



Date: December 6, 2022

Case: In Re: Rudolph W. Giuliani



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DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

- - - - - X

In the Matter of, Board Docket No.
RUDOLPH GIULIANI, 22-BD-027
Respondent. Disciplinary Docket No.

A Temporarily Suspended Member 2020-D253
of the Bar of the District of Vol. 2
Columbia Court of Appeals. :
Bar Number: 237255 :

- - - - - X

Tuesday, December 6, 2022

CONTINUED VIRTUAL HEARING OF
RUDOLPH GIULIANI

Reported by
Kim M. Brantley, C.S.R.

Page 273

1 Continued virtual hearing, taken via Zoom,
2 commencing at 9:02 a.m., before the Ad Hoc Hearing
3 Committee, and before Kim M. Brantley, a Court
4 Reporter and Notary Public in and for the District
5 of Columbia, when were present on behalf of the
6 respective parties:
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Page 274

1 APPEARANCES:
2 Ad Hoc Hearing Committee:
3 ROBERT C. BERNIUS, ESQUIRE
4 Chair
5 MS. CAROLYN HAYNESWORTH-MURRELL
6 Public Member
7 JAY BROZOST, ESQUIRE
8 Attorney Member
9
10 On behalf of the DC Attorney Disciplinary
11 System:
12 HAMILTON P. FOX, III, ESQUIRE
13 Disciplinary Counsel
14 JASON HORRELL, ESQUIRE
15 Assistant Disciplinary Counsel
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Page 275

1 APPEARANCES CONTINUED:
2 On behalf of Respondent:
3 HON. JOHN M. LEVENTHAL, (RET.) ESQUIRE
4 HON. BARRY KAMINS, (RET.) ESQUIRE
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10 ALSO PRESENT:
11 AZADEH MATINPOUR, Paralegal
12 DC Disciplinary Counsel
13
14 JOHN ESPOZITO
15 Aidala Bertuna & Kamins, PC
16
17 JON ORTIZ, ESQUIRE
18 DC Disciplinary Counsel Expert Witness
19
20 JIM PHALEN, ESQUIRE
21 MEGHAN BORAZZAS, Staff
22 Office of the Executive Attorney

Page 276

1 I N D E X
2 DISCIPLINARY COUNSEL'S CASE:
3 WITNESSES: DIRECT: CROSS:
4 Rudolph Giuliani 283 365
5 Daniel Ortiz 529 (Voir dire)
6 533
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Page 277

1 P R O C E E D I N G S
2 CHAIRMAN BERNIUS: This is a
3 continuation of the disciplinary hearing in the
4 matter of Rudolph W. Giuliani, Docket No.
5 2020-D253.
6 I have a couple of administrative
7 matters before we begin. First we have a new
8 court reporter so I need to give the oath to her.
9 (Court Reporter sworn.)
10 CHAIRMAN BERNIUS: One more
11 administrative detail. For the benefit of the
12 respondent -- the respondent and his attorneys,
13 this is -- this proceeding is basically a
14 bifurcated proceeding. There's a -- we're in
15 the -- the liability phase right now and, at the
16 end of the testimony at that phase, the committee
17 meets to decide whether there's been a showing of
18 a -- to make a probable -- whether or not there is
19 reason to believe that a -- a violation occurred.
20 If -- if we make that nonbinding determination,
21 the proceeding moves into the second phase, which
22 is the sanctions phase, at which point

Page 278

1 Disciplinary Counsel can offer evidence in
2 aggravation and respondent can offer evidence in
3 mitigation of sanction.
4 I'm just mentioning that now because we
5 will continue right into the sanctions phase after
6 the committee meets to make -- to decide whether
7 it's made the determination. If it makes the
8 determination, we'll continue right with the
9 sanctions phase. There will be no adjournment.
10 So I just wanted to give you a head's
11 up. If you've got evidence on sanction, as a
12 contingent matter you should have it ready to go
13 at the end of the liability phase.
14 Is there anything else we need to
15 discuss before we begin?
16 MR. LEVENTHAL: Mr. Chair, I don't know
17 if we're going to have actual -- you know, we're
18 hoping that there'll be no sanction, obviously,
19 but if there is a sanction, we -- we would like to
20 either have -- besides oral argument on Mr.
21 Giuliani's behalf, on his past contributions to
22 this country, and et cetera, we would like also

Page 279

1 perhaps to have a witness or two. And I don't
2 know if they could be ready right after this
3 election -- right after this hearing.
4 CHAIRMAN BERNIUS: Well, that's why --
5 that's why I'm saying now, if you're going to --
6 if you're going to have documentary evidence, you
7 can put -- you can on evidence or not as you see
8 fit. But what I'm saying is that it will have to
9 be presented as part of this continuous hearing at
10 the -- you know, after -- after the liability
11 phase is complete, ready to go.
12 MR. LEVENTHAL: The people who we're
13 talking about -- people I don't know if they'll be
14 available that particular minute.
15 CHAIRMAN BERNIUS: Well, I --
16 MR. LEVENTHAL: If the hearing's
17 over -- I don't even know when the hearing
18 actually is going to be over. I can't --
19 MR. GIULIANI: Won't there be some time
20 to decide it?
21 MR. LEVENTHAL: Yeah, can't we -- can't
22 we have maybe a day adjournment for -- for these

Page 280

1 people?
2 CHAIRMAN BERNIUS: Well, I think
3 somebody ought to get -- from your office ought to
4 get working on it and -- and realize that if and
5 when the need arises.
6 Anything else?
7 MR. LEVENTHAL: Yes. If -- would
8 character letters in lieu of testimony -- maybe
9 one or two, instead of -- because I can't
10 guarantee -- we don't know when this is exactly
11 going to be over, and then --
12 It's up to you.
13 MR. GIULIANI: Won't there be a delay
14 to decide it?
15 MR. LEVENTHAL: Yeah -- no, they -- no,
16 they --
17 MR. GIULIANI: They're going to decide
18 it like that?
19 MR. LEVENTHAL: They do and it's a
20 preliminary hearing. I'll talk to you later.
21 MR. GIULIANI: Oh, that's great. No
22 consideration.

Page 281

1 MR. LEVENTHAL: Oh, I'm not seen? I'm
2 so used to talking into the other screen. I
3 apologize.
4 So there's no adjournment even to get
5 someone to testify live?
6 CHAIRMAN BERNIUS: Like I said, this --
7 this hearing has been scheduled for a long time
8 and if -- if there is an issue, we can discuss it
9 at the time the issue arises. I'm just giving you
10 a head's up to avoid any problem to the extent
11 that we can.
12 In terms of what evidence you might
13 want to submit in the -- in any sanctions phase,
14 should it happen, I can't advise you on that.
15 That's up to you.
16 MR. LEVENTHAL: All right. So --
17 but -- but letters are appropriate. Is that
18 correct?
19 CHAIRMAN BERNIUS: Well, no, I can't --
20 like I said, Mr. Leventhal, I can't give you an
21 advisory opinion as to what's going to be --
22 what's acceptable or not.

Page 282

1 MR. LEVENTHAL: Okay.
2 CHAIRMAN BERNIUS: I -- I would --
3 that's not my role and it cannot be my role. I
4 hope you understand that.
5 MR. GIULIANI: As soon as -- as soon as
6 this is -- this part is concluded --
7 MR. LEVENTHAL: They make a
8 preliminary --
9 MR. GIULIANI: You're going to make a
10 decision on -- on the spot?
11 CHAIRMAN BERNIUS: We make a
12 preliminary, nonbinding decision as to whether or
13 not there has been -- a violation has been proved.
14 It is preliminary, it is nonbinding, but that's --
15 that's the process. And you can take a look at
16 the rules and see how it's spelled out.
17 MR. GIULIANI: We would object to that,
18 right? I hope we deserve that.
19 CHAIRMAN BERNIUS: Mr. Fox, are you
20 ready to go?
21 MR. FOX: I am.
22 CHAIRMAN BERNIUS: You may proceed.

Page 283

1 RUDOLPH GIULIANI,
2 called as a witness by Disciplinary Counsel, and
3 after having been previously sworn, was further
4 examined and testified as follows:
5 CONTINUED DIRECT EXAMINATION
6 ON BEHALF OF DISCIPLINARY COUNSEL
7 BY MR. FOX:
8 Q. Mr. Giuliani, we concluded yesterday in
9 talking about some of the declarations that were
10 part of Exhibit 36, which had been submitted by
11 your lawyers, and I wanted to spend a moment on
12 talking about the origins of those declarations,
13 because I think --
14 A. Well, just remind me again where we
15 were -- where we concluded yesterday, so I get the
16 right paper in front of me. I think I remember.
17 Q. I'm going to put the paper up and
18 I'll --
19 A. Thank you.
20 Q. -- I'll refer you to the paper.
21 A. Good, good, good.
22 Q. We discussed -- I think we concluded

Page 284

1 yesterday with discussing four declarations that
2 had come out of Exhibit 36, which were documents
3 submitted by your lawyers, and I think there was
4 some discussion at the end about the -- what those
5 documents were, and so I want to focus on that
6 briefly this morning.
7 So the first thing I'd like to do is to
8 refer you to Exhibit 33, Disciplinary Counsel
9 Exhibit 33.
10 MR. GIULIANI: Which one is 33.
11 MR. LEVENTHAL: He's putting it up.
12 MR. FOX: And if we'll go to I think
13 the second page of that exhibit, okay. Can you
14 make that a little larger.
15 BY MR. FOX:
16 Q. Now, you'll see this is a letter that
17 we wrote on the 27th of July in 2020 to your
18 lawyers, and if you will go down to the first
19 paragraph of the letter, you'll see that we refer
20 there to some statements that you made in court or
21 to the legislature or to the public, which were
22 based on certain documents and videotapes.

Page 285	Page 287
<p>1 You see that? 2 A. Yes, I do. 3 Q. Had you seen this letter before? 4 A. Oh, yes. 5 Q. Okay. 6 A. I saw it. 7 Q. And then if you'll go down to the third 8 paragraph of the letter, we refer to the 300 9 witnesses in the oral argument, that you mentioned 10 in the oral argument, and then we asked you to 11 provide copies of all affidavits, declarations or 12 other detailed statements that provide the factual 13 bases for your claims. 14 Do you remember we asked for those? 15 A. I do. 16 Q. Okay. And just to be clear, in this 17 letter, and we can point it to you also, we also 18 asked for some other stuff, some photographs and 19 audio recordings and three specific affidavits 20 that you referred to your Gettysburg proceedings. 21 A. Yes, sir. 22 Q. And if you'll see, the date on this, we</p>	<p>1 Q. Okay, and let's just get the date of 2 this email, if we can. And you see -- what's the 3 date there? 4 A. I see August 23rd there at the top. 5 Monday, August 23rd. 6 Q. Okay. 7 A. 2021, 2:51 p.m. 8 Q. Now let's go to Exhibit 36, which is 9 the exhibit we looked at yesterday. This is the 10 one that contained the declarations that we 11 discussed yesterday. First look at the date on -- 12 on this -- that's right, that focus. 13 Look at the -- if you -- can you read 14 the date there? 15 A. The August 31, 2021 date? 16 Q. Yeah, a Tuesday, okay? 17 A. Got it. 18 Q. And then you'll see that -- and can you 19 read the subject of the -- of the matter that was 20 transmitted? 21 A. Christina Pesce shared the folder 22 "Signed Declarations" with you. Assuming that</p>
Page 286	Page 288
<p>1 asked that you provide this stuff by August 17th. 2 If you look -- 3 MR. FOX: Yeah, highlight that. 4 BY MR. FOX: 5 Q. -- "Please respond by August 17th". 6 See that? 7 A. Mm-hmm. 8 Q. Okay. If you'll look next to Exhibit 9 35, which is a letter from your -- a transmission 10 from your counsel. 11 MR. FOX: Yeah, if you highlight that 12 portion if you can. 13 BY MR. FOX: 14 Q. It's an email from Mr. Leventhal, and 15 he indicates he's providing some photographs and 16 so forth. 17 And then you -- in the third paragraph 18 he says, "We are planning on transmitting the 19 statements, et cetera, to you by next Monday or 20 Tuesday". 21 You see that, sir? 22 A. I do.</p>	<p>1 means John, right, and Barry, right, okay. 2 Q. Right, okay. So Exhibit 36 purported 3 to be the declarations that we had asked for in 4 our letter of -- in July that supported the 5 various statements that you had made to the court 6 and also to the state legislature and to the 7 public, correct? 8 A. I'm sorry, is that a question? 9 Q. Yeah, is that -- is that what you 10 understood was being provided? 11 A. Yes, I -- now that I look at it, that's 12 what appears to have been provided. It's kind of 13 a little different than that, but I tried to 14 explain that at the beginning. 15 Q. Okay. 16 A. In that group -- in that group there 17 are affidavits -- no, okay. 18 MR. LEVENTHAL: May I interject -- 19 THE WITNESS: It's a more mixed group 20 than that. 21 MR. LEVENTHAL: May I interject, 22 Mr. Fox --</p>

Page 289

1 MR. FOX: No, no, no.
2 MR. LEVENTHAL: You and I had -- of a
3 rolling admission. You and I had an agreement of
4 a rolling admission.
5 THE WITNESS: Do -- do you want me to
6 clarify it or not? I mean, I'm happy to do it.
7 Mr. Fox, would you like me to clarify it or not?
8 BY MR. FOX:
9 Q. Yeah, go ahead, clarify.
10 A. Well, I thought I said at the
11 beginning, if I didn't say it clearly enough, that
12 contained the affidavits that we had. Some of
13 those I used in the allegations, as you can
14 patently see. Some of them I didn't use. I can't
15 say that I remember every single one of them. I
16 say I remember the vast majority. I've been
17 through them three times now. And I also know
18 there were other affidavits that we haven't found
19 that I relied on and oral statements that I relied
20 on.
21 Q. Okay.
22 A. So, to paint it as -- on other either

Page 290

1 side too extremely, in other words, these all
2 support everything I said in the notes. Some were
3 used; some were rejected. I remember them all,
4 most of them. And were there others? Yes, there
5 were others that we can't find.
6 Q. Okay.
7 A. I think that would be a better way to
8 describe what that package is. And we have found
9 a few others, not many, and as we found them,
10 we've sent them to you.
11 Q. And have you found any others that have
12 contained direct evidence of election fraud in the
13 Pennsylvania election?
14 A. Whatever we found we sent you. I don't
15 know how -- I don't -- I'd have to go over what we
16 sent you to tell you if we did or we didn't. We
17 didn't -- we didn't send them to you -- we didn't
18 just send you ones that contained direct evidence.
19 We sent you what we have. We viewed your request
20 as, send us everything you have.
21 Q. No, and you viewed it correctly. But
22 my -- my question -- let me ask you this...

Page 291

1 Of these -- you say you remember that
2 some exhibits were missing, some declarations were
3 missing.
4 A. Right. I'm thinking of one right now.
5 Q. And -- okay. And these are
6 declarations that have -- do any of these missing
7 declarations have direct evidence of election
8 fraud in the 2020 Pennsylvania election?
9 A. I would say yes, but we might debate
10 it, you know, if circumstantial evidence. It
11 depends on how you define direct evidence.
12 There's --
13 Q. Evidence of a particular --
14 A. Evidence -- evidence from which you can
15 make an argument that there was fraud. Yes, they
16 do.
17 Q. And was there any evidence, for
18 example, that a particularly identified voter
19 voted who was not authorized to vote?
20 A. Well, yes. There are some in there and
21 I -- I'd have to reserve that. It seemed to me
22 that this is just a vague recollection, that there

Page 292

1 were a few more such allegations than we supplied.
2 If I may, just quick explanation, the documents
3 here were very Helter Skelter. They were in a lot
4 of different places. And when we finished in
5 Washington, everybody went off in different
6 places, and I had to reassemble these from other
7 people. They weren't -- they weren't like all in
8 my -- they weren't all in my possession. Some of
9 them were in my possession; some were in Christina
10 Bob's possession; some of them were in
11 Christiani's possession; Maria Ryan.
12 I tried to bring them all together.
13 Q. Are you aware of any missing statements
14 that demonstrate that a ballot was fraudulently
15 cast in the 2020 presidential election in
16 Pennsylvania?
17 A. Yes.
18 Q. And can you tell us what those
19 statements are that are missing?
20 A. I can tell you in a very general -- in
21 a very general way. There is a -- there's a
22 statement -- this might be more in the nature of a

Page 293

1 here -- there's one that I -- I remember in the
2 nature of the hearsay statement from a worker in
3 another jurisdiction talking about her
4 conversation with a worker in Allegheny County in
5 which they discussed their similar training. I
6 think it's a worker in Detroit and a worker in
7 Allegheny County. And we don't have that in
8 either file, and I've been searching for it for
9 three -- for three months.

10 There are lesser, smaller affidavits or
11 declarations that involve lesser numbers than that
12 about what happened in Philadelphia over the five-
13 or six-day period. They would be more in the
14 nature of supplemental or duplicative, or in the
15 trial, if I put them in, a judge might object,
16 which is repeating what we have already.

17 But there are -- just hold one second.

18 I tried to recreate this last night.

19 Because I knew -- I kind of figured you'd ask
20 this. I don't know where I put it. Oh, here it
21 is.

22 I went through the -- the main

Page 294

1 affidavit that we gave you, meaning all of the
2 declarations, and I wrote down where I -- I
3 thought there would be others. I can't say they
4 add anything new, but they supplement what was
5 there. For example, of the -- of the affidavits
6 and declarations that we gave to you, there were a
7 very, very large number on people that had alleged
8 they already voted yet had come in to vote --
9 alleged that they hadn't voted and had come in to
10 vote and then were confronted with the fact that
11 they had already voted and denied it. And it
12 turned out on the record they had already voted.

13 It seemed to me there were a fairly
14 equal number of no-cure affidavits when I first
15 put them together, and the number was very, very
16 different. There was 55 of one and 26 of the
17 other. And I once made a list, that I can't find,
18 of what we had in each category, and that 26 was
19 more like 40. So I don't know what happened to
20 those.

21 There were -- oh, God, I can't even
22 read my own -- I'm sorry. There -- there are

Page 295

1 somewhere considerably more affidavits, although
2 there are a lot anyway, of people alleging
3 indifferent -- almost all -- not almost all, most
4 of it pertains to Allegheny and to Philadelphia
5 counties, little bits to Delaware of people who
6 were shut out in various ways. But, we had so
7 many of those that there was a point at which I
8 told probably Christiani, I don't remember, which
9 who I said, you know, "Put them in a separate
10 file. We don't need any more of these". But
11 they're somewhere and they're in addition to the
12 ones that were immediately available. I don't
13 think it's of much moment because with 55 of them,
14 and the -- and the amounts of votes that they
15 would represent, it's really just extra.

16 Q. Let me just make sure I understand.
17 You say that you had 55 statements from people who
18 attempted to vote and were told that they had
19 already voted by mail?

20 A. No, 55 pole watchers were unable to see
21 anything.

22 Q. Oh, 55 pole watchers were --

Page 296

1 A. About equally divided between
2 Pittsburgh and Philadelphia. The number who --
3 the number who said that they -- there was -- the
4 numbers who came in, prepared to vote and denied
5 that they had voted by mail was the number in the
6 affidavits we gave you is approximately 36.

7 Q. Thirty-six, okay. And those 36 people
8 were -- had to vote provisionally because there --
9 there was some indication that they had voted by
10 mail? Is that what happened?

11 A. Right, they -- they denied it --

12 Q. Okay.

13 A. -- vehemently and they were -- and they
14 were in two different categories. Some -- some --
15 some apparently just didn't vote, I guess out of
16 disgust or anger or whatever -- no, no, I'm sorry.
17 Some did vote and it registered. But 13 -- no,
18 more than that... one, two, three, four, five,
19 six, seven, eight, nine, 10, 11, 12 -- 13 of them,
20 their provisional vote was never registered. They
21 went back later to check, and they are not
22 registered. They're vote was canceled for some

1 reason. They're provisional vote was canceled for
2 some reason.

3 Q. Now Mr. Giuliani, as you saw yesterday
4 when we reviewed the transcript of the hearing
5 before the Philadelphia Election Board after the
6 election, people who vote -- the -- the election
7 board makes a determination as to whether or not
8 to count the provisional votes.

9 With respect to those 13 people, did
10 you go and see how the election board had handled
11 their matters?

12 A. I -- no. Some -- some of the people
13 working for me spoke to the election board and got
14 explanations but I can't tell you right now I
15 remember what the explanations were and -- this
16 was not -- this wasn't the -- this wasn't the area
17 that we were relying on the most. So we -- we
18 spent more time -- we spent more time on the
19 failure to be able to see any of the paper,
20 because that was more -- that was common to every
21 single case that we had in the other five
22 jurisdictions where there were massive attempts to

1 make sure that no republican got to see a piece of
2 paper.

3 Q. Now I think we strayed a little bit
4 from the question, so let's go back to the
5 question that I asked you. And what I was asking
6 you was whether there was any missing evidence --
7 sorry, missing direct evidence that a ballot was
8 fraudulently cast.

9 A. Yeah, I would say there is. But, you
10 know -- but I'm saying that.

11 Q. Was -- was there missing evidence that
12 a ballot was cast by an illegal voter?

13 A. No. The only -- the only issue on
14 illegal voter was from expert -- no, I don't
15 believe -- I could be wrong, but I don't --
16 because there's so many affidavits, if there is an
17 affidavit about an illegal voter, it's one or two.
18 There weren't -- there weren't like a -- a large
19 number like there are for these other categories
20 of people identifying illegal voters. There was
21 an estimate made based on the kind of analysis
22 that you're allowed to do at this stage of -- I

1 don't know what you would call it, an estimate of
2 the number of illegal voters that voted, and they
3 can vary with the expert. But those were not --
4 but that -- that would be considered in the realm
5 of expert testimony, not direct or circumstantial.
6 But it is allowed in election cases.

7 Q. And -- and these experts are whom?

8 A. These experts are people -- well, look,
9 first of all, all they have available is the mail,
10 so any time -- any of these expert analyses that
11 you see is always a projection, because --

12 Q. Yeah, but I'm just asking who they are.

13 A. Oh --

14 Q. The experts.

15 A. The experts that we employed or others
16 did and made available to us.

17 Q. Okay.

18 A. There were several others that were
19 doing investigations, like the Thomas Moore
20 Society. They weren't as active in Pennsylvania.
21 They were very active in Michigan, but they would
22 give us a great deal of their information.

1 Q. Let's stick with Pennsylvania for the
2 moment.

3 A. They gave us as much information about
4 Pennsylvania, just not as much.

5 Q. Okay, and can you identify to us these
6 experts?

7 A. I can't by -- I can't by -- I can by
8 category.

9 Q. No, I mean by name.

10 A. No, I'd have to go back and look and
11 find out. I mean, John Droz, who is going to
12 testify, is -- is one of them. A gentleman named
13 Biggs -- he did -- he did the -- he did the one
14 that some reason, as always happens when you read
15 these complex reports, one of them seemed to me
16 the most powerful to me, or maybe it's because I
17 understood it, and that one I got to know better.

18 Q. Okay. Forgive me if I asked you this,
19 but was there missing direct evidence -- no, I did
20 ask you that. So I withdraw the question.

21 You're aware, are you not, Mr.
22 Giuliani, that the 34d Circuit said that in the

Page 301

1 complaint that you filed, specifically including
2 the second amended complaint, you never alleged
3 there were any ballots that were fraudulent or
4 cast by an illegal voter.
5 A. I -- I would -- well, that could be so.
6 I don't -- I don't have a specific recollection of
7 the estimate of illegal voters in Pennsylvania the
8 way I do in Arizona and some other places. So
9 maybe we didn't have an estimate of illegal voters
10 in Philadelphia. I could have it confused with
11 surely Arizona --
12 Q. Arizona is not on my -- in my --
13 A. No, no, I know. I know. But you have
14 to understand when I'm trying to -- when I'm
15 trying to remember these things, I'm sorry, but my
16 mind -- the states overlap with each other.
17 MR. FOX: Could we put up Disciplinary
18 Counsel Exhibit 16, the 3rd Circuit opinion.
19 THE WITNESS: When you say "illegal
20 voters," you mean voters who aren't citizens?
21 BY MR. FOX:
22 Q. Well, I'm going to -- I'm -- let me

Page 302

1 come back to that.
2 MR. FOX: Can we go to page 12, please.
3 THE WITNESS: Oh, voters who died.
4 Yeah, sure. We have a lot of those.
5 MR. FOX: And -- can you make it a
6 little larger. I can't read. Thank you.
7 MR. LEVENTHAL: What case is this, Mr.
8 Fox?
9 MR. FOX: Third Circuit opinion. It's
10 our Exhibit 16.
11 MR. LEVENTHAL: On the appeal?
12 MR. FOX: Yes.
13 MR. LEVENTHAL: Okay.
14 MR. FOX: I'm sorry, I can't -- I just
15 can't read it. Can you find a portion that talks
16 about they ever alleged there was any ballot that
17 was fraudulent? There we go. That's right. The
18 paragraph there.
19 BY MR. FOX:
20 Q. "The campaign never alleges that any
21 ballot was fraudulent or cast by an illegal voter.
22 It never alleges the defendant treated the Trump

Page 303

1 campaign or any of its voters worse than it
2 treated the Biden campaign or its voters."
3 A. Well that isn't right.
4 Q. Okay. So the 3rd Circuit was wrong
5 about that, that you did allege that --
6 A. Well, sure. I mean, just the non-cure
7 cure would be an example of how we allege that the
8 Trump campaign and the Trump -- was treated
9 differently than the Biden campaign.
10 Again I'm a little confused as to -- if
11 we're talking about the second amended complaint,
12 we surely --
13 Q. Yes.
14 A. -- put it in there.
15 Q. Well, Mr. Giuliani, did you participate
16 in the appeal --
17 A. Dead voters, dead voters would be
18 illegal. Dead voters would be illegal voters and
19 we had -- we had direct allegations of that as
20 well as expert testimony on dead voters.
21 Q. Did you participate in the appeal to
22 the 2nd Circuit -- 3rd Circuit?

Page 304

1 A. Not much, no.
2 Q. You didn't sign the pleadings or
3 anything?
4 A. I -- did I? I don't know. I may have.
5 I mean, I read -- I read quick -- by that time I
6 had moved on to other -- other things because I
7 realized we weren't going to win, so we had to
8 try -- we moved on to Michigan or Arizona, at
9 least testifying in front of those legislatures.
10 I'm just telling -- the answer is, yes,
11 I've signed it, but I gave it not the same kind of
12 review. We're talking about the documents that I
13 assume that they were putting in everything that
14 makes sense. But I didn't have much hope that we
15 were going to win.
16 Q. And you were aware that the only issue
17 that was raised in the 3rd Circuit was Judge
18 Brann's denial of your motion to file the second
19 amended complaint?
20 A. I was aware. Now that -- I can't tell
21 you I retained that, and now that you tell me, I'm
22 refreshed.

Page 305

1 Q. And so when the 3rd Circuit said that
2 you never alleged that any ballot was fraudulent
3 or cast by an illegal voter, it was referring to
4 the second amended complaint, correct?
5 A. If you say so. I mean, I didn't read
6 it that carefully.
7 Q. And that's the one that you signed,
8 right?
9 A. That is the one that we signed, and I
10 would take issue with that because I think that --
11 I'm not exactly sure how they are defining that,
12 but voters -- voters who -- voters who are
13 required -- voters who are required to vote
14 because somebody has already voted for them, well
15 that would be a form of a fraudulent vote. There
16 were a lot of allegations of that, something like
17 35. So I don't know. Maybe they're defining it
18 differently.
19 MR. LEVENTHAL: Excuse me, excuse me.
20 The mayor was reading from the complaint. I'd
21 like him to say which paragraph he was reading
22 from.

