [12] - 25:20, 91:1, 109:7, 128:10, 152:7, 184:14, 206:22, 218:9, 218:24, 229:23, 246:16, 259:6</p> <p>TRULY [1] - 53:4</p> <p>TRUMP [161] - 7:4, 7:19, 10:2, 10:23, 35:10, 39:19, 56:20, 56:21, 57:8, 57:21, 63:12, 63:20, 64:5, 64:8, 66:4, 66:7, 66:21, 67:5, 67:11, 69:22, 71:14, 75:11, 77:15, 77:21, 78:5, 79:3, 79:21, 81:1, 82:12, 82:16, 88:18, 89:8, 89:12, 91:16, 91:23, 97:17, 98:15, 98:23, 99:2, 99:3, 99:7, 100:1, 100:7, 101:4, 102:23, 103:2, 103:25, 104:5, 106:4, 106:19, 107:12, 111:14, 119:19, 120:17, 121:7, 124:11, 130:5, 131:5, 133:3, 133:18, 133:19, 134:4, 134:16, 134:23, 139:25,</p>	<p>140:20, 142:22, 143:8, 146:7, 146:22, 148:3, 148:4, 163:12, 163:16, 163:18, 163:20, 163:22, 163:23, 164:2, 164:3, 165:12, 165:13, 165:15, 166:2, 166:3, 166:5, 166:23, 167:5, 167:6, 170:10, 170:11, 170:13, 170:19, 170:25, 171:4, 171:8, 171:14, 171:15, 172:11, 174:8, 174:24, 175:3, 175:6, 175:13, 175:16, 175:21, 176:11, 176:17, 177:19, 179:9, 179:10, 179:19, 184:5, 190:5, 190:6, 190:9, 190:23, 191:12, 191:24, 192:6, 195:15, 195:21, 196:2, 196:5, 199:4, 199:16, 204:8, 207:2, 207:16, 208:13, 208:17, 209:24, 209:25, 210:2, 210:9, 211:1, 211:7, 211:10, 211:15, 212:4, 213:3, 214:11, 219:1, 219:25, 227:18, 238:3, 240:3, 243:7, 247:14, 250:11, 251:8, 254:18</p> <p>TRUMP'S [2] - 70:1, 87:16</p> <p>TRUMP'S [6] - 71:18, 104:15, 120:24, 129:12, 132:1, 140:15</p> <p>TRUSTED [1] - 17:17</p> <p>TRUTH [2] - 114:16, 213:6</p> <p>TRUTHFUL [1] - 51:6</p> <p>TRY [30] - 3:15, 12:5, 12:8, 16:7, 16:12, 19:6, 19:18, 24:15, 32:20, 35:11, 35:13, 36:13, 37:4, 37:5, 44:12, 59:2, 81:16, 97:24, 98:1, 104:20, 110:11, 128:2,</p>	<p>159:22, 168:2, 226:2, 231:10, 232:22, 245:14, 250:13, 257:6</p> <p>TRYING [80] - 8:20, 12:16, 12:18, 12:20, 13:1, 15:4, 16:14, 16:22, 17:20, 18:1, 18:12, 19:20, 20:4, 20:13, 26:11, 27:17, 27:19, 28:20, 29:1, 29:5, 29:13, 30:10, 33:8, 33:22, 35:8, 35:21, 36:15, 45:3, 45:5, 49:4, 58:11, 59:19, 61:4, 61:9, 63:3, 69:11, 73:6, 74:10, 74:18, 74:22, 77:19, 78:13, 81:9, 81:12, 87:4, 93:3, 95:7, 96:8, 103:12, 104:25, 106:24, 106:25, 110:2, 112:3, 118:21, 127:23, 129:1, 129:11, 130:20, 134:12, 134:15, 137:3, 147:20, 149:21, 149:23, 152:14, 227:23, 