

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter Of, )  
 ) Case No 14F-001-AAG  
TOM HORNE, Individually, Tom Horne for )  
Attorney General Committee )  
(SOS Filer ID 2010 00003); KATHLEEN )  
WINN, Business Leaders for Arizona, )  
(SOS Filer ID 2010 00375) )  
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ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS  
1400 West Washington Street  
Suite 101  
Phoenix, Arizona  
February 12, 2014  
8:39 a.m.

BEFORE: HONORABLE TAMMY EIGENHEER, ADMINISTRATIVE LAW JUDGE

PREPARED BY:

CHAPMAN AND ASSOCIATES

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INDEX  
EXAMINATION

WITNESSES:	PAGE
KATHLEEN WINN	
Direct Examination by Mr. LaSota	526
Direct Examination by Mr. Kimerer	596
Cross-Examination by Mr. Fields	597
Redirect Examination by Mr. LaSota	673
TOM HORNE	
Direct Examination by Mr. Kimerer	679
Cross-Examination by Mr. Fields	709
Redirect Examination by Mr. Kimerer	728
Direct Examination by Mr. LaSota	730
BRIAN GREHOSKI	
Direct Examination by Mr. Fields	732
Cross-Examination by Mr. Debus	752
Cross-Examination by Mr. Kimerer	778

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PROCEEDINGS

JUDGE EIGENHEER: We are back on the record in Docket Number 14F-001-AAG. It is February 12, 2014, at approximately 8:39 a.m.

Again, my name is Tammy Eigenheer, and I'm the Administrative Law Judge assigned to this matter.

Could we have the parties' appearances, starting at this end and moving down.

MS. ROBERTSON: Maggie Robertson, paralegal at the Yavapai County Attorney's Office.

MR. KREUTZBERG: Benjamin Kreutzberg, Deputy Yavapai County Attorney.

MR. FIELDS: Jack Fields with the Yavapai County Attorney's Office.

MR. LASOTA: Tim LaSota on behalf of Kathleen Winn.

MS. WINN: Kathleen Winn.

MR. KIMERER: Michael Kimerer.

MR. HORNE: Tom Horne.

MR. RAKE: Buddy Rake.

MR. DEBUS: Larry Debus.

JUDGE EIGENHEER: I believe we're ready for the next witness.

MR. FIELDS: Your Honor, I believe we have a

couple preliminary matters, just housekeeping --

JUDGE FIELDS: Okay.

MR. FIELDS: -- not totally housekeeping. The first issue deals with Mr. Tatham's testimony yesterday and the recording that he played for the court.

Again, and counsel have said this. It was not disclosed to us. They indicated it was a surprise to them, basically, and I accept that, and I think that's fine.

The fact remains it wasn't disclosed to us. There was a request that it be transcribed into the record. We objected to that. We asked for a copy of it. We have not received that yet.

Based upon that -- and it makes -- it gives rise to some allegation of our key witness and FBI agents that we really do need to address it. It was something that should have been disclosed.

Again, I'm not trying to cast dispersions. They didn't know about it. We didn't know about it. But we do need an opportunity to listen to it, to be able to analysis it.

And, in addition, it's not something that really -- that should be -- Agent Grehoski should be crossed on until he has an opportunity to compare that

1 particular thing to the notes that he may -- again,  
2 this is not -- I know we're in relaxed rules of  
3 evidence procedure, but this is by surprise. That's  
4 not the way this game is played. So we would like to  
5 have an opportunity to do this.

6 Unfortunately, I realize I'm asking, because  
7 we're getting close to ending the major part of our  
8 testimony here and their testimony, that we're probably  
9 going to need probably an additional half a day at some  
10 point in the future after we have had an opportunity to  
11 do that.

12 In addition to that, to having the recording  
13 and being able to analyze it, we'd also like to be able  
14 to put Mr. Tatham under subpoena for an interview with  
15 the Yavapai County Attorney's Office to question him  
16 about that particular recording.

17 If counsel for the other side wants to be  
18 there, that's fine. But, again, this is -- this was an  
19 absolute surprise. It should have been disclosed. It  
20 was not. We need an opportunity to be able to take a  
21 look at it.

22 And there's another matter, too, but I'll  
23 leave it at that at that point. So the request is  
24 basically at some point in the future we're probably  
25 going to need a half a day in order to complete that

1 MR. DEBUS: I was sitting back there, and I  
2 didn't hear what he said in the beginning.

3 Is he asking to bring Mr. Grehoski back? They  
4 can do that, but not in our case. I don't know when --  
5 do you want to do something right now, or are you  
6 talking about later? I didn't hear what you were  
7 asking.

8 MR. FIELDS: Well, I'm assuming that  
9 Mr. Grehoski -- Mr. Grehoski is still under -- or  
10 subject to cross-examination by Mr. Horne's attorneys.

11 If he lets us -- if we let it go at that, I'll  
12 be happy to bring Mr. Grehoski back as a -- to counter  
13 Mr. Tatham. I think we have the right to do that.

14 But what we're asking for is to bring -- to  
15 potentially bring Mr. Tatham back after reviewing the  
16 recording and the -- and the speaking with Mr. Tatham.

17 MR. DEBUS: They've got a right to do that.  
18 They've got a right to try to interview him. He  
19 doesn't have to talk to them. So they can do whatever  
20 they want to do in their rebuttal case.

21 I thought they were asking to put Mr. Grehoski  
22 on this morning during the defense case, and if that's  
23 not -- and I don't have a problem with it.

24 JUDGE EIGENHEER: If I understand, you're  
25 basically saying that after you get the recording and

1 testimony, and we'd like an opportunity to have the  
2 disk to do the analysis for the cross-examination on  
3 that issue with Agent Grehoski.

4 MR. LASOTA: Well, Judge, the audio was  
5 disclosed to us yesterday, and I think the reason it  
6 wasn't given to us before is there's nothing -- it's  
7 not a substantive conversation.

8 But it becomes important when there's  
9 testimony that that conversation -- there was substance  
10 in it, and our guy has a -- or Mr. Tatham has a copy of  
11 the actual audio. So it only became important after  
12 Agent Grehoski testified the way he testified, Judge.

13 So it's been sent over to the Yavapai County  
14 Attorney's Office. It should come up any -- it's being  
15 entered into evidence anytime. I mean, you heard the  
16 recording.

17 And I -- you know, this business about now we  
18 have to subpoena Mr. Tatham for an interview, that's  
19 just not how it works here. They went out and asked  
20 him to interview, and he doesn't want to talk to them,  
21 and I think for a very good reason.

22 So there's no grounds for them to get a  
23 subpoena to go talk to Mr. Tatham at all. I mean, it  
24 is what it is, and they're getting a copy of the audio.  
25 And I think that's about it.

1 the chance to review it and go over it with  
2 Agent Grehoski, you may want an additional half day at  
3 some point later to bring back that rebuttal testimony?

4 MR. FIELDS: And it could include both  
5 Mr. Tatham and Mr. Grehoski.

6 JUDGE EIGENHEER: Okay. We can certainly talk  
7 about the timing of such events, if the recording comes  
8 through soon.

9 MR. DEBUS: Your Honor?

10 JUDGE EIGENHEER: Yes.

11 MR. DEBUS: Mr. Grehoski is under the rule.

12 JUDGE EIGENHEER: Yes.

13 MR. DEBUS: Yesterday after court he gave a  
14 press conference. I believe that's a violation of the  
15 rule, but that's for another day.

16 I would ask you to enter an order that he is  
17 not to talk to the press, he's not to talk to another  
18 witness, and he can't be present if they interview  
19 Mr. Tatham.

20 I haven't found out yet whether or not the  
21 Yavapai County Attorney's Office authorized that press  
22 conference. But Mr. Grehoski, under the rule, is  
23 basically in contempt of the court by having that press  
24 conference. We'll talk about that when they call him.

25 MR. FIELDS: I wasn't aware that Mr. Grehoski

1 talked to the press. However, this proceeding is being  
2 recorded. It's being tweeted live. So there's  
3 information floating around in the public domain, to  
4 use a population phrase, that Mr. -- that  
5 Agent Grehoski is aware of, and I would assume that the  
6 press asked him to comment on it.

7 Be that as it may -- okay.

8 JUDGE EIGENHEER: You're not making any formal  
9 motion or request at this time that --

10 MR. DEBUS: I'm sorry, Your Honor?

11 JUDGE EIGENHEER: You're not making any formal  
12 motion or request --

13 MR. DEBUS: No.

14 JUDGE EIGENHEER: -- with respect to that?

15 MR. DEBUS: No.

16 JUDGE EIGENHEER: Then, as you said, we'll  
17 address that --

18 MR. DEBUS: I think all of this is untimely,  
19 quite frankly.

20 MR. FIELDS: Well, when you drop a surprise  
21 recording on us that's not disclosed, I think the rules  
22 change.

23 The other issue -- if we're done with that,  
24 the other issue, and I have talked to Mr. Kimerer, and  
25 I believe that he's got the agreement of other counsel,

1 is that at the conclusion of the case we would -- the  
2 parties would prefer written closings rather than oral  
3 closings. That will give us an opportunity to kind of  
4 gather our thoughts.

5 We've been citing a lot of law, both sides  
6 have, and that will be an opportunity for the Judge to  
7 consider the law in a more quiet setting and make an  
8 appropriate ruling.

9 JUDGE EIGENHEER: And while we're on the topic  
10 of timing, what is your feeling as to whether or not --  
11 well, now the additional half day later, possibly, that  
12 may be moot, but are we going to conclude by tomorrow  
13 afternoon, do you think?

14 MR. KIMERER: I would hope we could do the  
15 additional half a day almost immediately. I'd really  
16 like to get the whole thing concluded without that  
17 lingering for a long period of time.

18 MR. FIELDS: And I'm probably looking -- I  
19 don't think it can happen. We might actually finish  
20 today except for that additional period.

21 But I don't think it will take us too long. A  
22 lot of it depends on how quickly we can get Mr. Tatham  
23 to cooperate. I think we could -- if the Court would  
24 issue a subpoena, I think we can get it fairly quickly.

25 MR. DEBUS: I have an idea that might help.

1 We'll bring Mr. Tatham down here at noon. They can try  
2 to interview him. If he doesn't want to talk to them,  
3 Mr. Tatham -- I mean, if they want to call him as a  
4 witness, I think he'd be cooperative and show up this  
5 afternoon again.

6 But I don't see why we have to take a whole  
7 day to try to interview him, find out they can't  
8 interview him, et cetera.

9 MR. FIELDS: So counsel is instructing  
10 Mr. Tatham not to interview him; is that what I'm  
11 hearing correctly?

12 MR. DEBUS: No, not at all.

13 MR. LASOTA: He doesn't want to talk to  
14 Agent Grehoski. He's indicated that.

15 MR. FIELDS: I'm not asking him to talk to  
16 Agent Grehoski.

17 MR. LASOTA: He doesn't want to talk to you,  
18 either. I don't think they --

19 MR. DEBUS: And Grehoski is better looking.

20 MS. WINN: That's not nice.

21 MR. DEBUS: He's been told by me personally  
22 that these are his options: You can talk to anybody  
23 you want to talk to, you don't have to talk to anybody  
24 you don't want to talk to. The only thing I ask is if  
25 you're going to talk to somebody, we'd like to be

1 there.

2 That is the law.

3 MR. FIELDS: We have no objection to them  
4 being there.

5 MR. DEBUS: Do you want me to bring him in at  
6 noon?

7 MR. FIELDS: I'm sorry?

8 MR. DEBUS: Do you want him here at noon to  
9 try to interview him, or do you want me to ask him if  
10 he'll talk to you and let you know?

11 MR. FIELDS: I don't want to do this on the  
12 fly. We need to look at the recording first. So I  
13 would ask that we -- if we're going to do this, we need  
14 something.

15 I'll be happy to do it next week. But given  
16 the magnitude of what this is, which it's significant,  
17 not huge, but it's significant, we'd like to have time  
18 to actually listen to the tape to be able to analyze it  
19 with Agent Grehoski and also formulate questions for  
20 Mr. Tatham.

21 We'd like to have another week and schedule  
22 that half day maybe next week or the week after.

23 MR. KIMERER: Your Honor, I really have to  
24 object to this lingering. We really need to conclude  
25 this. This thing, certainly on behalf of my client, it

1 just lingers as every day that goes on. It's  
2 just agony for all of us. We'd like some type of --

MR. FIELDS: I want to point out, I didn't  
4 even get to hear -- they knew about this at noon. We  
5 didn't even hear about it in the hallway.

6 The first time I -- he turned on that  
7 tape-recorder I thought I was going to hear the one  
8 that was disclosed. What I heard was something  
9 entirely different.

10 So for them to conduct an ambush, which maybe  
11 it wasn't at noon, but it certainly was when they put  
12 that man on the stand, and then to object for a delay  
13 to allow us to deal with this issue I think is  
14 unreasonable. We're asking for a very short period of  
15 time. I think we deserve it.

16 MR. LASOTA: You're talking about a week or  
17 two weeks? I mean, that's not a short amount of time.  
18 I don't understand -- if they could indicate why  
19 they -- okay.

20 So they listen to the tape, or the audio,  
21 whatever it is, I mean, what is it that you need to  
22 analyze about the audio? That's the question I would  
23 have that's it's going to take another week or two.

24 We object completely to coming back here next  
25 week. We've been -- I mean, this thing has been going

1 on for a long time, and we don't want to go into  
2 another week.

3 MR. KIMERER: The other problem we have, I  
4 know Mr. Rake starts a trial, he won't be available, so  
5 we have problems that way, too. And even my schedule  
6 is such. I'll have problems. I'd just like to get it  
7 over with within this time period as quickly as we can.

8 JUDGE EIGENHEER: I will take all of that  
9 under advisement.

10 Are there any other preliminary matters?

11 MR. FIELDS: I think that's okay. I think  
12 we're good.

13 JUDGE EIGENHEER: Then your next witness.

14 MR. LASOTA: We call Kathleen Winn to the  
15 stand, Judge.

16 JUDGE EIGENHEER: One last housekeeping, the  
17 stipulation you referred to yesterday about it not  
18 being filed.

19 MR. LASOTA: That's in process, too, Judge.

20 JUDGE EIGENHEER: Just making sure.

21 (The witness was duly sworn.)

22 JUDGE EIGENHEER: Please state your name,  
23 spelling it for the record?

24 THE WITNESS: Kathleen Winn, K-a-t-h-l-e-e-n,  
25 Winn, W-i-n-n.

1 JUDGE EIGENHEER: Please proceed.

2 MR. LASOTA: Thank you, judge.

3  
4 KATHLEEN WINN,

5 called as a witness herein, having been first duly  
6 sworn by the judge, was examined and testified as  
7 follows:

8  
9 DIRECT EXAMINATION

10 BY MR. LASOTA:

11 Q. Ms. Winn, will you tell us a little bit about  
12 your background in terms of -- I mean, where did you --  
13 start with where you went to college.

14 A. I went to college at the University of  
15 Arizona. I was a radio television major. Upon  
16 graduating, I was a television reporter.

17 From that I went into TV sales and marketing.  
18 I had my own advertising agency. One of my clients at  
19 the time was the Sheraton El Conquistador, Domino's  
20 Pizza, Patio Pools. I had big clients.

21 From that I went into real estate and spent  
22 about 27 to 28 years in real estate lending and real  
23 estate sales. I'm a real estate broker and a mortgage  
24 banker.

25 And then that pretty much brings us to three

1 years ago I started working as the community outreach  
2 and education director for the state of Arizona for the  
3 attorney general's office.

4 Q. Do you hold any special degrees,  
5 certifications in real estate?

6 A. I have the GRI, which is a graduate of Real  
7 Estate Institute. I have the CRS, which is certified  
8 real estate specialist. And I have my mortgage  
9 banker's license and my real estate broker's license.

10 Q. Do you have any political experience with  
11 the -- the real estate industry?

12 A. I was the chairman of the RAPAC committee for  
13 Tucson, so I did political fund raising and lobbying in  
14 Washington on behalf of property rights and homeowners  
15 and advocated for homeowners and worked in homeless  
16 issues. I founded a homeless shelter. I think that  
17 was mentioned in the opening argument.

18 Q. What shelter is that?

19 A. At the time it was called Shalom House. It's  
20 now called New Beginnings. And I was a founding member  
21 of the Heart Foundation that raised the capital and  
22 negotiated the contract and got the zoning changed to  
23 facilitate that property.

24 Q. Okay. Now, Ray PAC, could you just tell us a  
25 little -- exactly what that entity was?

1 A. It's a PAC. It's a Realtors political action.  
2 Much in the way we've talked about PACS here, we would  
3 raise money.

4 And our focus -- our issues were property  
5 rights and homeowners' rights. And so we would  
6 advocate with our legislators here in the state on  
7 things that affected property rights and advocate for  
8 laws that we felt were pro business and supported real  
9 estate agents and people that were in the real estate  
10 industry.

11 Q. I'd like to talk a little bit about your job  
12 at the time of the 2010 election. Let's go to October  
13 of 2010. Where were you working?

14 A. I was working at AmeriFirst Financial. I was  
15 a loan officer.

16 Q. Where was your office?

17 A. I don't remember the exact address anymore,  
18 but it was McKellips just west of Gilbert Road.

19 Q. And in terms of what you did there, could you  
20 describe that in a little bit more detail?

21 A. I was a -- as a senior loan officer, I  
22 originated and closed mortgage loans, both residential  
23 and commercial, primarily residential, 80 percent I  
24 would say, and 20 percent commercial.

25 Q. Okay. But you worked on both residential and

1 about the 5th I was in Arizona. The 5th through the  
2 8th I was in Massachusetts. I returned home on the  
3 8th, 9th. I'd have to check my phone records. And  
4 then I was in Arizona the 9th through November 2nd,  
5 which was the election.

6 Q. Now, when you returned home, did you reengage  
7 in political activities?

8 A. When I got home, I -- I'm trying to think what  
9 I did. I don't remember. I didn't -- I think if I got  
10 home around the 9th or 10th, I started -- I had  
11 received an e-mail, I think, regarding Felecia  
12 Rotellini. So I think I --

13 Q. But at some point you decided you were going  
14 to run an -- you were going to get an independent  
15 expenditure activity going; is that accurate?

16 A. Around the time I got back.

17 Q. Okay.

18 A. I saw something or I heard something.

19 Q. Do you know what prompted you to want to do  
20 that?

21 A. I haven't been able to pinpoint this, but I  
22 either saw an e-mail or saw an ad where they were  
23 accusing Tom Horne of being involved -- or supporting  
24 someone who was in child porn, and I found that  
25 offensive.

1 commercial?

2 A. Yes, I did.

3 Q. Now, I want to take you to the period -- let's  
4 go to September of 2010. What was happening that month  
5 for you personally?

6 A. My husband was retiring from Boeing. He was  
7 completing a 40-year career in Army aviation and  
8 military sales. He was the vice president. And he  
9 was -- we were completing that, and there was a lot of  
10 celebrations that month.

11 Q. But for the primary election of 2010, what had  
12 you done in that election?

13 A. I had been a volunteer for the Tom Horne  
14 campaign, and primarily I had worked in the rural  
15 counties.

16 Q. Now, was your activity level in September  
17 comparable to that -- that it had been at the end of  
18 the primary or not?

19 A. No. I pretty much think -- I attended a  
20 couple meetings in September, but I was pretty absent  
21 from the campaign.

22 Q. And so going to October, what -- take us  
23 through the beginning of October in terms of where you  
24 were physically.

25 A. Can I -- well, October 1st through, I think,

1 Q. So that made you want to do an independent  
2 expenditure?

3 A. Well, I wanted to see what resources the  
4 Republican party had to support a Republican candidate  
5 for attorney general, so I contacted Brett Mecum at the  
6 Republican party.

7 Q. Did Tom Horne tell you to go do that?

8 A. No. I did that on my own.

9 Q. When you called Brett Mecum, do you recall the  
10 date you called him, or the approximate dates?

11 A. It was right after I returned from  
12 Massachusetts.

13 Q. Okay.

14 A. I don't know the exact time or date.

15 Q. So what did Mr. Mecum say?

16 A. He said there was money available for that  
17 race but that he needed an IE, that the Republican  
18 party couldn't accept the money from the RSLC, so they  
19 needed an IE to take the money, and I said I had one.

20 Q. Okay. So once you did that, what did you do  
21 next?

22 A. I contacted Mr. Horne and said I would lead  
23 the campaign, and he sat down with me and we went  
24 over the -- it was one-page sheet of the law, ARS,  
25 whatever that law is that we're here for.

1 Q. Okay. So is it fair to say he told you about  
 2 the independent expenditure laws?  
 3 A. Yes. He even underlined things in the law.  
 4 Q. Okay. Did he tell you anything else? Did he  
 5 tell you to seek legal counsel?  
 6 A. Not in that conversation, but in the  
 7 subsequent conversation he suggested that I seek legal  
 8 counsel, and he gave me the name of Lisa Houser, who I  
 9 did contact.  
 10 Q. Could you tell the Court who Lisa Houser is?  
 11 A. She's an attorney. She -- I believe her  
 12 primary focus is election law. I don't know that. I  
 13 contacted her and had a conversation with her.  
 14 Q. Okay. What did she say in that conversation?  
 15 A. Lisa Houser laid out what I could and couldn't  
 16 do. I asked her questions. The thing that I was  
 17 concerned about was how to create separateness between  
 18 myself and the previous work I had done.  
 19 And she said that I could run an independent  
 20 campaign. I couldn't contact the candidate or his  
 21 staff on content, on where the expenditures were going  
 22 to be made.  
 23 And I understood that I couldn't ask them for  
 24 any help on contributions, but I've been since told  
 25 that that was not accurate.

1 But Lisa -- I had received her name and phone  
 2 number, so I had written it into the log so I could  
 3 contact her.  
 4 Q. And you did, in fact, contact her?  
 5 A. I did, on that day.  
 6 Q. All right. So I want to take you through -- I  
 7 think there were -- there were a number of donors to  
 8 the -- to the expenditure committee; is that correct?  
 9 A. That is correct.  
 10 Q. Do you remember exactly how many off the top  
 11 of your head?  
 12 A. Seven.  
 13 Q. Okay. Now -- so the first contribution and --  
 14 the records show the first contribution to be from  
 15 Chuck Diaz for \$5,000.  
 16 Is that consistent with your recollection?  
 17 A. Yes.  
 18 Q. Okay. Now, can you tell us the circumstances  
 19 of how you came to collect that money, how you got it  
 20 into your account, so to speak?  
 21 A. I went to Mr. Diaz' home, and I met with him  
 22 and his wife in his home, and he wrote me a check.  
 23 Q. Okay. Where is his home?  
 24 A. In Tucson, Arizona.  
 25 Q. What was the purpose of your visit for that?

1 Q. But that's what she told you?  
 2 A. That's what I believe that I was told.  
 3 Q. Okay. Now I'm going to take you to Exhibit --  
 4 it's going to be State's Exhibit 32, and I am going to  
 5 turn to October --  
 6 A. Do you mind if I look at it here on my own?  
 7 Q. Sure. It's on your screen, too, though.  
 8 A. Mine's in color.  
 9 MR. LASOTA: I mean, unless anyone has an  
 10 objection.  
 11 THE WITNESS: It's the same record. Is that  
 12 okay?  
 13 JUDGE EIGENHEER: That's fine.  
 14 Q. BY MR. LASOTA: Please turn to October 13th,  
 15 which is State's Exhibit 32, Bates stamped 549.  
 16 Now, can you read -- do you see Lisa Houser's  
 17 name anywhere there?  
 18 A. I do.  
 19 Q. Okay. With a number by it?  
 20 A. (602) 256-4462.  
 21 Q. Okay. Now, what does that -- her, what does  
 22 that entry in your journal indicate to you as a record?  
 23 A. This -- I was taught a long time ago to keep  
 24 records of your days in case you're ever sued. It was  
 25 more towards real estate than this.

1 Let me strike that.  
 2 Was that the entire purpose of your visit?  
 3 A. I was in Tucson with my husband. He was an  
 4 advisor to the U of A engineering college, and he was  
 5 there that weekend, and so I went with him and met with  
 6 Mr. Diaz. While he was in a meeting, I went to  
 7 Mr. Diaz' home.  
 8 Q. Okay. Now, had you met Mr. Diaz previously?  
 9 A. I had met Mr. Diaz in one prior occasion at  
 10 Mr. Horne's victory party for the primary and was  
 11 introduced to him.  
 12 Q. Okay. Who introduced you?  
 13 A. Sharon Collins.  
 14 Q. Now -- so how did you make the -- can you tell  
 15 us how you made the connection with Mr. Diaz?  
 16 A. After I met Mr. Diaz at the primary party, he  
 17 contacted me. He was also working on other political  
 18 campaigns. And he had an interest in helping Ruth  
 19 McClung beat Raul Grihala, I think, in Tucson.  
 20 And so he asked if any of the networks that I  
 21 had kind of set up for Mr. Horne in the rural areas, if  
 22 he could -- if we could use them to help Ruth McClung  
 23 get elected. He contacted me, I think, at the end of  
 24 September, the 25th I think.  
 25 Q. I'm going to turn to Bates Number 542. Check

1 that. It's going to be 543.  
 2 Do you see his name to the screen?  
 3 A. I do.  
 4 Q. Okay. Under the date September --  
 5 A. 25th, 2010.  
 6 Q. Okay. So -- but in terms of his contribution  
 7 on the 15th, I take it you had a subsequent  
 8 conversation with him about giving money to Business  
 9 Leaders for Arizona?  
 10 A. Yes. He was one of the people when I got  
 11 back, and it looked like there was money available. I  
 12 contacted him right away because he wanted to help Tom  
 13 Horne. So he was one of the first people I called.  
 14 Q. Okay. Did anyone -- I mean, did you get  
 15 that -- did Mr. Horne suggest you call him?  
 16 A. No. No.  
 17 Q. Okay. How about did anyone else suggest you  
 18 call him?  
 19 A. No one else suggested that I called him. I  
 20 let Sharon Collins know that I would be calling him,  
 21 because she introduced him to me. So I did tell her I  
 22 would be calling her contact.  
 23 Q. What did she say?  
 24 A. She said that he was great. She didn't want  
 25 to talk to him.

1 Richard. I don't know if they were college -- I don't  
 2 know if they went to law school at the same time, but  
 3 Greg Harris and Gerald were good friends. And when I  
 4 was trying to help Gerald in the Democrat primary,  
 5 actually, he -- I came to know Greg Harris at that  
 6 time, and he did not like Mr. Thomas.  
 7 Q. Okay. So you shared that sentiment?  
 8 A. Yes.  
 9 Q. All right. Now -- so you made that -- you  
 10 were in Tucson, and you made that arrangement with  
 11 Mr. Bruner?  
 12 A. Correct.  
 13 Q. And he subsequently came through with --  
 14 A. \$30,000.  
 15 Q. Okay. All right. The next -- now, in terms  
 16 of who you ultimately chose for -- to assist you with  
 17 the campaign, it was Lincoln Strategy Group. But can  
 18 you take us through a little bit about how you came to  
 19 choose them?  
 20 A. Yes. So when I talked to Brett originally,  
 21 when I got back and he said there was money for an IE,  
 22 he said, "But you should hire a firm that's known for  
 23 political strategies."  
 24 And I said, "Well, who do you recommend?"  
 25 He recommended Burt Coleman, Lincoln

1 Q. Why didn't she want to talk to him?  
 2 A. She was intimidated by him.  
 3 Q. Now, I want to move on to the next -- do you  
 4 remember off the top of your head who the next  
 5 contribution was from?  
 6 A. The next contribution was from one source, but  
 7 we got two separate checks for \$15,000. And I met with  
 8 a gentleman the next morning in Tucson, Keith Bruner,  
 9 and that was Texas Loan Corporation, I believe. But  
 10 there's two -- I don't have my bank records.  
 11 Q. NCP Financial?  
 12 A. Yes.  
 13 Q. Okay. Now, you mentioned Greg Harris. What  
 14 was their relation to Greg Harris?  
 15 A. Greg Harris was their attorney. He  
 16 represented them. He was their lobbyist. That was  
 17 like -- they did loans, title loans for people.  
 18 Q. Okay. How did you know Greg Harris?  
 19 A. I knew Greg Harris from when he worked on  
 20 Gerald Richard's campaign when Gerald Richard ran  
 21 against Tim Nelson for county attorney. Ultimately Tim  
 22 Nelson ran against Andrew Thomas.  
 23 Q. And you knew him as a sort of high profile  
 24 attorney?  
 25 A. I met Greg Harris completely from Gerald

1 Strategies, and one other that I do not recollect who  
 2 it was. And he gave me phone numbers.  
 3 I actually think I physically went to the  
 4 Republican headquarters. And he gave me phone numbers,  
 5 and I contacted. And Lincoln Strategies got back to me  
 6 first.  
 7 Q. Okay. Now -- so Brett Mecum, could you tell  
 8 us who he was at that time?  
 9 A. I think executive director. Randy Coleman was  
 10 the chairman of the Republican party, and Brett was his  
 11 right-hand person.  
 12 Q. Okay. And you knew Brett at that time, I  
 13 presume from your testimony?  
 14 A. Yes. I was a precinct committeeman at the  
 15 time, and so I knew him from that. And we had some  
 16 issues. I was in Russell Pierce's old district. And,  
 17 also, I had done Brett's mortgage for his house, when  
 18 he bought his house. Jeff Dial sold him his house, and  
 19 I did the mortgage.  
 20 Q. Who is Jeff Dial?  
 21 A. He's a state legislator.  
 22 Q. Do you know when you took care of that  
 23 mortgage for Mr. Mecum?  
 24 A. Before this, like June or July, possibly. I'd  
 25 have to look.

1 Q. All right. So let's -- I think this takes us  
2 to the next contribution, which is from Richard slash  
Christine Newman for \$15,000.

4 Can you tell us about that?

5 A. I had been told, when I talked to Lincoln  
6 Strategies, that in order to activate the money, Brian  
7 Murray told me I had to raise at least \$50,000 to get  
8 the money that -- to get it in here to be a viable  
9 campaign.

10 So -- and I don't remember exactly when we had  
11 that conversation. I actually physically went to  
12 Lincoln Strategies' office sometime during that week.

13 And so I had gotten the 5- -- the 35-, so I  
14 needed -- 15,000 got me to the 50,000, so I asked  
15 Christine Newman for 15,000 -- well, I didn't ask her.

16 I said, "This is what I'm trying to get." And  
17 she volunteered to give me 15,000. I didn't ask her  
18 for any specific dollar amount.

19 Q. Okay. Now, can you tell us who Christine  
20 Newman is?

21 A. Christine Newman is Tom Horne's older sister.

22 Q. Okay. Had you met her before speaking to her  
23 on the phone?

24 A. No. I had met her in-person at the same  
25 victory party where I met Chuck Diaz. And I had taken

1 Q. Okay. Thanks.

2 So that takes us to 50. Strike that.

3 I want to go back a little bit to the  
4 conversation with Mr. Murray. I want you to elaborate  
5 on that further.

6 So the question is this: He basically says  
7 you have to get to a certain threshold before you  
8 become viable?

9 A. Correct.

10 Q. And viable means you become a legitimate  
11 entity that the RSLC will give money to?

12 A. I don't know what -- we were a registered  
13 independent campaign with the state of secretary, so I  
14 don't understand the word "legitimate."

15 Q. Well, viable -- take that back, viable --  
16 well, they -- I mean, would the RS -- would the  
17 national Republicans want to give money to a committee  
18 that had 100 bucks in the bank?

19 A. Probably not.

20 Q. Okay.

21 A. Plus, I -- Brett Mecum had to let them know my  
22 -- about me and the community and who I was. He had to  
23 vouch for who I was, because they ultimately sent me  
24 \$350,000. They wired it directly to my account.

25 So Brett had to, as the director of the

1 a picture of her with Tom, and I had sent it to her.  
2 And she called to thank me after that and said, "If  
3 there's anything I can do for my baby brother, let me  
4 know."

5 And I don't think of Tom as anybody's baby  
6 brother, so that kind of stuck with me.

7 Q. Okay. And you exchanged contact info at  
8 that --

9 A. I had her e-mail, and I had her phone number.

10 Q. Okay. Did Mr. Horne tell you to call his  
11 sister and get money?

12 A. No. He didn't know that I had ever called his  
13 sister until long after the election was over.

14 Q. Do you think -- now, are you familiar with the  
15 law on contributions from a family member?

16 A. I think that there's no restriction on how  
17 much a family member can give to a campaign.

18 Q. Okay.

19 A. I'm not sure. I'm not a lawyer.

20 Q. If you told Mr. Horne about this money, do you  
21 think he would have had other ideas about where that  
22 money should go?

23 A. I'm sure he would have.

24 Q. Where?

25 A. To his campaign.

1 Republican party, say, "Here's who this person is, and  
2 that's why it's okay to send this money to her."

3 Q. Okay. So you had to establish some  
4 credibility?

5 A. Correct.

6 Q. And \$50,000 helped you establish that?

7 A. That's what Brian Murray told me I needed to  
8 do.

9 Q. Okay. So the next contribution is from -- is  
10 from the RSLC and --

11 A. Yeah. We originally had been -- oh, sorry.

12 Q. Yeah, just a second.

13 Okay. So, in your mind -- well, actually, you  
14 know what, this is what I'm going to do. I'm going to  
15 give you a set of facts that is actually true, and I'm  
16 going to tell you what you think about it.

17 And the set of facts is this: So I had a  
18 client who wanted to -- who wanted Phoenix Open  
19 tickets, and I wanted to get them for him. And I  
20 called another client who I know to be a -- sort of  
21 in -- you know, someone who could procure those things.

22 And he -- he says, "Let me see what I can do."

23 He calls another person and gets ticket and  
24 says, "Tim, I got you tickets. I called this other  
25 person who called in and get the tickets."

1 I get the tickets, and I go back to my  
2 original client, and I tell him, "Here are these  
3 tickets that I got for you."

4 I did not mention the -- even the person who  
5 gave them to me, even the person they originated with.

6 Do you think that makes me -- do you think  
7 that's false what I told my client?

8 MR. FIELDS: I'm going to object to the  
9 question. It's hypothetical in the extreme, and I  
10 don't see how it's relevant here.

11 MR. LASOTA: Well, Judge, I mean, they -- you  
12 know, they -- we'll get to her affidavit in a minute.  
13 But they've pulled that little snippet out and said she  
14 didn't raise the \$350,000 and she lied.

15 They've essentially -- they haven't said she  
16 lied. They said she was -- it was false when she took  
17 credit for raising \$350,000. That's been a big part of  
18 their case.

19 MR. FIELDS: So the question should address  
20 that issue.

21 MR. LASOTA: Okay. Well, I'll withdraw it.

22 Q. BY MR. LASOTA: And why don't we turn to that  
23 affidavit now, which -- okay. So this is going to be  
24 State's Exhibit 4, and it's Bates Stamp 8. It's up on  
25 your screen.

1 Would you read what you said, starting with  
2 Subsection B?

3 A. "There was no arrangement, coordination, or  
4 direction with respect to the expenditure in that, one,  
5 I chose from whom to raise money without any input;  
6 two, I raised the money myself."

7 Q. Okay. I'm going to stop you there.

8 A. Okay.

9 Q. So, in other words, you didn't just -- I mean,  
10 you said this in connection -- you said Number 2 in  
11 connection with Subsection B; is that accurate?

12 A. Yeah. These statements aren't meant to stand  
13 alone. They're all together in a context.

14 Q. Now, do you feel that you are responsible for  
15 raising the \$350,000?

16 A. Yes. I believe that I had an active role  
17 in -- I provided the IE. I provided the information to  
18 the RSLC, where they needed to wire the money. I  
19 realize that Brian Murray was equally helping in that  
20 process, but I believe that I helped raise the money  
21 myself, yes.

22 Q. Would it have happened without you?

23 A. Possibly. I mean, they may have found another  
24 IE, but I'm the one that stepped forward and did this.

25 Q. Okay. Now I want to take you to the next

1 contribution, which is from a gentleman by the name of  
2 Ron Lebowitz. The records show October 26, \$840.

3 Can you tell us about that contribution, to  
4 the extent you remember?

5 A. I just remember going to Mr. Lebowitz' house  
6 and picking up the check.

7 Q. Had you met Mr. Lebowitz prior?

8 A. I think one other time.

9 Q. Do you remember --

10 A. During the primary.

11 Q. During the primary? Okay.

12 In terms of the initial contact where you  
13 found out he wanted to give the money, do you remember  
14 if he called you or you called him?

15 A. I believe with Ron he called me.

16 Q. Okay. Next contribution is from Fife  
17 Symington, October 27, 500.

18 Does that sound about right?

19 A. Yeah.

20 Q. Okay. Now, if -- let me take you through one  
21 point.

22 If something shows up on your campaign finance  
23 report on a certain date, like the 27th, does that  
24 necessarily mean that it was entered -- that you  
25 received it on that date?

1 A. No. My bank records would be probably a  
2 little bit more accurate as to when I actually received  
3 monies.

4 Q. Okay. All right. So how did you -- how did  
5 the Symington contribution come about?

6 A. I contacted Fife. I knew Fife. And he said  
7 he was a little tapped out, but he sent \$500, or he had  
8 his personal assistant send \$500.

9 Q. Now, he's obviously former Governor Symington,  
10 but you call him Fife.

11 Can you tell us why?

12 A. My husband served on some committees for the  
13 governor, when he was governor, to attract high-tech  
14 industries to the state of Arizona. And so I knew  
15 Governor Symington and -- I just knew -- I just knew  
16 who he was.

17 Q. And you called him because you thought he  
18 might be able to contribute?

19 A. Right. Or give -- you know, and, actually,  
20 because he's still involved in the party, I asked if  
21 there was anyone else he thought I should call.

22 Q. Okay. Now, Mr. Steve Ellman is the next  
23 contribution, \$5,000, October 28th.

24 Can you tell me how you -- how that came to  
25 be?

1 A. Mark Goldman gave me \$5,000 and arranged for  
2 me to pick up a check from Mr. Ellman's office. I  
never spoke to Mr. Ellman.

4 Q. Now, let's talk about Mr. Goldman. How did  
5 you come to get a contribution from him?

6 A. I had called Dennis Wilenchik after I talked  
7 to Fife, and Dennis said he couldn't, but he referred  
8 me to Mr. Goldman.

9 So then I went to Mr. Goldman's house in  
10 Fountain Hills and picked up his check. While I was  
11 there, he called Mr. Ellman. I went to Mr. Ellman's  
12 office and picked up that check.

13 Q. Do you know if Mr. Goldman has a history of  
14 Republican party giving?

15 A. Yes. He's a very big Sheriff Joe advocate.

16 Q. Okay. ED Marshall for 2,000 on the 28th?

17 A. Correct.

18 Q. Do you know how you came across him?

19 A. I had met Mr. Marshall at some Republican  
20 event unrelated to any of this earlier, and I called  
21 him.

22 He offered -- I went to his business, and he  
23 offered to write a check. And so I went -- I had met  
24 him previously. So I had my own list of people, and he  
25 was at the end of my list, and I just called him right

1 at the end.

2 Q. Okay. And the last one is Richard Newman,  
3 \$100,000. Now, the secretary of state's records say  
4 the 29th.

5 Is that -- does that sound right to you?

6 A. No. I had it before then.

7 Q. Okay. Now, I'm going to --

8 A. There should be wiring records on that --

9 Q. Yeah.

10 A. -- bank account.

11 Q. Yeah. We're going to get to those now.

12 I'll take you to our Exhibit Number 11, and  
13 can you -- which is going to be Bates Stamp Number 1,  
14 Exhibit 11.

15 Can you read who that e-mail is from?

16 A. It's from Richard Newman.

17 Q. Who are the copies?

18 A. Steve Kim.

19 Q. The date?

20 A. He also copied his wife, Christine Newman.

21 Q. Okay. What is the date?

22 A. The date is October 26, 2010, Tuesday, at  
23 2:31 p.m.

24 Q. And what is he -- what does -- what does  
25 Mr. Newman say?

1 A. He is giving instructions to wire \$100,000  
2 from his account as soon as possible to my account,  
3 Business Leaders for Arizona, UMB Bank.

4 Q. And if we read further below, down -- it says  
5 original message, but October -- do you see the entry  
6 for October 26 at 12:46?

7 A. Yes.

8 Q. Can you read what you say there?

9 A. "My account number is the bank routing number  
10 below. Thank" -- "the bank number below. Thanks,  
11 Christina. It will make a huge difference."

12 There should have been a comma there.

13 Q. Okay. And this exchange starts on the --  
14 essentially on -- it goes down to 11:08 a.m.?

15 A. Correct.

16 Q. Okay. Now -- now I want you to take -- take  
17 you to -- well, let's talk about the October 27th  
18 e-mail that Mr. Home sent. I believe this is State's  
19 Exhibit -- well, okay, so we talked about this, but  
20 this is the e-mail on the 27th.

21 Do these things, this, you know, "try to raise  
22 100K," did this have anything to do with the  
23 contribution from Richard Newman?

24 Could it have? The contribution from Richard  
25 Newman comes in the day before, and this comes the next

1 day?

2 A. No. No.

3 Q. Okay.

4 A. They're not related.

5 Q. They're not related?

6 A. They're not related.

7 Q. Okay. Did -- but if you look at -- so if you  
8 see the October 27th e-mail and you look at your  
9 campaign finance report that's --

10 A. Are we talking about the e-mail from Tom?

11 Q. Yeah.

12 A. Okay.

13 Q. If you look at that e-mail and you look at  
14 your campaign finance report on this, does the campaign  
15 finance report give a different data other than  
16 October 26 for the Richard Newman -- and you can -- why  
17 don't we go there, actually. Sorry. Strike that.

18 A. Okay.

19 MR. LASOTA: Actually, that's your exhibit,  
20 isn't it, Jack?

21 MR. FIELDS: Which one?

22 MR. LASOTA: State's 5.

23 MR. FIELDS: Yeah.

24 Q. BY MR. LASOTA: Okay. If you see in that  
25 exhibit, when does it -- when does the -- the date

1 recorded for that contribution from -- the \$100,000  
2 from Richard Newman is?

3 A. It says 10/29, but I actually received it in  
4 my bank on 10 -- the morning of 10/27 --

5 Q. Okay.

6 A. -- prior to Mr. Horne's e-mail.

7 Q. Now, when Mr. Newman told you the good news  
8 about how -- well, actually, let's go back to that.

9 How did you -- how did you -- how did you come  
10 to arrange for the \$100,000 from Mr. Newman, or  
11 Mrs. Newman?

12 A. So I was -- I had gotten the first 50,000. We  
13 had been told that the RSLC was going to send 450,000,  
14 not 350,000. Christine Newman contacted me to make --  
15 she had mailed the check, the \$15,000 check, and it had  
16 taken a couple days to get here.

17 So she contacted me to make sure I had  
18 received the first check, the \$15,000 check, and she  
19 asked me how the campaign was going.

20 I said, "It's going good. We were expecting a  
21 little bit more money from the Republican party, and  
22 they deferred \$100,000 to a race in Virginia."

23 And she said, "Well, I'll send you \$100,000  
24 more."

25 And I was flabbergasted. I hadn't asked her

1 A. I believe so.

2 Q. Okay. Did they -- did anyone ever mention a  
3 particular theory they had with this contribution from  
4 Mr. Newman?

5 A. There's been many theories in this case, but I  
6 -- I don't know. I --

7 Q. Do you think they -- do you think they thought  
8 that Mr. Newman had given the money in response to the  
9 October 27th e-mail from Tom Horne?

10 A. I don't know what they thought. I don't know  
11 what the Maricopa County's office thinks.

12 Q. Okay. Well, were you ever told that that was  
13 one of their theories?

14 A. I believe my attorneys may have told me that.

15 Q. Okay. Is it possible that this affidavit was  
16 related to that theory?

17 A. Most of my affidavits were in response to  
18 whatever entity was attempting to prosecute this  
19 matter.

20 Q. Okay. And this was their -- at that time,  
21 this was their theory du jour, you might say?

22 A. Sure.

23 Q. Now, let's talk about your black Mustang for  
24 just one second.

25 Do you know when you actually received the

1 to do it. She suggested that she would.

2 And I thanked her. And I said, "But you can't  
3 mail it." I said, "It needs to be wired. We need to  
4 get it in right away."

5 So I -- she said, "I don't understand wiring.  
6 I'll get my husband to call you."

7 And that was the first time I had talked to  
8 Richard Newman since the primary party. My dealings  
9 had all been with Christine at that point.

10 Q. So that's good news, obviously. Did you run  
11 out and tell Mr. Horne about this?

12 A. No. No. I -- again, like I said, Mr. Horne  
13 did not know I was having conversations with his sister  
14 until after the election was over.

15 Q. Okay. Now I want to take you to -- let's take  
16 you to another one of your -- we have three affidavits,  
17 and we talked about this one already a little bit.

18 Actually, we haven't talked about Number 11.  
19 Okay. And if you'll pardon me for a second, I'm going  
20 to pull it out, because I have my own -- my own notes  
21 on this.

22 Now, the county attorney's office -- the  
23 Maricopa county attorney's office was investigating  
24 this at the time you submitted this affidavit, which is  
25 dated May 30th; is that correct?

1 Mustang?

2 A. October 1st, 2010.

3 Q. Did the investigating authorities, Maricopa  
4 county attorney's office and the FBI, did they ever  
5 have a theory on how you got that Mustang?

6 A. From the secret bank account that they said I  
7 had.

8 Q. Okay. Was that accurate?

9 A. I didn't have a secret bank account. My  
10 husband bought me the car. So I did not buy the car  
11 with funds from an account that did not exist.

12 Q. Okay. Well, what about this secret bank -- is  
13 there another bank account that we don't know about?

14 A. No. I have many bank accounts, but none of  
15 them are secret. And I did not have any secret funding  
16 accounts.

17 Q. Okay. And you reported all of these  
18 contributions as the law requires under your  
19 independent expenditure?

20 A. I registered my IE. I reported all my  
21 contributions. I did my contributions actually at the  
22 secretary of state's office and with their help.

23 There had been an error made, and so it got  
24 corrected, and there was no -- there was no surplus in  
25 the account. There was no secret account. There was

1 no extra funds.

2 Q. Okay. Now, the allegation was that you were  
3 coordinating with Mr. Horne, correct?

4 A. That's the allegation.

5 Q. Okay. Was there ever an allegation that you  
6 were illegally coordinating with Mr. Wilkinson?

7 A. I don't believe so.

8 Q. Okay. Because you couldn't -- you couldn't --

9 A. He was my treasurer.

10 Q. Okay. You could talk to Mr. Wilkinson?

11 A. And I did.

12 Q. Okay. And you could talk to Mr. Murray?

13 A. And I did.

14 Q. And you could talk to your contributors?

15 A. And I did.

16 Q. Okay. And you could talk to anyone else in  
17 the world other than Tom Horne and his agents; is that  
18 correct?

19 A. I even -- I even asked the attorney if I could  
20 talk to Tom Horne, but I could not talk to Tom Horne  
21 about his campaign, and I did talk to Tom Horne.

22 Q. Okay. So would you say your affidavits were  
23 geared at refuting allegations of illegal activity that  
24 were proffered by the authorities?

25 A. Yes.

1 Q. Okay. So you weren't too concerned with  
2 saying, "I did not coordinate with George Wilkinson in  
3 an affidavit"? Does that follow?

4 A. I don't understand.

5 Q. I'll withdraw.

6 But your affidavits are geared towards  
7 actually refuting the allegations of illegality that  
8 they made?

9 A. Correct.

10 Q. Okay. And you stand by your statements that  
11 you believe you raised the money?

12 A. I know I raised the money not from the RSLC.  
13 I believe that I was instrumental, along with  
14 Mr. Murray, in securing those funds, yes.

15 Q. But it's fair for you to take credit for it?

16 A. I believe so.

17 Q. Okay. Now, you say in here -- you talk  
18 about -- you talk about the October 27th e-mail from  
19 Mr. Horne, and you say you did not act upon it.

20 And do you stand by that?

21 A. I do.

22 Q. Okay. You forwarded the e-mail. We've heard  
23 that in the testimony.

24 A. I did.

25 Q. Okay. Did you do anything further with regard

1 to that e-mail?

2 A. I did not.

3 Q. Okay. Did you have any follow-up  
4 conversations regarding that e-mail?

5 A. With Mr. Murray.

6 Q. Okay. What was the conversation with  
7 Mr. Murray?

8 A. He was upset that I had forwarded that e-mail  
9 and said he was going to send his attorney a letter,  
10 which he sent me a copy of.

11 If you read the e-mail, I didn't ask him to  
12 take any action. I'd received it, and I sent it to  
13 him. I didn't ask him to do anything with it. I was  
14 just -- I -- when I got it, I didn't even really read  
15 it. I just forwarded it to him.

16 Q. You forwarded it, and he's -- Mr. Murray is  
17 annoyed.

18 And do you have a conversation after that  
19 conversation with Mr. Murray with another person?

20 A. Yes.

21 Q. Who?

22 A. I contacted Tom.

23 Q. All right. What did you tell Tom?

24 A. I said not to send me any e-mails.

25 Q. Were you annoyed with Mr. Horne?

1 A. Very.

2 Q. Okay. Why?

3 A. Because I had not discussed anything with the  
4 independent campaign from the time I let him know I was  
5 leaving to do the independent campaign, and I didn't  
6 know this violated, but I didn't want to -- there -- to  
7 have that as an issue.

8 Q. Okay. All right. So let's move on to  
9 Mr. Wilkinson.

10 Was he the campaign treasurer?

11 A. He was.

12 Q. Okay. Can you tell us how you met -- came to  
13 know Mr. Wilkinson?

14 A. I met George originally when he became an  
15 agent at RE/MAX Fine Properties, and I did several  
16 loans for him. He had a full-time job, but he was also  
17 selling property, and so I did loans for his purchases.

18 Q. Okay. Now, let's -- we've talked about the  
19 contributions you received. And just to summarize, did  
20 Mr. Horne direct you to go talk to any of the  
21 contributors?

22 A. No.

23 Q. All right. So let's talk about the actual ads  
24 that ran, and it was only one -- it turned out it was  
25 only one ad, finally, correct?

1 A. It was one television ad, 30 seconds.  
 2 Q. Okay. But there were different -- there were  
 3 different sort of iterations of that before it ran; is  
 4 that correct?  
 5 A. No. There was -- we created one television ad  
 6 for 30 seconds. We -- we -- in the process of creating  
 7 that ad, we had many different iterations --  
 8 Q. Okay.  
 9 A. -- if that's what you're asking.  
 10 Q. Yes.  
 11 Let's go to Exhibit 6. I'm going to scroll to  
 12 the bottom. This is State's Exhibit 6. And you'll see  
 13 it's Page 18 -- I'm sorry. Wrong one. Okay. It's  
 14 Page 19.  
 15 Can you read the date and time of that e-mail?  
 16 A. It is Wednesday, October 20th, at 10:21 a.m.  
 17 Q. Now, was this the first script that you had  
 18 received?  
 19 A. Yes.  
 20 Q. Okay. Who did it come from?  
 21 A. Brian Murray.  
 22 Q. All right. So can you tell us a little bit  
 23 about what you did when you first received this e-mail?  
 24 Would you like to refer to your phone records  
 25 for the day? Would that help refresh your memory?

1 worked?  
 2 A. At the Bank of America building at Alma School  
 3 and Southern, the southeast corner.  
 4 Q. Okay. Is that where you ended up meeting?  
 5 A. We did.  
 6 Q. Okay. Because it was convenient?  
 7 A. I think it was about 10 minutes from my  
 8 office, and he was headed to Chandler afterwards, and  
 9 so it was convenient.  
 10 Q. Okay.  
 11 A. It was right off the freeway, the 101 south.  
 12 Q. So tell us about that meeting.  
 13 A. I printed off this, whatever you just showed,  
 14 the Brian Murray ad, and brought it to -- in my car on  
 15 a piece of paper. And we went over it and read it out  
 16 loud.  
 17 And he gave me some input. He thought we  
 18 should -- if we're going to attack Felecia, he thought  
 19 we should say something good about Tom.  
 20 And so we were just kind of struggling with  
 21 did we want to go to negative -- there were a lot of  
 22 negative ads out, and I thought we'd just get lost with  
 23 all the other negative ads.  
 24 So we had that kind of discussion, but I can't  
 25 remember exactly what was said. It was the general

1 A. No. When I first received this e-mail, I --  
 2 two things, I thought I need to contact George and to  
 3 get his input, and I also didn't -- this originally hit  
 4 me, when I read it, I thought it was just -- was very,  
 5 very negative.  
 6 Q. Okay. So did you contact George Wilkinson  
 7 after receiving this?  
 8 A. I believe I did.  
 9 Q. And if we turn to --  
 10 A. Tim, was that the 20 --  
 11 Q. Yeah, that was October 20th.  
 12 If we turn to State's Exhibit 7, you received  
 13 the e-mail at 10:21. Do you see Mr. Wilkinson's number  
 14 on the morning of the 20th?  
 15 A. I did. I contacted George Wilkinson at 10:40,  
 16 and we spoke for five minutes.  
 17 Q. Okay. What did you tell Mr. Wilkinson at that  
 18 time, if you can remember?  
 19 A. I can't remember exactly. I asked him if he  
 20 was available. He said he had some running around to  
 21 do. He was going to have lunch with his then  
 22 girlfriend, now wife. And she worked in Mesa, so we  
 23 made some arrangement to meet up in Mesa around the  
 24 lunchtime hour.  
 25 Q. Okay. Do you remember where in Mesa she

1 tone of the conversation.  
 2 Q. But he didn't just say, "That sound great"?  
 3 A. No.  
 4 Q. Did he --  
 5 A. You know, he gave me his opinion. George  
 6 always told me his opinion. It was one of the reasons  
 7 I trusted him.  
 8 Q. Okay. Do you -- what -- what -- do you know  
 9 George's party affiliation?  
 10 A. He's Republican.  
 11 Q. Would you consider him of a like mind as you  
 12 politically?  
 13 A. Absolutely.  
 14 Q. Okay. And are there any other reasons you can  
 15 think of why you would want his input?  
 16 A. I trusted his opinions. He's a successful  
 17 businessperson. I knew him personally. I had helped  
 18 him. He had helped me. We were just friends, and I  
 19 relied on him.  
 20 Q. And he was the treasurer?  
 21 A. Yes, he was.  
 22 Q. And you were spending a lot of money, correct?  
 23 A. I was about to.  
 24 Q. So is it -- do you consider it natural that  
 25 you might solicit additional opinions before spending

1 half a million dollars?  
 2 A. Exactly.  
 3 Q. Okay. I want to take you -- do you remember  
 4 where you were before -- do you remember where you were  
 5 the morning of the 20th?  
 6 I mean, according to your phone records, you  
 7 were in Phoenix. Do you remember in your --  
 8 A. Yes.  
 9 Q. Okay.  
 10 A. I probably -- yeah. My mom had had surgery  
 11 the day before, so I was probably visiting her and my  
 12 dad at the hospital.  
 13 Q. Okay. Do you know if you went straight from  
 14 the hospital to meet Mr. Wilkinson?  
 15 A. I don't -- no. I think I must have ...  
 16 Q. Do you remember?  
 17 A. I don't remember.  
 18 Q. Okay. So let's take you to -- strike that.  
 19 Can you describe your interaction with  
 20 Mr. Murray in coming to the final ad that was run? Did  
 21 he agree with you?  
 22 A. We did not agree, but ultimately we -- I  
 23 agreed to do what he wanted to do.  
 24 Q. Okay. Now, was he -- do you think he cared a  
 25 lot about what you thought about the ad?

1 A. Mr. Murray viewed himself as the expert, and I  
 2 was probably getting in the way of what he wanted to do  
 3 is how he made me feel.  
 4 Q. Now, if you -- let's go to -- I want to look  
 5 at this e-mail string, Exhibit 8. All right. So on  
 6 October 20th at 2/29 you sent this e-mail back to Brian  
 7 Murray; is that correct?  
 8 A. Yes.  
 9 Q. If you want to review it, go ahead.  
 10 Now, you mention the term "we" in there. Can  
 11 you tell us who the "we" would have been, to the best  
 12 of your recollection?  
 13 A. "We" was Business Leaders for Arizona. I was  
 14 making us probably bigger than we were. We were only  
 15 two people. But "we" was us, me and George.  
 16 Q. Okay.  
 17 A. And collectively the people that were  
 18 contributing the money.  
 19 Q. Okay. And you talk about -- you also mention  
 20 the word -- the phrase "several masters" at the end of  
 21 that.  
 22 A. Oh.  
 23 Q. Okay. Can you tell us who you were thinking  
 24 about as your several masters?  
 25 A. Well, I believe that George was one of my, if

1 you will -- you don't really think of him as my master,  
 2 but it was just a saying.  
 3 But, also, I had several calls that day from  
 4 Greg Harris, because Greg Harris' people had  
 5 contributed \$30,000, and I wanted to get some feedback  
 6 from him also as to the direction that this ad was  
 7 going to go.  
 8 Q. Okay. What about -- what about the RSLC; they  
 9 were contributing money, too, correct?  
 10 A. Yes. But Brian -- Brian Murray, the direction  
 11 that he wanted to take, he was saying that that was the  
 12 RSLC's direction. He was saying that he was speaking  
 13 to them, and they had already approved his way of  
 14 wanting to do this.  
 15 Q. Okay.  
 16 A. So I didn't -- in this I did not consider them  
 17 to be a master, although they were the largest  
 18 contributor to the campaign.  
 19 Q. Okay. But when people give you tens of  
 20 thousands of dollars, are you concerned with doing a  
 21 good job with their money?  
 22 A. I wanted to make sure that the messaging that  
 23 we went out with, since they had given money to a  
 24 campaign, was something that they would approve.  
 25 Q. Was the "we" in this Tom Horne?

1 A. No.  
 2 Q. Did you discuss the script with him at any  
 3 time?  
 4 A. I did not.  
 5 Q. Did you discuss the ad with him?  
 6 A. I did not.  
 7 Q. Now, do you know when this ad went off to the  
 8 TV stations?  
 9 A. It was received by the stations actually on  
 10 the 22nd, so the stations actually had it in-house on  
 11 the 22nd. I don't believe it started to air until the  
 12 24th or 25th.  
 13 Q. Okay. Now, in this -- the phone records do  
 14 indicate a number of calls between you and Mr. Horne  
 15 over this time period.  
 16 Is that accurate?  
 17 A. It is.  
 18 Q. Okay. Now, I'd like you to tell us every --  
 19 all the things you talked about with Mr. Horne, and  
 20 specifically why don't we start with the real estate  
 21 deal that Mr. Horne was in the midst of closing, and  
 22 why don't you just start off telling us what you  
 23 remember about that.  
 24 A. Mr. Horne was selling his property at  
 25 7th Avenue and McDowell. He was the owner of that

1 property. He was then doing a 1031 exchange, and he  
2 was taking the equity from the property at 7th Avenue  
3 and McDowell and rolling it in -- using it as a down  
4 payment to purchase the Sun City property, which he  
5 currently owns.

6 Q. Okay. Can you go into a little bit more  
7 detail about what a 1031 exchange is?

8 A. A 1031 exchange is a vehicle that people use  
9 when they have equity in a property and they don't want  
10 tax consequences. So it's a tax device to -- so that  
11 you don't have to pay taxes on a capital gain.

12 And so you use that -- it's a smart business  
13 move so that you're not paying taxes on a capital gain,  
14 and you can use it -- it's a tax device to allow you to  
15 roll equity so that you can now make a new purchase  
16 with that real estate, the proceeds from your sale.

17 Q. Okay. But if he wouldn't have done a 1031 and  
18 he just sold the 7th Avenue and McDowell property, what  
19 would have happened?

20 A. I don't know.

21 Q. Would he likely have a tax consequence?

22 A. That would be a question for a CPA, and I'm  
23 not, but probably.

24 Q. Okay.

25 A. I believe that property was owned free and

1 did not go through. When I met Mr. Horne, he made me  
2 aware that he had had a buyer that had put \$100,000  
3 down, was at risk of losing that money. His name was  
4 Mike Hogarty.

5 Q. Okay. Let's go to the Yavapai County --  
6 county attorney's office, Exhibit 32, Page 473.

7 A. March?

8 Q. Yeah, March 19th. Maybe you're right; we  
9 should have used your copy.

10 Now, this -- who produced this exhibit; do you  
11 know? Was it the Yavapai county attorney's office?

12 A. I think this is the FBI.

13 Q. Okay. But you gave it to -- the FBI came to  
14 get it from you?

15 A. I gave it to my attorney, and my attorney  
16 turned it over to the FBI.

17 Q. Okay. Do you see Mike Hogarty's name on this  
18 page?

19 A. I believe he's Number 6.

20 Q. Okay. Now, can just read what it says on  
21 Line -- on Number 6 there?

22 A. It says, "Mike Hogarty, (480) 216-1197." And  
23 off to the right I put an arrow, and I wrote Tom  
24 Horne's name, because this was related to Tom Horne.

25 Q. Would you have any other reason to contact

1 clear, and it was a \$1.3 million sale.

2 Q. So it's not just selling a property, but  
3 Mr. Horne wants to find a property to acquire to make  
4 the 1031 exchange?

5 A. And he had.

6 Q. Okay. What was the property?

7 A. The property --

8 Q. The second property.

9 A. The second property, the one -- it was a  
10 medical building in Sun City.

11 Q. Okay. Now, I want to -- were you aware of any  
12 previous -- well, strike that.

13 This -- both of these sales ultimately closed  
14 and went through; is that correct?

15 A. Yes. Again, it was a simultaneous close, so  
16 they closed on the same day. That day was the 29th of  
17 October, which was three days -- three or four days  
18 before the general election.

19 Q. Okay. Are you aware of any attempts by  
20 Mr. Horne to sell this 7th Avenue property prior that  
21 were not successful?

22 A. Many.

23 Q. Okay. Can you tell us a little bit about some  
24 of those?

25 A. I was aware of three other transactions that

1 Mr. Hogarty?

2 A. I didn't have any knowledge of Mr. Hogarty  
3 until Mr. Horne told me that he was a potential buyer  
4 for his property.

5 Q. Have you had contact with him since this time  
6 period?

7 A. Not since this time period, no.

8 Q. Now, why don't we go to Page -- the entry  
9 under March 28th.

10 Do you see an e-mail address there?

11 A. I do.

12 Q. Okay. What e-mail address is it?

13 A. Mike.hogarty@thevikinggroup.net.

14 Q. Now, when you see the arrow on the previous  
15 page from Tom Horne to Mike Hogarty, or to his number,  
16 what does that mean to you?

17 A. That's my note to myself that this person has  
18 some connection to Tom Horne.

19 Q. Okay. Did you call Mike Hogarty?

20 A. I did.

21 Q. All right. What did you talk about?

22 A. We talked about whether or not he wanted to  
23 try to complete the sale. This is a long time ago. It  
24 was four years ago.

25 But I believe that he thought -- they had

1 agreed to a price, but then the values had gone down in  
2 the market, and I think he wanted Mr. Horne to reduce  
3 the price. And they couldn't come to a meeting of the  
4 minds, and he ultimately ended up forfeiting his  
5 \$100,000.

6 Q. Okay. But this was for the sale of the  
7 7th Avenue and McDowell property?

8 A. Right.

9 Q. Okay. But were you Mr. Horne's official  
10 broker on this?

11 A. No.

12 Q. Okay. Now, let's talk about -- we've  
13 stipulated as to an evidentiary matter regarding Kelly  
14 Miles, but would you tell her -- tell us who she was?

15 A. Kelly Miles was another volunteer on the Tom  
16 Horne campaign.

17 Q. Okay. And you came to know her?

18 A. I did.

19 Q. Okay. During the primary election, we've  
20 already agreed as a fact.

21 Could you tell us the situation Ms. Miles was  
22 in?

23 A. Yeah. One of the days she came to the  
24 headquarters, and she was crying. And I asked her what  
25 was wrong, and she had all these papers from Chase

1 election.

2 Chuck Johnson did a refinance on his home with  
3 his wife and bought a property for his son, so I did  
4 two or three mortgages for Chuck Johnson and his wife.

5 Q. Okay. Now, going back to Mr. Horne's two real  
6 estate transactions that closed very shortly before the  
7 general election, did those -- were those transactions  
8 important to Mr. Horne?

9 A. I believe for him they were the largest real  
10 estate transactions of his life.

11 Q. Okay. Do you remember approximate amount that  
12 the 7th Avenue property sold for?

13 A. I think --

14 Q. Over a million?

15 A. Yes.

16 Q. Okay.

17 A. 1.3 --

18 Q. What about the purchase price?

19 A. Similar.

20 Q. Okay. But --

21 A. I think the property he was buying I think was  
22 slightly less than the property that he was selling.  
23 There was -- I believe -- I can't remember.