Page 306

1 THE WITNESS: No, I wasn't -- I was --
2 what I was pointing out -- what I was going to
3 point out about the complaint is the complaint
4 doesn't directly allege fraud. It alleges fraud
5 as part of -- there isn't a prayer for relief
6 based on fraud. Fraud is part of a violation of
7 Due Process or a violation of Equal Protection.
8 Q. So -- so let's go to the fraud as a
9 violation of Due Process, which is where I was
10 going to go next.
11 Your -- your argument for Substantive
12 Due Process was that, because of the fraudulent
13 nature of the vote, the voters were deprived of
14 their fundamental right to vote, and that was a
15 violation of Substantive Due Process.
16 Have I said that right?
17 A. You did except you made it exclusive.
18 That was one of the ways in which Due Process was
19 denied: a changing nature of the rules, changing
20 the rules in the middle of the game, changing the
21 rules illegally because that -- that -- that right
22 exists with the legislature, not with the

Page 307

1 executive, and that's pretty darn clear. That was
2 also part of the -- I mean, it all boiled down to
3 those line of cases that say, if there are so many
4 different irregularities including fraud in the
5 way in which a state declares an election, the
6 election's invalid. That -- that was -- it built
7 up to that conclusion.
8 Q. Yeah, but for the -- the federal law
9 that is being violated -- or sorry, the federal
10 right that is being violated here is a right to
11 Substantive Due Process, correct?
12 A. Yes, sir. As far as I know there's no
13 federal fraud law that allows you to question or
14 overturn an election based on -- on fraud itself.
15 Q. Okay.
16 A. It would have to be a violation of a
17 federal right like Due Process, Equal Protection.
18 Q. Okay.
19 A. And we used -- we used fraud -- and
20 that may be part of the problem with, is it
21 defined with specificity, but we didn't look at it
22 as a fraud complaint -- fraud complaint. Fraud

Page 308

1 was one of three, four pieces of evidence that
2 would say an unfair election was conducted.
3 Q. Now you mentioned a moment ago an issue
4 about changing the rules of the election as the
5 legislature had determined they should be.
6 Am I saying that right?
7 A. You are.
8 Q. Okay. And -- and that was what the
9 so-called Election and Electors Clause argument
10 that was in your complaint.
11 Is that right?
12 A. It was there but it was also in the --
13 (Mr. Giuliani's audio feed is
14 disrupted.)
15 Q. I'm sorry, we can't hear you, Mr.
16 Giuliani.
17 MR. FOX: I -- maybe it's just me. I
18 can't hear him.
19 THE WITNESS: Oh, I'm sorry. Can you
20 hear me now?
21 BY MR. FOX:
22 Q. Yes, yes, sir. You better start over,

Page 309

1 because --
2 A. Yes. I think you would agree that
3 sometimes Due Process in this context and Equal
4 Protection overlap. The same facts that argue in
5 favor of a Due Process violation will argue in
6 favor of an Equal Protection violation.
7 So, for example, if you cure some
8 ballots but not all, someone's going to make an
9 Equal Protection argument about that, but they're
10 also going to say you're conducting an unfair
11 election. So they might -- it might sound in
12 both.
13 Q. Okay.
14 A. So here's an example, she changed at
15 the very end the closing date for the -- for the
16 ballots to come in, which I believe led one of the
17 justices to say they had to be preserved because
18 she was extending what Judge Alito had said --
19 they had to all be in by the 5th -- and Boockvar
20 changed it, I -- we would argue that that is
21 certainly a violation of Due Process. That would
22 not be a fraud, but that would be a violation of

Page 310

1 Due Process. Since she did it for all ballots,
2 you would -- you wouldn't say Equal Protection.
3 But if it were applied, if it were applied
4 unequally, you would then say it was a violation
5 of Equal Protection as applied.
6 Q. Okay. But I was trying to focus a
7 little bit on your election/elector's clause
8 argument in the --
9 A. Okay.
10 Q. -- complaint. And your argument
11 essentially there was that the regulations that
12 the Secretary of State or the interpretations the
13 Secretary of State made of the Act 77 were not
14 authorized by the legislature and therefore
15 violated the Election and Electors Clause of the
16 Constitution, correct?
17 A. Yeah, I mean, that was -- that was a
18 major theme of the entire argument in
19 Pennsylvania -- a little different than some of
20 the other states -- because there had been a
21 massive legislative effort to do this. The
22 legislature just expressed its will a year before

Page 311

1 and here she was changing it, and as far as -- as
2 far as we could tell, we had a very legitimate
3 argument that she was violating pretty settled
4 Constitutional law; that those changes have to be
5 made by the legislature; that the legislature
6 delegates this power and it's very narrow. And
7 when you're changing, you know, basic rules, that
8 has to go to the legislature.
9 Q. But you abandoned that argument, did
10 you not?
11 A. Well, I don't remember abandoning it.
12 Maybe my people did on -- tell me when we
13 abandoned it. I don't remember abandoning that
14 argument.
15 Q. Didn't you tell Judge Brann at the oral
16 argument that you weren't going forward on the
17 Elector and Elections Clause claim?
18 A. No -- I mean, you'd have to remind me
19 if I did. Don't we have one in -- in the second
20 amended complaint?
21 MR. LEVENTHAL: Yes.
22 THE WITNESS: Maybe I -- maybe I was

Page 312

1 referring to the fact that it wasn't in the -- I
2 mean, the -- the difficulty, Mr. Fox, and I really
3 would ask you to think about this, I -- I think
4 you -- I really do believe when we talked you
5 understood this. The confusion is I was defending
6 a complaint that I didn't write and I didn't agree
7 with, and it had truncated --
8 MR. LEVENTHAL: Which one is that?
9 THE WITNESS: The -- the first amended
10 complaint. That was filed without my knowledge.
11 It really was a reflection of the disagreement
12 before I even got in the case between Mr. Hicks on
13 the one hand and Linda Kearns on the other about
14 what -- which way to go, which happens with
15 lawyers. I wasn't even in it long enough to be
16 part of that or even to know. Hicks and I worked,
17 and he did most of the work. I contributed to the
18 original complaint. That's the one I thought we
19 were going to -- that Hicks was going to argue and
20 I was going to appear and I was just going to add
21 to that what I told you were the common
22 allegations of law and fact so that at some future

Page 313

1 point we preserved the possibility of
2 consolidating with other cases that we were
3 beginning to see were almost -- that were a
4 hundred -- not 100%, 80% similar. They had a
5 number of the main factors here: thousands and
6 thousands of republican inspectors excluded; votes
7 that were counted where they didn't get a chance
8 to examine the paper; becoming important, not for
9 picayune little things, but things like was there
10 fraudulent paper being introduced. And we
11 proposed using the official paper and testing
12 every piece of paper against that to determine if
13 it's official paper. There's a process for doing
14 that and in every jurisdiction we were refused --
15 never got a chance to do that.

16 Q. Okay, we strayed away --

17 A. So my purpose, my purpose was to make
18 sure that, if the day came when a federal court
19 was going to sit there with five complaints, and I
20 or somebody else was going to argue "These should
21 be consolidated," the other side is going to say,
22 "They're too different. They're too" -- and we

Page 314

1 want to be able to say, "No, the main set of facts
2 that we're going to adjudicate here are virtually
3 the same and it's much better, much faster to get
4 to the court if we do it in one place". That was
5 advice that was given to me by Kenneth Starr; it
6 was given to me by other colleagues of mine in the
7 Justice Department, Solicitor General's Office,
8 and people who had argued before the Supreme Court
9 more often than I had. I had only argued once.

10 Q. Mr. Giuliani, really I'm focusing here
11 on the Election and Electors Clause claim that you
12 had in your complaint, and isn't it a fact that
13 the 3rd Circuit had came down with an opinion that
14 said that campaigns had no standing to make those
15 arguments, and therefore you didn't proceed on the
16 argument in front of Judge Brann because of that
17 3rd Circuit ruling?

18 A. I don't know -- I'm sorry, I don't
19 understand the question, Mr. Fox.

20 Q. All right. Never mind. I'll with --
21 let's move on.

22 MR. LEVENTHAL: Hold on, hold on. Are

Page 315

1 you asking him if there's precedent in the 3rd
2 Circuit? Marks v. Stinson, look at the district
3 court opinion. I mean, this is a question of law.
4 This is not a question of --

5 CHAIRMAN BERNIUS: Gentlemen --
6 MR. LEVENTHAL: -- fact for Mr.
7 Giuliani.

8 CHAIRMAN BERNIUS: Gentlemen. Mr.
9 Rosenthal -- Mr. -- Mr. Leven --

10 MR. LEVENTHAL: Yes.

11 CHAIRMAN BERNIUS: Mr. Leventhal, if
12 you have an objection, state your objection.

13 MR. LEVENTHAL: All right, I'm sorry.
14 I apologize. I --

15 CHAIRMAN BERNIUS: This is not -- this
16 is not the time for you to make legal arguments.

17 MR. LEVENTHAL: Okay. I object. This
18 is a legal a conclusion. There is precedent in
19 the 3rd Circuit. Look at the district court's
20 opinion in Marks v. Stinson. There is standing.
21 And I will argue standing at the conclusion of
22 this hearing and I reserve my ability to do so.

Page 316

1 CHAIRMAN BERNIUS: Overruled. That was
2 not his question.

3 Continue, Mr. Fox.

4 BY MR. FOX:

5 Q. Let me move on to something else, Mr.
6 Giuliani.

7 A. Yeah, I am -- I'm not -- I am confused
8 by it. I -- I didn't think that that was removed
9 as a -- I mean, I thought we were arguing right to
10 the end the elector -- Electors Clause. We
11 certainly were in other jurisdictions.

12 MR. FOX: Can we put up Disciplinary
13 Counsel Exhibit 8, please.

14 BY MR. FOX:

15 Q. You recognize this as the oral argument
16 in front of Judge Brann?

17 A. Mm-hmm.

18 MR. FOX: If you'll go to page 12,
19 lines 24 through 25, start there and go over to
20 the next page through -- through line four.

21 BY MR. FOX:

22 Q. Do you recall --

1 A. Line four?

2 Q. Yes. You saw that Judge Brann said
3 that the 3rd Circuit opinion at the end of last
4 week in this certain case, "Plaintiffs cannot
5 assert standing in this circuit to raise their
6 Elections/Electors Clause claims".

7 Do you recall him saying that to you at
8 the oral argument?

9 A. Now that I see it, I do, yeah, mm-hmm.

10 MR. FOX: Then, if you'll go down to
11 lines five through 12.

12 BY MR. FOX:

13 Q. You'll see that you said you weren't
14 going forward on it but you were going to preserve
15 the issue for appeal.

16 A. Yeah, well, that's -- that's what we
17 did when -- well, I don't know if -- I can't tell
18 you the exact process that led us to inserting it
19 in the second amended complaint, but we do make a
20 claim there under the -- I think it's count three
21 of what I would call the real complaint, the one
22 we were -- the one we were intending to proceed

1 on. We make a claim on -- under count three on
2 the Electors Clause and I would have -- I don't
3 remember the discussion about this. I know there
4 was a discussion about it, pretty intense, and
5 this was the way we made sure we preserved it.

6 Q. Okay.

7 MR. FOX: Now -- that's fine. We can
8 take that down now.

9 BY MR. FOX:

10 Q. I want to turn now to the question of
11 the remedies that you requested. We got into this
12 a little bit yesterday with respect to the Notice
13 and Cure Equal Protection argument, and as I
14 understood what you said, it was that the remedy
15 you were seeking was some pro rata reduction in
16 the votes of both candidates, based on the number
17 of notice and secure votes had been cast. I
18 wasn't totally clear, but have I got that right?

19 A. No. I was a little confused that you
20 found it so confusing, because it's done rather --
21 rather often and I think it's pretty straight
22 forward. I found -- I found one provision that

1 might make it simpler to understand. There's a
2 provision in the Pennsylvania statutes of talking
3 about when you haven't -- when you haven't vetted
4 a military or absentee ballot correctly, and it's
5 25 PS Section 31468(g)(4). I'm just going to read
6 it for the purpose of illustrating the remedy, and
7 this is all over election law, all over the
8 place...

9 "Further, only those ballots that have
10 been verified under paragraph three shall be
11 counted".

12 So if -- if there's a ballot that
13 doesn't have the requisites listed in the opinion,
14 you take that ballot and you don't count it.
15 That's -- that -- that is the remedy that we were
16 asking for. I didn't think it was confusing.
17 It's done all the time. When a vote is
18 invalid -- I mean, that's what it means when you
19 say a vote is -- you're voiding a vote, a vote's
20 invalid; you -- you take the vote out of the
21 number of votes in that jurisdiction.

22 So if -- theoretically, if a hundred

1 foreigners walk into an election district, they
2 show no identification, they passed a hundred
3 votes, and you can all prove that they came from
4 Antarctica, you would take ten votes out of the
5 vote in that jurisdiction. That's what we're --
6 that's what we're asking for.

7 And the remedy of -- it's denominated
8 many different ways, in many different statutes --
9 "void," "not counted." Some like Wisconsin go
10 directly to take it out of the vote count.

11 So then, if there were a thousand votes
12 cast, and a hundred were declared to be illegal
13 votes under some theory -- could just be
14 technically illegal -- then those votes would be
15 deducted and there would only be 900 votes in that
16 count.

17 Q. Okay.

18 A. When you can, if you can, if it's
19 possible to deduct the exact vote -- which is
20 almost never possible because we do anonymous
21 voting -- you do that. When not, you take it out
22 of the whole. You take it out of the entire vote.

Page 321

1 Q. And that's the pro rata reduction that
2 you were talking about yesterday?
3 A. I don't know why you call it pro rata,
4 but that's the reduction.
5 Q. Well --
6 A. If there are 13 -- if there were 13
7 votes in -- in Philadelphia County that were cast
8 by noncitizens, let's say, that no -- I'm not
9 saying there were, but example -- then 13 votes
10 would be deducted.
11 Q. And -- and how would you attribute
12 those votes to -- decide whether to attribute
13 those votes to Trump or to Biden?
14 A. Well, the same way you would if you
15 took out four or five electors. It goes back to
16 the smaller number.
17 So now -- so now, if it happens in a --
18 in an even district, it has no meaning. If it
19 happens in a district in which either candidate
20 had a substantial lead, it inures to the benefit
21 of the candidate who has the smaller number, which
22 is why republicans challenge democrat districts

Page 322

1 and democrats challenge republican districts.
2 Q. Okay. I'm not sure I follow --
3 A. That's a hundred years of election.
4 Q. Can you identify for me where in any of
5 the complaints that you filed you asked for that
6 remedy?
7 A. We asked for the court to apply the
8 remedy that was the most just, the most fair. We
9 were going to argue remedy and the specifics --
10 and we also said whatever else the court might
11 deem just and necessary. We weren't at the remedy
12 stage. We were two days into the litigation and
13 we were researching remedy. But we wanted to
14 preserve whatever remedies were theoretically
15 possible, so that when we got to the remedy stage,
16 the court would have available -- we -- we
17 realized that this -- that the court here would
18 act as a court of equity in many ways and we
19 weren't going to really -- the most we were going
20 to do, if we got that far, is recommend a remedy.
21 The court was going to come up with a remedy.
22 That was one among others. A new

Page 323

1 election would have been another remedy.
2 Q. Okay, would you agree with me that you
3 did ask for some remedy, specify some remedies
4 that you asked for in your complaint?
5 A. I did, but I would also specify that we
6 made it an example by saying whatever else the
7 court deemed just and necessary, which is what you
8 do commonly in a -- in a -- in a -- in a lawsuit,
9 a lawsuit like this even more so, because this is
10 in many ways an unprecedented lawsuit, an
11 unprecedented situation. We weren't smart enough
12 to know all the remedies that would -- would be
13 fashioned here, nor did we think that our
14 remedy -- we thought of our remedies that we were
15 suggesting as the beginning of a discussion, if we
16 ever got to that point. Let me put it that way.
17 Q. Okay, so you didn't ask for the
18 specific remedy but it was included within the
19 remedy of anything else that the court --
20 A. The ones we could think of. It's the
21 ones we could think of at the time. What -- what
22 made sense, what seemed just --

Page 324

1 Q. Okay.
2 A. -- what fit into things that were done
3 in other jurisdictions to remedy this and what did
4 the laws say, like -- I never -- I picked one
5 statute, but there are many statutes in
6 Pennsylvania over the years that talk about not
7 counting votes. You don't count this vote, like
8 this one. That has been verified under paragraph
9 three, "Shall -- "Only those verified shall be
10 counted," which means the ones that aren't counted
11 are taken out and the vote descends from a
12 thousand to 900 and you're left with whatever the
13 consequences of that are.
14 Q. All right.
15 A. That's not the sole remedy, but that's
16 a remedy the courts have used.
17 Q. One remedy you did ask for was -- and I
18 think you referred to it earlier -- was prohibit
19 the governor and the Secretary of State from
20 certifying the election results, correct?
21 A. Correct. We -- we believed that under
22 Article 2, Section 1, Clause 2 of the

Page 325

1 Constitution, we were at the stage where it should
2 be given to the legislature under their plenary --
3 this is Supreme Court language now -- they're
4 plenary power to regulate presidential elections,
5 which the Supreme Court goes so far as to say that
6 they can -- any delegation they make they can
7 revoke at any time. And it's a very -- it's a
8 controversial provision. It's been the subject of
9 numerous law review articles. For some reason
10 over a hundred year it's never been fixed,
11 although every young law student somewhere
12 lectures the Supreme Court they should fix this.
13 They haven't fixed it, and it's still there.
14 So it was perfectly valid for us to
15 rely -- to -- to rely on it. I thought we'd be
16 negligent in our duty if we didn't.
17 Q. Okay.
18 A. I mean, I -- I can see -- and this is
19 for purposes of -- but I don't think you should
20 discipline me -- I made the arguments that were in
21 the light -- I interpreted these in the light most
22 favorable to my client, which is what I think you

Page 326

1 would want me to do even if my client were a mass
2 murderer.
3 Q. And -- and -- and so you thought that
4 you had alleged specific facts that would justify
5 a temporary restraining order whereby the federal
6 court would throw out 7M votes from the citizens
7 of Pennsylvania and direct the legislature to
8 decide who got the electoral votes in the
9 presidential election?
10 A. No, I didn't think we had alleged that.
11 I thought we had begun the process of alleging
12 that. I -- I never think in my complaint that
13 I've won my case. That would be like saying I
14 brought a case for -- for personal -- personal
15 injury case, and based on my complaint I expected
16 that I get \$2M because my client is paralyzed.
17 I expected we were -- we had begun the
18 process of proving what was necessary to get to
19 that point, maybe, as well as five other
20 possibilities. I thought I had -- let's put it
21 this way, Mr. Fox, in the language of Rule 11,
22 which I'm very familiar with, thought I had a

Page 327

1 reasonable basis for preserving that as a possible
2 remedy, which is the way it really has to be
3 looked at, if we ever looked at remedies as final
4 conclusions by lawyers, half the lawyers in this
5 country would have to be sanctioned, because they
6 always put in, and it's a joke, ridiculously large
7 sums of money from which they negotiate down, and
8 their justification for that is, well, I don't
9 know how much is going to be involved; let me ask
10 for everything in the -- in the remedy section;
11 nor -- nor do I find any cases where a lawyer has
12 been sanctioned because he made a mistake with the
13 remedy that he's suggesting. It's so far from
14 that in a case. It doesn't do any damage to
15 anyone.
16 I mean, I'm being sued by Dominion
17 for -- for, I don't know, \$20B. That's an absurd
18 amount. Truly, believe me, it's an absurd amount.
19 Q. We're talking about --
20 A. They should be sanctioned for -- for
21 doing that.
22 Q. You were asking for equitable relief,

Page 328

1 correct?
2 A. Yeah, which is even more in the nature
3 of the court's discretion as opposed to -- they're
4 not going to accept what I recommend. They're
5 going to fashion it. Equitable relief is like a
6 suggestion to the court of what they can do.
7 Q. And you were asking for equitable
8 relief on an expedited basis, correct?
9 A. But not immediate -- I was expecting a
10 hearing. No, I wasn't asking -- the -- the
11 expedited basis was a temporary restraining order.
12 Q. And there was --
13 A. It wasn't -- it wasn't an award of a
14 new election.
15 Q. And there are certain deadlines built
16 into the election process whereby the results of
17 the state have to be certified by a certain date,
18 correct?
19 A. Correct. But -- yes, that can all
20 be -- but that can all be -- that can all be
21 adjusted by the legislature. The real deadline is
22 when the president gets sworn in. That's the real

1 deadline. As you -- as you know, in Bush v. Gore,
2 they went beyond all those deadlines and --
3 because it was still in controversy. The
4 deadlines are not in and of themselves completely
5 unwaivable. They've been waived before in
6 election contests.

7 Q. And you were -- you believe that you
8 have sufficient evidence to justify a request for
9 equitable remedy that would have prevented
10 Pennsylvania from meeting that statutory deadline
11 for when they had to certify the votes, which I
12 think your lawyer said was November 23?

13 A. I -- I don't think I thought of it that
14 way. I thought of it as, this is what needs to be
15 done to find out -- to flesh out these
16 allegations, which appear to me to be true. I
17 have no reason not to believe 250 affidavits. I
18 mean, you can read the affidavits. I didn't make
19 up the things that I alleged. I was -- I was
20 standing in the place of other people who were
21 making these complaints to me. What am I going to
22 do, tear them up and say, "Oh, gee. I don't -- I

1 don't believe that you didn't get to see 100,000
2 ballots or that record that you have there of
3 100,000 ballots being counted and you didn't get
4 to see them made up"?

5 I mean, I -- this is why I find this
6 very, very strange, the whole proceeding. I based
7 it on I would say more evidence than you normally
8 have when you bring a complaint. I mean, the --
9 the things that I alleged, even if I might have
10 done a few inartfully, because it was done
11 quickly, come from an affidavit, from a fact, from
12 a person who told me that. I didn't make up the
13 fact that they were put in pens. I've got 45
14 affidavits saying they were put in pens. I didn't
15 make up the fact that there's no -- there's no
16 time in recorded human history that any political
17 party did this to another political party. These
18 are things that, as far as I knew -- I could have
19 been wrong -- as far as I knew were facts, and
20 it's my obligation to plead these on behalf of my
21 client. I did the best that I could to -- to --
22 to put them down in a way that was fair but geared

1 toward the interest of my client. And when I was
2 asking for relieve, I sure didn't expect to get
3 the relief based on the complaint. I'd be really
4 a poor lawyer. If I thought the judge was going
5 to take my complaint and say, "Okay, we have a new
6 election," then I would really be a jerk. I
7 knew -- I knew I had to prove what I said here.
8 And I knew there was a long way to go and very
9 little time to do it, because I had to -- I did
10 actually expect we were going to have hearings. I
11 was very shocked when we didn't get a hearing.

12 Q. Mr. Giuliani, let's go to the second
13 amended complaint. You disavowed the first
14 amended complaint, correct?

15 A. Pardon me?

16 Q. You disavowed the first amended
17 complaint? You said you had nothing to do with it
18 and --

19 A. That one I had nothing to do with,
20 absolutely. Never saw it until it was filed.

21 Q. Okay, and with the second amended
22 complaint, I only want to look at allegations that

1 were different from the initial complaint, okay.

2 A. Okay. Why? I don't -- I don't
3 understand.

4 Q. Well because we've already talked about
5 the initial complaint.

6 A. Oh, okay. Fair enough.

7 Q. So that's Disciplinary Counsel Exhibit
8 5 -- sorry, nine.

9 MR. FOX: And can we look at page --
10 actually for number nine we -- we start with
11 the -- the motion and then we get to the
12 complaint. But I want to get to the complaint
13 and -- let's go to paragraph 14, which is
14 paragraph five of the complaint.

15 BY MR. FOX:

16 Q. Here you indicate that there were
17 682,479 mail-in and absentee ballots in Allegheny
18 and Philadelphia County which were counted and --
19 and, as you say, not properly observed.

20 And was it your contention that,
21 because they weren't properly observed, all
22 682,000 votes should have been discarded?

Page 333

1 A. That would have been one of the
2 arguments.
3 Q. Okay.
4 A. We would have argued that those votes,
5 which -- and these -- these are -- these are the
6 numbers that had been recorded by one or another
7 of the inspectors in Philadelphia and Allegheny
8 County. So these were votes that were counted
9 without anyone other than the -- the government
10 official looking at the ballot. No one examined
11 if to see if it really was a valid ballot --
12 whether there was an address on it, whether there
13 was -- on the outer envelope, whether there was a
14 stamp, whether -- whether -- when it came in, when
15 it went out. There was no examination, as is
16 required by -- by -- by law.
17 Q. But wait a minute, Mr. Giuliani. There
18 had been a ruling beforehand by the Pennsylvania
19 Supreme Court that that was not required by law.
20 A. Oh, no, no, no. They -- they didn't
21 have to look at the signature, but they had to
22 look at the other identifying data.

Page 334

1 Q. Well...
2 A. There's no ruling -- there's no ruling
3 that says they didn't have to look at the other
4 identifying data on it to determine that it was,
5 you know, from -- from a -- from an actual person.
6 Q. Okay, I'll -- I'll withdraw that
7 comment then. Let -- let me ask you this --
8 A. And in fact you look -- when you see
9 the affidavits, you'll see that a large part of
10 the complaint is, you know, "We couldn't get to
11 see anything on that -- on that ballot. We
12 couldn't even determine" -- in many -- in many
13 cases, they -- they report that they just ripped
14 the envelope apart and put it in, didn't look at
15 anything.
16 Q. You -- but you -- you don't have any
17 evidence as to how many of these 682,000 ballots
18 were improper. You just say that your people
19 didn't have a chance to observe them, correct?
20 A. Which the law requires and very,
21 very -- very similar, if they weren't verified
22 properly, they're not counted. The person might

Page 335

1 not have done anything wrong, but the person
2 counting did something wrong and therefore they're
3 not counted.
4 You go back to what I read to you about
5 the military and other absentee ballots and it
6 says, "Only those ballots that have been verified
7 under paragraph three shall be counted". It
8 doesn't say only those ballots in which the -- the
9 voter cast an improper vote. The voter may have
10 been perfectly -- perfectly justified in what they
11 did, but in fact we have rules -- we have rules
12 that have to be followed by the government which
13 make and can make a vote subject to not being
14 counted.
15 Q. You don't know, Mr. Giuliani, whether
16 the Pennsylvania election officials who looked at
17 these mail-in ballots did their job properly or
18 not?
19 A. Well they didn't because they --
20 they -- they denied -- they're not allowed to do
21 their job by themselves. They -- they did not
22 permit meaningful observation.

Page 336

1 And, yes, we were going to preserve
2 that argument for appeal because we thought that
3 the ruling of the State Supreme Court of
4 Pennsylvania was irrational on its face.
5 Q. Okay. All right --
6 A. We thought that a ruling that said, in
7 a statute involving observation of ballots, that
8 you have to have all of the other parties present,
9 obviously meant in order to observe, not to sit
10 around reading a book.
11 Q. All right. So -- so your position was
12 that, even though the highest court in
13 Pennsylvania had ruled to the contrary, that the
14 law required these observers to be closer to see
15 how the election officials were examining these
16 ballots, correct?
17 A. Mr. Fox, why -- why do you say that in
18 a way that that's so unusual? Lawyers are
19 challenging the constitutionality of the highest
20 court in every state all the time when they think
21 they have a good reason that it's
22 unconstitutional. I fail to see why you think

Page 337

1 it's at least arguable and rational to argue that
2 a conclusion that, where presence is required and
3 presence is reduced to being a potted plant -- you
4 can't observe, you can't look, you can't check,
5 you're put behind a pen -- would be possibly
6 declared unconstitutional; or that I had the right
7 and obligation to preserve that argument for my
8 client in spite of the fact that a certain number
9 of people may hate him.
10 Q. All right.
11 MR. LEVENTHAL: Mr. Chair, could we
12 break in five minutes? Would that be all right --
13 THE WITNESS: It's incomprehensible to
14 me that that --
15 MR. LEVENTHAL: Hold on.
16 THE WITNESS: -- would be considered an
17 illegitimate argument.
18 MR. LEVENTHAL: Hold on, hold on.
19 We can break in five minutes, Mr.
20 Chair?
21 CHAIRMAN BERNIUS: We are going to take
22 a break at 10:30, the mid morning break.

Page 338

1 MR. LEVENTHAL: Okay.
2 BY MR. FOX:
3 Q. So Mr. Giuliani, I cited you this --
4 that paragraph about the 682,000 voters because
5 that was new in the second amended complaint, so I
6 want to go to some other things there were new.
7 MR. FOX: And let's -- let's look at --
8 and let's just take this as an example. Let's go
9 to pages -- page 79 to 80, paragraphs 167, 168.
10 Actually, just take 167. Let's --
11 THE WITNESS: Okay.
12 BY MR. FOX:
13 Q. You -- you start this paragraph by
14 saying, "Democrats who controlled the defendant
15 county election boards engaged in a deliberate
16 scheme of an intentional -- of intentional and
17 purposeful discrimination to favor presidential
18 candidate Joseph Biden over Donald J. Trump, and
19 thereby excluding republican and Trump campaign
20 observers from the canvassing of the mail
21 ballots".
22 A. Mm-hmm.