227:25, 228:1, 228:24, 230:24, 231:13, 232:17, 232:19, 238:24, 242:10, 246:1, 248:20, 250:24</p> <p>TUESDAY [1] - 172:18</p> <p>TURN [9] - 56:17, 75:1, 89:25, 156:5, 161:14, 182:22, 187:7, 235:22, 243:16</p> <p>TURNED [4] - 182:23, 208:21, 208:22, 212:2</p> <p>TURNING [2] - 21:25, 232:24</p> <p>TURNS [1] - 240:3</p> <p>TV [2] - 13:18, 136:22</p> <p>TWENTY [2] - 5:16, 5:19</p> <p>TWENTY-EIGHT [2] - 5:16, 5:19</p> <p>TWICE [2] - 101:15, 101:16</p> <p>TWO [43] - 6:22, 18:19, 21:3, 40:15, 45:15, 50:22, 82:25, 94:4, 101:19, 101:24, 120:7,</p>	<p>121:14, 126:8, 142:6, 142:8, 154:5, 156:10, 170:6, 175:6, 178:1, 179:5, 191:13, 193:16, 194:11, 196:19, 197:7, 198:3, 200:1, 200:8, 204:14, 212:8, 220:21, 220:22, 222:14, 222:16, 226:8, 226:16, 229:15, 246:16, 254:25, 257:12</p> <p>TWO-AND-A-HALF [1] - 170:6</p> <p>TWO-PAGE [1] - 142:6</p> <p>TYPE [4] - 23:20, 180:9, 197:10, 251:24</p> <p>TYPES [3] - 16:16, 23:22, 220:18</p> <p>TYPICAL [2] - 118:17, 207:17</p> <p>TYPICALLY [3] - 47:12, 119:10, 169:19</p>	<p>226:25</p> <p>UNDERSTOOD [11] - 69:6, 75:4, 76:9, 81:18, 95:11, 97:16, 121:10, 123:25, 219:12, 219:14, 247:16</p> <p>UNDERTAKE [7] - 47:22, 48:5, 49:16, 53:18, 54:1, 54:20, 229:7</p> <p>UNDERTAKEN [1] - 49:15</p> <p>UNDERTOOK [2] - 44:2, 46:22</p> <p>UNDUE [1] - 96:8</p> <p>UNFORTUNATE [1] - 225:22</p> <p>UNFOUNDED [4] - 79:3, 128:15, 128:18, 128:19</p> <p>UNHEARD [1] - 157:24</p> <p>UNINVITED [1] - 199:2</p> <p>UNIQUE [1] - 93:20</p> <p>UNITED [29] - 6:1, 6:12, 6:16, 6:21, 10:5, 12:8, 33:20, 34:18, 38:25, 62:10, 65:19, 66:15, 68:10, 74:7, 92:25, 98:8, 107:6, 110:17, 110:24, 112:23, 129:18, 148:18, 189:17, 189:18, 189:22, 230:20, 232:21, 233:9, 234:13</p> <p>UNITED [4] - 1:1, 1:11, 1:24, 259:3</p> <p>UNIVERSALLY [1] - 228:20</p> <p>UNLAWFULLY [1] - 5:20</p> <p>UNLESS [3] - 11:6, 178:10, 237:13</p> <p>UNLIKE [1] - 243:25</p> <p>UNNOTARIZED [1] - 157:2</p> <p>UNOFFICIAL [1] - 139:3</p> <p>UNPLEASANTNESS [1] - 52:25</p> <p>UNPREPARED [1] - 243:11</p> <p>UNQUESTIONABLE [1] - 228:19</p> <p>UNQUOTE [1] - 13:14</p> <p>UNRELATED [1] - 40:6</p>