24 Q. Okay. But did this -- do these transactions  
25 typically run smoothly, in your experience, or are

1 Bank. And they were going to foreclose on her, and she  
2 was in a temporary modification.

3 So I worked with her and got her -- and worked  
4 with Chase Bank and got her home modified, and she  
5 still resides in her home today.

6 Q. Okay. So you actually called Chase Bank?

7 A. I did.

8 Q. All right. Did you get paid for this?

9 A. I did not.

10 Q. Okay. Did you have any official position  
11 vis-a-vis Ms. Miles?

12 A. I just used my knowledge and facilitated her  
13 getting her modification and stopping the foreclosure  
14 so she wasn't kicked out of her home.

15 Q. Okay. Now, what about -- is there any other  
16 people you met on the campaign that you helped with  
17 real estate matters?

18 A. Several.

19 Q. Okay. Could you talk about them, briefly?

20 A. Sure.

21 Linnea Heap had a son, Andrew Heap, who had an  
22 FHA mortgage, who had an ex-fiancee', and he was  
23 getting ready to be deployed. He had joined the  
24 military. And so I had to get the ex-fiancee off title  
25 and refinance his loan. And that was close to the

1 there issues?

2 A. In any real estate transaction there are a lot  
3 of moving parts. So issues, I don't understand, but  
4 there's a lot of things that have to occur in a  
5 sequence in order to make sure, especially in a 1031  
6 exchange, that everything goes the way that it is so  
7 you meet all of the requirements of the 1031 change;  
8 otherwise, that income does become taxable if you don't  
9 meet all of the requirements of the 1031 exchange.

10 Q. Okay. Do you remember any complications that  
11 arose with this transaction?

12 A. Yes.

13 Q. Or transactions, I say.

14 A. At some point, and I have -- during this time,  
15 sometime in October, Mr. Horne was told he needed to  
16 bring more money to closing, that he didn't have --  
17 there was an extension done --

18 Q. Of the closing time?

19 A. Of the closing time for both transactions.

20 He needed to get financing on the building he  
21 was buying because of -- that was one of the solutions  
22 he was trying to come up with.

23 So there was just some -- there was some --  
24 there were taxes due on the building he was selling.  
25 So there was just some additional expenses on the

1 building he was selling which lowered the amount of his  
2 basis, and so therefore the property that he was  
3 buying, he didn't have enough funds to close at some  
4 point, and so they were working out those details.

5 Q. Okay. Did he turn to you for any assistance  
6 in this regard?

7 A. He did. So I wasn't involved -- I was more of  
8 a sounding board, like he was telling me what was going  
9 on, and then I was suggesting solutions.

10 But one of the things that I did is I took a  
11 loan application, one of the calls -- I don't know  
12 which one. I took a loan application for him and  
13 Marty, who I then learned her name was Martha.

14 And Mr. Horne's home, not part of this  
15 transaction, was free and clear. So we thought about  
16 if he needed quick money to do a quick home equity loan  
17 or do a bridge loan on the equity of his home. And so  
18 that was one of the solutions that we came up with.

19 And --

20 Q. Okay. So he comes up a little bit short in  
21 terms of the money he gets from the sale to cover the  
22 purchase; is that accurate?

23 A. That's accurate.

24 Q. Okay. So he needs more money?

25 A. He did.

1 of revision that comes into play, and there was  
2 limited -- we're talking probably the 16th, 17th, 18th,  
3 19th, somewhere in there. I think he was supposed to  
4 originally close on the 19th, and it got extended.

5 So there -- you had to build in certain  
6 debt -- other issues -- this issue created other  
7 issues, and you had to build those all into the  
8 solution.

9 Q. So you don't just call up the bank and say,  
10 "I've got the \$500 -- \$100,000 house that's free and  
11 clear. I'll give you -- you can secure this loan with  
12 it, and I'll be by at 3:00 o'clock to pick up my check  
13 for 300,000"; is that correct?

14 A. No.

15 Q. It doesn't move that quickly?

16 A. No.

17 Q. Okay.

18 A. No.

19 Q. Did you explore any other potential lending  
20 options with Mr. Horne?

21 A. I think we discussed that -- I think this is  
22 ultimately what happened.

23 I think there was a discussion about the  
24 underlying lien on the property he was buying and that  
25 the seller was going to do a seller carryback for part

1 Q. Did he have enough money in the bank account  
2 to satisfy this? Is that your recollection?

3 A. My recollection was he did not.

4 Q. Okay. So he needed more money.

5 Now, do you remember approximately what  
6 Mr. Horne's house was worth at that time? 300,000?  
7 400,000?

8 A. Somewhere under half a million dollars.

9 Q. Okay.

10 A. More than \$200,000, somewhere in that range.

11 Q. But -- so he's got no liens on it, as you  
12 testified?

13 A. Yes.

14 Q. Okay. Did you take any actions to try to  
15 secure him a line of credit against his house?

16 A. I did.

17 Q. Okay. What did you do?

18 A. I contacted several regional banks, because  
19 they could move quickly.

20 Q. Okay. Now, you say "move quickly." If --  
21 let's just take a hypothetical. If I own a  
22 half-a-million-dollar house, is it hard to get some  
23 money loaned to you against that house if you have no  
24 liens on it now?

25 A. It's not hard, but there's a three-day right

1 of the equity.

2 I think the underlying lien eventually did  
3 some kind of loan for Mr. Horne to make up the  
4 difference.

5 Q. Okay. So that was -- that seemed to be the  
6 solution they settled on?

7 A. I believe -- all I know is a solution was  
8 reached. He didn't get the home equity line until  
9 after he was in office, and he got it through his own  
10 personal bank, not through me. And he closed -- they  
11 closed both transactions on the 29th of October, 2010.

12 Q. Okay.

13 A. So they were successful.

14 Q. Okay. Now -- but why did he get -- why did he  
15 get a line of credit after, later, if he had already  
16 finished the transaction?

17 A. I believe whatever they set up on the buy  
18 side, he paid that off, and then he put the debt on his  
19 residence.

20 Q. Okay.

21 A. Probably a lower interest rate.

22 Q. Did you help him with that line of credit?

23 A. Only that I gave him quotes for interest  
24 rates.

25 Q. Okay. Now, how do you know all this?

1 A. How do I know all about the real estate  
 2 transaction?  
 3 Q. You testified to a lot of details about his  
 4 transaction.  
 5 A. He called me. He wasn't focused on that. He  
 6 was focusing on running for attorney general for the  
 7 state of Arizona, and this was a very complicated  
 8 transaction with a lot of details, and that's what I  
 9 did for a living.  
 10 So I was taking the information he was being  
 11 told and just giving it back to him kind of in  
 12 bite-size pieces so that he could keep doing what he  
 13 was doing, but know that where he was going or how it  
 14 was transacting was going to work.  
 15 Q. Okay.  
 16 A. And if it wasn't going to work, I tried to  
 17 give him solutions to make it work.  
 18 Q. So this knowledge that you attained, you  
 19 attained it during this October time period; is that  
 20 your testimony?  
 21 A. Probably starting -- I think the -- August,  
 22 August through October, yes.  
 23 Q. Okay. Now, I'm going to take you to -- this  
 24 is our Exhibit Number 6. It's Bates Stamp Number 43.  
 25 Tell us what -- would you tell us what this

1 Q. Well, it's not really in error; it's just --  
 2 it's not feasible, correct? Strike that.  
 3 It should have been for a date they could  
 4 actually close on?  
 5 A. And record. Recordation constitutes a sale.  
 6 Q. So if you've got this extension to the 31st,  
 7 what's your real closing date?  
 8 A. October 29th.  
 9 Q. Okay. And you told Mr. Horne that?  
 10 A. I did.  
 11 Q. "You don't have quite as much time as you  
 12 think you do"?  
 13 A. Exactly.  
 14 Q. Okay.  
 15 A. I mean, I didn't have quite as much time as I  
 16 thought I did.  
 17 Q. Okay. Now -- so is it fair to say that you  
 18 had extensive conversations with Mr. Horne about a  
 19 number of matters related to this transaction?  
 20 A. I did.  
 21 Q. Okay. Can you remember anything else  
 22 specifically?  
 23 A. No.  
 24 Q. Okay.  
 25 A. Not specifically.

1 document is? Take a second to review it.  
 2 A. It's an amendment to escrow instructions of a  
 3 purchase -- and/or a purchase contract. It's drafted  
 4 by First American Title Company. It is regarding the  
 5 purchase of a property on Johnson Boulevard in Sun City  
 6 West.  
 7 Q. Okay. It says, "The closing date is hereby  
 8 extended to on or before August 31st," correct?  
 9 A. Yes, and that was the problem.  
 10 Q. So this -- this extended the closing date from  
 11 what had previously been the closing date?  
 12 A. Correct.  
 13 Q. Okay. Did Mr. Horne tell you that he extended  
 14 the closing date?  
 15 A. Yes. And -- yes.  
 16 Q. To what date did he say he --  
 17 A. October 31st.  
 18 Q. Okay. What day of the week was October 31st?  
 19 A. A Sunday.  
 20 Q. Okay. Do you close real estate transactions  
 21 on a Sunday?  
 22 A. You cannot record them, and so if he had  
 23 closed this on November 1st, this contract would have  
 24 been voidable. And I do remember advising him about  
 25 that the contract date was in error.

1 Q. I mean, and you can't -- can you pinpoint a  
 2 date, you know, a phone call and say it definitively  
 3 was about a particular conversation, these  
 4 conversations?  
 5 A. No. I can't say on this date and time we  
 6 talked about whatever.  
 7 Q. Okay. But this came -- this did come about on  
 8 October 18th, correct, this extension?  
 9 A. It looks like it's date stamped on the top  
 10 October 19th, so it might have been drafted on the  
 11 18th, but whoever sent it didn't send it until the  
 12 19th.  
 13 Q. Okay. Do you remember exactly when Mr. Horne  
 14 had to scramble for some additional money?  
 15 A. I know that -- I know that the issue arose on  
 16 the 19th, and I think we started having discussions  
 17 about it on the 20th.  
 18 Q. Because what happened on the 19th that was of  
 19 significance to you?  
 20 A. My mother was in surgery for six hours.  
 21 Q. Okay. And I think you -- you testified you  
 22 actually took a loan application from him?  
 23 A. Yes.  
 24 Q. For Mr. Horne?  
 25 A. I did.

1 Q. Okay.  
 2 A. And his wife.  
 3 Q. Is there a lot of information to gather in  
 4 that?  
 5 A. Well, it's a loan application. It's four  
 6 pages. You get name, Social Security numbers,  
 7 financial data. So it takes -- I used to do it on the  
 8 phone -- probably 10 to 20 minutes.  
 9 Q. Okay. Now, Mr. Tatham, what was his role in  
 10 these collective transactions?  
 11 A. On this trans- -- on this particular  
 12 transaction, he was representing Mr. Horne as the  
 13 buyer's agent and then helping facilitate the sale of  
 14 the other property by dealing with the environmental  
 15 issues that had arisen on the property.  
 16 Q. Okay. Do you remember who Mr. Horne's agent  
 17 was on the sale of his 7th Avenue and McDowell  
 18 property?  
 19 A. He wasn't around very much, whoever he was.  
 20 So, no, I don't have any recollection of his name.  
 21 Q. Was he a lot of help to Mr. Horne?  
 22 A. I can't -- no. Many of the questions I asked  
 23 Mr. Horne he should have known. His agent, if he was  
 24 representing him, should have answered these questions,  
 25 but he wasn't. He wasn't around.

1 Q. Do you have any idea why Mr. Horne didn't take  
 2 the time to go out and find a new agent?  
 3 A. I think the deal was already in escrow, and  
 4 you don't -- you then have an obligation to pay two  
 5 commissions if you go out and get another agent, so ...  
 6 Q. Okay. So is it fair to say that Mr. Horne  
 7 relied on your advice?  
 8 A. He did.  
 9 Q. And do you feel that your background made you  
 10 equipped to provide advice?  
 11 A. I was very -- yes. I'm successful in the real  
 12 industry.  
 13 Q. Okay. Now, at this time, October, would  
 14 you -- had you developed a friendship with Mr. Horne?  
 15 A. Yes.  
 16 Q. Did you like to talk to Mr. Horne?  
 17 A. Sure.  
 18 Q. Can you remember some of the other things you  
 19 spoke about?  
 20 A. I think he checked in to see how my mom was  
 21 doing. I think we talked about the people in the  
 22 campaign. There were distinct personalities. I think  
 23 just general how are you doing, how is the weather kind  
 24 of questions.  
 25 Q. Did he call you to vent, ever?

1 A. Tom doesn't really say bad things about  
 2 anybody. He -- it was more just -- no, we didn't -- we  
 3 didn't talk about anything else. I mean, we talked  
 4 about -- I don't really -- I mean, I'm just --  
 5 Q. Did you work at the Department of Education  
 6 with Mr. Horne?  
 7 A. I did not.  
 8 Q. Do you think that you provided some  
 9 perspective that he was lacking or some -- I mean,  
 10 anything of that nature?  
 11 A. Mr. Horne -- I always told Mr. Horne how I  
 12 felt. He wasn't my boss. I -- so I was always very  
 13 candid about what was going on and how -- what I felt.  
 14 So I think he came to rely on my opinions about things.  
 15 Q. Did you call him to talk about the ad?  
 16 A. No.  
 17 Q. The script?  
 18 A. No.  
 19 Q. Did he call you to talk about it?  
 20 A. No.  
 21 Q. Now, I also want to go through your -- let's  
 22 talk about your phone records for a second, and  
 23 specifically the October 30th.  
 24 JUDGE EIGENHEER: Before you get to that, why  
 25 don't we take a brief recess. We've been going for a

1 while. We will go off the record at this time.  
 2 (A recess ensued.)  
 3 JUDGE EIGENHEER: We are back on the record in  
 4 Docket Number 14F-OO1-AAG.  
 5 Please proceed.  
 6 MR. LASOTA: Thank you, Judge.  
 7 Q. BY MR. LASOTA: Now, Ms. Winn, we're obviously  
 8 three years down the road from the events in question,  
 9 correct, over three years?  
 10 A. Over three years.  
 11 Q. Okay. Now, have you -- you worked hard trying  
 12 to sort of reconstruct this time period?  
 13 A. Yes. I'm trying to remember to the best of my  
 14 ability so that I can answer truthfully all the  
 15 questions that are being asked of me today.  
 16 Q. Are there some things that you remember better  
 17 now than before?  
 18 A. Certain documents remind me of certain things,  
 19 so the phone records and the e-mails and documents you  
 20 presented helped sometimes jog my memory.  
 21 Q. Okay. Now, you were kind of -- on the first  
 22 day I think you were scribbling away over there or  
 23 entering things into your phone.  
 24 What were you doing there?  
 25 A. I was trying to see who I spoke to on certain

1 days to see if that helped create a better picture.

2 Q. Okay. But you weren't just texting people or  
3 anything?

4 A. No. I was checking phone numbers in my phone  
5 log to see if it was someone I called on a more regular  
6 basis.

7 Q. Okay. I'm going to take you to what's Yavapai  
8 County's Exhibit 33, and it's going to be Bates Stamp  
9 Number 620.

10 A. Okay.

11 Q. Now, would you tell us the time and date  
12 that's on that document?

13 A. Tuesday, October 19th, 2010. That would be  
14 3:11 and eight seconds.

15 Q. And it goes to -- well, Tom Horne is copied on  
16 it anyway, correct?

17 A. Yes, under the cc line. Sorry.

18 Q. Now, I want you to read the paragraph that  
19 starts with the term -- actually, go to the paragraph  
20 that starts with "Additionally," and I want you to  
21 start reading the sentence that begins with the amount,  
22 right where that hand is.

23 A. Do you want me to start there?

24 Q. Well, okay, start with "Additionally." That's  
25 fine.

1 A. "Additionally, Tom and Martha Horne request,  
2 under separate agreement, simultaneous to close, but as  
3 equity extraction on a separate settlement statement  
4 will be the balance of the approved three" -- looks  
5 like 300,000 -- "the amount that the Hornes will  
6 require on the day of settlement will be no less than  
7 100,000 but can max out at 217,500."

8 Q. And I thought lawyers wrote things that were  
9 hard to understand.

10 But can you tell us what that means?

11 A. So it looks like on the buy they were trying  
12 to set up an approved balance from another source, and  
13 I don't know what that source is, of \$300,000.

14 Q. Let me rephrase that.

15 Can you tell me what the last sentence of that  
16 means, the amount that the Hornes will require?

17 A. Okay. So that they would bring no less than  
18 100,000 to closing, but that they would bring no more  
19 than 217,500 to closing. That was the range of the  
20 funds that Mr. Horne and Mrs. Horne would be required  
21 to bring to closing to complete the transaction.

22 Q. Cash or credit?

23 A. Cash.

24 Q. Cash?

25 A. Well, yeah, cash.

1 Q. Cash.

2 A. Cash to close.

3 Q. \$217,000?

4 A. Right.

5 Q. Okay. Now -- and there is some -- there's  
6 some phone activity the subsequent day with you and  
7 Mr. Horne.

8 Is it possible that some of that could have  
9 been related to this?

10 A. It's possible.

11 Q. Okay. In terms of securing financing?

12 A. In terms of getting additional cash to close  
13 and what source could he get it from.

14 Q. All right. Now I want to take you back to --  
15 let's go to the -- let's go to -- I believe it's  
16 State's 6. Okay. This is October 20th at 2:59 p.m.

17 And can you read what you said in that e-mail?

18 A. The 2:59 one?

19 Q. Right.

20 A. "The concern is you can get out her negatives  
21 without saying her name four times. I have two very  
22 strong personalities debating this moment. She lacks  
23 name recognition, and we do not want to help her in  
24 that regard is the argument."

25 Q. Do you remember who you were talking about

1 with the two strong personalities?

2 A. They were coworkers of mine in my office at  
3 AmeriFirst.

4 Q. Okay. And in terms of -- can you describe a  
5 little bit what's going on when you sent this e-mail?

6 A. We were trying to finalize the verbiage so  
7 that we could put the images to it. I was still a  
8 little attached to my way of wanting to do things and  
9 hadn't quite agreed with what Mr. Murray was saying.

10 And I was getting input from people that I --  
11 my manager, the owner of my company. There was  
12 about -- I want to say three or four, but two were very  
13 distinctly, you know, saying, "Nobody knows Felecia  
14 Rotellini's name. Everyone knows Tom Horne's name.  
15 Why do you keep saying her name? That might drive  
16 people to hear her name and then go vote for her."

17 So that was kind of the nature of the  
18 discussion. Those aren't the exact words, but that was  
19 kind of what was going on in my office at that moment  
20 in time.

21 Q. And it was a sentiment that had been expressed  
22 earlier by Mr. Wilkinson?

23 A. Yeah.

24 Q. Is that accurate?

25 A. It was the second time I was hearing it that

1 day.

2 Q. Okay. But you don't -- but do you know  
3 definitely -- I mean, you don't think that was actually  
4 Mr. Wilkinson?

5 A. No, it wasn't. At that point in the day, no.

6 Q. Okay. I'm going to take you to -- let's look  
7 at your phone records for -- let's look at your phone  
8 records for -- it's Yavapai County Exhibit 7, and Bates  
9 Stamp 23.

10 And in terms of where -- okay. I just want  
11 you to focus on the origination, which we heard earlier  
12 testimony that that's where you are.

13 A. Okay.

14 Q. Where are you?

15 A. What time?

16 Q. Oh, I'm sorry. At 2:59.

17 A. Probably in my office.

18 Q. What city does it say --

19 A. It says --

20 Q. -- under "Origination"?

21 A. Well, there's no two --

22 Q. Okay. Just from 2:41 until 3:27 -- 3:37,  
23 where are you? What's the city under "Origination"?  
24 Do you see that middle column there?

25 A. Oh, Mesa.

1 Q. Mesa. Okay.

2 All right. Well, let's go to Mr. Horne's  
3 phone records. Let's look at 10/20 at 3:00 p.m., or  
4 thereabouts. Where is he -- where is he at -- okay.  
5 This is all the way from 11:54 to 6:30. Where is he?

6 A. Phoenix, Arizona.

7 Q. Okay. All right. So is Mr. Horne -- is he  
8 one of the personalities?

9 A. Mr. Horne never came to my office, ever.

10 Q. Okay. Were you on the phone with him when he  
11 was one of these personalities?

12 A. In regards to this?

13 Q. Yes.

14 A. Absolutely not.

15 Q. Okay. So he was not one of the personalities?

16 A. No.

17 Q. Okay. And I want to take you to -- I want to  
18 take you back to your phone records. Let's go to the  
19 30th, October 30th.

20 Do you see any calls between you and Mr. Horne  
21 that day?

22 A. On the 30th?

23 Q. Yes. Is there a nine-minute call?

24 A. Yes. There's one call on that day.

25 Q. At 3:55 p.m.?

1 A. 4:00 o'clock.

2 Q. 4:00, okay. Well, what day is October 30th?

3 A. It's a Saturday.

4 Q. Okay. Now, are you guys talking about the  
5 real estate closing?

6 A. You know --

7 Q. Well, when did the real estate closing --

8 A. The closing had happened the day before  
9 successfully.

10 Q. Okay. So you're probably not talking about  
11 that; is that fair to say?

12 A. Well, no, I disagree. We could have been  
13 talking about it, because he -- the financing that they  
14 used to close the transaction, he still needed to get a  
15 loan in the future, so we may have mentioned it, but  
16 I -- Tim, I can't tell you what we talked about.

17 Q. Sure. But you -- but is it fair to say you  
18 weren't -- you couldn't have been talking about the --  
19 strike that.

20 And the 31st you talked to him, also?

21 A. I did.

22 Q. Okay. I mean, that Sunday -- the election day  
23 is Tuesday. Is there anything to be done on -- for  
24 Business Leaders of Arizona?

25 A. Everything was done and bought and --

1 actually, on the 22nd, so everything was done way  
2 before this.

3 Q. Okay. But you still had a -- you still  
4 chatted -- you still -- indicates a phone call on that  
5 day?

6 A. Three minutes.

7 Q. Okay. Now let's go to the -- one last thing.  
8 I want to go to your phone journal on the 19th.

9 A. The 19th of October?

10 Q. Yes.

11 Actually, let me -- I have it marked in mine.

12 Yeah, 19th. It's the number 32, Bates Stamp 552.

13 Can you identify what you have there under the  
14 name of Andrew Heap?

15 A. Yes.

16 Q. What does it say?

17 A. It says ethical, honest. I drew an arrow down  
18 so ethical, honest. I wanted to say good for business,  
19 good for Arizona. I was just writing down concepts,  
20 because I knew I was going to talk about the ad with  
21 Brian Murray.

22 Q. Okay. So, in other words, does this -- on  
23 October 19th, is this sort of your vision for what the  
24 ad is going to be?

25 A. At that time, yes.

1 MR. LASOTA: Okay. I don't think I have any  
2 other questions, Judge.

3 JUDGE EIGENHEER: Any questions?

4 MR. KIMERER: I only have two or three  
5 questions.

6  
7 DIRECT EXAMINATION

8 BY MR. KIMERER:

9 Q. Ms. Winn, did you and Mr. Horne at any time  
10 ever coordinate the activities between his campaign or  
11 your independent campaign?

12 A. No, we did not.

13 Q. Did you ever have, during any of the  
14 telephones that have been referenced in this hearing,  
15 any conversations where you and Mr. Horne discussed  
16 independent campaign or coordinated efforts?

17 A. We did not.

18 MR. KIMERER: I have no other questions,  
19 Your Honor.

20 JUDGE EIGENHEER: Cross?

21 MR. FIELDS: Your Honor, if I may have just a  
22 moment.

23 JUDGE EIGENHEER: Sure.

24  
25

1 CROSS-EXAMINATION

2 BY MR. FIELDS:

3 Q. Good morning, Ms. Winn.

4 A. Good morning.

5 Q. Okay. Let's kind of go through your testimony  
6 a little bit, if we could.

7 A. Sure.

8 Q. You worked on Tom Horne's campaign during the  
9 primary; is that correct?

10 A. I did.

11 Q. Okay. And you were coordinating volunteers, I  
12 believe, in the rural areas?

13 A. I focused -- everyone was pretty much focused  
14 on Maricopa County and --

15 Q. As a resident of Yavapai County, I must  
16 express a little bit of resentment for that, but ...

17 A. That's okay.

18 Q. You were focused on the rural counties?

19 A. Yes.

20 Q. And people were focused on Maricopa County,  
21 but I didn't --

22 A. Well, there were so many people focused on  
23 Maricopa County. And at the time, during the primary,  
24 I told Mr. Horne that we would probably lose Maricopa  
25 County, and the only way we could win the election was

1 if we won in the rural county. And so it was a numbers  
2 game. It was a math problem, how many votes were in  
3 the outer counties, how do we obtain those votes. And  
4 so we won in -- we won the rural counties, and we won  
5 the election by 899 votes.

6 Q. When did you join the campaign? Was it at the  
7 very beginning?

8 A. I don't know when the beginning of the  
9 campaign was. I would say that I joined the campaign  
10 sometime in the -- and I don't remember an exact date,  
11 but sometime the very beginning of 2010, January,  
12 February, somewhere in there.

13 Q. January, February 2010?

14 A. Uh-huh.

15 Q. And so, okay, you're in the primary, and you  
16 expressed, I believe, during -- either in your  
17 affidavits or during your testimony that one of the  
18 things that motivated you here was the -- an effort or  
19 a desire to defeat Andrew Thomas for attorney general?

20 A. That's absolutely correct.

21 Q. So that was really a motivation for both the  
22 creation of Business Leaders for Arizona and joining  
23 the Tom Horne campaign; would that be a fair statement?

24 A. In the way that you asked that, you're -- it  
25 sounds like one was incumbent on the other, and they

1 were independent actions.

2 Q. Okay.

3 A. Is that fair?

4 Q. That's fair.

5 A. Okay.

6 Q. But that kind of was the underlying motivation  
7 for both sets of actions?

8 A. Right. I thought Mr. Thomas, if he became the  
9 attorney general for the state, that would be dangerous  
10 for the state of Arizona, given how he had run the  
11 county attorney's office. And so I was committed that  
12 he not be elected the attorney general of the state of  
13 Arizona.

14 Q. And let me go back. I didn't quite get the  
15 answer to your question.

16 You joined the -- Mr. Horne's campaign for  
17 attorney general approximately when?

18 A. I don't remember the exact date.

19 Q. Spring or late winter?

20 A. Late -- yeah, late winter.

21 Q. Late winter, early spring?

22 A. Yes.

23 Q. And the campaign was formed and going at that  
24 time, although at probably the early stages; is that  
25 fair?

1 A. Again, I wasn't there at the start of the  
2 Horne campaign. I didn't know Mr. Horne. I went and  
3 introduced myself to Mr. Horne when I found out he was  
4 the one running against Andrew Thomas and offered my  
5 assistance, and then I met with his campaign.

6 Q. Okay. Were you initially given the project of  
7 the rurals? What was your initial role?

8 A. No. I just offered to help, and then I  
9 started attending campaign meetings and saw what was  
10 missing. And I -- instead of competing with everyone,  
11 I went to the area that wasn't being covered.

12 Q. When did that occur? When was that? That was  
13 kind of a transition for you?

14 A. Probably spring, like March, April.

15 Q. And how active were you in the campaign during  
16 this time?

17 A. During the primary?

18 Q. During the primary, sure.

19 A. I would say I spent some time every day on it.

20 Q. An estimate of average hours per week. Let's  
21 break it down by, let's say, June. How much time in  
22 June?

23 A. In June I would have been very active. So  
24 that would probably -- I probably was focused on it 30,  
25 40 hours a week.

1 Q. 30 or 40 hours a week? Full-time job.

2 A. Almost.

3 Q. What about July?

4 A. Same thing.

5 Q. Very active.

6 And what about August?

7 A. Well, the election was on the 24th, and the  
8 absent -- or the -- yeah, the absentee ballots were due  
9 prior to that, so we probably did a big push to get  
10 voters to vote prior to the election.

11 So I -- August I had a granddaughter born, so  
12 I would say in August there was things that started to  
13 take away from my time from the campaign. But the  
14 election was August 24th, I believe.

15 Q. I don't mean to sound facetious or sarcastic  
16 by this, but by August it's exceeding a full-time job;  
17 would that be a fair statement?

18 A. I was very busy. I, you know --

19 Q. Very busy with the campaign or with other  
20 things?

21 A. With both. I mean, I was still busy with the  
22 campaign, and I was busy with my life.

23 Q. How -- in the hierarchy of the campaign, what  
24 was most of your work at that point?

25 A. In August?

1 Q. Let's start with June. Where are you in the  
2 hierarchy of the campaign? You start off with  
3 Mr. Horne as the candidate, a campaign manager, maybe  
4 people who are focused on Maricopa County and people  
5 who are focused on Pima County, volunteer coordinators,  
6 those kinds of people in the campaign.

7 Where were you in that mix?

8 A. I'm just kind of doing my own thing. I'm a  
9 volunteer. I'm not in a hierarchy. I don't have any  
10 accountability. I'm just out doing the things that I  
11 think will make a difference for the Horne campaign.  
12 And I report to -- you know, I think Michael Vargas was  
13 the campaign manager. I worked with Vanessa Detherage.

14 Q. What was her role?

15 A. I think she was assistant campaign manager.

16 Q. Okay. And did you meet with them and talk  
17 about what you were doing, what --

18 A. Yeah.

19 Q. -- what you had done, what you planned on  
20 doing?

21 A. Right.

22 Q. And you asked them for resources to help  
23 you --

24 A. Right.

25 Q. -- do these things?

1 A. There was -- I guess we called them palm cards  
2 that had Mr. Horne's accomplishments on them. And so I  
3 drove all over the state and delivered signs.

4 Q. Who were you delivering them to?

5 A. Republican committees all over the state, even  
6 in Yavapai County.

7 Q. I don't believe we have an elected official in  
8 Yavapai County that's not a Republican, so that would  
9 not surprise me.

10 So you're delivering these hand cards. Who --

11 A. I mailed the hand cards. It's not efficient  
12 to drive. I took big -- like I had my husband's truck,  
13 and I filled it with the big ginormous signs, and we  
14 went and delivered them.

15 Q. To -- and who would you deliver them to?

16 A. To the --

17 Q. Campaign volunteers?

18 A. I went -- one day I went from here, left 4:00  
19 in the morning, got to Yuma, went to Parker, went to  
20 Bullhead City, back to Flagstaff, back to Prescott, and  
21 home, and I got home around 10:00 o'clock that night.

22 Q. And the people that you were delivering these  
23 signs to, kind of grass root supporters out in the  
24 rural areas?

25 A. Yeah, Republicans, other PCs. I had set up a

1 network around the state of people that were committed  
2 to Republican leadership in the state of Arizona. In  
3 2010, that was a good thing.

4 Q. You had set up a network?

5 A. These were contacts that -- well, they were  
6 contacts, some of them were Mr. Horne's. Some of them  
7 were people that I knew.

8 I went to college in Tucson. I had -- I was  
9 in media down there. I had contacts down there. I had  
10 business contacts down there. I'd been in real estate  
11 for 20-some years. My husband had contacts in the  
12 state. I had a -- it was a PC, a state PC, so I knew  
13 other PCs from other parts of the state.

14 Q. PC, meaning precinct --

15 A. Precinct committeemen, exactly.

16 Q. So it kind of sounds like you're doing  
17 something that's a little bit more than just fishing a  
18 Rolodex and a little bit less than forming a formal  
19 network committee of people.

20 Is that a fair characterization?

21 A. Yeah. It was more for support and resources,  
22 and I was kind of the point person, so if someone had a  
23 question and it was from out of county, they just  
24 directed them to me. I took care of their needs and  
25 helped them.

1 Q. And those questions would include things like  
2 resources that they could help Mr. Horne get elected  
3 out in the rural counties?

4 A. Correct.

5 Q. Okay. And would it include things like how --  
6 information about how Mr. Horne would stand on  
7 particular issues?

8 A. I think -- we didn't speak -- I didn't speak  
9 on behalf -- with one exception -- behalf of Mr. Horne  
10 and his views. I think there was a script for that, or  
11 there was a flyer. At some point there was something  
12 created by the Horne campaign as to Mr. Horne's views  
13 on issues.

14 Q. And you would provide that to people; that was  
15 part of the packages you --

16 A. Right. Correct.

17 Q. What about the information going the other  
18 way? Were you discussing things with people in the  
19 community or out in the rural areas about what was  
20 happening there as far as the campaign?

21 A. I would get -- yeah, information from people  
22 as to, you know, how is he perceived, you know -- yeah.  
23 And I can't remember anything specific.

24 Q. That's okay.

25 A. Okay.

1 Q. But the flow of information was going both  
2 ways. Here is the information about Horne's campaign  
3 from you to the precinct committeemen and the other  
4 people in your --

5 A. Yeah.

6 Q. -- Rolodex class, if you will --

7 A. Yeah.

8 Q. -- to the other areas, and then information  
9 going from them, how is the campaign being perceived,  
10 how is Mr. Horne being perceived, how is the race being  
11 perceived, going back the other way?

12 A. Correct.

13 Q. How many times did you -- well, let me back  
14 up.

15 I would assume that you met with Ms. Vargas or  
16 Ms. --

17 A. Mr. Vargas.

18 Q. -- Mr. Vargas or the -- Vanessa --

19 A. Detherage.

20 Q. -- Detherage on a fairly regular basis?

21 A. We had regular campaign meetings, and then I  
22 would call them.

23 Q. Okay. And who would attend these regular  
24 campaign meetings?

25 A. All of the volunteers and the campaign --

1 whoever was considered Mr. Horne's staff and Mr. Horne.

2 Q. When you say all of the volunteers, you're not  
3 talking about all of the people who were putting up  
4 signs in Yuma County or --

5 A. No. The people that were working in Maricopa  
6 County.

7 Q. The people in -- how many people were  
8 attending --

9 A. Typically at these meetings would be about 15  
10 to 20 people.

11 Q. Okay. 15 to 20 people. It was a fairly core  
12 group, it sounds like?

13 A. Yeah.

14 Q. Okay. And you --

15 A. Mr. Horne had run for other offices before I  
16 ever got there.

17 Q. And you were part of that core?

18 A. In the 2010 election I was, yes.

19 Q. In 2010 you were part of that core. Okay. So  
20 we move forward with the campaign, and we're going  
21 through June and July and August. We have the primary  
22 in August. And if I remember correctly, there was a --  
23 it was a close race. There was a count or something.  
24 Tell me about that.

25 A. So on the night of the election we didn't find

1 out who won. And, as a matter of fact, we didn't find  
2 out who won for a week after the election. And the  
3 votes didn't get certified I think for almost nine days  
4 after the election.

5 Q. It was just too close to call?

6 A. It was 899 votes.

7 Q. 899. Not enough to trigger a recall or --

8 A. 250 triggers a recall.

9 Q. 250, so not enough to trigger a recall?

10 A. Absolutely not.

11 Q. But close enough to make sure the election --  
12 the secretary of state wants to make sure it's  
13 accurate?

14 A. Yeah. And Mr. Thomas took a couple days to  
15 concede.

16 Q. Okay. You got other things happening at the  
17 time, so there's a break here. The campaign ends, I  
18 believe you said, in October. The election was the  
19 24th, so we've got another week. So maybe the 1st,  
20 2nd, 3rd of September before we get the final results.

21 And then what happens? Is there anything  
22 happening in the campaign at that point?

23 Let me rephrase that.

24 That you're participating in.

25 A. The next thing that I -- at the time when we

1 Q. That's always a happy occasion.

2 And then we take a vacation to Massachusetts?

3 A. Yes. And -- yes. My husband retired,  
4 completed being the vice president of Boeing in  
5 September. And there were many events for him. So  
6 that's really where my energies and time focused.

7 And then he was asked to speak at the 15,000  
8 engine delivery for General Electric. They provide the  
9 engines for the Apache Attack Helicopter. So he was  
10 the keynote speaker. And they paid for us to fly out  
11 to Massachusetts and put us up in a nice bed and  
12 breakfast in Marblehead, Massachusetts.

13 Q. Very good. And you come back, and I believe  
14 you came back -- at one point either you testified or  
15 somebody else testified that you came back from  
16 Massachusetts on October 9th?

17 A. 8th -- well, my phone records --

18 Q. 8th or 9th?

19 A. 8th or 9th. I think --

20 Q. Somewhere around there? It doesn't have to be  
21 exact.

22 A. Well, it might as well be.

23 It appears that I came into Phoenix on  
24 October -- got back on the 8th, which is Friday night.

25 Q. So if you're anything like me, you're actually

1 found out that Mr. Horne was going to win, I was in  
2 Rio Rico or Nogales. I had had a granddaughter born  
3 the first week of August, and it was the first time I  
4 actually could take a break, and I went down there.

5 And so I got a phone call from Tom saying that  
6 we were going to win based on how the votes were  
7 breaking. And so after that, the next event I remember  
8 coming to was the victory party.

9 Q. When did that occur?

10 A. I don't know. I need to -- I don't know.

11 It's like in the -- it was not right away. Like we  
12 didn't have it that week. It was like a couple weeks  
13 into September.

14 Q. Okay. Mid-September?

15 A. Yeah, beginning to mid-September. And we can  
16 look that up if you need that date. I just don't -- I  
17 didn't plan the party. I just attended the party.

18 Q. I think September of 2010 is fine --

19 A. Okay. Good.

20 Q. -- for our purposes.

21 A. Thank you.

22 Q. And I've got to ask, how is the granddaughter?

23 A. I now have three.

24 Q. Okay.

25 A. So that progress is going well.

1 not back until the 9th, because --

2 A. Yeah.

3 Q. -- I want to go home and go to bed.

4 A. Right.

5 Q. At that point -- and I believe you testified  
6 earlier, the reason that you were involved -- this  
7 heavily involved in the attorney general campaign was  
8 the desire to see Andrew Thomas defeated in the  
9 Republican primary.

10 Is that a fair statement?

11 A. That's a fair statement.

12 Q. So that goal had been accomplished. Did you  
13 feel at that point, when you returned from  
14 Massachusetts on October 9th, that you had accomplished  
15 that goal and there was nothing further left to do?

16 A. Yeah. I didn't have an agenda, if that's what  
17 you're asking.

18 Q. Okay. So I guess I'm curious why -- because  
19 it was shortly after that you started becoming involved  
20 again with the political manner of the attorney  
21 general's race; is that correct?

22 A. That's correct.

23 Q. Did you become involved with the campaign  
24 again after that?

25 A. Tom Horne's campaign?

1 Q. The Tom Horne campaign.  
 2 A. No, I did not get involved with Tom Horne's  
 3 campaign after that. I specifically had a conversation  
 4 to not be involved with Tom Horne's campaign with Tom  
 5 Horne himself.  
 6 Q. When did that conversation take place?  
 7 A. The week of the -- the 10th -- that's a  
 8 Monday. Let me just look.  
 9 Q. You can look at your notes.  
 10 A. The 10th -- probably the 11th, October 11th.  
 11 Q. Okay.  
 12 A. It's a Monday.  
 13 Q. Okay. So probably the 11th, on that Tuesday?  
 14 A. The Tuesday is the 12th.  
 15 Q. Tuesday would be the 12th, so maybe the 11th  
 16 would be a Monday is what you're saying?  
 17 A. Yes.  
 18 Q. All right.  
 19 A. It was sometime in the beginning of that week,  
 20 and I shouldn't be so definitive on it. I -- I -- but  
 21 it was sometime during the beginning of that week.  
 22 Q. I think I was thrown off because you said you  
 23 got back on Saturday the 8th, and that would have made  
 24 it the 9th.  
 25 A. Right.

1 Q. Yeah, and I'm not trying --  
 2 A. Friday --  
 3 Q. I'm just trying to get my dates --  
 4 A. No, Friday was the 8th, and I arrived back  
 5 Friday night.  
 6 Q. Okay. So, yeah, so we're back on Friday. So  
 7 you're going to have a conversation with Tom Horne on  
 8 October 11th, which is Monday, and this is about the  
 9 independent expenditure committee.  
 10 What triggered this thought about campaigning  
 11 for Tom for the attorney general race -- let me get my  
 12 words appropriate here -- through an independent  
 13 expenditure committee?  
 14 A. The owner of my company at the time,  
 15 AmeriFirst, Eric Bowlby, had worked with Felecia. And  
 16 he would get updates from either people that were  
 17 supporting her or her campaign.  
 18 And he -- I -- and I can't remember this  
 19 exactly, but I remember seeing something about them  
 20 associating Tom Horne with supporting someone who had  
 21 been convicted a pedophilia or child porn or something.  
 22 It was just something that was really offensive. And  
 23 they were saying really offensive things.  
 24 And it was -- it just bothered me, because it  
 25 wasn't a characterization of this person I had just

1 helped contribute to winning the primary, and so it  
 2 just set me off. I was kind of like, you know, that's  
 3 not -- it was like an unfair fight.  
 4 Q. Did you make -- so that triggered your  
 5 decision to go ahead --  
 6 A. I called -- I called -- that's what caused me  
 7 to call Brett Mecum. He's the only person I knew to  
 8 call to say, "How do we fix this? You're in charge of  
 9 the Republican Party. What do we do to fix this?"  
 10 Q. When did you call Brett?  
 11 A. I probably called him that weekend, or Monday.  
 12 Q. So it was after you decided to come back --  
 13 after you came back from Massachusetts --  
 14 A. Yes.  
 15 Q. -- and you decided to do this?  
 16 A. Right.  
 17 Q. And you also testified, I believe, that you  
 18 met with Mr. Horne on Monday, on the 11th?  
 19 A. I -- sometime in the beginning of that week we  
 20 sat down, we met, and we just went over the -- I said,  
 21 "I'm think I'm going to go do an IE."  
 22 And I said -- and he said, "Well, I'm going to  
 23 give you the rules."  
 24 And I said, "I don't -- I'm not going to do  
 25 anything else for the campaign."

1 I was trying to draw a line of demarcation.  
 2 Q. Okay. So, really, that was the line of  
 3 demarcation probably the 11th or maybe the 12th that  
 4 you --  
 5 A. I would say --  
 6 Q. -- that you --  
 7 A. -- the 10th or the 11th.  
 8 Q. The 10th or the 11th that really the  
 9 independent expenditure campaign began?  
 10 A. Well, it didn't -- I don't know. It wasn't  
 11 like this -- like trumpets went off and there was this  
 12 awesome beginning. There was just like steps I started  
 13 to take.  
 14 Q. So --  
 15 A. So, yeah --  
 16 Q. -- the first step -- the first step was I'm  
 17 going to open an independent expenditure committee,  
 18 right?  
 19 A. Well, I had one. I was going to reactivate  
 20 it.  
 21 Q. Reactivate it. So it is kind of like trumpets  
 22 going off: "I'm going to do this?"  
 23 A. Right.  
 24 Q. Okay. "And in furtherance of that goal, I'm  
 25 going to meet with Mr. Horne and tell him I'm doing

1 it," correct?  
 2 A. Right.  
 3 Q. And Mr. Horne is going to tell me, "You  
 4 probably should talk to a lawyer about this"?  
 5 A. He did.  
 6 Q. And you're going to call that lawyer?  
 7 A. And I did.  
 8 Q. And you did. And I believe that you talked  
 9 to -- the phone log, if we go to Exhibit 32 -- you may  
 10 need to help me, because I haven't seen that.  
 11 A. It's October 13th.  
 12 Q. October -- 32. October 13th, which I think is  
 13 549. Now we've got Lisa Houser, and that was pointed  
 14 out by counsel in here, right?  
 15 A. Correct.  
 16 Q. And a phone number there?  
 17 A. Correct.  
 18 Q. Would this indicate that you actually called  
 19 Lisa on that day?  
 20 A. Yes.  
 21 Q. Okay. So you actually called Lisa. So at  
 22 this point, October 13th, we're -- we talked to  
 23 Mr. Horne because he's the one that told us to contact  
 24 Ms. Houser. So we've got a definitive date here,  
 25 October 13th?

1 A. Right.  
 2 Q. You decided to reactivate the Business Leaders  
 3 for Arizona?  
 4 A. Uh-huh.  
 5 Q. You told Mr. Horne that you -- that you're  
 6 going to reactivate or you have reactivated Business  
 7 Leaders of Arizona?  
 8 A. Okay.  
 9 Q. Okay. And you've contacted legal counsel for  
 10 advice about how to conduct the affairs of legal  
 11 counsel -- or Business Leaders for Arizona.  
 12 Is that a fair statement?  
 13 A. Uh, yes.  
 14 Q. We're moving forward, right?  
 15 A. Yeah. Yeah.  
 16 Q. Okay.  
 17 A. Okay.  
 18 Q. So all of this is occurring on October 13th.  
 19 We're also looking at a phone number -- a name  
 20 and a phone number on October 13th, Chuck Diaz.  
 21 A. Uh-huh.  
 22 Q. And that would indicate a phone call to him,  
 23 or is that just a note about a phone record?  
 24 A. I believe I contacted Chuck Diaz that day.  
 25 Q. And why did you contact Chuck Diaz?

1 A. Because I -- he had wanted to get involved.  
 2 He wanted to help Tom Horne and Ruth McClung. I -- he  
 3 had been asking, kind of, "Can I help?"  
 4 And I now was going to do that, so I contacted  
 5 him. And I knew I was -- he was in Tucson, and I knew  
 6 I was going to Tucson that weekend.  
 7 Q. So when you say "help," you say help with the  
 8 attorney general race?  
 9 A. I didn't know what kind of help he was talking  
 10 about, and I hadn't -- I called him and told him what I  
 11 was doing with the Republican party, so I shared with  
 12 him my conversations that I'd had with Brett Mecum.  
 13 Q. So your conversation with Chuck Diaz is on  
 14 behalf of the Tom Horne campaign --  
 15 A. No.  
 16 Q. -- on that day?  
 17 A. No, it's not.  
 18 Q. No, it's not?  
 19 A. Huh-uh.  
 20 Q. Your conversation with Chuck Diaz is behalf --  
 21 on behalf of Business Leaders of America?  
 22 A. For Arizona.  
 23 Q. Excuse me. Arizona. For Arizona.  
 24 A. Yes.  
 25 Q. Okay. So pretty good, we got all three things

1 going here. We meet. We talk with Mr. Horne. We're  
 2 telling him we're doing this independent expenditure  
 3 committee. We've got Chuck Diaz. We've got Lisa  
 4 Houser.  
 5 And, by the way, there was some testimony  
 6 earlier that the campaign -- or excuse me -- Business  
 7 Leaders of Arizona had been deactivated. That's not  
 8 really a correct assessment at that point, is it?  
 9 A. Well, I hadn't raised any funds. I -- I --  
 10 Q. You --  
 11 JUDGE EIGENHEER: One at a time.  
 12 THE WITNESS: Sorry.  
 13 JUDGE EIGENHEER: Go ahead.  
 14 Q. BY MR. FIELDS: You were answering the  
 15 question. It had been deactivated. That's not really  
 16 a correct assessment, is it?  
 17 A. I had done nothing to raise funds. Since  
 18 December of the previous year, I had done nothing to --  
 19 so I filed nonactivity reports. I had not done -- I  
 20 had not used it. It was sitting there.  
 21 I hadn't made any messaging. I hadn't done  
 22 any -- Business Leaders for Arizona was not utilized  
 23 from the beginning -- sometime in the beginning of 2010  
 24 until this time, until October of two-thousand -- or  
 25 beginning -- yeah, end of 2009, so beginning of 2010

1 until October of 2010.

2 Q. So Business Leaders of Arizona, even though it  
3 had some activity earlier in 2010, all of the paperwork  
4 had been -- that needed to be filed had been filed as  
5 of October 13, 2010; is that correct?

6 A. Correct.

7 Q. And it really hadn't spent any money; there  
8 had been some activity there, but there was no issue  
9 with Business Leaders of America?

10 A. It's Business Leaders for Arizona.

11 Q. Business --

12 A. It's okay.

13 Q. -- Leaders for Arizona. For some reason I've  
14 got America on my mind.

15 I guess the point being, you really didn't  
16 need to do anything to reactivate it. It didn't need  
17 to be reactivated. It was active but not doing  
18 anything at that point.

19 Is that a fair characterization?

20 A. No, because activity to me means you're doing  
21 something, and I had done -- taken no action. And  
22 that's how I view activity. I had taken no actions  
23 from the winner until the fall of 2010 to create any  
24 messaging, to collect any funds, to do anything. So  
25 for me, that's not activity. There was no activity.

1 That was non-activity.

2 Q. In order to utilize Business Leaders for  
3 Arizona, you didn't have to file any documents with the  
4 secretary of state?

5 A. At the -- in October to collect --

6 Q. On October 13th, to collect money to do -- or  
7 to raise funds or to advocate on behalf of the attorney  
8 general's race; is that correct?

9 A. I did not -- or any other race. I did not  
10 have to -- I just had to file whatever funds I  
11 collected after that reporting period, which --

12 Q. The campaign financing reports?

13 A. Just regular reports, yes.

14 Q. Yeah. So you've got this tool sitting out  
15 there that you can just immediately pick up and start  
16 using?

17 A. Exactly.

18 Q. Okay. All right. That's fine.

19 So you contacted Chuck Diaz. And do you  
20 recall, you called him on October 13th, you said?

21 A. I believe I did.

22 Q. Do you recall what took place during that  
23 conversation?

24 A. I think I let him know I was coming to Tucson.  
25 I asked him if he wanted to contribute to an

1 independent campaign. He said he had an interest in  
2 doing that. And he asked me to come to his house and  
3 meet with him.

4 Q. So you're soliciting funds on October 13th --

5 A. Right.

6 Q. -- for Business Leaders for Arizona?

7 A. Correct.

8 Q. Okay. I'm going to go to Exhibit 4, which is  
9 Bates 8.

10 Do you see that on the screen?

11 A. I do.

12 Q. Now, in Paragraph Number 2, about two-thirds  
13 of the way down --

14 A. Right.

15 Q. -- you -- this is an affidavit you signed --

16 A. I did.

17 Q. -- under penalty of perjury. And the  
18 statement there, could you read -- do you see where the  
19 little mouse there --

20 A. I do.

21 Q. -- is?

22 Okay. Would you read that sentence beginning  
23 with "Activity," please?

24 A. "Activity for the independent campaign did not  
25 begin until October 17th, and the first contribution

1 was made on October 20th."

2 Q. Okay. So let's start with the "Activity for  
3 the independent campaign did not begin until October"  
4 statement -- October 17th.

5 That's not a true statement, is it, based upon  
6 what you just testified to?

7 A. I believe that was -- I believe that was a  
8 typo, and it's inaccurate. And, you're right, it's not  
9 correct.

10 Q. So what is the correct time that you --

11 A. I think that 17th was supposed to be the 12th.  
12 And I'm not -- I know I signed this, but I think I made  
13 mention to an attorney that it was incorrect after the  
14 fact.

15 Q. Now, when you -- you mentioned you went down  
16 to Tucson to pick up a check from -- you said that you  
17 could -- you told Mr. Diaz you could go down to Tucson  
18 and pick up a check from Mr. Diaz?

19 A. I told who?

20 Q. You mentioned earlier in your testimony that  
21 you could go down to -- when you called Mr. Diaz, you  
22 said you could go down --

23 A. I told him I was coming to Tucson.

24 Q. And did you tell him that you could pick up a  
25 contribution from him at that point?

1 A. No. We were just going to meet. I didn't  
2 know what he had in mind. All he -- at that point, all  
3 he had said to me was "I want to help." I didn't --  
4 there was no arrangement prior to that.

5 The first time I met with Mr. Diaz in his  
6 house on the 15th was when I knew he would -- how much  
7 money he was going to give.

8 Q. That was the first time you knew that he was  
9 going to give money?

10 A. Yes, in his house.

11 Q. And that was on the 15th of October?

12 A. Yes. It was a Friday night.

13 Q. And he wrote you a check at that point?

14 A. For \$5,000.

15 Q. For \$5,000?

16 A. And I think that's in my bank account.

17 Q. Okay. So the second part of the statement  
18 there that you just read, "and the first contribution  
19 was made on October 20th," that is a false statement as  
20 well, correct?

21 A. It is an incorrect statement.

22 Q. Because the first contribution took place  
23 when?

24 A. Well, it deposited, I think, on the 18th. So  
25 the 15th is when I picked up the check.

1 A. Uh-huh.

2 Q. Okay. And did you discuss with Mr. Bruner the  
3 independent expenditure committee, Business Leaders for  
4 Arizona?

5 A. I did.

6 Q. And at that point, did you request that he  
7 issue -- that he make a contribution or --

8 A. He offered to make a contribution.

9 Q. He offered to make a contribution. Did he  
10 make a contribution at that point?

11 A. No.

12 Q. Did you inform him that you would -- that --  
13 what the purpose of Business Leaders for Arizona was,  
14 what you were attempting to accomplish?

15 A. He had had a conversation with Greg Harris,  
16 his attorney, who had referred me to him, so I believe  
17 that Greg Harris had that conversation.

18 Q. So when did you have the conversation with  
19 Greg Harris about the purpose for Business Leaders of  
20 Arizona -- for Arizona?

21 A. A couple days before I met with Mr. Bruner.

22 Q. So that would have been around the --

23 A. 13th.

24 Q. 13th?

25 So the 13th seems to be the key date when

1 Q. Well, I suppose we could get into an argument  
2 about the funds aren't really there and so you  
3 deposited the check, but he gave you that check on  
4 October 15th?

5 A. He did. That's a correct statement.

6 Q. Any indication when he gave it to you that the  
7 check was no good?

8 A. No. I wouldn't -- no.

9 Q. Any indication at that time he gave you the  
10 check that he was going to stop payment on the check?

11 A. No. No.

12 Q. So the sentence should read, if it was  
13 truthful: Activity for the independent campaign did  
14 not begin until October 13th, and the first  
15 contribution was made on October 15th?

16 A. I -- okay.

17 Q. Is that a yes?

18 A. Yes.

19 Q. You mentioned on direct examination that you  
20 met, I believe, Keith Bruner in Tucson also on --

21 A. Keith --

22 Q. -- the 15th?

23 A. -- Bruner on the -- Saturday morning, the next  
24 morning.

25 Q. On the 16th?

1 we're doing all of this.

2 A. Where we're starting.

3 Q. Starting. Okay.

4 So by this time we're -- by the time we meet  
5 with Bruner -- Mr. Bruner, he knows the purpose of --  
6 and I'm going call it BLA. He knows the purpose of  
7 BLA. He knows that you're organizing it. He knows  
8 that you're fundraising for BLA. He knows that the  
9 focus of BLA is to advocate on behalf of the attorney  
10 general's race for Arizona.

11 Is that correct?

12 A. All those statements are true.

13 Q. Okay. Did you read this affidavit before you  
14 signed it?

15 A. I did, and I -- I -- I did read it before I  
16 signed it, and I focused on other points in it and  
17 didn't focus on the specific dates.

18 Q. Well, it seems that they're pretty important.  
19 I mean, given the fact that you were pretty active in  
20 the Horne campaign prior to this and -- you know, and  
21 especially since I believe you testified that Mr. Horne  
22 advised you, or at least you talked to him about the  
23 dangers of this coordination issue between the campaign  
24 and the independent expenditure committee, this would  
25 seem to be something that should draw your attention

1 and the attention of your counsel who prepared the  
2 affidavit, wouldn't you think?

3 A. I caught this error that you're now currently  
4 pointing out, and I don't want to -- I will tell you  
5 that I did catch this after I had signed it, but not  
6 before it went out.

7 Q. Was there any kind of correction in a  
8 subsequent affidavit?

9 A. I believe I had requested one to be filed. I  
10 don't know if it was.

11 Q. I've got three total affidavits. This was the  
12 second one. I'm not seeing any kind of correction of  
13 this error.

14 Now, the affidavit that I'm referring to is  
15 May 25th, 2012. The other affidavit, the third one,  
16 which is called the Second Amendment to Affidavit of  
17 Kathleen Winn, and that is Exhibit 11, is dated  
18 May 30th of 2012, and it's not included in there.

19 So when you say you found this error, when did  
20 you find it?

21 A. I don't know the exact date. It may have been  
22 in preparation for the first hearing.

23 Q. So today is really the first day you've been  
24 able to say under oath that's in error?

25 A. Correct.

1 Q. How long have you known about the error?

2 A. A while. I don't know exactly --

3 Q. A while?

4 A. -- how long.

5 Q. Months? Years?

6 A. Not years. Well, I don't know. I'd be  
7 guessing right now. I don't want to do that.

8 Q. This statement is almost two years old. When  
9 did you first discover the error?

10 A. Probably a year after this was written.

11 Q. So this error has been known to you for about  
12 a year?

13 A. I'm not exactly sure. I don't want to say.  
14 I'm just not exactly sure. I know that I pointed this  
15 out, and I don't know exactly the timeframe.

16 Q. And it's remained uncorrected until today?

17 A. Yes. That's true. Unless there's a  
18 supplement that's out there that I'm not aware of or  
19 you're not aware of.

20 Q. We're collecting money at this point. Let's  
21 kind of focus a minute on our contact with Brian  
22 Murray.

23 When did you first have contact with Brian  
24 Murray?

25 A. That -- I think that week.

1 Q. The week of the 13th?

2 A. Yeah. After -- let me look.

3 Yes, it had to be that week, the week of --  
4 that started on the -- the week of -- the week of the  
5 10th, but --

6 Q. The week of the 10th --

7 A. Yeah. The 13th occurs on the week of the  
8 10th, so I didn't want to say the week of the 13th.

9 Q. Okay. And I believe your testimony was you  
10 were given a -- and I can't remember who gave you the  
11 list of different consultants you could maybe contact?

12 A. Brett Mecum from the Arizona Republican --

13 Q. Brett Mecum.

14 And you contacted Lincoln Strategies, which I  
15 appreciate. I think that probably was a good choice.  
16 And you contacted Mr. Murray and --

17 A. I didn't -- I contacted Lincoln Strategies,  
18 and they referred me to Mr. Murray.

19 Q. Okay. And they referred --

20 A. Yes.

21 Q. -- you to Mr. Murray.

22 And he says, "Look, you need at least 50  
23 grand."

24 And if I understand correctly, it's kind of  
25 like "We want -- we want -- in order to approach the

1 RSLC, we need something to show that you can seriously  
2 raise some money here and that we're not just throwing  
3 our money to somebody that raises, you know, 15 or \$20  
4 and calls it an independent expenditure committee."

5 Is that kind of what your impression was?

6 A. No. I appreciate -- it's not too far off, but  
7 it's not accurate.

8 Q. Okay.

9 A. I'd already contacted Brett Mecum. I already  
10 knew that these funds were there. I --

11 Q. You're talking about the --

12 A. The RS -- the funds from the RSLC. I was  
13 aware of them, and I knew that they were there. So  
14 when I contacted Mr. Murray --

15 Q. Let me stop you for a minute.

16 A. Okay.

17 Q. When you say that you knew that the funds were  
18 there, are you talking about 450 or 550 specifically or  
19 just some funds, significant funds?

20 A. I didn't know the exact dollar amount. I just  
21 knew that there was a significant amount that they were  
22 willing to put into this race to advocate for a  
23 Republican attorney general in the state of Arizona.

24 Q. There was a pot of funds -- a pot of money  
25 available. Let's see if we can get into it?

1 A. Right. And I was told that if I -- that the  
2 Republican party -- in my previous testimony I said the  
3 Republican party could not take those funds. Brett  
4 Mecum could not receive those funds. He needed an IE.  
5 And that's what prompted all my actions after I had  
6 contacted him.

7 Q. Is that one of the things that kind of led you  
8 to activate, for lack of a better term, BLA, or did the  
9 activation occur before you knew of the -- of the RSLC  
10 funds?

11 A. (No oral response.)

12 Q. If you don't know -- if you don't recall --

13 A. I guess I'm having a problem with that word,  
14 the "activation" word.

15 I think that -- well, yeah.

16 Q. Let me rephrase the question.

17 A. Okay.

18 Q. Everything seemed to kind of hinged on  
19 October 12th and 13th.

20 Were you aware of the RSLC funds before  
21 October 12th?

22 A. Not before October 12th, no.

23 Q. Okay. Let --

24 A. Around -- you know, I --

25 Q. I'm not sure it's important, so --

1 a moment. Before we break for lunch, I just wanted to  
2 let everyone know that I have given consideration to  
3 the issues that we -- that were raised this morning,  
4 and I am going to grant additional time on behalf of  
5 Yavapai County to consider the recording that was  
6 played yesterday and prepare for further questioning or  
7 rebuttal, whatever is necessary, whatever they deem  
8 necessary.

9 So my plan was, if we take a slightly longer  
10 lunch break today, if the parties can confer and  
11 possibly work out some possible dates where everyone  
12 would be available to come back.

13 If that can't be done before the close of the  
14 hearing tomorrow, and -- I would recommend coming up  
15 with several options so that I can try to make sure  
16 that I can accommodate that in my calendar, also, and  
17 make every effort to get that done, but --

18 MR. FIELDS: I'll comment. I appreciate the  
19 longer lunch break. I think it would be a good thing.  
20 We have talked a little bit. There's been some things  
21 that have developed. So I think we can better address  
22 the issue at 1:00 o'clock about whether we actually  
23 need an additional day or not.

24 JUDGE EIGENHEER: Okay.

25 MR. FIELDS: Just for the Court and counsels'

1 A. Okay. All right.

2 Q. -- let's move on. Okay.

3 So we're -- we're -- we know about the RSLC  
4 funds now, and I was kind of trying to get to your  
5 interpretation of the \$50,000 being necessary to tap  
6 into the RSLC funds.

7 A. That was something Brian Murray said to me  
8 when I met with him. He said in order to get these  
9 funds that are there -- we both knew about the funds.  
10 He knew about it through his contacts. I knew about it  
11 through my contacts.

12 And he was going to -- and he had done work  
13 for them. He was -- Lincoln Strategies, being  
14 reputable in producing Republican ads, gave me  
15 credibility.

16 So what he said to me is, "In order to get  
17 these funds, you need to raise \$50,000."

18 And so that's what I did.

19 Q. And that caused you to go out and talk to --  
20 you've got some from the -- I can't remember -- I can  
21 produce that -- Texas Loan Corporation, I believe is --

22 A. Right. Keith Bruner, 30,000; Chuck Diaz,  
23 5,000. And then I contacted Christine Newman to get to  
24 the 50. And then -- I'm sorry.

25 JUDGE EIGENHEER: I was going to interrupt for

1 edification, I'm looking at probably 45 minutes more --

2 JUDGE EIGENHEER: Okay.

3 MR. FIELDS: -- with Ms. Winn, and that's  
4 about it. So we should be -- if we can start at 1:00,  
5 we may be able to push through the end of the day.

6 JUDGE EIGENHEER: Then we will break for lunch  
7 at this time, and we'll come back at 1:00 o'clock. So  
8 we'll go off the record at this time.

9 (A luncheon recess ensued.)

10 JUDGE EIGENHEER: We are back on the record in  
11 Docket Number 14F-001-AAG.

12 Any preliminary matters?

13 MR. LASOTA: I think our witness will be back  
14 in just a second, Judge.

15 JUDGE EIGENHEER: There she is.

16 Was there any consensus reached about the  
17 timing or -- no.

18 MR. FIELDS: I think so. I think we're going  
19 to forgo Mr. Tatham. The plan for this afternoon I  
20 think is to finish with cross-examination and redirect  
21 for Ms. Winn and to any other witnesses that they want  
22 to call.

23 We'll probably -- Agent Grehoski will probably  
24 come back on the stand either through cross or through  
25 rebuttal. And I'm not sure -- I think that will do it.

1 MR. LASOTA: I believe Mr. Fields is right,  
 2 Judge.  
 3 JUDGE EIGENHEER: Okay.  
 4 MR. FIELDS: And we should -- we have four  
 5 hours. We should be able to do it.  
 6 JUDGE EIGENHEER: Then let's get to it.  
 7 I will remind you, you are still under oath.  
 8 THE WITNESS: Thank you, Your Honor.  
 9 JUDGE EIGENHEER: You may proceed.  
 10 Q. BY MR. FIELDS: I just wanted to clarify one  
 11 thing about the contribution, Ms. Winn.  
 12 I believe on direct examination you had  
 13 testified that Ms. Newman, Christine Newman, who is  
 14 Tom's sister, had made a contribution of \$15,000  
 15 initially to the campaign; is that correct?  
 16 A. When I was getting the first 50,000, yes,  
 17 that's correct.  
 18 Q. Through the independent expenditure committee?  
 19 A. To BLA.  
 20 Q. To BLA. Thank you. When you were first  
 21 getting that together.  
 22 And I think you said that Tom didn't know  
 23 about that until much later?  
 24 A. For me. I don't know -- you know, I didn't  
 25 tell him.