Page 339

1 Q. The language about democrats doing this
2 deliberately was new in the second amended
3 complaint, correct?
4 A. I don't remember.
5 Q. You don't recall that you added that to
6 several allegations --
7 A. I don't -- I don't recall. I could
8 have, sure.
9 Q. Okay. But the -- you will agree with
10 me that the limitations on the observers apply to
11 both the democratic and the republican committee?
12 A. Not in -- in word but not necessarily
13 in practice. So -- so it would be like, you know,
14 constitutional on its face and constitutional --
15 unconstitutional as applied.
16 We have -- we have -- we have a number
17 of incidents, and of course only the ones we could
18 gather that quickly, in which republicans
19 complained that democrats were allowed to sit
20 right next to the county official or city official
21 that was counting, that they were in constant
22 interchange with them, picking up ballots, at

Page 340

1 times didn't have masks on. We have a number of
2 allegations that that wasn't --
3 Q. Okay.
4 A. -- carried out as -- as -- as intended.
5 Q. And -- and those are included in those
6 declarations that are part --
7 A. They are, yeah, uh-huh.
8 Q. Okay. Aside from adding this
9 language --
10 A. Can I just add -- can I just add one
11 other thing? And also they had the inherent
12 advantage that the people doing it were selected
13 by the democratic machine of the City of
14 Philadelphia, which was the machine where the
15 sheriff refused to enforce a court order. That's
16 a pretty strong machine. So we didn't think we
17 were in the hands of a neutral -- we weren't of
18 the illusion that the people who worked for the
19 City of Philadelphia, selected by the democratic
20 machine, are mutual observers.
21 Q. Okay. Now you added this language in
22 this second amended complaint about this being a

Page 341

1 deliberate scheme by the democrats, but you didn't
2 add any additional facts to support that, did you?
3 A. Well, I thought we were going to do
4 that at the hearing but --
5 MR. LEVENTHAL: You had witnesses.
6 THE WITNESS: -- and I -- we had
7 witnesses to this. I had affidavits to this. I
8 thought we were going to go to a hearing and we
9 were going to present these witnesses --
10 BY MR. FOX:
11 Q. Okay.
12 A. -- who were going to say this. I had
13 a -- I had a rational, reasonable basis under Rule
14 11 to make this. I can show you the affidavits
15 that say it.
16 Q. All right.
17 A. I didn't make this up, Mr. Fox.
18 Q. Okay. Would you agree with me this is
19 just a conclusory statement without supporting
20 facts?
21 A. Yeah, but I mean, this is a complaint.
22 This isn't a motion for a summary judgment. I'm

Page 342

1 laying out -- I'm laying out what we can
2 responsibly allege. If I included all the
3 affidavits, this would be a, you know, a 2,000
4 page document. Normally this is the way you do it
5 and then you have a verified -- you put in a
6 verified complaint, because you're a lawyer, and
7 they take it based on your word, and then you go
8 to a hearing.
9 I've done -- I've done 500 preliminary
10 injunctions. I've almost never not had a hearing.
11 Q. All right, but Mr. Giuliani, you
12 understand the complaint is supposed to plead
13 facts?
14 A. Well, that -- I mean, that is a fact.
15 It's a fact -- it's a fact that doesn't have the
16 supporting evidence listed there. But you don't
17 put the supporting evidence in a -- in a -- in a
18 complaint. The complaint would be 5,000 pages if
19 you did that.
20 Also, Mr. Fox, you're asking something
21 of me that was physically impossible, given the
22 amount of time that I had. I -- I -- I helped to

Page 343

1 prepare that with another gentleman in enough time
2 to try to get it in the court to save the case
3 from the ridiculous amended complaint that was put
4 in behind our back. I think, under the
5 circumstances, we did the best possible job we
6 could do -- we could. And I really -- doesn't do
7 any good to be offended, but I'm shocked and
8 offended that this is happening to me.
9 Q. If you'll look at pages -- let's see,
10 where are we? Pages 89 through 90, paragraphs 196
11 and 197.
12 MR. FOX: Just pull up 196, please.
13 It's the same illustration.
14 BY MR. FOX:
15 Q. Now here's an example where you did
16 plead facts in the complaint.
17 A. Mm-hmm.
18 Q. Right, Mr. Giuliani?
19 A. Yes, sir.
20 Q. And these were facts that were not
21 included in the first complaint.
22 Do you recall that?

Page 344

1 A. I don't recall that but I'll take your
2 word for it. Sounds like we wouldn't have had it
3 by the time of the first complaint, right?
4 Q. And these were facts about your county
5 in which you claim that the officials in that
6 county handled the -- the observers correctly,
7 right?
8 A. Yes, sir.
9 Q. All right. So, yeah --
10 A. I see it, yeah.
11 Q. Okay. So that was --
12 MR. FOX: Let's go now to Page 97,
13 paragraph 224.
14 BY MR. FOX:
15 Q. This is an additional facts that you
16 pled in the second amended complaint that was on
17 in the first complaint.
18 Do you remember that?
19 A. Yeah -- I mean, yes. I -- I don't say
20 that I can remember it, but it's obvious when I
21 read it this was -- this was put in the second
22 complaint.

Page 345

1 Q. Okay. Do you recall that you were --
2 A. Probably we didn't have this at the
3 time of the first, but okay.
4 Q. And it's -- it's -- it's an example of
5 one observer who said he was denied access to the
6 canvassing in Philadelphia, correct?
7 A. Yes, sir.
8 MR. FOX: If we could go to page 99,
9 please, and if we look at paragraph -- well,
10 let's -- I'm sorry. I've got -- I've got the
11 wrong page reference here. I apologize. I meant
12 page 110. I got the --
13 THE WITNESS: One ten?
14 MR. FOX: And -- and I want to look at
15 paragraphs 269 through 271. They're fairly short.
16 BY MR FOX:
17 Q. And you'll see that these concern a Mr.
18 Mercer who testified that when he was an observer
19 in Philadelphia he couldn't see adequately,
20 correct?
21 A. Yeah, I see that. I remember -- I
22 remember his in particular, yeah.

Page 346

1 Q. And this was a few facts that you pled
2 in the second amended complaint, correct?
3 A. Yeah, that is one we could have pled in
4 the first but -- we had that from the very
5 beginning. I don't know why we didn't have it in
6 the first, but we had it in the second.
7 As I said, the first I had less
8 involvement with than the second, but, you know...
9 Q. And you support -- you -- you pled this
10 fact to support your count seven, which was
11 something to Due Process argument arising out of
12 the fact that these observers weren't close enough
13 to see the actual ballot processing, correct?
14 A. Yes, I see that. I see it, yeah. I
15 did. That's one of the -- I mean, I could have
16 used it for some of the others, too, but we used
17 it for that, right.
18 Q. The Pennsylvania Supreme Court looked
19 at this identical affidavit, did it not, and
20 determined that it proved that Mr. Mercer had been
21 close enough to observe the election under the
22 Pennsylvania law.

Page 347

1 A. Well, I mean, I don't know how they
2 could do that, except to say that this lawyer, who
3 I believe -- I may have him confused with the head
4 of the bar association at one time -- was lying.
5 MR. FOX: Well, let's look at --
6 THE WITNESS: I mean -- I mean, there
7 is a -- there was a point at the very end, meaning
8 in the last day of this five- or six-day counting
9 period, when the election pretty much -- when
10 Biden had got ahead, when a number of the boards
11 caved in and allowed some observation, after three
12 or four days of refusing to allow it.
13 MR. FOX: Let's -- let's --
14 THE WITNESS: I don't remember if
15 Mercer benefited from that.
16 MR. FOX: Let's look at --
17 THE WITNESS: You see in the affidavits
18 that some of them did, but by that -- by that
19 point, the game was over.
20 MR. FOX: Let -- let's look at
21 Disciplinary Counsel Exhibit 20, please.
22

Page 348

1 BY MR. FOX:
2 Q. And you'll recognize this is the
3 opinion that the Pennsylvania Supreme Court
4 entered after the election in which it said that
5 the social distancing rules were -- did not
6 violate Pennsylvania law.
7 You remember this opinion?
8 A. Of course I do, yeah. Yeah, that's --
9 yeah, yes, I do. I do remember that opinion.
10 This is the -- this is the final opinion, the
11 Supreme Court?
12 Q. Yes.
13 A. And it was what, five to two opinion?
14 Q. The one that came down on the day that
15 you were arguing the case in front of Judge Brann.
16 You remember that?
17 A. Oh, oh, oh, yeah, okay, sure. I mean,
18 I think -- yeah, I remember.
19 MR. FOX: And let -- and let's go to I
20 think to the last page, which -- I'm sorry, page
21 nine, the last page of the majority opinion, and
22 starting with the last paragraph in the first

Page 349

1 column -- are we on page nine? I don't think
2 we're on page nine. That's eight. That's page
3 eight. There we go.
4 BY MR. FOX:
5 Q. You'll see -- and this goes onto the
6 next page -- that the Pennsylvania Supreme Court
7 said that the affidavit for Mr. Mercer supported
8 the fact that he had had a -- a meaningful
9 opportunity to observe the election, the
10 recounting.
11 A. I don't remember Mercer saying he got
12 to see anything. This -- I mean, I -- maybe
13 we're -- maybe we're quibbling over what
14 "meaningful way" means.
15 MR. FOX: Okay, could we go on to the
16 rest of that paragraph, which is in the -- in the
17 next column.
18 THE WITNESS: It's a surprise to me
19 that Mercer claims that he saw something. That's
20 an interpretation of what it -- what's meaningful.
21 He didn't get to see the significant facts that we
22 would argue were critical, and obviously we don't

Page 350

1 agree with this opinion. This is an opinion that
2 we're -- we're going to preserve the right to
3 argue was unconstitution (sic) and incorrectly
4 decided. I mean, this -- there's -- there's --
5 there's no suggestion of when I included that in
6 the complaint that I did something that wasn't
7 based on at least a reasonable interpretation of
8 what Mr. Mercer said. That should be the grounds
9 for discipline, not that the court disagrees with
10 me. Courts disagree with lawyers all the time.
11 And I -- and I think I have the better
12 of this argument about what constitutes presence.
13 I simply don't think that presence means you sit
14 there and you can't do anything. It would be
15 absurd. And plus, how can my argument be in bad
16 faith when judges agreed with me also? It's not
17 as if I made up this argument and it's some crazy
18 argument made by an out-of-control advocate.
19 Judge Canon agreed with me. The dissenters agreed
20 with me.
21 So I have to make arguments that
22 there's a basis for, not arguments that are

Page 351

1 necessarily always correct. If I'm stuck with
2 that, I can't argue for a client. I really -- I
3 think you're imposing a burden on me that's so
4 totally unrealistic --
5 MR. FOX: Let's go back --
6 THE WITNESS: I'm sorry -- excuse me.
7 I withdraw that comment.
8 MR. FOX: Let's go back to Exhibit 9,
9 the second amended complaint, and I want to go to
10 the prayer for relief which starts at page 122.
11 THE WITNESS: Yeah, I like to look at
12 my own exhibit. It's actually easier for me to
13 read paper --
14 BY MR. FOX:
15 Q. The one I really want to focus on is
16 paragraph 321 on page 123. Now, this would --
17 this -- do you recall that this prayer for relief
18 was not in the first amended complaint?
19 A. I don't -- I don't -- I don't recall
20 that. But I'm not disputing that it wasn't. But
21 I don't -- I don't -- if you're asking me do I
22 have a present recollection of that, no.

Page 352

1 Q. And here, this is where you're asking
2 the court to throw out all the ballots and let the
3 legislature decide.
4 A. Let the who?
5 Q. Legislature, general assembly.
6 A. Yeah, that's what it says, sure. It
7 says -- it says, because of all the irregularities
8 and illegalities and whatever in the -- in the
9 election that we expect to prove -- I'm not asking
10 him to do it based on this document, sir, any more
11 than if I sued for breach of contract for a
12 million dollars. I'm asking for the million
13 dollars based on that document. I'm saying, if I
14 prove this, if I prove this and more, this is one
15 of the things -- notice the word
16 "alternatively" -- this is one of the things I
17 suggest to you with the court of equity we can do.
18 Q. Last thing I want to --
19 A. They're not bound by this. They're not
20 necessarily influenced by this.
21 I fail to see how a prayer to relieve
22 to a court can be improper. What am I doing?

1 Unfairly influencing them? They're going to make
2 their own decision about whether, when we're
3 finished with this whole thing, if it hadn't been
4 aborted, whether that's a reasonable request or
5 not. You can't take this in isolation now and
6 say, "Oh, Giuliani asked for something that isn't
7 supported by the facts that he had then".

8 In almost every complaint we filed in
9 the United States, the prayer for relief is not
10 supported by the complaint. You couldn't get
11 relief based on the complaint. It's the beginning
12 of a process and you're making it appear as if
13 it's the end of a process.

14 Q. Mr. Giuliani, has there ever been a
15 situation in the United States where a federal
16 court has thrown out every single vote that was
17 cast in a statewide election and directed the
18 state legislature to determine who the candidate
19 was, or who the victim was?

20 A. First of all, your -- your original
21 statement is completely inaccurate. I'm not
22 asking him to throw out every single vote. I'm

1 asking him to throw out the votes that were
2 illegally cast, under the law of Pennsylvania or
3 under -- or were unconstitutional, violated Due
4 Process, violated Equal Protection. It's got to
5 be a nexus to -- so it was not all of the votes.
6 It was more like -- there was a lot of votes, but
7 Trump was ahead by 800,000 and they had to make up
8 a lot of votes. And there were -- there was
9 uniform, just about uniform exclusion of
10 republicans from seeing a single piece of paper
11 until the very end, which I thought was a very
12 telling and damning piece of evidence. And it was
13 organized and it was done in the same way. I'm
14 talking about in Pennsylvania. I thought that was
15 a very powerful case. I don't know we even had a
16 case like that.

17 So you're asking me, okay, we asked
18 for -- as an alternative, we asked the court to
19 consider, which is what you're doing in a prayer
20 for release -- relief, they're not bound by what I
21 wrote there. Obviously they're going to make
22 their own judgment about it. And that's why I --

1 I really do think you should withdraw your
2 complaints about the prayer for relief, because
3 the prayer for relief is not something that is
4 based on what you can get at that time. It's what
5 you hope to get in the future. And any lawyer is
6 preserving the most possible you can get for your
7 client.

8 So you say to me, well, there isn't a
9 precedent for this. I would argue there wasn't a
10 precedence for this case. I don't know of a case
11 in which republicans were uniformly refused the
12 opportunity to inspect absentee ballots. And I
13 participated in it myself. I remember the chads
14 in Florida. There was a republican on one side; a
15 democrat on the other, and they went "nope, nope,
16 nope".

17 Q. Sir --

18 A. Our republicans were 50 feet back.
19 They were given binoculars that didn't work. Some
20 of them were pushed out. A court order twice was
21 not followed. The sheriff said, "I don't have to
22 follow the court order". These were extraordinary

1 circumstances we expected to prove.

2 I didn't think I was going to get it
3 based on the complaint. You know that.

4 CHAIRMAN BERNIUS: Mr. Fox, I think
5 this might be a time to take our morning break.

6 MR. FOX: Thank you.

7 MR. LEVENTHAL: How much more do you
8 have, Mr. Fox?

9 Can I ask Mr. Fox how much more he has
10 of Mr. Giuliani?

11 MR. FOX: Well, it depends on whether
12 or not I get answers or the same thing repeated
13 over and over again. If we can get answers, then
14 I don't --

15 THE WITNESS: That's an unfair comment.
16 I'm defending myself, Mr. Fox.

17 MR. LEVENTHAL: Please.

18 CHAIRMAN BERNIUS: Okay, Mr. Giuliani,
19 just hold off for a bit.

20 MR. FOX: I -- I don't know. I really
21 don't know. It depends -- I think we'll be
22 finished by the lunch break.

Page 357

1 MR. LEVENTHAL: Sorry, I couldn't hear.
2 MR. FOX: I think I'll be finished by
3 the lunch break.
4 MR. LEVENTHAL: All right, thank you.
5 THE WITNESS: Thank you.
6 CHAIRMAN BERNIUS: We'll take a
7 fifteen-minute recess. We resume at 10:45.
8 MS. BORAZZAS: Opening up the breakout
9 rooms now.
10 (Recess taken.)
11 CHAIRMAN BERNIUS: We're waiting for
12 Mr. Giuliani to turn his camera on.
13 MR. LEVENTHAL: Okay, there it is.
14 THE WITNESS: Thank you.
15 CHAIRMAN BERNIUS: Are we ready to
16 resume?
17 THE WITNESS: I'm ready.
18 BY MR. FOX:
19 Q. Just one other point about remedy, and
20 I would like you to look at -- we're still in
21 Exhibit 9 but I want to go back to the motion that
22 you filed for leave to file the second amended

Page 358

1 complaint, and I want to look at page -- the
2 sentence that begins at the bottom of page 8 and
3 goes over to page nine?
4 MS. MATINPOUR: Is that Exhibit 9?
5 MR. FOX: Yes, Exhibit 9, page eight,
6 paragraph 20. All right, and just highlight the
7 last sentence that begins with "ultimately".
8 Yeah, start -- start up in -- you got to -- you go
9 got to go back to the -- yeah, the last -- that's
10 right. There you go.
11 BY MR. FOX:
12 Q. So, Mr. Giuliani, you announced in the
13 motion for leave to file the second amended
14 complaint -- this is not a prayer for relief --
15 that "Plaintiffs will seek -- "Ultimately
16 plaintiffs will seek the remedy of Trump being
17 declared the winner of illegal votes cast in
18 Pennsylvania in the 2020 general election and thus
19 the recipient of Pennsylvania's electors".
20 A. Well, I think what you've done -- would
21 you go back in that document. I think that's
22 qualified by having to prove that, and I think I

Page 359

1 point that out earlier in the document.
2 Could you -- could you --
3 MR. FOX: Sure. Go back and let him
4 look at the --
5 THE WITNESS: -- put it in context?
6 BY MR. FOX:
7 Q. Yeah, sure, absolutely. Can you read
8 all of paragraph 20.
9 A. If you go back to the beginning. I saw
10 it very, very quickly when you quickly went past
11 it. I don't have it in front of me, so.
12 MR. FOX: Can you -- can we go back to
13 paragraph 20 on page eight.
14 THE WITNESS: Can we get a copy of this
15 document, please?
16 MR. FOX: Can we blow up paragraph 20
17 so Mr. Giuliani can see it.
18 THE WITNESS: Now here -- Mr. Fox, this
19 is an early stage in a quickly moving thing, and I
20 limited -- I -- I limited to -- obviously they're
21 not going to give it to me unless I prove it...
22 "Hereafter limited discovery through

Page 360

1 statistical analysis, plaintiffs intend to
2 show" -- so we're going to need limited discovery,
3 which we haven't had -- "that a substantial
4 portion of the 1.5M votes received in the
5 defendant counties were counted in violation of
6 Pennsylvania law". I say "substantial portion"
7 because I don't know at this point what we're
8 going to be able to prove.
9 "Including the inclusion of Trump and
10 republican -- the exclusion of Trump and
11 republican watchers from the canvass of mail
12 ballots and approving mail ballots, which did not
13 comport with Pennsylvania's signature, date, and
14 other requirements.
15 "Plaintiffs will also show that
16 Defendants' conduct was part of an improper scheme
17 to favor Biden over Trump by counting improper
18 votes in violation of the Equal Protection, Due
19 Process --
20 "Ultimately, ultimately plaintiffs will
21 seek the remedy of Trump being declared the
22 winner."

Page 361

1 We're not seeking it now. We're making
2 an optimistic prediction of the outcome of our
3 case.
4 Now, am I the first lawyer to do that?
5 I'm making it -- and I'm not saying you got to do
6 it now based on what I just showed you. I'm
7 telling you I've got to prove all this, and you
8 get to agree or disagree with it.
9 Exactly what did I do wrong there,
10 Mr. -- Mr. Fox --
11 MR. LEVENTHAL: Please don't ask --
12 THE WITNESS: -- that other lawyers
13 don't do?
14 MR. LEVENTHAL: Don't ask him that.
15 CHAIRMAN BERNIUS: Mr. Giuliani, I
16 think if you could just limit yourself to
17 answering the questions --
18 THE WITNESS: I know, Mr. Chairman, but
19 it's really -- oh, never mind.
20 CHAIRMAN BERNIUS: I understand, but as
21 I said yesterday, you will have --
22 THE WITNESS: Again I apologize. I'm

Page 362

1 sorry.
2 BY MR. FOX:
3 Q. Okay, let's move on to something else.
4 And I want to focus now on your oral argument on
5 November 17th, 2020 before Judge Brann, which is
6 Disciplinary Counsel's Exhibit 8.
7 Now you -- I'll show you these things
8 if you need to see them, but you've told us I
9 think yesterday that you believe what happened in
10 Pennsylvania was part of a nationwide conspiracy,
11 and I think you said it occurred in -- well, I
12 think yesterday you said six, but before Judge
13 Brann you said it occurred in at least 10 other
14 jurisdictions, correct?
15 A. I did, by the time -- by the time we
16 get to now, I realize there were some that we
17 weren't able to pursue. But I mean, at the time,
18 that was the number I was given, but then we never
19 pursued it for example in Nevada, because we would
20 have had no chance of prevailing. It was a
21 democratic legislature. We -- we changed our
22 strategy and decided that the only way we were

Page 363

1 going to get our witnesses under oath, so they'd
2 be preserved for history, is if we went to the
3 state legislatures, and the only state
4 legislatures where we would have had a chance of
5 being accepted were state legislatures that had at
6 least a republican house or Senate.
7 So that ruled out a few of the states
8 that we originally, for example -- just would not
9 happen to Nevada. It's a -- both houses are
10 democrat, even though we had what my lawyers
11 regarded as very substantial evidence of fraud.
12 So eventually it came down to, by
13 process of elimination -- and that -- and that
14 eliminated Minnesota, as well -- it came down
15 to -- I hope I get it right -- Michigan,
16 Philadelphia, Arizona, Georgia. Did I say -- oh,
17 we did try Nevada but then we -- we -- we
18 abandoned it, because we thought it was useless,
19 and New Mexico also we thought was useless, but we
20 did try.
21 So the number changed over time but it
22 was essentially the same concept. We were asking

Page 364

1 the legislature to assert its power under Article
2 2, Section 1, Clause 2 of the Constitution, as
3 well as the Supreme Court decisions.
4 Unfortunately I've forgotten the name of the
5 1895 -- 1892 decision, but it was reaffirmed in
6 Bush v. Gore, which says, quite clearly, the state
7 legislature has -- they used the word "plenary
8 power" -- to determine the electors and can
9 withdraw any delegation at any time. And it would
10 seem to me that, in fact our facts are
11 provable, and the election was affected by -- by
12 substantial, overwhelming irregularities and/or
13 fraud, the state legislature had the obligation,
14 among other things -- there is no question and no
15 one would disagree with this -- that the number
16 submitted to the federal government of votes is
17 inaccurate. Whether -- whether Trump wins or
18 loses, in each one of these states it was
19 demonstrably provable that the number sent in was
20 totally inaccurate.
21 Q. Okay, you --
22 CHAIRMAN BERNIUS: Mr. Giuliani, I -- I

Page 365

1 know that you have a lot to say, but honestly,
2 this -- I'd like to finish this hearing by
3 Christmas and I'm getting concerned that we --
4 THE WITNESS: Okay.
5 CHAIRMAN BERNIUS: -- will be able to
6 do it.
7 You know, seriously, I -- I -- I -- I
8 lost track of the question. If you could just
9 kind of try to limit yourself to answering the
10 question as posed, and we can move on. Mr.
11 Leventhal will be able to ask you on -- on
12 cross-examination, then you can put your case in
13 and say whatever you want in response to his
14 questions.
15 But, you know, Mr. Fox is trying to get
16 through it and -- and -- and I think maybe you
17 could try to help him move it along.
18 THE WITNESS: I'll -- I'll try, Mr.
19 Chair, but I mean, you failed to note that Mr. Fox
20 asked me a question before in which he left out a
21 paragraph right before that changed the entire
22 meaning of what he asked me. So, I mean, I -- I

Page 366

1 luckily noted that.
2 But it's not -- I'm not exactly being
3 questioned -- well, never mind.
4 CHAIRMAN BERNIUS: I'm just -- I'm
5 just -- I'm just asking you --
6 THE WITNESS: I have to defend myself.
7 CHAIRMAN BERNIUS: I'm just asking you
8 to try your best to --
9 THE WITNESS: I am trying, Mr.
10 Chairman.
11 CHAIRMAN BERNIUS: Thank you.
12 BY MR. FOX:
13 Q. Mr. Giuliani, the only question I asked
14 you was whether you had asserted in front of Judge
15 Brann this nationwide conspiracy. But it is true,
16 is it not, that even though you asserted it you
17 haven't pled it and you certainly offered no
18 factual support for it?
19 A. No. You made it appear as if I was
20 asking for that relief and didn't point out that
21 in the paragraphs before that I amended that by
22 saying I had a lot to prove before I got there,

Page 367

1 which changed the meaning and the good faith basis
2 on which I did that.
3 And you're a really smart man, Mr. Fox.
4 Q. Mr. Giuliani, we're talking about
5 completely different things. I'm talking about
6 your argument in front of Judge Brann now. I'm
7 not talking about what you said in your motion in
8 support of this --
9 A. That's right. And I'm talking about
10 how you asked a sneaky question. That's all. And
11 I have to point that out to defend myself.
12 Q. (Indecipherable) you had to live up to
13 it, all right?
14 Now let's go back to judge -- the
15 argument in front of Judge Brann. You -- would
16 you agree with me that you had not pled a
17 nationwide conspiracy and you offered no factual
18 support for that?
19 A. No. I actually argued those facts in
20 front of him. I didn't have the opportunity to
21 plead it, but I -- if you look at the argument, I
22 think I began the argument with how this was going

Page 368

1 on in many, many districts. I think what you just
2 said is a complete misstatement of what my
3 argument was. My argument must have two, three
4 pages talking about the national conspiracy that
5 was going on, that this was unbelievably and
6 unusually the same conduct at the same period of
7 time. At midnight they stopped the count when
8 they weren't supposed to in five places --
9 Q. I just asked you if you pled that. Did
10 you plead it?
11 A. No, you asked me if I argued it or
12 pleaded it. I'm answering the argued part, Mr.
13 Fox. Would you please be fair in your questions.
14 I couldn't have pleaded it because I was arguing
15 the first complaint, which of course didn't plead
16 it.
17 Q. All right. Fine. That's all I want to
18 establish. Let's go on. Let's look at page 15,
19 line 16 through 23. All right. Now in this
20 paragraph, you talk about the report, Jimmy Carter
21 and James Baker, and you say in the last line,
22 "They very, very seriously warn us" quote, quote,

Page 369

1 'mail-in balloting is the largest source of voter
2 fraud".
3 A. I don't see the quote. I'm sorry,
4 Mr. --
5 MR. FOX: Just blow up the last -- the
6 21 through 23.
7 THE WITNESS: The one I have doesn't
8 have a quote -- oh, oh, no, I'm saying, quote.
9 Okay, I see. I see what you're saying. Yes.
10 BY MR. FOX:
11 Q. And that was in fact a misquote, was it
12 not, Mr. Giuliani?
13 A. No, I -- I don't believe it was.
14 Q. Let's look at your exhibit, your
15 exhibit, Respondent's Exhibit 50 -- sorry,
16 Respondent's Exhibit 8, at page 54. This is
17 the -- okay, this is the -- the report you're
18 talking about, right?
19 A. Yes, sir.
20 Q. All right and --
21 A. I think it is. That doesn't -- that
22 doesn't look like it.

Page 370

1 Q. Yeah, you see -
2 MR. FOX: Can you blow --
3 BY MR. FOX:
4 Q. You see the names Jimmy Carter and --
5 A. Yeah, yeah, mm-hmm.
6 Q. Okay.
7 MR. FOX: And let's go to page 54.
8 BY MR. FOX:
9 Q. And I want you -- if --
10 MR. FOX: Are we on 54?
11 MS. MATINPOUR: Sorry, we -- we had
12 some technical difficulties, so I had to go back
13 to the PDF. I apologize.
14 MR. FOX: Okay, here we are. And if
15 you'll highlight the first sentence under 5.2,
16 which I think is the sentence Mr. Giuliani --
17 MR. LEVENTHAL: Are we on -- are we
18 on -- back on the record?
19 MR. FOX: We've always been on the
20 record.
21 MR. LEVENTHAL: No, he said there was
22 technical difficulties.

Page 371

1 MR. FOX: No, she -- she just said
2 having difficulty putting up the exhibit.
3 MR. LEVENTHAL: Oh, oh, oh.
4 BY MR. FOX:
5 Q. So the actual quote was "Absentee
6 ballots remain the largest source of potential
7 voter fraud," correct?
8 A. Yes. I left the word "potential" out.
9 Q. Yeah, that -- that's kind of a big word
10 to leave out?
11 A. No, it isn't. It isn't a big word.
12 Q. Well, it's --
13 A. "The largest source of potential voter
14 fraud," or it's the largest source of voter fraud.
15 What's the larger one? What's the larger
16 potential source of voter fraud?
17 Q. Mr. Giuliani, you don't get to --
18 A. No, really -- never mind, never mind.
19 This is really picayune.
20 Q. You don't think there is a distinction
21 between telling the court that a presidential
22 commission said that mail-in balloting was the

Page 372

1 largest source of voter fraud, instead of saying
2 it was the largest "potential" source of voter
3 fraud?
4 A. No, I don't think there's a very big
5 difference between the two. There is no other
6 source of fraud that is larger, whether you
7 describe it as potential or not.
8 Q. All right. Okay, let's go back to --
9 we're finished with that and you may take a minute
10 to --
11 THE WITNESS: For that I'm going to get
12 disciplined?
13 BY MR. FOX:
14 Q. -- to back to Exhibit 8.
15 THE WITNESS: God almighty.
16 BY MR. FOX:
17 Q. And now I want to go to page 16, lines
18 10 through 20. Now this is your argument in front
19 of Judge Brann in which you cite election fraud
20 that occurred in other cities and in other
21 elections, correct?
22 A. Yes, sir.