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<p>UNSOURCED ^[1] - 157:5</p> <p>UNSURE ^[1] - 187:6</p> <p>UNSWORN ^[3] - 157:1, 157:13, 158:15</p> <p>UNUSUAL ^[1] - 68:4</p> <p>UP ^[132] - 4:12, 6:9, 8:17, 8:20, 9:4, 12:9, 12:18, 12:20, 12:23, 13:1, 14:25, 15:13, 15:14, 16:12, 17:19, 17:22, 17:25, 19:10, 19:21, 20:18, 20:19, 20:24, 22:16, 25:21, 26:21, 26:24, 27:1, 28:25, 29:3, 29:21, 30:12, 30:15, 30:20, 32:10, 32:11, 33:23, 34:1, 36:20, 36:25, 38:10, 39:3, 39:20, 42:13, 44:11, 44:20, 45:4, 49:23, 52:10, 52:21, 54:24, 55:2, 58:25, 59:2, 62:11, 62:14, 63:5, 63:11, 69:24, 72:10, 77:20, 77:21, 77:22, 91:14, 92:2, 92:16, 97:21, 97:23, 99:14, 99:15, 104:25, 108:15, 109:20, 110:16, 112:12, 112:20, 121:5, 124:1, 124:4, 124:7, 126:6, 128:5, 130:1, 134:12, 137:19, 144:16, 150:8, 152:24, 156:15, 159:22, 160:24, 169:25, 171:4, 181:6, 185:21, 185:25, 186:1, 187:4, 192:6, 192:7, 193:12, 193:14, 193:15, 194:5, 197:4, 200:13, 201:17, 202:15, 203:19, 207:10, 207:13, 208:5, 208:20, 212:23, 219:11, 219:17, 230:22, 231:3, 231:19, 234:7, 241:20, 242:6, 243:1, 245:4, 248:18, 252:14, 255:3, 256:18, 257:3, 257:20, 258:1</p> <p>UPCOMING ^[1] - 172:17</p>	<p>UPDATE ^[1] - 31:17</p> <p>UPDATES ^[1] - 22:22</p> <p>US ^[3] - 213:24, 216:6, 223:14</p> <p>USB ^[1] - 206:19</p> <p>USC ^[1] - 157:13</p> <p>USEFUL ^[1] - 27:10</p> <p>USES ^[1] - 242:25</p> <p style="text-align: center;">V</p> <p>VACANCIES ^[1] - 49:23</p> <p>VACATION ^[3] - 14:22, 14:25, 15:1</p> <p>VAGUE ^[1] - 89:20</p> <p>VALID ^[3] - 80:22, 150:3</p> <p>VALIDATION ^[1] - 225:8</p> <p>VARIED ^[1] - 131:5</p> <p>VARIETY ^[9] - 13:25, 16:7, 18:11, 21:19, 24:9, 46:25, 49:19, 85:10, 105:16</p> <p>VARIOUS ^[7] - 118:3, 119:13, 140:20, 169:14, 217:7, 231:7, 238:1</p> <p>VAST ^[1] - 126:10</p> <p>VERACITY ^[7] - 77:13, 129:2, 133:11, 133:13, 141:20, 150:1, 151:14</p> <p>VERIFICATION ^[16] - 52:6, 91:15, 96:19, 103:13, 103:16, 127:13, 129:7, 129:19, 132:5, 133:9, 192:20, 192:21, 198:7, 199:3, 208:10</p> <p>VERIFICATIONS ^[7] - 96:11, 96:21, 98:2, 107:5, 108:8, 108:10, 130:23</p> <p>VERIFIED ^[1] - 212:1</p> <p>VERIFY ^[3] - 131:1, 131:2, 188:17</p> <p>VERIFYING ^[2] - 193:11, 198:16</p> <p>VERSED ^[1] - 84:12</p> <p>VERSION ^[1] - 56:16</p> <p>VERSUS ^[2] - 18:24, 210:9</p> <p>VESTED ^[1] - 236:2</p> <p>VETTED ^[1] - 78:15</p> <p>VETTING ^[1] - 29:15</p> <p>VIEW ^[1] - 150:20</p> <p>VIEWED ^[4] - 27:25,</p>	<p>34:15, 34:22, 150:22</p> <p>VIOLA ^[2] - 1:23, 259:11</p> <p>VIOLA_ZBOROWSKI @GAND.