1 correct?  
 2 A. I have.  
 3 Q. Okay. And you originally saw it on the day it  
 4 was sent, on the 27th of October?  
 5 A. Yes, I saw it.  
 6 Q. And you've had a chance to review it since  
 7 then in preparation for today?  
 8 A. Yeah. I reviewed my -- I didn't review this  
 9 like I reviewed my phone records, so I'm aware of this  
 10 e-mail.  
 11 Q. Okay. This is an e-mail -- looking at it  
 12 right here where the little hand is, it says date,  
 13 Wednesday, October 27th, 2010, 20:36 dash -- or colon  
 14 09. I would assume that that is what the 8 -- 8:36.  
 15 Well, it's in Greenwich meantime, and I can't translate  
 16 that.  
 17 A. 12 --  
 18 Q. Oh, scroll to the next line. Okay. Oh, okay.  
 19 Here we go. Okay.  
 20 Well -- all right. So down where I'm at here,  
 21 that says 20:36:09. The other one says 1:45 p.m. It  
 22 looks like there's two separate e-mails. Let's go with  
 23 the one and just kind of leave the time blank right  
 24 now.  
 25 It's an e-mail to Tom Horne from Ryan

1 Q. Okay. Did he ever mention it to you?  
 2 A. Did Tom mention it to me?  
 3 Q. Yeah, that he knew that his sister had made  
 4 that contribution?  
 5 A. Not -- no. I mean, no. No.  
 6 Q. Okay. And I believe you said he'd be upset or  
 7 angry or something like that, or annoyed, because he  
 8 would want his sister to contribute to the campaign  
 9 rather than to him?  
 10 A. I think my attorney asked me that question.  
 11 Q. Is that a correct statement?  
 12 A. That he'd be -- I think he needed money at the  
 13 time, at the end of his campaign, so I don't know if  
 14 it's a correct statement. I don't want to speak for  
 15 Mr. Horne if he'd be annoyed or not. I just know that  
 16 I went to his sister.  
 17 Q. Okay. I suppose we could get into a  
 18 philosophical debate about whether the system we've  
 19 managed to set up in this country is good or bad or  
 20 indifferent, but we'll save that for another day.  
 21 A. Thank you, sir.  
 22 Q. Let's talk about -- talk about the e-mail  
 23 chain that occurred on October 27th, and that is  
 24 Yavapai County Exhibit 15. It should be right there.  
 25 Now, you've seen this e-mail chain before,

1 Ducharme; is that correct?  
 2 A. It appears to be.  
 3 Q. Okay. Do you know who Ryan Ducharme is?  
 4 A. I think he's a political consultant.  
 5 Q. Have you ever met him?  
 6 A. I have not.  
 7 Q. Do you know him by reputation?  
 8 A. I just think he's a political consultant.  
 9 Q. A political consultant?  
 10 A. Yes.  
 11 Q. Okay. Let's --  
 12 A. Probably a pollster, based on this.  
 13 Q. Okay. Well, let me read that. Read along  
 14 with me.  
 15 "Recent polls" -- this is the text of the  
 16 e-mail. Its subject line is "Important info to Tom  
 17 Horne. Recent polls show you losing ground amongst  
 18 independents to Rotellini and her starting to pick up  
 19 more Reps" -- and I'm going --  
 20 A. Republican.  
 21 Q. -- "Republicans" --  
 22 I'm going to assume that's Republicans.  
 23 -- "than you are picking up Dems." And I  
 24 assume that's Democrats.  
 25 "Bleeding needs to be stopped. Allegations

1 and smears against you by DC group starting to peel  
2 away votes."

3 I'm going to take that as District of  
4 Columbia, Washington, D.C.?

5 A. DC -- no.

6 Q. Or Democratic committee?

7 A. I think that's Democratic Committee for  
8 Justice and Fairness.

9 Is that what that is?

10 Q. Okay.

11 A. I'm not sure.

12 Q. "Starting to peel away votes. They need to be  
13 addressed as desperate last-minute attacks with no  
14 basis in truth. Sent from My Verizon Wireless  
15 BlackBerry."

16 Did I read it accurately?

17 A. I don't know about (inaudible.)

18 Q. I'm sorry?

19 A. I didn't author it. I don't know if it's  
20 accurate.

21 Q. No, no. Did I read it accurately?

22 A. Sure.

23 Q. Okay. Great.

24 But it's -- it's an e-mail, looks like on its  
25 face, from somebody that you're familiar with, or at

1 Ins" -- I believe that's independents?

2 A. My guess would be that would be independents.

3 Q. Independent voters, probably what that's  
4 referring to in this context?

5 A. Uh-huh.

6 Q. I think we can agree with that?

7 A. Yes.

8 Q. So -- now, here's a suggestion about -- this  
9 e-mail appears to be a suggestion about how to  
10 attack -- how to engage in a political attack against  
11 Mr. Horne's opponent directed to Mr. Horne, a  
12 suggestion, if you will, about how Mr. Horne should  
13 address these -- the incidences -- the smear campaign  
14 referred to below by the Democratic committee with the  
15 DC group.

16 Would that be a fair characterization of this?

17 A. I think you're giving it too much credibility  
18 for what it is, but --

19 Q. No, I'm just asking on its face, would that be  
20 a fair assessment of what this e-mail purports to do?

21 A. It's someone giving an opinion about what they  
22 think somebody should do based on the polling  
23 information.

24 Q. Based on the polling information.

25 And the person who's giving this, at least by

1 least by reputation, as a political consultant who  
2 appears from this to do polling information talking  
3 about recent polling information where -- to Tom Horne  
4 indicating it seems that Mr. Horne is losing ground to  
5 independents and suggesting a strategy to address  
6 attacks and smears by a Democratic group.

7 Would that be a fair assessment of that  
8 e-mail?

9 A. Sure. Yes.

10 Q. Okay. Now we're going to move up to the  
11 latest in that chain, October 27th, 1:45 p.m. Looks  
12 like it's to Kim Owens. I believe that's a member of  
13 the campaign, the Tom Horne campaign?

14 A. I believe she was doing fund raising for  
15 Mr. Horne.

16 Q. And also to Tom Horne?

17 A. And to Mr. Horne.

18 Q. And to Mr. Horne.

19 And, again, read along with me.

20 "I would link attacks directly to Rotellini as  
21 someone behind in the polls trying to hide from her  
22 record, (SB1070, ties to unions, calling for Arizona  
23 boycott, et cetera). The truth once known will  
24 undermine Rotellini's credibility and call into  
25 question her character. A very important quality for

1 reputation, is a political consultant?

2 I'm not commenting on quality or reputation of  
3 quality, good, bad, or indifferent. At least they're  
4 in the business of doing that?

5 A. Correct.

6 Q. And also appear to be in the business of, if  
7 not conducting polls, at least analyzing polls?

8 A. Apparently, yes.

9 Q. Okay. Do you know if Mr. Ducharme has any  
10 connection with the Republican party?

11 A. I know he's -- I believe he's a Republican.  
12 Other than that, I am not an expert on Ryan Ducharme.

13 Q. Do you know if he's ever been a precinct  
14 committeeman for the Republican party?

15 A. I do not know that answer.

16 Q. Has he held any other political office in the  
17 Republican party that you know of?

18 A. Not that I'm aware -- it's not to say he  
19 hasn't -- I'm just not -- I have no awareness of it.

20 Q. Okay. And has he worked for any kind of  
21 consulting or polling group that you're --

22 A. I'm not aware.

23 Q. That's fine.

24 So what happens -- what appears to happen next  
25 is at 1:47 -- this appears to be forwarded by

1 Mr. Horne, Tom Horne for attorney general address, to  
 2 Casey Phillips.  
 Now, who is Casey Phillips?  
 4 A. I believe Casey Phillips worked RAGA, the  
 5 Republican Attorney General's Association. And he was  
 6 a contact to candidates, Republican candidates that  
 7 were running for attorney general. And I think RAGA  
 8 assigns certain people to support candidates, and I  
 9 believe Casey -- Mr. Phillips was assigned to  
 10 Mr. Horne.  
 11 Q. Okay. Did you ever have any contact with Mr.  
 12 Casey?  
 13 A. With Casey Phillips?  
 14 Q. Excuse me. Casey Phillips. I'm sorry.  
 15 A. I believe I might have met him briefly, but  
 16 beyond that, no. Like I said, I was introduced to him  
 17 at some point.  
 18 Q. Any business interaction on behalf of BLA with  
 19 Mr. Phillips?  
 20 A. No, I did not.  
 21 Q. It looks like what happens next, and it's a  
 22 little jumbled here, because there's metadata, appears  
 23 to be some kind of metadata involved.  
 24 It looks like date, October 27th, 14:02, which  
 25 is about 2:00 o'clock in the afternoon, from Tom Horne

1 e-mail from Mr. Horne to Winn, Kathleen.  
 2 Do you recall receiving that e-mail?  
 3 A. I do.  
 4 Q. And, as far as you know, is it accurate as far  
 5 as the date and time you received it?  
 6 A. If it says I received it October 27th at  
 7 2:10 p.m., I have no reason to believe that I did not  
 8 receive that e-mail, so ...  
 9 Q. Okay. Thank you.  
 10 And do you recall receiving the other parts of  
 11 this, the "I forwarded to Casey"? Do you remember that  
 12 message?  
 13 A. I don't, actually. When I got this e-mail, I  
 14 just put a little note at the top, if you want to go  
 15 back where I commented.  
 16 "This just came into me. Read below."  
 17 I didn't -- I didn't actually take the time to  
 18 read it. I just forwarded it to Brian. I didn't read  
 19 what was in the e-mail. I just sent it on to Brian.  
 20 Q. Okay. You didn't read what was in the e-mail  
 21 at all?  
 22 A. I didn't.  
 23 Q. Okay. This is an e-mail from Tom Horne?  
 24 A. It is. And I -- when I got to all the  
 25 failure, whatever was there was -- I think it was at

1 for attorney general to Kathleen Winn at --  
 2 A. On Q.  
 3 Q. Onqfinancial.com, and it looks like -- subject  
 4 line, important info, so it looks like a forward of  
 5 that previous -- continuing in the chain, if you will.  
 6 "I forwarded this to Casey," which would be  
 7 confirming the e-mail just below. "Maybe we can  
 8 try" -- "maybe we can," period, "try again for the  
 9 100K."  
 10 Now, it looks like this e-mail was bounced  
 11 back. Do you know why that may have been?  
 12 A. It didn't work it On Q Financial at that  
 13 point. This is October of 2010, and I hadn't been  
 14 there since June or July.  
 15 Q. So it looks like Mr. Horne attempted again  
 16 through another e-mail address.  
 17 A. I think it's the same e-mail address and it  
 18 bounced.  
 19 Q. It bounced back?  
 20 A. Yeah.  
 21 Q. So now we've got another one. "Tom Horne for  
 22 attorney general, October 27th, 2010," so we're just a  
 23 couple minutes after this, maybe about eight minutes --  
 24 about five minutes. Excuse me. Tries again.  
 25 And about five minutes later we've got an

1 the top, and there was -- if you can -- I can't scroll  
 2 down. I'm sorry.  
 3 Q. If you grab the mouse, you can.  
 4 A. Oh, thank you. I'm sorry.  
 5 Q. Do what you need to do.  
 6 A. I may have just seen the subject line,  
 7 "Important Info."  
 8 Q. Okay.  
 9 A. And it says, "Recent polls," and I just  
 10 forwarded that to Brian, figuring polling information  
 11 was for him, and I didn't read through it.  
 12 Q. Now -- okay. Now --  
 13 A. It looks to me like -- what it looked like to  
 14 me was something -- like some communication from the  
 15 campaign, and I didn't care about any communications  
 16 from the campaign, so I just forwarded it to my  
 17 consultants.  
 18 I didn't care. I didn't need any information  
 19 about anything at that point. I was done with the ad.  
 20 I didn't need anything. I sent it on to my campaign  
 21 person that I was working with.  
 22 Q. Let me go back a minute.  
 23 What role did Brian Murray play in BLA?  
 24 A. He helped me construct my ad and buy the time.  
 25 That was our -- that was our sole purpose for coming

1 together.

2 Q. Well, you just described him as a consultant.  
Is that what he was?

4 A. For media. For -- yeah, for -- he was my  
5 consultant to tell me I had X amount of dollars, what  
6 was the most effective way to get as much exposure in  
7 the market. I consider that consulting.

8 So he consulted with me on what way to take  
9 the funds that I had raised, or he had raised, and how  
10 to spend them.

11 Q. Okay. And we put the ad together the week  
12 prior to the 27th, in general terms?

13 A. Yeah. It went to the stations on the 22nd, so  
14 five days prior to this e-mail.

15 Q. And it started running on the 25th?

16 A. 24th or 25th.

17 Q. 24th or 25th. So it's running?

18 A. It's running.

19 Q. Lincoln Strategies Group had been paid by this  
20 time?

21 A. My bank records will say when I wired the  
22 funds. But, yes, they were definitely paid for the  
23 production of the ads, the first 50,000, I think it  
24 was -- I don't know, 8,000.

25 Q. So from what I understand, we gave -- you get

1 A. Before this e-mail came.

2 Q. And who -- and who did you get it from?

3 A. Christine and Richard Newman.

4 Q. So reading this today, what do you take  
5 Mr. Horne to mean by "try again for the 100K"?

6 A. I don't know what he meant, and I didn't  
7 actually read that. Brian Murray pointed it out to me,  
8 and that's what prompted the letter to his attorney.

9 I didn't see that when I sent it to Brian.

10 Brian then called me back, was upset. We've kind of  
11 gone through that sequence of events. We had a  
12 discussion.

13 At that point I was going to do -- I didn't do  
14 anything. I didn't take any action based on this  
15 e-mail except to forward it to Brian. That was the  
16 extent of the action I took.

17 I did receive this e-mail. I did forward it  
18 to Brian Murray. But on the 27th there was nothing  
19 left to do. There was nothing to buy. There was no  
20 more money to be raised. It was done. I had  
21 nothing -- this didn't affect anything.

22 Q. But you still wanted to raise money if you  
23 could at that point, right?

24 A. Yeah. For -- well --

25 Q. I mean, you raised money the day before this

1 an e-mail from Tom Horne with something that appears to  
2 be to you polling data.

3 A. Uh-huh.

4 Q. You don't read the information other -- the  
5 only glean is polling data, which is at the bottom  
6 here, recent polls.

7 A. Uh-huh.

8 Q. You don't read any more than that.

9 A. Uh-huh.

10 Q. You don't read any more about the links to  
11 Rotellini. You don't read anything about the "I  
12 forwarded this to Casey. Try again for the 100K."

13 You don't read any of that. Yet, you know  
14 it's from Tom Horne. You know it's a political  
15 message, because it's the polls, and you forward it to  
16 Brian Murray?

17 A. Right. And then I --

18 Q. And at that point Brian Murray had done  
19 everything for you that you had paid him and contracted  
20 with him to do?

21 A. Yes.

22 Q. Except for raise another \$100,000?

23 A. No, we were done with that. We'd already  
24 gotten that extra \$100,000, too.

25 Q. When did you get the extra \$100,000?

1 e-mail. In fact, the money hit the day of this e-mail  
2 from Christina?

3 A. In the morning. I --

4 Q. In the morning?

5 A. But I already knew it was coming. I had  
6 requested it two days before, and they'd already  
7 committed to it.

8 Their notice that you have as evidence from --  
9 I don't know whose side it's on -- shows Richard Newman  
10 requesting money the day before on the 26th. That was  
11 already taken care of. This didn't affect that.

12 Q. How long was the -- how long before -- between  
13 this e-mail and the election?

14 A. Five days.

15 Q. Maybe six?

16 A. Five to six days.

17 Q. Five to six days. Okay.

18 So it's your position here that more money  
19 would not have helped -- more money to BLA, the extra  
20 \$100,000 given to BLA would not have been useful at  
21 that point on the 27th of October?

22 A. Well, I'd received \$100,000 that I knew was  
23 coming two days before this e-mail was ever sent. I  
24 got it that morning. The wire had been ordered. It  
25 hit the bank early in the morning. I even got to send

1 the money out that day.

2 So on the -- by the time this e-mail hit, I  
3 had already sent this -- the 100K that I'd gotten to  
4 the marketing firm. There was no more time to buy.  
5 There was nothing left to do.

6 The ad was out. It was running. I had made  
7 other contacts. I think I got smaller sums, but I  
8 didn't -- there was nothing -- I couldn't do anything  
9 with what --

10 Q. Reading this e-mail, "I forwarded this to  
11 Casey. Maybe we can try again for the 100K," what do  
12 you think Tom was asking you to do?

13 A. You'd have to ask Tom.

14 Q. You don't have any opinion about what he was  
15 trying to ask you to do?

16 A. I know there was an article that day. I don't  
17 know. I don't know what -- you know, I -- there was  
18 polling data. I forwarded the polling data to my  
19 consultant. That's exactly --

20 Q. You don't know what he's trying to ask you to  
21 do?

22 You've been involved in political campaigns  
23 for a long time, correct?

24 Helped run a political campaign, was  
25 involved -- basically known as the Raven of the Rurals,

1 helped put Tom through the primary, precinct  
2 committeeman, have a lot of experience, a lot of  
3 political experience that you sat up here and said you  
4 were very proud of, and yet you can't tell me what Tom  
5 Horne is asking for in an e-mail that contains polling  
6 data and advice from a pollster and something that says  
7 "Maybe we can try again for the 100 day -- 100K"; you  
8 can't tell me what that means?

9 A. At that point, I knew that the money that was  
10 originally committed to us had been sent someplace  
11 else. It had been sent to Virginia.

12 I had gotten the 100K that we had hoped to get  
13 from the Republican party from a different source. I  
14 could not do anything, based on this e-mail.

15 I had nothing -- I forwarded it to Brian  
16 Murray and -- for the polling data information. I  
17 didn't even catch this line in there because it was  
18 buried underneath all these failures and everything  
19 else, until Brian Murray called me back and said  
20 "You've been talking to Tom."

21 And so I didn't even see this. When I sent  
22 this -- yes, I hear what you're saying. But when I  
23 sent this to Brian Murray, I did not see this buried in  
24 this e-mail until Mr. Murray brought it to my  
25 attention.

1 Q. Ma'am, that's a very interesting answer, and I  
2 appreciate it.

3 The question was, can you tell me what this  
4 means? What is Tom Horne asking of you right here?  
5 What is this sentence asking you to do?

6 A. It's -- I forwarded this to Casey. "Maybe  
7 with this we can try again for 100K. "

8 Q. What does it mean?

9 A. It sounds to me like he wants another  
10 \$100,000.

11 Q. Isn't it true that RSLC originally promised  
12 BLA \$450,000 or said that they may have 450,000  
13 available?

14 A. Brett Mecum told me that that was the amount  
15 that was available. Brian Murray told me that that's  
16 what he anticipated we were getting. When the wire was  
17 actually sent, it was 350.

18 Q. So wouldn't it be a logical assumption that  
19 that's what Mr. Horne means, the extra 300 -- the extra  
20 \$100,000 -- is the extra \$100,000 difference between  
21 the 350 RSL gave you -- gave BLA and the 450 that was  
22 originally quoted?

23 A. It may be, but I'd already received the money  
24 on the 22nd, and I was told that there was no more  
25 money available from the RSLC.

1 For me, this part of this transaction was  
2 complete. There was nothing left to do. It doesn't  
3 matter if he asked me to go fly a kite or jump off a  
4 building. I could do nothing else at that point.

5 Q. I'm not suggesting that you could or couldn't  
6 or should or shouldn't have.

7 A. Okay.

8 Q. I'm asking you, what is Tom Horne asking you  
9 to do here?

10 A. You know, he wants me to go try to raise  
11 money, I guess. But it doesn't --

12 Q. From?

13 A. I don't know.

14 Q. RSLC, maybe?

15 A. It doesn't say. He -- I don't know what he  
16 wanted.

17 Q. Wouldn't that be a logical assumption from  
18 what we've got here?

19 A. You make all the assumptions you want. I  
20 didn't --

21 Q. I want you to tell me if that's a logical  
22 assumption. As experienced as --

23 A. I think --

24 Q. As experienced as you are in politics here and  
25 knowing the chain of events, isn't that a logical

1 assumption about what that -- isn't that a logical  
2 conclusion about what that sentence means?

3 A. You're trying to get me to draw a conclusion  
4 from an e-mail that Tom Horne sent, that I didn't send,  
5 that I didn't respond to, that I didn't take any action  
6 on, and you want me to tell you what Tom Horne was  
7 thinking and what that assumption is.

8 And I don't feel comfortable -- I can read it,  
9 and I can make up a million different things, but I  
10 don't -- I know what I did. I know what I didn't do.  
11 And I didn't take action on this.

12 So, for me, whatever he -- whatever the  
13 assumption is that whatever Tom was doing, you need to  
14 talk to Tom Horne.

15 I forwarded this e-mail to Brian Murray. My  
16 campaign was complete. I took no action based on this  
17 e-mail. And you can assume your heart out, but I don't  
18 know what Mr. Horne expected me to do.

19 And I wasn't taking any -- I wasn't taking any  
20 action or direction or conversations with him regarding  
21 BLA. It just didn't happen.

22 Q. Given the discrepancy between RSLC's original  
23 figure and what they gave you, the \$100,000, and given  
24 your political experience, experience with political  
25 campaigns, and your friendship, I believe, as you've

1 described it with Tom Horne, you can't tell me -- you  
2 can't decipher from this e-mail what Tom Horne --

3 MR. KIMERER: Your Honor, I'm going to object  
4 at this point. It's argumentative, and it's calling  
5 totally for speculation. And he's been repeating it  
6 three or four different times and asked and answered  
7 five or six different times.

8 MR. FIELDS: I'll move on.

9 JUDGE EIGENHEER: Okay.

10 Q. BY MR. FIELDS: I believe you just said that  
11 you took no action on this e-mail.

12 A. No.

13 Q. You forwarded it to Brian Murray. Isn't that  
14 an action?

15 A. Okay. So I may have misspoke. I forwarded  
16 this e-mail to Brian Murray, and I totally agree that I  
17 did that. I'm not going to dispute that.

18 Q. Brian Murray, who I believe is a consultant  
19 you described him?

20 A. Yeah. He was my source for getting the ads  
21 bought and produced.

22 Q. Brian Murray --

23 A. He help me produce the ads and the messaging  
24 that I wanted to produce.

25 Q. Brian Murray who actually obtained the money

1 from RSLC from you -- for you -- for BLA? Excuse me.

2 A. Yes.

3 Q. Brian Murray, who originally said, "We think  
4 we can get 450, but now we can only get 350,000,  
5 leaving \$100,000 gap"?

6 A. The way I looked at it, it was 350,000 more  
7 than I had, so I didn't --

8 Q. I understand.

9 A. Okay.

10 Q. But there was the possibility of another  
11 \$100,000 out there?

12 A. Originally Mr. Mecum thought that there was --  
13 Mr. Mecum is the one that told me 450.

14 Q. So when we look at the whole e-mail chain  
15 combined, what we've got is a political consultant  
16 pollster making political suggestions on strategy and  
17 the need to cover gaps, forwarding that to Mr. Horne,  
18 Mr. Horne forwarding that to you with the statement  
19 that "Maybe we can try again for the extra 100K," and  
20 you forwarding that to the man who is your political  
21 consultant, the man who obtained for BLA the \$350,000  
22 that really was the heart of producing the  
23 anti-Rotellini ad; is that correct?

24 A. I wouldn't say it's the heart. The 50,000  
25 that I first got that I did all by myself produced the

1 the ad. The --

2 Q. The 350 bought the spots?

3 A. Yes. Whereas I didn't want to diminish  
4 anything that Mr. Murray did. We were both working  
5 with different contacts into the same source, and I  
6 gave him full credit for -- because the money was sent  
7 to BLA. The money was wired to my account. I then  
8 forwarded that money to Lincoln Strategies.

9 So I just want to be responsible for how  
10 you're saying things and just give it back the way that  
11 I feel comfortable saying what happened.

12 Q. But, clearly, the point person with RSLA --

13 A. C.

14 Q. -- RSLC was Brian Murray; he was the person  
15 who was making the major contacts with the contributor?

16 A. I gave them my wiring information. Mr. Mecum  
17 had to vouch for who I was. I appreciate that we both  
18 accomplished the goal and we both have our own  
19 perspective of how it got done.

20 Q. Okay. I understand.

21 MR. FIELDS: If I may have just a minute,  
22 please.

23 JUDGE EIGENHEER: Yes.

24 Q. BY MR. FIELDS: I just want -- one last thing  
25 on the e-mail of the 27th.

1 You said you forwarded this without really  
2 reading it, didn't really take a look at it?

3 A. Typically when I get an e-mail and there's a  
4 bunch of stuff, I'll go down to the bottom. I saw it  
5 had something to do with polling data. I just went  
6 back to the top and sent it to Brian Murray.

7 Q. This is an e-mail from Tom Horne, who is  
8 obvious -- whatever. Okay.

9 So in the course of forming -- and this  
10 happens almost exactly two weeks after October 13th, on  
11 which between that time you met with Tom Horne. He  
12 said to be very careful, gave you advice about how  
13 things need to be separate with the independent  
14 committee and the campaign, Lisa Houser, who is an  
15 attorney who advised you of the same thing, Brian  
16 Murray, he's -- he said be careful in -- be very  
17 careful about contact between the independent committee  
18 and the campaign, particularly the candidate, your  
19 experience in political matters, and yet you didn't  
20 read the e-mail that's from Tom Horne to see its  
21 purpose, and instead just blindly forwarded it to Brian  
22 Murray?

23 A. I read what I told you I read. I forwarded  
24 it, because I thought it was polling information.  
25 Brian Murray is in that business. I forwarded it to

1 you, and I believe you confirmed that before.

2 So October --

3 A. Yeah, that would have been the original. I  
4 was counting the Rotellini.

5 Q. And I think --

6 A. There was four, so that's the original one.

7 Q. Okay. And so you printed it off. We go talk  
8 to George Wilkinson. And then at some point you go  
9 back to your office?

10 A. I did.

11 Q. And you send George at -- at 1:42 you send  
12 Brian an e-mail, "Do we have sound yet?"

13 "No, not for a couple more hours."

14 But then he seems to -- now, this is where the  
15 e-mail chains break up a little bit. And you kind of  
16 get branches off on it, because we've got this -- look  
17 at the subject line, "Horne ad copy."

18 What we have to do is go to Exhibit 9. Excuse  
19 me.

20 A. 10.

21 Q. Exhibit 10?

22 A. Your other 9.

23 Q. Thank you very much.

24 A. Sorry.

25 Q. Have you been channeling me?

1 Brian Murray.

2 Q. I believe your testimony before was you -- I  
3 think the e-mail records will bear this out.

4 You got an e-mail somewhere around 10:20 in  
5 the morning from Brian Murray, did not contain the  
6 voiceover, but it contained a script --

7 A. Right.

8 Q. -- of the commercial. And I'm talking about  
9 October 20. Excuse me for not adding the date in  
10 there.

11 So we're on October 20th, and it's about 10:21  
12 in the morning. You receive an e-mail. It's got the  
13 script of the -- the voiceover that Brian Murray is  
14 working on for BLA, the anti-Rotellini ad.

15 And that was the only advertisement or major  
16 significant work that BLA actually produced during that  
17 campaign; is that correct?

18 A. Was the television ad, yeah.

19 Q. Was the television ad?

20 A. Correct.

21 Q. The television advertisement.

22 I've got on the screen here -- now, you said  
23 you met with -- and George Wilkinson said that you two  
24 met that day, sometime around noon, and you kind of  
25 went over the -- here's the script that was provided to

1 It says, "Horne VO," so that is a different  
2 e-mail?

3 A. That was a sound file, and that was after we  
4 had -- that's 2:25. I believe at that point we had  
5 made some edits.

6 Q. He says -- I don't want to quibble with you.  
7 He says that it's an unedited file, but you -- I assume  
8 what you're saying is you talked to him about maybe the  
9 script. That's --

10 A. I meant --

11 Q. -- changes in the script?

12 A. Well, so when you do a 30-second ad, and it's  
13 a political ad, the content is about 27 seconds, and  
14 then you have to add the tag, major funding provided by  
15 blah, blah, blah, and that's usually two to three  
16 seconds. And so it would -- that tag line wasn't  
17 edited yet onto the --

18 Q. I see.

19 A. Okay?

20 Q. Okay. Now, had you talked with Brian Murray  
21 between the 2/24 -- excuse me -- the 10/21 e-mail where  
22 he sent you the written script and this e-mail where he  
23 sent you the voice file?

24 A. I may have called him from my landline. I  
25 would think we would have to because -- I don't

1 remember.

2 Q. Okay. Well, at this point, though, you're  
3 talking about the four times mentioned. You mention  
4 four times. And you get that at 2:29.

5 A. It would be not like -- so I sent that.

6 Q. Excuse me. You sent it at 2:29?

7 A. Uh-huh.

8 Q. Do you recall sending that?

9 A. I do.

10 Q. Are you a good typist? Can you type fast?

11 A. I -- I --

12 Q. One of the things --

13 A. I get over 200 e-mails a day, and I have a  
14 6,000-minute plan. I type.

15 Q. That's impressive. I drown at 70. So that's  
16 very impressive if you can answer those e-mails.

17 I'm just wondering how long you think it would  
18 take you to compose an e-mail like this.

19 A. You'd have to time me. I don't know.

20 Q. Okay. A minute, minute and a half, maybe?

21 A. Not probably that long.

22 Q. Well, you've been here throughout the  
23 testimony, and part of the things that we've been  
24 discussing is this rounding of minutes in the phone  
25 records and those kinds of things --

1 Q. Well, I guess that's why I'm asking how long  
2 it would take for you to do.

3 Now --

4 A. You know --

5 Q. -- it's an eight- or nine-minute call, so  
6 let's say 19, 27, 28. So you send out the e-mail at  
7 2:29. You have time to open it up, time to listen to  
8 it, time to send it off.

9 Do you recall what you were talking about with  
10 Tom that day at that time?

11 A. Based on documents I've seen, I would tell you  
12 his real estate transaction was supposed to have closed  
13 the day before and it wasn't. So if I were to guess, I  
14 would say it was his real estate transaction.

15 Q. That's a guess?

16 A. It's a guess. It's a total guess.

17 Can we go -- I'll wait for my turn.

18 Q. No, where do you want to go?

19 A. I don't think we -- you asked -- there was an  
20 audio file that I don't think I had at that point. I  
21 think I just had the -- we were just going back and  
22 forth on the words, and we were timing it, and then the  
23 audio file got produced. I don't think it was produced  
24 at that point. It doesn't matter.

25 Q. All right.

1 A. Right.

2 Q. -- and how long it takes, time, time kind of  
3 issues here.

4 So I'm just kind of wondering how long it  
5 would take to read and compose an e-mail, or listen to  
6 an e-mail. If it's a 30-second ad, you're going to  
7 listen to it for 30 seconds, and you're going to get  
8 some time to compose it.

9 A. Okay.

10 Q. And obviously where I'm going here is to -- is  
11 to -- so, then, which is the phone call that you've --  
12 that you've -- that you're on at 2:19 here --

13 A. Are we back on the 20th?

14 Q. We're back on the 20th.

15 A. The 2:19?

16 Q. Yeah. It's at the bottom of Bates 22 --

17 A. Right.

18 Q. -- on the screen.

19 A. Right.

20 Q. And that's Tom Horne's number, is it not?

21 A. Tom called me at 2:19, yes.

22 Q. Tom called you at 2:19. So if you received  
23 that e-mail at 2:24, you're still on the phone with  
24 him?

25 A. If I opened it at 2:24.

1 A. It just -- it doesn't matter.

2 Q. Now, on -- we have the Horne voiceover, an  
3 unedited file. Now, again, this appears to have  
4 branched out. This is Exhibit 8.

5 A. Okay.

6 Q. And that's where you talk about -- here at  
7 2:29 we're talking about "We don't like it four times.  
8 We're doing a rewrite currently, and we'll get back to  
9 you."

10 A. Right.

11 Q. Now, who is the "we" again that you're  
12 referring to?

13 A. Well, I'd already talked to George, and I was  
14 also contacting Greg Harris that day, whose client had  
15 given me 30,000. He's on my phone records. I talked  
16 to him --

17 Q. Is he on the phone records at 2:29?

18 A. Not on these phone records, but I think I  
19 called him from my landline at the office, because I  
20 was reviewing these e-mails at my desk at AmeriFirst.  
21 I remember talking to him and talking to George that  
22 day about this, getting input on what they thought we  
23 should --

24 Q. George, earlier in the day?

25 A. George -- well, maybe an hour before, an hour

1 and a half before this. It was not hours. It was a  
2 couple hours before.

3 Q. Okay.

4 A. Okay?

5 Q. All right. So who is the "we" doing a  
6 rewrite?

7 A. Well, I'd gotten George's input. I was --  
8 "we" was BLA, was me, with George's input. And then I  
9 was just making sure that Greg Harris was happy with  
10 what we were doing, with the direction we were going,  
11 and he kind of was fine with what we were doing.

12 Q. And what about the "several masters" comment?

13 A. Well, I felt like -- you know, George had a  
14 strong opinion. I felt like I owed Greg Harris' client  
15 who did -- you know, deposited \$30,000 in our account  
16 some input.

17 And so I just wanted to, before I gave Brian  
18 my final blessing, make sure that whatever we were  
19 doing was okay with the people that I felt accountable  
20 and responsible to.

21 Q. After sending that e-mail --

22 A. Which one?

23 Q. The 2:29 e-mail talking about several masters.

24 A. Okay.

25 Q. We're going to initiate a telephone call.

1 conversation about, that's what I would guess.

2 Q. Okay. So it's a guess. It's not -- it's not  
3 the political campaign. You're working fast and  
4 furious trying to get this ad out.

5 A. But I --

6 Q. You just got a voiceover on it.

7 A. I'm not -- Tom Horne was not involved in the  
8 process of this ad. I don't know how many different  
9 ways to say this. And I appreciate that both things  
10 were going on at the same time, except both things were  
11 going on at the same time, and they were separate  
12 matters.

13 I didn't combine them. I didn't make fruit  
14 salad out of them. I dealt with Mr. Horne on his real  
15 estate matters, and I dealt with the -- putting an ad  
16 together. And I did them separately. And I didn't  
17 combine them. And I didn't involve either party in  
18 what was going on.

19 And I dealt with Brian Murray to get the ad  
20 done, and got the ad done. We were on a tight  
21 deadline. I met my deadline. I did everything I was  
22 supposed to do to get that ad produced.

23 I also helped my friend Tom Horne with his  
24 real estate transaction. It doesn't mean there was an  
25 inner -- a commingling of these events.

1 Now, this is the e-mail records of Tom Horne --

2 A. Okay.

3 Q. -- and it's October 20th.

4 Do you see the -- do you see where the little  
5 hand is right there?

6 A. I do.

7 Q. Okay. Now, on that line, do you recognize  
8 that phone number at 2:37?

9 A. Yeah, that was my landline.

10 Q. That's your landline to your office, correct?

11 A. Correct.

12 Q. And it looks like you placed a call to  
13 Mr. Horne?

14 A. I think was returning a call, yeah.

15 Q. Okay. Returning a call. So he called you?  
16 He called you?

17 A. He called -- there was that eight-minute  
18 call --

19 Q. Right.

20 A. -- at 2:19, and I think he explained what was  
21 going on with his transaction. I called him back and  
22 took a loan application.

23 That's about the time it would take -- I don't  
24 know that that's exactly what happened, but if I was  
25 guessing, if you're asking me to say what was this

1 It's just -- the phone record, I talked to

2 Brian Murray, I talked to Tom Horne, not about the ad.

3 Q. So we're on Exhibit 6, and this is an e-mail  
4 on the 20th at 3:11 p.m., so we're kind of sequencing  
5 along.

6 You talked to Mr. Horne starting at 3:37 to  
7 approximately 2:40 -- 2:37. You talked until  
8 approximately 2:48. That was an 11-minute call,  
9 correct?

10 A. Correct.

11 Q. So now we've kind of worked on the end a  
12 little bit here, and now we've got another e-mail  
13 chain, "Horne ad copy."

14 A. Uh-huh.

15 Q. Okay. And that's from you to Murray?

16 A. Can you go back? You just cut it off.

17 Yes, from me to Brian Murray.

18 Q. Okay. From you to Brian Murray. That's your  
19 e-mail, right?

20 A. Right.

21 Q. And then we've got some back and forth with  
22 Brian?

23 A. We needed to cut some more. That's where one  
24 of the Rotellinis got cut out.

25 Q. Okay. And five more, still take five more?

1 A. Five more words.  
 2 Q. Five more words.  
 3 So now by the time we get to -- we're finally  
 4 going back and forth, but by the time we finally kind  
 5 of hone this down a little bit, 3:25 p.m., and we're  
 6 again talking to Mr. Horne, correct?  
 7 A. What time?  
 8 Q. It would be Exhibit -- 3:21 p.m.  
 9 A. He called me.  
 10 Q. He called you. That's the one that looks like  
 11 there was an issue in the compliance orders?  
 12 A. The 3:21 call?  
 13 Q. Do you recall that? Your lawyers will recall  
 14 it, I'm sure.  
 15 A. Well, but you said I called him, which was an  
 16 inaccurate statement.  
 17 Q. Yes.  
 18 A. I'm pretty sure he quoted you earlier. And --  
 19 Q. They've thrown that around enough.  
 20 A. Yeah. Sorry.  
 21 But, in fact, I was working on this, and  
 22 Mr. Horne called in to me. So that's what actually  
 23 happened. But you guys misstated it.  
 24 Q. Did you discuss the -- what you were working  
 25 on with him at that point?

1 A. No, I was not.  
 2 Q. Okay. So the group you were part of, how  
 3 would you characterize it?  
 4 A. As a volunteer group, one of many volunteers  
 5 for -- that was the bigger group.  
 6 Q. Okay. Now, you -- you know, you also said  
 7 that -- I think you -- in terms of what you were  
 8 talking about with Mr. Horne on October 20th in the  
 9 afternoon, you said before you cannot assign -- say  
 10 definitively that a particular conversation was about  
 11 this looking back over three years after; is that  
 12 correct?  
 13 A. I can't do that. I'm sorry.  
 14 Q. Okay. But you can say, or can't -- excuse me.  
 15 Strike that.  
 16 Can you sort of make some perhaps -- well, how  
 17 would you -- would you really characterize it as a  
 18 guess that you were talking about something, or --  
 19 A. Based on other documents that you guys have  
 20 presented, the real estate transaction, I know I had  
 21 those conversations. As to what specific conversation  
 22 was what and what happened at what time, I can't --  
 23 Q. Well, was October 20th, was that right around  
 24 the time that Mr. Horne was having the issue with  
 25 financing?

1 A. I absolutely did not.  
 2 Q. Do you recall what the conversation was about?  
 3 A. For four minutes?  
 4 Q. Yeah.  
 5 A. Probably answering a question I had asked  
 6 about his transaction.  
 7 Q. The real estate transaction you're referring  
 8 to?  
 9 A. Uh-huh.  
 10 MR. FIELDS: May I have the Court's  
 11 indulgence?  
 12 JUDGE EIGENHEER: Yes.  
 13 MR. FIELDS: Your Honor, we have no other  
 14 questions.  
 15 JUDGE EIGENHEER: Redirect?  
 16 MR. LASOTA: Just very briefly, Judge.  
 17  
 18 REDIRECT EXAMINATION  
 19 BY MR. LASOTA:  
 20 Q. Ms. Winn, on cross you testified about the  
 21 Horne campaign in the primary, and you testified about  
 22 different groups.  
 23 Was there -- was there a core strategy group?  
 24 A. Yes.  
 25 Q. Were you part of that?

1 A. He actually had it -- it started for him the  
 2 day before, but I was unavailable the day before. My  
 3 mother was in surgery. So for his first access to me  
 4 would have been the 20th.  
 5 Q. So it's certainly feasible that you'd be  
 6 talking about that on October 20th?  
 7 A. About the real estate transaction?  
 8 Q. Yes.  
 9 A. Yes.  
 10 Q. And about the financing part in particular?  
 11 A. It was his greatest concern.  
 12 Q. Okay. And Mr. Fields said, "Well, you were  
 13 doing both things at the same time."  
 14 Was this -- would either of these matters --  
 15 strike that.  
 16 Would the -- getting the ad out, is that  
 17 something you could put on the back burner and wait  
 18 until you -- wait to do that later?  
 19 A. Well, no, I couldn't wait. Both issues were  
 20 time sensitive.  
 21 Q. Both issues being the real estate transactions  
 22 and the -- and the ad, getting the ad done?  
 23 A. Yes.  
 24 Q. Okay. And the real estate transaction  
 25 wouldn't wait because it had an impending closing date?

1 A. Correct.

2 Q. Okay. Now -- so you received on the -- on the  
3 20th, when you received the voiceover at 2:24, or  
4 thereabouts, was that just the voice of the script that  
5 you had already read?

6 A. I don't know that it was -- I don't know what  
7 iteration we were on, so I don't know if it was an  
8 iteration that we had decided upon that they did the  
9 voice to or if it was the original one I'd gotten in  
10 the morning.

11 Eventually -- as Mr. Murray testified  
12 yesterday, this wasn't produced in his house. He was  
13 sending it out to a production house, and then it was  
14 sent to us. So I don't know -- we eventually got it  
15 all done. It was completed the next day.

16 Q. Okay. Well, is it -- when you made those  
17 comments about -- well, let's see if we can pull it  
18 out. I'll never get these exhibits straight. Wrong  
19 subject completely.

20 So when you made the comments about the -- in  
21 response to the particular e-mail and the voiceover,  
22 are those comments that you could have made about the  
23 original script, also?

24 A. Well, do you have where I asked for sound and  
25 he said he'd have it over to me in a couple hours?

1 Q. We do.

2 A. Just because in the subject line it says  
3 voiceover, the voiceover was -- I don't know -- I don't  
4 know what time it was produced and I received it, and  
5 these e-mails aren't making that clear.

6 Q. Okay. Well, let's go back to -- so you asked  
7 for sound, I think, at 1:42?

8 A. And he said it would be a couple hours.

9 Q. He said it would be a couple hours.

10 Okay. Here is the one. Do you see that one  
11 there? This is Exhibit 6.

12 A. Uh-huh.

13 Q. Do we have sound, the sound yet?

14 A. Yes.

15 Q. Okay. But your comments about the ad, could  
16 those have pertained to the script at that time period?

17 A. Yes.

18 Q. Okay.

19 A. Because that's all I'm trying to say.

20 Q. Because the voiceover was -- it may have had a  
21 couple edits, but it was voice of the script, was it  
22 not?

23 A. Yes.

24 Q. Okay.

25 MR. LASOTA: Just give me a second, Judge.

1 Q. BY MR. LASOTA: Now, the last thing, we talked  
2 about the one affidavit. But if you look at -- if you  
3 look at the campaign finance report which you filed for  
4 Business Leaders of Arizona, it's going to be State's  
5 5, individual contributions.

6 What does it say in that first -- for the date  
7 received -- for the date, what does it say?

8 A. Under which -- do you want me to just list all  
9 of them?

10 Q. No, the first one.

11 A. Chuck Diaz, 10/20.

12 Q. 2010, correct?

13 A. Correct.

14 Q. And that's what you put on your affidavit,  
15 right, when you received it?

16 A. I believe so.

17 MR. LASOTA: I don't have anything else.

18 MR. KIMERER: I have no questions, Your Honor.

19 JUDGE EIGENHEER: You may be excused.

20 THE WITNESS: Thank you.

21 JUDGE EIGENHEER: Your next witness.

22 MR. KIMERER: Our next witness will be Tom  
23 Horne. Can we have about a five-minute break,  
24 Your Honor?

25 JUDGE EIGENHEER: Yes. We'll take a short

1 recess. We'll go off the record at this time.

2 (A recess ensued.)

3 JUDGE EIGENHEER: We are back on the record in  
4 Docket 14F-001-AAG.

5 (The witness was duly sworn.)

6 JUDGE EIGENHEER: Would you please state your  
7 name, spelling it for the record?

8 THE WITNESS: Tom Horne, H-o-r-n-e.

9 JUDGE EIGENHEER: Please proceed.

10 MR. KIMERER: Thank you, Your Honor.

11  
12 TOM HORNE,

13 called as a witness herein, having been first duly  
14 sworn by the judge, was examined and testified as  
15 follows:

16  
17 DIRECT EXAMINATION

18 BY MR. KIMERER:

19 Q. Mr. Horne, you're the attorney general for the  
20 state of Arizona; is that right?

21 A. Yes.

22 Q. Briefly tell us about your background that led  
23 you up to becoming attorney general here.

24 A. For 30 years I was a practicing lawyer.

25 During those 30 years I did my public service by

1 serving on a school board for Arizona's third largest  
2 district. I did that for 24 years.

3 My four children were preschoolers when I  
4 started, and I stayed -- I handed a diploma to the last  
5 one. Ten years as the president of the school board.

6 I also served as a judge pro tem both in the  
7 Superior Court and the Court of Appeals during the  
8 years that I was a practicing lawyer.

9 I then was elected to the legislature. In the  
10 legislature I was chairman of the academic  
11 accountability committee, and I served on the judiciary  
12 committee.

13 And after the legislature, I was elected to  
14 state superintendent of schools. I served that for  
15 eight years, which is all they allow under term limits,  
16 and then I was elected attorney general.

17 Q. Now, you're aware of the charges that Yavapai  
18 County has levied against you and Kathleen Winn, are  
19 you not?

20 A. Yes.

21 Q. And you're aware they're saying that the two  
22 of you coordinated her independent campaign somehow  
23 with your regular campaign?

24 A. Yes.

25 Q. Now, you've been in public service now for

1 There's a case you were actually involved in,  
2 wasn't there?

3 A. Yes.

4 Q. And tell me what that case was about and how  
5 that gave you knowledge of what's proper or not proper  
6 when it comes to coordination.

7 A. Well, in 2002, I ran against Jaime Molera for  
8 the position of superintendent of schools, and his  
9 campaign sent out -- it was either an e-mail or a  
10 mailing to all of their contributors and supporters  
11 saying, "If you want to give money to an independent  
12 campaign in favor of Jaime Molera's campaign, here's  
13 the name and address where you can send the money to."

14 And when I saw, my first reaction was that  
15 seemed to me a violation. They were directly  
16 soliciting money for an independent campaign.

17 So I filed a complaint with the secretary of  
18 state's office. The secretary of state's office  
19 responded that it was not a violation. And that sent  
20 me to the statute, and I read it carefully.

21 And that's what brought to my attention the  
22 distinction between the expenditure, which would be the  
23 writing of the ad, producing it, where it appears,  
24 where you spend money, versus contribution, which is  
25 not covered by the law on prohibited coordination.

1 years. Do you have knowledge about the campaign laws  
2 and what coordination is?

3 A. Yes, I do.

4 Q. I'll show you -- in front of you is Exhibit  
5 Number 14. And without getting into that in any  
6 detail, is that the provision for the CFRs that we've  
7 heard about here that the secretary of state handed out  
8 which kind of describes exactly what coordination would  
9 be or what it shouldn't be?

10 A. Yes. I think the important point made by this  
11 prong is the distinction between coordinating  
12 expenditures, which would be writing the ad, where you  
13 spend the money and so on, versus contributions.

14 So if you look at the very first one, it says,  
15 "If the communication is created, produced, or  
16 distributed."

17 That's the expenditure. There's nothing in  
18 there about contributions. And that's true of all five  
19 paragraphs. It's all about the expenditure. There's  
20 nothing about the contribution.

21 Q. And you've had a lot of experience in your  
22 career dealing with that definition and how the law  
23 operates, have you not?

24 A. Yes. In 2002 --

25 Q. I was going to get to that.

1 Q. So during the entire time that you were  
2 running for attorney general, your understanding of  
3 coordination was that it did not include contributions;  
4 it only applied to expenditures?

5 A. That's correct.

6 Q. Is that correct?

7 A. Yes.

8 Q. To be a violation?

9 A. That's exactly right.

10 Q. Now, if I can have Mr. LaSota put up  
11 Exhibits 3, 4, and 5 briefly to -- for you to look at,  
12 let's start with Number 3, and that's the Horne-Winn  
13 exhibits.

14 A. Yes.

15 Q. Do you see that exhibit there? And does that  
16 give an example of what goes on basically in politics  
17 under this particular regulation -- and this is about  
18 President Obama.

19 Can you tell me why we're presenting that here  
20 before the judge?

21 A. Well, if you look at the -- if you bring it up  
22 again, Tim, so that you can see the first indented  
23 paragraph there, it says, "Obama's campaign is now  
24 encouraging Democratic fundraisers to back priorities  
25 USA Action." That's an independent campaign.

1 What these three articles show is that both  
2 President Obama and Mitt Romley, who was running  
3 against him, were -- and their staffs were encouraging  
4 people to give to their independent campaigns.

5 And in the case of Mitt Romley, he actually  
6 appeared at fundraisers, as did President Obama's staff  
7 appeared at fundraisers for independent campaigns.

8 Q. And would you please put up 4 and 5 just so we  
9 can see those particular articles about Romley?

10 And so during the last presidential campaign,  
11 basically there was a lot of activity as far as  
12 contributions, and that's not considered to be a  
13 violation of coordination?

14 A. Exactly. If you look at the bottom paragraph  
15 that's appearing on the screen there, it says,  
16 "President Obama's campaign manager appeared at a fund  
17 raiser for an independent campaign."

18 Q. So they even make the distinction there --  
19 there's nothing that prevents you from communicating  
20 with somebody that's involved in an independent  
21 campaign?

22 A. About contributions. You're prohibited from  
23 communicating about the expenditure, which would be the  
24 writing of the ad, where you run it, what market, and  
25 so on. But there's no prohibition against talking

1 A. No.

2 Q. And you recognized her when she was a  
3 volunteer in your primary campaign?

4 A. Yeah. As I say, we got to be good friends,  
5 because she was an extremely effective volunteer.

6 Q. And would you consider her to be hardworking  
7 and intelligent, dedicated, and all the things we heard  
8 about her here?

9 A. Extremely.

10 Q. And would you consider her to be somebody that  
11 became a friend?

12 A. Yes.

13 Q. And did you find out through knowing her that  
14 she had some expertise in whatever her regular job  
15 would be?

16 A. Yes. She had been in the real estate business  
17 I think for 27 years, and I and the other volunteers  
18 were all aware of that, and many of us consulted with  
19 her about real estate matters.

20 Q. And so she would be the person if you had  
21 things about real estate or mortgages, people would  
22 just go because she was pretty much an expert; is that  
23 right?

24 A. That's exactly right.

25 Q. And you had gone to her about advice about

1 about raising money, the contributions.

2 Q. And there's no prohibition about having  
3 everyday conversations about "How are you?" or what  
4 somebody else is over here doing and things like that?

5 A. Right.

6 Q. Is that correct?

7 A. Yes.

8 Q. Let me -- based upon the knowledge you have of  
9 coordination and your experience with it, you know the  
10 time period we're talking about here; you know what the  
11 allegations are here.

12 Did you and/or Kathleen Winn at any time  
13 violate the coordination laws of the state of Arizona?

14 A. No. I absolutely had no input into the ad.  
15 We did not coordinate at any time.

16 Q. Let me jump around here now.

17 Do you know Kathleen Winn?

18 A. I do.

19 Q. Okay. And how do you know her?

20 A. She was a volunteer in my -- in my primary  
21 campaign. She was not only a volunteer, but she was an  
22 extremely effective and productive volunteer. And as a  
23 result of that, we got to be good personal friends.

24 Q. And did you know her before you started  
25 running for attorney general?

1 real estate matters; is that right?

2 A. Yes.

3 Q. Now, there came a time, as you've heard here,  
4 where Kathleen Winn formed an independent campaign, or  
5 started an independent campaign, that basically  
6 promote -- basically all they did was promote this one  
7 ad we've been talking about here.

8 When did you first learn about that, and how  
9 did you learn about the fact that she was going to have  
10 an independent campaign?

11 A. October 11th, plus or minus one or two days,  
12 she came to me and said that she was leaving the  
13 campaign. She had been very active in the campaign.  
14 She told me she was leaving. And the reason she was  
15 leaving is that she was going to do an independent  
16 campaign.

17 Q. And how do you remember it was around  
18 October 11th one or two days?

19 A. We've been looking at her diaries and in  
20 talking to --

21 Q. And that's when those things happened?

22 A. Yes.

23 Q. Now, during that meeting, did you discuss the  
24 election laws? Did you go over this conduct code and  
25 things like that with her?

1 A. I don't know if it was the first time she told  
2 me, or I think we arranged a meeting, and I made a copy  
3 of the statute.

4 I was very concerned that there are legal  
5 traps in doing an independent campaign. I wanted to be  
6 sure she knew what she needed to do to avoid those  
7 traps.

8 I made a copy of the statute. I sat down with  
9 her, and I talked to her about the statute and  
10 underlined relevant parts of the statute.

11 And in addition to that, I referred her to  
12 Lisa Houser, an elections expert, so she would have  
13 legal counsel of her own to be sure she would stay  
14 within the law.

15 Q. And you gave her the name of the attorney --

16 A. Yes.

17 Q. -- who was the specialist in election law?

18 A. That's correct.

19 Q. And that was Lisa Houser?

20 A. Yes.

21 Q. And, as far as you know now, did she go see  
22 Lisa Houser?

23 A. She did. And I saw the diary entry which  
24 shows her name and phone number there.

25 Q. Now, after that particular meeting where you

1 and that transaction fell apart because the recession  
2 had hit, and the proposed purchaser couldn't get  
3 financing.

4 In addition, in 2008, because of the  
5 recession, the building emptied out. I lost my  
6 tenants.

7 And when I had gone into public service full  
8 time back in 2003, I had taken a salary cut of more  
9 than two-thirds of the income that I had had as a  
10 lawyer. So I was dependent -- the reason I could  
11 afford it was because I had income from this and  
12 another small strip center.

13 So it was very important that I sell the  
14 building and buy another building that would have  
15 income.

16 And so I -- for those years between 2008 and  
17 2010, I had four attempts to sell, all four of which  
18 had fallen through, mostly because people could not  
19 obtain financing.

20 Q. Could you please put up Exhibit 6?

21 Tom, Exhibit 6, do you see that before you on  
22 the screen?

23 A. Yes.

24 Q. And those are basically many, many records of  
25 different real estate transactions, and I think the

1 were discussing independent campaign laws and what you  
2 could or could not do clear up until the time of the  
3 election, did you and Kathleen Winn in any way violate  
4 those laws or in any way coordinate the activities that  
5 are going on on the general campaign or your regular  
6 campaign?

7 A. No. We absolutely never coordinated or  
8 violated any of the laws in any way.

9 Q. And even more specific, did you in any way, be  
10 it were involved or coordinate or produce or  
11 disseminate this particular ad that was produced by the  
12 independent campaign, which you've heard referred to  
13 here?

14 A. I did not.

15 Q. Now, Tom, we're talking -- we've heard about  
16 your real estate transaction. So give us a little  
17 background about this piece of property here you're  
18 trying to trade off or get more money for or less money  
19 for. Just briefly tell us what happened.

20 A. Okay. Well, I owned a little strip shopping  
21 center on the southeast corner of 7th Avenue and  
22 McDowell. And there had been an offer to sell it -- to  
23 buy it from me in 2005. That transaction had fallen  
24 apart.

25 In 2008, there was another offer to buy it,

1 closing records and the final records of the  
2 transaction of this property that you talked about.

3 Do you recognize those?

4 A. I do. I should tell you that when  
5 transactions failed, I discarded the documentation, so  
6 whatever I have was preserved by Greg Tatham.

7 Q. But they establish what was going on at that  
8 point in time and that there were serious things that  
9 were occurring; is that right?

10 A. Yes.

11 Q. Now, we know you're a lawyer, but did you ever  
12 consider yourself a specialist in real estate  
13 transactions?

14 A. No. I was a litigator, and I never litigated  
15 an actual real estate transaction, so I really didn't  
16 know anything about it.

17 Q. As a matter of fact, I think you shared with  
18 me a story once about your sister or something --

19 A. Yes.

20 Q. -- that asked about your legal knowledge and  
21 ability in real estate?

22 A. Well, after my mother died, my sister sent --  
23 we were selling my mother's house, and my sister sent  
24 me a real estate contract to sell the house, and I  
25 signed it and sent it back to her.

1 And she called me up and she said, "What kind  
2 of lawyer are you?"

3 I said, "What do you mean?"

4 She said, "You signed this real estate  
5 contract. My broker tells me it has terrible things in  
6 it."

7 I said, "Well, Chris, I'm not a real estate  
8 lawyer. I'm a litigator. And I don't read documents  
9 unless people are fighting about them."

10 Q. Let's go up to now what at one time the county  
11 attorney has described as the core of their case, which  
12 was this October 20th call. I think it was about  
13 10/17, or something like that.

14 You know, prior to these accusations being  
15 made to you, did you really have any dates -- what  
16 recall of the dates, what time or where or when or  
17 anything like that?

18 A. No. Neither I nor I think anybody can  
19 remember specific calls from three years ago.

20 Q. Okay. And so what you had to do was go back  
21 and look at records and try to refresh the best you  
22 could your recollection of what occurred?

23 A. That's correct.

24 Q. Now, I want to show you Exhibit 33.

25 Bates 620, Tim.

1 building?

2 A. That's correct.

3 Q. But it fell through; is that right?

4 A. He couldn't get financing.

5 Q. Now, one of the things that the county  
6 attorney brought out in his direct examination of some  
7 of the witnesses is -- and I think it was Mr. Tatham.

8 If you look at all these records, Kathleen  
9 Winn's name is not in any of these records. Do you  
10 remember that?

11 A. Yes.

12 Q. Well, would there be any reason for Kathleen  
13 Winn's name to be in these records?

14 A. No. Greg Tatham was the actual broker, so he  
15 had an awful lot of paperwork to process with me.  
16 Kathleen had no formal role. I was just getting advice  
17 for her -- from her.

18 I was also getting advice from Rick Bistrow,  
19 my chief deputy, who is now my chief deputy, then as a  
20 lawyer, and I had many conversations with him as well.  
21 But there is no paperwork between us. I was just  
22 getting advice.

23 Q. So around October 17th, 18th, you're trying to  
24 close, finally, this transaction that's failed four  
25 times, right?

1 Now, going back to your real estate  
2 transaction, because this is going on around this date,  
3 aren't they?

4 A. Yes.

5 Q. How long before the 20th has this transaction  
6 been cooking, had you been working on it?

7 A. Well, the particular -- are you talking about  
8 the particular transaction or --

9 Q. Let's say the very --

10 A. Basically for two years I was trying to sell  
11 the shopping center so I could buy one with income,  
12 because I was in full public service, and I needed the  
13 income.

14 Q. And you -- when -- you already had enlisted  
15 Kathleen's help to help with that transaction, had you  
16 not, or gone to her for advice?

17 A. Yes. Well, in March she was actually in touch  
18 with a prospective buyer to try to help him obtain  
19 financing.

20 Q. And who was that?

21 A. Let me refresh my memory.

22 Q. Would Hagerty help or --

23 A. His name is Mike Hogarty.

24 Q. And you were trying to -- you went to her to  
25 see if she could help get him the financing to buy that

1 A. Correct.

2 Q. And on October 19th, did you get a statement  
3 or something from Greg Tatham that caused you some  
4 concern? And that I believe is shown on Exhibit 33,  
5 which is on your screen.

6 A. Yes.

7 Q. Tell me what that is and what happened.

8 A. Okay. Well, I was selling the 7th Avenue  
9 property for a million 350, and I was buying the  
10 property in Sun City for a million three.

11 So I was getting more money than I was  
12 spending, and I didn't think I'd have to come up with a  
13 lot of money.

14 But what I was -- should have been but was not  
15 conscious of were all kinds of expenses, including  
16 closing costs, an environmental holdback, other --  
17 repayment of a loan, all kinds of things I wasn't  
18 thinking of.

19 I thought if I did have to come up with  
20 something, I had about \$90,000 in the bank at the time,  
21 and there's -- my financial statement actually is in  
22 evidence.

23 But when this came on the 19th, for the first  
24 time I became aware I might have to come up with as  
25 much as 217,000. And if you scroll down a little, that

1 will show up.

2 In the bottom of the second paragraph it says,  
3 "The amount that the Hornes will require on the day of  
4 settlement will be no less than 100,000, but can max  
5 out at 217,500."

6 Q. And you're sitting there with 90,000 in the  
7 bank?

8 A. Right.

9 Q. So you know you're a little short?

10 A. Yes.

11 Q. And you've got a closing date coming.  
12 Actually, we saw another document. You extended the  
13 closing date, or somebody did?

14 A. Yes, that's correct.

15 Q. And that only extended to when, for about 20  
16 days, 10 days?

17 A. Yeah, until October 31st. And, actually,  
18 Kathleen was the one who noticed that that was a  
19 Sunday. And if we went over to Monday, the transaction  
20 was voidable, so we really needed to do it by the prior  
21 Friday.

22 Q. So you're sitting here maybe being as much as  
23 \$120,000 short on Monday, and you had 10 days to find  
24 it somewhere?

25 A. Well, Greg Tatham, who is the broker, was

1 other, and some short calls, which could have been --  
2 obviously, I was -- I wanted to find out how things had  
3 gone with her mother.

4 But it seems likely that the eight-minute call  
5 would have been when I would have explained what my  
6 problem was, and the 11-minute call would have been  
7 when she was taking the information for her form for  
8 the financing, which she says is within the length that  
9 you would normally expect to take down that financing  
10 information.

11 Q. And you specifically remember those  
12 conversations occurring, because that's what you were  
13 really concerned about then?

14 A. That's correct.

15 Q. At this point in time you're running for  
16 attorney general, but you're also at a point where  
17 you've got to close on this big financial transaction,  
18 which is one of your biggest assets, if not your  
19 biggest asset; is that right?

20 A. Yes, and I need the income. And so I was  
21 getting no income out of the 7th Avenue property.

22 Q. So it would be fair to say you think maybe the  
23 first long call, the three-minute call, is where you  
24 told her about the problem, or had you told her about  
25 the problem before?

1 arranging for a loan from the lender to the person who  
2 was selling me the property in Sun City.

3 But I had learned that these things frequently  
4 fall through, and I was very insecure about it, and  
5 this was very important. So I called Kathleen to see  
6 if we could have some kind of backup plan for  
7 financing.

8 Q. And so --

9 A. And I would have called her on the 20th,  
10 because on the 19th she wasn't available. Her mother  
11 was having very serious surgery, so I called her on the  
12 20th.

13 Q. And so that's what focuses you then on what  
14 calls you think you made to Kathleen on October 20th;  
15 is that correct?

16 A. That's correct.

17 Q. And the big call that they make a big thing  
18 out of first is this 2:19 call, I believe, that lasts  
19 for approximately eight minutes.

20 Do you remember looking at telephone records?

21 A. Yes, I do. There were only two lengthy calls  
22 that day, one for eight minutes and then a subsequent  
23 one for 11 minutes.

24 The other calls mostly were one minute, which  
25 may have been unsuccessful attempts to reach each

1 A. No, I think the first three-minute call was  
2 probably about how did things go with her mother the  
3 previous day.

4 Q. Okay. And then the second eight-minute call?

5 A. The eight-minute call would be, I think, when  
6 I would have described the problem to her.

7 Q. And then probably in the three-minute call,  
8 did you mention the shortfall at that time, do you  
9 think?

10 A. I can't remember things in that much detail  
11 that long ago.

12 Q. And then you think the later call was probably  
13 filling out a loan application?

14 A. Well, yes, especially because Kathleen says  
15 that's the time period that that would normally take,  
16 and because that was also followed by a call from  
17 Kathleen to the Bank of Arizona.

18 Q. So, now, there's some other calls that day --  
19 you saw those -- that show you talking with Kathleen  
20 Winn, you're calling her, and her calling you.

21 Do you know what any of those calls were  
22 about?

23 A. I don't really know. They're mostly very  
24 short ones.

25 Q. Well, let me ask you this: On that particular

1 day, did you at any time talk to Kathleen Winn about  
2 this ad that was produced by the independent campaign?