Page 373

1 Q. And you don't contend, do you, that
2 election fraud in other jurisdictions in other
3 elections is evidence that there was election
4 fraud in Pennsylvania in 2020?
5 A. No, but remember I was arguing -- as I
6 pointed out before and you were disputing -- I was
7 arguing here that this was part of a national --
8 not -- not -- not -- not national in the sense of
9 the entire country, but in anywhere from five to
10 nine specific democratic city cures that this was
11 a conspiracy that existed outside of Pennsylvania,
12 of which Pennsylvania was a part. So here I am
13 pointing out that there's a history of that.
14 Q. And this -- and this conspiracy
15 included Mayor Daley in 1960?
16 A. No, of course not. But I don't know if
17 you know the RICO statute. The RICO statute goes
18 back to prior history of 50, 60, 70 years.
19 Q. Okay.
20 A. And so here I'm pointing out that this
21 is not -- I mean, a lot of people would look at
22 election fraud and say, "Oh, my god, that can't

Page 374

1 happen, and I understand that. I've dealt with
2 election fraud both as a candidate and as a
3 prosecutor. But a lot of people don't believe it
4 exists. So what I am pointing out here is,
5 "Judge, this is not so darn unusual. It happens.
6 It happened a long time ago in a very important
7 presidential election, or allegedly happened then,
8 and it happened in 2018". And I happen to have --
9 have specific knowledge of the 20-year history in
10 Palm Beach County and Broward County and exactly
11 the percentage of vote that they used to determine
12 whether they were going to fix the election or
13 not. It was, if the election was within two
14 percent, they would then try to make up ballots
15 and bring them in. And they got caught in the
16 DeSantis/Scotto election because they had a whole
17 bunch of ballots up in Jacksonville that were
18 headed to Palm Beach and Broward County. DeSantis
19 fired the woman who'd been running it for 20
20 years, and since then, they've had elections that
21 are flawless and get reported in eight years.
22 Q. And your contentions is that that was

Page 375

1 evidence that fraud had been committed in the
2 Pennsylvania presidential election in 19- --
3 A. No, it's background to refute the
4 general attitude that often happens: "Oh, this is
5 impossible. This doesn't happen".
6 The New York Times writes editorials
7 like that every week, "There is no voter fraud.
8 Republicans make it up". That sort of thing.
9 It was -- it was to refute that, to put
10 it in context.
11 Q. Let's look next at page 17, lines 11
12 through 15, and here you're talking about voter
13 fraud that occurred in Philadelphia in other
14 elections, correct?
15 A. Yes, sir.
16 Q. All right. And I will show them if you
17 want, but I think there are other references to
18 previous elections in which you say voter fraud
19 occurred in Philadelphia, right?
20 A. Yes. I based that on newspaper
21 articles.
22 Q. Again, that's not evidence of any fraud

Page 376

1 that occurred in Pennsylvania in the 2020
2 presidential election, is it?
3 A. Well, it depends on how broad your --
4 your trial is going to be. If you're going to
5 bring in history and likelihood in a jurisdiction,
6 yeah, that could -- you could argue that that
7 possibly is relevant. I've been able to get
8 evidence like that in of a historical pattern.
9 Philadelphia would be a good example of that
10 because you have so many articles about how it's
11 replete with -- with voter -- voter fraud.
12 It isn't -- it isn't a criminal trial
13 where you can't introduce, you know, prior
14 misbehavior. In a civil trial you can. So, yeah,
15 the fact that you happen to be in what some people
16 would kind of colloquially describe as, you know,
17 a professional voter fraud city: Philadelphia and
18 Chicago. I mean, a guy just got convicted a few
19 weeks ago in Philadelphia of voter fraud.
20 This -- this -- I mean, this is
21 something -- I don't know if you'd get it in. You
22 would try -- you -- you might try to show -- this

Page 377

1 isn't just -- they didn't just pick, you know,
2 Tucson, or they didn't just pick Omaha, Nebraska.
3 They picked a place that has a long, long history
4 of voter fraud that's been controlled by one
5 political party or 50 years and has a reputation
6 and a then bunch of convictions for corruption
7 that kind of shocks the conscience.
8 Q. Okay. Do you know, incidentally, Mr.
9 Giuliani, how many election fraud investigations
10 were conducted in Pennsylvania after the 2020
11 election?
12 A. After the 2020 election?
13 Q. Yeah, the one we're talking about.
14 A. No, I was relying on newspaper
15 articles -- I thought I supplied them -- that lay
16 out how frequent there are voter fraud
17 investigations in Pennsylvania and how it's the
18 situs of many after an election. I can't remember
19 the date -- dates of each one of them. But that
20 was based on -- it wasn't based on me. It was
21 based on articles from newspapers.
22 Q. All right. Let's look on -- let's look

Page 378

1 at the evidence that you said you had that did
2 relate to the 2020 election, and let's go to page
3 22 of your argument, lines 20 to 25.
4 Now you --
5 MS. MATINPOUR: What line was it?
6 MR. FOX: Twenty to 25.
7 BY MR. FOX:
8 Q. And you say here, among other things,
9 "One of the problems that we have in this case and
10 why we had to amend it is because, as compared to
11 last week, we had twice as much evidence this
12 week".
13 A. I'm sorry, is that a question?
14 Q. Well, that -- that is what you argued,
15 correct?
16 A. It's kind of -- I'm not -- I'm not sure
17 I understand what I argued. I kind of need the
18 paragraph before.
19 Q. Oh, sure.
20 (Witness reviews document.)
21 A. This is about the Equal Protection
22 claim, okay.

Page 379

1 Q. So would you agree with me here that
2 you're -- you're arguing that you're getting
3 increasing evidence all the time of fraud in the
4 Pennsylvania 2020 election?
5 A. I didn't say it now. Maybe later. All
6 I'm talking about is how I -- I failed to see why
7 this is a difficult Equal Protection claim when he
8 was treated differently than the other candidate,
9 which is kind of common Equal Protection argument.
10 Now let's read this.
11 (Witness reviews document.)
12 Yeah, I'm not talking about how we're
13 going to get more evidence -- denial of Equal
14 Protection. We -- we had more evidence than than
15 we had when I originally argued. People were
16 sending in -- we -- we -- we had a -- we had
17 system, a call-in system that was working 24 hours
18 a day. And the reason that the documents
19 involving this all show up at headquarters, rather
20 than in the various local lawyers' offices are,
21 that's where the investigators were, and that's
22 where they were processing the information, and in

Page 380

1 some cases going out and investigating. And we
2 were every day getting -- I can't put a number on
3 it, I'd just be guessing. Every day we'd be
4 getting additional allegations. Here I'm talking
5 about the ones having to do with Equal Protection,
6 but they also related to being excluded from
7 seeing ballots; whole manner of other things.
8 Q. Okay. And that's what you represented
9 to the court, correct?
10 A. Yeah, that -- that we -- that we got
11 more allegation, yes.
12 Q. And now let's look at page 28, lines 16
13 through 20. And we've talked about this before.
14 This is your representation to the court that
15 you've got 300 affidavits or declarations to
16 support your allegations, correct?
17 A. That is correct.
18 Q. And these are in evidence. These
19 should be -- withdrawn.
20 These should be in evidence in this
21 proceeding, with all the --
22 A. No, not -- as I said, not all of them,

Page 381

1 but the ones that we could find, yes.
2 Q. Okay.
3 A. And if I have to qualify it a little
4 bit, I can't be absolutely -- well, it's both
5 overinclusive and underinclusive.
6 How many did we supply, 245? There
7 are -- there are more affidavits than that, and I
8 can't be sure that every single one of them that
9 we have in that was used in this litigation. This
10 is what we found --
11 Q. Okay.
12 A. -- and handed over to you. Some of
13 them I can remember specifically, some I can
14 remember generally, and some I don't remember at
15 all.
16 Q. Now, the only exhibits that you
17 actually offered at the oral argument before Judge
18 Brann were four photographs.
19 Is that correct?
20 A. Yes. I also offered to produce
21 anything else that he wanted.
22 Q. And -- and the four photographs were

Page 382

1 designed to show these problems that --
2 A. Correct, it was -- it was designed to
3 show that --
4 Q. May I finish the question, sir?
5 A. It was a football field, basically. We
6 showed a picture of a --
7 MR. LEVENTHAL: Let him finish the
8 question.
9 BY MR. FOX:
10 Q. The four photographs were designed to
11 show the difficulties that the observers had in
12 seeing what was going on when the mail-in ballots
13 were being counted, correct?
14 A. That is correct.
15 Q. And aside from those photographs, you
16 offered no other exhibits in front of Judge Brann?
17 A. Frankly, we didn't have the time to.
18 Q. Okay.
19 A. But we offered to give him anything he
20 wanted.
21 Q. Now --
22 A. We expected we were going to have a

Page 383

1 hearing, and that's when we would produce these.
2 Q. If -- if you will look at -- if we
3 could go now to page 23 and 24, starting with line
4 24 and 23 and going over to the second line of
5 page -- I'm sorry. I -- I've got this -- let --
6 let me see if I've got this -- it appears to be
7 the wrong cite.
8 (Brief pause.)
9 MR. LEVENTHAL: Where?
10 MR. FOX: I'm going to come back. I
11 think I've -- I gave -- I've got the cite screwed
12 up. I apologize.
13 (Brief pause.)
14 BY MR. FOX:
15 Q. Well, let -- let me -- let me -- let
16 me -- let me do it this way... You took the
17 position, did you not, in front of Judge Brann
18 that all mail-in ballots which were not inspected
19 by observers were illegal?
20 A. The ones that -- I can't -- I can't say
21 in a universe of what I don't know that I took
22 the -- I took the position that the ones that we

Page 384

1 had identified were -- those were illegal.
2 I imagine any one not inspected would
3 be illegal, but I can't say -- I don't know.
4 There may be some exception somewhere.
5 The ones that -- the ones that we --
6 the ones that we used as the general basis for our
7 argument were -- we took the position that they
8 should be -- that they were void.
9 Q. Okay. Let -- let's -- let's go back to
10 page 23, lines 24, and then go over to page 24,
11 lines one through two, which I meant to show you
12 before.
13 MS. MATINPOUR: What was the line?
14 MR. FOX: Line 24 and 23, going over to
15 line two on page 24.
16 BY MR. FOX:
17 Q. And again, if you need the context,
18 I'll happily give it to you, but you argue here
19 that, "The illegal ballots that were not inspected
20 at all have been entered and counted. In fact
21 precisely 682,770 that we can count now".
22 So your argument in front of Judge

Page 385

1 Brann was that these 672,000 ballots -- the
2 numbers slightly changed, but -- were all illegal,
3 correct?
4 A. Yeah, they're -- they're -- they -- but
5 a certain category of ballot, which I think we --
6 these are the ballots that were counted where the
7 republican inspectors were uniformly excluded and
8 they were able to make a -- a calculation of how
9 many ballots were counted that way.
10 Q. Okay.
11 A. Some of them stayed there. You see one
12 affidavit, you know, 19 hours, 12 hours, 10 hours,
13 five. He puts it down in the affidavit and some
14 of them didn't make any prediction at all. But
15 the ones who -- who -- who went to the trouble of
16 counting the number counted in front of them,
17 which they didn't get to see -- I didn't do this
18 myself, but I had my staff or my assistants -- but
19 that number kept changing. It kept going up. And
20 I guess that was the number at the time.
21 Q. Okay. And you didn't cite any
22 authority in front of Judge Brann for the

Page 386

1 proposition that, because the observers hadn't
2 been able to see these ballots when they were
3 inspected, that they were illegal, did you?
4 A. Well, I don't know if this ever came up
5 before.
6 Q. Okay.
7 A. So there wouldn't be -- I mean, this --
8 I -- I saw this in many, many ways as a case of
9 first impression and where the law says they have
10 to be inspected and they are not, and in other
11 circumstances, like under 25 Pennsylvania Statute
12 3146(a), where not every item is included, the --
13 the -- the -- the -- the remedy is that they
14 shouldn't -- they shouldn't be counted.
15 Q. Okay.
16 A. So one of the -- I mean, frankly,
17 again, if you go to the Carter/Baker, the critical
18 element in preserving integrity when there is
19 something that has more of a tendency for fraud,
20 like mail-in ballots, is identification of the
21 ballot at the time that it's being counted,
22 because there's no other time that it can be

Page 387

1 verified. That's it.
2 Q. The election workers were doing that,
3 weren't they?
4 A. Yeah, but they weren't allowing it to
5 be independently inspected, which is pretty much a
6 uniform rule throughout the United States and
7 Europe.
8 Q. All right. Now, let's go -- let's go
9 now to page 26, lines nine through 17, and here I
10 think you're arguing before Judge Brann that, in
11 the seven counties that were the defendants, there
12 were one-and-a-half million votes that were
13 illegal?
14 A. I don't believe I am. I don't believe
15 I -- I -- I don't believe I'm arguing that any are
16 illegal --
17 Q. First of all, I'm -- I think we're at
18 the wrong page.
19 A. Can I finish my -- okay. Never mind.
20 Q. No, I think I gave you the wrong page.
21 MR. FOX: That's 27. I want page 26.
22 Sorry. Lines nine through 17.

Page 388

1 BY MR. FOX:
2 Q. Now as I understand what you're saying
3 here -- take a minute to read it -- but I
4 understand you're saying here, in seven counties
5 there are a million and a half illegal votes.
6 A. Well, I think -- I think I'm saying
7 that the only person that knows is an employee
8 that we -- we hadn't looked at all those.
9 Q. Well, 1.5M votes that were entered
10 illegally, that's your -- that was your argument,
11 was it not?
12 A. Yeah, I -- I did say that. I misspoke.
13 I thought -- I thought the context of it was
14 clear, that the total that I had was 682,770. We
15 hadn't examined the rest of these yet, and I'm
16 saying, the only way we'll know, is if we examine
17 them.
18 Is it potentially possible? I guess.
19 But I -- if I did suggest that it was 1.5M, that
20 is not what I was trying to say. I had -- I had
21 not -- I wouldn't be able to say at that point it
22 was 1.5M.

Page 389

1 Q. So -- so how many illegal ballots
2 did -- were you contending there were?
3 A. Right -- at that point, 682,770, right
4 there.
5 Q. And -- and -- and it was your position
6 that all those ballots had to be canceled, wasn't
7 it?
8 A. There might be some exceptions. I
9 mean, there'd be defenses to some of it maybe.
10 But yeah, most of them. If they were -- if the
11 law says that a person has to be present from the
12 other party to examine it, and if "present"
13 means -- I'm just giving you my logic. I don't
14 have to if you don't want it.
15 Yes, my contention would be that, if
16 these weren't inspected by an independent person,
17 they were useless, under Pennsylvania law and
18 under universal concept of Due Process, because in
19 almost every civilized country, they're inspected.
20 Philadelphia would stand out,
21 Pennsylvania would stand out as having elections
22 that were more unfair than countries in which, you

Page 390

1 know, they are definitely Third World countries
2 where they inspect absentee ballots, have an
3 independent inspection of.
4 Q. And just to be clear -- let's go to
5 page 27, lines 14 through 18 -- and this is where
6 you say that the ballots need to be canceled,
7 right?
8 A. Ultimately, always ultimately. I mean,
9 not -- not based on what I'm alleging here.
10 This is -- again, this is a complaint.
11 It predicts what you believe you can prove later.
12 I don't get anything if I don't prove it. The
13 judge knows that; I know it. So a complaint is a
14 prediction. It's not a statement of what you
15 definitely are going to get, what you're
16 definitely going to prove.
17 Gosh, if you had to do that, you'd --
18 you'd have to be a mind reader.
19 Q. And -- and -- and, as I understand your
20 testimony, it wasn't a million and a half ballots
21 that you were asking to be canceled, it was only
22 680,000?

Page 391

1 A. It -- it was the number that at that
2 point I could determine was examined without
3 inspection by a republican inspector as is done in
4 almost all of the rest of the country in other
5 democracies. I thought that would be a really
6 good argument. I didn't know and I think I -- I
7 think I could argue an interpretation of what I
8 said there, if at one point 1.5M is the total
9 number that were counted in those counties, but I
10 hadn't looked at those yet.
11 So, I mean that was -- remember, this
12 is the beginning of a proceeding. It might turn
13 out that those weren't, that those were perfectly
14 fine.
15 Q. Okay. All right. Now, in -- in -- in
16 my review -- and you can correct me if I'm wrong,
17 and I'll show you the pages if you -- if you want
18 me to -- I saw that you pled that you argued three
19 facts to support these claims: the first one was
20 there was an observer in Philadelphia who had to
21 use binoculars and even that those proved
22 insufficient.

Page 392

1 Do you remember arguing that?
2 A. As one of many -- well, yeah, I
3 remember --
4 Q. Do you remember --
5 A. I don't remember specifically arguing
6 it in this case or some other case, but I did talk
7 about the people who needed binoculars. It was
8 more they were given binoculars. They said, "We
9 can't see anything," and the government officials
10 came over and gave them binoculars, and then they
11 complained, "We can't see it even with the
12 binoculars."
13 And I do remember a situation in which
14 the real problem was that the people counting the
15 ballots about 40 feet away, which you couldn't see
16 anyway, had their back to the inspector so that
17 you could deliberately not see what they were
18 doing. There's also testimony like that. But I
19 did argue -- I did argue, as among many, many
20 other arguments, that they were some -- not all,
21 in a few cases they were offered binoculars. They
22 were also offered monitors that didn't work.

Page 393

1 Q. Okay, I -- I'm just trying to establish
2 now the facts, the facts that you cited to Judge
3 Brann at your argument on November 17th.
4 A. Okay. Well that's one of them, I
5 think.
6 Q. All right. The second one that I --
7 that I think you cited to him was that, when some
8 of the people in Philadelphia tried to move
9 closer, they were pushed back and they were not
10 allowed to get closer.
11 Do you remember that? I'll show it to
12 you if you want to see it.
13 A. No, no, I do. I do remember that,
14 sure. There were -- some got closer and were
15 pushed back. I do recall that, yes.
16 Q. And when you made that argument, you
17 pointed out --
18 MR. FOX: Well let -- let's put up --
19 let's go to page 26 and put up lines 18 through
20 24.
21 BY MR. FOX:
22 Q. You argued this happened to democrats

Page 394

1 as well as republicans, right?
2 A. Not uniformly, but it did happen to
3 democrats probably a good deal of the time. But
4 there were exceptions in which democrats were
5 allowed to inspect and not republicans.
6 Q. Now, did you --
7 A. But I would say what I state there is
8 more the rule than the exception.
9 Q. Okay. Now, I tried to go through your
10 argument from Judge Brann and I've tried to go
11 through the initial complaint and the second
12 amended complaint to pull out all the factual
13 arguments that you made to support your position.
14 Are there any other factual arguments
15 that you made in those pleadings or to Judge Brann
16 that we have overlooked?
17 A. If you give me a chance to read it, I
18 would -- I would tell you what they are. I mean,
19 I haven't --
20 Q. Well, then that -- I don't certainly
21 want to delay the proceeding for that, but then
22 if -- if -- you'll have an opportunity, as the

Page 395

1 chair has already pointed out, to testify later
2 on. So perhaps if there are, you can let us know
3 what those facts are.
4 And I'd rather switch now to --
5 A. If I were looking at it and -- and tell
6 you if there are other -- other arguments.
7 Q. But if you made any -- if you pled any
8 facts or made any arguments, though, or cited any
9 facts in any arguments in support of his position
10 that we have not brought out, and if there are,
11 I'd like to know what they are.
12 A. Yeah, I don't know -- I don't know if I
13 did or if I didn't. But I -- I certainly alerted
14 him to the situation.
15 Q. Okay. Let -- let's -- let's shift to
16 the subject of the legal authority. And you'll be
17 happy to know this is the second last -- to the
18 last area that I want to discuss.
19 One of the cases -- I saw that in front
20 of Judge Brann that you argued two cases: Marks v.
21 Stinson and Bush v. Gore.
22 Were there any other -- was there any

Page 396

1 other legal authority that you cited to Judge
2 Brann or that you relied on aside from Marks v.
3 Stinson and Bush v. Gore?
4 A. I don't remember.
5 Q. Marks v. Stinson was a 1994 3rd Circuit
6 case, correct -- 3rd Circuit and district court
7 case, correct?
8 A. Yep, it was. Yes. He was actually
9 cocounsel in -- in our case.
10 Q. Mr. Marks was? Mr. Marks was
11 cocounsel?
12 A. Yes, sir.
13 Q. All right. And that was a race for a
14 state legislature position, correct?
15 A. I think it was the Senate.
16 Q. Senate. And it was in a jurisdiction
17 in which there were 40,000 votes cast, correct?
18 A. I don't -- if you say so, then -- it
19 was a small election. I don't remember the
20 numbers.
21 Q. And the margin of victory for Mr.
22 Stinson was 420 votes, correct?

Page 397

1 A. Sounds right. Very -- very narrow.
2 Q. And there -- Mr. Marks had filed,
3 before he filed a federal case, a state election
4 contest, correct?
5 A. I don't remember that, but okay. All
6 right.
7 Q. And they had developed extensive facts.
8 Do you recall that?
9 A. Yeah, it was a completed case. It was
10 well beyond the complaint stage.
11 Q. And there was a fax that showed that --
12 and in -- and in those days there was no such
13 thing as universal mail-in voting, right?
14 A. No. You had to give a -- you had to
15 give usually a very strict reason or -- and had to
16 follow very strict procedures.
17 Q. Okay. And Stinson's people had gone
18 into certain neighborhoods and had solicited
19 absentee ballot applications from voters, correct?
20 There was evidence of this?
21 A. You're reminding me of it, but yeah,
22 that's -- that's right.

Page 398

1 Q. In fact at one time he paid his
2 election workers a -- a bounty for each one of the
3 absentee ballot applications that he could come up
4 with?
5 A. I -- I don't remember that, but okay.
6 All right.
7 Q. And instead of the ballots being sent
8 to the voters, somebody in the election board
9 actually gave them directly to the Stinson
10 campaign, correct?
11 A. Again, if you say so.
12 Q. Okay. And in front of the district
13 court -- and -- and -- and it was possible to --
14 and the discovery identified the number of these
15 fraudulently obtained ballots that had been given,
16 correct?
17 A. I don't remember.
18 Q. And you remember in front of the
19 district court there were three statistical
20 experts -- one of them was hired by Mr. Stinson --
21 all of whom agreed that the evidence showed that,
22 without the illegal votes, Marks would have won

Page 399

1 the election.
2 You remember that?
3 A. I remember that was the showing. I
4 don't remember the -- the process by which they
5 got to that conclusion.
6 Q. Would you agree with me then that the
7 facts of Marks v. Stinson were a far cry from the
8 ones here?
9 A. Well, of course. This is -- we're at
10 the complaint stage, they're at the completed
11 stage, but we're hoping we can get there. And --
12 and it's the principal of law that -- in which
13 they required a new election, that we're arguing
14 for. There's no guarantee we're going to get
15 there, but you often -- I mean, that's -- there
16 aren't many cases -- first of all, this case is
17 suis generis; that you're not going to find
18 authority for a case like this. I don't remember
19 this happening in a presidential election. So how
20 am I going to find -- I can't go make up cases and
21 I'm not going to do that. And so this was a case
22 that showed that the court intervened and there

Page 400

1 were a number of remedies that were suggested, a
2 couple tried, and I think the ultimate remedy was
3 a -- was I -- I think he sat somebody first, and
4 then the ultimate remedy, it turned out not to
5 work for some reason, and then the judge ordered a
6 new election and Marks won.
7 And strangely, the thing I remember
8 about it most is the critical election because it
9 decided the majority of leadership of the -- of
10 the -- I believe it was the state Senate.
11 But I don't -- we weren't trying to
12 fool anybody that we're at that stage. We
13 didn't -- we didn't cite it.
14 Q. Okay.
15 A. Theirs was at a different stage as
16 ours, quite obviously, and we didn't -- we didn't
17 pretend it wasn't.
18 Q. All right. Now, let's go to Bush v.
19 Gore. You recall that the Supreme Court said in
20 Bush v. Gore that the consideration that was given
21 was limited to the present circumstances?
22 Why don't we do this. Let's -- let's

Page 401

1 put up --
2 A. Yeah, yeah, I remember that they --
3 they -- they -- they used language there trying to
4 limit it so that it wouldn't be used too much. To
5 the best they could, knowing that obviously,
6 whatever they do -- they were trying to
7 eliminate -- eliminate the presidential value of
8 it. I do recall something like that, yeah.
9 Q. And -- and Bush v. Gore arose in the
10 context of a recount, correct, not the original
11 count of the election, but the recount?
12 A. That's correct.
13 Q. All right. And would you agree with me
14 that there has no -- there has been no case since
15 Bush v. Gore where that case has been applied to
16 overturn a statewide election?
17 A. I don't know -- I -- I don't think so
18 but I wasn't citing it -- I was citing it for
19 Equal Protection.
20 Q. Okay.
21 A. The doctrine of Equal Protection and
22 for the vitality of the -- of the observation

Page 402

1 and -- and -- and conclusion of the court a
2 hundred years earlier, that the state
3 legislator -- legislature is the sole primary and
4 plenary determinate of elections.
5 Q. You know, you've alluded to that --
6 A. By the way -- which by the way was a
7 surprise to most state legislatures. They didn't
8 know that. I would have to -- in order to
9 convince them of that, I would have to show them
10 the Constitution. They couldn't believe that our
11 founding fathers had given them such authority.
12 Q. Mr. --
13 A. Maybe they don't think of themselves
14 as, you know, elevated as that, but the
15 Constitution is clear as hell, the Constitutional
16 Convention was clear, and even some of the
17 writings of our framers made it clear that they
18 wanted the body closest to the people if there
19 would be a dispute of this kind.
20 Q. Mr. Giuliani, you've alluded to this
21 several times. It's called the "independent state
22 legislature theory," correct?

Page 403

1 A. I don't know it as that. I know it as
2 Article 2, Section 1, Clause 2 of the United
3 States Constitution, which is plain as hell.
4 Q. Article two?
5 A. Yeah, Article 1 has the -- has the
6 Elections Clause. Article 2 has the Electors
7 Clause.
8 Q. And do you recall that this was cited
9 in a concurring opinion by Chief Justice
10 Rehnquist?
11 A. I don't recall who cited it, but I
12 recall it was cited, yes.
13 Q. And -- and the theory is actually going
14 to be argued before the Supreme Court tomorrow,
15 isn't it, in Moore v. Harper?
16 A. Yes, yeah. The more extended theory,
17 yes.
18 Q. The more extended theory, okay. But
19 it's your contention that that's established law
20 now, what you just said?
21 A. Well, until they change it. I mean,
22 that's what they -- that -- that's what the --

Page 404

1 that's what Rehnquist said. Am I going to
2 disagree with him? And -- and, you know, it's an
3 interpretation. Even if it wasn't established
4 law, if it was one interpretation of the law,
5 which it certainly was, and it was one that inured
6 to the benefit of my client, wouldn't I be more or
7 less duty bound to argue it?
8 Q. All right. Do -- well, I'll leave it
9 there -- no, I do want to follow up with one
10 thing. I'm getting away from Bush v. Gore, but do
11 you remember in the 3rd Circuit that you did not
12 challenge the dismissal of the complaint based on
13 the Electors and Elections Clause?
14 A. I don't remember that. I didn't --
15 Q. Okay.
16 A. I didn't handle the 3rd Circuit and I
17 don't know when that decision was made.
18 Q. Okay.
19 A. Nor do I know the rationale for why we
20 didn't.
21 Q. To go back to Bush v. Gore, Bush v.
22 Gore explicitly recognized, did it not, that local

Page 405

1 entities may develop different systems for
2 implement -- for the implementation of elections?
3 A. One hundred percent, yeah.
4 Q. Okay.
5 A. That's sort of the -- that's sort of
6 the whole -- okay, yeah. Yes.
7 Q. All right. And in -- in Bush v. Gore
8 the unusual circumstances was that a single entity
9 of the state Supreme Court was supervising the
10 recount of the vote, correct?
11 A. That's correct.
12 Q. And the court had established no
13 standards -- and what was going on was what's
14 called generally undercounting the ballot, where
15 it look -- sorry, undervoting the ballot, where
16 it's not clear that somebody voted in the
17 presidential election at all, right?
18 A. Yeah, I think that's right. You're
19 getting a little beyond now my recollection of it,
20 but...
21 Q. And you had all this stuff, like the
22 hanging chads, the --

Page 406

1 A. Can't forget those, right.
2 Q. We all remember the hanging chads,
3 right?
4 A. We'll never forget them.
5 Q. Okay. And -- and they looked to see if
6 the ballot -- if there was an impression on the --
7 an impression on the -- on the ballot which --
8 A. How -- how far through did it go.
9 Q. Right. And the problem was, that the
10 Supreme Court focused on, was that the state
11 Supreme Court had not given the people who were
12 making these determinations any standards to apply
13 in making those determinations, correct?
14 A. Yes, sir.
15 Q. All right. And that was a violation of
16 Equal Protection?
17 A. Yes.
18 Q. Okay.
19 MR. LEVENTHAL: Excuse me, could I
20 correct that?
21 MR. FOX: No, sir.
22 MR. LEVENTHAL: That's not the right

Page 407

1 interpretation of the case.
2 MR. GIULIANI: Well, Mr. -- okay, we'll
3 fix it. We'll fix it.
4 MR. LEVENTHAL: We're talking about law
5 now, not -- not -- not testimony.
6 CHAIRMAN BERNIUS: You'll have your
7 chance, Mr. Leventhal.
8 BY MR. FOX:
9 Q. All right. Aside from Marks v. Stinson
10 and Bush v. Gore, was there any other authority on
11 which you relied in support of your complaints or
12 your oral argument before Judge Brann?
13 A. If there was, it's in the -- in the
14 papers. If it isn't in the papers, then we
15 couldn't find anything in the seven or eight hours
16 that we had to do this. And I wasn't so surprised
17 that we didn't, because it did seem to be a case
18 of first impression, a case of very unusual -- I
19 had never remembered something like this happening
20 before.
21 So, in instructing my guys and women to
22 look for cases, which I often do, I go back to

Page 408

1 things that happened in the past and say, "Well,
2 let's look at this; let's look at that". I was
3 having a hard time figuring out what we could look
4 at. And I -- I figured we'd come up with more as
5 we were going along, but I thought this was going
6 to get decided sort of based on the facts more
7 than anything else, because they were pretty
8 compelling.
9 Q. Okay. Last thing I want to look at,
10 and then we'll -- then we'll be done, is the
11 answer you filed to the Specification of Charges
12 in this matter, which is Disciplinary Counsel's
13 Exhibit 4.
14 Do you recognize this as the answer
15 that you filed?
16 A. Yes, I do, sir. Yes.
17 Q. If you look at page nine, you signed
18 this personally, did you not?
19 A. I did.
20 Q. Okay. That's your signature on page
21 nine?
22 A. Yeah, that's my signature.