</p> <p>USCOURTS.GOV ^[1] - 1:25</p> <p>VIOLATED ^[6] - 40:14, 41:7, 41:13, 42:12, 149:1, 229:6</p> <p>VIOLATING ^[1] - 32:20</p> <p>VIOLATION ^[22] - 5:17, 5:19, 5:23, 40:2, 136:7, 140:6, 140:8, 149:1, 177:5, 215:15, 215:16, 225:19, 229:7, 229:20, 233:16, 233:20, 234:8, 238:6, 238:9, 251:24, 252:2, 252:24</p> <p>VIOLATIONS ^[4] - 136:19, 137:14, 225:15, 226:13</p> <p>VIRGINIA ^[1] - 168:1</p> <p>VIRTUALLY ^[2] - 175:22, 220:2</p> <p>VISIT ^[4] - 82:8, 152:9, 230:8, 230:9</p> <p>VISITED ^[2] - 218:11, 218:14</p> <p>VISITING ^[3] - 52:3, 76:11, 90:13</p> <p>VISUAL ^[2] - 69:11, 72:7</p> <p>VITALLY ^[3] - 3:18, 4:6</p> <p>VOICE ^[1] - 199:25</p> <p>VOICEMAIL ^[2] - 196:14, 200:11</p> <p>VOLUME ^[1] - 36:7</p> <p>VOLUNTEER ^[2] - 122:14</p> <p>VOTE ^[11] - 7:22, 39:18, 59:17, 130:12, 191:19, 192:3, 210:20, 210:21, 211:23, 222:7</p> <p>VOTED ^[5] - 146:17, 193:11, 211:22, 212:4, 212:9</p> <p>VOTER ^[2] - 165:14, 166:4</p> <p>VOTER ^[10] - 212:2, 213:18, 213:22, 217:7, 217:9, 217:24, 217:25, 220:5, 221:6, 221:13</p>	<p>VOTER'S ^[1] - 222:12</p> <p>VOTERS ^[12] - 126:13, 211:22, 212:1, 212:3, 212:12, 212:14, 212:15, 212:17, 220:21, 221:2, 222:14, 222:16</p> <p>VOTES ^[7] - 7:20, 84:6, 211:8, 217:3, 217:7, 221:7, 247:20</p> <p>VOTING ^[1] - 215:16</p> <p>VS ^[1] - 1:7</p> <p style="text-align: center;">W</p> <p>WADE ^[1] - 5:9</p> <p>WADE ^[1] - 1:17</p> <p>WAIT ^[1] - 61:18</p> <p>WAKE ^[1] - 137:19</p> <p>WAKEFORD ^[2] - 5:7, 240:14</p> <p>WAKEFORD ^[26] - 1:16, 5:6, 8:16, 83:19, 95:14, 240:12, 240:14, 240:18, 243:19, 247:16, 251:11, 251:14, 251:17, 252:2, 252:4, 252:23, 252:25, 253:5, 253:8, 253:18, 254:4, 254:20, 255:2, 255:6, 255:9, 257:23</p> <p>WALK ^[1] - 159:17</p> <p>WALL ^[2] - 11:2, 24:12</p> <p>WANTS ^[3] - 65:22, 173:18, 201:12</p> <p>WARRANT ^[1] - 233:22</p> <p>WASHINGTON ^[1] - 150:24</p> <p>WATCH ^[2] - 7:22, 218:23</p> <p>WATSON ^[17] - 53:21, 54:9, 54:10, 54:12, 77:5, 77:23, 89:7, 