3 A. I absolutely did not give any input in the ad.  
4 We never talked about it. Finding out later on that  
5 she was busy with the ad may explain why sometimes we  
6 had trouble reaching each other.

7 Q. And you're absolutely sure that you never  
8 talked to --

9 A. That I'm absolutely certain. We knew that we  
10 could not, and we did not. I was not going -- I was  
11 not going to violate the law while running for attorney  
12 general.

13 Q. Did you know at that time that she was even  
14 producing an ad?

15 A. Did not.

16 Q. So you really did not know about where she was  
17 getting money at that time for her independent  
18 campaign?

19 A. No, I never knew where she got money.

20 Q. Now, let's -- Exhibit 19, please, Tim.

21 Would you look at that document, Tom, on the  
22 screen?

23 A. Yes.

24 Q. Does that show basically around October 18th  
25 where you were in the polls?

1 A. Yeah. This was a poll that was taken  
2 October 5 to 6. It was taken by somebody else, but we  
3 bought a question on it to show where I was. And if  
4 you'll scroll further down, you'll see I was ahead by  
5 17 points.

6 Q. So in the political world, 17 points is a  
7 pretty good lead, isn't it?

8 A. Yes.

9 Q. And so you were pretty comfortable about where  
10 you were at that point in time?

11 A. I was working hard, but we thought our really  
12 tough campaign was the primary against Andrew Thomas,  
13 and we'd won that.

14 Q. Now, this is around October 18th. Now let's  
15 go to this October 27th date which you've heard about  
16 here about this e-mail which you sent to Kathleen Winn.

17 Shortly before that date, or around that date,  
18 were you receiving information that you had dropped in  
19 the polls in any way?

20 A. Well, there was -- the Democratic attorney  
21 generals working through another group were spending  
22 \$1,500,000 on an independent campaign in her favor  
23 which was falsely accusing me of being for child  
24 pornography, pedophilia, statutory rape, you name it.

25 I didn't -- I hoped no one would believe it.

1 I had no way of knowing.

2 On the 27th I received the e-mail from Ryan  
3 Ducharme that has been talked about showing that I was  
4 losing support.

5 Q. And?

6 A. And I should say, I ultimately won the  
7 election by 4 percent, so I did lose 13 percent in that  
8 time period.

9 Q. Tim, would you put up Exhibit Number 10,  
10 please, of the Horne-Winn exhibits?

11 So on October 27th, when you sent the e-mail  
12 to Kathleen Winn, which was Exhibit 15 -- and you've  
13 heard that referenced here, have you not?

14 A. Yes.

15 Q. You've obviously seen this article here in the  
16 news?

17 A. Yes. This was an article in the morning of  
18 the 27th which reported that Kathleen had gotten less  
19 money than she had anticipated and had to cancel some  
20 ads.

21 That information was out there. I was getting  
22 calls all the time from people in the Republican party,  
23 lobbyists and so on, conveying rumors to me, and they  
24 told me about the fact that was actually \$100,000  
25 short. And that was then followed by my getting the

1 e-mail from Brian Ducharme.

2 Q. And at that point in time, you had already  
3 known that her independent campaign had run this ad in  
4 the subject of this entire hearing, correct?

5 A. Oh, yes.

6 Q. And you had seen that?

7 A. Yes.

8 Q. But you -- before it ran on TV, you never knew  
9 anything about it; is that right?

10 A. That's correct.

11 Q. So, now, when you got this e-mail from  
12 Ducharme -- and, by the way, who is Ducharme, so we  
13 know?

14 A. He works for John Huppenthal. I didn't know  
15 him before this election. He did telephone polling for  
16 John Huppenthal. I didn't know anything about whether  
17 he was a consultant or had skills or anything else.

18 Q. And at this point in time you were concerned  
19 about this drop in the polls, were you not?

20 A. Yes.

21 Q. And when you sent this e-mail -- would you put  
22 up Exhibit 15, please?

23 Now, you recognize that; you've looked at that  
24 many times now since this case has started?

25 A. Yes.

1 Q. Do you see your last message there -- better  
2 yet, describe the circumstances of that e-mail of what  
3 you were doing and why you sent it to her and what it  
4 meant.

5 A. Yes. Well, as I explained earlier, in my mind  
6 there was nothing improper about talking to the  
7 independent campaign about fundraising. I couldn't  
8 talk about the expenditure, but I could talk to her  
9 about fundraising.

10 And so I sent her the poll in the hope -- as  
11 the opposing attorney said, in the hope that she could  
12 use the poll to get the \$100,000 that I had been told  
13 she had been short.

14 Q. And that was the purpose of sending that to  
15 her; is that right?

16 A. It was.

17 Q. And then you -- I think you said after that  
18 where she said she was -- got -- sometime Brian Murray  
19 beat her up, and then she came to you and said --

20 A. Yes. I'd known her very well --

21 Q. Tell us about that conversation.

22 A. Well, I had known her very well for almost a  
23 year then, and that was the first time I'd ever seen  
24 her angry.

25 Q. Tell us why she was angry.

1 A. Because Brian Ducharme had come down on her,  
2 and she was coming down on me, and I -- in my mind, I  
3 felt it was all right, but I just accepted it. I  
4 realized she wasn't going to do anything, and I  
5 accepted it.

6 Q. Did you also realize that by her  
7 interpretation she and Brian Murray really didn't  
8 understand all of the coordination law --

9 A. Right.

10 Q. -- they were getting it too restrictive?

11 A. Right. They thought we could not communicate  
12 about contributions. I thought we could. Up to that  
13 point we hadn't -- I didn't know who she was raising  
14 money from. But when she called me conveying how her  
15 consultant had reacted, I just accepted it. I knew she  
16 wasn't going to do anything, and then I accepted that.

17 Q. And --

18 A. If I could also say, there was -- Ryan  
19 Ducharme had also sent me some language that he  
20 expected me to use. Now, he wasn't talking about an  
21 independent campaign. He was making suggestions for my  
22 campaign.

23 Q. It was you that came up with an ad, in your --

24 A. That would use wording that he was suggesting,  
25 and I wasn't -- he wasn't -- as far as I knew, I didn't

1 view him as an expert. I wasn't paying any attention  
2 to that.

3 We were less than a week from the election. I  
4 didn't refer to that in my e-mail. I didn't do  
5 anything with it, and neither did Kathleen, obviously.

6 Q. Now, we've also heard about the fact that your  
7 sister donated \$100,000 to -- actually, more than  
8 that -- to Kathleen's independent campaign.

9 Did you ever know about those donations?

10 A. At the time, I did not. And the opposing  
11 attorney asked if I was annoyed. Annoyed would be the  
12 last thing I would be. I would not be annoyed.

13 But if I had known that my -- I didn't know my  
14 sister was willing to contribute 100,000. She and her  
15 husband and their kids had given me the normal maximum,  
16 which is \$840, and I was happy about that.

17 I didn't know she was willing to give 100,000.  
18 If I had known she was willing to give 100,000, I  
19 definitely would have suggested she give it to my  
20 campaign rather than an independent campaign.

21 Q. But you didn't know about it at that time?

22 A. I didn't know it.

23 Q. There's no restriction on family members, on  
24 the limit --

25 A. That's correct. She could give me --

1 Q. -- she could contribute for you?

2 A. That's right. She could give me as much as  
3 she wanted. And so if we were willing to coordinate, I  
4 would have known about the 100,000, and I would have  
5 asked her to give it to my campaign.

6 Q. I think there's some testimony here at some  
7 point, or some suggestion that somehow you did  
8 something with the Chuck Diaz and contributions and  
9 things like that. Do you know Chuck Diaz and what  
10 that's about?

11 A. I do. Chuck Diaz was a very strong supporter  
12 of mine for a number of years.

13 Q. Did you know or direct him to give any money  
14 to the independent --

15 A. No. I had nothing to do with that. And in  
16 the first two interviews with Sharon Collins she  
17 described that without including me at all.

18 Q. And then after she was intimidated by the FBI,  
19 all of a sudden she said maybe you were the one that  
20 suggested that?

21 A. That only happened after they intimidated her.  
22 In her first two interviews, she described that whole  
23 situation without ever once mentioning me.

24 Q. Tom, I'll ask you one more time, as far as  
25 this ad goes that was produced by the independent

1 campaign, you didn't know anything about it until it  
2 was actually broadcast?

3 A. That's correct.

4 Q. You had nothing to do with its production?

5 A. That's correct.

6 Q. You never had anything to do with even  
7 suggesting such an ad?

8 A. Correct.

9 Q. And you never knew anything about an ad. And  
10 at no time -- at any time from the time that Kathleen  
11 Winn talked to you about what the campaign laws were  
12 and what you shouldn't do as far as coordination goes,  
13 at no time were you ever involved in coordinating the  
14 efforts of your campaign with the independent campaign;  
15 is that correct?

16 A. That's correct. I absolutely never did  
17 coordinate with Kathleen Winn.

18 Q. And all during this period of time -- and we  
19 see many, many telephone conversations between you and  
20 Kathleen Winn. Of all those conversations that we see  
21 at that time, are any of those conversations -- I mean,  
22 you've indicated you probably don't know what a lot of  
23 them are, but can you honestly say that there's never  
24 any discussion of anything that would be a violation  
25 of -- or of the coordination laws?

1 A. I can say that with absolute certainty.

2 Q. And based upon your knowledge of the law,  
3 everything you did during this entire period of time,  
4 and everything that Kathleen did during this period of  
5 time, comport with what's proper under the coordination  
6 laws; you didn't violate those laws?

7 A. That's absolutely correct.

8 MR. KIMERER: I have no other questions.

9 MR. LASOTA: I don't have anything, Judge.

10 JUDGE EIGENHEER: Cross?

11 MR. FIELDS: Thank you.

12  
13 CROSS-EXAMINATION

14 BY MR. FIELDS:

15 Q. Good afternoon, Mr. Horne.

16 A. Good afternoon.

17 Q. I just have a few points to cover here. I do  
18 have to say personally, "I don't read documents unless  
19 people are fighting about them," did make me chuckle.  
20 I appreciate your comments, and I can understand that's  
21 pretty much what litigators are all about, so I do  
22 appreciate that.

23 One of the points that you covered early was  
24 your opinion, and you seem -- based upon something that  
25 had been a complaint you had actually made in a

1 previous campaign, I believe for superintendent of  
2 schools regarding independent committee, and it had to  
3 do with contribution versus expenditures.

4 And I believe you opined that in your view,  
5 and you were informed of this by the attorney general's  
6 office when you were running several years ago, that  
7 the coordination aspect of this covered expenditures  
8 but not contributions.

9 Is that a correct statement?

10 A. Well, the secretary of state's office just  
11 told me that they didn't think it was a violation.

12 Q. That particular thing?

13 A. That particular thing, when Jaime Molera  
14 sent -- or his campaign sent out a notice to supporters  
15 saying this is where you can contribute to an  
16 independent campaign if you want to, it was as a result  
17 of getting that letter that I looked at the statute  
18 very carefully, and then I arrived at my understanding  
19 of what the law said.

20 Q. And that was based upon the Arizona statute,  
21 based on --

22 A. Yes.

23 Q. -- the -- Arizona's definition?

24 A. Yes.

25 Q. So when we're looking at -- and, again, I'll

1 point you to the County Attorney's Exhibit 14, we're  
2 looking at the Federal Code of Regulations here, kind  
3 of a pamphlet put out by the Feds based upon federal  
4 law.

5 And you've been here during the entire  
6 hearing. The secretary of state's office, at least  
7 some people there, suggested this is an interpretation  
8 of Arizona law.

9 Now, I don't want to put you in a position --  
10 it's not my intent to put you in a position today of  
11 opining in your official capacity, but certainly I want  
12 to ask you some questions about what you think about  
13 things.

14 A. Okay.

15 Q. I'm going to ask you, do you agree that this  
16 is a pretty good guide to -- and interpretation or  
17 something that we can use in Arizona to interpret  
18 Arizona law as far as what's legal and illegal as far  
19 as campaign coordination?

20 A. I'm going by an FBI document which says that  
21 the secretary of state's office told them that they go  
22 by the document.

23 Q. Okay. Do you -- do you agree with that  
24 assessment by the secretary of state?

25 And, again, I want to make it clear to

1 everyone in this room, this is not the official opinion  
2 of the attorney general; this is your opinion here?

3 A. I agree with the secretary of state that  
4 the Arizona law is vague. Whether or not they're  
5 correct in looking to federal law, I have not arrived  
6 at an opinion personally.

7 Q. Okay. If it -- the way it was kind of phrased  
8 before, was it -- to you in this courtroom, was it kind  
9 of boiled down to expenditures versus -- versus  
10 contributions.

11 And it was your view, based upon your reading  
12 of Arizona law, that if it deals strictly with  
13 contributions -- and I'm going to emphasize that word  
14 "strictly" -- then it is not -- then the communication  
15 is not coordination.

16 Is that a fair statement of what your view is?

17 A. Yes. And, you know, as I mentioned, our  
18 presidential candidates were doing it.

19 Q. So one of the examples you used, the example  
20 that gave rise to your question to the secretary of  
21 state that was years ago was if you want to contribute,  
22 contribute to this independent expenditure --  
23 independent committee?

24 A. Correct.

25 Q. If I read the exhibits correctly, it was

1 of -- if you're talking about content, intended  
2 audience, would you agree with me that if I'm going to  
3 put a general word on all of those things, content,  
4 intended audience, means or mode of communications,  
5 timing or frequency or prominence, we're talking about  
6 strategy?

7 A. I would use the word expenditure.

8 Q. Well, but strategy would also work as well.  
9 Content -- I mean, content -- an ad produced by content  
10 would also -- expenditure is a good word if, you know,  
11 you're talking about how you're going to spend your  
12 money, but you're also talking about created,  
13 creativity, how that process works, the message you're  
14 trying to convey.

15 Wouldn't you agree with that?

16 A. Well, what content you're making as part of  
17 your expenditure.

18 Q. All right.

19 A. I use the word expenditure, because that's the  
20 word used in the Arizona statutes.

21 Q. Okay. And if you're trying to -- if you're  
22 dealing with content or if you're dealing with  
23 strategy, it kind of creates -- expenditures, wouldn't  
24 you agree that an expenditure is an expression of  
25 strategy?

1 advocacy on behalf of both President Obama and  
2 candidate Romley to contribute to political action  
3 committees or independent expenditure committees that  
4 advocated certain -- certain things?

5 A. Yes, that's correct.

6 Q. Just contribute to these sources?

7 A. Yes.

8 Q. That's it?

9 A. Well, and showing up at a fundraiser for an  
10 independent campaign and speaking there.

11 Q. Showing up and speaking about -- was there any  
12 clarification about what he spoke about?

13 A. No.

14 Q. Okay. I guess, you know, if I'm looking at  
15 this -- the definition here, as you indicated, it's  
16 vague, and this seems to be at least a fairly good  
17 guide toward adding some clarity here.

18 Look at Item 2 here, and we're looking at the  
19 conduct prong in Item 2. "If the candidate -- and I'll  
20 read it -- "If the candidate's authorized committee or  
21 political committee is materially involved in decisions  
22 regarding the content, intent, audience, means, or  
23 modes of communication, the timing or frequency or size  
24 or prominence of the communication."

25 So that would seem to talk about a discussion

1 A. Well, there is strategy that goes into  
2 expenditure, and there would be strategy that would go  
3 into other things, too.

4 Q. Such as?

5 A. Contributions.

6 Q. Okay. Contributions.

7 But strategy -- but expenditures are an  
8 expression of strategy of some kind?

9 A. I think that -- there would be a strategy  
10 connected with expenditures, and there would also be  
11 other things associated with expenditures. But if you  
12 wanted a heading to make the distinction, the heading  
13 would be contributions versus expenditures.

14 Q. Can an expenditure be a contribution as well?

15 A. No.

16 Q. I spend money for mailers attempting to gain  
17 contributions. That's an expenditure, part of the  
18 strategy to enhance the campaign.

19 A. Okay. I'll give you that one.

20 Q. Okay. So when we talk about expenditures and  
21 contributions, they are not exclusive boxes that we can  
22 just say are totally separate?

23 A. Well, you pointed out an exception to me, but,  
24 in general, I would say they are, yes.

25 Q. Well, in many ways all expenditures, if

1 they're advocating for votes or for contributions, are  
2 an expression of strategy for a candidate to get  
3 elected, wouldn't you say?

4 A. Well, I think the -- you know, in the  
5 exception you gave me, if you were doing a mailing,  
6 there would be a strategy that would go into that  
7 mailing and an expenditure to try to raise money. In  
8 this case, we're talking about a TV ad, so it doesn't  
9 really apply in our case.

10 Q. Well, I'm just trying to get past the concept  
11 here that we've got two boxes, and they show not me,  
12 and that's clearly not true based upon the conversation  
13 we're having here.

14 A. I think you found the one exception, but it  
15 doesn't apply in our case.

16 Q. Well, I guess I'm going down this road  
17 because -- I'm looking at the e-mail, and this is the  
18 October 27th e-mail.

19 And I'll ask you, you're familiar with -- this  
20 is a dumb question. You're familiar with the e-mails.  
21 They've been around a long time. Oftentimes they'll  
22 come in chains, correct?

23 A. Correct.

24 Q. And sometimes you really need to pay attention  
25 to the chains, because they say things that sometimes

1 Q. Now superintendent of schools.

2 A. But I knew him for many years in the  
3 legislature. We served together in the legislature,  
4 and he was doing robo calls before anybody else.

5 Q. I had about a 20-year gap between growing up  
6 in Arizona and moving back to Arizona, so you'll excuse  
7 me.

8 So we've got the e-mail here, and we've got  
9 Mr. Ducharme whose at least got a modicum of reputation  
10 in the political arena here.

11 A. No. He has no reputation.

12 Q. You knew him before this, though, this e-mail?

13 A. Yes. But all I knew about him was he was  
14 working for John and he was doing his pushbutton polls  
15 for him. That's all I knew about him.

16 Q. Okay. Did you read -- did you read the  
17 information that he was trying to convey to you? Did  
18 you read it when it came through?

19 A. Yes.

20 Q. "Recent polls show you losing ground among the  
21 independents." And I'm reading the one that's labeled  
22 20-36-09. Do you see the little hand there? I'm  
23 reading that, the e-mail, a portion of the e-mail.

24 A. Yes.

25 Q. "Recent polls show you losing ground amongst

1 are important. Wouldn't you agree with that? But in  
2 this case --

3 A. But we don't always do that.

4 Q. We don't always.

5 A. No.

6 Q. But in this case it's not even really a chain.  
7 There's two e-mails dropped on you by Brian Ducharme.

8 A. Yeah.

9 Q. By the way, do you know Mr. Ducharme?

10 A. I've met him. I don't really know him. And I  
11 don't have any reason to think he has any particular  
12 expertise.

13 He just -- I knew John Huppenthal for many  
14 years, and John was a pioneer in doing pushbutton polls  
15 that you can do for almost no money where people press  
16 one for yes and two for no.

17 And then when Ryan Ducharme went to work for  
18 John, he started doing that for John. So I have no way  
19 of knowing whether he himself has any expertise. I was  
20 familiar with John Huppenthal's expertise in the area  
21 of recorded calls and pushbutton polls and that sort of  
22 thing.

23 Q. If I remember correctly, Mr. Huppenthal was  
24 the former superintendent of schools?

25 A. He's now superintendent of schools.

1 independents, to Rotellini, and her starting to pick up  
2 more Reps."

3 And you heard Ms. Winn say that's probably  
4 Republicans. Would you agree with that?

5 A. Yes.

6 Q. Okay. "Then you are picking up Dems,"  
7 Democrats. "Rotellini needs to be stopped.  
8 Allegations and smears against you by DC group" -- and  
9 that's probably Democratic committee?

10 A. No, I think that's Washington, D.C.

11 Q. "DC groups starting to peel away votes. They  
12 need to be addressed as desperate last-minute attacks  
13 with no basis in truth."

14 An e-mail giving poll results -- I'm not  
15 talking about the accuracy or the sophistication of the  
16 poll results. An e-mail, at least ostensibly giving  
17 poll results, with a suggestion of a course of action;  
18 would you agree that's what that is?

19 A. Yes.

20 Q. In general?

21 A. Yes.

22 Q. Then further information.

23 "I would link attacks directly to Rotellini as  
24 someone behind in the polls trying to hide from her  
25 record (SB 1070, ties to unions, calling for AZ

1 boycott, et cetera). The truth once known will  
 2 undermine Rotellini's credibility and call into  
 3 question her character, a very important quality for  
 4 Ins."  
 5 Probably independents?  
 6 A. Yes.  
 7 Q. Meaning independent voters?  
 8 A. Yes.  
 9 Q. So now we've got some advice about a course of  
 10 action here, strategy, if you will.  
 11 Link attacks directly to Rotellini. Someone  
 12 behind in the polls trying to hide from her record with  
 13 specific references to SB1070, ties to the union, and a  
 14 suggestion about what that strategy will gain and who  
 15 would it be targeted to, independent voters.  
 16 Would you agree that that's probably what that  
 17 says?  
 18 A. I agree you read it accurately.  
 19 Q. Would you agree that that's a fair  
 20 interpretation of what that message is trying to convey  
 21 to you?  
 22 A. I thought you were reading it. I'm not sure  
 23 you gave me an interpretation.  
 24 But I'll tell you that strategy -- what was  
 25 said there made no sense to me and I paid no attention

1 campaigns.  
 2 Q. Okay. I'm not going to doubt what you say.  
 3 It just seems a little strange that RSLC, which is  
 4 walled off from the National Republican Committee,  
 5 would then turn around and hire somebody and wall them  
 6 off, I guess.  
 7 A. Well, he was walled off from the independent  
 8 campaigns.  
 9 Q. Okay.  
 10 A. So what they wanted to do was provide help to  
 11 candidates, so he would come up -- he actually attended  
 12 my meetings.  
 13 Q. Was he working for the RNC?  
 14 A. No. He was working for either -- ultimately  
 15 he was working for RSLC.  
 16 Q. Okay. I'd love to explore that as a  
 17 philosophical enterprise, but I don't think it has  
 18 anything to do with why we're here, so ...  
 19 So you forwarded the e-mail to him?  
 20 A. Yes.  
 21 Q. And then you forwarded it to Kathleen?  
 22 A. Yes.  
 23 Q. And it bounced back?  
 24 A. Yes.  
 25 Q. So you forwarded it to a different address for

1 to it. I had my ads running. This was directed to me,  
 2 not to an independent campaign.  
 3 Q. I understand.  
 4 A. I had my ads running. It was less than a week  
 5 to the election. My ads had a strategy from a  
 6 nationally known sophisticated consultant named Larry  
 7 Weizner. And that part of his e-mail was utterly  
 8 meaningless to me.  
 9 Q. Okay. But was the first part more meaningful  
 10 to you?  
 11 A. The polls were, yes.  
 12 Q. The polls?  
 13 A. Yeah.  
 14 Q. We move forward.  
 15 This seems to be forwarded to Casey Phillips,  
 16 and remind me who he is again.  
 17 A. Casey Phillips worked for either the  
 18 Republican Attorney General's Association or RSLC,  
 19 which was the parent organization of the Republican  
 20 Attorney General's Association.  
 21 He had a very unique kind of status. He was  
 22 walled off from their independent campaigns. He was  
 23 not allowed to communicate with the people who were  
 24 doing the independent campaigns. He was sent out to  
 25 candidates such as myself to help us with our

1 Kathleen?  
 2 A. Yes.  
 3 Q. With this message: "I forwarded this to  
 4 Casey," meaning Casey Phillips, "maybe with this we can  
 5 try again for the 100K"?  
 6 A. Yes.  
 7 Q. What was your intent -- what did you intend to  
 8 convey with that message?  
 9 A. I thought the -- I thought if, as I read in  
 10 that article, and people were calling me telling me,  
 11 they had sent less money here, it was because they  
 12 thought I'm a winner. I mean, the polls showed me 17  
 13 points ahead, and therefore it wasn't needed.  
 14 If a poll showed that I was losing ground  
 15 because the other side was spending a million five,  
 16 calling me, essentially, a pedophile, that they would  
 17 think then maybe they should spend more money here.  
 18 So it was sent not as a matter of any kind of  
 19 strategy, other than a strategy for getting more money  
 20 from them, which is on the contribution side of the --  
 21 Q. More money from whom?  
 22 A. From RSLC.  
 23 Q. RSLC?  
 24 A. Yes.  
 25 Q. And how did you know -- the 100K, you

1 obviously knew that they were 100K short at one point?

2 A. I had been told that. I don't know -- I  
3 didn't know how reliable it was. I was getting a lot  
4 of calls.

5 During a campaign you get a lot of calls from  
6 people saying, "Hey" -- I got calls from people saying,  
7 "I hear there's going to be an independent campaign in  
8 your favor. Don't worry," you know. So you get calls  
9 like that.

10 Q. So let me take care of this side note here.

11 If I'm looking at -- you were referred to  
12 Exhibit 10 of the -- and I'm going to put it on the  
13 screen right now -- the -- that your attorney submitted  
14 to us.

15 And that's the -- it was the advertisement or  
16 the article from the Capitol Times that said, "National  
17 groups pump nearly one million into last minute ads for  
18 Home-Rotellini."

19 Did I hear your testimony that it was from  
20 that ad that you heard 100 -- that it was 100,000 --

21 A. No, that article didn't use the word 100,000.  
22 That article said that she had gotten less money than  
23 she expected, and therefore she had to cut back on her  
24 advertising.

25 And that's an illustration of the fact that

1 forwarding -- I was forwarding what I had received so  
2 she could get the polling information.

3 Q. But it contained the strategic advice that  
4 Mr. Ducharme was suggesting?

5 A. It did, but I wasn't paying attention to that,  
6 and my e-mail didn't say anything about that. My  
7 e-mail was saying, in effect, use the polling  
8 information to be able to raise more money. That's  
9 what my e-mail said.

10 Q. So even though it contained the strategic  
11 information behind the advice, you sent it anyway?

12 A. Because that's what happens when you forward  
13 an e-mail. You can't -- you know, when you push  
14 forward, you don't say -- they don't test something  
15 that comes up and says, "Which sentences should I  
16 forward?" When you forward an e-mail, you forward the  
17 entire e-mail.

18 Q. Would you say that in a court of criminal law  
19 that the law is more concerned about -- criminal and  
20 civil law, the more -- the law is more concerned about  
21 what you did rather than what you intended to do?

22 A. No. I think intent is very important.

23 Q. But what you did here was to forward a request  
24 for money and justify it with a strategic need and a  
25 suggestion for how to implement that strategy to an

1 the information was out there, it wasn't a secret that  
2 she had gotten less money, and consistent with the fact  
3 that I was getting phone calls where people were  
4 passing rumors on to me.

5 Q. Okay. So you forwarded this message to  
6 Kathleen for what purpose?

7 A. That I thought the poll would help get more  
8 money out of the RSLC.

9 Q. What about the information about strategy;  
10 what about the suggestion there?

11 A. I paid no attention to it. I did nothing with  
12 it. And, obviously, neither did she. It was -- it was  
13 aimed -- it wasn't aimed at an independent campaign.  
14 It was information aimed at what I should be doing.

15 And I was certainly not going to change my ads  
16 based on something coming from somebody that I didn't  
17 know anything about that on the face of it made no  
18 sense to me.

19 Q. Mr. Ducharme aimed this at you, correct?

20 A. Correct.

21 Q. Mr. Ducharme aimed this at you?

22 A. Correct.

23 Q. And then you aimed it to Kathleen Winn and the  
24 independent committee?

25 A. Well, I didn't aim that part of it. I was

1 independent committee, correct?

2 A. Well, neither I nor Kathleen paid attention  
3 nor did anything with it, so it certainly didn't have a  
4 material effect on anything.

5 Q. Well, I'm not asking whether it had an  
6 effect --

7 A. Yes.

8 Q. -- but the act was to forward a request for  
9 money along with a suggestion of strategy and a means  
10 of implementing that strategy and what to do with that  
11 money if you got it to -- from a campaign candidate to  
12 an independent expenditure committee; is that correct?

13 A. My e-mail referred only to the raising of  
14 money. I forwarded an e-mail that had polling  
15 information. It happened also to have some so-called  
16 strategy information that nobody paid attention to and  
17 that made no sense.

18 Q. So it did contain that information?

19 A. Yes.

20 Q. You had a conversation around October 11th  
21 with Kathleen that indicated how she needed to be very  
22 careful about her operation of the independent  
23 expenditure committee, correct?

24 A. Yes.

25 Q. Would you consider the forwarding of this

1 e-mail carefully -- being careful about the mixing of  
2 the independent committee --

3 A. Well --

4 Q. -- the campaign and the independent  
5 expenditure committee?

6 A. When I sent the e-mail, I thought it was  
7 proper because my e-mail was about contributions, and  
8 in my mind there's no prohibition against that.

9 MR. FIELDS: Thank you, Mr. Horne. No other  
10 questions.

11 JUDGE EIGENHEER: Redirect?

12 MR. KIMERER: Oh, excuse me.

13  
14 REDIRECT EXAMINATION

15 BY MR. KIMERER:

16 Q. Let's go back to this e-mail on the 27th,  
17 October 27th.

18 When you sent this e-mail chain, the only  
19 thing you were really referring to is about getting a  
20 contribution of maybe more money, and that was based  
21 upon the polling information that you had received that  
22 was included in this chain.

23 And there was some strategic stuff or  
24 something that they're talking about that you paid no  
25 attention to, had nothing to do with an independent

1 THE WITNESS: Thank you.

2  
3 DIRECT EXAMINATION

4 BY MR. LASOTA:

5 Q. I have one question.

6 General Horne, is the RSLC, do you think  
7 they're going to care about what Mr. Ducharme thinks  
8 about how to run an ad?

9 A. No.

10 Q. So they're not going to say, "Well, Ducharme  
11 has this, who we don't know, has this great strategy  
12 for running an ad. Just get out the checkbook"?

13 A. No.

14 Q. But they might react to a poll?

15 A. Yes.

16 MR. LASOTA: Thank you.

17 JUDGE EIGENHEER: You may be excused.

18 THE WITNESS: Thank you.

19 JUDGE EIGENHEER: Your next witness? Who is  
20 your next witness?

21 MR. LASOTA: We rest, Judge.

22 MR. KIMERER: We rest. And we're not going to  
23 call Agent Grehoski on cross-examination. We give up  
24 that right.

25 JUDGE EIGENHEER: Rebuttal?

1 campaign or anything like that.

2 Is that right?

3 A. That's correct.

4 Q. Now -- and there's no reason, Mr. Horne, that  
5 you, as the attorney general here of Arizona, would lie  
6 about that, would you?

7 A. Absolutely no reason to lie, no.

8 Q. And on Mr. Ducharme, you really didn't know --  
9 he wasn't anybody to be relied upon for either advice  
10 or anything like that?

11 A. No, I never did.

12 Q. And, in fact, at this point no one reacted or,  
13 based upon that e-mail, did anything of any kind, no  
14 ads were placed, no strategy was done, nobody was  
15 raced, nothing --

16 A. Correct.

17 Q. -- right?

18 A. That's correct.

19 Q. Nothing materially was done?

20 A. Correct.

21 Q. And all you were doing was telling her a way  
22 to get more, possibly, money, which you felt was legal  
23 under the law?

24 A. Correct.

25 MR. KIMERER: Nothing else, Mr. Horne.

1 MR. FIELDS: May I have a moment?

2 JUDGE EIGENHEER: You may. Do you want to  
3 take a recess?

4 MR. FIELDS: Yeah, why don't we take 5 or 10  
5 minutes.

6 JUDGE EIGENHEER: Okay. We'll go off the  
7 record at this time.

8 (A recess ensued.)

9 JUDGE EIGENHEER: We are back on the record in  
10 Docket 14F-001-AAA.

11 MR. FIELDS: I'd like to call Agent Grehoski  
12 for rebuttal, please.

13 JUDGE EIGENHEER: Okay. I'll remind you that  
14 you are still under oath.

15 THE WITNESS: I've been so advised.

16 JUDGE EIGENHEER: Please proceed.

17 MR. FIELDS: Your Honor, may I approach the  
18 bench?

19 JUDGE EIGENHEER: You may.

1 BRIAN GREHOSKI,  
2 called as a witness herein, having been previously  
3 sworn by the judge, was examined and testified as  
4 follows:  
5

6 DIRECT EXAMINATION

7 BY MR. FIELDS:

8 Q. Agent Grehoski, I've handed you a copy of --  
9 I'm not sure which exhibit it's marked. It's the 302  
10 file for the -- I'm sorry. It's not an exhibit. It is  
11 a document that Agent Grehoski is going to be referring  
12 to on the stand. I've provided copies to counsel and  
13 Mr. Horne.

14 MR. DEBUS: Is that previously disclosed?

15 MR. FIELDS: It's going to be used for him to  
16 refresh his memory. It's been referred to in the  
17 testimony.

18 MR. DEBUS: If it's not previously disclosed,  
19 it's not an exhibit. That's all I'm asking.

20 MR. FIELDS: That's correct.

21 MR. DEBUS: And so the trial by ambush he was  
22 talking about this morning, I don't care if they use  
23 it, but this is an argument why it's not trial by  
24 ambush. You know, sometimes you come across things. I  
25 suppose he just found out about this today.

1 MR. FIELDS: If we -- it is rebuttal. If we  
2 can move forward on this, and it does deal with the  
3 subject that was brought up today.

4 MR. DEBUS: Could I be reminded of what rule  
5 says that you don't have to disclose rebuttal?

6 MR. FIELDS: We -- I'm disclosing it to you  
7 right now.

8 MR. DEBUS: Is it a rule?

9 MR. FIELDS: May we move forward?

10 JUDGE EIGENHEER: We don't operate under the  
11 formal rules of evidence in an administrative --

12 MR. DEBUS: I understand. I just wondered if  
13 there was.

14 JUDGE EIGENHEER: So are you offering this as  
15 an exhibit?

16 MR. FIELDS: No.

17 JUDGE EIGENHEER: No. Okay. Please proceed.

18 MR. FIELDS: I just want to make sure -- we're  
19 going to be mentioning it. I want to make sure  
20 everybody has a copy of it. If you want to give it  
21 back afterward, that's fine.

22 Q. BY MR. FIELDS: Agent Grehoski, you're aware  
23 of some testimony given earlier by Mr. Tatham; is that  
24 correct?

25 A. I am.

1 Q. And you were -- are you familiar basically  
2 with the testimony that Mr. Tatham gave earlier?

3 A. In a general sense, yes.

4 Q. And, in general, what is your understanding of  
5 the testimony he gave?

6 A. I understand there was a second recording he  
7 brought. I understand that he claims we never spoke to  
8 him specifically about Kathleen Winn, and that he  
9 enumerated, I believe, four conversations in total that  
10 he claims happened, one at the front gate of his house.  
11 I believe there was the one a couple weeks ago we had  
12 spoken of. I believe there was the telephone interview  
13 that he recorded. And then I believe there was the one  
14 he was referring to that was just a couple minutes that  
15 is the recording that's only a couple minutes that was  
16 just introduced.

17 Are those the four that I understand to be  
18 correct?

19 Q. That's your understanding?

20 A. That's my understanding.

21 Q. Okay. You're aware that there was one  
22 interview that you and Agent Mason conducted that he  
23 did record?

24 A. I'm aware of that.

25 Q. And that was disclosed as part of this case?

1 A. It was.

2 Q. And are you aware that that was introduced  
3 into evidence by Mr. Horne and Ms. Winn?

4 A. I am.

5 Q. Have you heard that conversation?

6 A. You're referring to the 15-minute --  
7 approximately 15-minute conversation --

8 Q. Yes.

9 A. -- or the new recording?

10 Q. And, for the record, it's marked as Horne-Winn  
11 Exhibit 14. It's approximately a 15-minute --

12 A. That's -- yes, I am familiar with that one.

13 Q. And you've heard that conversation?

14 A. I have.

15 Q. Okay. Any other -- were you aware that that  
16 conversation was being recorded when you were having  
17 it?

18 A. I was not.

19 Q. Okay. What about this new conversation; were  
20 you aware of any other conversation between yourself  
21 and Mr. Tatham that was recorded?

22 A. I am not aware of any other ones that were  
23 recorded.

24 Q. What about your partner, Agent Mason; was  
25 he -- are you aware of any conversations between him

1 and Mr. Tatham that were recorded?  
 2 A. I was not aware of any other conversations  
 3 between Agent Mason and Mr. Tatham that were recorded,  
 4 no.  
 5 Q. Have you heard the recording that Mr. Tatham  
 6 brought with him yesterday?  
 7 A. I've heard it, yes.  
 8 MR. FIELDS: And, Your Honor, it's been moved  
 9 to be introduced into evidence. We have no objection  
 10 to it.  
 11 JUDGE EIGENHEER: And that has been -- okay.  
 12 Then Exhibit -- Hoine-Winn Exhibit 15 -- I'm sorry --  
 13 25 is admitted into the record.  
 14 MR. FIELDS: Let's go ahead and play  
 15 Exhibit 25. I'll start at the beginning.  
 16 (The recording was played.)  
 17 MR. FIELDS: That's the end of the tape.  
 18 Q. BY MR. FIELDS: Agent Grehoski, have you ever  
 19 heard that before?  
 20 A. Not before today.  
 21 Q. Okay. You got a good listen to the phone  
 22 call?  
 23 A. I did.  
 24 Q. Do you want to listen to it again?  
 25 A. I don't think I need to. I think I understood

1 you're not in any trouble, and we'll talk to you  
 2 tomorrow," that kind of stuff, to put people at ease  
 3 when we're speaking to him.  
 4 So that call is Special Agent Mason setting up  
 5 a conversation with Mr. Tatham for 1:00 o'clock the  
 6 next day.  
 7 MR. DEBUS: Excuse me, Your Honor. My  
 8 objection is move to strike. He's testifying as to  
 9 what was is in Agent Mason's mind. He's testifying as  
 10 to what Agent Mason's practice was. He's testifying as  
 11 to what this phone call must have been. That's an  
 12 opinion he cannot give. And besides all that, where is  
 13 Agent Mason?  
 14 MR. FIELDS: Your Honor, this is Agent Mason's  
 15 partner. He's familiar with Agent Mason's practices  
 16 and procedures and with his general conduct in  
 17 conducting these investigations.  
 18 Given the relaxed rules of evidence and  
 19 procedures here, I believe it's appropriate testimony.  
 20 We'll continue on and talk about other things about the  
 21 phone call as we go.  
 22 JUDGE EIGENHEER: I'll allow the question.  
 23 Q. BY MR. FIELDS: Okay. Now, the content  
 24 of the phone call, by its -- on its own face, it looks  
 25 like Agent Mason is setting up a contact between

1 clearly what was said.  
 2 Q. You said -- you just said that you never heard  
 3 that phone call before?  
 4 A. I have not.  
 5 Q. Okay. Based on the conversation there, was  
 6 the phone call directed to you?  
 7 A. No, it was not.  
 8 Q. Who was it directed to?  
 9 A. Special Agent Mason.  
 10 Q. And does it appear from the sound of the phone  
 11 call that the phone call went through to Agent Mason's  
 12 speakerphone?  
 13 A. It appears to have gone through to  
 14 Agent Mason. It's unclear to me from the sound where  
 15 he actually was, but based what he's saying, "I don't  
 16 want to crash and die," I believe Agent Mason was  
 17 driving at that point, and it was his phone that was  
 18 called.  
 19 Q. The content of the phone call, describe what  
 20 your interpretation of the phone call is. What was  
 21 going on there?  
 22 A. That phone call is a phone call I've heard  
 23 Merv make with other people where he's setting up an  
 24 initiative interview, and he -- I know it's practice  
 25 for him to let somebody know, "Hey, just so you know,

1 Mr. Tatham and himself, Agent Mason, and perhaps you  
 2 at -- the next day?  
 3 MR. DEBUS: Excuse me, Your Honor. My  
 4 objection is -- I know leading isn't really an  
 5 objection used here, but he's supposed to be  
 6 testifying, not the State's attorney.  
 7 MR. FIELDS: Foundation. Thank you.  
 8 MR. DEBUS: Can he ask a question, please?  
 9 MR. FIELDS: It's foundation for the question  
 10 that's coming up.  
 11 JUDGE EIGENHEER: Proceed.  
 12 Q. BY MR. FIELDS: So, again, on the face of the  
 13 phone call, it appears that Agent Mason is attempting  
 14 to set up a phone conversation between Mr. Tatham and  
 15 Agent Mason and perhaps you at 1:00 o'clock.  
 16 Do you know if that meeting -- if that phone  
 17 conversation actually took place that they set up?  
 18 A. The recording, the recording that you're  
 19 referring to, did that two-minute call take place; is  
 20 that what you're asking?  
 21 Q. No. I'm asking if the meeting that they  
 22 attempted to set up, the phone conference they  
 23 attempted to set up, did it take place?  
 24 A. It did.  
 25 Q. And what time was that phone conference,

1 according to the tape, supposed to take place?  
 2 A. 1:00 o'clock.  
 3 Q. And a meeting -- I believe you just testified  
 4 a meeting did take place at 1:00 o'clock?  
 5 A. Approximately 1:00 o'clock we did speak with  
 6 Mr. Tatham; that's correct.  
 7 Q. Okay. Now, the 1:00 o'clock meeting, do you  
 8 recall -- or a phone conference, do you recall that  
 9 phone conference?  
 10 A. Yes, I do.  
 11 Q. Who initiated that phone conference at  
 12 1:00 o'clock?  
 13 A. We -- we -- we initiated that conversation, to  
 14 the best of my recollection, and I conferred with  
 15 Special Agent Mason, and his recollection was the same,  
 16 that we called Mr. Tatham at approximately  
 17 1:00 o'clock.  
 18 Q. Okay. Now, the tape indicates that Tatham  
 19 says, "Well, I'll call you back."  
 20 And Mason says, "Okay. That would be fine.  
 21 Why don't you do that?"  
 22 Do you remember hearing that on the tape?  
 23 A. I do.  
 24 Q. Okay. Was there anything -- another reference  
 25 to who would call who in that tape?

1 called him. We ended up calling him. There may have  
 2 been a little phone tag going on. I'm not sure.  
 3 My recollection and Merv's recollection was we  
 4 ended up calling him. And that first conversation,  
 5 Mr. Tatham said -- basically, we had a brief  
 6 conversation where we talked about --  
 7 Q. When you're talking about that first  
 8 conversation, are you talking about the conversation  
 9 the next day?  
 10 A. The conversation on May 31st at approximately  
 11 1:00 o'clock --  
 12 Q. And I'm going to stop you again.  
 13 A. Yeah.  
 14 Q. On May 31st, would that have been this  
 15 conversation that I just played for you, or would it  
 16 have been the next day?  
 17 A. This would have -- May 31st would have been  
 18 the next day. This conversation we just heard would  
 19 have been on the 30th, and that was Merv setting up the  
 20 1:00 o'clock conference call for the following day.  
 21 Q. Did the 1:00 o'clock conversation take place?  
 22 A. It did. It was approximately --  
 23 Q. Was it on time?  
 24 A. Yes, approximately on time, around  
 25 1:00 o'clock, approximately. I don't know the exact

1 A. It sounds like -- and I may have to hear the  
 2 last -- very tail end of it again. But Mr. Tatham  
 3 said, "Well, why don't I call you?"  
 4 And then what I thought I heard Agent Mason  
 5 say was, "Okay. We'll call you," or it may have been,  
 6 "You call me." So we may have to play the tail end of  
 7 that one more time.  
 8 Q. Well, let's play the tape again. It's a  
 9 two-minute tape, one and a half minutes.  
 10 (The recording was played.)  
 11 Q. BY MR. FIELDS: What is your understanding of  
 12 the arrangements after listening to the tape again?  
 13 Who was to call who?  
 14 A. Well, it's -- I believe Mr. Mason said, "Okay.  
 15 Give me a call at 1:00," which seems to be consistent  
 16 with what he had just previously said when Mr. Tatham  
 17 said, "I'll call you."  
 18 And if you want to play -- maybe play that  
 19 last second again.  
 20 (The recording was played.)  
 21 THE WITNESS: Yeah, so it sounds to me as if  
 22 at the end Mr. Tatham says, "I can give you a call,"  
 23 and Merv says, "Okay. Give me a call. Give me a call  
 24 then."  
 25 The following day, my recollection is we

1 time.  
 2 Q. Okay. Tell us about what you recall about  
 3 that conversation?  
 4 A. My recollection is we called Mr. Tatham, and  
 5 we basically described to him the information we were  
 6 looking to ascertain, which was his participation in  
 7 the purchase and/or sale of the property owned by  
 8 Mr. Home at 7th Ave and McDowell and the property at  
 9 Sun City West. And we also wanted to know his  
 10 knowledge of -- if Kathleen Winn was involved with this  
 11 purchase and/or sale of those properties.  
 12 And then what he advised was -- he wasn't at  
 13 his office, or he wasn't near the information that he  
 14 needed to properly answer some of those questions, and  
 15 he asked if he could call us back, which we said that  
 16 would be fine.  
 17 And after we hung up the phone, Special Agent  
 18 Mason and I had a conversation about what we had just  
 19 talked to Mr. Tatham about.  
 20 And in discussing it, we thought maybe next  
 21 time we speak with him we should ask a much broader  
 22 question. Instead of targeting specifically was  
 23 Ms. Winn involved in that sale, we asked a broader  
 24 question, was anybody else involved in the sale.  
 25 Q. Now, the first conversation, let me lead you

1 back to that again. When the contact took place, was  
2 Mr. Tatham -- did he express to you where he was?

3 A. He expressed that he was not near his office  
4 or was not in his office and not where he could access  
5 any files that he may have pertinent to what we wanted  
6 to address with him.

7 Q. Did you notice anything about -- did you make  
8 any judgment about whether he was on his cell phone,  
9 based upon the tone, or whether he was out in the open  
10 or in an office or anything, any indication of that?

11 A. I don't recall that, but I recall that it was  
12 the cell phone number that I believe Merv called.

13 Q. So he did express that he wasn't at his office  
14 at that point?

15 A. That's what was relayed to us.

16 Q. Okay. So that was approximately 1:00 o'clock,  
17 give or take a little bit of time?

18 A. That's correct.

19 Q. How much leeway are we talking about when we  
20 say give or take a few minutes?

21 A. Maybe 5, 10 minutes. It's unclear to me. In  
22 speaking with my partner, he didn't recall. But maybe  
23 we played a little phone tag. Sometimes Mr. Tatham was  
24 difficult to get ahold of, as I recall.

25 As I think I stated yesterday, Special Agent

1 with his wife, Amy Rezzonico, we encountered him at the  
2 gate outside his house, and we had a brief exchange.

3 There was nothing substantive about that  
4 conversation, but ultimately his wife consented to an  
5 interview. We went into his house and did an interview  
6 with Ms. Rezzonico. So I do recall speaking with him  
7 at the gate.

8 And the other thing that is always fresh in my  
9 mind is, when we saw him come out of the house, and you  
10 have to picture the way his house is set up, there was  
11 a gate that was locked in a courtyard, and then there's  
12 two entrances to his residence.

13 We had no way of getting into the courtyard to  
14 get to the entrances to knock. So we were actually  
15 outside when Mr. Tatham just happened to come out, and  
16 so we addressed him as Mr. Rezzonico, not knowing that  
17 he went by Mr. Tatham, and he was very agitated with us  
18 about that.

19 So we apologized subsequently and moved on.  
20 So that was the first conversation I recall with him.

21 Q. And then was there any other that you  
22 participated in prior to the May 30th conversation?

23 A. Not to my knowledge, no.

24 Q. On the May 30 -- excuse me -- May 31st  
25 conversation, were there any prior to the May 31st

1 Mason was primarily dealing with Mr. Tatham, which is  
2 why Mr. Tatham called Agent Mason back on the 30th to  
3 set this up, because Agent Mason had called him  
4 initially.

5 Mr. Tatham called Merv back and said, "Hey,  
6 you know, thanks for calling me back." And then we set  
7 something up for 1:00.

8 All of that coordination for those telephone  
9 conversations and interviews was done by Mr. Agent  
10 Mason, and that's what the first recording indicates  
11 from the 30th.

12 And then on the 31st, as I said, we had our  
13 initial conversation at approximately 1:00 clock,  
14 followed by a gap, and then subsequently later on we  
15 had the second conversation.

16 Q. Okay. And that was all on -- that was on the  
17 31st?

18 A. That's correct.

19 Q. So when Mr. Tatham asserts that there were  
20 only four contacts with you, what is your opinion about  
21 that opinion, about that statement?

22 A. Well, in my understanding as to what he  
23 testified to, there was a conversation we had at the  
24 gate of his house, which is true.

25 When we showed up the first night to speak

1 conversation?

2 A. Not that I recall.

3 Q. That you participated in?

4 A. Correct.

5 Q. So it's your testimony today that there were  
6 two conversations on May 31st that you participated  
7 in --

8 A. That's correct.

9 Q. -- with Mr. Tatham?

10 A. Yes.

11 Q. How long do you think the first one was?

12 A. It was brief. I believe the second call was  
13 longer because there was more detail in it. The first  
14 call was a shorter one.

15 As I stated, he was not at his office. He  
16 wasn't near the information he needed to answer our  
17 questions in any great detail. So it would have to  
18 have been -- if that one that we listened to was 15  
19 minutes, I'm guessing the previous one was maybe 8 to  
20 10 minutes tops.

21 Q. Okay. The -- and then the last contact that  
22 you had with Mr. Tatham was when?

23 A. The last contact I had was approximately two  
24 weeks ago when we attempted to re-interview him to  
25 capture on tape the information we had from our first

1 two interviews on the 31st.  
 2 Q. Why were you attempting to contact Mr. Tatham?  
 3 A. A couple weeks ago?  
 4 Q. No, no, no. Let me back up.  
 5 Why were you attempting to contact Mr. Tatham  
 6 initially?  
 7 A. It had been put out by Mr. Winn and  
 8 Ms. Horne's attorneys that the reason they were  
 9 communicating with each other was over the purchase  
 10 and/or sale of the properties at 7th Ave and McDowell  
 11 or Sun City West.  
 12 Q. You're talking about Horne and Winn  
 13 communicating with each other?  
 14 A. That is correct. It was put to us that the  
 15 purpose for all of the phone conversations at those  
 16 times related to the sales of those properties and that  
 17 Ms. Winn was giving advice because of her expertise in  
 18 real estate and real estate financing.  
 19 Q. And so you contacted Greg Tatham because?  
 20 A. We contacted Greg Tatham as -- I'm not sure  
 21 where we heard it, but we heard that he was involved in  
 22 that real estate transaction.  
 23 And so in interviewing Mr. Tatham we were  
 24 trying to ascertain if he had any knowledge whatsoever  
 25 of Kathleen Winn assisting in any way in either of

1 A 1-A envelope in the FBI is just a little  
 2 envelope that goes in the case file where we pull up  
 3 and put our notes or any exhibits that we may have  
 4 shown somebody during the course of an interview so we  
 5 can reconstruct the interview if we need to from the  
 6 notes and exhibits. And so that is just a cover sheet  
 7 stating that the notes had been put into the case file.  
 8 And then the second sheet is a scanned image  
 9 of the handwritten notes taken by Special Agent Mason  
 10 on May 31st. This is his handwriting.  
 11 As I stated yesterday, when we had these calls  
 12 with Mr. Tatham, I was driving my car, and Mr. Mason  
 13 was sitting in the passenger seat. We were using his  
 14 phone. It was on speakerphone. And he was the one  
 15 taking notes of these two interviews.  
 16 Q. Were these the notes -- could you see him  
 17 taking notes?  
 18 A. I did see him taking notes.  
 19 Q. Was this a document you could see him making?  
 20 A. It appears to be, yes.  
 21 Q. I'm sorry?  
 22 A. It appears to be yes.  
 23 Q. Okay.  
 24 A. At the top of this document it says, "Tatham."  
 25 Item Number 1, 1515, part of the transaction. I think

1 those transactions.  
 2 Q. Was there any other reason for you to contact  
 3 Mr. Tatham except for that?  
 4 A. There was no other reason for us other than to  
 5 find out if he had any knowledge of her assistance in  
 6 those matters.  
 7 Q. Would it be sound investigative techniques for  
 8 you to contact Mr. Tatham for the purpose of finding  
 9 out if specifically Kathleen Winn had participated in  
 10 that real estate transaction and not asking him that  
 11 question?  
 12 A. It would have made no sense to not ask that  
 13 question. So we specifically asked the question,  
 14 because that was what we were looking to to ascertain,  
 15 is if he had any knowledge whatsoever of her  
 16 participation.  
 17 Q. There's a document that's before you. Looks  
 18 like it's -- can you tell us what the front and the  
 19 back are?  
 20 A. Yeah. If you look at the front sheet, which  
 21 is this typed printed sheet, that is a cover sheet that  
 22 is associated with this document.  
 23 And if you look at the detail section, it  
 24 says, "Document 1-A added to caption matter. Items in  
 25 the 1-A include Greg Tatham interview notes."

1 it says tell us.  
 2 And Mr. Mason's handwriting is like a lot of  
 3 people's handwriting, mostly legible to the person that  
 4 wrote it. But that was one of the first things we  
 5 wanted to talk to him about.  
 6 And Item Number 2 says, "Was KW involved?"  
 7 And KW in all of our notes is an abbreviation  
 8 for Kathleen Winn. And then we had our brief  
 9 conversation with Mr. Tatham. The call ended, as I  
 10 said. And then Mr. Tatham called us back.  
 11 And if you look in the upper right-hand  
 12 corner, at approximately 2:39 p.m., Agent Mason made  
 13 the note that this is when the information was coming  
 14 in.  
 15 And if you listen to the second -- or the very  
 16 first tape that was presented, that 15-minute tape, it  
 17 starts out with Agent Mason saying, "Hold on a second.  
 18 I've got to get my stuff." And you can hear him going  
 19 through his notebook. And he was turning to this page  
 20 in his notebook.  
 21 And what he did was, because this was a  
 22 continuation of the previous phone call, he added notes  
 23 to the existing notes. So this one page of notes  
 24 represents the information from both telephone  
 25 conversations.

1 And so Item Number 3 here says, "Are you aware  
 2 if Horne was consulting with/any?" Meaning anyone.  
 3 And so this is the basis for the 302 that we  
 4 talked about yesterday that in our recollection from  
 5 our two conversations with Mr. Tatham, in the first  
 6 conversation we asked him specifically about Kathleen  
 7 Winn; in the second conversation, which he  
 8 surreptitiously recorded, you don't hear us ask about  
 9 Winn, because we decided in the gap between the two  
 10 phone calls that we should probably ask a more broad  
 11 question to see if there was anybody else that  
 12 Mr. Tatham was aware of that may have assisted in this  
 13 transaction.

14 MR. FIELDS: I have no other questions.  
 15 JUDGE EIGENHEER: Cross?

CROSS-EXAMINATION

18 BY MR. DEBUS:

19 Q. You understand that yesterday a witness  
 20 basically accused you of perjury, correct?

21 A. As did you, sir.

22 Q. Where is Mr. Mason? Where's your partner?  
 23 Where is Mr. Mason to come in here and back you up? Is  
 24 he around?

25 A. He flew in last night for a family event.

1 testimony I gave on my 302, and information will be  
 2 presented tomorrow that will show that I was telling  
 3 the truth.

4 Q. And you told them what that information would  
 5 be, notes?

6 A. I don't know which words I used.

7 Q. Well, if they say that's what you said, would  
 8 you disagree with that?

9 A. I don't know that I would disagree with it.

10 Q. And you understood before you made these  
 11 public comments that you were under the rule of  
 12 exclusion of witnesses?

13 A. It was my understanding that I was not to  
 14 discuss my testimony with any other witness, Mr. Debus,  
 15 and I honored that.

16 Q. You were --

17 A. I made --

18 Q. You were under the rule of exclusion of  
 19 witnesses, right?

20 A. I understood what I was instructed to do,  
 21 which was not be in this courtroom and not discuss my  
 22 testimony with any other witnesses. That was my  
 23 understanding, Mr. Debus. You asked a yes-or-no  
 24 question, and I can't answer it with a yes-or-no  
 25 question.

1 Q. Is there a reason why he isn't here?

2 A. No.

3 Q. You said you talked to him about this, right?

4 A. I did.

5 Q. Did you tell him that an FBI agent, namely  
 6 you, had been accused of perjury?

7 A. I did.

8 Q. So your partner didn't want to come back you  
 9 up?

10 A. He made the offer. If you're interested, we  
 11 can put him on a speakerphone and call him right now,  
 12 sir.

13 Q. I mean, I want to see him here. Why isn't he  
 14 here?

15 A. Then you need to subpoena him. I can ask him  
 16 to come if you'd like.

17 Q. Last night when we finished, you were out  
 18 outside? Did you talk to a reporter?

19 A. I was surrounded by reporters, and I made a  
 20 comment, yes.

21 Q. Did you tell a reporter -- you basically held  
 22 a news conference where you told a reporter you had  
 23 notes that proved that you didn't lie in this  
 24 courtroom?

25 A. What I told the reporter was, I stand by the

1 Q. How many times have you testified in federal  
 2 court in your career?

3 A. I can't answer that.

4 Q. 50?

5 A. I don't know. I've never counted.

6 Q. How many times have you been under the rule of  
 7 exclusion of witnesses?

8 A. I don't know, sir.

9 Q. Do you know what the rule of exclusion of  
 10 witnesses is intended to do?

11 A. I don't know what the rule you're referring to  
 12 with the verbiage is in that rule. I understood from  
 13 the Judge's instructions I was not to discuss my  
 14 testimony with other witnesses.

15 THE WITNESS: And, Your Honor, I honored that  
 16 as I understood it. I meant no disrespect to the  
 17 court.

18 I was bombarded with questions from reporters  
 19 asking me what I thought about being -- committing  
 20 perjury. And in a spontaneous utterance I said, "I  
 21 stand by my testimony." And whatever I said, I said,  
 22 "It will be brought out tomorrow, and I stand by what I  
 23 said."

24 Q. Do you understand that this rule has been  
 25 around since the Talmud?

1 MR. FIELDS: Objection; relevance to this line  
2 of questioning. Mr. --

3 MR. DEBUS: It's very relevant.

4 MR. FIELDS: -- Debus' venom is entertaining  
5 but hardly gets us forward with the proceeding.

6 MR. DEBUS: No, it's to prove that he fully  
7 understands what the rule of exclusion of witnesses is,  
8 and that is so he doesn't hear other people's testimony  
9 and other people don't hear what he's going to testify  
10 to, other witnesses.

11 And he went out in a public forum and in  
12 violation of the rule of exclusion of witnesses tried  
13 to defend himself with these reporters.

14 Now, I'm not making a motion as a result of  
15 that. I just want you to know that he's in contempt of  
16 your order. I don't care if you do anything about it,  
17 quite frankly. I want you to know that he was.

18 JUDGE EIGENHEER: I think that's been made  
19 clear.

20 Q. BY MR. DEBUS: So in Exhibit 25 -- let me play  
21 this again for you. I want to know whose voice,  
22 voices, if you can identify them.

23 (The recording was played.)

24 Q. BY MR. DEBUS: Whose voices were those?

25 A. Mr. Tatham and Mr. Mason's.

1 No, we don't have a policy about driving like  
2 a maniac.

3 Q. No FBI policy about that? Okay.

4 And we talked yesterday a little bit about FBI  
5 policy, about when you're to document information you  
6 get in an investigation, in other words, when you are  
7 to make a 302.

8 And there's a policy about that, isn't there?

9 A. There is.

10 Q. And you're supposed to do it basically right  
11 afterwards or as soon as possible, right?

12 A. Within five days is the guideline.

13 Q. Okay. And your summary of your information in  
14 this case wasn't done for 40 days; is that right?

15 A. I didn't write a summary on this, Mr. Debus.

16 Q. Well --

17 A. Mr. Mason wrote the summary. You know that.

18 Q. But it was 40 days after gathering the  
19 information, correct?

20 A. That's correct.

21 Q. Okay. This phone call, do you have any  
22 recollection of -- that was recorded, Exhibit 25 that  
23 we played about four times this morning, do you have  
24 any information about when that phone call was made, a  
25 date?

1 Q. Do you remember all the time you spent  
2 yesterday on Kathleen Winn using the word "we"? Do you  
3 remember that?

4 A. I remember reading the e-mails, yes.

5 Q. Mr. Mason just said "we're," plural, "out and  
6 about." Were you in the car with him?

7 A. Can you play the entire thing again?

8 Q. Sure.

9 (The recording was played.)

10 Q. BY MR. DEBUS: Who's out and about?

11 A. He's out and about.

12 Q. By himself?

13 A. Yes.

14 Q. Where are you?

15 A. Not with him.

16 Q. All right. And it's his voice, right?

17 A. His voice.

18 Q. Okay. He said something about not wanting to  
19 die. Is there an FBI policy about not conducting  
20 interviews and talking while you're driving?

21 A. Mr. Debus, Merv's a lighthearted guy. He  
22 makes off-the-cuff, weird, funny statements. That's a  
23 way of breaking the ice with people.

24 Do you honestly think he was driving like a  
25 maniac and would kill himself, sir?

1 A. No.

2 Q. Was there a 302 made about it?

3 A. No.

4 Q. Were any --

5 A. There would be no reason.

6 Q. Were any notes made about it?

7 A. There would be no reason. I don't know if  
8 Mr. Mason took --

9 Q. I didn't ask you if there was a reason. I  
10 asked you whether or not notes were made.

11 A. I don't know. I wasn't at the call,  
12 Mr. Debus. You'd have to ask Mr. Mason.

13 Q. But you haven't seen any in the file?

14 A. I haven't seen any.

15 Q. Okay.

16 A. But that's not testimonial information. We  
17 don't document every phone call, Mr. Debus.

18 Q. But you're not denying that phone call  
19 happened with Mr. Mason?

20 A. Not at all.

21 Q. Okay. Now, in your previous testimony you  
22 told us that there were but two conversations, right?

23 A. I said there were two substantive  
24 conversations that went into the information contained  
25 in the 302.

1 Q. Do you recall being asked yesterday -- do you  
2 remember you told us about two conversations -- and  
3 they have this same transcript of your testimony, I  
4 think, the same -- you told us about two conversations  
5 you had with Mr. Tatham.

6 And your answer was, "I remember."

7 "And were there only two conversations?"

8 Your answer was, "There were only two  
9 documented in that 302 where we spoke to him on  
10 previous occasions."

11 I said, "What other occasions?"

12 "You don't recall off the top of your head?  
13 Most recent one was a couple weeks ago," as you said  
14 today.

15 And then you said -- I said, "That's three."

16 And they you said, "Well, there were some  
17 phone calls going on between my partner, special agent,  
18 and Mr. Tatham, regarding getting documents."

19 And that was Mr. Mason's aspect of the  
20 investigation.

21 And I said, "But the conversation that you put  
22 on that 302 where you mentioned Kathleen, that was the  
23 two where you were in the car?"

24 And you said, "Yeah."

25 That was two when you were in the car,

1 Q. All right.

2 A. I'm not sure what you're getting at, but I  
3 don't understand -- I'm not sure what you're doing.

4 Q. I'm just asking questions. You just answer  
5 them, please.

6 Did you give that testimony?

7 A. Yes.

8 MR. DEBUS: Okay. And, Your Honor, the notes  
9 that he's testified about, I would offer them as an  
10 exhibit. And we'll put them in electronically at a  
11 later date.

12 MR. FIELDS: No objection.

13 JUDGE EIGENHEER: Okay. Then those will be --

14 MR. DEBUS: Thank you.

15 JUDGE EIGENHEER: -- marked as Horne-Winn 26,  
16 and they can be submitted and confined to Case  
17 Management Order Number 2 and will be admitted  
18 contingent on such a submission.

19 MR. DEBUS: Thank you.

20 Q. BY MR. DEBUS: Do you have those notes in  
21 front of you?

22 A. I do.

23 Q. Look at the cover sheet. Where it says what  
24 these notes are about, it says, "Items in the 1-A  
25 include Greg Tatham interview," singular, "notes,"

1 correct?

2 A. Correct.

3 Q. And that conversation you didn't make a 302  
4 about until 40 days later, and you just told us it was  
5 Mason that made the 302, not you, right?

6 A. Can you be specific about which conversation  
7 you're talking about now? Because you've just listed  
8 three different conversations. I want to know which  
9 one specifically.

10 Q. The question was, "But the conversation that  
11 you put in the 302 where he mentioned Kathleen, that  
12 was the two of you in the car, right?"

13 Your answer was, "Yes."

14 Question: "And that conversation, you didn't  
15 make the 302 until about a month and 10 days later?"

16 Your answer was, "Special Agent didn't make a  
17 report until a month and 10 days later."

18 "And were there no other conversations where  
19 you had any conversation of substance with Mr. Tatham?"