Page 409

1 Q. Okay. Let's go to page eight and --
2 well, let's go to page eight, paragraph 45. It
3 goes over to the next page, but -- well, stay on
4 page eight, 45.
5 MR. FOX: And can you make that -- if
6 you can blow that up a little bit, I'd appreciate
7 it.
8 BY MR. FOX:
9 Q. Now, Mr. Giuliani, in this answer you
10 said that, because Judge Brann did not sanction
11 you, that was an indication that he thought you
12 had evidence of law and fact in support of the
13 complaint, correct?
14 (Witness reviews document.)
15 A. No, I didn't -- I didn't say that he
16 approved -- approved of everything that I did.
17 Q. All right. Well, let me -- -- let's
18 just start --
19 A. What I said was -- well, let me finish.
20 What I said was he didn't find reason
21 under Rule 11 to sanction me, and if I had done
22 something seriously wrong that would warrant

Page 410

1 disbarment, the first place you would look,
2 although it's not conclusive, is the trial judge,
3 particularly if he had reservations about what you
4 did but didn't invoke Rule 11. He obviously
5 thought about it and didn't. He would be in the
6 best position to do it, rather than somebody
7 writing a letter to a bar association in a
8 different jurisdiction. Nor did any of my
9 adversaries complain about it.
10 So when you don't have complaints
11 emerging from it inside the case, that's not
12 conclusive. I -- I understand that. But it
13 should -- it suggest that maybe it isn't as bad as
14 you're making it.
15 Q. Now, Mr. Giuliani, you argued that,
16 under the 1983 amendment to Rule 11, Judge Brann
17 would have been mandated to sanction you if he
18 thought you had violated the rule, correct?
19 A. Well, I didn't argue that. I -- I
20 pointed out that -- I pointed out that gloss on
21 it. I didn't argue that.
22 MR. FOX: Okay. All right, strike

Page 411

1 that.
2 BY MR. FOX:
3 Q. You -- you pointed out that he was
4 mandated under the 1983 amendment to Rule 11 to
5 sanction you if he thought you violated the rule,
6 right?
7 A. I -- I -- I cited that -- I cited that,
8 but I didn't argue it.
9 Q. Okay. I'm -- I'm -- I'm saying
10 "cited".
11 And in support of that, you cited a
12 case called Invst Financial Group, which you said
13 was a 6th Circuit case from 2011, right?
14 A. I see that, yes.
15 Q. Now, in point of fact, before I
16 withdraw that, you also pointed out in this, did
17 you not, that your -- that opposing counsel had
18 not filed a Rule 11 motion seeking sanctions
19 against you, correct?
20 A. I -- I think I did. I don't see it,
21 but yeah, I think I did.
22 Q. Okay.

Page 412

1 A. I said they didn't complain.
2 Q. All right. Now, in -- in point of
3 fact, invest -- the Invst Financial Group was not
4 a 2011 case. It was a 1983 case, wasn't it?
5 A. I don't know if it was incorrectly
6 cited.
7 MR. FOX: Could we put it up, please.
8 We'll -- we'll have to mark this for
9 identification only. I mean, it's a case. It's
10 not evidence. Let's call it -- what do we have it
11 marked as?
12 BY MR. FOX:
13 Q. Here's -- here's the case --
14 MS. MATINPOUR: Fifty-three.
15 MR. FOX: Fifty-three? Okay.
16 BY MR. FOX:
17 Q. Here -- here's the case, and we can go
18 back if we need to, to show it's the same
19 citation: eight -- 815 F 2nd 391, that you cited
20 and you can see it was decided March 11, 1987.
21 Do you see that?
22 A. I do. I see the date is -- yeah.

Page 413

1 Q. Okay. So let's go back to Exhibit 4,
2 page eight, paragraph 45.
3 MR. FOX: Again, can we make that a
4 little larger.
5 BY MR. GIULIANI:
6 Q. And you cited it as a 2011 case,
7 correct?
8 A. Yeah, we put the -- obviously put the
9 wrong date there.
10 Q. Well, Rule 11 was amended in 1993,
11 wasn't it?
12 A. Yes.
13 Q. And after 1993, there was no longer a
14 mandate that the court impose sanctions if the
15 court decided there was a Rule 11 violation,
16 correct?
17 A. I don't think I was aware of that.
18 Q. Well, isn't it true, Mr. Giuliani --
19 A. Yes, I now know that that -- that it is
20 true, yes.
21 Q. Okay, but so isn't it true that the --
22 the quote that you used from this case, this --

Page 414

1 that you said was a 2011 case, no longer applies;
2 that Rule 11 has been changed since that time?
3 A. That's a mistake. I'm sorry.
4 Q. Okay.
5 A. We made a -- we made a mistake in that
6 citation, both with the date, and that therefore
7 creates the confusion and the misinterpretation.
8 Q. Well, it's not just the date. It's the
9 fact that you didn't the fact that -- that you
10 didn't consider the 1983 amendment -- 1993
11 amendment to Rule 11, did you?
12 A. That's correct.
13 Q. All right. So you would agree with me
14 that we can't draw the significance that you drew
15 from the fact that Judge Brann didn't sua sponte
16 sanction you?
17 A. I would say it isn't as powerful. You
18 can still draw a conclusion from it. I mean,
19 there -- there are plenty of Rule 11 cases after
20 that, with judges that have cited lawyers under
21 Rule 11, and many, many cases in which adversaries
22 cite you under Rule 11.

Page 415

1 Q. With respect to the adversaries --
2 A. Can I just finish?
3 We made a mistake in that, but it's a
4 mistake of degree. It is not as powerful an
5 argument. You're right.
6 Q. We'll, so -- so, we'll come back to
7 adversaries in a minute, but just focus on the
8 judge...
9 Are you aware of any statistics about
10 how frequently since Rule 11 was amended in
11 1993 --
12 MR. FOX: Actually, I want to keep that
13 up, if we can, because we're going to go to other
14 portions of it.
15 BY MR. FOX:
16 Q. Are you aware of how frequently since
17 1993 --
18 MR. FOX: Withdrawn.
19 BY MR. FOX:
20 Q. Are you aware of any -- any statistics
21 that show how much --
22 MR. LEVENTHAL: Objection, objection.

Page 416

1 We're only concerned whether Judge Brann did
2 rule -- gave a Rule 11 sanction. And I'm throwing
3 myself under the bus. I spoke to Mr. Fox about
4 that. That's my mistake, this quote, and he knows
5 it. And that's John Leventhal speaking.
6 CHAIRMAN BERNIUS: I -- think there --
7 there was no question yet posed.
8 So why don't you pose your question,
9 Mr. Fox.
10 MR. FOX: Well, Mr. Giuliani just said
11 we could draw some significance from the fact that
12 Judge Brann didn't sua sponte sanction him, and
13 the question that I wanted to ask is whether he
14 was aware of any statistics that showed, since the
15 1993 amendments, how frequently judges sua sponte
16 sanctioned litigants.
17 MR. LEVENTHAL: Objection as
18 irrelevant.
19 CHAIRMAN BERNIUS: Overruled.
20 THE WITNESS: I am not aware.
21 BY MR. FOX:
22 Q. Okay. Now, let's come to the fact that

Page 417

1 the --
2 A. I have -- I mean, I have myself argued
3 Rule 11 cases and gotten sanctions. So I'm very
4 aware of Rule 11. And in fact the case that I
5 argued is the reason for the amendment.
6 Q. I see.
7 A. Nemeroff against Abelson, which was
8 decided in '78, '79, something like that.
9 Q. And -- and that caused the 1993
10 amendment?
11 A. I guess it was an earlier amendment.
12 Q. Now, let's come to the question of your
13 opponents moving for sanctions.
14 Are you aware that, since Rule 11 has
15 been amended, that there's a so-called "safe
16 harbor" provision in it?
17 A. Vaguely.
18 Q. Well, you said --
19 A. I haven't -- I haven't -- I haven't
20 used it in 30 years.
21 Q. I thought you just told us you were
22 very familiar with Rule 11?

Page 418

1 A. Yeah, but I haven't -- I was familiar
2 with the genesis of Rule 11. I haven't used it in
3 30 years.
4 Q. Are you aware that, before a lawyer can
5 move for Rule 11 sanctions, he or she has to give
6 his opponent, their opponent 21 days to fix the
7 problem?
8 A. Yeah, I did -- I am aware of that.
9 Q. Okay.
10 A. Now that you say it, yeah.
11 Q. All right. And you filed your
12 complaint in this case on the 9th of November,
13 2020, correct?
14 A. That's right.
15 Q. And it was dismissed by Judge Brann on
16 November 21, correct?
17 A. That's right.
18 Q. And the 3rd Circuit affirmed --
19 affirmed on November 27th, correct?
20 A. Yes, sir.
21 Q. So even if they had given you notice on
22 the very first day that you filed the case, the 21

Page 419

1 days wouldn't have run before the whole case had
2 disappeared, correct?
3 A. But they wouldn't have known that on
4 the day that they did it.
5 Q. Okay. But -- but it was not possible,
6 was it, Mr. Giuliani, for your opponents to file
7 for Rule 11 sanctions against you because of the
8 safe harbor provisions?
9 A. No -- because of the -- of the delay --
10 of the date -- of the timing?
11 Q. Yes.
12 A. No. How would -- how do they know how
13 long the case was going to go on? It could have
14 gone on for a year.
15 Q. Mr. Giuliani, you're aware that you
16 can't file for sanctions until the 21 days have
17 run, or you -- or are you not aware of that?
18 A. No, I'm aware of that, but they could
19 have -- I mean, very often, when people do Rule
20 11, they raise it right at the moment of -- at the
21 moment of trial, and then they file it. But they
22 wouldn't have known at that point if they had the

Page 420

1 21 days or not.
2 Q. Okay.
3 A. They made -- in other words, no one
4 during that argument made any objection such as
5 the objections that are being made now.
6 Q. Okay.
7 A. And they were much more familiar with
8 the case than any of the people arguing it from
9 the outside. And -- and plus, the -- the
10 extenuating circumstances of this case in that I
11 was pushed into it at the very, very last minute
12 and had to argue it.
13 Q. Let -- let's look at some of the other
14 things in your answer.
15 MR. FOX: And I want to go now to page
16 three and I want to look at paragraph 18, which
17 unfortunately goes over to page four. But the
18 part -- part I want to look at is on paragraph 18.
19 BY MR. FOX:
20 Q. And I want to specifically refer to
21 your discussion of the case called In Re canvass
22 of Absentee and Main-In Ballots. And you cite to

Page 421

1 this case at 241 A 3rd, 1058, in 2020, correct?
2 You see that, Mr. Giuliani?
3 A. I do see that, yes.
4 Q. And what you say there is that you were
5 somehow vindicated because in this case the court
6 ruled that, in the future --
7 A. I don't think I say I'm vindicated. I
8 don't see where I say that.
9 Q. Let me just finish the sentence, and
10 then you can tell me if I'm wrong.
11 You're partially vindicated because the
12 court subsequently ruled in the future that all
13 the ballots had to be dated, right?
14 That's what you said?
15 A. I don't agree with your
16 characterization. I agree that I cited the case.
17 Q. For the proposition that -- that in the
18 future, if the ballots -- mail-in ballots were not
19 dated, they wouldn't be accepted.
20 A. Okay. I -- I mean, that's what it
21 says, yeah.
22 Q. Okay. But that's not what the case

Page 422

1 says, is it?
2 A. What?
3 Q. The case that you cited?
4 A. I don't recall that.
5 Q. Let's look at Disciplinary Counsel
6 Exhibit 21.
7 MR. LEVENTHAL: What's the cite again,
8 please?
9 MR. FOX: Disciplinary Counsel Exhibit
10 21.
11 MR. LEVENTHAL: At 241 --
12 MR. FOX: Twenty-one.
13 MR. LEVENTHAL: -- 3rd. 1058. Go
14 ahead.
15 BY MR. FOX:
16 Q. This is the case that you cited, is it
17 not?
18 THE WITNESS: May I take a short break?
19 Mr. Chairman, may I take a short break?
20 CHAIRMAN BERNIUS: We're -- let's --
21 we're going to break for lunch in about 15
22 minutes, and if Mr. Kamins can sit in while

Page 423

1 you're --
2 MR. LEVENTHAL: It's Mr. Giuliani
3 asking for the break.
4 THE WITNESS: But I could be real quick
5 and I can waive whatever you're doing right now.
6 MR. LEVENTHAL: No, don't waive.
7 CHAIRMAN BERNIUS: How much more -- how
8 much more do you have on this, Mr. Fox?
9 MR. FOX: I've got -- I've got this
10 issue, which I'm almost finished with, and one
11 more.
12 We can take a short break. I'll --
13 I'll be happy -- I'll be sure to finish up shortly
14 before lunch.
15 CHAIRMAN BERNIUS: All right, let's --
16 its -- it's noon. I was going to go a little
17 further. Why don't we take our lunch break now --
18 THE WITNESS: Thank you, sir.
19 CHAIRMAN BERNIUS: -- and we'll
20 reconvene at 1:30.
21 (Whereupon at 11:58 a.m. a luncheon
22 recess was taken.)

Page 424

1 A F T E R N O O N S E S S I O N
2 (Whereupon at 1:32 p.m. the hearing
3 resumed.)
4 CHAIRMAN BERNIUS: Everybody is here.
5 I think Mr. Fox, you're still examining
6 the witness.
7 BY MR. FOX:
8 Q. Mr. Giuliani, I'm going to withdraw my
9 questions with respect to the In Re canvass case
10 and talk about the McLinko case.
11 So I want to go back to Disciplinary
12 Counsel's Exhibit 4, page three, paragraph 16. So
13 you'll see in the second part of the paragraph you
14 discuss what you say is a Pennsylvania Supreme
15 Court case called McLinko -- I think I'm
16 pronouncing that right -- which held that "The
17 statutes established that any qualified elector
18 may vote by mail without having to demonstrate a
19 valid reason for their absence from their polling
20 place on Election Day violated" -- I think it
21 should be "the state constitution's provisions
22 that required electors to vote in person at their

Page 425

1 designated poll places on Election Day, since
2 state constitution allowed requirements of all
3 in-person voting to be waived only when an elector
4 was absent for reasons of occupation, physical
5 incapacity, religious observances or Election Day
6 duties.
7 "But statutes governing the no-excuse
8 mail-in voting system did not fall under any of
9 the constitutionally enumerated exceptions to
10 allow absentee voting, and a constitutional
11 amendment to end requirement of in-person voting
12 was a necessary prerequisite to establish a
13 no-excuse mail-in voting system".
14 You agree that that's what you -- that
15 you said in your statement that that's what the
16 Pennsylvania Supreme Court held in *McLinko*?
17 A. Yeah, I think it was an appellate
18 court. I think that's right.
19 Q. Right. But it -- but it wasn't the
20 Pennsylvania Supreme Court, was it?
21 A. It was an appellate court.
22 Q. Right. And the Pennsylvania Supreme

Page 426

1 Court overruled that appellate court, didn't it?
2 A. They did, later.
3 Q. Yes, later, the same year, correct?
4 A. Well, I don't know that they -- before
5 I wrote this?
6 Q. Well, it's part of your exhibits.
7 Let's look at your -- your Respondent's Exhibit
8 23.
9 First of all, before we take that
10 down --
11 MR. FOX: I'm sorry, could you -- well,
12 that's all right. We'll come back to it.
13 THE WITNESS: What's the date of that?
14 BY MR. FOX:
15 Q. I -- I want you first -- I just want
16 you to note that *McLinko* is 279 A 3rd, 1243.
17 A. Yeah, that's in our Exhibit 22. We put
18 that cite in our answer.
19 Q. I understand, sir. Now can we look at
20 Exhibit 23. This is a Pennsylvania Supreme Court
21 case, not the one that -- not an intermediate
22 court case. It's 279 A 3rd, 539.

Page 427

1 You see that?
2 A. Mm-hmm.
3 Q. All right. And do you understand that
4 that explicitly overruled the case on which you
5 were -- that which you cited in your answer?
6 MR. LEVENTHAL: Have you answered?
7 THE WITNESS: Yes.
8 BY MR. FOX:
9 Q. Okay. And so if -- just to be clear
10 about that, if you look at --
11 MR. LEVENTHAL: I just want to look at
12 the answer, please. Give me a minute.
13 BY MR. FOX:
14 Q. If you -- if you'll look at page
15 five --
16 THE WITNESS: Do we answer?
17 BY MR. FOX:
18 Q. -- New York 23, five --
19 MR. FOX: That if you'll blow up the
20 first paragraph on that page -- or the yeah -- the
21 first full paragraph --
22 THE WITNESS: Just a minute. We're

Page 428

1 looking for the answer.
2 MR. FOX: Okay.
3 MR. LEVENTHAL: What paragraph is that,
4 Mr. Fox?
5 MR. FOX: What paragraph of what?
6 MR. LEVENTHAL: The answer that you're
7 talking about.
8 MR. FOX: Paragraph 16.
9 MR. LEVENTHAL: Thank you.
10 (Brief pause.)
11 THE WITNESS: Yes, sir.
12 BY MR. FOX:
13 Q. Okay, and you'll see in the last
14 sentence that the court says before it now "is a
15 question of whether the general assembly
16 overstepped the bounds of this power and violated
17 our Constitution when it enacted legislation that
18 allows for universal, mail-in voting.
19 "For the reasons that follow, we find
20 no constitutional violation and so we reverse the
21 order of the commonwealth court".
22 A. Mm-hmm.

Page 429

1 Q. Correct?
2 A. That's what it says.
3 Q. And so the Pennsylvania Supreme Court,
4 in the same year, after the case that you cited,
5 reversed that opinion?
6 A. I'm -- I'm asking you, was -- was
7 this -- was that done before or after we submitted
8 this -- this -- these papers?
9 MR. LEVENTHAL: It was before.
10 THE WITNESS: I mean, obviously we
11 missed it. I'm trying to figure out if it was
12 extant at the time we submitted this or it
13 happened after we submitted this and we just
14 didn't pick it up.
15 Q. If you'll look at the --
16 MR. FOX: Can we go to the first page
17 of the McLinko opinion.
18 THE WITNESS: When was it decided, I'm
19 sorry?
20 BY MR. FOX:
21 Q. August 2, 2022.
22 A. Well, look, I mean, I don't -- I don't

Page 430

1 know if this was for sure, but it looks like this
2 was submitted in July.
3 Q. Okay.
4 A. Before -- before this reversal.
5 Q. All right. So you didn't learn -- so
6 you didn't -- so you didn't -- you didn't know it
7 at the time, you couldn't have known it at the
8 time you submitted your answer.
9 Is that right?
10 A. I'm just looking at the dates, Mr. Fox.
11 Q. Okay.
12 A. At the time we wrote that we did make a
13 mistake in saying "Supreme Court," but we couldn't
14 have known that the Supreme Court was going to
15 reverse it, because they reversed it a month
16 later.
17 Q. Okay. But you never corrected your
18 answer?
19 A. Well, I'm sorry, we didn't keep up on
20 every single --
21 Q. And (indecipherable) saying this was a
22 Supreme Court opinion?

Page 431

1 A. Is that really -- is that really a
2 necessary question? I mean, we didn't keep up
3 with every single piece that we cited in its
4 history. I'm sorry.
5 MR. LEVENTHAL: Let the record reflect
6 it's in our exhibit list. We weren't trying to
7 hide it.
8 MR. FOX: Okay.
9 THE WITNESS: I -- I apologize --
10 MR. LEVENTHAL: It's in our exhibit
11 list.
12 THE WITNESS: I wasn't trying to keep
13 up with every single case.
14 CHAIRMAN BERNIUS: All right. I have
15 no other questions of this witness.
16 THE WITNESS: Good.
17 CHAIRMAN BERNIUS: All right, Mr.
18 Leventhal.
19 MR. LEVENTHAL: Yes, thank you. Just
20 give me one half minute.
21 Kindly go to Exhibit DC Exhibit 17 and
22 our exhibit -- where is it our exhibit? Both the

Page 432

1 same. Page 20. Go to their exhibit. We have the
2 same exhibit. Is it up there? Okay, thank you.
3 BY MR. LEVENTHAL:
4 Q. Mr. Giuliani -- I can't even see that.
5 I'm going to have to stand. Is that all right?
6 Can you see me when I stand?
7 A. No. The question is could we hear you.
8 MR. LEVENTHAL: I'm standing by the --
9 the screen, so I could read the -- the exhibit.
10 Is that all right, Mr. Bernius? You
11 can you hear me, though, right?
12 CHAIRMAN BERNIUS: Yes, we can. We can
13 hear you.
14 THE WITNESS: Okay.
15 CROSS EXAMINATION
16 ON BEHALF OF RESPONDENT
17 BY MR. LEVENTHAL:
18 Q. Okay, so we're looking now at DC
19 Counsel's Exhibit 17, and it's our exhibit --
20 what, John? It's our Exhibit 20. Go to page 20,
21 please.
22 Mr. Giuliani?

Page 433

1 A. Yes, sir --
2 MR. LEVENTHAL: Could you blow that up
3 a little more, John.
4 THE WITNESS: I can read it -- I can
5 read it from here --
6 MR. LEVENTHAL: Okay.
7 THE WITNESS: -- your Honor.
8 BY MR. LEVENTHAL:
9 Q. So, when you read that, then the
10 second -- especially the second paragraph in --
11 while the Pennsylvania Constitution mandates that
12 elections be free and equal, does it not say that
13 it leaves the task of effectuating the mandate to
14 the legislature?
15 A. Yes, sir.
16 Q. And are they talking about the Notice
17 and Cure?
18 MR. FOX: Could we not -- not leading
19 on these questions?
20 MR. LEVENTHAL: Well, you talked about
21 it. I'm following up on what you said and I --
22 MR. FOX: Object to the form of the

Page 434

1 question, leading.
2 CHAIRMAN BERNIUS: I'll -- I'll
3 overrule the objection but there may -- it may
4 move us along a little more quickly at this point.
5 That's not carte blanche, Mr.
6 Leventhal. If you're pointing to an exhibit to
7 have the witness -- to direct the attention of the
8 witness, I don't have a problem, but I may have a
9 problem otherwise.
10 MR. LEVENTHAL: I apologize and I stand
11 corrected.
12 BY MR. LEVENTHAL:
13 Q. Please look at the one, two, three,
14 four, five, six -- the seventh line. What does
15 that say?
16 A. Seventh line?
17 Q. In quotes.
18 A. The first -- oh, down there.
19 Q. In quotes.
20 A. It says "Notice and opportunity to cure
21 procedure" -- Notice and Cure.
22 Q. Okay. Could you continue -- could you

Page 435

1 continue to the next page.
2 A. Sure. It says "Notice and Cure" --
3 "Notice and opportunity to cure procedure sought
4 by petitioner...
5 "To the extent that a voter is at risk
6 for having his or her ballot rejected due to minor
7 errors made in contravention of these -- of those
8 requirements, we agree that the decision to
9 provide a notice and opportunity to cure procedure
10 to alleviate that risk is one best suited for the
11 legislature.
12 "We express disagreement, in
13 particularly in light of the open-policy questions
14 attendant to that decision, including what the
15 precise contours of the procedure would be, how
16 the concomitant burdens would be addressed, and
17 how the procedure would impact the confidentiality
18 and counting of ballots, all of which are best
19 left to the legislative branch of Pennsylvania's
20 government.
21 "Thus, for the reasons stated,
22 petitioner is not entitled to relieve it seeks in

Page 436

1 count three of its petition."
2 MR. LEVENTHAL: Okay, could you go to
3 the top, please, the very top.
4 BY MR. LEVENTHAL:
5 Q. Who is -- who is the petitioner here?
6 A. The Pennsylvania Democratic Party is
7 the petitioner --
8 Q. All right, now who is opposing this
9 notice to cure procedure?
10 A. It looks like the Secretary of the
11 Commonwealth, Kathy Boockvar.
12 Q. All right, thank you.
13 MR. LEVENTHAL: Next, please go to the
14 second amended complaint.
15 THE WITNESS: Yeah, I got it.
16 MR. LEVENTHAL: No, we're going to go
17 on --
18 THE WITNESS: Oh, we're going to go on
19 this file.
20 MR. LEVENTHAL: Page 60. DC Number 9,
21 page 60, please. Highlight number eleven -- or
22 111. Can we look at the next page, please.