89:13, 89:15, 90:3, 90:12, 90:13, 90:15, 130:25, 194:23, 194:24, 197:13</p> <p>WAYS ^[4] - 29:12, 52:17, 93:1, 257:10</p> <p>WAYSIDE ^[1] - 37:4</p> <p>WEAKER ^[1] - 30:14</p> <p>WEAKNESS ^[1] - 227:21</p> <p>WEDDING ^[2] - 15:2, 15:3</p>	<p>WEDNESDAY ^[1] - 182:16</p> <p>WEEK ^[7] - 14:8, 101:19, 101:24, 120:7, 199:25, 200:8, 258:2</p> <p>WEEKEND ^[2] - 3:3, 15:3</p> <p>WEEKENDS ^[3] - 14:11, 14:13</p> <p>WEEKS ^[1] - 200:8</p> <p>WEIGH ^[3] - 29:19, 91:8, 196:24</p> <p>WEIGHING ^[1] - 196:25</p> <p>WEIGHT ^[2] - 158:24, 159:6</p> <p>WELCOME ^[2] - 20:20, 226:4</p> <p>WELL-ADVISED ^[1] - 85:9</p> <p>WELL-INFORMED ^[2] - 52:12, 85:9</p> <p>WELL-KNOWN ^[1] - 15:20</p> <p>WELL-VERSED ^[1] - 84:12</p> <p>WERE ^[1] - 258:4</p> <p>WEST ^[8] - 13:12, 13:17, 13:18, 13:24, 15:10, 19:11, 45:19, 169:22</p> <p>WEST ^[2] - 13:22</p> <p>WHATNOT ^[1] - 31:1</p> <p>WHATSOEVER ^[3] - 4:8, 216:18, 227:15</p> <p>WHEAT ^[1] - 36:19</p> <p>WHEREAS ^[1] - 244:3</p> <p>WHITE ^[46] - 11:20, 15:9, 22:15, 22:22, 24:23, 24:25, 25:4, 27:5, 41:12, 41:25, 42:11, 45:1, 45:21, 46:11, 47:2, 47:4, 51:2, 66:17, 68:20, 74:10, 74:15, 82:22, 82:24, 94:9, 95:3, 95:5, 95:8, 99:15, 105:2, 105:7, 105:10, 105:11, 124:20, 125:4, 136:20, 137:6, 137:10, 137:22, 151:3, 169:20, 171:15, 171:17, 199:7, 200:23, 229:10, 232:12</p> <p>WHOLE ^[11] - 20:6, 41:1, 53:4, 87:1, 104:17, 150:13,</p>
---	--	--	--	---

222:5, 222:18, 224:21, 232:18, 243:23 WIDE ^[1] - 47:3 WIDELY ^[1] - 106:24 WIDER ^[2] - 237:1, 237:2 WIDESPREAD ^[6] - 78:9, 79:3, 79:18, 80:2, 80:21, 127:7 WIFE ^[2] - 73:13, 208:2 WILLFUL ^[1] - 238:10 WILLFULLY ^[1] - 237:14 WILLING ^[1] - 92:11 WILLIS ^[2] - 6:11, 7:12 WIN ^[5] - 146:11, 146:13, 146:16, 211:7, 251:3 WIND ^[2] - 45:4, 151:23 WING ^[8] - 13:12, 13:17, 13:18, 13:24, 15:10, 19:11, 45:19, 169:22 WINNER ^[1] - 251:8 WINNING ^[1] - 146:7 WIRES ^[1] - 36:15 WISCONSIN ^[2] - 92:8, 92:17 WISE ^[3] - 8:14, 8:19, 8:21 WISHED ^[4] - 99:8, 101:1, 101:5, 102:1 WISHES ^[1] - 8:5 WITHDRAW ^[1] - 126:21 WITHDRAWAL ^[6] - 20:10, 26:15, 28:17, 30:23, 86:16, 86:25 WITNESS ^[23] - 41:17, 41:19, 55:8, 59:25, 117:19, 141:7, 149:9, 153:14, 156:3, 156:4, 159:15, 