20 And you said, "No."

21 Is that right?

22 A. As it pertained to the 302 --

23 Q. Did you give that testimony?

24 A. If that's in the transcript, those are my  
25 words, yes.

1 correct?

2 A. That's what it says.

3 Q. It doesn't refer to multiple interviews; it  
4 says singular interview, correct?

5 A. That's what it says.

6 Q. And then when you look at the notes, and you  
7 turn it over, how many dates are on this note?

8 A. There's one date.

9 Q. There's no reference to another date,  
10 specifically the date you claim that Mr. Tatham said  
11 Kathleen wasn't involved; is that right?

12 A. Because it was the same day.

13 Q. Okay. But this date has the specific time on  
14 it, 2:39 p.m.

15 A. That's correct.

16 Q. What date was the other -- what time was the  
17 other conversation?

18 A. Approximately 1:00 o'clock, like we arranged  
19 with Mr. Tatham.

20 Q. Is there anything on here that references an  
21 interview at 1:00 o'clock?

22 A. No.

23 Q. And the basis for you putting this statement  
24 that Kathleen Winn wasn't involved in the -- or  
25 Mr. Mason's basis for putting it in the summary, the

1 basis is these notes; is that correct?

2 A. No. The basis is our recollection, and then  
3 these notes are a refresher on some other items. But  
4 we both vividly remember asking him specifically about  
5 Kathleen Winn.

6 Q. Well, if he vividly remembered that, wouldn't  
7 he be here?

8 A. Mr. Debus, I already told you --

9 Q. Let's go back to the notes. Do these notes  
10 make any reference to Mr. Tatham saying that Kathleen  
11 wasn't involved in this transaction?

12 A. No. It makes note that we asked the question,  
13 and we both heard the answer. That's our recollection.  
14 That's what's in the 302.

15 Q. But the reason you were talking to Mr. Tatham  
16 was to find out whether Kathleen was involved in this  
17 transaction, right?

18 A. That's correct.

19 Q. And you didn't include it in your notes what  
20 the answer to this question was? It's not here, is it?

21 A. The answer is our recollection. We asked him  
22 specifically -- we wrote down the question we asked  
23 him, and Mr. Mason and I discussed the interview after  
24 we talked to him the first time, and then that's why we  
25 decided to ask the second question.

1 Q. When were these notes made?

2 A. These notes were made on May 31st, 2012.

3 Q. And then 40 days later you and Mr. Mason are  
4 discussing it, looking at these notes, and you say,  
5 "Well, we asked that question, and our recollection is  
6 that he said she wasn't involved."

7 But there's nothing in this note anywhere that  
8 reflects that, correct?

9 A. The notes say we asked the question, and we  
10 vividly remembered the answer because it was important  
11 to our case.

12 The only reason we called Mr. Tatham was to  
13 find out if Kathleen Winn was involved. That's why we  
14 asked the question.

15 And an answer like that from Mr. Tatham is  
16 huge to our case, because they're claiming she was  
17 involved, and here is his go-to guy. If you look down  
18 the page, all the conversations there, run all the  
19 deals by him on the bottom.

20 Mr. Tatham said Mr. Horne runs all his deals  
21 by him, and Mr. Tatham said to his knowledge Kathleen  
22 wasn't involved. So that stood out in our minds.

23 Q. There's not a single word or mention of that,  
24 this big, huge statement you got from Tatham, nothing  
25 about that in your notes, correct?

1 A. Mr. Debus, these notes are to help draft a  
2 report, which we drafted, and the report --

3 Q. Answer the question, please. Is there  
4 anything about this huge statement that Tatham made in  
5 your notes?

6 A. Yeah.

7 Q. What?

8 A. Was Kathleen Winn involved. We knew the  
9 answer.

10 Q. You put a question, is there anything about  
11 Tatham's answer, this huge answer in these notes where  
12 you say --

13 A. Not in the notes.

14 Q. -- Mr. Tatham said or anything like that?  
15 Nothing here, is there?

16 A. Not in the notes. We didn't need it. These  
17 notes helped us write our report. I stand by it.

18 Q. So the FBI policy of making a 302 in five  
19 days, must be a reason for that, isn't there?

20 A. I'm sure there is.

21 Q. Well, isn't the reason that you might remember  
22 in five days, might have less memory in 10, even less  
23 in 30, and no memory in 40, but you're saying you  
24 basically violated a policy and wrote this summary 40  
25 days later based on your memory, right?

1 Not a note, like you told the reporters --

2 MR. FIELDS: I'm going to object.

3 Q. BY MR. DEBUS: -- based on your memory?

4 MR. FIELDS: If he can get to a question and  
5 kind of stop and let him answer it, that would be good.

6 Q. BY MR. DEBUS: Yeah, you based this on your  
7 memory?

8 A. Yeah.

9 Q. Okay.

10 A. Absolutely.

11 Q. Okay.

12 A. And I stand by it.

13 Q. Well, I know you do.

14 MR. DEBUS: Would you bring up the summary,  
15 please?

16 Q. BY MR. DEBUS: I want you to look -- what  
17 exhibit is this, 14?

18 MR. LASOTA: 34, State's 34.

19 Q. BY MR. DEBUS: State's 34.

20 Do you see that?

21 A. I do.

22 Q. Take a look at the second paragraph.  
23 What interview did that come from?

24 A. That came from one of these two interviews,  
25 the phone interviews.

1 Q. Which one?

2 A. It's from one of the two interviews.

3 Q. You don't know whether it came from the first  
4 interview or the second?

5 A. Well, I see at the bottom of this page the  
6 words "Run all deals by him." And that's a  
7 recollection. That's what tickled Mr. Mason's  
8 recollection, ours. Tom runs all his real estate deals  
9 by me. That's what Mr. Tatham told us.

10 Q. No. My question to you is, which interview  
11 did Paragraph 2 come from? If you don't know, just say  
12 you don't remember.

13 A. I don't remember if it was the first or the  
14 second, but we heard it.

15 Q. Yeah. The third paragraph, "Horne tried to  
16 sell his strip mall," et cetera, above, that was  
17 from -- that whole paragraph was from Mr. Tatham,  
18 correct?

19 A. Yes.

20 Q. And what interview was that from?

21 A. It was one of the two interviews.

22 Q. You don't know which one?

23 And the fourth paragraph, which interview did  
24 that come from?

25 A. That one came from the first, yeah.

1 Q. You -- oh, so you remember which interview  
2 that paragraph came from, correct?

3 A. Yeah, because that was the sole purpose of  
4 calling Mr. Tatham.

5 Q. The next paragraph, "Tatham was and continues  
6 to be," which interview did that come from?

7 A. That came from one of the two.

8 Q. Next paragraph, "Horne tried to sell his strip  
9 mall," which interview did that come from?

10 A. It was one of the two, probably both. All of  
11 these are probably both.

12 But specifically when we asked about Winn, it  
13 was the first, and we asked the blanket question, was  
14 anyone involved, that was from the second, as you know  
15 from the recording.

16 Q. And the last paragraph, which interview did  
17 that come from?

18 A. Probably both.

19 Q. So in this summary made 40 days later, the  
20 only line that you remember which interview it came  
21 from just so happens to be the one about Kathleen; is  
22 that right?

23 A. No. I remember specifically in the first call  
24 it was Kathleen, and the second one, it was a blanket  
25 one because of the discussion Mr. Mason and I had

1 between phone calls where we made the conscious  
2 decision to make a more broad question. Absolutely, I  
3 remember that.

4 Q. Well, you told us a while ago that the first  
5 phone call was probably 10 minutes?

6 A. It's an approximation. And we talked in  
7 general terms. Maybe he threw out some details.

8 What I can tell you is in that second call you  
9 hear Mr. Mason open his notebook to this page, and he  
10 added additional notes to the previous conversation.  
11 And as a single 302 --

12 Q. Do you remember the question?

13 A. No. I mean --

14 Q. The question was -- I'll just rephrase it.

15 This paragraph is the only paragraph where you  
16 remember which conversation it came from; you just  
17 happened to remember that the paragraph that the  
18 Kathleen Winn paragraph came from was from that first  
19 interview?

20 A. Absolutely.

21 Q. And in the 10 minutes that you took in that  
22 interview interviewing Mr. Mason, the only thing that  
23 you know you got in that first paragraph was basically  
24 one sentence; is that right?

25 A. If you're referring to that Kathleen Winn

1 wasn't involved to his knowledge?

2 Q. No.

3 A. I'm sorry.

4 Q. I'm asking whether or not you have any  
5 recollection if there -- about anything else Mr. Tatham  
6 said in that first interview, other than that one  
7 sentence?

8 A. I remember we talked in general terms about  
9 his involvement with the deal, the real estate  
10 transaction, and his recollection of what Winn's  
11 involvement was with it.

12 Q. You didn't put in the summary anything about  
13 Mr. Tatham telling you several times about how Mr. Winn  
14 talked to a whole lot of people and talked to anybody  
15 he could; you never put that in your summary, did you?

16 A. Well, you'd have to ask Special Agent Mason,  
17 but, no, it doesn't appear to be in there.

18 Q. Okay. Does the FBI have a policy about being  
19 recorded by a witness?

20 A. Do we have a policy about other people  
21 recording us?

22 Q. Yeah. Let me make it simple.

23 You go to interview Mr. Tatham. If Mr. -- at  
24 his house. So you interview him at his house. He puts  
25 a tape-recorder out, or you know he's tape-recording

1 you, what are you going to do?

2 A. We would generally not consent to the  
3 interview. We would leave.

4 Q. You'd leave, right?

5 A. Well, I guess on a case-by-case basis, but  
6 generally we don't record interviews. And if we're the  
7 ones controlling and conducting the interview, then we  
8 would say whether it was going to be recorded or not.

9 Q. And you don't record interviews because, for  
10 one reason, you don't want things to happen just like  
11 happened here, right?

12 A. You'd have to talk to the FBI headquarters why  
13 the policy is the way it is, Mr. Debus.

14 Q. You know there's a policy, but you don't  
15 understand why?

16 A. I'm not going to talk to you about that. You  
17 want to quote the DIOG, go ahead and quote the DIOG,  
18 sir. I understand the principles behind the policy.

19 I don't know the specifics, the verbiage in  
20 it, Your Honor. I just don't know what the specifics  
21 are, and I'm not prepared to talk intelligently about  
22 that policy.

23 If you'd like, I could go refresh my memory,  
24 pull up some notes, review the policy. But off the top  
25 of my head, I don't know the specifics.

1 Q. Have you ever written a report -- as a law  
2 enforcement officer, have you ever written a report  
3 after you collected some evidence and got it wrong,  
4 ever?

5 A. I don't recall.

6 Q. Have you ever been challenged in a case, a  
7 courtroom like this, about getting your summaries  
8 wrong?

9 A. Not to my knowledge.

10 Q. And this phone call that we're talking about  
11 here, you've talked with Mr. Mason about it?

12 A. I have.

13 Q. And Mr. Mason says he made the call?

14 A. He made -- which call are you referring to?

15 Q. I'm sorry?

16 A. I'm sorry. Which call are you referring to?

17 Q. The Exhibit 25. The one we came out with  
18 yesterday.

19 A. The new one?

20 Q. Uh-huh.

21 A. He didn't make that call.

22 Q. Who made that call?

23 A. Mr. Tatham called Mr. Mason.

24 Q. And why did he call Mr. Mason?

25 A. Because he was returning Mr. Mason's call.

1 Q. And when did Mr. Mason call him?

2 A. I don't know. Previously.

3 Q. So yesterday Mr. Mason testified that he  
4 talked to you two twice --

5 A. Mr. Mason testified yesterday?

6 Q. Mr. Tatham talked to you -- the two of you  
7 only twice and that he recorded both conversations.

8 Is he lying?

9 A. Yes. That or he doesn't remember the first  
10 one.

11 Q. And if there was a third conversation of  
12 10 minutes and he recorded the one before the one you  
13 claim you had and the one after you claim you had, can  
14 you think of any reason why he didn't record that one  
15 that you're talking about?

16 A. Yeah. He wasn't in his office. As he told us  
17 in the first call, he wasn't near the information, he  
18 wasn't near his office, he would call us back. And he  
19 did. He called us back and taped it.

20 Q. So he's a liar, correct?

21 A. In my opinion either is lying to you or he  
22 doesn't recall the call, because not a lot of details  
23 were in it, and he's more focused on the one he  
24 actually recorded.

25 Q. He was very hostile towards the FBI, was he

1 not?

2 A. He was.

3 Q. He didn't want to talk to you?

4 A. He didn't want to talk to us. He didn't want  
5 his wife to talk to us.

6 Q. Isn't that the right of an American citizen?

7 A. Absolutely.

8 Q. And he went to the trouble of recording these  
9 two calls?

10 A. Yes.

11 Q. And somehow, according to you, he's forgotten  
12 the call where Kathleen Winn was mentioned, or he's  
13 lying, one of the two?

14 A. Yes.

15 Q. Now, my final question to you is -- we were  
16 speaking about the FBI policy manual -- can you tell me  
17 if there's anything in the policy manual that says,  
18 with regard to a witness, that notes trump a recording,  
19 anything like that that you ever heard about?

20 A. I'm not -- can you ask that again?

21 Q. Yeah. You told the press that the notes you  
22 had, the evidence you were presented, would prove that  
23 Mr. Tatham was lying or something, the notes.

24 And I'm asking you, is there any policy or  
25 anything you've ever heard about that where notes, your

1 notes or a witness' notes, trump an actual live  
2 recording?

3 A. I don't know that this contradicts the live  
4 recording. If anything, it backs up my version of the  
5 events where we asked specifically if Kathleen Winn was  
6 involved.

7 Q. Well, you hold up the notes you say where you  
8 asked specifically, and it's in evidence, and there's  
9 not a single word in here, other than a question, about  
10 what Mr. Tatham said about Kathleen, correct?

11 A. That's what's on paper. But I'm telling you,  
12 Mr. Debus, as I've said before, the sole purpose of  
13 that phone call was to get that question answered, and  
14 that's what stuck in our heads.

15 Q. The question is, there's nothing in these  
16 notes that mentions what Tatham said about Kathleen,  
17 right?

18 A. That's correct.

19 Q. And there's nothing in these notes that says  
20 there about two interviews, right? It says it's  
21 singular, one interview?

22 A. Well, addressing that issue, if you'll look,  
23 the person that wrote this was a woman named Ashley  
24 Roan, who was the squad's secretary, and she was  
25 putting into evidence what she believed it was. Nobody

1 told her specifically --

2 Q. So she made a mistake?

3 A. She made a mistake.

4 Q. Okay. And then in the page of the notes it  
5 says the date of the interview at 2:33 p.m., and it  
6 says nothing about an interview an hour or two hours or  
7 whatever earlier.

8 It says nothing about the time of the  
9 interview you claim Tatham said something about  
10 Kathleen, correct?

11 A. No, sir, that says 2:39 p.m., and --

12 Q. 2:39.

13 A. -- you're correct on the other point.

14 Q. It says nothing about the time of the  
15 second -- or the other interview --

16 A. The first interview.

17 Q. -- that we're talking about here; is that  
18 right?

19 A. The first interview, yes.

20 Q. Is that right?

21 A. You're right.

22 Q. The first interview?

23 A. You're right.

24 Q. It isn't mentioned here?

25 A. It's not recorded on that paper.

1 Q. Okay. And there's nothing mentioned in your  
2 notes about a first interview?

3 A. Well, and just to correct you, these are not  
4 my notes. These are Special Agent Mason's notes.

5 Q. There's nothing in these notes -- when I  
6 started out, I said when I ask about you, I mean you  
7 and Mason, because you were partners in this deal, but  
8 I'll be specific.

9 My final question is, there's nothing in these  
10 notes that says anything about a first interview? In  
11 these notes.

12 A. There's nothing that mentions the first  
13 interview specifically, no.

14 MR. DEBUS: Thank you. I don't have any other  
15 questions.

16 MR. KIMERER: I have several questions,  
17 Your Honor.

#### CROSS-EXAMINATION

18 BY MR. KIMERER:

19 Q. Agent Grehoski, I'm a little bit confused what  
20 got recorded, when the conversation was and when it  
21 wasn't recorded.

22 As I understand the sequence of events, the  
23 first recording that we heard here today was the call  
24  
25

1 from Greg Tatham to Merv Mason?

2 A. That's correct.

3 Q. And that would have been on the 30th?

4 A. That's correct.

5 Q. And at that time it's talking about having an  
6 arrangement to call the next day at 1:00 o'clock; is  
7 that right?

8 A. That's correct.

9 Q. And in that 1:00 o'clock call, it sounded to  
10 me like Mr. Tatham was going to call you at that time?

11 A. That's what it sounded like from the call;  
12 that's correct.

13 Q. Do you remember, did he call you, or did you  
14 end up calling him, or Merv Mason calling him?

15 A. My recollection was that we ended up calling  
16 him for whatever reason.

17 Q. And you think you called him then at about  
18 1:00 o'clock?

19 A. Approximately 1:00 o'clock.

20 Q. And at 1:00 o'clock, were you in your car,  
21 both of you in your car at that time?

22 A. We were.

23 Q. And there's a conversation, then, you have  
24 with Mr. Tatham; is that right?

25 A. Correct.

1 Q. That's a conversation we're now saying was not  
2 recorded?  
3 A. That's correct.  
4 Q. And in that conversation you're saying that's  
5 where Mr. Tatham must have mentioned Kathleen Winn; is  
6 that right?  
7 A. No, I'm not saying he mentioned. I'm saying  
8 that we asked him specifically --  
9 Q. You remember specifically asking him in that  
10 1:00 o'clock conversation about Kathleen Winn?  
11 A. That's correct.  
12 Q. And now -- well, I indicate, but it seems to  
13 be inferred here, or stated, is that there is then --  
14 do you know how long you talked to him on that  
15 conversation?  
16 A. I estimate it might have been 8 to 10 minutes.  
17 Q. Okay.  
18 A. I know it was a briefer conversation than the  
19 subsequent one, and we covered less detail.  
20 Q. So the second conversation would have been  
21 longer?  
22 A. That's my recollection, yes.  
23 Q. And that's the one that did get recorded?  
24 A. That's correct.  
25 Q. Now, when you had the second conversation, the

1 A. That's correct.  
2 Q. Second one you didn't know was recorded,  
3 but -- and the first one you're saying now Greg Tatham  
4 must not have recorded --  
5 A. That's correct.  
6 Q. -- even though he recorded the one the  
7 previous morning?  
8 A. That's correct. The previous morning you  
9 said?  
10 Q. The previous day.  
11 A. That's correct.  
12 Q. Because that's the one you ...  
13 A. Saying it differently, Mr. Kimerer, when he  
14 was the one calling us, he had the tape-recorder with  
15 him. On the one that we called him, he did not have  
16 his tape-recorder, apparently. Otherwise, we assume  
17 the same thing, he would have recorded it.  
18 Q. Okay. But you're saying you caught him by  
19 surprise by calling at 1:00?  
20 A. When we called him, I believe it was on his  
21 cell phone, and he was not in the office, or his  
22 office, and that's --  
23 Q. And that first --  
24 A. -- what he indicates.  
25 Q. -- phone call lasted 8 to 10 minutes?

1 first one was at 1:00, so that goes without saying  
2 1:10.  
3 When was it that the next conversation  
4 started? Is that the 2:39 time up there?  
5 A. According to Mason's notes, yes.  
6 Q. And was that conversation while you were  
7 riding in the car together?  
8 A. It was.  
9 Q. So you were still in the car?  
10 A. That's correct.  
11 Q. So you were driving in your car from  
12 approximately 1:10 to approximately 2:39?  
13 A. We were out doing investigative activities, so  
14 we were in and out of our vehicle.  
15 Q. On the 2:39 call, did he call back to you, or  
16 did you call him?  
17 A. He called us.  
18 Q. He did call you.  
19 And did he call you, or did he call Merv  
20 Mason?  
21 A. He called Merv Mason.  
22 Q. Now, so when we're talking about what the  
23 basis is for this report that you have written which is  
24 in evidence here, it's from those two conversations,  
25 one recorded and one not recorded?

1 A. Correct, sir.  
2 Q. The second call lasted approximately 15  
3 minutes?  
4 A. Correct.  
5 Q. And he called on your phone or Merv Mason's  
6 phone?  
7 A. Well, Mr. Tatham called on his own phone, but  
8 he called Special Agent Mason's phone.  
9 Q. He called Mr. Mason.  
10 And when you called him back, when the call  
11 was made at 1:00 o'clock, was that -- did Merv Mason  
12 make that call, or did you make that call on your  
13 phone?  
14 A. So if I understand what you're asking, the  
15 two-minute call on the 30th where he called Merv Mason  
16 and he called Merv Mason's cell phone and Merv Mason  
17 set up the interview for the following day at  
18 1:00 o'clock, he had called Merv Mason, who was in  
19 Merv's own vehicle, and he was driving, and then they  
20 set up for a 1:00 o'clock call.  
21 Q. So the first call that got recorded you  
22 listened to today, which was a surprise call, you  
23 didn't know it was recorded, you weren't present in the  
24 car with Merv Mason then --  
25 A. I was not.

1 Q. -- on the 30th?

2 But on the 31st you were, both of you?

3 A. Correct.

4 Q. Now, on that first call, the 1:00 o'clock call  
5 now that lasted for 10 minutes, you were there, Merv  
6 Mason was there, and that's where you heard all of the  
7 specific information about Kathleen Winn?

8 A. That's where we specifically asked him to his  
9 knowledge was Kathleen Winn involved with the  
10 transaction.

11 Q. And that is a call you made to him?

12 A. That is a call Merv Mason made to Greg Tatham,  
13 correct.

14 Q. And made it on his phone?

15 A. Merv Mason made it on his phone to Greg  
16 Tatham's cell phone, correct.

17 Q. And then the second call that comes in on --  
18 is on his phone almost a couple hours later.

19 Did you call him back?

20 A. About an hour and a half later.

21 Q. Now, on the second one that gets recorded,  
22 that's the one that you say he called you. You didn't  
23 call him, then?

24 A. Greg Tatham called Merv Mason's phone,  
25 correct.

1 Q. Okay. So --

2 A. And that one was recorded.

3 Q. So I guess, there would be telephone records  
4 of these calls, wouldn't there?

5 A. You would think so, yes.

6 Q. So have you checked those telephone records?

7 A. It is my understanding Mr. Mason made the  
8 request to the FBI headquarters for records that would  
9 confirm those telephone exchanges.

10 I don't think he was successful in obtaining  
11 those records. FBI headquarters, I don't know, we have  
12 30,000 phones that they track. I don't know that he  
13 ever successfully got those records back.

14 Q. So are those -- so are those phones -- those  
15 are FBI -- those are your official phones that you're  
16 using --

17 A. That's correct.

18 Q. -- at this time?

19 And that you each have a number for those  
20 phones?

21 A. We do.

22 Q. Now, are you free to give us your telephone  
23 numbers, or is that privileged information? I don't  
24 know. Is that secret or something?

25 A. I don't know that I really want to give out my

1 phone number in open court with the press here.

2 Q. I understand. I appreciate that. But that's  
3 a number that we could somehow get. Now, the FBI must  
4 have some type of a check if somebody tries to subpoena  
5 your telephone number?

6 A. I'm sure there is.

7 Q. So they would put a halt on it. So we'd have  
8 to rely upon the FBI to get the information and the  
9 times of those particular calls?

10 A. I'm sure there's a mechanism to obtain those  
11 records.

12 Q. Okay. Or as Mr. Rake just reminded me, we can  
13 contact NSA and get everything.

14 A. You know, I've been waiting for that joke to  
15 come up this whole week.

16 Q. Okay. So that would be one way -- that would  
17 establish two separate calls if we looked at the  
18 records of Merv Mason and also the records of Greg  
19 Tatham to show that?

20 A. Agreed.

21 Q. But you can't get those records now. Why not?

22 A. We could go get them. We could make the  
23 attempt. I know Special Agent Mason did make the  
24 attempt. There was a mechanism that he tried to go  
25 through, and I don't know that he was ever successful

1 in obtaining those records.

2 We agreed. We tried to get them, because it  
3 would prove our point. And I'd have to check with  
4 Special Agent Mason to see what happened with them.

5 Q. Now, Special Agent Mason, he's stationed here  
6 in Phoenix along with you, is he not?

7 A. He's currently on a temporary duty assignment  
8 on the East Coast.

9 Q. On the East Coast. He came back for a family  
10 thing, so he's around?

11 A. He arrived last night, as I understand, and I  
12 don't know how long --

13 Q. What did you tell him about this problem?

14 A. I e-mailed him a copy of the notes. He  
15 reviewed the notes. I told him the issue with the late  
16 submission on his 302. And his explanation to me was  
17 that was a very busy time for us, which is true, that  
18 one is one that slipped through the cracks.

19 When he drafted that, what he put in there was  
20 specifically what he could remember. And if there were  
21 things that weren't specific and he couldn't swear to  
22 them in open court, then he didn't put them in.

23 And that's generally how we do it. We only  
24 put in these reports what we know to be true and what  
25 we feel comfortable swearing to in trial.

1 Q. So he is -- but he has been in town here  
2 working on this problem trying to help you find a  
3 solution, correct?

4 A. Well, he arrived last night at about  
5 8:00 o'clock. He was made aware of the notes. He  
6 looked at them on his BlackBerry.

7 And his explanation was he vividly remembers  
8 opening back up to his notes when Mr. Tatham called us  
9 and adding the information, the details from that  
10 second discussion, into the existing notes that we had  
11 from the first phone call, including that Number 3 item  
12 with, are you aware if Home was consulting with any,  
13 was him writing down our broad question from that  
14 second conversation.

15 Q. Mr. Debus asked you why Mr. Mason wasn't here  
16 today. Wouldn't it have been good to have him here  
17 today to explain this?

18 A. I agree. I told him, and he said he's  
19 available. He has not been asked.

20 Q. You didn't suggest he come to explain this  
21 rather than make you do it?

22 A. I did not.

23 Q. Did you check with the --

24 MR. FIELDS: I'm going to object here.  
25 Agent Grehoski does not control whether witnesses come

1 A. I do see that.

2 Q. Now, is this the standard way the FBI always  
3 keeps their notes in an investigation when you have  
4 witnesses, that you submit them so they are filed with  
5 the case, with this type of a document?

6 A. Well, what I can tell you is the FBI,  
7 approximately two years ago, migrated to a new  
8 recordkeeping system. And this case was initiated  
9 before we were in the new recordkeeping system.

10 And as a mechanism to migrate the old files  
11 into the new system, notes such as these handwritten  
12 notes have been scanned in, and cover sheets explaining  
13 where they came from have been done by a lot of the  
14 support staff just to get all the paper files as  
15 quickly as we can into an electronic format.

16 Q. The standard practice is to have a cover sheet  
17 for each note for every witness you talk to?

18 A. On these, yes. Yes.

19 Q. And that would be --

20 A. Yeah.

21 Q. That would be throughout this entire case,  
22 there's these cover sheets and notes of witnesses?

23 A. I'm not sure if they'd be exactly like this.  
24 But to answer your question, there is a record for  
25 every item that is entered into a 1-A envelope.

1 or don't come. I do.

2 JUDGE EIGENHEER: So noted.

3 Q. BY MR. KIMERER: This is a pretty significant  
4 issue that you're concerned about following --

5 A. And I spoke -- yeah.

6 MR. FIELDS: I'm still going to object. If  
7 there's any question, if the Court has any questions  
8 about this, but I don't think it's relevant for  
9 Agent Grehoski to be answering these questions.  
10 Whether or not Agent Mason is appropriate to be here  
11 would be my call, period, not his.

12 MR. KIMERER: I accept that at this point. I  
13 just asked the question. I think this would be -- this  
14 is a significant --

15 MR. FIELDS: And the answer to the question  
16 should be he doesn't know, because he doesn't control  
17 the case. So I'm going to level that objection.  
18 Your Honor, you can do with it what you'd like.

19 JUDGE EIGENHEER: Let's move on.

20 Q. BY MR. KIMERER: Agent Grehoski, I notice we  
21 received today some notes of Merv Mason that combine  
22 all these conversations into one, and it has a cover  
23 sheet attached to it, Federal Bureau of Investigation  
24 electronic communication.

25 Do you see that?

1 And I don't know if it would look exactly like  
2 this for new cases or if this is a representation of  
3 what the old thing would look like in the new format.

4 But, generally speaking, there's a record for  
5 every item entered into evidence, correct.

6 Q. Do you know if Merv Mason is going to follow  
7 through on trying to get the telephone records, the  
8 calls at different times?

9 A. I will endeavor to make sure that happens. I  
10 don't know. I haven't talked to him. I don't know his  
11 intentions. I can't speak for his intentions on those  
12 records at this time. What I can say is I will look  
13 into the matter.

14 Q. And I take it your telephone -- have you  
15 ever -- does the FBI, when you make telephone calls, do  
16 they show you the telephone records, like your -- like  
17 a billing like we've been using records here and show  
18 the time the call comes and who it comes from and what  
19 time and --

20 A. I've had -- never had the issue come about, so  
21 I don't know what format they will arrive in.

22 Q. Okay. But that would tell us like if a call  
23 came in for Mr. Tatham, even though it came from a  
24 different phone, the records would show to Merv Mason's  
25 phone that call coming in and the length of time,

1 correct?  
 2 A. I would think so.  
 3 MR. KIMERER: Thank you. I have no other  
 4 questions.  
 5 JUDGE EIGENHEER: Redirect?  
 6 MR. FIELDS: Thank you. No.  
 7 JUDGE EIGENHEER: Well, good. You may be  
 8 excused. Any other rebuttal?  
 9 MR. FIELDS: No.  
 10 JUDGE EIGENHEER: At this time, we will go off  
 11 the record.  
 12 (An off-the-record discussion ensued.)  
 13 JUDGE EIGENHEER: Back on the record at this  
 14 time.  
 15 Off the record we went through certain  
 16 deadlines and timing for the resolution of this case,  
 17 as it was agreed upon by the parties, and if you would  
 18 all agree to this on the record, the specifically  
 19 written motion addressing those issues raised regarding  
 20 cross-examination, the written motion will be filed by  
 21 Monday, February 24th, with a response due by Friday,  
 22 March 7th, and any reply by Wednesday, March 12th.  
 23 MR. FIELDS: Agreeable, Your Honor.  
 24 MR. DEBUS: Yes.  
 25 JUDGE EIGENHEER: Okay. Then receipt of the

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CERTIFICATE

I, WENDELL CHAPMAN, a Court Reporter herein, hereby certify that the proceedings had in the foregoing matter are contained fully and accurately in the shorthand record made by me thereof, and that the foregoing typewritten pages constitute a full, true and accurate transcript of said shorthand record, all done to the best of my skill and ability.

DATED, this 3rd day of March, 2014.

  
 WENDELL CHAPMAN, RPR, CR

1 transcript will be by March 3rd, with simultaneous  
 2 written closing arguments due by March 13th, and  
 3 simultaneous written rebuttals, if either party wishes  
 4 to submit those, due by March 17th.  
 5 MR. FIELDS: Agreeable.  
 6 MR. LASOTA: Yes, Judge.  
 7 JUDGE EIGENHEER: Okay. Then if there's  
 8 nothing further, that will conclude today's  
 9 proceedings. And we'll go off the record at this time.  
 10 (The proceedings concluded at 5:07 p.m.)  
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A				
<b>abbreviation</b> 751:7	591:24 608:13	661:19 662:17	724:17 725:15	520:5 522:14,16
<b>ability</b> 587:14	631:7 640:20	663:12,13 665:6	729:14	523:19 559:15
691:21 794:13	646:4 794:12	670:4,8,15,19,20	<b>advertisement</b>	584:13,16,23
<b>able</b> 515:22 516:13	<b>accurately</b> 640:16	670:22 671:2,13	661:15,21 724:15	585:2,5 635:23
516:13,20 523:18	640:21 720:18	675:16,22,22	<b>advertising</b> 526:18	730:23 731:11
530:21 547:18	794:9	677:15 681:12	724:24	732:8,11 733:22
628:24 635:5	<b>accusations</b> 692:14	682:23 684:24	<b>advice</b> 585:7,10	734:22 735:24
636:5 726:8	<b>accused</b> 752:20	685:14 687:7	617:10 653:6	736:3,18 737:9,11
<b>absent</b> 529:20	753:6	689:11 700:2,3,5	660:12 686:25	737:14,16 738:4,9
601:8	<b>accusing</b> 530:23	700:14 703:3	693:16 694:16,18	738:10,13,14,15
<b>absentee</b> 601:8	701:23	705:23 707:25	694:22 720:9	738:25 739:1,13
<b>absolute</b> 516:19	<b>acquire</b> 569:3	708:7,9 714:9	726:3,11 729:9	739:15 740:15
709:1	<b>act</b> 557:19 727:8	716:8 724:20	748:17	741:4 743:17
<b>absolutely</b> 563:13	<b>action</b> 528:1	730:8,12	<b>advised</b> 627:22	744:25 745:2,3,9
593:14 598:20	558:12 620:21	<b>add</b> 663:14	660:15 731:15	750:9 751:12,17
608:10 673:1	650:14,16 656:5	<b>added</b> 749:24	743:12	753:5 760:17
685:14 689:7	656:11,16,20	751:22 770:10	<b>advisement</b> 525:9	761:16 771:16
700:3,7,9 708:16	657:11,14 683:25	<b>adding</b> 661:9	<b>advising</b> 581:24	778:4,21 783:8
709:7 729:7	713:2 719:17	713:17 788:9	<b>advisor</b> 535:4	786:23 787:4,5
767:10 770:2,20	720:10	<b>addition</b> 515:23	<b>advocate</b> 528:6,7	788:25 789:9,10
775:7	<b>actions</b> 577:14	516:12 688:11	548:15 621:7	789:20
<b>academic</b> 680:10	599:1,7 620:22	690:4	627:9 631:22	<b>agents</b> 515:17
<b>accept</b> 515:9	632:5	<b>additional</b> 516:9	<b>advocated</b> 527:15	528:9 556:17
531:18 789:12	<b>activate</b> 540:6	519:2 521:11,15	713:4	<b>agitated</b> 746:17
<b>accepted</b> 705:3,5	632:8	521:20 563:25	<b>advocating</b> 716:1	<b>ago</b> 527:1 533:23
705:15,16	<b>activation</b> 632:9,14	575:25 583:14	<b>advocation</b> 713:1	571:23,24 692:19
<b>access</b> 675:3 744:4	<b>active</b> 545:16	590:12 634:4,23	<b>affairs</b> 617:10	699:11 710:6
<b>accommodate</b>	600:15,23 601:5	770:10	<b>affect</b> 650:21	712:21 734:11
634:16	620:17 627:19	<b>Additionally</b>	651:11	747:24 748:3
<b>accomplish</b> 626:14	687:13	588:20,24 589:1	<b>affidavit</b> 544:12,23	760:13 770:4
<b>accomplished</b>	<b>activities</b> 530:7	<b>address</b> 515:17	553:24 554:15	790:7
611:12,14 659:18	596:10 689:4	520:17 528:17	557:3 622:15	<b>agony</b> 524:2
<b>accomplishments</b>	781:13	544:19 571:10,12	627:13 628:2,8,14	<b>agree</b> 564:21,22
603:2	<b>activity</b> 529:16	634:21 641:5	628:15,16 678:2	642:6 657:16
<b>account</b> 534:20	530:15 556:23	642:13 644:1	678:14	711:15,23 712:3
542:24 549:10	590:6 620:3,8,20	645:16,17 682:13	<b>affidavits</b> 553:16	714:2,15,24 717:1
550:2,2,9 555:6,9	620:22,25,25	722:25 744:6	554:17 556:22	719:4,18 720:16
555:11,13,25,25	622:23,24 623:2	<b>addressed</b> 640:13	557:6 598:17	720:18,19 788:18
577:1 624:16	625:13 684:11	719:12 746:16	628:11	792:18
659:7 668:15	<b>actual</b> 517:11	<b>addressing</b> 776:22	<b>affiliation</b> 563:9	<b>Agreeable</b> 792:23
<b>accountability</b>	559:23 691:15	792:19	<b>afford</b> 690:11	793:5
602:10 680:11	694:14 776:1	<b>administrative</b>	<b>afternoon</b> 521:13	<b>agreed</b> 564:23
<b>accountable</b> 668:19	<b>ad</b> 530:22 559:25	511:1,11,17 514:7	522:5 635:19	572:1,20 591:9
<b>accounts</b> 555:14,16	560:1,5,7 562:14	733:11	644:25 674:9	786:20 787:2
<b>accuracy</b> 719:15	564:20,25 566:6	<b>admitted</b> 736:13	709:15,16	792:17
<b>accurate</b> 530:15	567:5,7 586:15	762:17	<b>afterward</b> 733:21	<b>agreement</b> 520:25
532:25 545:11	595:20,24 647:19	<b>ads</b> 559:23 562:22	<b>agency</b> 526:18	589:2
547:2 555:8	647:24 648:11	562:23 633:14	<b>agenda</b> 611:16	<b>ahead</b> 565:9 614:5
567:16 576:22,23	652:6 658:23	648:23 657:20,23	<b>agent</b> 515:24 517:3	619:13 701:4
	659:1 661:14,18	702:20 721:1,4,5	517:12 519:2	723:13 736:14

772:17	706:11,12	584:5 669:22	536:9 547:14	540:14 547:20
<b>hold</b> 744:24	<b>answer</b> 587:14	699:13	550:3 565:13	552:19,25 556:19
<b>im</b> 725:25	599:15 643:15	<b>applied</b> 683:4	580:7 593:6	561:19 572:24
<b>aimed</b> 725:13,13,14	654:1 664:16	<b>apply</b> 716:9,15	594:24 595:19	584:22 587:15
725:19,21,23	743:14 747:16	<b>appreciate</b> 630:15	598:22 599:10,13	598:24 602:22
<b>air</b> 567:11	754:24 755:3	631:6 634:18	604:2 617:3,7,11	610:7 621:25
<b>allegation</b> 515:16	760:6,8 761:13,16	654:2 659:17	618:22,23,23	622:2 637:10
556:2,4,5	762:4 764:13,20	670:9 709:20,22	619:7,22 620:2,10	655:3 657:6
<b>allegations</b> 556:23	764:21 765:10,15	786:2	620:13 621:3	666:19 673:5
557:7 639:25	766:3,9,11,11	<b>approach</b> 630:25	622:6 626:4,13,20	676:24 677:6
685:11 719:8	767:5 789:15	731:17	626:20 627:10	691:20 706:11
<b>allow</b> 524:13	790:24	<b>appropriate</b> 521:8	630:12 631:23	707:5 743:15,23
568:14 680:15	<b>answered</b> 584:24	613:12 738:19	641:22 678:4	749:13 752:6
738:22	657:6 776:13	789:10	679:20 685:13	754:23 759:10
<b>allowed</b> 721:23	<b>answering</b> 619:14	<b>approve</b> 566:24	699:17 710:20	760:1 764:12,21
<b>Alma</b> 562:2	673:5 789:9	<b>approved</b> 566:13	711:8,17,18 712:4	764:22 765:5,9,14
<b>ambush</b> 524:10	<b>anticipated</b> 654:16	589:4,12	712:12 714:20	769:12,13 776:5,8
732:21,24	702:19	<b>approximate</b>	718:6,6 729:5	780:8 784:8
<b>amendment</b> 581:2	<b>anti-Rotellini</b>	531:10 574:11	<b>Arizona's</b> 680:1	788:15,19 789:13
628:16	658:23 661:14	<b>approximately</b>	710:23	<b>asking</b> 516:6 518:3
<b>America</b> 562:2	<b>anybody</b> 522:22,23	514:5 577:5	<b>Army</b> 529:7	518:7,14,21
618:21 620:9,14	586:2 692:18	599:17 671:7,8	<b>arose</b> 575:11	522:15 524:14
<b>American</b> 581:4	718:4 729:9	697:19 735:7,11	583:15	560:9 611:17
775:6	743:24 752:11	740:5,16 742:10	<b>arrange</b> 552:10	618:3 642:19
<b>meriFirst</b> 528:14	771:14	742:22,24,25	<b>arranged</b> 548:1	652:12 653:5
591:3 613:15	<b>anybody's</b> 541:5	744:16 745:13	688:2 763:18	654:4,5 655:8,8
667:20	<b>anymore</b> 528:17	747:23 751:12	<b>arrangement</b>	666:1 669:25
<b>amount</b> 524:17	<b>anytime</b> 517:15	763:18 779:19	538:10 545:3	727:5 732:19
540:18 574:11	<b>anyway</b> 588:16	781:12,12 783:2	561:23 624:4	739:20,21 749:10
576:1 588:21	726:11	790:7	779:6	755:19 762:4
589:5,16 631:20	<b>Apache</b> 610:9	<b>approximation</b>	<b>arrangements</b>	764:4 771:4
631:21 648:5	<b>apart</b> 689:24 690:1	770:6	741:12	775:24 780:9
654:14 696:3	<b>apologized</b> 746:19	<b>April</b> 600:14	<b>arranging</b> 697:1	783:14
<b>Amy</b> 746:1	<b>apparently</b> 643:8	<b>area</b> 600:11 717:20	<b>arrive</b> 791:21	<b>aspect</b> 710:7
<b>analysis</b> 515:22	782:16	<b>areas</b> 535:21	<b>arrived</b> 613:4	760:19
517:2	<b>Appeals</b> 680:7	597:12 603:24	710:18 712:5	<b>asserts</b> 745:19
<b>analyze</b> 516:13	<b>appear</b> 643:6	605:19 606:8	787:11 788:4	<b>assessment</b> 619:8
523:18 524:22	737:10 771:17	<b>arena</b> 718:10	<b>arrow</b> 570:23	619:16 641:7
<b>analyzing</b> 643:7	<b>appearances</b> 514:8	<b>argument</b> 527:17	571:14 595:17	642:20 711:24
<b>Andrew</b> 537:22	<b>appeared</b> 684:6,7	590:24 625:1	<b>ARS</b> 531:24	<b>asset</b> 698:19
573:21 595:14	684:16	732:23	<b>article</b> 652:16	<b>assets</b> 698:18
598:19 600:4	<b>appearing</b> 684:15	<b>argumentative</b>	702:15,17 723:10	<b>assign</b> 674:9
611:8 701:12	<b>appears</b> 610:23	657:4	724:16,21,22	<b>assigned</b> 514:7
<b>and/or</b> 581:3	639:2 641:2 642:9	<b>arguments</b> 793:2	<b>articles</b> 684:1,9	644:9
685:12 743:7,11	643:24,25 644:22	<b>arisen</b> 584:15	<b>ascertain</b> 743:6	<b>assignment</b> 787:7
748:10	649:1 667:3	<b>Arizona</b> 511:6,11	748:24 749:14	<b>assigns</b> 644:8
<b>angry</b> 637:7 704:24	682:23 737:13	511:12 513:7,10	<b>Ashley</b> 776:23	<b>assist</b> 538:16
704:25	739:13 750:20,22	513:11,14,16,20	<b>asked</b> 515:13	<b>assistance</b> 576:5
<b>annoyed</b> 558:17,25	<b>application</b> 576:11	526:15 527:2	517:19 520:6	600:5 749:5
637:7,15 706:11	576:12 583:22	530:1,4 534:24	532:16 535:20	<b>assistant</b> 547:8

602:15  
 assisted 752:12  
 assisting 748:25  
 associated 715:11  
 749:22  
**ASSOCIATES**  
 511:22  
 associating 613:20  
**Association** 644:5  
 721:18,20  
 assume 520:5  
 606:15 638:14  
 639:22,24 656:17  
 663:7 782:16  
 assuming 518:8  
 assumption 654:18  
 655:17,22 656:1,7  
 656:13  
 assumptions  
 655:19  
 attached 591:8  
 789:23  
 attack 562:18  
 610:9 642:10,10  
 attacks 640:13  
 641:6,20 719:12  
 719:23 720:11  
 attained 580:18,19  
 attempt 786:23,24  
 attempted 645:15  
 739:22,23 747:24  
 attempting 554:18  
 626:14 715:16  
 739:13 748:2,5  
 attempts 569:19  
 690:17 697:25  
 attend 606:23  
 attended 529:19  
 609:17 722:11  
 attending 600:9  
 607:8  
 attention 627:25  
 628:1 653:25  
 682:21 706:1  
 716:24 720:25  
 725:11 726:5  
 727:2,16 728:25  
 attorney 511:5  
 513:4 514:13  
 527:3 531:5

532:11 537:15,21  
 537:24 556:19  
 558:9 570:15,15  
 580:6 598:19  
 599:9,12,17 611:7  
 611:20 613:11  
 618:8 621:7  
 623:13 626:16  
 627:9 631:23  
 637:10 644:1,5,7  
 645:1,22 650:8  
 660:15 679:19,23  
 680:16 683:2  
 685:25 688:15  
 692:11 694:6  
 698:16 700:11  
 701:20 704:11  
 706:11 710:5  
 712:2 721:18,20  
 724:13 729:5  
 739:6  
**attorneys** 518:10  
 554:14 748:8  
**attorney's** 513:19  
 514:11,15 516:15  
 517:14 519:21  
 553:22,23 555:4  
 570:6,11 599:11  
 711:1  
**attract** 547:13  
**audience** 713:22  
 714:2,4  
**audio** 517:4,11,24  
 524:20,22 666:20  
 666:23  
**August** 580:21,22  
 581:8 601:6,11,12  
 601:14,16,25  
 607:21,22 609:3  
**author** 640:19  
**authorities** 555:3  
 556:24  
**authorized** 519:21  
 713:20  
**available** 525:4  
 531:16 536:11  
 561:20 631:25  
 634:12 654:13,15  
 654:25 697:10  
 788:19

**Ave** 743:8 748:10  
**Avenue** 567:25  
 568:2,18 569:20  
 572:7 574:12  
 584:17 689:21  
 695:8 698:21  
**average** 600:20  
**aviation** 529:7  
**avoid** 688:6  
**aware** 519:25 520:5  
 569:11,19,25  
 570:2 629:18,19  
 631:13 632:20  
 638:9 643:18,22  
 680:17,21 686:18  
 695:24 733:22  
 734:21,24 735:2  
 735:15,20,22,25  
 736:2 752:1,12  
 788:5,12  
**awareness** 643:19  
**awesome** 615:12  
**awful** 694:15  
**AZ** 511:24 719:25  
**a.m** 511:13 514:5  
 550:14 560:16

---

**B**


---

**B** 545:2,11  
**baby** 541:3,5  
**back** 514:3 518:1,3  
 518:12,15 519:3  
 524:24 530:16  
 536:11 538:21  
 539:5 542:3,15  
 544:1 552:8 565:6  
 574:5 580:11  
 587:3 590:14  
 593:18 599:14  
 603:20,20 606:11  
 606:13 610:13,14  
 610:15,24 611:1  
 612:23 613:4,6  
 614:12,13 634:12  
 635:7,10,13,24  
 645:11,19 646:15  
 647:22 650:10  
 653:19 659:10  
 660:6 662:9  
 665:13,14 666:21

667:8 669:21  
 671:16,21 672:4  
 674:11 675:17  
 677:6 679:3  
 683:24 690:8  
 691:25 692:20  
 693:1 718:6  
 722:23 724:23  
 728:16 731:9  
 733:21 740:19  
 743:15 744:1  
 745:2,5,6 748:4  
 749:19 751:10  
 752:23 753:8  
 764:9 774:18,19  
 781:15 783:10  
 784:19 785:13  
 787:9 788:8  
 792:13  
**background**  
 526:12 585:9  
 679:22 689:17  
**backs** 776:4  
**backup** 697:6  
**bad** 586:1 637:19  
 643:3  
**balance** 589:4,12  
**ballots** 601:8  
**bank** 537:10  
 542:18 547:1  
 549:10 550:3,9,10  
 552:4 555:6,9,12  
 555:13,14 562:2  
 573:1,4,6 577:1  
 578:9 579:10  
 624:16 648:21  
 651:25 695:20  
 696:7 699:17  
**banker** 526:24  
**banker's** 527:9  
**banks** 577:18  
**based** 515:15 609:6  
 623:5 639:12  
 642:22,24 650:14  
 653:14 656:16  
 666:11 674:19  
 685:8 709:2,24  
 710:20,21 711:3  
 712:11 716:12  
 725:16 728:20

729:13 737:5,15  
 744:9 766:25  
 767:3,6  
**basically** 515:9  
 516:24 518:25  
 519:23 542:6  
 652:25 683:16  
 684:11 687:5,6  
 690:24 693:10  
 700:24 734:1  
 742:5 743:5  
 752:20 753:21  
 758:10 766:24  
 770:23  
**basis** 576:2 588:6  
 606:20 640:14  
 719:13 752:3  
 763:23,25 764:1,2  
 772:5 781:23  
**Bates** 533:15  
 535:25 544:24  
 549:13 580:24  
 588:8 592:8  
 595:12 622:9  
 665:16 692:25  
**bear** 661:3  
**beat** 535:19 704:19  
**becoming** 611:19  
 679:23  
**bed** 610:11 611:3  
**began** 615:9  
**beginning** 518:2  
 529:23 598:7,8,11  
 609:15 612:19,21  
 614:19 615:12  
 619:23,23,25,25  
 622:22 736:15  
**Beginnings** 527:20  
**begins** 588:21  
**behalf** 513:4,11,17  
 514:16 523:25  
 527:14 605:9,9  
 618:14,20,21  
 621:7 627:9 634:4  
 644:18 713:1  
**believe** 514:23,25  
 519:14 520:25  
 532:11 533:2  
 537:9 545:16,20  
 546:15 550:18

554:1,14 556:7 557:11,13,16 561:8 565:25 567:11 568:25 570:19 571:25 574:9,23 579:7,17 590:15 597:12 598:16 601:14 603:7 608:18 610:13 611:5 614:17 616:8 617:24 621:21 623:7,7 625:20 626:16 627:21 628:9 630:9 633:21 636:1,12 637:6 641:12,14 642:1 643:11 644:4,9,15 646:7 656:25 657:10,18 661:2 662:1 663:4 678:16 695:4 697:18 701:25 710:1,4 734:9,11 734:12,13 737:16 738:19 740:3 741:14 744:12 747:12 782:20 <b>believed</b> 776:25 <b>bench</b> 731:18 <b>Benjamin</b> 513:19 514:12 <b>best</b> 565:11 587:13 692:21 740:14 794:13 <b>better</b> 522:19 587:16 588:1 632:8 634:21 704:1 <b>beyond</b> 644:16 <b>big</b> 526:20 544:17 548:15 601:9 603:12,13 697:17 697:17 698:17 765:24 <b>bigger</b> 565:14 674:5 <b>iggest</b> 698:18,19 <b>billing</b> 791:17 <b>Bistrow</b> 694:18	<b>bit</b> 526:11 528:11 528:20 538:18 542:3 547:2 552:21 553:17 560:22 568:6 569:23 576:20 591:5 597:6,16 604:17,18 634:20 662:15 671:12 672:5 744:17 758:4 778:21 <b>bite-size</b> 580:12 <b>BLA</b> 627:6,7,8,9 632:8 636:19,20 644:18 647:23 651:19,20 654:12 654:21 656:21 658:1,21 659:7 661:14,16 668:8 <b>black</b> 554:23 <b>BlackBerry</b> 640:15 788:6 <b>blah</b> 663:15,15,15 <b>blank</b> 638:23 <b>blanket</b> 769:13,24 <b>Bleeding</b> 639:25 <b>blessing</b> 668:18 <b>blindly</b> 660:21 <b>board</b> 576:8 680:1 680:5 <b>Boeing</b> 529:6 610:4 <b>boiled</b> 712:9 <b>bombarded</b> 755:18 <b>born</b> 601:11 609:2 <b>Bosco</b> 513:13 <b>boss</b> 586:12 <b>bothered</b> 613:24 <b>bottom</b> 560:12 649:5 660:4 665:16 684:14 696:2 765:19 768:5 <b>bought</b> 539:18 555:10 574:3 594:25 657:21 659:2 701:3 <b>Boulevard</b> 581:5 <b>bounced</b> 645:10,18 645:19 722:23 <b>Bowlby</b> 613:15	<b>boxes</b> 715:21 716:11 <b>boycott</b> 641:23 720:1 <b>branched</b> 667:4 <b>branches</b> 662:16 <b>break</b> 600:21 608:17 609:4 634:1,10,19 635:6 662:15 678:23 <b>breakfast</b> 610:12 <b>breaking</b> 609:7 757:23 <b>Brett</b> 531:5,9 538:20 539:7,10 539:12 542:21,25 614:7,10 618:12 630:12,13 631:9 632:3 654:14 <b>Brett's</b> 539:17 <b>Brian</b> 512:10 540:6 543:7 545:19 560:21 562:14 565:6 566:10,10 595:21 629:21,23 633:7 646:18,19 647:10,23 649:16 649:18 650:7,9,10 650:15,18 653:15 653:19,23 654:15 656:15 657:13,16 657:18,22,25 658:3 659:14 660:6,15,21,25 661:1,5,13 662:12 663:20 668:17 670:19 671:2,17 671:18,22 703:1 704:18 705:1,7 717:7 732:1 <b>bridge</b> 576:17 <b>brief</b> 586:25 742:5 746:2 747:12 751:8 <b>briefe</b> 780:18 <b>briefly</b> 573:19 644:15 673:16 679:22 683:11 689:19 <b>bring</b> 518:3,12,14	518:15 519:3 522:1 523:5 575:16 589:17,18 589:21 683:21 767:14 <b>brings</b> 526:25 <b>broad</b> 752:10 770:2 788:13 <b>broadcast</b> 708:2 <b>broader</b> 743:21,23 <b>broker</b> 526:23 572:10 692:5 694:14 696:25 <b>broker's</b> 527:9 <b>brother</b> 541:3,6 <b>brought</b> 562:14 653:24 682:21 694:6 733:3 734:7 736:6 755:22 <b>Bruner</b> 537:8 538:11 625:20,23 626:2,21 627:5,5 633:22 <b>bucks</b> 542:18 <b>Buddy</b> 513:8 514:21 <b>build</b> 578:5,7 <b>building</b> 562:2 569:10 575:20,24 576:1 655:4 690:5 690:14,14 694:1 <b>Bullhead</b> 603:20 <b>bunch</b> 660:4 <b>Bureau</b> 789:23 <b>buried</b> 653:18,23 <b>burner</b> 675:17 <b>Burt</b> 538:25 <b>business</b> 511:6 513:11 517:17 528:8 536:8 548:22 550:3 565:13 568:12 594:24 595:18 598:22 604:10 617:2,6,11 618:21 619:6,22 620:2,9 620:10,11 621:2 622:6 626:3,13,19 643:4,6 644:18 660:25 678:4	686:16 <b>businessperson</b> 563:17 <b>busy</b> 601:18,19,21 601:22 700:5 787:17 <b>buy</b> 555:10 579:17 589:11 647:24 650:19 652:4 689:23,25 690:14 693:11,25 <b>buyer</b> 570:2 571:3 693:18 <b>buyer's</b> 584:13 <b>buying</b> 574:21 575:21 576:3 578:24 695:9
<b>C</b>				
<b>C</b> 513:1 514:1 659:13 794:6,6 <b>Cactus</b> 511:23 <b>calendar</b> 634:16 <b>call</b> 519:24 522:3 525:14 536:15,18 541:10 547:10,21 553:6 571:19 578:9 583:2 585:25 586:15,19 593:23,24 595:4 606:22 608:5 609:5 614:7,8,10 616:6 617:22 627:6 635:22 641:24 665:11 666:5 668:25 669:12,14,15,18 671:8 672:12 692:12 697:17,18 698:4,6,23,23 699:1,4,5,7,12,16 720:2 730:23 731:11 736:22 737:3,6,11,11,19 737:20,22,22 738:4,11,21,24 739:13,19 740:19 740:25 741:3,5,6 741:13,15,17,22 741:23,23 742:20				

743:15 747:12,14 751:9,22 753:11 758:21,24 759:11 759:17,18 769:23 770:5,8 773:10,13 773:14,16,21,22 773:24,25 774:1 774:17,18,22 775:12 776:13 778:25 779:6,9,10 779:11,13 781:15 781:15,16,18,19 781:19 782:25 783:2,10,12,12,15 783:20,21,22 784:4,4,11,12,17 784:19,23 788:11 789:11 791:18,22 791:25 <b>called</b> 526:5 527:19 527:20 531:9,10 536:13,19 541:2 541:12 543:20,24 543:25 546:14,14 546:15 547:17 548:6,11,20,25 573:6 580:5 588:5 603:1 614:6,6,11 616:18,21 618:10 621:20 623:21 628:16 650:10 653:19 663:24 665:21,22 667:19 669:15,16,17,21 672:9,10,15,22 679:13 692:1 697:5,9,11 705:14 732:2 737:18 740:16 742:1 743:4 744:12 745:2,3,5 751:10 765:12 773:23 774:19 779:17 781:17,21 782:15 782:20 783:5,7,8 783:9,10,15,16,18 784:22,24 788:8 <b>alling</b> 536:20,22 641:22 657:4 699:20,20 719:25	723:10,16 742:1,4 745:6 769:4 779:14,14,15 782:14,19 <b>calls</b> 543:23 566:3 567:14 576:11 593:20 631:4 692:19 697:14,21 697:24 698:1 699:18,21 702:22 717:21 718:4 724:4,5,6,8 725:3 750:11 752:10 760:17 770:1 775:9 785:4 786:9 786:17 791:8,15 <b>Camelback</b> 513:9 513:13 <b>campaign</b> 529:14 529:21 531:23 532:20 537:20 538:17 540:9 541:17,25 542:13 546:22 551:9,14 551:14 552:19 556:21 559:4,5,10 566:18,24 572:16 573:16 585:22 596:10,11,16 597:8 598:6,9,9 598:23 599:16,23 600:2,5,9,15 601:13,19,22,23 602:2,3,6,11,13 602:15 603:17 605:12,20 606:2,9 606:21,24,25 607:20 608:17,22 611:7,23,25 612:1 612:3,4 613:17 614:25 615:9 618:14 619:6 621:12 622:1,24 623:3 625:13 627:20,23 636:15 637:8,13 641:13 641:13 642:13 647:15,16,20 652:24 656:16 660:14,18 661:17	670:3 673:21 678:3 680:22,23 681:1 682:9,12,12 682:16 683:23,25 684:10,16,17,21 685:21 686:3 687:4,5,10,13,13 687:16 688:5 689:1,5,6,12 700:2,18 701:12 701:22 703:3 704:7 705:21,22 706:8,20,20 707:5 708:1,11,14,14 710:1,14,16 711:19 713:10 715:18 721:2 724:5,7 725:13 727:11 728:4 729:1 <b>campaigning</b> 613:10 <b>campaigns</b> 535:18 652:22 656:25 684:4,7 721:22,24 722:1,8 <b>cancel</b> 702:19 <b>candid</b> 586:13 <b>candidate</b> 531:4 532:20 602:3 660:18 713:2,19 716:2 727:11 <b>candidates</b> 644:6,6 644:8 712:18 721:25 722:11 <b>candidate's</b> 713:20 <b>capacity</b> 711:11 <b>capital</b> 527:21 568:11,13 <b>Capitol</b> 724:16 <b>caption</b> 749:24 <b>capture</b> 747:25 <b>car</b> 555:10,10 562:14 750:12 757:6 760:23,25 761:12 779:20,21 781:7,9,11 783:24 <b>cards</b> 603:1,10,11 <b>care</b> 539:22 604:24 647:15,18 651:11	724:10 730:7 732:22 756:16 <b>cared</b> 564:24 <b>career</b> 529:7 681:22 755:2 <b>careful</b> 660:12,16 660:17 727:22 728:1 <b>carefully</b> 682:20 710:18 728:1 <b>carryback</b> 578:25 <b>case</b> 511:4 518:4,20 518:22 521:1 533:24 544:18 554:5 682:1,4 684:5 692:11 703:24 716:8,9,15 717:2,6 734:25 750:2,7 758:14 762:16 765:11,16 773:6 789:17 790:5,8,21 792:16 <b>cases</b> 791:2 <b>Casey</b> 644:2,3,4,9 644:12,13,14 645:6 646:11 649:12 652:11 654:6 721:15,17 723:4,4 <b>case-by-case</b> 772:5 <b>cash</b> 589:22,23,24 589:25 590:1,2,12 <b>cast</b> 515:19 <b>catch</b> 628:5 653:17 <b>caught</b> 628:3 782:18 <b>caused</b> 614:6 633:19 695:3 <b>cc</b> 588:17 <b>celebrations</b> 529:10 <b>cell</b> 744:8,12 782:21 783:16 784:16 <b>center</b> 689:21 690:12 693:11 <b>certain</b> 542:7 546:23 578:5 587:18,18,25 644:8 700:9 713:4	713:4 792:15 <b>certainly</b> 519:6 523:25 524:11 675:5 711:11 725:15 727:3 <b>certainty</b> 709:1 <b>certifications</b> 527:5 <b>certified</b> 511:25 527:7 608:3 <b>certify</b> 794:8 <b>cetera</b> 522:8 641:23 720:1 768:16 <b>CFRs</b> 681:6 <b>chain</b> 637:23,25 641:11 645:5 655:25 658:14 671:13 717:6 728:18,22 <b>chains</b> 662:15 716:22,25 <b>chairman</b> 527:12 539:10 680:10 <b>challenged</b> 773:6 <b>chance</b> 519:1 638:6 <b>Chandler</b> 562:8 <b>change</b> 520:22 575:7 725:15 <b>changed</b> 527:22 <b>changes</b> 663:11 <b>channeling</b> 662:25 <b>Chapman</b> 511:22 511:24 794:7,17 <b>character</b> 641:25 720:3 <b>characterization</b> 604:20 613:25 620:19 642:16 <b>characterize</b> 674:3 674:17 <b>charge</b> 614:8 <b>charges</b> 680:17 <b>Chase</b> 572:25 573:4,6 <b>chatted</b> 595:4 <b>check</b> 530:3 534:22 535:25 546:6 548:2,10,12,23 552:15,15,18,18 578:12 623:16,18
---	---	--	---	---