Page 437

1 Hold on.
2 THE WITNESS: Oh, I'm sorry.
3 MR. LEVENTHAL: Can you highlight
4 number 112. Okay, could you -- could you -- could
5 you keep it there, please.
6 BY MR. LEVENTHAL:
7 Q. Okay, could -- could you read those?
8 And that's -- what -- what is this document?
9 A. This is -- this is my complaint -- our
10 complaint.
11 Q. Which one?
12 A. Second.
13 Q. Right.
14 A. The second one.
15 Q. Okay, now --
16 A. Yeah, the second one, second amended
17 complaint.
18 Q. What are you alleging here?
19 A. We're alleging a -- I think, without
20 reading it --
21 Q. Well, read it.
22 A. Oh, it seems to me it's going to be --

Page 438

1 it's going to be Equal Protection.
2 Q. Okay.
3 A. Well, because it says right at the
4 beginning. "In addition, the disparate treatment
5 between mail-in and in-person voters as to the
6 verification of the voters' identity through
7 signature verification has created an environment
8 in Pennsylvania that encourages ballot fraud or
9 tampering about prevents the Commonwealth and
10 County Election boards from ensuring that the
11 results of the November 3, 2020 general election
12 are fair -- free, fair and transparent.
13 "As a result of the manner in which the
14 county election boards were directed to conduct
15 the election, including the canvassing of mail-in
16 ballots, the validity of Pennsylvania's votes who
17 favor Trump have been unconstitutionally diluted
18 through defendant's arbitrary, disparate, and/or
19 uneven approval of all absentee and mail-in
20 ballots without performing the requisite
21 verification of the voters' signature, resulting
22 in the treatment of by-mail and in-person voters

Page 439

1 across the state, in an unequal fashion, in
2 violation of state and federal constitutional
3 standards in order to favor Biden."
4 Q. And this is what Mr. Fox had termed a
5 signature comparison and the Supreme Court of
6 Pennsylvania has approved the denial of a
7 signature comparison to people who vote in
8 absentee and mail-in.
9 Is that correct?
10 A. That's correct.
11 MR. LEVENTHAL: Okay, could you please
12 go to Exhibit 28, our Exhibit 28. All right,
13 could you go up a little more so we see the cite.
14 BY MR. LEVENTHAL:
15 Q. All right, this is -- this is a 2022
16 case.
17 MR. LEVENTHAL: Go up.
18 BY MR. LEVENTHAL:
19 Q. The petition for writ of certiorari --
20 well, could you read that Mr. --
21 A. Sure. This is Ritter vs. Migliori, and
22 it's in the Supreme Court --

Page 440

1 Q. Just -- just read the whole in.
2 A. Oh, I'm sorry. You mean read the --
3 Q. Read what's in yellow.
4 A. "The petition for a writ of certiorari
5 is granted, the judgment is vacated, and the case
6 is remanded to the United States Court of Appeals
7 for the 3rd Circuit with instructions to dismiss
8 the case as moot."
9 MR. LEVENTHAL: Okay, could you please
10 go to -- this is what, 20 --
11 MR. ESPOSITO: Twenty-eight.
12 MR. LEVENTHAL: Go to 29, please.
13 And I draw -- I draw the panel's
14 attention to this case also. This is -- I -- I'm
15 not testifying. You could read the case itself.
16 This is an application for a stay of -- not
17 putting the date on.
18 BY MR. LEVENTHAL:
19 Q. Mr. Giuliani, can you -- can you read
20 this? This one was denied. Three judges
21 dissented. Go ahead.
22 A. "The 3rd Circuit held that the failure

Page 441

1 to count mail-in ballots that did not include the
2 date on which they were filled out constituted a
3 violation of this provision, but the 3rd Circuit
4 made little effort to explain how its
5 interpretation can be reconciled with the language
6 of the statute."
7 Q. Okay --
8 A. "In my view, however, it appears that
9 elements two and five are clearly not met."
10 MR. LEVENTHAL: Can you -- can you
11 scroll down further.
12 BY MR. FOX:
13 Q. Okay, can you read this, now, Mr.
14 Giuliani?
15 A. "The problem with the 3rd Circuit's
16 interpretation can be illustrated by considering
17 what would happen if it were applied to a mail-in
18 voting rule that is indisputably important; namely
19 the requirement that a mail-in ballot be signed.
20 "Suppose a voter did not personally
21 sign his or her ballot but instead instructed
22 another person to complete the ballot and signed

Page 442

1 it using the standard notation employed when a
2 letter is signed for someone else, (p.p. John or
3 Jane Doe)."
4 Q. Okay.
5 A. "Or suppose that a voter for some
6 reason typed his or her name instead of signing
7 it.
8 "These -- those violations would be,
9 material in determining whether a ballot should be
10 counted, but they would not be material in
11 determining whether such individual is qualified
12 under state law to vote in each election -- in
13 such election.
14 "Therefore, under the 3rd Circuit's
15 interpretation, a ballot signed by a third party
16 and a ballot with a typed name rather than a
17 signature would have to be counted.
18 "It seems most likely that this is what
19 52 U.S.C. Section 10101 (a)(2)(B) means."
20 Q. All right, sir, it's the Voting Rights
21 Act. But Mr. --
22 CHAIRMAN BERNIUS: Mr. -- Mr.

Page 443

1 Leventhal, could I -- I thought I saw it.
2 Which -- whose opinion is this that you're reading
3 from.
4 MR LEVENTHAL: Oh, go up, please.
5 This is -- this is Alito and Gorsuch
6 and Thomas, which is apparently adopted by the
7 Supreme Court when they granted certiorari. Here
8 this was a motion for a stay. They denied the
9 application for a stay before the election. After
10 the election they vacated the 3rd Circuit opinion
11 and they, you know, vacated the judgment, and they
12 granted certiorari.
13 So basically it was based on this -- it
14 was based on this --
15 CHAIRMAN BERNIUS: All right. I
16 just -- I just wanted to clarify that -- that the
17 language that was just read was from a dissent.
18 MR. LEVENTHAL: It was a dissent for --
19 it was a dissent in the application for a stay
20 before the election.
21 Could you go back to the other -- could
22 you go back to the other exhibit, please.

Page 444

1 Now the Supreme Court, after
2 considering it, they granted certiorari. They
3 denied certiorari before the election, and after
4 the election they granted certiorari and they
5 vacated the judgment, and the case was remanded to
6 the United States Supreme Court with instruction
7 to dismiss.
8 The import of this, Mr. Chair, is that
9 there were two dissents. Everyone else went along
10 with the rationale basically espoused in the
11 application pre election. But post election they
12 granted certiorari and they -- and they granted
13 the petition and they -- for a writ of certiorari
14 and they vacated the judgment.
15 That's the import of this.
16 MR. FOX: May I object. This is --
17 this is argument. I think it's incorrect it's a
18 moot case but this is more for -- I mean, I --
19 THE WITNESS: And therefore it's not a
20 precedent. And therefore it's not a precedent.
21 BY MR. LEVENTHAL:
22 Q. All right. So, Mr. -- Mr. Giuliani,

Page 445

1 reading Judge Alito and -- and the Supreme Court
2 decision, how does that comport with your
3 argument? Could you describe to the panel --
4 A. Sure, I mean --
5 Q. -- your argument about signature
6 comparison.
7 A. I mean, this is a very unusual way to
8 do it with the Supreme Court, but essentially they
9 have -- removed the 3rd Circuit opinion that they
10 originally didn't grant cert for. They did grant
11 cert, they vacated it, and therefore removed it as
12 a precedent in the 3rd Circuit.
13 So it's no longer the guiding --
14 guiding law until something changes in the 3rd
15 Circuit.
16 That's the way I would read that.
17 Q. All right.
18 A. I could be wrong, but that -- that
19 seems what -- it would have been -- who am I to,
20 you know, criticize the Supreme Court? There
21 would have been clearer ways to do it, but that's
22 an interesting law school exercise.

Page 446

1 MR. LEVENTHAL: And could you go back
2 to -- to -- I think it's 20- -- the one before
3 this. Give me a second. Go ahead.
4 MR. ESPOZITO: Twenty-nine?
5 MR. LEVENTHAL: Twenty-nine.
6 BY MR. LEVENTHAL:
7 Q. Do you see In Re Campus of Absentee
8 Mail-In Ballots of November 3, 2020?
9 MR. LEVENTHAL: Could you go down?
10 THE WITNESS: Yeah, I do.
11 BY MR. LEVENTHAL:
12 Q. What does it say the Supreme Court did
13 in that case?
14 A. "The Supreme Court has held that the
15 inclusion of the date on which the ballot was
16 filled out is mandatory and that undated ballots
17 cannot be counted".
18 Q. And that's how three justices of the
19 Supreme Court interpreted that case?
20 A. That is correct. That -- that is a
21 dissent at that point.
22 Q. And -- and did Mr. Fox take issue with

Page 447

1 your representation and your answer on that?
2 A. Yeah, but he failed --
3 Q. Yes or no?
4 A. I'm sorry. Yes, he did.
5 Q. Okay. All right.
6 A. You want me to explain?
7 Q. No.
8 A. Oh, okay.
9 MR. LEVENTHAL: Could we go -- could we
10 go to that -- that case.
11 THE WITNESS: Something like 200 --
12 MR. LEVENTHAL: That's Mr. Fox's --
13 that was Mr. Fox's exhibit.
14 THE WITNESS: I would like to
15 explain the Supreme Court.
16 MR. LEVENTHAL: No.
17 This case, November 3rd election. Give
18 me a second. May I see the top. Okay, all right.
19 Could you look at -- could you -- could
20 we look at Judge Wecht's concurrence, please.
21 THE WITNESS: So just to be clear,
22 we're talking about the same case now?

Page 448

1 BY MR. LEVENTHAL:
2 Q. No, we're talking about --
3 MR. LEVENTHAL: Could you go up,
4 please, John.
5 BY MR. LEVENTHAL:
6 Q. In Re Canvassing Observation.
7 A. Yes, okay. All right. I've got it.
8 Q. 2020. I think it's the same case. Let
9 me make sure.
10 MR. LEVENTHAL: Go up and see if it's
11 Judge Wecht's --
12 THE WITNESS: I think this is another
13 one of those complicated -- they need a scorecard.
14 MR. LEVENTHAL: Can you go to Judge
15 Wecht's concurrence, please.
16 Give me a second, your Honor.
17 (Brief pause.)
18 MR. LEVENTHAL: It's number 19, 340
19 3rd, 591. That's not it. Their exhibit, DC
20 Exhibit 19. Can you go to Judge Wecht's
21 concurrence, please.
22 THE WITNESS: Page 28. It says at the

Page 449

1 bottom page 28. I can read this from here.
2 MR. LEVENTHAL: Go up, John.
3 I'm sorry, Mr. Chairman. I'm going to
4 go in my -- I'm tripping over wires here. Just
5 give me one second.
6 (Brief pause.)
7 MR. LEVENTHAL: This is the wrong case.
8 Sorry, your Honor.
9 Try 21, their Exhibit 21.
10 My apologies.
11 CHAIRMAN BERNIUS: Perhaps we could
12 move on -- perhaps we could move on to another
13 topic and circle back to this after a break.
14 MR. LEVENTHAL: Well, I -- I'm here
15 now, so can we -- could we --
16 Could you -- could you go ahead a
17 little more, John, so we could see --
18 BY MR. LEVENTHAL:
19 Q. Okay. What was this case about?
20 A. You got to get me back to the case now.
21 Which case are we talking about?
22 Q. This -- this is number 21, In Re

Page 450

1 Canvass of Absentee and Mail-In Ballots of
2 November 23rd --
3 MR. ESPOSITO: "November 3rd."
4 BY MR. LEVENTHAL:
5 Q. Or November, 3rd, 2020.
6 A. The question was whether the ballot had
7 to be dated and signed.
8 Q. Right.
9 A. And --
10 Q. And you -- you put in your answer --
11 Mr. Fox said that you put it in an answer --
12 A. We put it in an answer --
13 Q. -- that in future elections --
14 A. At future elections it had to be dated
15 and signed, and it -- and that is --
16 Q. How did you interpret that to be?
17 A. Very simple; very simple and very
18 confusing decision.
19 Four judges ruled that in that
20 particular case it wouldn't be fair to require
21 that the ballot be dated and signed or to suffer
22 the penalty of its being discounted.

Page 451

1 But then Judge Wecht, who had been in
2 the majority in that case, switches over to the
3 dissenters. So now it becomes 4/3 the other way,
4 and says quite clearly, here -- I mean, if you
5 don't have it underlined -- that in the future
6 that will be required.
7 So I think we -- we cited it correctly
8 by saying in the future the requirement -- that is
9 going to be a -- a requirement.
10 I remember this because we used a
11 little chart to figure it out, which is what I do
12 when you have Supreme Court decisions or decisions
13 of courts when judges concur in part and dissent
14 in part. It could become very confusing.
15 But there's no doubt that Judge Wecht
16 says that, in the future, you're going to have
17 to -- you're going to have to have the date, and
18 it's going to have to be done properly in
19 accordance with the statute. He says "it's a very
20 weighty matter," if I'm -- now I'm relying on my
21 recollection, because I can't see that. But I
22 think he says "it's a very weighty matter".

Page 452

1 Q. Okay. And I --
2 A. You could very easily miss it.
3 MR. LEVENTHAL: Could you go to the
4 answer now please of --
5 THE WITNESS: My own answer?
6 MR. ESPOSITO: No, our answer.
7 MR. LEVENTHAL: I'm taking to our media
8 guy now. About DCX4, page six.
9 MR. ESPOSITO: Respondent's answer.
10 THE WITNESS: You want me to read that?
11 MR. LEVENTHAL: No.
12 BY MR. LEVENTHAL:
13 Q. I direct you to 32. The last sentence,
14 you're -- you're repeating Democratic
15 (indecipherable) v. Boockvar. Read your last
16 sentence.
17 A. "Pennsylvania State" --
18 Q. No, your last sentence.
19 A. Of what?
20 Q. Of 32.
21 MR. ESPOSITO: The answer.
22 THE WITNESS: Oh, the whole last

Page 453

1 sentence, okay.
2 "Thus respondent lacks sufficient
3 information to form a belief to the allegation
4 regarding Pennsylvania State law regarding the
5 Notice and Cure procedure except notes that
6 Pennsylvania State law does not in any way
7 prohibit the remedy requested."
8 Right, it doesn't prohibit it and it
9 doesn't provide --
10 BY MR. LEVENTHAL:
11 Q. What do you mean -- wait for a
12 question, sir.
13 A. Sorry.
14 Q. What do you mean by that?
15 A. What I mean is there' no -- there's no
16 prohibition toward going ahead and requiring it,
17 or not doing it. And question -- and the --
18 the -- the Equal Protection argument arises from
19 the application of it because it was applied in
20 different ways in different parts of the state.
21 And whether that's done as a matter of law or it's
22 done as a matter of practice, either one can be a

Page 454

1 violation, I think everyone knows, of Equal
2 Protection, as applied.
3 Q. Was there a case that we went earlier
4 that supports your view?
5 A. Well, sure. I mean, the case we just
6 looked at. I mean, it supports our view. If you
7 take out a little chart and you see that Judge
8 Wecht -- well, never mind. We did that already.
9 MR. LEVENTHAL: Could you go to Exhibit
10 38, our Exhibit 38.
11 BY MR. LEVENTHAL:
12 Q. Mr. Giuliani --
13 A. Yes, your Honor?
14 Q. What is this -- what is this exhibit?
15 A. Oh, this -- this is a -- this was a
16 list I think pretty early on that was compiled --
17 could you go back to title there. I'm trying
18 to -- trying to recall it. I know that I saw
19 this. I don't know that I used it much. But
20 "Montgomery County List of Challenged Ballots,"
21 this was given to me by -- it was not given to
22 me -- the group of documents were given to me

Page 455

1 right before the argument by Bernie Kerik. There
2 was a very important document given to me by Maria
3 Ryan, and that was the -- the --
4 Q. What did Maria Ryan give you?
5 A. She gave me the Droz document, which is
6 the one I kind of liked the best.
7 Q. When did she give you that?
8 A. She gave it to me during the day of the
9 16th, and I had a chance to read it quickly that
10 day or night, and then I really absorbed it in the
11 car going up to the argument.
12 This -- this I saw but I don't -- I
13 don't think I used it.
14 Q. You're not -- you're not -- are -- are
15 you saying that it's absolutely true, what's in
16 here, or are you --
17 A. No, I have no -- I shouldn't say I have
18 no idea. It is what it is. That's what it says
19 and I'm not sure if I -- I don't -- I don't recall
20 where and if I used this or one of my assistants
21 used it.
22 Q. But you had this as a --

Page 456

1 A. I had this -- I had this --
2 Q. Let me ask the question, please.
3 A. I'm sorry.
4 Q. But you had this as part of your
5 challenge to the Montgomery County, which was one
6 of the defendants in the lawsuit?
7 A. Yes, sir.
8 MR. LEVENTHAL: I move this into
9 evidence.
10 MR. FOX: I have no objection.
11 CHAIRMAN BERNIUS: Admitted.
12 MR. LEVENTHAL: Could we go to Exhibit
13 39. Oh, no, he didn't object to this. I'm sorry.
14 Exhibit 40. Could you scroll down a
15 little bit.
16 Mr. Chair, this is the redacted
17 version.
18 THE WITNESS: Redacted?
19 BY MR. LEVENTHAL:
20 Q. All right, when did -- when did you
21 receive this information?
22 A. I had it before the argument, because

Page 457

1 it's hard to forget this. I had this before
2 the -- probably the day before.
3 Q. And who funded -- who funded --
4 A. This one -- this one I'm pretty certain
5 was given to Bernie Kerik, along with one or two
6 other documents.
7 Q. And what was Bernie Kerik's role --
8 A. Chief investigator.
9 Q. Let me finish my questions, Mr.
10 Giuliani.
11 Was your chief investigator in
12 Pennsylvania?
13 A. No, in the -- for the country.
14 Q. Please take your hand away from your
15 mouth.
16 A. He -- he was a -- he was selected by
17 President Trump to be our chief investigator, or I
18 recommended him and President Trump agreed. I
19 can't remember exactly how it happened. But he
20 was our chief investigator for our legal team.
21 Q. Are you -- you're not swearing for the
22 voracity of each of the --

Page 458

1 A. No.
2 Q. -- exhibits, are you?
3 A. No, no. I'm telling you I received
4 them. I know as much about the exhibit as what is
5 on the exhibit. That's all.
6 Q. This is what your investigation team
7 provided you with?
8 A. Yeah, and I -- at a -- at a rather
9 early stage. Because you should understand, the
10 only thing available at that point were the people
11 who voted mail-in, but this would not include any
12 of the people that voted -- I don't think, I'm
13 pretty sure of this -- this would not include any
14 of the people who voted in the general election --
15 Q. Why is that so?
16 A. Because you don't he get that list
17 until much later. For some reason you get the
18 list of the people who voted, mail-in and
19 absentee, right away, as soon as they're finished.
20 But this they don't put out in most
21 states, and I think Pennsylvania is one of them,
22 until March.

Page 459

1 Q. Okay.
2 A. So you wouldn't get this until -- so
3 this is why a lot of the evidence, expert
4 evidence, et cetera, is done by extrapolation and
5 is allowed within certain limits by the court,
6 because you're never going to have this in time to
7 make an argument.
8 MR. LEVENTHAL: All right. Could
9 you -- could you go to --
10 BY MR. LEVENTHAL:
11 Q. Would the same thing be true of
12 exhibit --
13 MR. LEVENTHAL: What exhibit is this
14 one?
15 MR. ESPOSITO: 40, it's 40.
16 BY MR. LEVENTHAL:
17 Q. Of 41... 42...
18 MR. LEVENTHAL: Show them 41 so they
19 know what it is, please; of 42... keep going.
20 THE WITNESS: Yeah, there's a --
21 BY MR. LEVENTHAL:
22 Q. I didn't ask a question.

Page 460

1 MR. LEVENTHAL: Forty-three.
2 BY MR. LEVENTHAL:
3 Q. Would the same -- if your testimony be
4 the same as -- as your testimony as to the prior
5 exhibit that I -- that was put up on the screen?
6 A. Yes, pretty much the same -- and
7 there's --
8 Q. Was it also given to you by Bernie --
9 A. Yeah. These three were given to me by
10 Mr. Kerik, yes.
11 Q. Okay. And are you swearing to the
12 truth of these?
13 A. No, not the underlying truth.
14 Q. Okay, but -- but they were given to you
15 and -- from your recollection team.
16 Is that correct?
17 A. Yes, sir.
18 MR. LEVENTHAL: I move these exhibits
19 into evidence.
20 MR. FOX: Mr. Chair, I object and I
21 would like to forestall admitting these exhibits
22 until Mr. Kerik testifies.

Page 461

1 As -- as we have made clear, we
2 requested and supposedly received the information
3 that was in Mr. Giuliani's files with respect to
4 the election. This was not included in those
5 documents. They were not -- these four exhibits
6 were not included in those documents. They were
7 also not included in the documents that are
8 originally marked as exhibits.
9 As I understand it, from the
10 representation that was made to me, Mr. Kerik came
11 and produced these documents after the original
12 exhibits were submitted in March.
13 And accordingly, I think we should
14 reserve on whether this should be admitted or not
15 until Mr. Kerik testifies.
16 MR. LEVENTHAL: All right, subject to
17 connection?
18 CHAIRMAN BERNIUS: I will -- I'll
19 reserve ruling out their admissibility at this
20 point.
21 MR. LEVENTHAL: Okay.
22

Page 462

1 BY MR. LEVENTHAL:
2 Q. And you say you had Mr. Droz's report
3 on the 16th. Is that correct?
4 A. Yes, I -- I -- I remember that clearly,
5 yeah.
6 MR. LEVENTHAL: All right. Mr. Fox are
7 you reserving your same objection with Mr. Droz's
8 report?
9 MR. FOX: Well, my problem with Mr.
10 Droz's report is this: I understood it to be an
11 expert report to be admitted for the truth of
12 what -- of what it says, and I don't think Mr.
13 Droz is an expert and -- so I objected to it on
14 that -- that grounds.
15 If it's simply admitted for the --
16 well, so I -- I do object to it if it's being
17 offered for that purpose.
18 MR. LEVENTHAL: But for -- but for the
19 purpose of what Mr. Giuliani relied upon for his
20 state of mind, you would admit that and it's
21 subject to in Droz's qualification as an expert?
22 MR. FOX: I did -- it seems to me

Page 463

1 appropriate if Mr. Droz is going to testify to do
2 the same thing and to withhold the ruling until he
3 testifies and explains what it was.
4 MR. LEVENTHAL: That's why I asked you
5 if your objection is the same. Okay.
6 CHAIRMAN BERNIUS: For the record, I
7 have no idea what exhibit you're talking about.
8 What number is this?
9 MR. LEVENTHAL: I'm sorry.
10 MR. ESPOSITO: Exhibit 11.
11 MR. LEVENTHAL: It's our Exhibit 11. I
12 apologize. Mr. -- this is Mr. Fox and I have been
13 talking so long about this case that he finishes
14 my sentences.
15 CHAIRMAN BERNIUS: Okay. As long as
16 it's identified by number, that's okay.
17 You may -- you may proceed.
18 BY MR. LEVENTHAL:
19 Q. Okay, Mr. Giuliani, you had stated
20 earlier that there might have been other documents
21 that you didn't turn over that you had but you
22 would have forgotten about.

Page 464

1 Was one of them the Montgomery County
2 exhibit?
3 A. I'm pretty certain, yes. I have a
4 clear recollection of this had one but --
5 Q. Now Mr. Fox had turned over to us, I
6 think it was in discovery, the Friess memorandum.
7 I don't think we included that in our exhibits.
8 Was that another one that was given to
9 Mr. Kerik that you had forgotten about, the --
10 the -- the Friess information?
11 A. Well, I don't know that I had forgotten
12 about it. I don't --
13 Q. You didn't turn it over --
14 A. It wasn't with my documents.
15 Q. All right. You didn't turn it over to
16 Mr. Fox. I think Mr. Fox --
17 A. Mr. Fox is quite right. We didn't --
18 there are certain documents -- as I tried to
19 explain earlier, the documents we turned over are
20 the documents that I had, and I -- I knew and I
21 tried to explain that they were underinclusive and
22 overinclusive, particularly underinclusive. I

Page 465

1 knew I had other documents as well, I knew I had
2 read other documents, but I didn't have them. So
3 I don't know where they ended up, but in some
4 cases with Bernie. I think you might find the
5 same thing with Christie Bobb. And they held the
6 documents, instead of me. They didn't return all
7 of them to me.
8 The Droz one is the one that really
9 gets me to remember the rest, because I -- I
10 really was impressed with the Droz summary --
11 Q. Let me ask you a question.
12 A. For several --
13 Q. I'm not seeking --
14 A. For several reasons.
15 Q. Excuse me. I'm not seeking to
16 introduce this document.
17 A. Which one?
18 Q. Right on -- right on the screen.
19 A. Oh, this one here (indicating)?
20 Q. Right.
21 MR. FOX: Do we have a number?
22 MR. LEVENTHAL: It's not on the screen.

Page 466

1 It's not -- it's not an exhibit. I'm not seeking
2 to introduce it.
3 THE WITNESS: Okay.
4 MR. LEVENTHAL: Okay?
5 CHAIRMAN BERNIUS: Well, it should
6 be -- it should be marked for identification if
7 you're going to -- since you're showing it to the
8 witness.
9 MR. LEVENTHAL: All right. I'll mark
10 it for identification as Respondent's -- A or 1,
11 Mr. Chair?
12 THE WITNESS: What's the number?
13 MR. FOX: What was the number? I
14 couldn't hear.
15 MR. LEVENTHAL: Is it A or 1?
16 THE WITNESS: What's the next number?
17 MR. ESPOSITO: The next number is 44.
18 MR. LEVENTHAL: No, no, no -- oh, do I
19 mark it as -- oh, I see. Forty-four?
20 THE WITNESS: Yeah.
21 MR. LEVENTHAL: Okay. I'll mark it as
22 Exhibit 44. I'm not seeking to admit it because I

Page 467

1 know we didn't submit it.
2 CHAIRMAN BERNIUS: Could you -- could
3 you read -- could you read the title of the
4 document, please.
5 MR. LEVENTHAL: Sure, "2020 Election
6 Information Briefing for Pennsylvania Republican
7 Party, by Seth Keshel, MBA, November 11th, 2020".
8 Could you pull the screen up a little
9 bit and just show the -- just -- just give him a
10 quick screening.
11 MR. FOX: Well --
12 MR. LEVENTHAL: I'm not seeking to
13 admit it.
14 MR. FOX: Well, we're publishing a
15 document -- an exhibit that has not been admitted.
16 MR. LEVENTHAL: I -- I agree, because I
17 didn't put it on our exhibit list.
18 MR. FOX: It's not -- Mr. Chair, I
19 object. It's not appropriate to publish a
20 document that's not been even authenticated, much
21 less admitted.
22 CHAIRMAN BERNIUS: I -- I agree, Mr.

Page 468

1 Leventhal, notwithstanding that we can't read it.
2 It's going by so fast.
3 MR. LEVENTHAL: Okay, just put it on
4 the -- just put the title page, then, please. I
5 listen when I'm told.
6 BY MR. LEVENTHAL:
7 Q. Is this one of the other documents that
8 you'd forgotten about?
9 A. Yeah, I don't think that's the right
10 description. These are the documents that were
11 not in my possession, which I do recall seeing
12 before -- when you asked me the question before,
13 the argument. Some I relied on; some I didn't.
14 So, I don't know what that means, but
15 that's -- about state of mind, but --
16 Q. Okay.
17 A. -- that's all I'll tell you about -- I
18 could tell you more about this, if you want.
19 Q. On Election Day, did Jeremy -- Jeremy
20 Mercer give you anything on that day?
21 A. It would be the day after the election.
22 That's when I first met him. And it would be when

Page 469

1 I went to Philadelphia at the request of Corey
2 Lewandowski and former Attorney General Bondi.
3 And that's where I met Mr. Mercer, and he -- so I
4 spent a good deal of time -- you could call it
5 interviewing him; you could call it talking to
6 him, and he gave me -- he gave me other documents,
7 but he gave me -- he gave me a document so that we
8 could follow up on the witnesses. I recall that.
9 MR. LEVENTHAL: For one brief second,
10 could you put that up and mark that as Exhibit 45.
11 And we're not seeking to introduce it
12 because we didn't have it 'till later.
13 Just put it up for a brief second
14 because it lists names and I just want to show it.
15 MR. FOX: I -- I'm -- I'm not sure I
16 understand what's going on here, but I object
17 because -- I --
18 MR. LEVENTHAL: You said -- you said is
19 there other information --
20 MR. FOX: May I state my objection,
21 please?
22 MR. LEVENTHAL: Okay. You said there

Page 470

1 were other information --
2 MR. FOX: May I state my objection,
3 please?
4 MR. LEVENTHAL: Sure.
5 MR. FOX: I object because in fact they
6 are admitting these documents.
7 MR. LEVENTHAL: No --
8 MR. FOX: May I please finish?
9 He's offering these documents I think
10 to prove the truth of the statement that there are
11 additional things that Mr. Giuliani knew that he
12 didn't include in his files and, while he's not
13 putting the substance of the documents there, he's
14 in effect offering the documents, and they're not
15 on the witness list -- or the exhibit list.
16 CHAIRMAN BERNIUS: I agree. The
17 objection is sustained -- sustained.
18 MR. LEVENTHAL: I can't mark it,
19 your -- your Honor?
20 MR. BERNIUS: We will mark it, but you
21 can't show it to everybody.
22 MR. LEVENTHAL: Okay, no, I was only

Page 471

1 going to show it for an instance to show that it
2 existed, the fact that it wasn't a make believe.
3 MR. FOX: But that's -- that's the
4 purpose of the whole exhibit. That's why you're
5 offering the -- the evidence.
6 MR. LEVENTHAL: No, you're -- you're
7 saying authentication --
8 CHAIRMAN BERNIUS: All right, Mr.
9 Leventhal, I have sustained the objection. Let's
10 move on.
11 MR. LEVENTHAL: All right.
12 THE WITNESS: You want me to describe
13 how --
14 BY MR. LEVENTHAL:
15 Q. All right, could you describe -- could
16 you describe the information that he gave you, the
17 information --
18 A. Yes.
19 Q. -- that he gave you?
20 A. Yes. He -- he said -- I'll do the best
21 I can. This is, you know, sum and substance from
22 several years ago during a very confusing period

Page 472

1 of time. So this is not word for word.
2 He was very upset. He explained to me
3 what terrible situation he had been put through.
4 It seemed to me the day before that day he
5 reiterated a lot of what Mr. Lewandowski and Pam
6 Bondi had told me in the car over the phone when I
7 was coming up; that -- that they -- he was shocked
8 when he got there that they were all excluded and
9 is not allowed to see any documents. He said he
10 was certain that they were just going to --
11 there -- there was nothing that was going to
12 persuade them to allow any republican to look at
13 any piece of paper. He said as a result of that
14 he took his team -- he had a team of -- a large
15 team. He himself is a -- a lawyer. He either was
16 the president of the bar association or an
17 official of the Bar Association of Pennsylvania;
18 might have been head of his law firm for a while;
19 said he'd never been treated like this by the
20 democratic officials. And he said he had his
21 people keep a record -- and by "his people" he
22 meant -- well, he didn't mean anything yet -- of

Page 473

1 how many -- he said, "I thought the most valuable
2 thing that I could do was I could have my people
3 keep a record of the number of times they are
4 entering a vote and we're not getting to see the
5 piece of paper that, from time immemorial, we
6 would always get to see, which it seemed to him
7 was crucial to the legality and -- of it. And he
8 didn't understand why they weren't doing it. He
9 showed it to me, I saw it myself. I mean, I saw
10 them -- I don't know, half a football field away
11 from me entering ballots. They had some people
12 around them. They weren't by themselves, but
13 there were no republicans around them. I probably
14 saw about -- I was in a position where I could see
15 about seven or eight of them. I was shocked. It
16 looked like -- I don't know what it looked like.
17 Like a prison or something.
18 Q. I just asked you what he gave you.
19 A. And -- and then he handed me -- at some
20 point I said, "We're going to have to get these
21 witnesses and interview them".
22 I -- I spoke to -- I had with me Dr.