159:18, 160:8, 164:7, 181:17, 181:19, 182:24, 185:9, 185:15, 206:8, 214:15, 223:25, 241:10 WITNESS ^[63] - 17:8, 23:1, 23:5, 23:16, 23:19, 23:22, 25:7, 32:22, 32:25, 41:5, 41:10, 42:11, 42:16, 50:12, 50:18, 55:24, 59:15, 60:6, 60:9, 60:11, 61:8, 70:21, 78:17, 78:19, 84:11, 84:15, 84:17, 84:22, 84:24, 86:24, 92:6, 95:3, 115:2, 116:10, 116:23, 117:12, 126:25, 131:22, 153:19, 155:25, 161:7, 161:18, 178:1, 178:7, 178:12, 178:21, 181:16, 184:16, 185:8, 186:3, 187:2, 187:10, 203:22, 203:25, 204:23, 205:1, 205:4, 205:7, 205:11, 205:14, 205:18, 205:22, 206:6 WITNESS ^[1] - 185:12 WITNESSED ^[1] - 130:23 WITNESSES ^[1] - 2:2 WITNESSES ^[5] - 156:9, 158:16, 159:21, 224:1, 224:2 WITT ^[1] - 168:4 WON ^[9] - 133:21, 134:4, 134:16, 134:17, 134:23, 192:10, 217:11, 230:17, 230:21 WONDER ^[1] - 253:18 WONDERFUL ^[1] - 134:10 WONDERING ^[10] - 60:21, 60:23, 62:19, 65:4, 96:6, 104:12, 108:2, 121:6, 129:10, 171:3 WOODS ^[1] - 4:23 WOOTEN ^[1] - 1:17 WOOTEN ^[1] - 5:11 WORD ^[11] - 79:16, 87:8, 96:2, 96:10, 106:5, 187:9, 235:1, 242:24, 242:25, 243:2, 243:3 WORDS ^[11] - 104:13, 104:16, 151:13, 170:17, 193:9, 213:7, 213:23, 238:21, 243:7, 251:24, 254:3 WORKERS ^[1] - 208:3 WORKINGS ^[1] - 230:2 WORKS ^[1] - 250:1 WORLD ^[2] - 232:11, 232:12	WORLD'S ^[1] - 222:5 WORSE ^[1] - 17:7 WORTHY ^[1] - 158:22 WOUND ^[1] - 25:21 WRAP ^[5] - 19:21, 20:24, 44:11, 58:25, 59:2 WRAP-UP ^[5] - 19:21, 20:24, 44:11, 58:25, 59:2 WRAPPED ^[4] - 44:20, 193:12, 193:14, 194:5 WRIGHT ^[4] - 4:10, 4:16, 9:6, 186:5 WRITE ^[5] - 62:2, 122:22, 185:21, 252:19, 252:21 WRITING ^[2] - 144:13, 144:14 WRONGDOING ^[1] - 192:25 WROTE ^[2] - 86:15, 146:5	ZOOMED ^[1] - 248:18
Y		
YEAR ^[7] - 6:3, 15:5, 27:7, 27:15, 211:24, 212:1 YEARS ^[9] - 40:8, 73:12, 121:22, 121:23, 162:7, 170:6, 216:3, 217:11 YELLED ^[1] - 148:15 YESTERDAY ^[1] - 145:1 YORK ^[4] - 21:21, 31:13, 69:16, 118:6 YOU-ALL ^[18] - 3:2, 3:6, 3:25, 4:14, 5:5, 5:12, 10:9, 108:16, 117:2, 156:18, 157:9, 159:20, 218:7, 224:6, 224:13, 224:15, 251:25, 257:24 YOUNG ^[1] - 5:11 YOUNG ^[1] - 234:25 YOUNG ^[1] - 1:16 YOURSELF ^[1] - 175:15		
Z		
ZBOROWSKI ^[1] - 259:10 ZBOROWSKI ^[2] - 1:23, 259:11 ZERO ^[2] - 50:9, 212:16		