624:13,25 625:3,3 625:7,10,10 786:4 787:3 788:23 <b>checkbook</b> 730:12 <b>checked</b> 585:20 785:6 <b>checking</b> 588:4 <b>checks</b> 537:7 <b>chief</b> 694:19,19 <b>child</b> 530:24 613:21 701:23 <b>children</b> 680:3 <b>choice</b> 630:15 <b>choose</b> 538:19 <b>chose</b> 538:16 545:5 <b>Chris</b> 692:7 <b>Christina</b> 550:11 651:2 <b>Christine</b> 540:3,15 540:19,21 549:20 552:14 553:9 633:23 636:13 650:3 <b>Chuck</b> 534:15 540:25 574:2,4 617:20,24,25 618:13,20 619:3 621:19 633:22 678:11 707:8,9,11 <b>chuckle</b> 709:19 <b>circumstances</b> 534:18 704:2 <b>citing</b> 521:5 <b>citizen</b> 775:6 <b>city</b> 568:4 569:10 581:5 592:18,23 603:20 695:10 697:2 743:9 748:11 <b>civil</b> 726:20 <b>claim</b> 763:10 774:13,13 777:9 <b>claiming</b> 765:16 <b>claims</b> 734:7,10 <b>clarification</b> 713:12 <b>clarify</b> 636:10 <b>clarity</b> 713:17 <b>class</b> 606:6 <b>clear</b> 569:1 576:15	578:11 677:5 689:2 711:25 756:19 <b>clearly</b> 659:12 716:12 737:1 <b>client</b> 523:25 543:18,20 544:2,7 667:14 668:14 <b>clients</b> 526:18,20 <b>clock</b> 745:13 <b>close</b> 516:7 569:15 573:25 576:3 578:4 581:20 582:4 589:2 590:2 590:12 594:14 607:23 608:5,11 634:13 694:24 698:17 <b>closed</b> 528:22 569:13,16 574:6 579:10,11 581:23 666:12 <b>closing</b> 567:21 575:16,18,19 581:7,10,11,14 582:7 589:18,19 589:21 594:5,7,8 675:25 691:1 695:16 696:11,13 793:2 <b>closings</b> 521:2,3 <b>Coast</b> 787:8,9 <b>code</b> 687:24 711:2 <b>Coleman</b> 538:25 539:9 <b>collect</b> 534:19 620:24 621:5,6 <b>collected</b> 621:11 773:3 <b>collecting</b> 629:20 <b>collective</b> 584:10 <b>collectively</b> 565:17 <b>college</b> 526:13,14 535:4 538:1 604:8 <b>Collins</b> 535:13 536:20 707:16 <b>colon</b> 638:13 <b>color</b> 533:8 <b>Columbia</b> 640:4 <b>column</b> 592:24	<b>combine</b> 670:13,17 789:21 <b>combined</b> 658:15 <b>come</b> 517:14 547:5 548:5 552:9 560:20 572:3 575:22 583:7 610:13 614:12 622:2 634:12 635:7,24 695:12 695:19,24 705:1 716:22 722:11 732:24 746:9,15 752:23 753:8,16 767:23 768:11,24 769:6,9,17 786:15 788:20,25 789:1 791:20 <b>comes</b> 519:7 550:25,25 576:20 578:1 682:6 726:15 784:17 791:18,18 <b>comfortable</b> 656:8 659:11 701:9 787:25 <b>coming</b> 524:24 564:20 609:8 621:24 623:23 634:14 647:25 651:5,23 696:11 705:2 725:16 739:10 751:13 791:25 <b>comma</b> 550:12 <b>comment</b> 520:6 634:18 668:12 753:20 <b>commented</b> 646:15 <b>commenting</b> 643:2 <b>comments</b> 676:17 676:20,22 677:15 709:20 754:11 <b>commercial</b> 528:23 528:24 529:1 661:8 <b>commingling</b> 670:25 <b>commissions</b> 585:5 <b>committed</b> 599:11	604:1 651:7 653:10 <b>committee</b> 511:5 513:4 527:12 534:8 542:17 604:19 613:9,13 615:17 619:3 626:3 627:24 631:4 636:18 640:6,7 642:14 660:14,17 680:11 680:12 710:2 712:23 713:20,21 719:9 722:4 725:24 727:1,12 727:23 728:2,5 <b>committeeman</b> 539:14 643:14 653:2 <b>committeemen</b> 604:15 606:3 <b>committees</b> 547:12 603:5 713:3,3 <b>committing</b> 755:19 <b>communicate</b> 705:11 721:23 <b>communicating</b> 684:19,23 748:9 748:13 <b>communication</b> 647:14 681:15 712:14 713:23,24 789:24 <b>communications</b> 647:15 714:4 <b>community</b> 527:1 542:22 605:19 <b>company</b> 581:4 591:11 613:14 <b>comparable</b> 529:17 <b>compare</b> 515:25 <b>competing</b> 600:10 <b>complaint</b> 682:17 709:25 <b>complete</b> 516:25 571:23 589:21 655:2 656:16 <b>completed</b> 610:4 676:15 <b>completely</b> 524:24	537:25 676:19 <b>completing</b> 529:7,9 <b>compliance</b> 672:11 <b>complicated</b> 580:7 <b>complications</b> 575:10 <b>comport</b> 709:5 <b>compose</b> 664:18 665:5,8 <b>concede</b> 608:15 <b>concept</b> 716:10 <b>concepts</b> 595:19 <b>concern</b> 590:20 675:11 695:4 <b>concerned</b> 532:17 557:1 566:20 688:4 698:13 703:18 726:19,20 789:4 <b>conclude</b> 521:12 523:24 793:8 <b>concluded</b> 521:16 793:10 <b>conclusion</b> 521:1 656:2,3 <b>conduct</b> 524:10 617:10 687:24 713:19 738:16 <b>conducted</b> 734:22 <b>conducting</b> 643:7 738:17 757:19 772:7 <b>confer</b> 634:10 <b>conference</b> 519:14 519:22,24 739:22 739:25 740:8,9,11 742:20 753:22 <b>conferred</b> 740:14 <b>confined</b> 762:16 <b>confirm</b> 785:9 <b>confirmed</b> 662:1 <b>confirming</b> 645:7 <b>confused</b> 778:21 <b>connected</b> 715:10 <b>connection</b> 535:15 545:10,11 571:18 643:10 <b>Conquistador</b> 526:19 <b>conscious</b> 695:15
---	--	---	---	--

770:1	558:22 561:15	550:23,24 552:1	761:3,6,10,14,19	588:15
<b>consensus</b> 635:16	577:18 617:9,24	554:3 622:25	763:17 770:10,16	<b>copies</b> 549:17
<b>consent</b> 772:2	618:4 621:19	623:25 624:18,22	774:11 778:22	732:12
<b>consented</b> 746:4	630:14,16,17	625:15 626:7,8,9	779:23 780:1,4,10	<b>copy</b> 515:13 517:10
<b>consequence</b>	631:9,14 632:6	626:10 636:11,14	780:15,18,20,25	517:24 558:10
568:21	633:23 748:19,20	637:4 681:20	781:3,6 788:14	570:9 662:17
<b>consequences</b>	<b>contacting</b> 667:14	682:24 710:3	<b>conversations</b>	671:13 688:2,8
568:10	<b>contacts</b> 604:5,6,9	715:14 723:20	553:13 558:4	732:8 733:20
<b>consider</b> 521:7	604:10,11 633:10	728:20	582:18 583:4	787:14
563:11,24 566:16	633:11 652:7	<b>contributions</b>	596:15 618:12	<b>core</b> 607:11,17,19
634:5 648:7 686:6	659:5,15 745:20	532:24 541:15	656:20 674:21	673:23 692:11
686:10 691:12	<b>contain</b> 661:5	555:18,21,21	685:3 694:20	<b>corner</b> 562:3
727:25	727:18	559:19 678:5	698:12 708:19,20	689:21 751:12
<b>consideration</b>	<b>contained</b> 661:6	681:13,18 683:3	708:21 734:9	<b>Corporation</b> 537:9
634:2	726:3,10 759:24	684:12,22 685:1	735:25 736:2	633:21
<b>considered</b> 607:1	794:9	705:12 707:8	745:9 747:6	<b>correct</b> 534:8,9
684:12	<b>contains</b> 653:5	710:8 712:10,13	748:15 751:25	538:12 542:9
<b>consistent</b> 534:16	<b>contempt</b> 519:23	715:5,6,13,17,21	752:5 759:22,24	543:5 548:17
725:2 741:15	756:15	716:1 728:7	760:2,4,7 761:8	550:15 553:25
<b>constitute</b> 794:11	<b>content</b> 532:21	<b>contributor</b> 566:18	761:18 765:18	556:3,18 557:9
<b>constitutes</b> 582:5	663:13 713:22	659:15	774:7 781:24	559:25 560:4
<b>construct</b> 647:24	714:1,3,9,9,16	<b>contributors</b>	789:22	563:22 565:7
<b>consultant</b> 639:4,8	714:22 737:19	556:14 559:21	<b>convey</b> 714:14	566:9 569:14
639:9 641:1 643:1	738:23	682:10	718:17 720:20	578:13 581:8,12
648:2,5 652:19	<b>context</b> 545:13	<b>control</b> 788:25	723:8	582:2 583:8 587:9
657:18 658:15,21	642:4	789:16	<b>conveying</b> 702:23	588:16 597:9
703:17 705:15	<b>contingent</b> 762:18	<b>controlling</b> 772:7	705:14	598:20 605:4,16
721:6	<b>continuation</b>	<b>convenient</b> 562:6,9	<b>convicted</b> 613:21	606:12 611:21,22
<b>consultants</b> 630:11	751:22	<b>conversation</b> 517:7	<b>cooking</b> 693:6	616:1,15,17 619:8
647:17	<b>continue</b> 738:20	517:9 532:6,7,13	<b>cooperate</b> 521:23	619:16 620:5,6
<b>consulted</b> 648:8	<b>continues</b> 769:5	532:14 536:8	<b>cooperative</b> 522:4	621:8 622:7 623:9
686:18	<b>continuing</b> 645:5	540:11 542:4	<b>coordinate</b> 557:2	623:10 624:20
<b>consulting</b> 643:21	<b>contract</b> 527:22	558:6,18,19 563:1	596:10 685:15	625:5 627:11
648:7 752:2	581:3,23,25	583:3 612:3,6	689:4,10 707:3	628:25 636:15,17
788:12	691:24 692:5	613:7 618:13,20	708:17	637:11,14 638:1
<b>contact</b> 532:9,20	<b>contracted</b> 649:19	621:23 626:15,17	<b>coordinated</b> 596:16	639:1 643:5
534:3,4 536:22	<b>contradicts</b> 776:3	626:18 670:1	680:22 689:7	652:23 658:23
541:7 546:12	<b>contribute</b> 547:18	673:2 674:10,21	<b>coordinating</b> 556:3	661:17,20 669:10
561:2,6 570:25	614:1 621:25	704:21 716:12	556:6 597:11	669:11 671:9,10
571:5 616:23	637:8 706:14	727:20 735:5,7,13	681:11 708:13	672:6 674:12
617:25 629:21,23	707:1 710:15	735:16,19,20	<b>coordination</b> 545:3	676:1 678:12,13
630:11 644:6,11	712:21,22 713:2,6	737:5 738:5	627:23 681:2,8	683:5,6 685:6
660:17 738:25	<b>contributed</b> 566:5	739:14,17 740:13	682:6,25 683:3	688:18 692:23
744:1 747:21,23	<b>contributing</b>	742:4,6,8,8,10,15	684:13 685:9,13	694:2 695:1
748:2,5 749:2,8	565:18 566:9	742:18,21 743:3	705:8 708:12,25	696:14 697:15,16
786:13	<b>contribution</b>	743:18,25 745:13	709:5 710:7	698:14 703:4,10
<b>contacted</b> 531:5,22	534:13,14 536:6	745:15,23 746:4	711:19 712:15	706:25 708:3,5,8
532:13 535:17,23	537:5,6 540:2	746:20,22,25	745:8	708:15,16 709:7
536:12 539:5	543:9 546:1,3,16	747:1 751:9 752:6	<b>coordinators</b> 602:5	710:9 712:5,24
547:6 552:14,17	547:5,23 548:5	752:7 760:21	<b>copied</b> 549:20	713:5 716:22,23

725:19,20,22	597:25 598:1	578:6 605:12	583:2,5,9 588:11	687:11,18 696:16
727:1,12,23 729:3	599:11 602:4,5	681:15 714:12	598:10 599:18	696:16,23 758:12
729:16,18,20,24	603:6,8 604:23	<b>creates</b> 714:23	609:16 616:24	758:14,18 761:4
732:20 733:24	607:4,6 634:5	<b>creating</b> 560:6	626:25 628:21	761:15,17 765:3
734:18 740:6	637:24 680:18	<b>creation</b> 598:22	638:12 644:24	766:19,22,25
744:18 745:18	692:10 694:5	<b>creativity</b> 714:13	646:5 661:9	769:19
747:4,8 748:14	711:1	<b>credibility</b> 543:4	675:25 678:6,7	<b>DC</b> 640:1,5 642:15
752:20 758:19,20	<b>County's</b> 554:11	633:15 641:24	693:2 696:11,13	719:8,11
761:1,2 763:1,4	588:8	642:17	701:15,17,17	<b>deactivated</b> 619:7
763:15 764:1,18	<b>couple</b> 515:1	<b>credit</b> 544:17	758:25 762:11	619:15
765:8,25 768:18	529:20 552:16	557:15 577:15	763:8,9,10,13,16	<b>deadline</b> 670:21,21
769:2 774:20	608:14 609:12	579:15,22 589:22	777:5	<b>deadlines</b> 792:16
776:10,18 777:10	626:21 645:23	659:6	<b>dated</b> 553:25	<b>deal</b> 524:13 567:21
777:13 778:3	662:13 668:2	<b>creditability</b> 720:2	628:17 794:14	585:3 733:2 771:9
779:2,4,8,12,25	676:25 677:8,9,21	<b>criminal</b> 726:18,19	<b>dates</b> 531:10 613:3	778:7
780:3,11,24	734:11,14,15	<b>cross</b> 596:20	627:17 634:11	<b>dealing</b> 584:14
781:10 782:1,5,8	748:3 760:13	635:24 673:20	692:15,16 763:7	681:22 714:22,22
782:11 783:1,4	784:18	709:10 752:15	<b>day</b> 516:9,25 519:2	745:1
784:3,13,16,25	<b>course</b> 660:9	<b>crossed</b> 515:25	519:15 521:11,15	<b>dealings</b> 553:8
785:17 788:3	719:17 720:9	<b>cross-examination</b>	522:7 523:22	<b>deals</b> 515:4 712:12
791:5 792:1	750:4	512:5,8,12,12	524:1 534:5	765:19,20 768:6,8
<b>corrected</b> 555:24	<b>court</b> 515:6 519:13	517:2 518:10	550:25 551:1	<b>dealt</b> 670:14,15,19
<b>correction</b> 628:7	519:23 521:23	597:1 635:20	560:25 564:11	<b>debate</b> 637:18
628:12	532:10 634:25	709:13 730:23	566:3 569:16,16	<b>debating</b> 590:22
<b>orrectly</b> 522:11	680:7,7 726:18	752:17 778:19	581:18 587:22	<b>debt</b> 578:6 579:18
607:22 630:24	755:2,17 786:1	792:20	589:6 590:6 592:1	<b>Debus</b> 512:12
712:25 717:23	787:22 789:7	<b>CRS</b> 527:7	592:5 593:21,24	513:15,15 514:22
<b>costs</b> 695:16	794:7	<b>crying</b> 572:24	594:2,8,22 595:5	514:22 518:1,17
<b>counsel</b> 515:7	<b>courtroom</b> 712:8	<b>curious</b> 611:18	600:19 603:18	519:9,11,13
516:17 520:25	753:24 754:21	<b>currently</b> 568:5	616:19 617:24	520:10,13,15,18
522:9 532:5,8	773:7	628:3 667:8 787:7	618:16 628:23	521:25 522:12,19
616:14 617:9,11	<b>courtyard</b> 746:11	<b>cut</b> 671:16,23,24	634:23 635:5	522:21 523:5,8
628:1 688:13	746:13	690:8 724:23	637:20 638:3	732:14,18,21
732:12	<b>Court's</b> 673:10		650:25 651:1,10	733:4,8,12 738:7
<b>counsels</b> 634:25	<b>cover</b> 576:21	<b>D</b>	652:1,16 653:7	739:3,8 752:18
<b>count</b> 607:23	658:17 709:17	<b>D</b> 512:1 513:5	661:24 664:13	754:14,23 756:3,4
<b>counted</b> 755:5	749:21 750:6	514:1	666:10,13 667:14	756:6,20,24
<b>counter</b> 518:12	762:23 789:22	<b>dad</b> 564:12	667:22,24 675:2,2	757:10,21 758:15
<b>counties</b> 529:15	790:12,16,22	<b>dangerous</b> 599:9	676:15 696:3	759:12,17 762:8
597:18 598:3,4	<b>covered</b> 600:11	<b>dangers</b> 627:23	697:22 699:3,18	762:14,19,20
605:3	682:25 709:23	<b>dash</b> 638:13	700:1 738:6 739:2	764:8 766:1 767:3
<b>counting</b> 662:4	710:7 780:19	<b>data</b> 551:15 584:7	741:25 742:9,16	767:6,14,16,19
<b>country</b> 637:19	<b>coworkers</b> 591:2	649:2,5 652:18,18	742:18,20 763:12	772:13 776:12
<b>county</b> 513:19	<b>CPA</b> 568:22	653:6,16 660:5	779:6 782:10	778:14 788:15
514:11,13,15	<b>CR</b> 794:17	<b>date</b> 531:10,14	783:17 794:14	792:24
516:15 517:13	<b>cracks</b> 787:18	536:4 546:23,25	<b>days</b> 533:24 552:16	<b>December</b> 619:18
519:21 537:21	<b>crash</b> 737:16	549:19,21,22	569:17,17 572:23	<b>decided</b> 530:13
553:22,23 555:4	<b>create</b> 532:17	551:25 560:15	588:1 608:3,14	614:12,15 617:2
570:5,6,11 592:8	588:1 620:23	581:7,10,11,14,16	626:21 648:14	676:8 752:9
597:14,15,20,23	<b>created</b> 560:5	581:25 582:3,7	651:6,14,16,17,23	764:25

<b>decipher</b> 657:2	<b>described</b> 648:2 657:1,19 692:11 699:6 707:17,22 743:5	<b>diploma</b> 680:4	<b>disrespect</b> 755:16	<b>domain</b> 520:3
<b>decision</b> 614:5 770:2	<b>desires</b> 681:8	<b>direct</b> 512:4,5,8,9 512:11 526:9 559:20 596:7 625:19 636:12 679:17 694:6 707:13 730:3 732:6	<b>disseminate</b> 689:11	<b>Domino's</b> 526:19
<b>decisions</b> 713:21	<b>deserve</b> 524:15	<b>directed</b> 604:24 642:11 721:1 737:6,8	<b>distinct</b> 585:22	<b>donated</b> 706:7
<b>dedicated</b> 686:7	<b>desire</b> 598:19 611:8	<b>direction</b> 545:4 566:6,10,12 656:20 668:10	<b>distinction</b> 681:11 682:22 684:18 715:12	<b>donations</b> 706:9
<b>deem</b> 634:7	<b>desk</b> 667:20	<b>director</b> 527:2 539:9 542:25	<b>distinctly</b> 591:13	<b>donors</b> 534:7
<b>defeat</b> 598:19	<b>desperate</b> 640:13 719:12	<b>disagree</b> 594:12 754:8,9	<b>distributed</b> 681:16	<b>doubt</b> 722:2
<b>defeated</b> 611:8	<b>detail</b> 528:20 568:7 681:6 699:10 747:13,17 749:23 780:19	<b>discarded</b> 691:5	<b>district</b> 539:16 640:3 680:2	<b>draft</b> 766:1
<b>defend</b> 756:13	<b>details</b> 576:4 580:3 580:8 770:7 774:22 788:9	<b>disclose</b> 733:5	<b>Docket</b> 514:4 587:4 635:11 679:4 731:10	<b>drafted</b> 581:3 583:10 766:2 787:19
<b>defense</b> 518:22	<b>Detherage</b> 602:13 606:19,20	<b>disclosed</b> 515:8,11 515:18 516:19 517:5 520:21 524:8 732:14,18 734:25	<b>document</b> 581:1 588:12 696:12 700:21 711:20,22 732:11 749:17,22 749:24 750:19,24 758:5 759:17 790:5	<b>draw</b> 615:1 627:25 656:3
<b>deferred</b> 552:22	<b>developed</b> 585:14 634:21	<b>disclosing</b> 733:6	<b>documentation</b> 691:5	<b>drew</b> 595:17
<b>definitely</b> 592:3 648:22 706:19	<b>device</b> 568:10,14	<b>discover</b> 629:9	<b>documented</b> 760:9	<b>drive</b> 511:23 591:15 603:12
<b>definition</b> 681:22 710:23 713:15	<b>Dial</b> 539:18,20	<b>discrepancy</b> 656:22	<b>documents</b> 587:18 587:19 621:3 666:11 674:19 692:8 709:18 760:18	<b>driving</b> 737:17 750:12 757:20,24 758:1 781:11 783:19
<b>definitive</b> 612:20 616:24	<b>diaries</b> 687:19	<b>discuss</b> 567:2,5 626:2 672:24 687:23 754:14,21 755:13	<b>doing</b> 566:20 568:1 580:12,13 585:21 585:23 587:24 602:8,10,17,20 604:16 615:25 618:11 619:2 620:17,20 622:2 627:1 641:14 643:4 656:13 667:8 668:5,10,11 668:19 675:13 685:4 688:5 704:3 712:18 716:5 717:14,18 718:4 718:14 721:24 725:14 729:21 762:3 781:13	<b>drop</b> 520:20 703:19
<b>definitively</b> 583:2 674:10	<b>diary</b> 688:23	<b>discussed</b> 559:3 578:21 596:15 764:23	<b>document</b> 581:1 588:12 696:12 700:21 711:20,22 732:11 749:17,22 749:24 750:19,24 758:5 759:17 790:5	<b>dropped</b> 701:18 717:7
<b>degrees</b> 527:4	<b>Diaz</b> 534:15,21 535:6,7,8,9,15,16 540:25 617:20,24 617:25 618:13,20 619:3 621:19 623:17,18,21 624:5 633:22 678:11 707:8,9,11	<b>discussing</b> 605:18 664:24 689:1 743:20 765:4	<b>documented</b> 760:9	<b>drove</b> 603:3
<b>delay</b> 524:12	<b>die</b> 737:16 757:19	<b>discussion</b> 562:24 578:23 591:18 650:12 708:24 713:25 769:25 788:10 792:12	<b>documents</b> 587:18 587:19 621:3 666:11 674:19 692:8 709:18 760:18	<b>drown</b> 664:15
<b>deliver</b> 603:15	<b>died</b> 691:22	<b>discussions</b> 583:16	<b>du</b> 554:21	<b>Ducharme</b> 639:1,3 643:9,12 702:3 703:1,12,12 705:1 705:19 717:7,9,17 718:9 725:19,21 726:4 729:8 730:7 730:10
<b>delivered</b> 603:3,14	<b>difference</b> 550:11 579:4 602:11 654:20	<b>disk</b> 517:2	<b>due</b> 575:24 601:8 792:21 793:2,4	<b>du</b> 554:21
<b>delivering</b> 603:4,10 603:22	<b>different</b> 524:9 551:15 560:2,3,7 630:11 653:13 656:9 657:6,7 659:5 663:1 670:8 673:22 690:25 722:25 761:8 791:8,24	<b>dispersions</b> 515:19	<b>duly</b> 525:21 526:5 679:5,13	<b>du</b> 554:21
<b>delivery</b> 610:8	<b>difficult</b> 744:24	<b>dispute</b> 657:17	<b>dumb</b> 716:20	<b>Ducharme</b> 639:1,3 643:9,12 702:3 703:1,12,12 705:1 705:19 717:7,9,17 718:9 725:19,21 726:4 729:8 730:7 730:10
<b>demarcation</b> 615:1 615:3	<b>diminish</b> 659:3		<b>duty</b> 787:7	<b>Ducharme</b> 639:1,3 643:9,12 702:3 703:1,12,12 705:1 705:19 717:7,9,17 718:9 725:19,21 726:4 729:8 730:7 730:10
<b>Democrat</b> 538:4	<b>DIOG</b> 772:17,17		<b>D.C</b> 640:4 719:10	<b>Ducharme</b> 639:1,3 643:9,12 702:3 703:1,12,12 705:1 705:19 717:7,9,17 718:9 725:19,21 726:4 729:8 730:7 730:10
<b>Democratic</b> 640:6 640:7 641:6 642:14 683:24 701:20 719:9				<b>due</b> 575:24 601:8 792:21 793:2,4
<b>Democrats</b> 639:24 719:7				<b>duly</b> 525:21 526:5 679:5,13
<b>Dems</b> 639:23 719:6				<b>dumb</b> 716:20
<b>Dennis</b> 548:6,7				<b>duty</b> 787:7
<b>denying</b> 759:18				<b>D.C</b> 640:4 719:10
<b>Department</b> 586:5				
<b>dependent</b> 690:10				
<b>depends</b> 521:22				
<b>deployed</b> 573:23				
<b>deposited</b> 624:24 625:3 668:15				
<b>deputy</b> 514:12 694:19,19				
<b>Derrick</b> 513:6				
<b>describe</b> 528:20 564:19 591:4 704:2 737:19				

## E

**E** 512:1,1 513:1,1,9  
514:1,1 794:6,6  
**earlier** 548:20  
591:22 592:11  
611:6 619:6 620:3  
623:20 667:24  
672:18 704:5  
733:23 734:2  
777:7

<b>early</b> 599:21,24 651:25 709:23	699:4,5	<b>engine</b> 610:8	<b>estate</b> 526:21,22,23 526:23 527:5,7,8 527:9,11 528:9,9 533:25 567:20 568:16 573:17 574:6,10 575:2 580:1 581:20 594:5,7 604:10 666:12,14 670:15 670:24 673:7 674:20 675:7,21 675:24 686:16,19 686:21 687:1 689:16 690:25 691:12,15,21,24 692:4,7 693:1 748:18,18,22 749:10 768:8 771:9	564:2 582:13 583:13 604:15 613:19 621:17 629:2,13,14,15 652:19 660:10 669:24 681:8 683:9 684:14 686:24 790:23 791:1	
<b>case</b> 738:2	<b>either</b> 522:18 530:22 598:16 610:14 613:16 635:24 670:17 675:14 682:9 721:17 722:14 729:9 748:25 774:21 793:3	<b>enhance</b> 715:18	670:24 673:7 674:20 675:7,21 675:24 686:16,19 686:21 687:1 689:16 690:25 691:12,15,21,24 692:4,7 693:1 748:18,18,22 749:10 768:8 771:9	<b>examination</b> 512:4 512:5,6,8,9,9,11 526:9 596:7 625:19 636:12 673:18 679:17 694:6 728:14 730:3 732:6	
<b>East</b> 511:23 513:6 513:13,16,20 787:8,9	<b>El</b> 526:19	<b>enlisted</b> 693:14	<b>entirely</b> 524:9	<b>examined</b> 526:6 679:14 732:3	
<b>ED</b> 548:16	<b>elaborate</b> 542:4	<b>ensued</b> 587:2 635:9 679:2 731:8 792:12	<b>entity</b> 527:25 542:11 554:18	<b>example</b> 683:16 712:19	
<b>edification</b> 635:1	<b>elected</b> 535:23 599:12 603:7 605:2 680:9,13,16 716:3	<b>entered</b> 517:15 546:24 790:25 791:5	<b>entrances</b> 746:12 746:14	<b>examples</b> 712:19	
<b>edited</b> 663:17	<b>election</b> 528:12 529:11,12 530:5 532:12 541:13 553:14 569:18 572:19 574:1,7 594:22 597:25 598:5 601:7,10,14 607:18,25 608:2,4 608:11,18 651:13 687:24 688:17 689:3 702:7 703:15 706:3 721:5	<b>entering</b> 587:23	<b>entry</b> 533:22 550:5 571:8 688:23	<b>exchange</b> 550:13 568:1,7,8 569:4 575:6,9 746:2	
<b>edits</b> 663:5 677:21	<b>Electric</b> 610:8	<b>enterprise</b> 722:17	<b>envelope</b> 750:1,2 790:25	<b>exchanged</b> 541:7	
<b>education</b> 527:2 586:5	<b>electronic</b> 789:24 790:15	<b>entertaining</b> 756:4	<b>environmental</b> 584:14 695:16	<b>exchanges</b> 785:9	
<b>effect</b> 726:7 727:4,6	<b>electronically</b> 762:10	<b>entire</b> 535:2 683:1 703:4 709:3 711:5 726:17 757:7 790:21	<b>equally</b> 545:19	<b>exclusion</b> 754:12 754:18 755:7,9 756:7,12	
<b>effective</b> 648:6 685:22 686:5	<b>Ellman</b> 547:22 548:3,11	<b>entering</b> 587:23	<b>equipped</b> 585:10	<b>exclusive</b> 715:21	
<b>efficient</b> 603:11	<b>Ellman's</b> 548:2,11	<b>enterprise</b> 722:17	<b>equity</b> 568:2,9,15 576:16,17 579:1,8 589:3	<b>excuse</b> 618:23 619:6 644:14 645:24 658:1 661:9 662:18 663:21 664:6 674:14 718:6 728:12 738:7 739:3 746:24	
<b>effort</b> 598:18 634:17	<b>emphasize</b> 712:13	<b>entirely</b> 524:9	<b>error</b> 555:23 581:25 582:1 628:3,13,19,24 629:1,9,11	<b>excused</b> 678:19 730:17 792:8	
<b>efforts</b> 596:16 708:14	<b>emptied</b> 690:5	<b>entity</b> 527:25 542:11 554:18	<b>escrow</b> 581:2 585:3	<b>executive</b> 539:9	
<b>Eigenheer</b> 511:17 514:3,6,23 518:24 519:6,10,12 520:8 520:11,14,16 521:9 525:8,13,16 525:20,22 526:1 533:13 586:24 587:3 596:3,20,23 619:11,13 633:25 634:24 635:2,6,10 635:15 636:3,6,9 657:9 659:23 673:12,15 678:19 678:21,25 679:3,6 679:9 709:10 728:11 730:17,19 730:25 731:2,6,9 731:13,16,19 733:10,14,17 736:11 738:22 739:11 752:15 756:18 762:13,15 789:2,19 792:5,7 792:10,13,25 793:7	<b>encountered</b> 746:1	<b>enlisted</b> 693:14	<b>establish</b> 543:3,6 691:7 786:17	<b>exactly</b> 527:25 534:10 540:10 561:19 562:25	
<b>eight</b> 588:14 645:23 666:5 680:15 697:19,22	<b>encouraging</b> 683:24 684:3	<b>ensued</b> 587:2 635:9 679:2 731:8 792:12	<b>especially</b> 575:5 627:21 699:14	<b>estate</b> 526:21,22,23 526:23 527:5,7,8 527:9,11 528:9,9 533:25 567:20 568:16 573:17 574:6,10 575:2 580:1 581:20 594:5,7 604:10 666:12,14 670:15 670:24 673:7 674:20 675:7,21 675:24 686:16,19 686:21 687:1 689:16 690:25 691:12,15,21,24 692:4,7 693:1 748:18,18,22 749:10 768:8 771:9	<b>exceeding</b> 601:16
<b>eight-minute</b> 669:17 698:4	<b>endeavor</b> 791:9	<b>entered</b> 517:15 546:24 790:25 791:5	<b>Esq</b> 513:5,12,15,18 513:19	<b>exception</b> 605:9 715:23 716:5,14	
	<b>ended</b> 562:4 572:4 742:1,4 751:9 779:15	<b>entering</b> 587:23	<b>essentially</b> 544:15 550:14 723:16	<b>exchange</b> 550:13 568:1,7,8 569:4 575:6,9 746:2	
	<b>enforcement</b> 773:2	<b>enterprise</b> 722:17	<b>establish</b> 543:3,6 691:7 786:17	<b>exchanged</b> 541:7	
	<b>engage</b> 642:10	<b>entertaining</b> 756:4	<b>estate</b> 526:21,22,23 526:23 527:5,7,8 527:9,11 528:9,9 533:25 567:20 568:16 573:17 574:6,10 575:2 580:1 581:20 594:5,7 604:10 666:12,14 670:15 670:24 673:7 674:20 675:7,21 675:24 686:16,19 686:21 687:1 689:16 690:25 691:12,15,21,24 692:4,7 693:1 748:18,18,22 749:10 768:8 771:9	<b>exchanges</b> 785:9	

592:8 616:9 622:8 628:17 637:24 662:18,21 667:4 671:3 672:8 677:11 681:4 683:15 690:20,21 692:24 695:4 700:20 702:9,12 703:22 711:1 724:12 732:9,10 732:19 733:15 735:11 736:12,12 736:15 756:20 758:22 762:10 767:17 773:17	<b>experienced</b> 655:22 655:24 <b>expert</b> 565:1 643:12 686:22 688:12 706:1 <b>expertise</b> 686:14 717:12,19,20 748:17 <b>explain</b> 700:5 788:17,20 <b>explained</b> 669:20 698:5 704:5 <b>explaining</b> 790:12 <b>explanation</b> 787:16 788:7 <b>explore</b> 578:19 722:16 <b>exposure</b> 648:6 <b>express</b> 597:16 744:2,13 <b>expressed</b> 591:21 598:16 744:3 <b>expression</b> 714:24 715:8 716:2 <b>extended</b> 578:4 581:8,10,13 696:12,15 <b>extension</b> 575:17 582:6 583:8 <b>extensive</b> 582:18 <b>extent</b> 546:4 650:16 <b>extra</b> 556:1 649:24 649:25 651:19 654:19,19,20 658:19 <b>extraction</b> 589:3 <b>extreme</b> 544:9 <b>extremely</b> 685:22 686:5,9 <b>ex-fiancee</b> 573:22 573:24 <b>e-mail</b> 530:11,22 541:9 549:15 550:18,20 551:8 551:10,13 552:6 554:9 557:18,22 558:1,4,8,11 560:15,23 561:1 561:13 565:5,6	571:10,12 590:17 591:5 637:22,25 638:10,11,25 639:16 640:24 641:8 642:9,20 645:7,10,16,17 646:1,2,8,13,19 646:20,23 648:14 649:1 650:1,15,17 651:1,1,13,23 652:2,10 653:5,14 653:24 656:4,15 656:17 657:2,11 657:16 658:14 659:25 660:3,7,20 661:3,4,12 662:12 662:15 663:2,21 663:22 664:18 665:5,6,23 666:6 668:21,23 669:1 671:3,12,19 676:21 682:9 701:16 702:2,11 703:1,11,21 704:2 706:4 716:17,18 718:8,12,23,23 719:14,16 721:7 722:19 726:6,7,9 726:13,16,17 727:13,14 728:1,6 728:7,16,18 729:13 <b>e-mailed</b> 787:14 <b>e-mails</b> 558:24 587:19 638:22 664:13,16 667:20 677:5 716:20 717:7 757:4	623:14 627:19 651:1 672:21 687:9 691:17 702:24 706:6 724:25 725:2 729:12 <b>facts</b> 543:15,17 <b>failed</b> 691:5 694:24 <b>failure</b> 646:25 <b>failures</b> 653:18 <b>fair</b> 532:1 557:15 582:17 585:6 594:11,17 598:23 599:3,4,25 601:17 604:20 611:10,11 617:12 620:19 641:7 642:16,20 698:22 712:16 720:19 <b>fairly</b> 521:24 606:20 607:11 713:16 <b>Fairness</b> 640:8 <b>fall</b> 620:23 697:4 <b>fallen</b> 689:23 690:18 <b>false</b> 544:7,16 624:19 <b>falsely</b> 701:23 <b>familiar</b> 541:14 640:25 716:19,20 717:20 734:1 735:12 738:15 <b>family</b> 541:15,17 706:23 752:25 787:9 <b>far</b> 605:20 631:6 646:4,4 684:11 688:21 705:25 707:24 708:12 711:18,18 <b>fast</b> 664:10 670:3 <b>favor</b> 682:12 701:22 724:8 <b>FBI</b> 515:16 555:4 570:12,13,16 707:18 711:20 750:1 753:5 757:19 758:3,4 766:18 771:18	772:12 774:25 775:16 785:8,11 785:15 786:3,8 790:2,6 791:15 <b>feasible</b> 582:2 675:5 <b>February</b> 511:13 514:4 598:12,13 792:21 794:14 <b>federal</b> 711:2,3 712:5 755:1 789:23 <b>Feds</b> 711:3 <b>feedback</b> 566:5 <b>feel</b> 545:14 565:3 585:9 611:13 656:8 659:11 787:25 <b>feeling</b> 521:10 <b>Felecia</b> 530:11 562:18 591:13 613:15 <b>fell</b> 690:1 694:3 <b>felt</b> 528:8 586:12 586:13 668:13,14 668:19 705:3 729:22 <b>FHA</b> 573:22 <b>Fields</b> 512:5,8,11 513:18 514:14,14 514:25 515:2,3 518:8 519:4,25 520:20 521:18 522:9,15 523:3,7 523:11 524:3 525:11 544:8,19 551:21,23 596:21 597:2 619:14 634:18,25 635:3 635:18 636:1,4,10 657:8,10 659:21 659:24 673:10,13 675:12 709:11,14 728:9 731:1,4,11 731:17 732:7,15 732:20 733:1,6,9 733:16,18,22 736:8,14,17,18 738:14,23 739:7,9 739:12 741:11
<b>expenditures</b> 532:21 681:12 683:4 710:3,7 712:9 714:23 715:7,10,11,13,20 715:25 <b>expenses</b> 575:25 695:15 <b>experience</b> 527:10 574:25 653:2,3 656:24,24 660:19 681:21 685:9	<b>expenditure</b> 530:15 531:2 532:2 534:8 545:4 555:19 613:9,13 615:9,17 619:2 626:3 627:24 631:4 636:18 681:17,19 682:22 684:23 704:8 712:22 713:3 714:7,10,17 714:19,24 715:2 715:14,17 716:7 727:12,23 728:5	<b>expect</b> 698:9 <b>expected</b> 656:18 705:20 724:23 <b>expecting</b> 552:20 <b>expenditure</b> 530:15 531:2 532:2 534:8 545:4 555:19 613:9,13 615:9,17 619:2 626:3 627:24 631:4 636:18 681:17,19 682:22 684:23 704:8 712:22 713:3 714:7,10,17 714:19,24 715:2 715:14,17 716:7 727:12,23 728:5	<b>fact</b> 515:11 534:4 572:20 608:1	
		<b>F</b> 794:6 <b>face</b> 640:25 642:19 725:17 738:24 739:12 <b>facetious</b> 601:15 <b>facilitate</b> 527:23 584:13 <b>facilitated</b> 573:12 <b>fact</b> 515:11 534:4 572:20 608:1		

752:14 756:1,4 762:12 767:2,4 788:24 789:6,15 792:6,9,23 793:5 <b>Fife</b> 546:16 547:6,6 547:10 548:7 <b>fight</b> 614:3 <b>fighting</b> 692:9 709:19 <b>figure</b> 656:23 <b>figuring</b> 647:10 <b>file</b> 621:3,10 663:3 663:7,23 666:20 666:23 667:3 732:10 750:2,7 759:13 <b>filed</b> 525:18 619:19 620:4,4 628:9 678:3 682:17 790:4 792:20 <b>Filer</b> 511:5,6 <b>files</b> 744:5 790:10 790:14 <b>filled</b> 603:13 <b>filling</b> 699:13 <b>final</b> 564:20 608:20 668:18 691:1 775:15 778:9 <b>finalize</b> 591:6 <b>finally</b> 559:25 672:3,4 694:24 <b>finance</b> 546:22 551:9,14,15 678:3 <b>financial</b> 528:14 537:11 584:7 645:12 695:21 698:17 <b>financing</b> 575:20 590:11 594:13 621:12 674:25 675:10 690:3,19 693:19,25 694:4 697:7 698:8,9 748:18 <b>find</b> 522:7 569:3 585:2 607:25 608:1 628:20 686:13 696:23 698:2 749:5 764:16 765:13	788:2 <b>finding</b> 700:4 749:8 <b>fine</b> 515:10 516:18 533:13 559:15 588:25 609:18 621:18 643:23 668:11 733:21 740:20 743:16 <b>finish</b> 521:19 635:20 <b>finished</b> 579:16 753:17 <b>firm</b> 538:22 652:4 <b>first</b> 515:4 523:12 524:6 526:5 534:13,14 536:13 539:6 552:12,18 553:7 560:17,23 561:1 581:4 587:21 609:3,3 615:16,16 622:25 624:5,8,18,22 625:14 628:22,23 629:9,23 636:16 636:20 648:23 658:25 675:3 678:6,10 679:13 681:14 682:14 683:22 687:8 688:1 695:23 697:18 698:23 699:1 704:23 707:16,22 721:9 742:4,7 743:25 745:10,25 746:20 747:11,13,25 751:4,16 752:5 764:24 768:3,13 768:25 769:13,23 770:4,18,23 771:6 774:9,17 777:16 777:19,22 778:2 778:10,12,25 781:1 782:3,23 783:21 784:4 788:11 <b>fishing</b> 604:17 <b>five</b> 561:16 645:24 645:25 648:14 651:14,16,17	657:7 671:25,25 672:1,2 681:18 723:15 758:12 766:18,22 <b>five-minute</b> 678:23 <b>fix</b> 614:8,9 <b>flabbergasted</b> 552:25 <b>Flagstaff</b> 603:20 <b>flew</b> 752:25 <b>floating</b> 520:3 <b>flow</b> 606:1 <b>fly</b> 523:12 610:10 655:3 <b>flyer</b> 605:11 <b>focus</b> 528:4 532:12 592:11 627:9,17 629:21 <b>focused</b> 580:5 597:13,13,18,20 597:22 600:24 602:4,5 610:6 627:16 774:23 <b>focuses</b> 697:13 <b>focusing</b> 580:6 <b>follow</b> 557:3 791:6 <b>followed</b> 699:16 702:25 745:14 <b>following</b> 741:25 742:20 783:17 789:4 <b>follows</b> 526:7 679:15 732:4 <b>follow-up</b> 558:3 <b>foreclose</b> 573:1 <b>foreclosure</b> 573:13 <b>foregoing</b> 794:9,11 <b>forfeiting</b> 572:4 <b>forgo</b> 635:19 <b>forgotten</b> 775:11 <b>form</b> 698:7 <b>formal</b> 520:8,11 604:18 694:16 733:11 <b>format</b> 790:15 791:3,21 <b>formed</b> 599:23 687:4 <b>former</b> 547:9 717:24	<b>forming</b> 604:18 660:9 <b>formulate</b> 523:19 <b>forth</b> 666:22 671:21 672:4 <b>forum</b> 756:11 <b>forward</b> 545:24 607:20 617:14 645:4 649:15 650:15,17 721:14 726:12,14,16,16 726:16,23 727:8 733:2,9 756:5 <b>forwarded</b> 557:22 558:8,15,16 643:25 645:6 646:11,18 647:10 647:16 649:12 652:10,18 653:15 654:6 656:15 657:13,15 659:8 660:1,21,23,25 721:15 722:19,21 722:25 723:3 725:5 727:14 <b>forwarding</b> 658:17 658:18,20 726:1,1 727:25 <b>found</b> 519:20 530:24 545:23 546:13 600:3 609:1 628:19 716:14 732:25 <b>foundation</b> 527:21 739:7,9 <b>founded</b> 527:16 <b>founding</b> 527:20 <b>Fountain</b> 548:10 <b>four</b> 569:17 571:24 584:5 590:21 591:12 636:4 657:6 662:6 664:3 664:4 667:7 673:3 680:3 690:17,17 694:24 734:9,17 745:20 758:23 <b>fourth</b> 768:23 <b>frankly</b> 520:19 756:17 <b>free</b> 568:25 576:15	578:10 785:22 <b>freeway</b> 562:11 <b>frequency</b> 713:23 714:5 <b>frequently</b> 697:3 <b>fresh</b> 746:8 <b>Friday</b> 610:24 613:2,4,5,6 624:12 696:21 792:21 <b>friend</b> 670:23 686:11 <b>friends</b> 538:3 563:18 685:23 686:4 <b>friendship</b> 585:14 656:25 <b>front</b> 681:4 734:10 749:18,20 762:21 <b>fruit</b> 670:13 <b>full</b> 659:6 690:7 693:12 794:11 <b>fully</b> 756:6 794:9 <b>full-time</b> 559:16 601:1,16 <b>fund</b> 527:13 641:14 684:16 <b>funding</b> 555:15 663:14 <b>fundraiser</b> 713:9 <b>fundraisers</b> 683:24 684:6,7 <b>fundraising</b> 627:8 704:7,9 <b>funds</b> 555:11 556:1 557:14 576:3 589:20 619:9,17 620:24 621:7,10 622:4 625:2 631:10,12,17,19 631:19,24 632:3,4 632:10,20 633:4,6 633:9,9,17 648:9 648:22 <b>funny</b> 757:22 <b>furious</b> 670:4 <b>further</b> 542:5 550:4 557:25 611:15 634:6 701:4 719:22
--	--	---	--	--

793:8  
**furtherance** 615:24  
**future** 516:10,24  
 594:15

## G

**G** 514:1  
**gain** 568:11,13  
 715:16 720:14  
**game** 516:4 598:2  
**gap** 658:5 718:5  
 745:14 752:9  
**gaps** 658:17  
**gate** 734:10 745:24  
 746:2,7,11  
**gather** 521:4 584:3  
**gathering** 758:18  
**geared** 556:23  
 557:6  
**general** 511:5  
 513:4 531:5  
 562:25 569:18  
 574:7 580:6  
 585:23 598:19  
 599:9,12,17 610:8  
 611:7 613:11  
 618:8 631:23  
 644:1,7 645:1,22  
 648:12 679:19,23  
 680:16 683:2  
 685:25 689:5  
 698:16 700:12  
 712:2 714:3  
 715:24 719:20  
 729:5 730:6 734:3  
 734:4 738:16  
 770:7 771:8  
**generally** 772:2,6  
 787:23 791:4  
**generals** 701:21  
**general's** 527:3  
 611:21 621:8  
 627:10 644:5  
 710:5 721:18,20  
**gentleman** 537:8  
 546:1  
**George** 557:2  
 559:14 561:2,6,15  
 563:5 565:15,25  
 661:23 662:8,11

667:13,21,24,25  
 668:13  
**George's** 563:9  
 668:7,8  
**Gerald** 537:20,20  
 537:25 538:3,4  
**getting** 516:7  
 517:24 565:2  
 573:13,23 590:12  
 591:10 636:16,21  
 654:16 657:20  
 667:22 675:16,22  
 681:5 694:16,18  
 694:22 695:11  
 698:21 700:17  
 702:21,25 705:10  
 710:17 723:19  
 724:3 725:3  
 728:19 746:13  
 760:18 762:2  
 773:7  
**Gilbert** 528:18  
**ginormous** 603:13  
**girlfriend** 561:22  
**give** 521:3 540:17  
 541:17 542:11,17  
 543:15 546:13  
 547:19 551:15  
 566:19 578:11  
 580:17 614:23  
 624:7,9 659:10  
 677:25 682:11  
 683:16 684:4  
 689:16 700:3  
 706:17,18,19,25  
 707:2,5,13 715:19  
 730:23 733:20  
 738:12 741:15,22  
 741:23,23 744:17  
 744:20 761:23  
 762:6 785:22,25  
**given** 517:6 523:15  
 554:8 566:23  
 599:10 600:6  
 627:19 630:10  
 634:2 651:20  
 656:22,23 667:15  
 706:15 733:23  
 738:18  
**gives** 515:15

**giving** 536:8  
 548:14 550:1  
 580:11 642:17,21  
 642:25 719:14,16  
 748:17  
**glean** 649:5  
**go** 517:23 518:11  
 519:1 525:1  
 528:12 529:4  
 531:7 541:22  
 542:3 544:1  
 551:17 552:8  
 559:20 560:11  
 562:21 565:4,9  
 566:7 568:6 570:1  
 570:5 571:8 585:2  
 585:5 586:21  
 587:1 588:19  
 590:15,15 591:16  
 593:2,18 595:7,8  
 597:5 599:14  
 611:3,3 614:5,21  
 616:9 619:13  
 622:8 623:17,21  
 623:22 633:19  
 635:8 638:19,22  
 646:14 647:22  
 655:3,10 660:4  
 662:7,8,18 666:17  
 666:18 671:16  
 677:6 679:1  
 686:22 687:24  
 688:21 692:10,20  
 699:2 701:15  
 711:21 715:2  
 716:6 728:16  
 731:6 736:14  
 738:21 764:9  
 771:23 772:17,23  
 786:22,24 792:10  
 793:9  
**goal** 611:12,15  
 615:24 659:18  
**goes** 524:1 550:14  
 575:6 588:15  
 683:16 707:25  
 708:12 715:1  
 750:2 781:1  
**going** 516:9,25  
 521:12 522:25

523:13 524:7,23  
 524:25 529:22  
 530:13,14,15  
 532:21 533:3,4,4  
 535:25 536:1  
 543:14,14,16  
 544:8,23 545:7  
 546:5 549:7,11,13  
 552:13,19,20  
 553:19 558:9  
 560:11 561:21  
 562:18 566:7  
 573:1 574:5 576:8  
 578:25 580:13,14  
 580:16,23 586:13  
 586:25 588:7,8  
 591:5,19 592:6  
 595:20,24 599:23  
 605:17 606:1,9,11  
 607:20 609:1,6,25  
 613:7 614:21,22  
 614:24 615:17,19  
 615:22,22,25  
 616:3,6 617:6  
 618:4,6 619:1  
 622:8 624:1,7,9  
 625:10 627:6  
 633:12,25 634:4  
 635:18 639:19,22  
 640:3 641:10  
 650:13 657:3,17  
 665:6,7,10 666:21  
 668:10,25 669:21  
 670:10,11,18  
 672:4 678:4  
 681:25 687:9,15  
 689:5 691:7 693:1  
 693:2 700:10,11  
 705:4,16 711:15  
 711:20 712:13  
 714:2,11 716:16  
 722:2 724:7,12  
 725:15 730:7,10  
 730:22 732:11,15  
 733:19 737:21  
 742:2,12 751:18  
 756:9 760:17  
 767:2 772:1,8,16  
 779:10 788:24  
 789:6,17 791:6

**Goldman** 548:1,4,8  
 548:13  
**Goldman's** 548:9  
**good** 517:21 525:12  
 538:3 552:7,20  
 553:10 562:19  
 566:21 595:18,19  
 597:3,4 604:3  
 609:19 610:13  
 618:25 625:7  
 630:15 634:19  
 637:19 643:3  
 664:10 685:23  
 686:4 701:7  
 709:15,16 711:16  
 713:16 714:10  
 736:21 767:5  
 788:16 792:7  
**gotten** 540:13  
 552:12 649:24  
 652:3 653:12  
 668:7 676:9  
 702:18 724:22  
 725:2  
**governor** 547:9,13  
 547:13,15  
**go-to** 765:17  
**grab** 647:3  
**graduate** 527:6  
**graduating** 526:16  
**grand** 630:23  
**granddaughter**  
 601:11 609:2,22  
**grant** 634:4  
**grass** 603:23  
**great** 536:24 563:2  
 640:23 730:11  
 747:17  
**greatest** 675:11  
**Greenwich** 638:15  
**Greg** 537:13,14,15  
 537:18,19,25  
 538:3,5 566:4,4  
 626:15,17,19  
 667:14 668:9,14  
 691:6 694:14  
 695:3 696:25  
 748:19,20 749:25  
 762:25 779:1  
 782:3 784:12,15

784:24 786:18	664:20 668:1	<b>heading</b> 715:12,12	766:1 788:2	673:13 678:18,24
<b>Grehoski</b> 512:10	741:9 784:20	<b>headquarters</b>	<b>helped</b> 543:6	679:10 731:17
515:24 517:3,12	<b>half-a-million-do...</b>	539:4 572:24	545:20 563:17,18	736:8 738:7,14
518:3,9,9,12,21	577:22	772:12 785:8,11	573:16 587:20	739:3 755:15
519:2,5,11,22,25	<b>hallway</b> 524:5	<b>heads</b> 776:14	588:1 604:25	762:8 772:20
520:5 522:14,16	<b>halt</b> 786:7	<b>Heap</b> 573:21,21	614:1 647:24	778:17 789:18
522:19 523:19	<b>hand</b> 588:22	595:14	651:19 652:24	792:23
635:23 730:23	603:10,11 638:12	<b>hear</b> 518:2,6 524:4	653:1 670:23	<b>HONORABLE</b>
731:11 732:1,8,11	669:5 718:22	524:5,7 591:16	766:17	511:17
733:22 736:18	<b>handed</b> 680:4	653:22 724:7,19	<b>helping</b> 535:18	<b>honored</b> 754:15
778:21 788:25	681:7 732:8	741:1 751:18	545:19 584:13	755:15
789:9,20	<b>handwriting</b>	752:8 756:8,9	<b>Hey</b> 724:6 737:25	<b>hope</b> 521:14 704:10
<b>GRI</b> 527:6	750:10 751:2,3	770:9	745:5	704:11
<b>Grihala</b> 535:19	<b>handwritten</b> 750:9	<b>heard</b> 517:15 524:8	<b>he'll</b> 523:10	<b>hoped</b> 653:12
<b>ground</b> 639:17	790:11	530:18 557:22	<b>hide</b> 641:21 719:24	701:25
641:4 718:20,25	<b>happen</b> 521:19	592:11 681:7	720:12	<b>Horne</b> 511:4,4
723:14	643:24 656:21	686:7 687:3	<b>hierarchy</b> 601:23	512:7 513:4,4
<b>grounds</b> 517:22	772:10	689:12,15 701:15	602:2,9	514:20,20 529:13
<b>group</b> 513:9 538:17	<b>happened</b> 545:22	702:13 706:6	<b>high</b> 537:23	530:23 531:7,22
607:12 640:1	568:19 578:22	719:3 724:20	<b>high-tech</b> 547:13	535:21 536:13,15
641:6 642:15	583:18 594:8	735:5,13 736:5,7	<b>Hills</b> 548:10	541:10,20 550:18
643:21 648:19	659:11 669:24	736:19 737:2,22	<b>hinged</b> 632:18	553:11,12 554:9
673:23 674:2,4,5	672:23 674:22	741:4 742:18	<b>hire</b> 538:22 722:5	556:3,17,20,20,21
701:21 719:8	687:21 689:19	748:21,21 764:13	<b>history</b> 548:13	557:19 558:25
<b>roups</b> 673:22	695:7 707:21	768:14 775:19,25	<b>hit</b> 561:3 651:1,25	559:20 566:25
719:11 724:17	727:15 734:10	778:25 784:6	652:2 690:2	567:14,19,21,24
<b>growing</b> 718:5	746:15 759:19	<b>hearing</b> 522:11	<b>Hogarty</b> 570:4,22	569:3,20 570:1,24
<b>guess</b> 603:1 611:18	770:17 772:11	591:25 596:14	571:1,2,15,19	571:3,15,18 572:2
620:15 632:13	787:4	628:22 634:14	693:23	572:16 574:8
642:2 655:11	<b>happening</b> 529:4	703:4 711:6	<b>Hogarty's</b> 570:17	575:15 578:20
666:1,13,15,16,16	605:20 608:16,22	740:22	<b>hold</b> 527:4 751:17	579:3 581:13
670:1,2 674:18	<b>happens</b> 608:21	<b>HEARINGS</b> 511:1	776:7	582:9,18 583:13
713:14 716:16	643:24 644:21	511:11	<b>holdback</b> 695:16	583:24 584:12,21
722:6 772:5 785:3	660:10 726:12	<b>heart</b> 527:21	<b>home</b> 530:2,6,8,10	584:23 585:1,6,14
<b>guessing</b> 629:7	769:21 791:9	656:17 658:22,24	534:21,22,23	585:16 586:6,11
669:25 747:19	<b>happy</b> 518:12	<b>heavily</b> 611:7	535:7 573:4,5,14	586:11 588:15
<b>guide</b> 711:16	523:15 610:1	<b>held</b> 643:16 753:21	574:2 576:14,16	589:1,20,20 590:7
713:17	668:9 706:16	<b>Helicopter</b> 610:9	576:17 579:8	593:7,9,20 596:9
<b>guideline</b> 758:12	<b>hard</b> 577:22,25	<b>help</b> 521:25 532:24	603:21,21 611:3	596:15 597:24
<b>Gurley</b> 513:20	587:11 589:9	535:22 536:12	<b>homeless</b> 527:15,16	598:23 600:2,2,3
<b>guy</b> 517:10 757:21	701:11	538:4 555:22	<b>homeowners</b>	602:3,11 605:2,6
765:17	<b>hardworking</b> 686:6	560:25 579:22	527:14,15 528:5	605:9,12 606:10
<b>guys</b> 594:4 672:23	<b>Harris</b> 537:13,14	584:21 590:23	<b>hone</b> 672:5	607:1,15 609:1
674:19	537:15,18,19,25	600:8 602:22	<b>honest</b> 595:17,18	612:1,5 613:7,20
	538:3,5 566:4,4	605:2 616:10	<b>honestly</b> 708:23	614:18 615:25
	626:15,17,19	618:2,3,7,7,9	757:24	616:3,23 617:5
<b>H</b>	667:14 668:9,14	624:3 657:23	<b>Honor</b> 514:25	618:2,14 619:1
<b>Hagerty</b> 693:22	<b>head</b> 534:11 537:4	693:15,15,18,22	519:9 520:10	627:20,21 637:15
<b>half</b> 516:9,25 519:2	760:12 772:25	693:25 721:25	523:23 596:19,21	638:25 639:17
521:11,15 523:22	<b>headed</b> 562:8	722:10 725:7	636:8 657:3	641:3,4,13,15,16
564:1 577:8				

641:17,18 642:11 642:12 644:1,1,10 644:25 645:15,21 646:1,23 649:1,14 650:5 653:5 654:4 654:19 655:8 656:4,6,14,18 657:1,2 658:17,18 660:7,11,20 662:17 663:1 667:2 669:1,13 670:7,14,23 671:2 671:6,13 672:6,22 673:21 674:8,24 678:23 679:8,12 679:19 709:15 728:9 729:4,25 730:6 732:13 735:3 743:8 748:12 752:2 765:20 768:15 769:8 788:12	636:5 662:13 668:1,2 676:25 677:8,9 777:6 784:18 <b>house</b> 527:19 539:17,18,18 546:5 548:9 577:6 577:15,22,23 578:10 622:2 624:6,10 676:12 676:13 691:23,24 734:10 745:24 746:2,5,9,10 771:24,24 <b>housekeeping</b> 515:1,3 525:16 <b>Houser</b> 532:8,10,15 616:13,24 619:4 660:14 688:12,19 688:22 <b>Houser's</b> 533:16 <b>huge</b> 523:17 550:11 765:16,24 766:4 766:11 <b>Huh-uh</b> 618:19 <b>hung</b> 743:17 <b>Huppenthal</b> 703:14 703:16 717:13,23 <b>Huppenthal's</b> 717:20 <b>husband</b> 529:6 535:3 547:12 553:6 555:10 604:11 610:3 706:15 <b>husband's</b> 603:12 <b>hypothetical</b> 544:9 577:21 <b>H-o-r-n-e</b> 679:8	<b>illegally</b> 556:6 <b>illustration</b> 724:25 <b>image</b> 750:8 <b>images</b> 591:7 <b>immediately</b> 521:15 621:15 <b>impending</b> 675:25 <b>implement</b> 726:25 <b>implementing</b> 727:10 <b>important</b> 517:8,11 574:8 627:18 632:25 639:16 641:25 645:4 647:7 681:10 690:13 697:5 717:1 720:3 726:22 765:10 <b>impression</b> 631:5 <b>impressive</b> 664:15 664:16 <b>improper</b> 704:6 <b>inaccurate</b> 623:8 672:16 <b>inaudible</b> 640:17 <b>incidences</b> 642:13 <b>include</b> 519:4 605:1,5 683:3 749:25 762:25 764:19 <b>included</b> 628:18 728:22 <b>including</b> 695:15 707:17 788:11 <b>income</b> 575:8 690:9 690:11,15 693:11 693:13 698:20,21 <b>incorrect</b> 623:13 624:21 <b>incumbent</b> 598:25 <b>indented</b> 683:22 <b>independent</b> 530:14 531:1 532:2,19 542:13 555:19 559:4,5 596:11,16 599:1 613:9,12 615:9,17 619:2 622:1,24 623:3 625:13 626:3 627:24	631:4 636:18 642:3 660:13,17 680:22 682:11,16 683:25 684:4,7,17 684:20 687:4,5,10 687:15 688:5 689:1,12 700:2,17 701:22 703:3 704:7 705:21 706:8,20 707:14 707:25 708:14 710:2,16 712:22 712:23 713:3,10 720:7,15 721:2,22 721:24 722:7 724:7 725:13,24 727:1,12,22 728:2 728:4,25 <b>independents</b> 639:18 641:5 642:1,2 718:21 719:1 720:5 <b>indicate</b> 524:18 533:22 567:14 616:18 617:22 780:12 <b>indicated</b> 515:8 522:14 708:22 713:15 727:21 <b>indicates</b> 595:4 740:18 745:10 782:24 <b>indicating</b> 641:4 <b>indication</b> 625:6,9 744:10 <b>indifferent</b> 637:20 643:3 <b>individual</b> 678:5 <b>Individually</b> 511:4 <b>indulgence</b> 673:11 <b>industries</b> 547:14 <b>industry</b> 527:11 528:10 585:12 <b>inferred</b> 780:13 <b>info</b> 541:7 639:16 645:4 647:7 <b>inform</b> 626:12 <b>information</b> 520:3 545:17 580:10 584:3 605:6,17,21	606:1,2,8 641:2,3 642:23,24 647:10 647:18 649:4 653:16 659:16 660:24 698:7,10 701:18 702:21 718:17 719:22 725:1,9,14 726:2 726:8,11 727:15 727:16,18 728:21 743:5,13 747:16 747:25 751:13,24 754:1,4 758:5,13 758:19,24 759:16 759:24 774:17 784:7 785:23 786:8 788:9 <b>informed</b> 710:5 <b>initial</b> 546:12 600:7 745:13 <b>initially</b> 600:6 636:15 745:4 748:6 <b>initiate</b> 668:25 <b>initiated</b> 740:11,13 790:8 <b>initiative</b> 737:24 <b>inner</b> 670:25 <b>input</b> 545:5 561:3 562:17 563:15 591:10 667:22 668:7,8,16 685:14 700:3 <b>Ins</b> 642:1 720:4 <b>insecure</b> 697:4 <b>Institute</b> 527:7 <b>instructed</b> 754:20 <b>instructing</b> 522:9 <b>instructions</b> 550:1 581:2 755:13 <b>instrumental</b> 557:13 <b>intelligent</b> 686:7 <b>intelligently</b> 772:21 <b>intend</b> 723:7 <b>intended</b> 714:1,4 726:21 755:10 <b>intent</b> 711:10 713:22 723:7 726:22	
<b>Horne</b> 589:5,16 696:3 <b>Horne's</b> 518:10 535:10 540:21 552:6 570:24 572:9 574:5 576:14 577:6 584:16 591:14 593:2 597:8 599:16 603:2 604:6 605:12 606:2 607:1 611:25 612:2,4 642:11 665:20 748:8 <b>Horne-Rotellini</b> 724:18 <b>Horne-Winn</b> 683:12 702:10 735:10 736:12 762:15 <b>hospital</b> 564:12,14 <b>hostile</b> 774:25 <b>hour</b> 561:24 667:25 667:25 777:6 784:20 <b>hours</b> 583:20 600:20,25 601:1	<b>ice</b> 757:23 <b>ID</b> 511:5,6 <b>idea</b> 521:25 585:1 <b>ideas</b> 541:21 <b>identify</b> 595:13 756:22 <b>illegal</b> 556:23 711:18 <b>illegality</b> 557:7	<b>incumbent</b> 598:25 <b>indented</b> 683:22 <b>independent</b> 530:14 531:1 532:2,19 542:13 555:19 559:4,5 596:11,16 599:1 613:9,12 615:9,17 619:2 622:1,24 623:3 625:13 626:3 627:24	<b>incumbent</b> 598:25 <b>indented</b> 683:22 <b>independent</b> 530:14 531:1 532:2,19 542:13 555:19 559:4,5 596:11,16 599:1 613:9,12 615:9,17 619:2 622:1,24 623:3 625:13 626:3 627:24	<b>incumbent</b> 598:25 <b>indented</b> 683:22 <b>independent</b> 530:14 531:1 532:2,19 542:13 555:19 559:4,5 596:11,16 599:1 613:9,12 615:9,17 619:2 622:1,24 623:3 625:13 626:3 627:24	<b>incumbent</b> 598:25 <b>indented</b> 683:22 <b>independent</b> 530:14 531:1 532:2,19 542:13 555:19 559:4,5 596:11,16 599:1 613:9,12 615:9,17 619:2 622:1,24 623:3 625:13 626:3 627:24

**intentions** 791:11  
791:11  
**interaction** 564:19  
644:18  
**interest** 535:18  
579:21,23 622:1  
**interested** 753:10  
**interesting** 654:1  
**interpret** 711:17  
**interpretation**  
633:5 705:7 711:7  
711:16 720:20,23  
737:20  
**interrupt** 633:25  
**interview** 516:14  
517:18,20 518:18  
519:18 522:2,7,8  
522:10 523:9  
734:12,22 737:24  
746:5,5 749:25  
750:4,5 762:25  
763:4,21 764:23  
767:23 768:4,10  
768:20,23 769:1,6  
769:9,16,20  
770:19,22 771:6  
771:23,24 772:3,7  
776:21 777:5,6,9  
777:15,16,19,22  
778:2,10,13  
783:17  
**interviewing**  
748:23 770:22  
**interviews** 707:16  
707:22 745:9  
748:1 750:15  
757:20 763:3  
767:24,25 768:2  
768:21 772:6,9  
776:20  
**intimidated** 537:2  
707:18,21  
**introduced** 535:11  
535:12 536:21  
600:3 644:16  
734:16 735:2  
736:9  
**investigating**  
553:23 555:3  
**investigation** 758:6