Page 474

1 Ryan, I know for sure. I think I might have had
2 Boris with me also, Boris Epshteyn -- Epshteyn,
3 and I said, "Let's gather names so we're going to
4 have to interview these people quickly". I said,
5 "Were all these people shut out?" He said, "Every
6 single one of them". He said, "You can question
7 them, but I don't think any one of them ever got
8 to see a single piece of paper, and they are
9 really upset and very suspicious that something
10 very funny is going on here".
11 Q. How many -- how many --
12 A. Well, then he -- he handed me this
13 list --
14 Q. "A" list, not in evidence, "a" list.
15 A. He handed me a list and then he went
16 and checked off I guess this was his list of
17 people -- that this was his team and then he
18 checked off the people that would have knowledge
19 of this, and he -- he dealt with Boris and with
20 Maria quite a bit on this. And he -- and the --
21 so the red marks on it are the people that we
22 would -- and you'll -- you'll also see -- which I

Page 475

1 don't understand what the big deal is about
2 this -- this -- this corresponds to a lot of the
3 affidavits we have already talked about.
4 Q. Okay.
5 MR. LEVENTHAL: Now please go to
6 Exhibit 16, please.
7 THE WITNESS: Which -- which is that?
8 I'm sorry.
9 MR. LEVENTHAL: You look at the screen.
10 Sixteen, our Exhibit 16.
11 THE WITNESS: This included the --
12 MR. LEVENTHAL: Excuse me. It's not
13 included. It's not in the -- in the list.
14 THE WITNESS: Oh, okay.
15 MR. LEVENTHAL: All right, Exhibit 16.
16 Could you go up a little bit. Stop right there.
17 All right. I just -- just for the
18 panel, I just want to say, this is the Judge
19 Christine Fizzano Cannon regarding the observation
20 of 6P, right?
21 Go now to Exhibit 17. So, please go to
22 the dissent. I'm sorry, stop right here.

Page 476

1 Just for the panel's edification, this
2 is a reversal of Judge Cannon by the Supreme Court
3 saying that being in the room is enough.
4 Please go to the dissent. I'll tell
5 you which one. Go ahead. No, keep going; keep
6 going; stop. Could you go down a little more.
7 Stop. Stop right there. Highlight this, please.
8 BY MR. LEVENTHAL:
9 Q. Could you read the dissent, please, one
10 of the dissents?
11 A. This is Judge Shaler's (phon) or Judge
12 Mundy's? I don't know which dissent. I'll read
13 it, whichever. You figure it out.
14 "The majority now vacates the
15 commonwealth court's order and holds, while this
16 language contemplates an opportunity to broadly
17 observe the mechanics of the canvassing process,
18 we note that these provisions do not set a minimum
19 distance between authorized representatives and
20 canvassing activities occurring while they remain
21 in the room. Majority Opinion, Op, at 350.
22 "In so doing, the majority seemingly

Page 477

1 endorses what the commonwealth court did in its
2 order: provide an opportunity to broadly observe.
3 "Appellee was merely requesting the
4 ability to be able to observe the ballots in order
5 to accurately relay compliance action. Appellee's
6 brief at 22. The appellate -- the campaign
7 simply wants the right to observe in a meaningful
8 way that would allow the campaign to determine
9 whether the board was following legal processing
10 procedures, and if not, to challenge that process
11 through appropriate litigation," end of quote and
12 parens.
13 Q. All right.
14 A. "The commonwealth court's order and the
15 subsequent mutual agreement of the parties in the
16 federal action did precisely that, and I would not
17 disturb it. According, I dissent."
18 Q. All right, earlier in the proceeding,
19 not today but --
20 THE WITNESS: May I take a --
21 MR. LEVENTHAL: No.
22 THE WITNESS: -- recess? I have to

Page 478

1 take a recess.
2 MR. LEVENTHAL: Oh, he wants a bathroom
3 break.
4 THE WITNESS: For the same reason you
5 do.
6 MR. LEVENTHAL: Could we take a break,
7 your Honor, for two, three minutes. We're almost
8 finished. We are almost finished.
9 CHAIRMAN BERNIUS: Okay, we'll take a
10 five-minute recess.
11 MR. LEVENTHAL: Thank you.
12 MS. BORAZZAS: I will open up the
13 breakout rooms for everyone.
14 (Recess taken.)
15 CHAIRMAN BERNIUS: Okay. Everybody's
16 back.
17 Mr. Leventhal, you may continue.
18 Mr. Leventhal, if you're talking, I
19 can't hear you.
20 MS. BORAZZAS: You guys are on mute.
21 MR. LEVENTHAL: I'm sorry.
22 THE WITNESS: How are we now?

Page 479

1 CHAIRMAN BERNIUS: Okay now.
2 MR. LEVENTHAL: Okay, all right.
3 BY MR. LEVENTHAL:
4 Q. So, Mr. Giuliani, Mr. Fox read you a
5 portion of Exhibit 17, which is the Supreme
6 Court's reversal of Judge Cannon saying that six
7 feet -- you had to be within six feet, saying that
8 Mr. Mercer testified that he was in the room.
9 Could you describe the room that --
10 that -- where they put the observers in
11 Philadelphia?
12 A. Well, I can describe it -- yeah, sure.
13 It was -- well, he describes it as two foot --
14 football fields. Others would describe it as
15 three football fields. I would describe it as a
16 gigantic auditorium. From my own -- I was in a
17 gigantic auditorium. I think they even watch
18 basketball games there hockey games. I don't
19 know. I'm not sure which one it was. But it was
20 not a room. It was a convention hall, and they
21 were spread out --
22 Q. Talk louder.

Page 480

1 A. And they were spread out at all
2 different parts of the convention hall. So the
3 closest observer would be 20 to 30 feet and the
4 furthest two football fields away.
5 Q. And you heard earlier --
6 MR. LEVENTHAL: Only one more area,
7 your Honor, and I'm finished.
8 BY MR. LEVENTHAL:
9 Q. Mr. Giuliani, Mr. Fox had stated to you
10 the second amended complaint. Is there any cause
11 of action stating fraud in there?
12 A. You mean as a -- as a claim for relief?
13 I don't believe so, no.
14 Q. In any of the counts, of any of the
15 counts?
16 A. No. No, the answer is no.
17 Q. And you added more counts in the second
18 amended complaint than in the first amended
19 complaint?
20 A. Yeah, but they --
21 Q. Yes or no?
22 A. Yes, yes.

Page 481

1 Q. And were those counts sounding in Due
2 Process and Equal Protection, yes or no?
3 A. Yes, and also Elector and Election --
4 Election Clause.
5 MR. LEVENTHAL: I have no further
6 questions.
7 CHAIRMAN BERNIUS: Mr. Fox?
8 MR. FOX: No questions.
9 CHAIRMAN BERNIUS: Mr. -- Mr. Giuliani,
10 I -- I do have a -- a few questions to clarify
11 some things in my own mind.
12 THE WITNESS: Sure.
13 CHAIRMAN BERNIUS: If you don't mind.
14 THE WITNESS: I don't.
15 CHAIRMAN BERNIUS: First, the -- the
16 chronology, as I -- as I understand it, on
17 Election Day or around Election Day, you were
18 asked by the former president to take charge of
19 his litigation, post-election litigation matters.
20 Is that right?
21 THE WITNESS: Yes, sir. I was told to
22 take --

Page 482

1 MR. LEVENTHAL: Yes or no?
2 THE WITNESS: The answer is yes, but I
3 was told to take charge of the campaign. I
4 interpreted it as the litigation part.
5 CHAIRMAN BERNIUS: So you were -- at
6 that -- at that point you understood you were
7 acting as an attorney for -- for whom? What
8 was -- who was your client?
9 THE WITNESS: I -- I regarded it as --
10 and then we put out a press release, which I guess
11 states it, I was at the time I was already his
12 personal attorney. I had been for two -- two
13 years. And I was adding to that being attorney
14 for the Donald Trump Campaign in the capacity of
15 overseeing whatever election litigation was -- was
16 necessary.
17 CHAIRMAN BERNIUS: So you were the --
18 you were the -- the lawyer who was the -- the
19 general commander of this litigation process for
20 the -- for the Trump Campaign?
21 THE WITNESS: I'd say -- I'd say that
22 that's a fair -- that's a fair interpretation,

Page 483

1 yes.
2 CHAIRMAN BERNIUS: And that -- that was
3 in -- I think you said it was a nationwide
4 litigation strategy?
5 THE WITNESS: Yeah. I mean, I didn't
6 know that immediately, but as soon as I got over
7 to the campaign headquarters and they came in and
8 started briefing me and put up the Whiteboards all
9 over the country, I realized probably didn't know
10 what I was getting into when I first said yes.
11 But yeah.
12 CHAIRMAN BERNIUS: Well, by
13 "nationwide" I don't mean all 50 states plus DC.
14 That -- there were some states that were around
15 the country, were there not?
16 THE WITNESS: Yeah, I think at that
17 point it was what Mr. Fox said, about 10 or -- 10
18 or 11 states were in question at that point, maybe
19 12.
20 CHAIRMAN BERNIUS: And had -- as I --
21 as I recall you had essentially a war room in
22 Arlington, Virginia?

Page 484

1 THE WITNESS: Yeah, the campaign -- the
2 Trump For President Campaign headquarters were in
3 Arlington, Virginia, and there was one very
4 expandable conference room and that -- and that
5 turned out to be our main place to work, because
6 everybody was working together, and singular
7 offices didn't really matter --
8 CHAIRMAN BERNIUS: And -- and by "our,"
9 you mean the legal team that you had assembled?
10 THE WITNESS: The legal team I
11 assembled and whatever was there that joined with
12 us.
13 CHAIRMAN BERNIUS: Okay, and -- and --
14 and there were also lawyers in individual --
15 individual states that you worked with who you --
16 you relied on as local counsel essentially, right?
17 THE WITNESS: Sure. There were a lot
18 more of them, yeah. And some had -- I'm sorry.
19 Yes.
20 CHAIRMAN BERNIUS: I'm sorry, in --
21 in -- in Pennsylvania I think you said there was a
22 lawyer named Hicks with whom you had -- with whom

Page 485

1 you worked?
2 THE WITNESS: Yes, sir. He was -- yes.
3 He was the principal lawyer in Philadelphia.
4 MR. LEVENTHAL: Mr. Chair -- Mr. Chair,
5 excuse me for second. I'm not going to stop him
6 from answering any questions -- of course I
7 can't -- but we will bring all this out when Mr.
8 Giuliani testifies on our case in direct, if
9 that'll be helpful. But it's up to you.
10 CHAIRMAN BERNIUS: I -- you know, this
11 is -- I'm not going to go through the entire --
12 I'm just trying to orient things --
13 THE WITNESS: Okay.
14 CHAIRMAN BERNIUS: -- because as a way
15 to understand. I'm not familiar with -- with --
16 with what happened here.
17 But -- so you ever worked with Mr.
18 Hicks before?
19 THE WITNESS: No, I didn't know -- I
20 don't believe I knew Mr. Hicks. I might have met
21 him. I meet a lot of people and -- but I have no
22 recollection of working with Mr. Hicks.

Page 486

1 CHAIRMAN BERNIUS: And -- but he was --
2 and I assume he had -- did he have other lawyers
3 working with him at the time?
4 THE WITNESS: He did. He had a staff.
5 I don't know -- yes, he had a staff working with
6 him and had already handled some matters for the
7 campaign preceding me.
8 CHAIRMAN BERNIUS: And, as I -- as I
9 recall, essentially Mr. Hicks took the lead in
10 drafting the initial federal court complaint that
11 was filed.
12 Is that correct?
13 THE WITNESS: That is -- that is
14 correct. Yes, sir.
15 CHAIRMAN BERNIUS: But -- but before it
16 was filed, you met with him and you reviewed it
17 and I think you said you added some material to
18 the -- the initial complaint.
19 Is -- is that right?
20 THE WITNESS: Yes, sir.
21 CHAIRMAN BERNIUS: And that was because
22 you -- again as I understood it, you -- you

Page 487

1 expected that this lawsuit would become part of a
2 I guess you'd say a multidistrict litigation?
3 THE WITNESS: That was our hope. I --
4 certainly we wanted to leave that option open.
5 CHAIRMAN BERNIUS: So you -- what was
6 the -- what was it that you added to the draft of
7 the -- the -- the Hicks draft of the complaint
8 that you felt was important to make it compatible
9 with other cases around the country?
10 THE WITNESS: The -- the -- the
11 allegations about the -- to the extent that we had
12 them at that point, of the republican inspectors
13 who had been herded aside and put into pens.
14 Because that was similar to the allegations in
15 four or five other -- other places that happened
16 contemporaneously.
17 CHAIRMAN BERNIUS: Okay. Anything else
18 that you added that you can recall?
19 THE WITNESS: Yes, but I can't recall
20 right now.
21 I mean, but that -- that was one of the
22 main -- that was one of the main things that we --

Page 488

1 that we added.
2 CHAIRMAN BERNIUS: And as the -- and
3 as -- and as the lead lawyer, as -- as you were
4 effectively supervising Mr. Hicks and you -- you
5 approved the initial complaint before it was
6 filed?
7 THE WITNESS: Yeah. I mean, I'm not --
8 I'm not begging off. I'm just trying to give you
9 the truth.
10 I relied greatly on Hicks. He had a
11 great reputation. As -- as all of us would do,
12 when you first work with a lawyer, I checked him
13 out as quickly as I could with people who work
14 with him and know the Philadelphia Bar, and they
15 told me he's a very fine lawyer. And I found his
16 work to be excellent.
17 CHAIRMAN BERNIUS: Would it be fair to
18 say that -- that he was -- took the lead, at least
19 in terms of state law issues that -- that might
20 come up?
21 THE WITNESS: Well, yeah, he -- he
22 was -- up until the point that he said he had to

Page 489

1 leave, he was going to argue the case. He wanted
2 me to be there. He thought it -- he thought that
3 I could -- he was -- he was -- he was impressed
4 that there were similar situations elsewhere, so
5 similar to his, and he thought it be would
6 helpful. But I was -- mine was intending to argue
7 for about five minutes.
8 CHAIRMAN BERNIUS: So you didn't sign
9 the initial complaint because you were not
10 admitted pro hac at that time, right?
11 THE WITNESS: Yeah. I mean, I might
12 not have signed it even if I was. My contribution
13 was minor.
14 CHAIRMAN BERNIUS: Okay.
15 THE WITNESS: And it was really his
16 product and a good one.
17 CHAIRMAN BERNIUS: And I -- it's --
18 it -- obviously sometime after the initial
19 complaint was filed, it was a -- there was a first
20 amendment -- an amended complaint was filed,
21 right? It was the first amendment -- amended
22 complaint?

Page 490

1 THE WITNESS: That's correct, sir.
2 CHAIRMAN BERNIUS: And my understanding
3 is that the first amendment -- amended complaint
4 withdrew some allegations that were -- had been
5 contained in the initial complaint.
6 THE WITNESS: Yeah, I took it down to
7 two -- I have to look to remind myself what the
8 first complaint had. I took it down to only two
9 counts: one, Equal Protection, one, Due Process.
10 It sort of had this omnibus clause in it that
11 reincorporated by reference everything else, but
12 it was very unspecific.
13 CHAIRMAN BERNIUS: Okay, I -- I -- but
14 my understanding -- I may be wrong -- from the
15 testimony was that the initial complaint was
16 amended and -- and certain allegations or claims
17 were taken out of the -- the complaint and
18 essentially deleted from the first amendment --
19 amended complaint.
20 Is that -- am I right on that, or?
21 THE WITNESS: You're absolutely
22 correct, and I would add the word substantially

Page 491

1 changed. It was taken from a -- from this to that
2 (indicating.)
3 CHAIRMAN BERNIUS: How much -- well,
4 what was taken out of the first amendment --
5 amended complaint, the first complaint that did
6 not appear in the amended complaint?
7 Do you recall?
8 THE WITNESS: I don't now recall
9 exactly what was taken out. I recall it was a --
10 a great -- a great deal of it.
11 But my -- my concern really, when I
12 tried to do surgery on it, was to kind of ignore
13 it and just go back to Hicks' complaint, use that
14 as the basis for the second amended complaint,
15 which had quite -- I think I told you I did, that
16 was sort of the prototype for the -- and then add
17 on the second amended complaint a few of the
18 additional things we had found out.
19 CHAIRMAN BERNIUS: So, I mean, you
20 were -- you were involved with the initial
21 complaint. Who -- who was responsible for filing
22 the amendment -- the first amended complaint? I

Page 492

1 mean, who made the deletions from the initial
2 complaint and -- and did not include it in the
3 first amended complaint?
4 THE WITNESS: Linda Kearns, who was, as
5 I understood it, Mr. Hicks' assistant. She
6 claimed to be his equal cocounsel. Everyone else,
7 including Mr. Hicks, described her as his
8 assistant. She made those changes, filed it, and
9 I found out about it after it was filed. And at
10 this point -- this was after Mr. Hicks had to
11 withdraw from the case.
12 CHAIRMAN BERNIUS: Why did he withdraw?
13 THE WITNESS: Well he first called me
14 very upset, very -- saying that there was a lot of
15 pressure being put on him by his law firm to
16 withdraw. He said he was not going to withdraw,
17 not to worry, and that -- and then we just went on
18 and talked about the case. We didn't have --
19 then --
20 CHAIRMAN BERNIUS: Did you come to
21 understand why Ms. Kearns --
22 THE WITNESS: Well, they got -- he

Page 493

1 got -- I'm sorry.
2 CHAIRMAN BERNIUS: You have to wait
3 'till I finish.
4 Did you -- did you come to understand
5 why she made the changes that she did before she
6 filed the first amended complaint?
7 THE WITNESS: I understood in
8 retrospect that she never agreed with the first --
9 that she and Hicks were not of one mind on the
10 first complaint.
11 CHAIRMAN BERNIUS: What was it that she
12 disagreed with in terms of the first complaint?
13 THE WITNESS: I -- I don't -- I don't
14 know. She wasn't around long enough nor did I
15 have the time to be able to figure out -- honestly
16 I don't think I ever knew what exactly it was that
17 troubled her about it. She -- it could have been
18 a -- I mean, this is gossip --
19 MR. LEVENTHAL: Don't speculate.
20 THE WITNESS: Okay. It could have been
21 personality. I don't know.
22 CHAIRMAN BERNIUS: Now when you --

Page 494

1 THE WITNESS: It was the -- it was the
2 odd circumstances that he -- he was considered the
3 lead counsel by everyone that talked to me, there
4 and in -- and in Washington, and she kept
5 describing herself as "cocounsel".
6 So, you know how lawyers are.
7 CHAIRMAN BERNIUS: So, in the Middle
8 District of Pennsylvania, you -- you represented
9 the plaintiffs, right? There were three
10 plaintiffs?
11 THE WITNESS: Yes. We represented the
12 campaign and Donald Trump, and we represented --
13 was there two -- two plaintiffs?
14 CHAIRMAN BERNIUS: There was -- there
15 was -- it was Lawrence Roberts and David John
16 Henry.
17 THE WITNESS: Yes, and Trump. So
18 three, three plaintiffs.
19 CHAIRMAN BERNIUS: Those were your
20 three clients, right?
21 THE WITNESS: Right.
22 CHAIRMAN BERNIUS: And did you --

Page 495

1 who -- who are Mr. Roberts and Mr. Henry?
2 THE WITNESS: They are citizens of -- I
3 think one's Luzerne County. I've forgotten the
4 other county. And they were -- they were there to
5 illustrate the denial of Due Process based on the
6 cure provisions that were applied in some parts of
7 the state but not in other parts of the state,
8 because of the confusing advice given to them
9 by -- by Boockvar's office.
10 CHAIRMAN BERNIUS: Okay. So -- so
11 the -- as I -- as I understand it, neither one of
12 them lived in a county, in a defendant county,
13 correct?
14 THE WITNESS: That is correct, but they
15 were -- the -- the thinking that Hicks had was
16 that they were --
17 CHAIRMAN BERNIUS: Well, I'll --
18 THE WITNESS: Okay, I'm sorry.
19 CHAIRMAN BERNIUS: I'm not done. So
20 don't -- don't -- don't confuse me. I'm just
21 trying to work my way through.
22 THE WITNESS: I see, okay. Thank you,

Page 496

1 sir.
2 CHAIRMAN BERNIUS: So they -- they
3 voted in -- were they from the same county or two
4 different counties?
5 THE WITNESS: They were two different
6 counties, two difference counties.
7 CHAIRMAN BERNIUS: So they respectively
8 voted in the proper county, neither of which was a
9 defendant in the case, and their votes were
10 rejected, correct?
11 THE WITNESS: They weren't allowed to
12 cure their votes the way the people were in the
13 counties that were defendants. Yes, sir.
14 CHAIRMAN BERNIUS: And were they
15 challenging that decision, not to allow them to
16 cure their votes?
17 THE WITNESS: I believe they did, yeah.
18 So I'm not sure -- I'm not -- I'm not -- I'm not
19 sure, because that predated me, exactly what they
20 did before I got into the case, what they did in
21 their counties. So I shouldn't say that.
22 CHAIRMAN BERNIUS: I -- I thought the

Page 497

1 testimony was or I saw somewhere that they were
2 not allowed to cure their votes and they did
3 not -- they did not challenge that decision?
4 THE WITNESS: That could -- well, that
5 could be right.
6 CHAIRMAN BERNIUS: Now both -- both Mr.
7 Roberts and Mr. Henry sued the -- Kathy Boockvar
8 and seven counties.
9 Can you tell me what their claim was
10 against the seven counties in which they did not
11 reside, because I'm lost. I'm lost in that.
12 THE WITNESS: Well, their claim --
13 their claim was that there, illegally, they were
14 allowing curing of ballots, which created the
15 disparate condition in their county. They -- they
16 didn't want to -- or Mr. Hicks didn't want to sue
17 those counties because those counties were
18 following the letter of the law, and it's the
19 counties that allowed the cure that weren't. So,
20 his thinking was that they were the ones creating
21 the injury. And if so --
22 CHAIRMAN BERNIUS: So what -- what is

Page 498

1 the nature of the injury to him from the allowance
2 of votes to be counted in the -- by the defendant
3 counties?
4 THE WITNESS: Vote dilution.
5 MR. BERNIUS: Well --
6 THE WITNESS: All of these -- all of
7 these, allegedly illegal votes are counted
8 which -- which dilutes the vote and in their
9 particular case didn't allow them to vote on the
10 same basis as others.
11 CHAIRMAN BERNIUS: So -- so his -- his
12 theory was that allowing others to vote diluted
13 the -- his -- his vote? I don't -- I don't
14 understand. Because he --
15 THE WITNESS: It diluted the vote of
16 the entire county and, in their case --
17 CHAIRMAN BERNIUS: Yeah -- yeah, but --
18 but he's -- he's the plaintiff, and he -- he
19 didn't vote because he -- he didn't follow the
20 appropriate procedure, so how --
21 THE WITNESS: Well, he did.
22 CHAIRMAN BERNIUS: -- does the

Page 499

1 voting -- does the voting in the defendant
2 counties dilute a vote that he was never entitled
3 to cast in the first place?
4 THE WITNESS: Well, he -- the vote that
5 he wasn't entitled to cast in his county he wasn't
6 entitled to cast because he followed the letter of
7 the law. The vote that they cast was contrary to
8 the law.
9 CHAIRMAN BERNIUS: But if he was --
10 if -- if he was --
11 THE WITNESS: And therefore that
12 diluted the legal vote.
13 CHAIRMAN BERNIUS: If he was concerned
14 about dilution of his vote, why didn't he bring a
15 claim to allow his vote to count, and why didn't
16 he sue the county which denied him the right to
17 vote?
18 THE WITNESS: Because he didn't -- he
19 didn't -- he didn't allege or agree that the
20 county had acted improperly, but that the other
21 counties had acted improperly in allowing people
22 to vote that weren't entitled to vote.

Page 500

1 CHAIRMAN BERNIUS: And -- and -- so
2 that based on the fact that Mr. Roberts and Mr.
3 Henry were properly not entitled to vote, you, on
4 their behalf, sought to invalidate every other
5 voter in seven counties that had been granted the
6 notice -- right to Notice and Cure?
7 THE WITNESS: Well, sure.
8 I mean, the -- the -- the -- the right
9 to Notice and Cure was not -- that -- that was the
10 illegal part of it. Those votes shouldn't have
11 been counted in the first place.
12 CHAIRMAN BERNIUS: So that -- that was
13 the -- that was the underlying nature of your
14 Equal Protection and Due Process claims brought on
15 behalf of Mr. Roberts and Mr. Henry, right?
16 THE WITNESS: Yeah, that's correct.
17 And -- and on that, we didn't ask for a
18 specific -- on that we would have certainly been
19 willing to accept a new election.
20 CHAIRMAN BERNIUS: So -- so based on
21 the fact that these two plaintiffs were properly
22 denied, in your view, the right to vote in their

Page 501

1 county, you sought -- you thought a court would
2 grant a new election?
3 THE WITNESS: Depending on the number
4 of votes. We had no idea how many -- how broad
5 the practice was of cure. If it were -- if it
6 were only the number we were alleging at that
7 point, surely not. But if the number were much,
8 much larger, then it would have had a material
9 effect on the outcome of the election.
10 CHAIRMAN BERNIUS: So I'm saying
11 these -- these two plaintiffs had a claim that,
12 based on what happened with their votes and the
13 notice of cure, they were entitled to an order
14 negating every other Notice and Cure vote that had
15 been allowed in the entire state?
16 THE WITNESS: Well, not really. In the
17 counties -- in the counties that had been --
18 CHAIRMAN BERNIUS: In the -- those
19 seven counties.
20 THE WITNESS: Depending on whether it
21 had a material effect on the election. So we had
22 the beginning of a case. We didn't have the end

Page 502

1 of a case.
2 CHAIRMAN BERNIUS: Did you -- did you
3 really think that any -- any court in Pennsylvania
4 would grant relief like that to these two
5 plaintiffs?
6 THE WITNESS: I thought it was
7 conceivable if it was broader than the numbers
8 that we started with, yes, and also, combined with
9 the Trump voter dilution.
10 CHAIRMAN BERNIUS: Let me ask you about
11 these --
12 THE WITNESS: You know, in a -- in a --
13 in a case with standing, if one of the three has
14 standing, that's sufficient. So it didn't rest
15 on -- on its own. It rested also on the Trump
16 standing.
17 CHAIRMAN BERNIUS: I mean, let me ask
18 you about the -- you -- you've testified I think a
19 few times about some declarations and by
20 declarations I think the declarations are
21 affidavits. And you've said the number estimated
22 about 300.

Page 503

1 Is that --
2 THE WITNESS: Yeah. It turns out to be
3 about 240. I -- I had said 300, correct.
4 CHAIRMAN BERNIUS: Okay, those 240
5 declarations were of -- some of them -- some of
6 them raised what you say are allegations of fraud
7 on their face. Others raised the Notice and Cure
8 issue. Others raised the observer distance issue.
9 Is that -- is that fair? Am I
10 understanding that correctly?
11 THE WITNESS: Perfectly, yeah, but in
12 very different proportions.
13 CHAIRMAN BERNIUS: Well, I'm not going
14 to ask -- I'm not going to ask you how many of
15 which, but does that basically cover the
16 waterfront in terms of their content?
17 THE WITNESS: No. I have -- I made a
18 list of them. They are exclusion -- exclusion
19 from observing the vote, various different ways,
20 not allowing people to vote who had claimed they
21 didn't vote, but there had been an absentee ballot
22 executed for them, of I which there were many that

Page 504

1 was a large category, much larger, for example,
2 than Notice and Cure, which is why I think those
3 aspects of the case would have taken over, which
4 relates to Trump's standing.
5 A significant number, slightly
6 different, that came in to vote on Election Day
7 and were allowed to file a provisional ballot,
8 they did claim that there was a false vote entered
9 for them. They never voted absentee. Now you put
10 that number together, it gets up to about 70.
11 Many of them, not every one, cast a
12 provisional vote. Many of their provisional
13 votes, when they went back and checked, were never
14 counted. I'd say the majority of them were never
15 counted.
16 So, in their case, if there were 70, 55
17 or so were deprived of the right to vote because
18 somebody had falsely entered an absentee ballot in
19 their name using their registration to cover their
20 phoney ballot. That was a -- that was -- that was
21 maybe -- maybe even larger than the number of
22 people that had been excluded from observing the

1 ballots being counted.