760:20 789:23  
790:3  
**investigations**  
738:17  
**investigative** 749:7  
781:13  
**involve** 670:17  
**involved** 530:23  
547:20 576:7  
611:6,7,19,23  
612:2,4 618:1  
644:23 652:22,25  
670:7 682:1  
684:20 689:10  
708:13 713:21  
743:10,23,24  
748:21 751:6  
763:11,24 764:11  
764:16 765:6,13  
765:17,22 766:8  
769:14 771:1  
776:6 784:9  
**involvement** 771:9  
771:11  
**in-house** 567:10  
**in-person** 540:24  
**issue** 515:4 517:3  
520:23,24 521:24  
524:13 544:20  
559:7 578:6  
583:15 620:8  
626:7 627:23  
634:22 672:11  
674:24 776:22  
787:15 789:4  
791:20  
**issues** 527:16 528:4  
539:16 575:1,3  
578:6,7 584:15  
605:7,13 634:3  
665:3 675:19,21  
792:19  
**item** 713:18,19  
750:25 751:6  
752:1 788:11  
790:25 791:5  
**items** 749:24  
762:24 764:3  
**iteration** 676:7,8  
**iterations** 560:3,7

---

**J**


---

**Jack** 513:18 514:14  
551:20  
**Jaime** 682:7,12  
710:13  
**January** 598:11,13  
**Jeff** 539:18,20  
**job** 528:11 559:16  
566:21 601:1,16  
686:14  
**Joe** 548:15  
**jog** 587:20  
**John** 703:14,16  
717:13,14,18,18  
717:20 718:14  
**Johnson** 574:2,4  
581:5  
**join** 598:6  
**joined** 573:23  
598:9 599:16  
**joining** 598:22  
**joke** 786:14  
**jour** 554:21  
**journal** 533:22  
595:8  
**JR** 513:8  
**judge** 511:17 514:3  
514:7,23 515:2  
517:4,12 518:24  
519:6,10,12 520:8  
520:11,14,16  
521:6,9 525:8,13  
525:15,16,19,20  
525:22 526:1,2,6  
533:13 544:11  
586:24 587:3,6  
596:2,3,20,23  
619:11,13 633:25  
634:24 635:2,6,10  
635:14,15 636:2,3  
636:6,9 657:9  
659:23 673:12,15  
673:16 677:25  
678:19,21,25  
679:3,6,9,14  
680:6 683:20  
709:9,10 728:11  
730:17,19,21,25  
731:2,6,9,13,16  
731:19 732:3

733:10,14,17  
736:11 738:22  
739:11 752:15  
756:18 762:13,15  
789:2,19 792:5,7  
792:10,13,25  
793:6,7  
**Judge's** 755:13  
**judgment** 744:8  
**judiciary** 680:11  
**July** 539:24 601:3  
607:21 645:14  
**jumbled** 644:22  
**jump** 655:3 685:16  
**June** 539:24 600:21  
600:22,23 602:1  
607:21 645:14  
**Justice** 640:8  
**justify** 726:24

---

**K**


---

**Kathleen** 511:5  
512:3 513:11  
514:16,18 525:14  
525:24 526:4  
628:17 645:1  
646:1 680:18  
685:12,17 687:4  
689:3 694:8,12,16  
696:18 697:5,14  
699:14,17,19  
700:1 701:16  
702:12,18 706:5  
708:10,17,20  
709:4 722:21  
723:1 725:6,23  
727:2,21 734:8  
743:10 748:25  
749:9 751:8 752:6  
757:2 760:22  
761:11 763:11,24  
764:5,10,16  
765:13,21 766:8  
769:21,24 770:18  
770:25 775:12  
776:5,10,16  
777:10 780:5,10  
784:7,9  
**Kathleen's** 693:15  
706:8

**Kazan** 513:15  
**keep** 533:23 580:12  
591:15  
**keeps** 790:3  
**Keith** 537:8 625:20  
625:21 633:22  
**Kelly** 572:13,15  
**key** 515:16 626:25  
**keynote** 610:10  
**kicked** 573:14  
**kids** 706:15  
**kill** 757:25  
**Kim** 549:18 641:12  
**Kimerer** 512:5,8,9  
512:12 513:5,6  
514:19,19 520:24  
521:14 523:23  
525:3 596:4,8,18  
657:3 678:18,22  
679:10,18 709:8  
728:12,15 729:25  
730:22 778:16,20  
782:13 789:3,12  
789:20 792:3  
**kind** 521:3 535:21  
541:6 562:20,24  
579:3 580:11  
585:23 587:21  
591:17,19 597:5  
599:6 600:13  
602:8 603:23  
604:16,22 614:2  
615:21 618:3,9  
628:7,12 629:21  
630:24 631:5  
632:7,18 633:4  
638:23 643:20  
644:23 650:10  
661:24 662:15  
665:2,4 668:11  
671:4,11 672:4  
681:8 692:1 697:6  
711:2 712:7,8  
714:23 715:8  
721:21 723:18  
729:13 738:2  
767:5  
**kinds** 602:6 664:25  
695:15,17  
**kite** 655:3

<b>knew</b> 524:4 537:19 537:23 539:12,15 547:6,14,15,15 563:17 595:20 604:7,12 614:7 618:5,5 624:6,8 631:10,13,17,21 632:9 633:9,10,10 637:3 651:5,22 653:9 688:6 700:9 700:19 703:8 705:15,25 708:9 717:13 718:2,12 718:13,15 724:1 766:8	637:13,15 639:3,7 640:17,19 643:9 643:11,13,15,17 645:11 646:4 648:24 649:13,14 650:6 651:9 652:16,17,17,17 652:20 655:10,13 655:15 656:10,10 656:18 664:19 666:4 668:13,15 669:24 670:8 674:6,20 676:6,6 676:7,14 677:3,4 685:9,10,17,19,24 688:1,21 691:11 691:16 692:14 696:9 699:21,23 700:13,16 703:13 703:14,16 705:13 706:9,13,17,21,22 707:9,13 708:1,22 712:17 713:14 714:10 716:4 717:9,10 723:25 724:2,3,8 725:17 726:13 729:8 730:11 732:24 737:24,25,25 739:4,16 742:25 743:9 745:6 754:6 754:9 755:5,8,9 755:11 756:15,17 756:21 758:17 759:7,11 761:8 767:13 768:3,11 768:22 769:14 770:23 771:25 772:14,19,20,25 774:2 776:3 780:14,18 782:2 783:23 785:11,12 785:24,25 786:14 786:23,25 787:12 787:24 789:16 791:1,6,10,10,21	573:12 580:18 681:1 682:5 685:8 691:20 709:2 743:10 746:23 748:24 749:5,15 765:21 771:1 773:9 784:9 <b>known</b> 538:22 584:23 629:1,11 641:23 652:25 703:3 704:20,22 706:13,18 707:4 720:1 721:6 <b>knows</b> 591:13,14 627:5,6,7,7,8 <b>Kreutzberg</b> 513:19 514:12,12 <b>KW</b> 751:6,7 <b>K-a-t-h-l-e-e-n</b> 525:24	<b>lasted</b> 782:25 783:2 784:5 <b>lasts</b> 697:18 <b>last-minute</b> 640:13 719:12 <b>late</b> 599:19,20,20 599:21 787:15 <b>latest</b> 641:11 <b>law</b> 511:17 513:9 514:7 521:5,7 523:2 531:24,25 532:3,12 538:2 541:15 555:18 681:22 682:25 688:14,17 700:11 705:8 709:2 710:19 711:4,8,18 712:4,5,12 726:18 726:19,20,20 729:23 773:1 <b>laws</b> 528:8 532:2 681:1 685:13 687:24 689:1,4,8 708:11,25 709:6,6 <b>lawyer</b> 541:19 616:4,6 679:24 680:8 690:10 691:11 692:2,8 694:20 <b>lawyers</b> 589:8 672:13 <b>lead</b> 531:22 701:7 743:25 <b>Leaders</b> 511:6 513:11 536:9 550:3 565:13 594:24 598:22 617:2,7,11 618:21 619:7,22 620:2,9 620:10,13 621:2 622:6 626:3,13,19 678:4 <b>leadership</b> 604:2 <b>leading</b> 739:4 <b>learn</b> 687:8,9 <b>learned</b> 576:13 697:3 <b>leave</b> 516:23 638:23 772:3,4 <b>leaving</b> 559:5 658:5	687:12,14,15 <b>Lebowitz</b> 546:2,5,7 <b>led</b> 632:7 679:22 <b>leeway</b> 744:19 <b>left</b> 603:18 611:15 650:19 652:5 655:2 <b>legal</b> 532:5,7 617:9 617:10 688:4,13 691:20 711:18 729:22 <b>legible</b> 751:3 <b>legislator</b> 539:21 <b>legislators</b> 528:6 <b>legislature</b> 680:9 680:10,13 718:3,3 <b>legitimate</b> 542:10 542:14 <b>lender</b> 697:1 <b>lending</b> 526:22 578:19 <b>length</b> 698:8 791:25 <b>lengthy</b> 697:21 <b>letter</b> 558:9 650:8 710:17 <b>let's</b> 528:12 529:3 540:1 548:4 550:17 552:8 553:15 554:23 559:8,18,23 560:11 564:18 565:4 570:5 572:12 577:21 586:21 590:15,15 592:6,7 593:2,3 593:18 595:7 597:5 600:20,21 602:1 623:2 629:20 631:25 633:2 636:6 637:22 638:22 639:11 666:6 676:17 677:6 683:12 692:10 693:9 700:20 701:14 728:16 736:14 741:8 764:9 789:19 <b>level</b> 529:16 789:17	
<b>knock</b> 746:14 <b>know</b> 515:20,20 516:2 517:17 518:4 523:10 525:4 530:19 531:14 532:12 536:20 537:18 538:1,2,5 539:22 541:4,12 542:12 542:21 543:14,20 543:21 544:12 547:19 548:13,18 550:21 553:13 554:6,10,10,25 555:13 557:12 559:4,6,13 563:5 563:8 564:13 567:7 568:20 570:11 572:17 576:11 579:7,25 580:1,13 583:2,15 583:15 589:13 591:13 592:2 594:6 598:8 600:2 601:18 602:12 605:22,22 609:10 609:10 614:2 615:10 618:9 621:24 623:12 624:2 627:20 628:10,21 629:2,6 629:14,15 631:3 631:20 632:12,24 633:3 634:2 636:22,24,24	637:13,15 639:3,7 640:17,19 643:9 643:11,13,15,17 645:11 646:4 648:24 649:13,14 650:6 651:9 652:16,17,17,17 652:20 655:10,13 655:15 656:10,10 656:18 664:19 666:4 668:13,15 669:24 670:8 674:6,20 676:6,6 676:7,14 677:3,4 685:9,10,17,19,24 688:1,21 691:11 691:16 692:14 696:9 699:21,23 700:13,16 703:13 703:14,16 705:13 706:9,13,17,21,22 707:9,13 708:1,22 712:17 713:14 714:10 716:4 717:9,10 723:25 724:2,3,8 725:17 726:13 729:8 730:11 732:24 737:24,25,25 739:4,16 742:25 743:9 745:6 754:6 754:9 755:5,8,9 755:11 756:15,17 756:21 758:17 759:7,11 761:8 767:13 768:3,11 768:22 769:14 770:23 771:25 772:14,19,20,25 774:2 776:3 780:14,18 782:2 783:23 785:11,12 785:24,25 786:14 786:23,25 787:12 787:24 789:16 791:1,6,10,10,21 <b>knowing</b> 655:25 686:13 702:1 717:19 746:16 <b>knowledge</b> 571:2	573:12 580:18 681:1 682:5 685:8 691:20 709:2 743:10 746:23 748:24 749:5,15 765:21 771:1 773:9 784:9 <b>known</b> 538:22 584:23 629:1,11 641:23 652:25 703:3 704:20,22 706:13,18 707:4 720:1 721:6 <b>knows</b> 591:13,14 627:5,6,7,7,8 <b>Kreutzberg</b> 513:19 514:12,12 <b>KW</b> 751:6,7 <b>K-a-t-h-l-e-e-n</b> 525:24	<b>L</b> <b>L</b> 513:15 <b>LA</b> 513:12 <b>labeled</b> 718:21 <b>lack</b> 632:8 <b>lacking</b> 586:9 <b>lacks</b> 590:22 <b>laid</b> 532:15 <b>landline</b> 663:24 667:19 669:9,10 <b>Lane</b> 513:16 <b>language</b> 705:19 <b>largest</b> 566:17 574:9 680:1 <b>Larry</b> 513:15 514:22 721:6 <b>LaSota</b> 512:4,6,9 514:16,16 517:4 522:13,17 524:16 525:14,19 526:2 526:10 533:9,14 544:11,21,22 551:19,22,24 587:6,7 596:1 635:13 636:1 673:16,19 677:25 678:1,17 683:10 709:9 730:4,16,21 767:18 793:6	<b>lasted</b> 782:25 783:2 784:5 <b>lasts</b> 697:18 <b>last-minute</b> 640:13 719:12 <b>late</b> 599:19,20,20 599:21 787:15 <b>latest</b> 641:11 <b>law</b> 511:17 513:9 514:7 521:5,7 523:2 531:24,25 532:3,12 538:2 541:15 555:18 681:22 682:25 688:14,17 700:11 705:8 709:2 710:19 711:4,8,18 712:4,5,12 726:18 726:19,20,20 729:23 773:1 <b>laws</b> 528:8 532:2 681:1 685:13 687:24 689:1,4,8 708:11,25 709:6,6 <b>lawyer</b> 541:19 616:4,6 679:24 680:8 690:10 691:11 692:2,8 694:20 <b>lawyers</b> 589:8 672:13 <b>lead</b> 531:22 701:7 743:25 <b>Leaders</b> 511:6 513:11 536:9 550:3 565:13 594:24 598:22 617:2,7,11 618:21 619:7,22 620:2,9 620:10,13 621:2 622:6 626:3,13,19 678:4 <b>leadership</b> 604:2 <b>leading</b> 739:4 <b>learn</b> 687:8,9 <b>learned</b> 576:13 697:3 <b>leave</b> 516:23 638:23 772:3,4 <b>leaving</b> 559:5 658:5	687:12,14,15 <b>Lebowitz</b> 546:2,5,7 <b>led</b> 632:7 679:22 <b>leeway</b> 744:19 <b>left</b> 603:18 611:15 650:19 652:5 655:2 <b>legal</b> 532:5,7 617:9 617:10 688:4,13 691:20 711:18 729:22 <b>legible</b> 751:3 <b>legislator</b> 539:21 <b>legislators</b> 528:6 <b>legislature</b> 680:9 680:10,13 718:3,3 <b>legitimate</b> 542:10 542:14 <b>lender</b> 697:1 <b>lending</b> 526:22 578:19 <b>length</b> 698:8 791:25 <b>lengthy</b> 697:21 <b>letter</b> 558:9 650:8 710:17 <b>let's</b> 528:12 529:3 540:1 548:4 550:17 552:8 553:15 554:23 559:8,18,23 560:11 564:18 565:4 570:5 572:12 577:21 586:21 590:15,15 592:6,7 593:2,3 593:18 595:7 597:5 600:20,21 602:1 623:2 629:20 631:25 633:2 636:6 637:22 638:22 639:11 666:6 676:17 677:6 683:12 692:10 693:9 700:20 701:14 728:16 736:14 741:8 764:9 789:19 <b>level</b> 529:16 789:17

<b>levied</b> 680:18	692:8	699:11 716:21	653:2,2 681:21	<b>Marblehead</b>
<b>liar</b> 774:20	<b>litigators</b> 709:21	747:11 780:14	684:11 694:15	610:12
<b>license</b> 527:9,9	<b>little</b> 526:11 527:25	787:12	695:13 708:22	<b>March</b> 570:7,8
<b>lie</b> 729:5,7 753:23	528:11,20 538:18	<b>longer</b> 634:9,19	724:3,5 751:2	571:9 600:14
<b>lied</b> 544:14,16	542:3 544:13	747:13 780:21	771:14 774:22	693:17 792:22,22
<b>lien</b> 578:24 579:2	547:2,7 552:21	<b>look</b> 516:21 523:12	790:13	793:1,2,4
<b>liens</b> 577:11,24	553:17 560:22	533:6 539:25	<b>loud</b> 562:16	<b>Maricopa</b> 553:23
<b>life</b> 574:10 601:22	568:6 569:23	551:7,8,13,13	<b>love</b> 722:16	554:11 555:3
<b>lighthearted</b>	576:20 591:5,8	565:4 592:6,7	<b>lower</b> 579:21	597:14,20,23,24
757:21	597:6,16 604:17	593:3 609:16	<b>lowered</b> 576:1	602:4 607:5
<b>limit</b> 706:24	604:18 622:19	612:8,9 630:2,22	<b>lunch</b> 561:21 634:1	<b>Mark</b> 548:1
<b>limited</b> 578:2	634:20 638:12	658:14 660:2	634:10,19 635:6	<b>marked</b> 595:11
<b>limits</b> 680:15	644:22 646:14	662:16 678:2,3	<b>luncheon</b> 635:9	732:9 735:10
<b>Lincoln</b> 538:17,25	662:15 669:4	681:14 683:11,21	<b>lunchtime</b> 561:24	762:15
539:5 540:5,12	671:12 672:5	684:14 692:21	<b>lying</b> 774:8,21	<b>market</b> 572:2
630:14,17 633:13	689:16,20 695:25	694:8 700:21	775:13,23	648:7 684:24
648:19 659:8	696:9 718:22	713:18 749:20,23		<b>marketing</b> 526:17
<b>line</b> 570:21 577:15	722:3 742:2	751:11 762:23	<b>M</b>	652:4
579:8,15,22	744:17,23 750:1	763:6 765:17	<b>M</b> 512:1	<b>Marshall</b> 548:16
588:17 615:1,2	758:4 778:21	767:16,22 776:22	<b>Maggie</b> 514:10	548:19
638:18 639:16	<b>live</b> 520:2 776:1,3	791:1,3,12	<b>magnitude</b> 523:16	<b>Martha</b> 576:13
645:4 647:6	<b>living</b> 580:9	<b>looked</b> 536:11	<b>mail</b> 553:3	589:1
653:17 662:17	<b>loan</b> 528:15,21	647:13 658:6	<b>mailed</b> 552:15	<b>Marty</b> 576:13
663:16 669:7	537:9 573:25	703:23 710:17	603:11	<b>Mason</b> 734:22
677:2 756:1	576:11,12,16,17	786:17 788:6	<b>mailers</b> 715:16	735:24 736:3
769:20	578:11 579:3	<b>looking</b> 521:18	<b>mailing</b> 682:10	737:9,14,16 738:4
<b>lingering</b> 521:17	583:22 584:5	522:19 617:19	716:5,7	738:13,25 739:1
523:24	594:15 633:21	635:1 638:11	<b>major</b> 516:7	739:13,15 740:15
<b>lingers</b> 524:1	669:22 695:17	674:11 687:19	526:15 659:15	740:20 741:4,14
<b>link</b> 641:20 719:23	697:1 699:13	697:20 710:25	661:15 663:14	743:18 745:1,2,3
720:11	<b>loaned</b> 577:23	711:2 712:5	<b>making</b> 520:8,11	745:10 750:9,12
<b>links</b> 649:10	<b>loans</b> 528:22	713:14,18 716:17	525:20 565:14	751:12,17 752:22
<b>Linnea</b> 573:21	537:17,17 559:16	724:11 743:6	658:16 659:15	752:23 757:5
<b>Lisa</b> 532:8,10,15	559:17	749:14 765:4	668:9 677:5	758:17 759:8,12
533:16 534:1	<b>lobbying</b> 527:13	<b>looks</b> 583:9 589:4	705:21 714:16	759:19 761:5
616:13,19,21	<b>lobbyist</b> 537:16	589:11 638:22	750:19 756:14	764:23 765:3
619:3 660:14	<b>lobbyists</b> 702:23	640:24 641:11	766:18	769:25 770:9,22
688:12,19,22	<b>locked</b> 746:11	644:21,24 645:3,4	<b>mall</b> 768:16 769:9	771:16 773:11,13
<b>list</b> 548:24,25	<b>log</b> 534:2 588:5	645:10,15 647:13	<b>man</b> 524:12 658:20	773:23,24 774:1,3
630:11 678:8	616:9	669:12 672:10	658:21	774:5 778:7 779:1
<b>listed</b> 761:7	<b>logical</b> 654:18	738:24 749:17	<b>managed</b> 637:19	779:14 781:20,21
<b>listen</b> 515:21	655:17,21,25	<b>lose</b> 597:24 702:7	<b>Management</b>	783:9,11,15,16,18
523:18 524:20	656:1	<b>losing</b> 570:3 639:17	762:17	783:24 784:6,12
665:5,7 666:7	<b>long</b> 521:17,21	641:4 702:4	<b>manager</b> 591:11	784:15 785:7
736:21,24 751:15	525:1 533:23	718:20,25 723:14	602:3,13,15	786:18,23 787:4,5
<b>listened</b> 747:18	541:13 571:23	<b>lost</b> 562:22 690:5	684:16	788:15 789:10,21
783:22	629:1,4 651:12,12	<b>lot</b> 521:5,22 529:9	<b>maniac</b> 757:25	791:6
<b>stening</b> 741:12	652:23 664:17,21	562:21 563:22	758:2	<b>Mason's</b> 737:11
<b>litigated</b> 691:14	665:2,4 666:1	564:25 575:2,4	<b>manner</b> 611:20	738:9,10,14,15
<b>litigator</b> 691:14	693:5 698:23	580:3,8 584:3,21	<b>manual</b> 775:16,17	751:2 756:25

760:19 763:25	650:5,25 654:8	664:3 699:8	<b>middle</b> 592:24	<b>mix</b> 602:7
768:7 773:25	670:24 692:3	765:23	<b>midst</b> 567:21	<b>mixing</b> 728:1
778:4 781:5 783:5	708:21 714:9	<b>mentioned</b> 527:17	<b>Mid-September</b>	<b>mode</b> 714:4
783:8,16 784:24	723:12 753:13	537:13 594:15	609:14,15	<b>modes</b> 713:23
791:24	770:13 778:6	623:15,20 625:19	<b>migrate</b> 790:10	<b>modicum</b> 718:9
<b>Massachusetts</b>	<b>meaning</b> 604:14	664:3 712:17	<b>migrated</b> 790:7	<b>modification</b> 573:2
530:2 531:12	720:7 723:4 752:2	760:22 761:11	<b>Mike</b> 570:4,17,22	573:13
610:2,11,12,16	<b>meaningful</b> 721:9	775:12 777:24	571:15,19 693:23	<b>modified</b> 573:4
611:14 614:13	<b>meaningless</b> 721:8	778:1 780:5,7	<b>Mike.hogarty@t...</b>	<b>Molera</b> 682:7
<b>master</b> 566:1,17	<b>means</b> 542:10	<b>mentioning</b> 707:23	571:13	710:13
<b>masters</b> 565:20,24	589:10,16 620:20	733:19	<b>Miles</b> 572:14,15,21	<b>Molera's</b> 682:12
668:12,23	653:8 654:4,19	<b>mentions</b> 776:16	573:11	<b>mom</b> 564:10
<b>material</b> 727:4	656:2 713:22	778:12	<b>military</b> 529:8	585:20
<b>materially</b> 713:21	714:4 727:9	<b>Merv</b> 737:23	573:24	<b>moment</b> 590:22
729:19	<b>meant</b> 545:12	741:23 742:19	<b>million</b> 564:1 569:1	591:19 596:22
<b>math</b> 598:2	650:6 663:10	744:12 745:5	574:14 577:8	634:1 731:1
<b>matter</b> 511:3 514:7	704:4 755:16	779:1,14 781:19	656:9 695:9,10	<b>Monday</b> 612:8,12
516:22 554:19	<b>mechanism</b> 786:10	781:21 783:5,11	723:15 724:17	612:16 613:8
572:13 608:1	786:24 790:10	783:15,16,16,18	<b>mind</b> 533:6 543:13	614:11,18 696:19
655:3 666:24	<b>Mecum</b> 531:5,9,15	783:24 784:5,12	563:11 620:14	696:23 792:21
667:1 691:17	539:7,23 542:21	784:15,24 786:18	624:2 704:5 705:2	<b>money</b> 528:3
723:18 749:24	614:7 618:12	789:21 791:6,24	728:8 738:9 746:9	531:16,18,19
791:13 794:9	630:12,13 631:9	<b>Merv's</b> 742:3	<b>minds</b> 572:4	534:19 536:8,11
<b>matters</b> 515:1	632:4 654:14	757:21 783:19	765:22	538:21 540:6,8
525:10 573:17	658:12,13 659:16	<b>Mesa</b> 561:22,23,25	<b>mine</b> 591:2 595:11	541:11,20,22
582:19 635:12	<b>media</b> 604:9 648:4	592:25 593:1	707:12	542:11,17 543:2
660:19 670:12,15	<b>medical</b> 569:10	<b>message</b> 550:5	<b>Mine's</b> 533:8	545:5,6,18,20
675:14 686:19	<b>meet</b> 561:23 564:14	646:12 649:15	<b>minus</b> 687:11	546:13 552:21
687:1 749:6	575:7,9 602:16	704:1 714:13	<b>minute</b> 544:12	554:8 557:11,12
<b>max</b> 589:7 696:4	615:25 619:1	720:20 723:3,8	629:21 631:15	563:22 565:18
<b>maximum</b> 706:15	622:3 624:1 627:4	725:5	647:22 659:21	566:9,21,23 570:3
<b>Ma'am</b> 654:1	<b>meeting</b> 535:6	<b>messaging</b> 566:22	664:20,20 697:24	575:16 576:16,21
<b>McClung</b> 535:19	562:4,12 572:3	619:21 620:24	724:17	576:24 577:1,4,23
535:22 618:2	687:23 688:2,25	657:23	<b>minutes</b> 561:16	583:14 620:7
<b>McDowell</b> 567:25	739:16,21 740:3,4	<b>met</b> 534:21 535:5,8	562:7 584:8 595:6	621:6 624:7,9
568:3,18 572:7	740:7	535:9,16 537:7,25	635:1 645:23,23	629:20 631:2,3,24
584:17 689:22	<b>meetings</b> 529:20	540:22,24,25	645:24,25 664:24	637:12 650:20,22
743:8 748:10	600:9 606:21,24	546:7 548:19,23	673:3 697:19,22	650:25 651:1,10
<b>McKellips</b> 528:18	607:9 722:12	559:12,14 570:1	697:23 731:5	651:18,19 652:1
<b>mean</b> 517:15,23	<b>member</b> 527:20	573:16 600:5	734:14,15 741:9	653:9 654:23,25
522:3 524:17,21	541:15,17 641:12	606:15 614:18,20	744:20,21 747:19	655:11 657:25
524:25 526:12	<b>members</b> 706:23	624:5 625:20	747:20 770:5,21	659:6,7,8 681:13
533:9 536:14	<b>memory</b> 560:25	626:21 633:8	774:12 780:16	682:11,13,16,24
542:16 544:11	587:20 693:21	639:5 644:15	782:25 783:3	685:1 689:18,18
545:9,23 546:24	732:16 766:22,23	660:11 661:23,24	784:5	695:11,13 700:17
564:6 571:16	766:25 767:3,7	670:21 717:10	<b>missing</b> 600:10	700:19 702:19
582:15 583:1	772:23	<b>metadata</b> 644:22	<b>misspoke</b> 657:15	705:14 707:13
586:3,4,9 592:3	<b>mention</b> 544:4	644:23	<b>misstated</b> 672:23	714:12 715:16
594:22 601:15,21	554:2 565:10,19	<b>Michael</b> 513:5	<b>mistake</b> 777:2,3	716:7 717:15
627:19 637:5	623:13 637:1,2	514:19 602:12	<b>Mitt</b> 684:2,5	723:11,17,19,21

724:22 725:2,8  
 726:8,24 727:9,11  
 727:14 728:20  
 729:22  
**monies** 547:3  
**month** 529:4,10  
 761:15,17  
**Months** 629:5  
**moot** 521:12  
**morning** 518:22  
 537:8 552:4  
 561:14 564:5  
 597:3,4 603:19  
 625:23,24 634:3  
 651:3,4,24,25  
 661:5,12 676:10  
 702:17 732:22  
 758:23 782:7,8  
**mortgage** 526:23  
 527:8 528:22  
 539:17,19,23  
 573:22  
**mortgages** 574:4  
 686:21  
**nother** 583:20  
 675:3 691:22  
 697:10 698:3  
 699:2  
**mother's** 691:23  
**motion** 520:9,12  
 756:14 792:19,20  
**motivated** 598:18  
**motivation** 598:21  
 599:6  
**mouse** 622:19  
 647:3  
**move** 537:3 559:8  
 568:13 577:19,20  
 578:15 607:20  
 633:2 641:10  
 657:8 721:14  
 733:2,9 738:8  
 789:19  
**moved** 736:8  
 746:19  
**moving** 514:9  
 575:3 617:14  
 718:6  
**multiple** 763:3  
**Murray** 540:7

542:4 543:7  
 545:19 556:12  
 557:14 558:5,7,16  
 558:19 560:21  
 562:14 564:20  
 565:1,7 566:10  
 591:9 595:21  
 629:22,24 630:16  
 630:18,21 631:14  
 633:7 647:23  
 649:16,18 650:7  
 650:18 653:16,19  
 653:23,24 654:15  
 656:15 657:13,16  
 657:18,22,25  
 658:3 659:4,14  
 660:6,16,22,25  
 661:1,5,13 663:20  
 670:19 671:2,15  
 671:17,18 676:11  
 704:18 705:7  
**Mustang** 554:23  
 555:1,5  
**M.E** 513:8

---

**N**


---

**N** 512:1,1,1 513:1  
 514:1  
**name** 514:6 525:22  
 532:8 533:17  
 534:1 536:2 546:1  
 570:3,17,24  
 576:13 584:6,20  
 590:21,23 591:14  
 591:14,15,16  
 595:14 617:19  
 679:7 682:13  
 688:15,24 693:23  
 694:9,13 701:24  
**named** 721:6  
 776:23  
**national** 542:17  
 722:4 724:16  
**nationally** 721:6  
**natural** 563:24  
**nature** 586:10  
 591:17  
**NCP** 537:11  
**near** 743:13 744:3  
 747:16 774:17,18

**nearly** 724:17  
**necessarily** 546:24  
**necessary** 633:5  
 634:7,8  
**need** 515:17,21  
 516:9,20,25  
 523:12,13,24  
 524:21 553:3  
 561:2 609:10,16  
 616:10 620:16,16  
 630:22 631:1  
 633:17 634:23  
 640:12 647:5,18  
 647:20 656:13  
 658:17 660:13  
 698:20 716:24  
 719:12 726:24  
 736:25 750:5  
 753:15 766:16  
**needed** 531:17,19  
 540:14 543:7  
 545:18 575:15,20  
 576:16 577:4  
 594:14 620:4  
 632:4 637:12  
 671:23 688:6  
 693:12 696:20  
 723:13 727:21  
 743:14 747:16  
**needs** 553:3 576:24  
 604:24 639:25  
 719:7  
**negative** 561:5  
 562:21,22,23  
**negatives** 590:20  
**negotiated** 527:22  
**neither** 692:18  
 706:5 725:12  
 727:2  
**Nelson** 537:21,22  
**network** 604:1,4,19  
**networks** 535:20  
**never** 548:3 593:9  
 676:18 689:7  
 691:14 700:4,7,19  
 703:8 708:6,9,16  
 708:23 729:11  
 734:7 737:2 755:5  
 771:15 791:20  
**new** 527:20 568:15

585:2 735:9,19  
 773:19 790:7,9,11  
 791:2,3  
**Newman** 540:3,15  
 540:20,21 549:2  
 549:16,20,25  
 550:23,25 551:16  
 552:2,7,10,11,14  
 553:8 554:4,8  
 633:23 636:13,13  
 650:3 651:9  
**news** 552:7 553:10  
 702:16 753:22  
**nice** 522:20 610:11  
**night** 603:21  
 607:25 610:24  
 613:5 624:12  
 745:25 752:25  
 753:17 787:11  
 788:4  
**nine** 608:3  
**nine-minute**  
 593:23 666:5  
**Nogales** 609:2  
**nonactivity** 619:19  
**non-activity** 621:1  
**noon** 522:1 523:6,8  
 524:4,11 661:24  
**normal** 706:15  
**normally** 698:9  
 699:15  
**note** 571:17 617:23  
 646:14 724:10  
 751:13 763:7  
 764:12 765:7  
 767:1 790:17  
**notebook** 751:19  
 751:20 770:9  
**noted** 789:2  
**notes** 516:1 553:20  
 612:9 749:25  
 750:3,6,7,9,15,16  
 750:17,18 751:7  
 751:22,23,23  
 753:23 754:5  
 759:6,10 762:8,20  
 762:24,25 763:6  
 764:1,3,9,9,19  
 765:1,2,4,9,25  
 766:1,5,11,13,16

766:17 770:10  
 772:24 775:18,21  
 775:23,25 776:1,1  
 776:7,16,19 777:4  
 778:2,4,4,5,10,11  
 781:5 787:14,15  
 788:5,8,10 789:21  
 790:3,11,12,22  
**notice** 651:8 710:14  
 744:7 789:20  
**noticed** 696:18  
**November** 530:4  
 581:23  
**NSA** 786:13  
**number** 514:4  
 533:19 534:2,7  
 535:25 541:9  
 545:10 549:12,13  
 550:9,9,10 553:18  
 561:13 567:14  
 570:19,21 571:15  
 580:24,24 582:19  
 587:4 588:9  
 595:12 616:16  
 617:19,20 622:12  
 635:11 665:20  
 669:8 681:5  
 683:12 688:24  
 702:9 707:12  
 744:12 750:25  
 751:6 752:1  
 762:17 785:19  
 786:1,3,5 788:11  
**numbers** 539:2,4  
 584:6 588:4 598:1  
 785:23

---

**O**


---

**O** 512:1 514:1  
**oath** 628:24 636:7  
 731:14  
**Obama** 683:18  
 684:2 713:1  
**Obama's** 683:23  
 684:6,16  
**object** 523:24  
 524:12,24 544:8  
 657:3 767:2  
 788:24 789:6  
**objected** 515:13

<b>objection</b> 523:3 533:10 736:9 738:8 739:4,5 756:1 762:12 789:17	617:18,20 619:24 620:1,5 621:5,6 621:20 622:4,25 623:1,3,4 624:11 624:19 625:4,14 625:15 632:19,21 632:22 637:23 638:4,13 641:11 644:24 645:13,22 646:6 651:21 660:10 661:9,11 662:2 669:3 674:8 674:23 675:6 687:11,18 692:12 694:23 695:2 696:17 697:14 700:24 701:2,14 701:15 702:11 716:18 727:20 728:17	573:10 603:7 711:11 712:1 785:15 <b>off-the-cuff</b> 757:22 <b>off-the-record</b> 792:12 <b>Ofentimes</b> 716:21 <b>oh</b> 543:11 565:22 592:16,25 638:18 638:18 647:4 703:5 728:12 769:1 <b>okay</b> 515:2 519:6 520:7 524:19 525:11 527:24 528:25 530:17 531:13,20 532:1,4 532:14 533:3,12 533:19,21 534:13 534:18,23 535:8 535:12 536:4,6,14 536:17 537:13,18 538:7,15 539:7,12 540:19,22 541:7 541:10,18 542:1 542:20 543:2,3,9 543:13 544:21,23 545:7,8,25 546:11 546:16,20 547:4 547:22 548:16 549:2,7,21 550:13 550:16,19 551:3,7 551:12,18,24 552:5 553:15,19 554:2,12,15,20 555:8,12,17 556:2 556:5,8,10,12,16 556:22 557:1,10 557:17,22,25 558:3,6 559:2,8 559:12,18 560:2,8 560:13,20 561:6 561:17,25 562:4,6 562:10 563:8,14 564:3,9,13,18,24 565:16,19,23 566:8,15,19 567:13,18 568:6 568:17,24 569:6 569:11,19,23	570:5,13,17,20 571:12,19 572:6,9 572:12,17,19 573:6,10,15,19 574:5,11,16,20,24 575:10 576:5,20 576:24 577:4,9,14 577:17,20 578:17 579:5,12,14,20,25 580:15,23 581:7 581:13,18,20 582:9,14,17,21,24 583:7,13,21 584:1 584:9,16 585:6,13 587:11,21 588:2,7 588:10,24 589:17 590:5,11,16 591:4 592:2,6,10,13,22 593:1,4,7,10,15 593:17 594:2,4,10 594:22 595:3,7,22 596:1 597:5,11,17 598:15 599:2,5 600:6 602:16 605:5,24,25 606:23 607:11,14 607:19 608:16 609:14,19,24 611:18 612:11,13 613:6 615:2,24 616:21 617:8,9,16 617:17 618:25 620:12 621:18 622:8,22 623:2 624:17 625:16 626:2 627:3,13 630:9,19 631:8,16 632:17,23 633:1,2 634:24 635:2 636:3 637:1,6,17 638:3,11,18,18,19 639:3,11,13 640:10,23 641:10 643:9,20 644:11 646:9,20,23 647:8 647:12 648:11 651:17 655:7 657:9,15 658:9 659:20 660:8 662:7 663:19,20	664:2,20 665:9 667:5 668:3,4,19 668:24 669:2,7,15 670:2 671:15,18 671:25 674:2,6,14 675:12,24 676:2 676:16 677:6,10 677:15,18,24 685:19 689:20 692:20 695:8 699:4 711:14,23 712:7 713:14 714:21 715:6,19 715:20 718:16 719:6 721:9 722:2 722:9,16 725:5 731:6,13 733:17 734:21 735:15,19 736:11,21 737:5 738:23 740:7,18 740:20,24 741:5 741:14,23 743:2 744:16 745:16 747:21 750:23 757:18 758:3,13 758:21 759:15,21 762:8,13 763:13 767:9,11 771:18 777:4 778:1 780:17 782:18 785:1 786:12,16 791:22 792:25 793:7 <b>old</b> 539:16 629:8 790:10 791:3 <b>older</b> 540:21 <b>once</b> 531:20 641:23 691:18 707:23 720:1 <b>ones</b> 699:24 735:22 772:7 <b>one-page</b> 531:24 <b>Onqfinancial.com</b> 645:3 <b>open</b> 543:18 615:17 666:7 744:9 770:9 786:1 787:22 <b>opened</b> 665:25 <b>opening</b> 527:17 788:8
---	---	--	---	--

<b>operate</b> 733:10	<b>owed</b> 668:14	770:15,15,17,18	643:17 653:13	571:6,7 580:19
<b>operates</b> 681:23	<b>Owens</b> 641:12	770:23	670:17 702:22	587:12 621:11
<b>operation</b> 727:22	<b>owned</b> 568:25	<b>paragraphs</b> 681:19	793:3	645:8 677:16
<b>opined</b> 710:4	689:20 743:7	<b>paralegal</b> 514:10	<b>passenger</b> 750:13	685:10 699:15
<b>opining</b> 711:11	<b>owner</b> 567:25	<b>pardon</b> 553:19	<b>passing</b> 725:4	702:8 708:18
<b>opinion</b> 563:5,6	591:11 613:14	<b>parent</b> 721:19	<b>Patio</b> 526:20	709:3,4 789:11
642:21 652:14	<b>owns</b> 568:5	<b>Parker</b> 603:19	<b>pay</b> 568:11 585:4	<b>perjury</b> 622:17
668:14 709:24	<b>o'clock</b> 578:12	<b>part</b> 516:7 544:17	716:24	752:20 753:6
712:1,2,6 738:12	594:1 603:21	576:14 578:25	<b>paying</b> 568:13	755:20
745:20,21 774:21	634:22 635:7	605:15 607:17,19	706:1 726:5	<b>person</b> 539:11
<b>opinions</b> 563:16,25	644:25 738:5	624:17 655:1	<b>payment</b> 568:4	543:1,23,25 544:4
586:14	739:15 740:2,4,5	664:23 673:25	625:10	544:5 558:19
<b>opponent</b> 642:11	740:7,12,17	674:2 675:10	<b>PC</b> 604:12,12,14	571:17 604:22
<b>opportunity</b> 515:21	742:11,20,21,25	714:16 715:17	<b>PCs</b> 603:25 604:13	613:25 614:7
515:25 516:5,10	744:16 763:18,21	721:7,9 725:25	<b>pedophile</b> 723:16	642:25 647:21
516:20 517:1	779:6,9,18,19,20	734:25 750:25	<b>pedophilia</b> 613:21	659:12,14 686:20
521:3,6	780:10 783:11,18	<b>participated</b>	701:24	697:1 751:3
<b>opposing</b> 704:11	783:20 784:4	746:22 747:3,6	<b>peel</b> 640:1,12	776:23
706:10	788:5	749:9	719:11	<b>personal</b> 547:8
<b>options</b> 522:22		<b>participating</b>	<b>penalty</b> 622:17	579:10 685:23
578:20 634:15		608:24	<b>people</b> 528:9	<b>personalities</b>
<b>oral</b> 521:2 632:11	<b>P</b>	<b>participation</b> 743:6	536:10,13 537:17	585:22 590:22
<b>order</b> 516:25	<b>P</b> 513:1,1 514:1	749:16	548:24 565:15,17	591:1 593:8,11,15
519:16 540:6	<b>PAC</b> 527:24 528:1	<b>particular</b> 516:1,16	566:4,19 568:8	<b>personally</b> 522:21
575:5 621:2	<b>packages</b> 605:15	554:3 583:3	573:16 585:21	529:5 563:17
630:25 633:8,16	<b>PACS</b> 528:2	584:11 605:7	588:2 591:10,16	709:18 712:6
756:16 762:17	<b>page</b> 512:2 560:13	674:10 675:10	597:20,22 602:4,4	<b>perspective</b> 586:9
<b>ordered</b> 651:24	560:14 570:6,18	676:21 683:17	602:6 603:22	659:19
<b>orders</b> 672:11	571:8,15 751:19	684:9 688:25	604:1,7,19 605:14	<b>pertained</b> 677:16
<b>organization</b>	751:23 765:18	689:11 693:7,8	605:18,21 606:4	761:22
721:19	768:5 770:9 777:4	699:25 710:12,13	607:3,5,7,7,10,11	<b>pertinent</b> 744:5
<b>organizing</b> 627:7	<b>pages</b> 584:6 794:11	717:11 786:9	613:16 644:8	<b>Philips</b> 723:4
<b>original</b> 544:2	<b>paid</b> 573:8 579:18	<b>particularly</b> 660:18	668:19 684:4	<b>Phillips</b> 644:2,3,4,9
550:5 656:22	610:10 648:19,22	<b>parties</b> 514:8 521:2	686:21 690:18	644:13,14,19
662:3,6 676:9,23	649:19 720:25	634:10 792:17	692:9 702:22	721:15,17
<b>originally</b> 538:20	725:11 727:2,16	<b>partner</b> 735:24	709:19 711:7	<b>philosophical</b>
543:11 559:14	728:24	738:15 744:22	717:15 721:23	637:18 722:17
561:3 578:4 638:3	<b>palm</b> 513:16 603:1	752:22 753:8	723:10 724:6,6	<b>Phoenix</b> 511:12,24
653:10 654:11,22	<b>pamphlet</b> 711:3	760:17	725:3 737:23	513:7,10,14,16
658:3,12	<b>paper</b> 562:15	<b>partners</b> 778:7	738:2 756:9	543:18 564:7
<b>originated</b> 528:22	776:11 777:25	<b>parts</b> 575:3 604:13	757:23 771:14,20	593:6 610:23
544:5	790:14	646:10 688:10	<b>people's</b> 751:3	787:6
<b>origination</b> 592:11	<b>papers</b> 572:25	<b>party</b> 531:4,6,18	756:8	<b>phone</b> 530:3 534:1
592:20,23	<b>paperwork</b> 620:3	535:10,16 539:10	<b>perceived</b> 605:22	539:2,4 540:23
<b>Osborn</b> 513:6	694:15,21	540:25 543:1	606:9,10,11	541:9 560:24
<b>ostensibly</b> 719:16	<b>paragraph</b> 588:18	547:20 548:14	<b>percent</b> 528:23,24	564:6 567:13
<b>outer</b> 598:3	588:19 622:12	552:21 553:8	702:7,7	583:2 584:8
<b>outreach</b> 527:1	683:23 684:14	563:9 609:8,17,17	<b>period</b> 521:17,20	586:22 587:19,23
<b>outside</b> 746:2,15	696:2 767:22	614:9 618:11	524:14 525:7	588:4,4 590:6
753:18	768:11,15,17,23	632:2,3 643:10,14	529:3 567:15	592:7,7 593:3,10
	769:2,5,8,16			

593:18 595:4,8 609:5 610:17 616:9,16 617:19 617:20,22,23 638:9 664:24 665:11,23 667:15 667:17,18 669:8 671:1 688:24 725:3 736:21 737:3,6,10,11,17 737:19,20,22,22 738:11,21,24 739:13,14,16,22 739:25 740:8,9,11 742:2 743:17 744:8,12,23 748:15 750:14 751:22 752:10 758:21,24 759:17 759:18 760:17 767:25 770:1,5 773:10 776:13 782:21,25 783:5,6 783:7,8,13,16 784:14,15,16,18 784:24 786:1 788:11 791:24,25	583:1 <b>pioneer</b> 717:14 <b>Pizza</b> 526:20 <b>place</b> 612:6 621:22 624:22 739:17,19 739:23 740:1,4 742:21 744:1 <b>placed</b> 669:12 729:14 <b>plan</b> 609:17 634:9 635:19 664:14 697:6 <b>planned</b> 602:19 <b>plat</b> 741:8 <b>play</b> 578:1 647:23 736:14 741:6,18 741:18 756:20 757:7 <b>played</b> 515:5 516:4 634:6 736:16 741:10,20 742:15 744:23 756:23 757:9 758:23 <b>please</b> 525:22 526:1 533:14 587:5 622:23 659:22 679:6,9 684:8 690:20 700:20 702:10 703:22 731:12,16 733:17 739:8 762:5 766:3 767:15 <b>plural</b> 757:5 <b>plus</b> 542:21 687:11 <b>point</b> 516:10,23,24 519:3 524:3 530:13 546:21 553:9 575:14 576:4 592:5 601:24 604:22 605:11 608:22 610:14 611:5,13 616:22 619:8 620:15,18 623:25 624:2,13 626:6,10 629:20 644:17 645:13 647:19 649:18 650:13,23 651:21 653:9	655:4 657:4 659:12 662:8 663:4 664:2 666:20,24 672:25 681:10 691:8 698:15,16 701:10 703:2,18 705:13 707:7 711:1 724:1 729:12 737:17 744:14 777:13 787:3 789:12 <b>pointed</b> 616:13 629:14 650:7 715:23 <b>pointing</b> 628:4 <b>points</b> 627:16 701:5,6 709:17,23 723:13 <b>policy</b> 757:19 758:1 758:3,5,8 766:18 766:24 771:18,20 772:13,14,18,22 772:24 775:16,17 775:24 <b>political</b> 527:10,13 528:1 530:7 535:17 538:23 611:20 639:4,8,9 641:1 642:10 643:1,16 649:14 652:22,24 653:3 656:24,24 658:15 658:16,20 660:19 663:13 670:3 701:6 713:2,21 718:10 <b>politically</b> 563:12 <b>politics</b> 655:24 683:16 <b>poll</b> 701:1 704:10 704:12 719:14,16 719:17 723:14 725:7 730:14 <b>polling</b> 641:2,3 642:22,24 643:21 647:10 649:2,5 652:18,18 653:5 653:16 660:5,24 703:15 726:2,7 727:14 728:21	<b>polls</b> 639:15,17 641:21 643:7,7 647:9 649:6,15 700:25 701:19 703:19 717:14,21 718:14,20,25 719:24 720:12 721:11,12 723:12 <b>pollster</b> 639:12 653:6 658:16 <b>Pools</b> 526:20 <b>population</b> 520:4 <b>porn</b> 530:24 613:21 <b>pornography</b> 701:24 <b>portion</b> 718:23 <b>position</b> 573:10 651:18 682:8 711:9,10 <b>possibility</b> 658:10 <b>possible</b> 550:2 554:15 590:8,10 634:11 758:11 <b>possibly</b> 521:11 539:24 545:23 634:11 729:22 <b>pot</b> 631:24,24 <b>potential</b> 571:3 578:19 <b>potentially</b> 518:15 <b>practice</b> 737:24 738:10 790:16 <b>practices</b> 738:15 <b>practicing</b> 679:24 680:8 <b>precinct</b> 539:14 604:14,15 606:3 643:13 653:1 <b>prefer</b> 521:2 <b>preliminary</b> 515:1 525:10 635:12 <b>preparation</b> 628:22 638:7 <b>prepare</b> 634:6 <b>prepared</b> 511:22 628:1 772:21 <b>preschoolers</b> 680:3 <b>Prescott</b> 513:20 603:20 <b>present</b> 519:18	783:23 <b>presented</b> 587:20 674:20 751:16 754:2 775:22 <b>presenting</b> 683:19 <b>preserved</b> 691:6 <b>president</b> 529:8 610:4 680:5 683:18 684:2,6,16 713:1 <b>presidential</b> 684:10 712:18 <b>press</b> 519:14,17,21 519:23 520:1,6 717:15 775:21 786:1 <b>presume</b> 539:13 <b>pretty</b> 526:25 529:19,20 597:13 618:25 627:18,19 672:18 686:22 701:7,9 709:21 711:16 789:3 <b>prevents</b> 684:19 <b>previous</b> 532:18 569:12 571:14 619:18 632:2 645:5 699:3 710:1 747:19 751:22 759:21 760:10 770:10 782:7,8,10 <b>previously</b> 535:8 548:24 581:11 732:2,14,18 741:16 774:2 <b>price</b> 572:1,3 574:18 <b>primarily</b> 528:23 529:14 745:1 <b>primary</b> 529:11,18 532:12 535:10,16 538:4 546:10,11 553:8 572:19 597:9,23 598:15 600:17,18 607:21 611:9 614:1 653:1 673:21 685:20 686:3 701:12 <b>principles</b> 772:18 <b>printed</b> 562:13
---	---	---	---	--

662:7 749:21	545:20 560:6	691:2 695:9,10	678:14 683:10	<b>questioning</b> 634:6
<b>prior</b> 535:9 546:7	670:8 694:15	697:2 698:21	684:8 690:20	756:2
552:6 569:20	714:13	743:7,8	702:9 703:21	<b>questions</b> 523:19
601:9,10 624:4	<b>procure</b> 543:21	<b>proposed</b> 690:2	711:3,9,10 714:3	532:16 584:22,24
627:20 648:12,14	<b>produce</b> 633:21	<b>prosecute</b> 554:18	724:12 738:2	585:24 587:15
692:14 696:20	657:23,24 689:10	<b>prospective</b> 693:18	748:7,14 750:3,7	596:2,3,5,18
746:22,25	<b>produced</b> 570:10	<b>proud</b> 653:4	753:11 760:21	605:1 673:14
<b>priorities</b> 683:24	657:21 658:25	<b>prove</b> 756:6 775:22	761:11 762:10	678:18 709:8
<b>privileged</b> 785:23	661:16 666:23,23	787:3	766:10 771:12,15	711:12 728:10
<b>pro</b> 528:8 680:6	670:22 676:12	<b>proved</b> 753:23	786:7 787:19,22	743:14 747:17
<b>probably</b> 516:8,9	677:4 681:15	<b>provide</b> 585:10	787:24	752:14 755:18
516:24 521:18	689:11 700:2	605:14 610:8	<b>puts</b> 771:24	762:4 778:15,16
542:19 547:1	707:25 714:9	722:10	<b>putting</b> 607:3	789:7,9 792:4
564:10,11 565:2	<b>producing</b> 633:14	<b>provided</b> 545:17,17	670:15 763:23,25	<b>quibble</b> 663:6
565:14 568:23	658:22 682:23	586:8 661:25	776:25	<b>quick</b> 576:16,16
578:2 579:21	700:14	663:14 732:12	<b>P.A</b> 513:13	<b>quickly</b> 521:22,24
580:21 584:8	<b>production</b> 648:23	<b>provision</b> 681:6	<b>P.C</b> 513:6	525:7 577:19,20
592:17 594:10	676:13 708:4	<b>public</b> 520:3	<b>p.m</b> 549:23 590:16	578:15 790:15
597:24 599:24	<b>productive</b> 685:22	679:25 680:25	593:3,25 638:21	<b>quiet</b> 521:7
600:14,24,24	<b>proffered</b> 556:24	690:7 693:12	641:11 646:7	<b>quite</b> 520:19
601:9 612:10,13	<b>profile</b> 537:23	754:11 756:11	671:4 672:5,8	582:11,15 591:9
614:11 615:3	<b>progress</b> 609:25	<b>pull</b> 553:20 676:17	751:12 763:14	599:14 756:17
616:4 629:10	<b>prohibited</b> 682:25	750:2 772:24	777:5,11 793:10	<b>quote</b> 772:17,17
630:15 635:1,23	684:22	<b>pulled</b> 544:13		<b>quoted</b> 654:22
635:23 639:12	<b>prohibition</b> 684:25	<b>pump</b> 724:17	<b>Q</b>	672:18
642:3 664:21	685:2 728:8	<b>purchase</b> 568:4,15	<b>quality</b> 641:25	<b>quotes</b> 579:23
673:5 699:2,7,12	<b>project</b> 600:6	574:18 576:22	643:2,3 720:3	
708:22 719:3,9	<b>prominence</b> 713:24	581:3,3,5 743:7	<b>question</b> 516:15	<b>R</b>
720:5,16 752:10	714:5	743:11 748:9	524:22 542:6	<b>R</b> 513:1 514:1
769:10,11,18	<b>promised</b> 654:11	<b>purchaser</b> 690:2	544:9,19 568:22	794:6
770:5	<b>promote</b> 687:6,6	<b>purchases</b> 559:17	587:8 599:15	<b>race</b> 531:17 552:22
<b>problem</b> 518:23	<b>prompted</b> 530:19	<b>purports</b> 642:20	604:23 619:15	606:10 607:23
525:3 581:9 598:2	632:5 650:8	<b>purpose</b> 534:25	632:16 637:10	611:21 613:11
632:13 698:6,24	<b>prong</b> 681:11	535:2 626:13,19	641:25 654:3	618:8 621:8,9
698:25 699:6	713:19	627:5,6 647:25	673:5 701:3	627:10 631:22
787:13 788:2	<b>proper</b> 682:5,5	660:21 704:14	712:20 716:20	<b>raced</b> 729:15
<b>problems</b> 525:5,6	709:5 728:7	725:6 748:15	720:3 730:5	<b>radio</b> 526:15
<b>procedure</b> 516:3	<b>properly</b> 743:14	749:8 769:3	738:22 739:8,9	<b>RAGA</b> 644:4,7
<b>procedures</b> 738:16	<b>properties</b> 559:15	776:12	743:22,24 749:11	<b>raise</b> 528:3 540:7
738:19	743:11 748:10,16	<b>purposes</b> 609:20	749:13,13 752:11	544:14 545:5,20
<b>proceed</b> 526:1	<b>property</b> 527:14,23	<b>push</b> 601:9 635:5	754:24,25 761:10	550:21 619:17
587:5 636:9 679:9	528:4,7 559:17	726:13	761:14 764:12,20	621:7 631:2
731:16 733:17	567:24 568:1,2,4	<b>pushbutton</b> 717:14	764:22,25 765:5,9	633:17 649:22
739:11	568:9,18,25 569:2	717:21 718:14	765:14 766:3,10	650:22 655:10
<b>proceeding</b> 520:1	569:3,6,7,8,9,20	<b>put</b> 516:14 518:21	767:4 768:10	716:7 726:8
756:5	571:4 572:7 574:3	524:11 570:2,23	769:13 770:2,12	<b>raised</b> 527:21
<b>proceedings</b> 793:9	574:12,21,22	579:18 591:7	770:14 775:15	545:6 557:11,12
793:10 794:8	576:2 578:24	610:11 631:22	776:9,13,15 778:9	619:9 634:3 648:9
<b>proceeds</b> 568:16	581:5 584:14,15	646:14 648:11	788:13 789:7,13	648:9 650:20,25
<b>process</b> 525:19	584:18 689:17	653:1 675:17	789:15 790:24	792:19

<b>raiser</b> 684:17	682:20 692:8	729:8 739:4	<b>recess</b> 586:25 587:2	784:21 785:2
<b>raises</b> 631:3	709:18 712:25	785:25	635:9 679:1,2	<b>recording</b> 515:5
<b>raising</b> 527:13	713:20 718:16,16	<b>Realtors</b> 528:1	731:3,8	516:12,16 517:16
544:17 545:15	718:18 720:18	<b>reason</b> 517:5,21	<b>recession</b> 690:1,5	518:16,25 519:7
641:14 685:1	723:9	570:25 611:6	<b>recognition</b> 590:23	520:21 523:12
705:13 727:13	<b>reading</b> 588:21	620:13 646:7	<b>recognize</b> 669:7	634:5 734:6,15
<b>Rake</b> 513:8,9	650:4 652:10	687:14 690:10	691:3 703:23	735:9 736:5,16
514:21,21 525:4	660:2 712:11	694:12 717:11	<b>recognized</b> 686:2	739:18,18 741:10
786:12	718:21,23 720:22	729:4,7 748:8	<b>recollect</b> 539:1	741:20 745:10
<b>ran</b> 537:20,22	757:4	749:2,4 753:1	<b>recollection</b> 534:16	756:23 757:9
559:24 560:3	<b>ready</b> 514:23	759:5,7,9 764:15	565:12 577:2,3	769:15 771:21
682:7 703:8	573:23	765:12 766:19,21	584:20 692:22	775:8,18 776:2,4
<b>Randy</b> 539:9	<b>real</b> 526:21,22,22	772:10 774:14	740:14,15 741:25	778:25
<b>range</b> 577:10	526:23 527:5,6,8	779:16	742:3,3 743:4	<b>recordkeeping</b>
589:19	527:9,11 528:8,9	<b>reasons</b> 563:6,14	752:4 758:22	790:8,9
<b>RAPAC</b> 527:12	533:25 567:20	<b>rebuttal</b> 518:20	764:2,13,21 765:5	<b>records</b> 530:3
<b>rape</b> 701:24	568:16 573:17	519:3 634:7	768:7,8 771:5,10	533:24 534:14
<b>rate</b> 579:21	574:5,9 575:2	635:25 730:25	779:15 780:22	537:10 546:2
<b>rates</b> 579:24	580:1 581:20	731:12 733:1,5	<b>recommend</b> 538:24	547:1 549:3,8
<b>Raul</b> 535:19	582:7 585:11	792:8	634:14	560:24 564:6
<b>Raven</b> 652:25	594:5,7 604:10	<b>rebuttals</b> 793:3	<b>recommended</b>	567:13 586:22
<b>Ray</b> 527:24	666:12,14 670:14	<b>recall</b> 531:9 608:7	538:25	587:19 592:7,8
<b>reach</b> 697:25	670:24 673:7	608:8,9 621:20,22	<b>reconstruct</b> 587:12	593:3,18 610:17
<b>reached</b> 579:8	674:20 675:7,21	632:12 646:2,10	750:5	638:9 648:21
635:16	675:24 686:16,19	664:8 666:9	<b>record</b> 514:3	661:3 664:25
<b>reaching</b> 700:6	686:21 687:1	672:13,13 673:2	515:13 525:23	667:15,17,18
<b>react</b> 730:14	689:16 690:25	692:16 740:8,8	533:11,22 581:22	669:1 690:24
<b>reacted</b> 705:15	691:12,15,21,24	743:2 744:11,11	582:5 587:1,3	691:1,1 692:21
729:12	692:4,7 693:1	744:22,24 746:6	617:23 635:8,10	694:8,9,13 697:20
<b>reaction</b> 682:14	748:18,18,22	746:20 747:2	641:22 671:1	785:3,6,8,11,13
<b>reactivate</b> 615:19	749:10 768:8	760:1,12 773:5	679:1,3,7 719:25	786:11,18,18,21
615:21 617:2,6	771:9	774:22	720:12 731:7,9	787:1 791:7,12,16
620:16	<b>realize</b> 516:6	<b>receipt</b> 792:25	734:23 735:10	791:17,24
<b>reactivated</b> 617:6	545:19 705:6	<b>receive</b> 632:4 646:8	736:13 772:6,9	<b>redirect</b> 512:6,9
620:17	<b>realized</b> 705:4	650:17 661:12	774:14 790:24	635:20 673:15,18
<b>read</b> 533:16 545:1	<b>really</b> 515:17,24	<b>received</b> 515:14	791:4 792:11,13	728:11,14 792:5
549:15 550:4,8	521:15 523:23,24	530:11 534:1	792:15,18 793:9	<b>reduce</b> 572:2
558:11,14 560:15	558:14 566:1	546:25 547:2	794:10,12	<b>reengage</b> 530:6
561:4 562:15	582:1 586:1,4	552:3,18 554:25	<b>Recordation</b> 582:5	<b>refer</b> 560:24 706:4
570:20 588:18	598:21 610:6	558:12 559:19	<b>recorded</b> 520:2	763:3
590:17 622:18,22	613:22,23 615:2,8	560:18,23 561:1	552:1 717:21	<b>reference</b> 740:24
624:18 625:12	619:8,15 620:7,15	561:12 567:9	734:13 735:16,21	763:9 764:10
627:13,15 639:13	625:2 628:23	646:5,6 651:22	735:23 736:1,3	<b>referenced</b> 596:14
639:13 640:16,21	658:22 660:1,2	654:23 665:22	752:8 758:22	702:13
641:19 646:16,18	674:17 691:15	676:2,3 677:4	771:19 772:8	<b>references</b> 720:13
646:18,20 647:11	692:15 696:20	678:7,15 702:2	774:7,12,24	763:20
649:4,8,10,11,13	698:13 699:23	726:1 728:21	777:25 778:22,23	<b>referred</b> 525:17
650:7 656:8	700:16 701:11	789:21	780:2,23 781:25	548:7 626:16
660:20,23,23	705:7 716:9,24	<b>receiving</b> 561:7	781:25 782:2,4,6	630:18,19 642:14
665:5 676:5	717:6,10 728:19	646:2,10 701:18	782:17 783:21,23	688:11 689:12

724:11 727:13 732:16 <b>referring</b> 628:14 642:4 667:12 673:7 728:19 732:11 734:14 735:6 739:19 755:11 770:25 773:14,16 <b>refinance</b> 573:25 574:2 <b>reflects</b> 765:8 <b>refresh</b> 560:25 692:21 693:21 732:16 772:23 <b>refresher</b> 764:3 <b>refuting</b> 556:23 557:7 <b>regard</b> 557:25 576:6 590:24 775:18 <b>regarding</b> 530:11 558:4 572:13 581:4 656:20 710:2 713:22 760:18 792:19 <b>regards</b> 593:12 <b>regional</b> 577:18 <b>registered</b> 542:12 555:20 <b>regular</b> 588:5 606:20,21,23 621:13 680:23 686:14 689:5 <b>regulation</b> 683:17 <b>Regulations</b> 711:2 <b>related</b> 551:4,5,6 554:16 570:24 582:19 590:9 748:16 <b>relation</b> 537:14 <b>relaxed</b> 516:2 738:18 <b>relayed</b> 744:15 <b>relevance</b> 756:1 <b>relevant</b> 544:10 688:10 756:3 789:8 <b>reliable</b> 724:3 <b>relied</b> 563:19 585:7	729:9 <b>rely</b> 586:14 786:8 <b>remained</b> 629:16 <b>remains</b> 515:11 <b>remember</b> 528:17 530:9 534:10 537:4 540:10 546:4,5,9,13 561:18,19,25 562:25 564:3,4,7 564:16,17 567:23 574:11,23 575:10 577:5 581:24 582:21 583:13 584:16 585:18 587:13,16 590:25 598:10 599:18 605:23 607:22 609:7 613:18,19 630:10 633:20 646:11 664:1 667:21 687:17 692:19 694:10 697:20 698:11 699:10 717:23 740:22 757:1,3,4 760:2,6 764:4 766:21 768:12,13 769:1,20,23 770:3 770:12,16,17 771:8 774:9 779:13 780:9 787:20 <b>remembered</b> 764:6 765:10 <b>remembers</b> 788:7 <b>remind</b> 587:18 636:7 721:16 731:13 <b>reminded</b> 733:4 786:12 <b>repayment</b> 695:17 <b>repeating</b> 657:5 <b>rephrase</b> 589:14 608:23 632:16 770:14 <b>reply</b> 792:22 <b>report</b> 546:23 551:9,14,15 602:12 678:3	761:17 766:2,2,17 773:1,2 781:23 <b>reported</b> 555:17,20 702:18 <b>reporter</b> 511:25 526:16 753:18,21 753:22,25 794:7 <b>reporters</b> 753:19 755:18 756:13 767:1 <b>reporting</b> 621:11 <b>reports</b> 619:19 621:12,13 787:24 <b>representation</b> 791:2 <b>represented</b> 537:16 <b>representing</b> 584:12,24 <b>represents</b> 751:24 <b>Reps</b> 639:19 719:2 <b>Republican</b> 531:4 531:4,6,17 539:4 539:10 543:1 548:14,19 552:21 563:10 603:5,8 604:2 611:9 614:9 618:11 630:12 631:23 632:2,3 633:14 639:20 643:10,11,14,17 644:5,6 653:13 702:22 721:18,19 722:4 <b>Republicans</b> 542:17 603:25 639:21,22 719:4 <b>reputable</b> 633:14 <b>reputation</b> 639:7 641:1 643:1,2 718:9,11 <b>request</b> 515:12 516:23 520:9,12 589:1 626:6 726:23 727:8 785:8 <b>requested</b> 628:9 651:6 <b>requesting</b> 651:10 <b>require</b> 589:6,16 696:3	<b>required</b> 589:20 <b>requirements</b> 575:7,9 <b>requires</b> 555:18 <b>resentment</b> 597:16 <b>residence</b> 579:19 746:12 <b>resident</b> 597:15 <b>residential</b> 528:22 528:23,25 <b>resides</b> 573:5 <b>resolution</b> 792:16 <b>resources</b> 531:3 602:22 604:21 605:2 <b>respect</b> 520:14 545:4 <b>respond</b> 656:5 <b>responded</b> 682:19 <b>RESPONDENT/...</b> 513:17 <b>response</b> 554:8,17 632:11 676:21 792:21 <b>responsible</b> 545:14 659:9 668:20 <b>rest</b> 730:21,22 <b>restriction</b> 541:16 706:23 <b>restrictive</b> 705:10 <b>result</b> 685:23 710:16 756:14 <b>results</b> 608:20 719:14,16,17 <b>retired</b> 610:3 <b>retiring</b> 529:6 <b>returned</b> 530:2,6 531:11 611:13 <b>returning</b> 669:14 669:15 773:25 <b>review</b> 519:1 565:9 581:1 638:6,8 772:24 <b>reviewed</b> 638:8,9 787:15 <b>reviewing</b> 518:15 667:20 <b>revision</b> 578:1 <b>rewrite</b> 667:8 668:6	<b>Rezzonico</b> 746:1,6 746:16 <b>re-interview</b> 747:24 <b>RE/MAX</b> 559:15 <b>Richard</b> 537:20 538:1 540:2 549:2 549:16 550:23,24 551:16 552:2 553:8 650:3 651:9 <b>Richard's</b> 537:20 <b>Rick</b> 694:18 <b>Rico</b> 609:2 <b>riding</b> 781:7 <b>right</b> 518:5,13,17 518:18 531:11 534:6 536:12 538:9,15 540:1 546:18 547:4,19 548:25 549:5 553:4 558:23 559:8,23 560:22 562:11 565:5 570:8,23 571:21 572:8 573:8 577:25 588:22 590:4,14,19 593:2 593:7 599:8 602:21,24 605:16 609:11 611:4 612:18,25 614:16 615:18,23 616:2 616:14 617:1,14 621:18 622:5,14 623:8 629:7 632:1 633:1,22 636:1 637:24 638:12,20 638:23 649:17 650:23 654:4 661:7 665:1,17,19 666:25 667:10 668:5 669:5,19 671:19,20 674:23 678:15 679:20 683:9 685:5 686:23,24 687:1 691:9 694:3,25 696:8 698:19 703:9 704:15 705:3,9,11 707:2
--	---	---	---	---

714:18 724:13 729:2,17 730:24 733:7 753:3,11 754:19 757:16,16 758:10,11,14 759:22 761:5,12 761:21 762:1 763:11 764:17 766:25 769:22 770:24 772:4,11 775:6 776:17,20 777:18,20,21,23 779:7,24 780:6 <b>rights</b> 527:14 528:5 528:5,7 <b>right-hand</b> 539:11 751:11 <b>Rio</b> 609:2 <b>rise</b> 515:16 712:20 <b>risk</b> 570:3 <b>RNC</b> 722:13 <b>road</b> 513:6,9,13 528:18 587:8 716:16 <b>Roan</b> 776:24 <b>Robertson</b> 514:10 514:10 <b>robo</b> 718:4 <b>role</b> 545:16 584:9 600:7 602:14 647:23 694:16 <b>roll</b> 568:15 <b>rolling</b> 568:3 <b>Rolodex</b> 604:18 606:6 <b>Romley</b> 684:2,5,9 713:2 <b>Ron</b> 546:2,15 <b>room</b> 712:1 <b>root</b> 603:23 <b>Rotellini</b> 530:12 639:18 641:20 649:11 662:4 719:1,7,23 720:11 <b>Rotellinis</b> 671:24 <b>Rotellini's</b> 591:14 641:24 720:2 <b>ounding</b> 664:24 <b>routing</b> 550:9 <b>RPR</b> 794:17	<b>RS</b> 542:16 631:12 <b>RSL</b> 654:21 <b>RSLA</b> 659:12 <b>RSLC</b> 531:18 542:11 543:10 545:18 552:13 557:12 566:8 631:1,12 632:9,20 633:3,6 654:11,25 655:14 658:1 659:14 721:18 722:3,15 723:22 723:23 725:8 730:6 <b>RSLC's</b> 566:12 656:22 <b>rule</b> 519:11,15,22 733:4,8 754:11,18 755:6,9,11,12,24 756:7,12 <b>rules</b> 516:2 520:21 614:23 733:11 738:18 <b>ruling</b> 521:8 <b>rumors</b> 702:23 725:4 <b>run</b> 530:14 532:19 553:10 564:20 574:25 599:10 607:15 652:24 684:24 703:3 730:8 765:18 768:6 <b>running</b> 561:20 580:6 600:4 644:7 648:15,17,18 652:6 683:2 684:2 685:25 698:15 700:11 710:6 721:1,4 730:12 <b>runs</b> 765:20 768:8 <b>rural</b> 529:14 535:21 597:12,18 598:1,4 603:24 605:3,19 <b>rurals</b> 600:7 652:25 <b>Russell</b> 539:16 <b>Ruth</b> 535:18,22 618:2	<b>Ryan</b> 638:25 639:3 643:12 702:2 705:18 717:17 <b>R.P.R</b> 511:24 <hr/> <b>S</b> <hr/> <b>S</b> 513:1 514:1 <b>salad</b> 670:14 <b>salary</b> 690:8 <b>sale</b> 568:16 569:1 571:23 572:6 576:21 582:5 584:13,17 743:7 743:11,23,24 748:10 <b>sales</b> 526:17,23 529:8 569:13 748:16 <b>sarcastic</b> 601:15 <b>sat</b> 531:23 614:20 653:3 688:8 <b>satisfy</b> 577:2 <b>Saturday</b> 594:3 612:23 625:23 <b>save</b> 637:20 <b>saw</b> 530:18,22,22 600:9 638:3,5 660:4 682:14 688:23 696:12 699:19 746:9 <b>saying</b> 518:25 557:2 566:2,11,12 590:21 591:9,13 591:15 609:5 612:16 613:23 653:22 659:10,11 663:8 680:21 682:11 710:15 724:6,6 726:7 737:15 751:17 764:10 766:23 780:1,4,7,7 781:1 782:3,13,18 <b>says</b> 542:6 543:22 543:24 550:4 552:3 570:20,22 581:7 592:19 595:17 630:22 638:12,21,21 646:6 647:9 653:6	663:1,6,7 677:2 681:14 683:23 684:15 696:2 698:8 699:14 711:20 720:17 726:15 733:5 740:19,20 741:22 741:23 749:24 750:24 751:1,6 752:1 762:23,24 763:2,4,5 773:13 775:17 776:19,20 777:5,6,8,11,14 778:10 <b>SB</b> 719:25 <b>SB1070</b> 641:22 720:13 <b>scanned</b> 750:8 790:12 <b>schedule</b> 523:21 525:5 <b>school</b> 538:2 562:2 680:1,5 <b>schools</b> 680:14 682:8 710:2 717:24,25 718:1 <b>scramble</b> 583:14 <b>screen</b> 533:7 536:2 544:25 622:10 661:22 665:18 684:15 690:22 695:5 700:22 724:13 <b>scribbling</b> 587:22 <b>script</b> 560:17 567:2 586:17 605:10 661:6,13,25 663:9 663:11,22 676:4 676:23 677:16,21 <b>scroll</b> 560:11 638:18 647:1 695:25 701:4 <b>seat</b> 750:13 <b>second</b> 543:12 553:19 554:24 569:8,9 581:1 586:22 591:25 624:17 628:12,16 635:14 677:25 696:2 699:4 734:6	741:19 745:15 747:12 750:8 751:15,17 752:7 764:25 767:22 768:4,14 769:14 769:24 770:8 777:15 780:20,25 782:2 783:2 784:17,21 788:10 788:14 <b>seconds</b> 560:1,6 588:14 663:13,16 665:7 <b>secret</b> 555:6,9,12 555:15,15,25 725:1 785:24 <b>secretary</b> 542:13 549:3 555:22 608:12 621:4 681:7 682:17,18 710:10 711:6,21 711:24 712:3,20 776:24 <b>section</b> 749:23 <b>secure</b> 577:15 578:11 <b>securing</b> 557:14 590:11 <b>Security</b> 584:6 <b>see</b> 522:6 531:3 533:16 536:2 543:22 544:10 550:5 551:8,24 560:12 561:13 570:17 571:10,14 585:20 587:25 588:1,5 592:24 593:20 611:8 622:10,18 631:25 650:9 653:21,23 660:20 663:18 669:4,4 676:17 677:10 683:15,22 684:9 688:21 690:21 693:25 697:5 701:4 704:1 708:19,20 718:22 750:16,18,19 752:11 753:13 767:20 768:5
---	---	---	--	--

787:4 789:25 790:1 <b>seeing</b> 613:19 628:12 <b>seek</b> 532:5,7 <b>seen</b> 616:10 637:25 647:6 666:11 702:15 703:6 704:23 759:13,14 <b>sell</b> 569:20 689:22 690:13,17 691:24 693:10 768:16 769:8 <b>seller</b> 578:25,25 <b>selling</b> 559:17 567:24 569:2 574:22 575:24 576:1 691:23 695:8 697:2 <b>send</b> 543:2 547:8 552:13,23 558:9 558:24 583:11 651:25 656:4 662:11,11 666:6,8 682:13 <b>sending</b> 664:8 668:21 676:13 704:14 <b>senior</b> 528:21 <b>sense</b> 720:25 725:18 727:17 734:3 749:12 <b>sensitive</b> 675:20 <b>sent</b> 517:13 541:1 542:23 547:7 550:18 558:10,12 565:6 583:11 591:5 638:4 640:14 646:19 647:20 650:9 651:23 652:3 653:10,11,21,23 654:17 656:4 659:6 660:6 663:22,23 664:5,6 676:14 682:9,19 691:22,23,25 701:16 702:11 703:21 704:3,10 705:19 710:14,14	721:24 723:11,18 726:11 728:6,18 <b>sentence</b> 588:21 589:15 622:22 625:12 654:5 656:2 770:24 771:7 <b>sentences</b> 726:15 <b>sentiment</b> 538:7 591:21 <b>separate</b> 537:7 589:2,3 638:22 660:13 670:11 715:22 786:17 <b>separately</b> 670:16 <b>separateness</b> 532:17 <b>September</b> 529:4 529:16,20 535:24 536:4 608:20 609:13,18 610:5 <b>sequence</b> 575:5 650:11 778:24 <b>sequencing</b> 671:4 <b>serious</b> 691:8 697:11 <b>seriously</b> 631:1 <b>served</b> 547:12 680:6,11,14 718:3 <b>service</b> 679:25 680:25 690:7 693:12 <b>serving</b> 680:1 <b>set</b> 535:21 543:15 543:17 579:17 589:12 603:25 604:4 614:2 637:19 739:14,17 739:22,23 745:3,6 746:10 783:17,20 <b>sets</b> 599:7 <b>setting</b> 521:7 737:23 738:4,25 742:19 <b>settled</b> 579:6 <b>settlement</b> 589:3,6 696:4 <b>Seven</b> 534:12 <b>Shalom</b> 527:19 <b>shared</b> 538:7	618:11 691:17 <b>Sharon</b> 535:13 536:20 707:16 <b>sheet</b> 531:24 749:20,21,21 750:6,8 762:23 789:23 790:16 <b>sheets</b> 790:12,22 <b>shelter</b> 527:16,18 <b>Sheraton</b> 526:19 <b>Sheriff</b> 548:15 <b>shopping</b> 689:20 693:11 <b>short</b> 524:14,17 576:20 678:25 696:9,23 698:1 699:24 702:25 704:13 724:1 <b>shorter</b> 747:14 <b>shortfall</b> 699:8 <b>shorthand</b> 794:10 794:12 <b>shortly</b> 574:6 611:19 701:17 <b>show</b> 522:4 534:14 546:2 631:1 639:17 681:4 684:1 692:24 696:1 699:19 700:24 701:3 716:11 718:20,25 754:2 786:19 791:16,17,24 <b>showed</b> 562:13 723:12,14 745:25 <b>showing</b> 702:3 713:9,11 <b>shown</b> 695:4 750:4 <b>shows</b> 546:22 651:9 688:24 <b>side</b> 516:17 579:18 651:9 723:15,20 724:10 <b>sides</b> 521:5 <b>signed</b> 622:15 623:12 627:14,16 628:5 691:25 692:4 <b>significance</b> 583:19 <b>significant</b> 523:16	523:17 631:19,21 661:16 789:3,14 <b>signs</b> 603:3,13,23 607:4 <b>Similar</b> 574:19 <b>simple</b> 771:22 <b>simultaneous</b> 569:15 589:2 793:1,3 <b>single</b> 765:23 770:11 776:9 <b>singular</b> 762:25 763:4 776:21 <b>sir</b> 637:21 752:21 753:12 755:8 757:25 772:18 777:11 783:1 <b>sister</b> 540:21 541:11,13 553:13 636:14 637:3,8,16 691:18,22,23 706:7,14 <b>sitting</b> 518:1 619:20 621:14 696:6,22 750:13 <b>situation</b> 572:21 707:23 <b>six</b> 583:20 651:15 651:16,17 657:7 <b>size</b> 713:23 <b>skill</b> 794:13 <b>skills</b> 703:17 <b>slash</b> 540:2 <b>slightly</b> 574:22 634:9 <b>slipped</b> 787:18 <b>small</b> 690:12 <b>smaller</b> 652:7 <b>smart</b> 568:12 <b>smear</b> 642:13 <b>smears</b> 640:1 641:6 719:8 <b>smoothly</b> 574:25 <b>snippet</b> 544:13 <b>Social</b> 584:6 <b>sold</b> 539:18 568:18 574:12 <b>sole</b> 647:25 769:3 776:12 <b>solicit</b> 563:25	<b>soliciting</b> 622:4 682:16 <b>solution</b> 578:8 579:6,7 788:3 <b>solutions</b> 575:21 576:9,18 580:17 <b>somebody</b> 522:25 610:15 631:3 640:25 642:22 684:20 685:4 686:10 696:13 701:2 722:5 725:16 737:25 750:4 786:4 <b>someplace</b> 653:10 <b>son</b> 573:21 574:3 <b>soon</b> 519:8 550:2 758:11 <b>sophisticated</b> 721:6 <b>sophistication</b> 719:15 <b>sorry</b> 520:10 523:7 543:11 551:17 560:13 588:17 592:16 619:12 633:24 640:18 644:14 647:2,4 662:24 672:20 674:13 732:10 736:12 750:21 771:3 773:15,16 <b>sort</b> 537:23 543:20 560:3 587:12 595:23 674:16 717:21 <b>SOS</b> 511:5,6 <b>SOTA</b> 513:12 <b>sound</b> 546:18 549:5 563:2 601:15 662:12 663:3 676:24 677:7,13 677:13 737:10,14 749:7 <b>sounded</b> 779:9,11 <b>sounding</b> 576:8 <b>sounds</b> 598:25 604:16 607:12 654:9 741:1,21 <b>source</b> 537:6 589:12,13 590:13
--	--	---	---	--

653:13 657:20 659:5 sources 713:6 south 562:11 southeast 562:3 689:21 Southern 562:3 so-called 727:15 speak 534:20 605:8 605:8 610:7 637:14 740:5 743:21 745:25 791:11 speaker 610:10 speakerphone 737:12 750:14 753:11 speaking 518:16 540:22 566:12 713:10,11 738:3 744:22 746:6 775:16 791:4 special 527:4 737:9 738:4 740:15 743:17 744:25 750:9 760:17 761:16 771:16 778:4 783:8 786:23 787:4,5 specialist 527:8 688:17 691:12 specific 540:18 605:23 627:17 674:21 689:9 692:19 720:13 761:6 763:13 778:8 784:7 787:21 specifically 567:20 582:22,25 586:23 612:3 631:18 698:11 734:8 743:22 749:9,13 752:6 761:9 763:10 764:4,22 769:12,23 776:5,8 777:1 778:13 780:8,9 784:8 787:20 792:18 specifics 772:19,20	772:25 speculation 657:5 spelling 525:23 679:7 spend 648:10 681:13 682:24 714:11 715:16 723:17 spending 563:22,25 695:12 701:21 723:15 spent 526:21 600:19 620:7 757:1 spoke 548:3 561:16 585:19 587:25 713:12 734:7 760:9 789:5 spoken 734:12 spontaneous 755:20 spots 659:2 spring 599:19,21 600:14 squad's 776:24 staff 532:21 607:1 684:6 790:14 staffs 684:3 stages 599:24 Stamp 544:24 549:13 580:24 588:8 592:9 595:12 stamped 533:15 583:9 stand 524:12 525:15 545:12 557:10,20 605:6 635:24 732:12 753:25 755:21,22 766:17 767:12 standard 790:2,16 start 526:13 567:20 567:22 588:21,23 588:24 600:1 602:1,2 621:15 623:2 635:4 683:12 736:15 started 527:1 530:10 567:11	583:16 600:9 601:12 611:19 615:12 630:4 648:15 675:1 680:4 685:24 687:5 703:24 717:18 778:6 781:4 starting 514:9 545:1 580:21 627:2,3 639:18 640:1,12 671:6 719:1,11 starts 525:4 550:13 588:19,20 751:17 state 525:22 527:2 528:6 539:21 542:13 547:14 580:7 599:9,10,12 603:3,5 604:1,2 604:12,12,13 608:12 621:4 631:23 679:6,20 680:14 681:7 685:13 711:24 712:3,21 stated 744:25 747:15 750:11 780:13 statement 589:3 598:23 601:17 611:10,11 617:12 622:18 623:4,5 624:17,19,21 625:5 629:8 637:11,14 658:18 672:16 695:2,21 710:9 712:16 745:21 763:23 765:24 766:4 statements 545:12 557:10 627:12 757:22 state's 533:4,15 544:24 549:3 550:18 551:22 555:22 560:12 561:12 590:16 678:4 682:18,18 710:10 711:6,21	739:6 767:18,19 stating 750:7 stationed 787:5 stations 567:8,9,10 648:13 stature 688:10 status 721:21 statute 682:20 688:3,8,9 710:17 710:20 statutes 714:20 statutory 701:24 stay 688:13 stayed 680:4 step 615:16,16 stepped 545:24 steps 615:12 Steve 547:22 549:18 stipulated 572:13 stipulation 525:17 stood 765:22 stop 545:7 625:10 631:15 742:12 767:5 stopped 639:25 719:7 stopping 573:13 story 691:18 straight 564:13 676:18 strange 722:3 strategic 726:3,10 726:24 728:23 strategies 538:23 539:1,5 540:6,12 630:14,17 633:13 648:19 659:8 strategy 538:17 641:5 658:16 673:23 714:6,8,23 714:25 715:1,2,7 715:8,9,18 716:2 716:6 720:10,14 720:24 721:5 723:19,19 725:9 726:25 727:9,10 727:16 729:14 730:11 Street 511:11	513:20 strictly 712:12,14 strike 535:1 542:2 551:17 564:18 569:12 582:2 594:19 674:15 675:15 738:8 string 565:5 strip 689:20 690:12 768:16 769:8 strong 590:22 591:1 668:14 707:11 struggling 562:20 stuck 541:6 776:14 stuff 660:4 728:23 738:2 751:18 subject 518:10 639:16 645:3 647:6 662:17 676:19 677:2 703:4 733:3 submission 762:18 787:16 submit 790:4 793:4 submitted 553:24 724:13 762:16 subpoena 516:14 517:18,23 521:24 753:15 786:4 Subsection 545:2 545:11 subsequent 532:7 536:7 590:6 628:8 697:22 780:19 subsequently 538:13 745:14 746:19 substance 517:9 761:19 substantive 517:7 746:3 759:23 successful 563:16 569:21 579:13 585:11 785:10 786:25 successfully 594:9 785:13 sudden 707:19 sued 533:24
---	--	--	--	---

<b>suggest</b> 536:15,17 788:20	623:11 666:12 670:22 739:5 740:1 758:10	534:6 536:7 538:18 542:15 545:25 546:20	656:14 662:7 667:6 700:1 704:8 704:8 713:25	779:5 781:22 <b>Talmud</b> 755:25
<b>suggested</b> 532:7 536:19 553:1 706:19 707:20 711:7	<b>sure</b> 525:20 533:7 541:19,23 552:17 554:22 566:22 573:20 575:5 585:17 594:17 596:23 597:7 600:18 608:11,12 629:13,14 632:25 634:15 635:25 640:11,22 641:9 668:9,18 672:14 672:18 688:6,13 700:7 720:22 732:9 733:18,19 742:2 748:20 757:8 762:2,3 766:20 786:6,10 790:23 791:9	549:12 550:16,16 553:15,15 557:15 558:12 564:3,18 566:11 577:14,21 580:23 581:1 585:1 586:25 588:7 590:14 592:6 593:17,18 601:13 609:4 610:2 612:6 615:13 632:3 634:9 640:3 646:17 648:8 650:4,14 656:5,11 660:2 664:18 665:5 666:2 669:23 671:25 678:25 698:9 699:15 724:10 731:3,4 739:19,23 740:1,4 742:21 744:17,20 767:22 791:14	715:20 738:1,20 751:5 753:18 772:12,16,21 775:3,4,5 790:17 <b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>Tammy</b> 511:17 514:6 <b>tap</b> 633:5 <b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>suggesting</b> 576:9 641:5 655:5 705:24 708:7 726:4	<b>surgery</b> 564:10 583:20 675:3 697:11	<b>taken</b> 540:25 552:16 620:21,22 651:11 690:8 701:1,2 750:9	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>suggestion</b> 642:8,9 642:12 707:7 719:17 720:14 725:10 726:25 727:9	<b>surplus</b> 555:24 <b>surprise</b> 515:8 516:3,19 520:20 603:9 782:19 783:22	<b>takes</b> 540:1 542:2 584:7 665:2	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>suggestions</b> 658:16 705:21	<b>surrounding</b> 753:19	<b>talk</b> 517:20,23 518:19 519:6,17 519:17,24 522:2 522:13,15,17,22 522:23,23,24,25 523:10 528:11 536:25 537:1 548:4 550:17 554:23 556:10,12 556:14,16,20,20 556:21 557:17,18 559:20,23 565:19 571:21 572:12 573:19 585:16 586:3,15,19,22 595:20 602:16 616:4 619:1 633:19 637:22,22	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>Suite</b> 511:12 513:7 513:10	<b>swear</b> 787:21	<b>taken</b> 540:25 552:16 620:21,22 651:11 690:8 701:1,2 750:9	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>summaries</b> 773:7	<b>swearing</b> 787:25	<b>takes</b> 540:1 542:2 584:7 665:2	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>summarize</b> 559:19	<b>sworn</b> 525:21 526:6 679:5,14 732:3	<b>talk</b> 517:20,23 518:19 519:6,17 519:17,24 522:2 522:13,15,17,22 522:23,23,24,25 523:10 528:11 536:25 537:1 548:4 550:17 554:23 556:10,12 556:14,16,20,20 556:21 557:17,18 559:20,23 565:19 571:21 572:12 573:19 585:16 586:3,15,19,22 595:20 602:16 616:4 619:1 633:19 637:22,22	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>summary</b> 758:13 758:15,17 763:25 766:24 767:14 769:19 771:12,15	<b>Symington</b> 546:17 547:5,9,15	<b>takes</b> 540:1 542:2 584:7 665:2	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>sums</b> 652:7	<b>system</b> 637:18 790:8,9,11	<b>talk</b> 517:20,23 518:19 519:6,17 519:17,24 522:2 522:13,15,17,22 522:23,23,24,25 523:10 528:11 536:25 537:1 548:4 550:17 554:23 556:10,12 556:14,16,20,20 556:21 557:17,18 559:20,23 565:19 571:21 572:12 573:19 585:16 586:3,15,19,22 595:20 602:16 616:4 619:1 633:19 637:22,22	<b>talked</b> 520:1,24 528:2 538:20 540:5 548:6 550:19 553:7,17 553:18 559:18 567:19 571:22 583:6 585:21 586:3 594:16,20 616:8,22 627:22 634:20 663:8,20 667:13,15 671:1,2 671:6,7 678:1 688:9 691:2 700:4 700:8 702:3 708:11 742:6 743:19 752:4 753:3 758:4 764:24 770:6 771:8,14,14 773:11 774:4,6 780:14 791:10	<b>tape</b> 523:18 524:20 736:17 740:1,18 740:22,25 741:8,9 741:12 747:25 751:16,16 <b>taped</b> 774:19 <b>tape-recorder</b> 524:7 771:25 782:14,16 <b>tape-recording</b> 771:25 <b>tapped</b> 547:7 <b>targeted</b> 720:15 <b>targeting</b> 743:22 <b>Tatham</b> 516:14 517:10,18,23 518:13,15,16 519:5,19 521:22 522:1,3,10 523:20 584:9 635:19 691:6 694:7,14 695:3 696:25 733:23 734:2 735:21 736:1,3,5 738:5 739:1,14 740:6,16,18 741:2 741:16,22 742:5 743:4,19 744:2,23 745:1,2,5,19 746:15,17 747:9 747:22 748:2,5,19 748:20,23 749:3,8 749:25 750:12,24 751:9,10 752:5,12 756:25 760:5,18 761:19 762:25 763:10,19 764:10 764:15 765:12,15 765:20,21,24 766:4,14 768:9,17 769:4,5 771:5,13 771:23 773:23 774:6 775:23 776:10,16 777:9 779:1,10,24 780:5
<b>Sun</b> 568:4 569:10 581:5 695:10 697:2 743:9 748:11	<b>T</b>	<b>taken</b> 540:25 552:16 620:21,22 651		

782:3 783:7	775:16 787:13	733:23 734:2,5	598:18 601:12,20	624:24 628:2
784:12,24 786:19	790:6 791:22	738:19 747:5	602:10,25 605:1,5	629:25 630:15
788:8 791:23	<b>telling</b> 567:22	754:1,14,22	605:18 608:16	632:15 634:19,21
<b>Tatham's</b> 515:4	576:8 619:2	755:14,21 756:8	613:23 618:25	635:13,18,18,20
766:11 784:16	723:10 729:21	759:21 760:3	632:7 634:20	635:25 636:22
<b>taught</b> 533:23	754:2 771:13	761:23 762:6	656:9 659:10	637:10,12 639:4,8
<b>tax</b> 568:10,10,14,21	776:11	<b>Texas</b> 537:9 633:21	660:13 664:12,23	640:7 642:6,17,22
<b>taxable</b> 575:8	<b>tells</b> 692:5	<b>text</b> 639:15	664:25 670:9,10	644:7 645:17
<b>taxes</b> 568:11,13	<b>tem</b> 680:6	<b>texting</b> 588:2	675:13 685:4	646:25 648:23
575:24	<b>temporary</b> 573:2	<b>thank</b> 526:2 541:2	686:7,21 687:21	652:7,12 655:23
<b>techniques</b> 749:7	787:7	550:10 587:6	687:25 691:8	658:3 661:3 662:5
<b>telephone</b> 668:25	<b>Ten</b> 680:5	609:21 636:8,20	692:5 694:5	663:25 664:17
697:20 703:15	<b>tenants</b> 690:6	637:21 646:9	695:17 697:3	666:19,20,21,23
708:19 734:12	<b>tens</b> 566:19	647:4 662:23	698:2 699:2,10	667:18 669:14,20
745:8 751:24	<b>term</b> 565:10 588:19	678:20 679:10	707:9 711:13	674:7 677:7
785:3,6,9,22	632:8 680:15	709:11 728:9	713:4 714:3 715:3	681:10 686:17
786:5 791:7,14,15	<b>terms</b> 526:12	730:1,16,18 739:7	715:11 716:25	688:2 690:25
791:16	528:19 529:23	762:14,19 778:14	732:24 738:20	691:17 692:12,18
<b>telephones</b> 596:14	536:6 538:15	792:3,6	751:4 772:10	694:7 695:12
<b>television</b> 526:15	546:12 576:21	<b>thanked</b> 553:2	787:21	697:14 698:22
526:16 560:1,5	590:11,12 591:4	<b>thanks</b> 542:1	<b>think</b> 515:9 517:5	699:1,5,9,12
661:18,19,21	592:10 648:12	550:10 745:6	517:21,25 518:13	704:17 707:6
<b>tell</b> 526:11 527:24	674:7 770:7 771:8	<b>theories</b> 554:5,13	520:18,21 521:13	710:11 711:12
531:7 532:4,5,10	<b>terrible</b> 692:5	<b>theory</b> 554:3,16,21	521:19,21,23,24	715:9 716:4,14
534:18 535:14	<b>test</b> 726:14	555:5	522:4,18 524:13	717:11 719:10
536:21 539:7	<b>testified</b> 517:12,12	<b>thereabouts</b> 593:4	524:15 525:11,11	722:17 723:17
540:4,19 541:10	526:6 577:12	676:4	527:16 529:19,25	726:22 730:6
543:16 544:2	580:3 583:21	<b>thereof</b> 794:10	530:8,9,11,12	736:25,25 744:25
546:3 547:11,24	610:14,15 611:5	<b>they'd</b> 651:6	534:7 535:19,23	747:11 750:25
553:11 558:23	614:17 623:6	790:23	535:24 539:3,9	756:18 757:24
559:12 560:22	627:21 636:13	<b>thing</b> 516:1 521:16	540:1 541:5,14,16	760:4 774:14
561:17 562:12	673:20,21 676:11	522:24 523:25	541:21 543:16	779:17 785:5,10
565:11,23 567:18	679:14 732:3	524:25 532:16	544:6,6 546:8	789:8,13 792:2
569:23 572:14,14	740:3 745:23	595:7 601:4 602:8	554:7,7 562:7	<b>thinking</b> 565:23
572:21 580:25,25	755:1 762:9 774:3	604:3 608:25	563:15 564:15,24	656:7 695:18
581:13 588:11	774:5	634:19 636:11	566:1 570:12	<b>thinks</b> 554:11
589:10,15 594:16	<b>testify</b> 756:9	659:24 660:15	572:2 574:13,21	730:7
607:24 615:25	<b>testifying</b> 738:8,9	678:1 697:17	574:21 578:3,21	<b>third</b> 628:15 680:1
616:3 623:24	738:10 739:6	706:12 710:12,13	578:21,23 579:2	768:15 774:11
628:4 636:25	<b>testimonial</b> 759:16	717:22 728:19	580:21 582:12	<b>Thomas</b> 537:22
648:5 653:4,8	<b>testimony</b> 515:5	746:8 757:7	583:16,21 585:3	538:6 598:19
654:3 655:21	516:8,8 517:1,9	770:22 782:17	585:20,21,22	599:8 600:4
656:6 657:1	519:3 539:13	787:10 791:3	586:8,14 587:22	608:14 611:8
666:11 679:22	557:23 580:20	<b>things</b> 528:7 532:3	592:3 596:1	701:12
682:4 683:19	592:12 597:5	543:21 550:21	602:11,12,15	<b>thought</b> 518:21
689:19 691:4	598:17 619:5	561:2 567:19	605:8,10 608:3	524:7 547:17,21
695:7 704:21,25	623:20 630:9	575:4 576:10	609:18 610:19	554:7,10 561:2,4
720:24 743:2	632:2 661:2	585:18 586:1,14	612:22 614:21	562:17,18,22
749:18 751:1	664:23 707:6	587:16,18,23	616:12 621:24	564:25 571:25
753:5,21 770:8	724:19 732:17	589:8 591:8	623:11,12 624:16	576:15 582:16

589:8 599:8	553:7,24 554:20	<b>times</b> 590:21	513:4,4 514:20	<b>tough</b> 701:12
613:10 658:12	559:4 560:15	606:13 657:6,7	529:13 530:23	<b>town</b> 788:1
660:24 667:22	561:18 567:3,15	664:3,4 667:7	531:7 536:12	<b>track</b> 785:12
695:19 701:11	571:5,7,23 575:14	694:25 703:24	540:21 541:1,5	<b>trade</b> 689:18
705:11,12 720:22	575:18,19 577:6	724:16 748:16	551:10 554:9	<b>trans</b> 584:11
723:9,9,12 725:7	580:19 582:11,15	755:1,6 758:23	556:17,20,20,21	<b>transacting</b> 580:14
728:6 741:4	583:5 585:2,13	771:13 786:9	558:22,23 562:19	<b>transaction</b> 575:2
743:20 755:19	587:1,12 588:11	791:8	566:25 570:23,24	575:11 576:15
<b>thoughts</b> 521:4	591:20,25 592:15	<b>timing</b> 519:7	571:15,18 572:15	579:16 580:2,4,8
<b>thousands</b> 566:20	595:25 596:9	521:10 635:17	586:1 588:15	582:19 584:12
<b>three</b> 526:25	597:23 599:24	666:22 713:23	589:1 591:14	589:21 594:14
553:16 569:17,17	600:16,19,21	714:5 792:16	597:8 598:23	655:1 666:12,14
569:25 574:4	601:13 608:17,25	<b>TIMOTHY</b> 513:12	609:5 611:25	669:21 670:24
587:8,9,10 589:4	609:3 610:6	<b>title</b> 537:17 573:24	612:1,2,4,4 613:7	673:6,7 674:20
591:12 595:6	613:14 619:11,24	581:4	613:11,20 618:2	675:7,24 689:16
596:4 609:23	623:10 624:5,8	<b>today</b> 521:20 573:5	618:14 636:22	689:23 690:1
618:25 628:11	625:9 627:4,4	587:15 628:23	637:2 638:25	691:2,15 693:2,5
657:6 663:15	634:4 635:7,8	629:16 634:10	639:16 641:3,13	693:8,15 694:24
674:11 684:1	637:13 638:23	638:7 650:4	641:16 644:1,25	696:19 698:17
692:19 695:10	646:5,17 647:24	711:10 732:25	645:21 646:23	748:22 749:10
760:15 761:8	648:20 652:2,4,23	733:3 736:20	649:1,14 652:12	750:25 752:13
<b>three-day</b> 577:25	660:11 664:19	747:5 760:14	652:13 653:1,4,20	764:11,17 771:10
<b>three-minute</b>	665:2,2,8 666:7,7	778:25 783:22	654:4 655:8 656:4	784:10
698:23 699:1,7	666:8,10 669:23	788:16,17 789:21	656:6,13,14 657:1	<b>transactions</b>
<b>threshold</b> 542:7	670:10,11 672:3,4	<b>today's</b> 793:8	657:2 660:7,11,20	569:25 574:6,7,10
<b>threw</b> 770:7	672:7 674:22,24	<b>told</b> 522:21 532:1	665:20,21,22	574:24 575:13,19
<b>throwing</b> 631:2	675:13,20 677:4	532:24 533:1,2	666:10 669:1	579:11 581:20
<b>thrown</b> 612:22	677:16 679:1	540:5,7 541:20	670:7,23 671:2	584:10 675:21
672:19	683:1 685:10,12	543:7 544:7 552:7	678:22 679:8,12	690:25 691:5,13
<b>ticket</b> 543:23	685:15 687:3	552:13 554:12,14	689:15 690:21	749:1
<b>tickets</b> 543:19,24	688:1 689:2 690:8	563:6 571:3	700:21 707:24	<b>transcribed</b> 515:12
543:25 544:1,3	691:8 692:10,16	575:15 580:11	768:8	<b>transcript</b> 760:3
<b>tickled</b> 768:7	695:20,24 698:15	582:9 586:11	<b>tomorrow</b> 521:12	761:24 793:1
<b>ties</b> 641:22 719:25	699:8,15 700:1,13	597:24 616:23	634:14 738:2	794:12
720:13	700:17 701:10	617:5 618:10	754:2 755:22	<b>transition</b> 600:13
<b>Tiffany</b> 513:13	702:8,22 703:2,18	623:17,19,23	<b>Tom's</b> 636:14	<b>translate</b> 638:15
<b>tight</b> 670:20	704:23 706:10,21	632:1 654:14,15	<b>tone</b> 563:1 744:9	<b>traps</b> 688:5,7
<b>Tim</b> 514:16 537:21	707:24 708:10,10	654:24 658:13	<b>tool</b> 621:14	<b>treasurer</b> 556:9
537:21 543:24	708:10,13,18,21	660:23 687:14	<b>top</b> 534:10 537:4	559:10 563:20
561:10 594:16	709:3,5 716:21	688:1 698:24,24	583:9 646:14	<b>trial</b> 525:4 732:21
683:22 692:25	731:7 739:25	702:24 704:12	647:1 660:6	732:23 787:25
700:20 702:9	741:7 742:23,24	710:11 711:21	750:24 760:12	<b>tried</b> 580:16 756:12
<b>time</b> 520:9 521:17	743:1,21 744:17	724:2 753:22,25	772:24	768:15 769:8
523:17 524:6,15	757:1 763:13,16	754:4 759:22	<b>topic</b> 521:9	786:24 787:2
524:17 525:1,7	764:24 777:8,14	760:2,4 761:4	<b>tops</b> 747:20	<b>tries</b> 645:24 786:4
526:19 527:19	779:5,10,21 781:4	764:8 767:1 768:9	<b>total</b> 628:11 666:16	<b>trigger</b> 608:7,9
528:12 530:16	785:18 787:17	770:4 774:16	734:9	<b>triggered</b> 613:10
531:14 533:23	791:12,18,19,25	775:21 777:1	<b>totally</b> 515:3 657:5	614:4
538:2,6 539:8,12	792:10,14 793:9	787:15 788:18	657:16 715:22	<b>triggers</b> 608:8
539:15 546:8	<b>timeframe</b> 629:15	<b>Tom</b> 511:4,4 512:7	<b>touch</b> 693:17	<b>trouble</b> 700:6

738:1 775:8	612:13,14,15	<b>typo</b> 623:8	755:12,16	<b>version</b> 776:4
<b>truck</b> 603:12	<b>turn</b> 533:5,14		<b>unedited</b> 663:7	<b>versus</b> 681:13
<b>true</b> 543:15 623:5	535:25 544:22	<b>U</b>	667:3	682:24 710:3
627:12 629:17	561:9,12 576:5	<b>U</b> 535:4	<b>unfair</b> 614:3	712:9,9 715:13
654:11 681:18	666:17 722:5	<b>Uh</b> 617:13	<b>Unfortunately</b>	<b>viable</b> 540:8 542:8
716:12 745:24	763:7	<b>Uh-huh</b> 598:14	516:6	542:10,15,15
787:17,24 794:11	<b>turned</b> 524:6	617:4,21 626:1	<b>union</b> 720:13	<b>vice</b> 529:8 610:4
<b>trump</b> 775:18	559:24 570:16	642:5 649:3,7,9	<b>unions</b> 641:22	<b>victory</b> 535:10
776:1	<b>turning</b> 751:19	664:7 671:14	719:25	540:25 609:8
<b>trumpets</b> 615:11	<b>TV</b> 526:17 567:8	673:9 677:12	<b>unique</b> 721:21	<b>view</b> 620:22 706:1
615:21	703:8 716:8	773:20	<b>University</b> 526:14	710:4 712:11,16
<b>trusted</b> 563:7,16	<b>tweeted</b> 520:2	<b>ultimately</b> 537:21	<b>unreasonable</b>	<b>viewed</b> 565:1
<b>truth</b> 640:14	<b>twice</b> 774:4,7	538:16 542:23	524:14	<b>views</b> 605:10,12
641:23 719:13	<b>two</b> 524:17,23	564:22 569:13	<b>unrelated</b> 548:20	<b>violate</b> 685:13
720:1 754:3	537:7,10 545:6	572:4 578:22	<b>unsuccessful</b>	689:3 700:11
<b>truthful</b> 625:13	561:2 565:15	702:6 722:14	697:25	709:6
<b>truthfully</b> 587:14	574:4,5 585:4	746:4	<b>untimely</b> 520:18	<b>violated</b> 559:6
<b>try</b> 518:18 522:1,7	590:21 591:1,12	<b>UMB</b> 550:3	<b>updates</b> 613:16	689:8 766:24
523:9 550:21	592:21 596:4	<b>unavailable</b> 675:2	<b>upper</b> 751:11	<b>violation</b> 519:14
571:23 577:14	629:8 638:22	<b>unclear</b> 737:14	<b>upset</b> 558:8 637:6	682:15,19 683:8
634:15 645:8,8	651:6,23 660:10	744:21	650:10	684:13 708:24
649:12 650:5	661:23 663:15	<b>uncorrected</b>	<b>USA</b> 683:25	710:11 756:12
652:11 653:7	680:21 687:11,18	629:16	<b>use</b> 520:4 535:22	<b>Virginia</b> 552:22
654:7 655:10	693:10 697:21	<b>underlined</b> 532:3	568:8,12,14	653:11
658:19 692:21	707:16,22 716:11	688:10	704:12 705:20,24	<b>vision</b> 595:23
693:18 716:7	717:7,16 746:12	<b>underlying</b> 578:24	711:17 714:7,19	<b>visit</b> 534:25 535:2
723:5	747:6,23 748:1	579:2 599:6	724:21 726:7	<b>visiting</b> 564:11
<b>trying</b> 515:19	750:15 752:5,9	<b>undermine</b> 641:24	732:22	<b>vis-a-vis</b> 573:11
530:8 538:4	759:22,23 760:2,4	720:2	<b>useful</b> 651:20	<b>vividly</b> 764:4,6
540:16 575:22	760:7,8,23,25	<b>underneath</b> 653:18	<b>usually</b> 663:15	765:10 788:7
587:11,13,25	761:12 767:24	<b>understand</b> 518:24	<b>utilize</b> 621:2	<b>VO</b> 663:1
589:11 591:6	768:2,21 769:7,10	524:18 542:14	<b>utilized</b> 619:22	<b>voice</b> 663:23 676:4
613:1,3 615:1	774:4,6 775:9,13	553:5 557:4 575:3	<b>utterance</b> 755:20	676:9 677:21
633:4 641:21	776:20 777:6	589:9 630:24	<b>utterly</b> 721:7	756:21 757:16,17
652:15,20 656:3	781:24 786:17	648:25 658:8		<b>voiceover</b> 661:6,13
670:4 677:19	790:7	659:20 705:8	<b>V</b>	667:2 670:6 676:3
689:18 693:10,24	<b>two-minute</b> 739:19	709:20 721:3	<b>vacation</b> 610:2	676:21 677:3,3,20
694:23 714:14,21	741:9 783:15	733:12 734:6,7,17	<b>vague</b> 712:4 713:16	<b>voices</b> 756:22,24
716:10 718:17	<b>two-thirds</b> 622:12	752:19 755:24	<b>values</b> 572:1	<b>voidable</b> 581:24
719:24 720:12,20	690:9	762:3 772:15,18	<b>Vanessa</b> 602:13	696:20
748:24 788:2	<b>two-thousand</b>	778:24 783:14	606:18	<b>volunteer</b> 529:13
791:7	619:24	786:2 787:11	<b>Vargas</b> 602:12	572:15 602:5,9
<b>Tucson</b> 527:13	<b>type</b> 524:2 664:10	<b>understanding</b>	606:15,17,18	674:4 685:20,21
534:24 535:3,19	664:14 786:4	683:2 710:18	<b>vehicle</b> 568:8	685:22 686:3,5
537:8 538:10	790:5	734:4,19,20	781:14 783:19	<b>volunteered</b> 540:17
604:8 618:5,6	<b>typed</b> 749:21	741:11 745:22	<b>venom</b> 756:4	<b>volunteers</b> 597:11
621:24 623:16,17	<b>typewritten</b> 794:11	754:13,23 785:7	<b>vent</b> 585:25	603:17 606:25
623:23 625:20	<b>typically</b> 574:25	<b>understands</b> 756:7	<b>verbiage</b> 591:6	607:2 674:4
<b>Tuesday</b> 549:22	607:9 660:3	<b>understood</b> 532:23	755:12 772:19	686:17
588:13 594:23	<b>typist</b> 664:10	736:25 754:10,20	<b>Verizon</b> 640:14	<b>vote</b> 591:16 601:10

<b>voters</b> 601:10 642:3 720:7,15 <b>votes</b> 598:2,3,5 608:3,6 609:6 640:2,12 716:1 719:11 <b>vouch</b> 542:23 659:17	772:10,17 775:3,4 775:4 785:25 <b>wanted</b> 531:3 536:12 543:18,18 543:19 546:13 564:23 565:2 566:5,11,22 571:22 572:2 595:18 618:1,2 621:25 634:1 636:10 650:22 655:16 657:24 668:17 688:5 698:2 707:3 715:12 722:10 743:9 744:5 751:5 <b>wanting</b> 566:14 591:8 757:18 <b>wants</b> 516:17 569:3 608:12 654:9 655:10 <b>Washington</b> 511:11 527:14 640:4 719:10 <b>wasn't</b> 515:11 517:6 519:25 524:11 573:14 576:7 580:5,16 584:19,25,25 586:12 592:5 600:1,11 613:25 615:10 656:19,19 663:16 666:13 676:12 682:2 695:17 697:10 705:4,16,20,25,25 706:1 723:13 725:1,13 726:5 729:9 743:12,13 744:13 747:16 758:14 759:11 763:11,24 764:11 765:6,22 771:1 774:16,17,18 778:23 788:15 <b>way</b> 516:4 517:12 525:5 528:2 565:2 566:13 575:6 591:8 593:5 595:1 597:25 598:24	605:18 606:11 619:5 622:13 648:6,8 658:6 659:10 689:3,4,8 689:9 701:19 702:1 703:12 712:7 717:9,18 729:21 746:10,13 748:25 757:23 772:13 786:16 790:2 <b>ways</b> 606:2 670:9 715:25 <b>weather</b> 585:23 <b>Wednesday</b> 560:16 638:13 792:22 <b>week</b> 523:15,21,22 523:22 524:16,23 524:25 525:2 540:12 581:18 600:20,25 601:1 608:2,19 609:3,12 612:7,19,21 614:19 629:25 630:1,3,3,4,4,6,7 630:8 648:11 706:3 721:4 786:15 <b>weekend</b> 535:5 614:11 618:6 <b>weeks</b> 524:17 609:12 660:10 734:11 747:24 748:3 760:13 <b>weird</b> 757:22 <b>Weizner</b> 721:7 <b>Wendell</b> 511:24 794:7,17 <b>went</b> 517:19 526:13 526:14,17,21 531:23 534:21 535:5,6 538:2 539:3 540:11 548:9,11,22,23 562:15 564:13 566:23 567:7 569:14 600:2,11 603:14,18,18,19 603:19 604:8 609:4 614:20	615:11 623:15 628:6 637:16 648:13 660:5 661:25 693:24 696:19 717:17 737:11 746:5,17 756:11 759:24 775:8 792:15 <b>weren't</b> 557:1 588:2 594:18 783:23 787:21 <b>west</b> 511:11 528:18 581:6 743:9 748:11 <b>Westerhausen</b> 513:15 <b>we'll</b> 519:24 520:16 522:1 544:12 635:7,8,23 637:20 667:8 678:25 679:1 731:6 738:1 738:20 741:5 762:10 793:9 <b>we're</b> 514:23 516:2 516:7,8,24 518:14 520:23 521:9 523:13 524:14 525:12 531:25 549:11 562:18 578:2 587:7 607:20 613:6 616:22 617:14,19 619:1,2 627:1,2,4 629:20 631:2 633:3,3 635:18 641:10 645:22 661:11 665:14 667:7,8 668:25 671:3,4 672:3,5 683:19 685:10 689:15 710:25 711:1 713:18 714:5 716:8,13 722:18 730:22 733:18 738:3 757:5 772:6 773:10 777:17 780:1 781:22 <b>we've</b> 521:5 524:25 528:2 557:22	559:18 572:12,19 586:25 608:19 616:13,24 619:3,3 637:18 645:21,25 650:10 655:18 658:15 662:16 664:23 671:11,12 671:21 681:6 687:7,19 689:15 706:6 716:11 718:8,8 720:9 791:17 <b>whatsoever</b> 748:24 749:15 <b>wife</b> 534:22 549:20 561:22 574:3,4 584:2 746:1,4 775:5 <b>Wilenchik</b> 548:6 <b>Wilkinson</b> 556:6 556:10 557:2 559:9,13 561:6,15 561:17 564:14 591:22 592:4 661:23 662:8 <b>Wilkinson's</b> 561:13 <b>willing</b> 631:22 706:14,17,18 707:3 <b>win</b> 597:25 609:1,6 <b>Winn</b> 511:6 512:3 513:11 514:17,18 514:18 522:20 525:14,24,25 526:4,11 587:7 596:9 597:3 628:17 635:3,21 636:11 645:1 646:1 673:20 680:18 685:12,17 687:4 689:3 699:20 700:1 701:16 702:12 708:11,17,20 719:3 725:23 734:8 735:3 743:10,23 748:7 748:12,17,25 749:9 751:8 752:7 752:9 757:2
--	--	---	---	---

## W

763:24 764:5  
 765:13 766:8  
 769:12 770:18,25  
 771:13 775:12  
 776:5 780:5,10  
 784:7,9  
**winner** 620:23  
 723:12  
**winning** 614:1  
**Winn's** 694:9,13  
 771:10  
**winter** 599:19,20  
 599:21  
**wire** 545:18 550:1  
 651:24 654:16  
**wired** 542:24 553:3  
 648:21 659:7  
**Wireless** 640:14  
**wiring** 549:8 553:5  
 659:16  
**wishes** 793:3  
**withdraw** 544:21  
 557:5  
**with/any** 752:2  
**witness** 514:24  
 515:16 519:18  
 522:4 525:13,21  
 525:24 526:5  
 533:11 619:12  
 635:13 636:8  
 678:20,21,22  
 679:5,8,13 730:1  
 730:18,19,20  
 731:15 732:2  
 741:21 752:19  
 754:14 755:15  
 771:19 775:18  
 776:1 790:17  
**witnesses** 512:2  
 635:21 694:7  
 754:12,19,22  
 755:7,10,14 756:7  
 756:10,12 788:25  
 790:4,22  
**woman** 776:23  
**won** 598:1,4,4,4  
 608:1,2 701:13  
 702:6  
**wondered** 733:12  
**wondering** 664:17

665:4  
**word** 542:14  
 565:20 632:13,14  
 712:13 714:3,7,10  
 714:19,20 724:21  
 757:2 765:23  
 776:9  
**wording** 705:24  
**words** 545:9 591:18  
 595:22 613:12  
 666:22 672:1,2  
 754:6 758:6  
 761:25 768:6  
**work** 532:18  
 580:14,16,17  
 586:5 601:24  
 633:12 634:11  
 645:12 661:16  
 714:8 717:17  
**worked** 527:15  
 528:25 529:14  
 537:19 561:22  
 562:1 573:3,3  
 587:11 597:8  
 602:13 613:15  
 643:20 644:4  
 671:11 721:17  
**working** 527:1  
 528:13,14 535:17  
 576:4 607:5  
 647:21 659:4  
 661:14 670:3  
 672:21,24 693:6  
 701:11,21 718:14  
 722:13,14,15  
 788:2  
**works** 517:19  
 703:14 714:13  
**world** 556:17 701:6  
**worry** 724:8  
**worth** 577:6  
**wouldn't** 568:17  
 625:8 628:2  
 654:18 655:17  
 658:24 675:25  
 714:15,23 716:3  
 717:1 764:6 785:4  
 788:16  
**Wren** 511:23  
**write** 548:23

758:15 766:17  
**writing** 595:19  
 681:12 682:23  
 684:24 788:13  
**written** 521:2  
 534:2 629:10  
 663:22 773:1,2  
 781:23 792:19,20  
 793:2,3  
**wrong** 560:13  
 572:25 676:18  
 773:3,8  
**wrote** 534:22  
 570:23 589:8  
 624:13 751:4  
 758:17 764:22  
 766:24 776:23  
**W-i-n-n** 525:25

---

**X**

---

**X** 512:1,1 648:5

---

**Y**

---

**Yavapai** 513:19  
 514:11,13,14  
 516:15 517:13  
 519:21 570:5,11  
 588:7 592:8  
 597:15 603:6,8  
 634:5 637:24  
 680:17  
**yeah** 543:11,12  
 545:12 546:19  
 549:9,11 551:11  
 551:23 561:11  
 564:10 570:8  
 572:23 589:25  
 591:23 595:12  
 599:20 601:8  
 602:18 603:25  
 604:21 605:21,22  
 606:5,7 607:13  
 608:14 609:15  
 611:2,16 613:1,6  
 615:15 617:15,15  
 619:25 621:14  
 630:2,7 632:15  
 637:3 638:8  
 645:20 648:4,13  
 650:24 657:20

661:18 662:3  
 665:16 669:9,14  
 672:20 673:4  
 686:4 696:17  
 701:1 717:8  
 721:13 731:4  
 741:21 742:13  
 749:20 760:24  
 766:6 767:6,8  
 768:15,25 769:3  
 771:22 774:16  
 775:21 789:5  
 790:20  
**year** 619:18 629:10  
 629:12 704:23  
**years** 526:22 527:1  
 571:24 587:8,9,10  
 604:11 629:5,6,8  
 674:11 679:24,25  
 680:2,5,8,15  
 681:1 686:17  
 690:16 692:19  
 693:10 707:12  
 710:6 712:21  
 717:14 718:2  
 790:7  
**yesterday** 515:5  
 517:5 519:13  
 525:17 634:6  
 676:12 736:6  
 744:25 750:11  
 752:4,19 757:2  
 758:4 760:1  
 773:18 774:3,5  
**yes-or-no** 754:23  
 754:24  
**Yuma** 603:19  
 607:4

---

**Z**

---

**zoning** 527:22

---

**\$**

---

**\$1,500,000** 701:22  
**\$1.3** 569:1  
**\$100,000** 549:3  
 550:1 552:1,10,22  
 552:23 570:2  
 572:5 578:10  
 649:22,24,25

651:20,22 654:10  
 654:20,20 656:23  
 658:5,11 702:24  
 704:12 706:7  
**\$120,000** 696:23  
**\$15,000** 537:7  
 540:3 552:15,18  
 636:14  
**\$20** 631:3  
**\$200,000** 577:10  
**\$217,000** 590:3  
**\$30,000** 538:14  
 566:5 668:15  
**\$300,000** 589:13  
**\$350,000** 542:24  
 544:14,17 545:15  
 658:21  
**\$450,000** 654:12  
**\$5,000** 534:15  
 547:23 548:1  
 624:14,15  
**\$50,000** 540:7  
 543:6 633:5,17  
**\$500** 547:7,8  
 578:10  
**\$840** 546:2 706:16  
**\$90,000** 695:20

---

**0**

---

**00003** 511:5  
**00375** 511:6  
**09** 638:14

---

**1**

---

**1** 549:13 750:25  
**1st** 529:25 555:2  
 581:23 608:19  
**1-A** 749:24,25  
 750:1 762:24  
 790:25  
**1.3** 574:17  
**1:00** 634:22 635:4,7  
 738:5 739:15  
 740:2,4,5,7,12,17  
 741:15 742:11,20  
 742:21,25 744:16  
 745:7,13 763:18  
 763:21 779:6,9,18  
 779:19,20 780:10  
 781:1 782:19

783:11,18,20 784:4 1:10 781:2,12 1:42 662:11 677:7 1:45 638:21 641:11 1:47 643:25 10 552:4 562:7 584:8 662:20,21 696:16,23 702:9 724:12 731:4 744:21 747:20 761:15,17 766:22 770:5,21 774:12 780:16 782:25 784:5 10th 530:10 612:7 612:10 615:7,8 630:5,6,8 10/17 692:13 10/20 593:3 678:11 10/21 663:21 10/27 552:4 10/29 552:3 10:00 603:21 0:20 661:4 10:21 560:16 561:13 661:11 10:40 561:15 100 513:7 542:18 653:7 724:20 100K 550:22 645:9 649:12 650:5 652:3,11 653:7,12 654:7 658:19 723:5,25 724:1 100,000 589:7,18 696:4 706:14,17 706:18 707:4 724:20,21 101 511:12 562:11 1031 568:1,7,8,17 569:4 575:5,7,9 1070 719:25 11 549:12,14 553:18 628:17 697:23 11th 612:10,10,13 612:15 613:8 614:18 615:3,7,8 687:11,18 727:20	11-minute 671:8 698:6 11:08 550:14 11:54 593:5 12 511:13 514:4 638:17 12th 612:14,15 615:3 623:11 632:19,21,22 792:22 12:46 550:6 13 620:5 702:7 13th 533:14 616:11 616:12,22,25 617:18,20 621:6 621:20 622:4 625:14 626:23,24 626:25 630:1,7,8 632:19 660:10 793:2 1313 513:6 14 681:5 711:1 735:11 767:17 14F-OO1-AAG 587:4 14F-001-AAA 731:10 14F-001-AAG 511:4 514:4 635:11 679:4 14:02 644:24 1400 511:11 15 607:9,11 631:3 637:24 702:12 703:22 736:12 747:18 783:2 15th 536:7 624:6 624:11,25 625:4 625:15,22 15,000 540:14,15 540:17 610:7 15-minute 735:6,7 735:11 751:16 1515 750:25 16th 578:2 625:25 160 513:10 1614 511:23 17 701:5,6 723:12 17th 578:2 622:25 623:4,11 694:23	793:4 18 560:13 18th 578:2 583:8 583:11 624:24 694:23 700:24 701:14 19 560:14 666:6 700:20 19th 570:8 578:3,4 583:10,12,16,18 588:13 595:8,9,12 595:23 695:2,23 697:10 <hr/> 2 2 545:10 622:12 713:18,19 751:6 762:17 768:11 2nd 530:4 608:20 2,000 548:16 2/24 663:21 2/29 565:6 2:00 644:25 2:10 646:7 2:19 665:12,15,21 665:22 669:20 697:18 2:24 665:23,25 676:3 2:25 663:4 2:29 664:4,6 666:7 667:7,17 668:23 2:31 549:23 2:33 777:5 2:37 669:8 671:7 2:39 751:12 763:14 777:11,12 781:4 781:12,15 2:40 671:7 2:41 592:22 2:48 671:8 2:59 590:16,18 592:16 20 528:24 561:10 584:8 607:10,11 661:9 696:15 20th 560:16 561:11 561:14 564:5 565:6 583:17 590:16 623:1	624:19 661:11 665:13,14 669:3 671:4 674:8,23 675:4,6 676:3 692:12 693:5 697:9,12,14 20-some 604:11 20-year 718:5 20-36-09 718:22 20:36 638:13 20:36:09 638:21 200 664:13 2002 681:24 682:7 2003 690:8 2005 689:23 2008 689:25 690:4 690:16 2009 619:25 2010 511:5,6 528:12,13 529:4 529:11 536:5 549:22 555:2 579:11 588:13 598:11,13 604:3 607:18,19 609:18 619:23,25 620:1,3 620:5,23 638:13 645:13,22 678:12 690:17 2012 628:15,18 765:2 2014 511:13 514:4 794:14 216-1197 570:22 217,000 695:25 217,500 589:7,19 696:5 22 665:16 22nd 567:10,11 595:1 648:13 654:24 225 513:20 23 592:9 2325 513:13 24 680:2 24th 567:12 601:7 601:14 608:19 648:16,17 792:21 25 736:13,15 756:20 758:22	773:17 25th 535:24 536:5 567:12 628:15 648:15,16,17 250 608:8,9 252-2927 511:25 256-4462 533:20 26 546:2 549:22 550:6 551:16 762:15 26th 651:10 27 526:22 546:17 663:13 666:6 686:17 27th 546:23 550:17 550:20 551:8 554:9 557:18 637:23 638:4,13 641:11 644:24 645:22 646:6 648:12 650:18 651:21 659:25 701:15 702:2,11 702:18 716:18 728:16,17 2701 513:9 28 526:22 666:6 28th 547:23 548:16 571:9 29th 549:4 569:16 579:11 582:8 <hr/> 3 3 683:11,12 752:1 788:11 3rd 608:20 793:1 3:00 578:12 593:3 3:11 588:14 671:4 3:21 672:8,12 3:25 672:5 3:27 592:22 3:37 592:22 671:6 3:55 593:25 30 560:1,6 600:24 601:1 665:7 679:24,25 746:24 766:23 30th 553:25 586:23 593:19,19,22 594:2 628:18
---	--	---	---	---

742:19 745:2,11	<b>450,000</b> 552:13	743:8 748:10
746:22 779:3	654:12	792:22
783:15 784:1	<b>473</b> 570:6	<b>70</b> 664:15
<b>30,000</b> 633:22	<b>480</b> 570:22	<b>709</b> 512:8
667:15 785:12		<b>728</b> 512:9
<b>30-second</b> 663:12	<b>5</b>	<b>730</b> 512:9
665:6	<b>5</b> 540:13 551:22	<b>732</b> 512:11
<b>300</b> 654:19	678:5 683:11	<b>752</b> 512:12
<b>300,000</b> 577:6	684:8 701:2 731:4	<b>778</b> 512:12
578:13 589:5	744:21	
<b>302</b> 732:9 752:3	<b>5th</b> 530:1,1	<b>8</b>
754:1 758:7 759:2	<b>5,000</b> 633:23	<b>8</b> 544:24 565:5
759:25 760:9,22	<b>5:07</b> 793:10	622:9 638:14
761:3,5,11,15,22	<b>50</b> 542:2 630:22	667:4 747:19
764:14 766:18	633:24 755:4	780:16 782:25
770:11 787:16	<b>50,000</b> 540:14	<b>8th</b> 530:2,3 610:17
<b>31st</b> 581:8,17,18	552:12 636:16	610:18,19,24
582:6 594:20	648:23 658:24	612:23 613:4
696:17 742:10,14	<b>500</b> 546:17	<b>8,000</b> 648:24
742:17 745:12,17	<b>50091</b> 511:25	<b>8:00</b> 788:5
746:24,25 747:6	<b>526</b> 512:4	<b>8:36</b> 638:14
748:1 750:10	<b>542</b> 535:25	<b>8:39</b> 511:13 514:5
765:2 784:2	<b>543</b> 536:1	<b>80</b> 528:23
<b>32</b> 533:4,15 570:6	<b>549</b> 533:15 616:13	<b>85004</b> 513:16
595:12 616:9,12	<b>550</b> 631:18	<b>85014</b> 513:7
<b>33</b> 588:8 692:24	<b>552</b> 595:12	<b>85016</b> 513:10
695:4	<b>596</b> 512:5	<b>85016-4237</b> 513:14
<b>335</b> 513:16	<b>597</b> 512:5	<b>85020</b> 511:24
<b>34</b> 767:18,18,19		<b>86301</b> 513:20
<b>35</b> 540:13	<b>6</b>	<b>899</b> 598:5 608:6,7
<b>350</b> 654:17,21	<b>6</b> 560:11,12 570:19	
659:2 695:9	570:21 580:24	<b>9</b>
<b>350,000</b> 552:14	590:16 671:3	<b>9</b> 662:18,22
658:4,6	677:11 690:20,21	<b>9th</b> 530:3,4,10
	701:2	610:16,18,19
<b>4</b>	<b>6,000-minute</b>	611:1,14 612:24
<b>4</b> 544:24 622:8	664:14	<b>90,000</b> 696:6
683:11 684:8	<b>6:30</b> 593:5	
702:7	<b>602</b> 511:25 533:20	
<b>4:00</b> 594:1,2 603:18	<b>620</b> 588:9 692:25	
<b>40</b> 600:25 601:1	<b>673</b> 512:6	
758:14,18 761:4	<b>679</b> 512:8	
765:3 766:23,24		
769:19	<b>7</b>	
<b>40-year</b> 529:7	<b>7</b> 561:12 592:8	
<b>400,000</b> 577:7	<b>7th</b> 567:25 568:2	
<b>43</b> 580:24	568:18 569:20	
<b>5</b> 635:1	572:7 574:12	
<b>450</b> 631:18 654:21	584:17 689:21	
658:4,13	695:8 698:21	