2 The number of people being excluded
3 from seeing the ballots was also around 60 or 70,
4 and they were in categories ranging from not
5 seeing ballots being excluded for half a day, and
6 they didn't bother to count them, they just gave
7 you a general feeling: a hundred, 200, 300, we
8 didn't count those.

9 CHAIRMAN BERNIUS: So this is -- these
10 are -- these are all -- they were in the universe
11 of about 240 documents, declarations?

12 THE WITNESS: Yeah. I'm -- I'm trying
13 to tell you the ones that were the most
14 significant.

15 CHAIRMAN BERNIUS: I'm just trying to
16 get the -- the aggregate number.

17 THE WITNESS: So some of them -- so --
18 of the -- of the -- of the universe that was
19 excluded from seeing ballots, they ranged from
20 someone who didn't see a couple of hundred ballots
21 to -- so some that didn't see a couple of thousand
22 ballots and kept records of them.

1 CHAIRMAN BERNIUS: Yeah, I'm just --
2 I'm just talking right but about the declarations,
3 themselves.

4 THE WITNESS: Well, those --

5 CHAIRMAN BERNIUS: I understand -- I
6 understand you say that some declarations refer to
7 one incident; some refer to more than one
8 incident.

9 THE WITNESS: Thousands of incidents.

10 CHAIRMAN BERNIUS: But you had -- you
11 had the total of about 240 declarations.

12 When -- at what -- what period of time
13 did you assemble these? During -- was it before
14 the first amended complaint, before the -- during
15 that period of time when -- when is the best
16 understanding that you have now when you got
17 those?

18 THE WITNESS: Pretty much from the
19 first day. I -- I began that with that
20 conversation that I described to Judge Leventhal
21 before. That began immediately when Mr. Mercer
22 gave me the list, because that was our first group

1 of witnesses.

2 He said, "These -- these are my people
3 who observed this, not only here in the arena, but
4 they observed it all over Philadelphia".

5 He also told me he had been in contact
6 with his counterparts in Pittsburgh and he said
7 it's very strange but --

8 CHAIRMAN BERNIUS: Okay. Mr. Giuliani,
9 just -- you know, I -- you're giving me too much
10 information now.

11 THE WITNESS: I'm sorry. I'm sorry.

12 CHAIRMAN BERNIUS: I -- you've got all
13 of these declarations around the time of the --
14 the filing of the complaints and I think you told
15 Judge Brann they were still coming in --

16 THE WITNESS: Yes, they were.

17 CHAIRMAN BERNIUS: -- at the time of
18 the oral argument, okay.

19 So you -- when -- when was the last --
20 when did you receive the last of these
21 declarations?

22 THE WITNESS: I don't -- I don't know.

1 CHAIRMAN BERNIUS: Was it about or
2 around the time at least of the 3rd Circuit
3 decision in the case?

4 THE WITNESS: Yeah, I would assume. I
5 mean, frankly we probably lost some interest in it
6 at that point, because we had to turn -- we had to
7 our attention to other -- you know, to the hearing
8 in Michigan and to the hearing in Arizona and that
9 sort of thing.

10 CHAIRMAN BERNIUS: Right, now Mr. Fox's
11 office requested that you produce all of those
12 declarations, right?

13 THE WITNESS: Yes, he did.

14 CHAIRMAN BERNIUS: And about how many
15 did you produce?

16 THE WITNESS: We produced all that we
17 had. I -- I didn't keep any behind in my office.

18 CHAIRMAN BERNIUS: Well, about how many
19 is that?

20 THE WITNESS: It's about the two --
21 probably the -- the number you see in our exhibit.

22 CHAIRMAN BERNIUS: Was it the

Page 509

1 attachments to the letter that were about 15
2 exhibits.
3 THE WITNESS: Oh, no, no, no. That
4 letter was just a brief letter to try to give a
5 few examples. We did not attach all that we had
6 then. We attached them to our answer, to the --
7 to the more formal complaint.
8 CHAIRMAN BERNIUS: But there are
9 some -- what efforts did you make to retrieve
10 declarations that were not in your custody?
11 THE WITNESS: I called all the people
12 that I work with. In fact I did retrieve some, so
13 I should I amend that. When we made our original
14 major turnover, I took everything that I had. I
15 called -- I may miss somebody, but I called
16 Christina Bobb; I called Christiani Allen; I
17 talked to Bernie Kerik, because I see Bernie on a
18 regular basis; I talked to Dr. Ryan, I said,
19 "Please give me anything you have"; I talked to
20 Boris Epshteyn and Mike Roman. I asked them to
21 please give me what they had that they had
22 original given to me, but for some reason it kept

Page 510

1 or took, or -- and they did. They -- they sent me
2 documents, and those documents were included in
3 the original disclosure of documents. And then,
4 since then a few others have come in and those are
5 the ones that we've produced, you know, later.
6 CHAIRMAN BERNIUS: Okay.
7 THE WITNESS: There was no -- we -- we
8 want you to have everything that we have, because
9 we think it justifies at least the basis for our
10 case, whether you agree with it or not.
11 CHAIRMAN BERNIUS: I -- I apologize if
12 I'm being repetitive here, but could you -- could
13 you explain to me the Equal Protection claim that
14 was asserted on behalf of the individual
15 plaintiffs.
16 THE WITNESS: We're talking about Trump
17 now, as well?
18 CHAIRMAN BERNIUS: Oh, as the
19 individual, Mr. Roberts and Mr. Henry I think the
20 names were. As succinctly as you can. I just --
21 I'm just trying to orient myself.
22 THE WITNESS: I know you're having

Page 511

1 trouble with it, but it -- the Equal Protection
2 claim was that they -- in other counties in the
3 state, people were allowed to vote on a -- on a --
4 an interpretation of the law that in their
5 counties were regarded as illegal and were not
6 available to them. So therefore they were
7 deprived of their right to vote, where other
8 people were granted the right to vote on an
9 illegal basis. That directly injured them.
10 Number two it deleted -- diluted vote in general
11 and it diluted the vote for Trump, who was their
12 codefendant. And the law of standing is that, if
13 any one of the three has standing, you have
14 standing.
15 CHAIRMAN BERNIUS: Well --
16 THE WITNESS: And I should emphasize,
17 without -- without -- without trying to escape it,
18 I should emphasize that that was part of the case
19 when I came into it and I -- I -- I didn't develop
20 that theory. I agreed with it.
21 CHAIRMAN BERNIUS: Why -- why did
22 you -- why did they not bring a claim against the

Page 512

1 counties that denied their vote?
2 THE WITNESS: Because I believe -- Mr.
3 Hicks believed, and I agreed, that they would have
4 lost that. Because the counties were following
5 the law, at least the way we also interpreted it,
6 and it was the counties that were violating the
7 law that were creating the disparate treatment, of
8 them and then of all the Trump voters.
9 CHAIRMAN BERNIUS: All right, thank
10 you, Mr. Giuliani.
11 Mr. Brozost, do you have anything?
12 MR. BROZOST: Yes, I do. Thank you,
13 Mr. Bernius. And Mr. Bernius, you asked a number
14 of questions that I was going to ask, so I think
15 we can speed this along.
16 Mr. Giuliani, you indicated that you
17 were brought in by former President Trump to
18 coordinate the national effort.
19 Is that correct?
20 THE WITNESS: Yes, sir, that's correct.
21 MR. BROZOST: And you went -- and I
22 want to get back to that in a second, but you went

Page 513

1 to Pennsylvania at some point shortly thereafter
2 and the matter was being prosecuted at that time
3 by Mr. Hicks.
4 Is that correct?
5 THE WITNESS: That is correct.
6 MR. BROZOST: And Mr. Hicks you said
7 was a very well known, established lawyer in I
8 think you said Philadelphia?
9 THE WITNESS: That's right, yes.
10 MR. BROZOST: Pennsylvania had an
11 established procedure to challenge presidential
12 elections on an expedited basis.
13 Is that correct?
14 THE WITNESS: I -- I'm generally aware
15 of that, but I've -- I'm not, you know, an expert
16 on Pennsylvania law. I'm sorry.
17 MR. BROZOST: Well, I thought maybe Mr.
18 Hicks could help on that matter. I -- what I'm
19 not understanding is why an established procedure
20 for challenging a presidential election wasn't
21 followed.
22 Do you have any idea?

Page 514

1 THE WITNESS: I'm -- I'm very sorry.
2 He explained it to me, but I don't remember it.
3 And you have to understand -- I know
4 that sounds strange -- but this all happened in
5 two days. Our interchange was -- our interchange
6 was pressured enormously by the time -- he -- when
7 I met him he was working on the first -- on what
8 you see as the first complaint with the two -- he
9 met with and interviewed the two gentlemen that
10 Mr. Bernius asked me about.
11 MR. BROZOST: Right.
12 THE WITNESS: He had already done a
13 substantial amount of work putting together that
14 first complaint, which is why I got it so quickly.
15 MR. BROZOST: And I understand that.
16 But there was no subsequent -- preliminarily there
17 was no discussion, or there was discussion but it
18 was never brought up again?
19 THE WITNESS: There was a discussion
20 that I recall about -- I would have -- I would
21 have thought I might have asked if we exhaust
22 state remedies or -- because that's the way I

Page 515

1 probably would have looked at it from my --
2 MR. BROZOST: Right.
3 THE WITNESS: -- litigation practice.
4 And he explained to me -- I mean, I'm going to be
5 guessing a little, because I got so many -- I'm
6 pretty sure it had something to do -- they -- they
7 had a history of -- they did -- "they" meaning Mr.
8 Hicks, Linda Kearns, they had brought previous
9 litigation there about the election.
10 MR. BROZOST: About this presidential
11 election --
12 THE WITNESS: Mm-hmm, mm-hmm,
13 challenging some of the -- challenging some of the
14 changes in the law. I'm a little foggy on this,
15 so, but they had brought other cases basically
16 challenging the executive changes that were made
17 without legislative approval, and they -- I do
18 believe they felt that it was a lost cause to
19 litigate it in a -- to -- to litigate this in a
20 Philadelphia court or in a local court, that they
21 thought -- and I hope not to offend anyone -- but
22 they thought the dye was cast as to how the court

Page 516

1 would come out. And therefore, as lawyers do,
2 where you try to choose the right venue, they
3 thought they had a better chances in federal
4 court.
5 MR. BROZOST: Okay. Going back to
6 something Mr. Bernius was referring to on the
7 Notice and Cure, the Secretary Boockvar issue
8 guidance that the counties could or could not
9 implement it. It was up to them to implement --
10 implement Notice and Cure.
11 Is that correct?
12 THE WITNESS: Yes, I -- I think that
13 was the final one -- there were several iterations
14 of that, but I think that was the final one that
15 came out, right near the end of the election,
16 yeah.
17 MR. BROZOST: So it was chosen by those
18 counties that the plaintiffs resided in. Those
19 counties decided not to implement it, although she
20 said, you know, it's up to you.
21 THE WITNESS: Yeah, and those counties,
22 in the few that I had a chance to talk to, had

Page 517

1 gotten legal opinions that it was illegal. What
2 she had asked -- what she was telling them to do
3 would have violated the law, and she has no right,
4 as you know, to change the law.
5 The -- the -- the law with regard to
6 elections, whatever the outcome of the new Supreme
7 Court decision, gets set by the legislature, not
8 by the executive. All the executive gets to do is
9 a ministerial function. I mean, that's pretty
10 strict Constitutional law.
11 So, not only --
12 MR. BROZOST: Mr. -- Mr. -- I'm sorry.
13 THE WITNESS: I would have -- I would
14 have agreed with that if I were the mayor or
15 the -- I wouldn't have done that. And -- and if
16 you look at who followed it and who didn't,
17 there's a very partisan cast to it.
18 MR. BROZOST: Okay. Let me move on,
19 Mr. Giuliani, to the issue about the observational
20 boundaries.
21 First -- and I think you acknowledged
22 that these operational barriers, one of the

Page 518

1 impetus may have been or was the COVID outbreak.
2 Is that correct?
3 THE WITNESS: That was the purported
4 reason given, contradicted more than followed by
5 the numerous people that walked up to the people
6 standing there and sitting there without any mask,
7 much more than six feet. It seemed as if this was
8 only something that might effect a republican.
9 MR. BROZOST: And -- and I'm a little
10 troubled by that, when you say that, because I
11 thought you had indicated that both democrats and
12 republicans were subject to the same thing in
13 large part.
14 THE WITNESS: I said that democrats
15 were subject to it, but when there were exceptions
16 made, it was made only for democrats. And of
17 course the officials sitting there are almost all
18 democrats, appointed by, for example, the
19 Philadelphia Democratic Party, well known as
20 machine employees. I mean, you have to have your
21 head in the sand not to know that.
22 MR. BROZOST: These observers, am I

Page 519

1 correct, cannot challenge a ballot?
2 THE WITNESS: They -- I think -- I
3 think you're right. I think their function is to
4 record it for future litigation.
5 MR. BROZOST: Okay. Yeah, I -- I -- my
6 reading is that they could not challenge the
7 ballot, so it was more purely observational. And
8 I was struck by one thing. You indicated I
9 believe, very early, you met with attorney Mercer
10 who was highly respected, according to you.
11 Is that correct?
12 THE WITNESS: Yes.
13 CHAIRMAN BERNIUS: And Mr. Mercer
14 provided several affidavits, at least two, at
15 least two affidavits that you used?
16 THE WITNESS: Yeah. Yes, I have -- I
17 have two.
18 MR. BROZOST: And those affidavits
19 talked about observational boundaries and problems
20 observing what was going on?
21 THE WITNESS: No, they're pretty
22 much -- can't say 100%, but they pretty much track

Page 520

1 what he told me orally.
2 I hate to introduce a complication, but
3 I do think Mr. Mercer was also involved in other
4 litigation, so there might be other affidavits of
5 his. I tried to get them once, but I couldn't.
6 MR. BROZOST: Okay. Here's where I got
7 the little confused. The Supreme Court heard this
8 issue on observational boundaries.
9 Is that correct?
10 THE WITNESS: The Supreme Court of
11 Pennsylvania.
12 MR. BROZOST: Pennsylvania, yes.
13 THE WITNESS: Almost immediately,
14 right.
15 MR. BROZOST: Right. And one of the
16 witnesses called was Mercer, attorney Mercer.
17 THE WITNESS: That's right.
18 MR. BROZOST: And, I don't have the
19 exact language, but the language that I wrote down
20 was that attorney Mercer was deemed a credible
21 witness by the Supreme Court.
22 THE WITNESS: Okay.

Page 521

1 MR. BROZOST: That -- that was
2 testimony this morning.
3 THE WITNESS: That was a
4 mischaracterization of the word "meaningful".
5 The -- the -- the -- the conclusion was that his
6 presence was meaningful, and the reality is he
7 never got to within a football field of seeing
8 anything.
9 MR. BROZOST: But he did testify
10 apparently to the Supreme Court that his ability
11 to actually -- he was not deprived of the ability
12 to actually observe the process in any meaningful
13 way. That was his --
14 THE WITNESS: Have you seen that?
15 MR. LEVENTHAL: Well, that's what the
16 decision says.
17 THE WITNESS: I haven't seen that
18 testimony -- I haven't seen that testimony and I
19 don't -- I don't interpret their paraphrase of it
20 as --
21 MR. BROZOST: That was the Supreme
22 Court's language.

Page 522

1 THE WITNESS: It was their language,
2 but what they mean by "meaningful" is being in the
3 room. The -- the whole decision decides that
4 being in the room is meaningful. So that doesn't
5 tell you anything, sir, I'm sorry.
6 MR. BROZOST: Okay.
7 THE WITNESS: That's like circular.
8 MR. BROZOST: But that his ability to
9 observe was not in any way effected in any
10 meaningful way.
11 THE WITNESS: But he doesn't say that.
12 MR. BROZOST: Okay. All right.
13 THE WITNESS: He says quite clearly, in
14 his affidavits, over and over, that he saw
15 nothing. And they decided --they decided that was
16 okay because your presence in the room was
17 meaningful, which I think is an absurd decision,
18 an absolutely absurd decision.
19 MR. BROZOST: Okay.
20 THE WITNESS: It means that you could
21 be a potted plant in that room. If you didn't see
22 anything, you still complied with their rule.

Page 523

1 There was no requirement that you see anything.
2 Now what the heck are you doing there if it isn't
3 to see something, which I think Judge Cannon was
4 correct about, and the dissenters. And I also
5 would say it certainly gives me, I hope, the clear
6 defense that I was making a reasonable argument,
7 because I was making an argument that three judges
8 agreed with.
9 I'm surely entitled to make an argument
10 for my client that three judges agree.
11 MR. BROZOST: Well, Mr. Giuliani, thank
12 you. I believe that's all I have.
13 THE WITNESS: Thank you, sir.
14 CHAIRMAN BERNIUS: Ms. Murrell, do you
15 have anything?
16 MS. HAYNESWORTH-MURRELL: Mr. Giuliani.
17 THE WITNESS: Yeah, I'm sorry, I
18 can't -- I can't hear you, Ms.
19 Haynesworth-Murrell.
20 MS. HAYNESWORTH-MURRELL: Mr. Giuliani.
21 THE WITNESS: Now I hear you. Yes,
22 sir -- yes, ma'am.

Page 524

1 MS. HAYNESWORTH-MURRELL: Thank you,
2 very well.
3 Were you -- did you enter your presence
4 at the court to represent the clients, or were you
5 working with Mr. Hicks?
6 At any time when Mr. Hicks removed
7 himself from the case, did you then enter
8 yourself?
9 THE WITNESS: I -- I -- I was an
10 attorney -- I was one of the -- yes. I was an -- I
11 was an official -- I -- I was -- I was allowed pro
12 hac vice. I was allowed as an outsider to
13 practice for the purpose of that case, which is
14 quite common, and the principal lawyer first was
15 Mr. Hicks, and then Mr. Scaringi, along with Ms.
16 Kearns, who the judge would not allow out of the
17 case because he felt that we, Scaringi and I, were
18 in it to -- briefly to really understand it. And
19 I think that reflects part of the problem.
20 MS. HAYNESWORTH-MURRELL: Thank you.
21 THE WITNESS: Thank you very much,
22 ma'am.

Page 525

1 CHAIRMAN BERNIUS: Mr. Fox, do you have
2 anything additional?
3 MR. FOX: No.
4 CHAIRMAN BERNIUS: Mr. Leventhal, any
5 follow-up?
6 MR. LEVENTHAL: I did. I forgot one
7 thing, if I may, very quickly.
8 CONTINUED CROSS-EXAMINATION
9 ON BEHALF OF RESPONDENT
10 BY MR. LEVENTHAL:
11 Q. Mr. Fox --
12 MR. LEVENTHAL: Oh, I can sit down. I
13 thought I was going to the screen again.
14 BY MR. LEVENTHAL:
15 Q. Mr. Fox had mentioned that Judge
16 Diamond had entered into a stipulation with the
17 parties when they weren't honoring Judge Cannon,
18 Fizzano's order which was in effect on November
19 5th, and Mr. Fox was kind enough to send me
20 earlier this morning -- I think he was up all
21 night -- but he sent it to me earlier this morning
22 the transcript of the hearing or the consent, and

Page 526

1 that they agreed that they could get closer to
2 the --
3 CHAIRMAN BERNIUS: Mr. -- Mr.
4 Leventhal, just, if you'll excuse me, at this
5 point, do you have any further questions of Mr.
6 Giuliani?
7 MR. LEVENTHAL: I do, I do, but I want
8 to go through the stages. I want to refresh
9 what -- what had transpired.
10 BY MR. LEVENTHAL:
11 Q. Mr. Fox had mentioned that Judge
12 Diamond did a settlement that they can get closer.
13 Mr. Giuliani, after that, was there
14 still remaining a problem in observing in a
15 meaningful way in Philadelphia or at least and
16 perhaps other jurisdictions.
17 You can't nod your head. You have to
18 answer.
19 A. No, no, I am. I was just waiting to
20 get -- I was just waiting to get the microphone.
21 The answer is there are -- the answer
22 is yes.

Page 527

1 The problem remained of -- it only
2 abated in some places the last day or two.
3 Q. Day of -- day or two of what? Not
4 yesterday?
5 A. No, no, no. Like the -- the whole
6 counting went on for about seven or eight days.
7 The seventh or eighth day there was some access --
8 not in Philadelphia or Allegheny, as I understand
9 it but some of the other counties. But there also
10 are affidavits in the file of people who were
11 excluded after the settlement and complained about
12 it.
13 Q. And yes or no, will we have a witness
14 who will testify to that?
15 A. Yes, there are several, in the file.
16 MR. LEVENTHAL: Okay. All right.
17 That's all. And I said it would be brief.
18 CHAIRMAN BERNIUS: Mr. Fox, anything
19 else?
20 MR. FOX: No.
21 CHAIRMAN BERNIUS: I think you're done,
22 Mr. Giuliani. Thank you.

Page 528

1 Mr. Fox --
2 THE WITNESS: Thank you very much.
3 (Mr. Giuliani's testimony concludes.)
4 CHAIRMAN BERNIUS: -- are you going to
5 bring your next witness on now? We could take
6 our -- we can take our mid-afternoon break and
7 then resume with the next witness.
8 MR. FOX: That's correct. He's right,
9 here: Mr. Ortiz.
10 CHAIRMAN BERNIUS: Okay. We'll --
11 we'll break until 3:45.
12 MS. BORAZZAS: I will open up the
13 breakout rooms now.
14 (Recess taken.)
15 CHAIRMAN BERNIUS: Okay, we're back on
16 the record, Mr. Fox. Your next witness, please.
17 MR. FOX: Daniel Ortiz. And I guess
18 Dan needs to unmask.
19 (Daniel Ortiz on the witness stand.)
20 CHAIRMAN BERNIUS: Mr. Ortiz, do you
21 solemnly swear or affirm that the testimony you
22 will give in this proceeding will be the truth,

Page 529

1 the whole truth and nothing but the truth, so help
2 you God.
3 THE WITNESS: I do.
4 CHAIRMAN BERNIUS: Okay. Proceed, Mr.
5 Fox.
6 Whereupon,
7 DANIEL ORTIZ,
8 called as a witness on behalf of Disciplinary
9 Counsel, and after having been first duly sworn,
10 was examined and testified as follows:
11 VOIR DIRE
12 ON BEHALF OF DISCIPLINARY COUNSEL
13 BY MR. FOX:
14 Q. Please state your name.
15 A. My name is Daniel R. Ortiz.
16 Q. And Mr. Ortiz, where are you testifying
17 from?
18 A. I'm testifying from a town called
19 Ascoli Peceno in the region of Le Marche, in
20 Italy.
21 Q. Okay. And what time of day is it
22 there?

Page 530

1 A. It is now about ten minutes before
2 10:00 p.m.
3 Q. Okay. Tell us about your educational
4 background: where you went to college, where you
5 went to law school.
6 A. I graduated from Yale College with
7 three majors in 1978. Then I went to Oxford
8 University as a Marshall scholar and got an MPhil
9 in Shakespeare and English Drama Until 1640, and
10 then -- that was in 1980, and then I went to Yale
11 Law School and received my JD in 1983.
12 Q. And what has been your employment --
13 what was your employment immediately after law
14 school?
15 A. Immediately after law school I worked
16 as a summer associate for Kuras Wayne and Moore
17 and Newton (phon) -- Moore in New York City for a
18 few months, and then I began a clerkship with then
19 Judge Stephen Breyer in the 1st Circuit in Boston.
20 Q. And after your clerkship with Judge
21 Breyer, then Judge Breyer, where did you go?
22 A. Then I moved to Washington and clerked

Page 531

1 for Justice Powell for a year.
2 Q. What has been your employment since
3 your clerkship with Justice Powell?
4 A. After taking a short vacation after my
5 time with Justice Powell, I started at the
6 University of Virginia School of law in 1985, and
7 I've been teaching there ever since, except for a
8 total period of three years when I visited away at
9 other law schools at different periods of time.
10 Q. And which other law schools were you a
11 visiting professor at?
12 A. The University of Southern California
13 and Berkley.
14 Q. Can you tell us what your experience
15 has been with election law?
16 A. Yes. When I was a law student, I wrote
17 my student note on election law. Then I started
18 teaching election law a year -- a few years after
19 I landed at UVA. And I have cochaired the
20 Election Law Committee of the Section on
21 Administered and Regulatory Practice for the ADA,
22 and I was chief of legal advisors for the National

Page 532

1 Commission on Federal Election Reform that was set
2 up after the 2000 presidential election. And I've
3 written -- I've written articles on election law,
4 of course, as well.
5 Q. Can you just tell us a little bit about
6 what that commission law is, for whom you worked?
7 A. That commission was set up after the
8 2000 election to make recommendations. It was a
9 bipartisan commission. It was headed by former
10 Presidents Ford and Carter and came out with a
11 report -- actually several subsidiary reports, on
12 various aspects of the election and made
13 recommendations as to how to reform things going
14 forward.
15 Q. Finally, as a law professor, have you
16 taught civil procedure?
17 A. Yes, sir. I've been teaching civil
18 procedure fairly regularly.
19 MR. FOX: I would move Mr. Ortiz in as
20 an expert witness in the areas of election law and
21 civil procedure.
22 CHAIRMAN BERNIUS: Mr. Kamins?

Page 533

1 MR. KAMINS: No objection.
2 CHAIRMAN BERNIUS: All right.
3 MR. FOX: Would you display to the
4 witness Disciplinary Counsel Exhibit 40, 4-0, in
5 evidence.
6 DIRECT EXAMINATION
7 BY MR. FOX:
8 Q. Can you just tell us what this is,
9 Professor Ortiz?
10 A. That's the expert report I submitted in
11 this proceeding.
12 MR. FOX: Thank you. You can take that
13 down now.
14 BY MR. FOX:
15 Q. I'd like first to start with the
16 discussion between the responsibilities between
17 the federal government and the state government
18 for the conduct of elections in the United States
19 for federal office.
20 Could you just tell us how that
21 responsibility is divided.
22 A. There are two relevant, primarily

Page 534

1 relevant constitutional provisions. In Article 1
2 there is the so-called Elections Clause which
3 allows the states to set the time, places and
4 manner of Congressional elections, subject to a
5 federal override. And then in Section 2 there is
6 the so-called Electors Clause, which gives the
7 states even more authority with respect to
8 choosing presidential electors. The federal
9 government can specify the date that the electors
10 are chosen and the date that the electors have to
11 cast their vote in the electoral college, but that
12 date, the second date has to be the same for all
13 states.
14 Q. Okay. With respect to the actual
15 conduct of an election, who has the primary
16 responsibility?
17 A. That is determined by the state and
18 just about every state has devolved most of that
19 authority down to locality, whether counties or
20 cities, with some state guidance.
21 Q. Okay. In terms of procedures, such as
22 procedures to monitor elections, who determines

Page 535

1 what those procedures are? Which -- which body,
2 or which governmental body?
3 A. The state governments.
4 Q. Is there any federal requirement that
5 elections have poll watchers or election observers
6 and so forth?
7 A. In general, no. There is a provision
8 in the Voting Rights Act of 1965 which allows the
9 Attorney General to appoint federal poll watchers
10 in certain circumstances. That provision -- that
11 provision was used not irregularly during the
12 1960s and 1970's after the initial passage of the
13 act. It's still used today. I believe in the
14 last 2000 electio -- 2020 election there may be
15 20, around 25 jurisdictions of like the county
16 level or something like that where federal poll
17 watchers were appointed.
18 Q. And aside from those jurisdictions that
19 are covered by the Voting Rights Act, is there any
20 federal requirement about how many poll watchers
21 or even whether to have poll watchers?
22 A. No, sir.

Page 536

1 Q. Now, with respect to the decision of
2 how to vote -- and I mean by that whether by mail
3 or in person -- what -- what -- who has the
4 authority to make that determination?
5 A. The states.
6 Q. And prior to the 2020 election, have
7 there -- are there jurisdictions in the United
8 States where no-question mail-in voting has been
9 permitted?
10 A. Yes. There were many of them. The
11 most prominent would probably have been in Oregon,
12 which in 1995 I believe had a federal primary
13 election held completely by mail-in voting, and in
14 1996 had a federal Congressional general election,
15 I believe the senatorial, held completely by
16 mail-in voting.
17 Q. Now let's come to the issue of election
18 disputes or -- and recounts and that sort of
19 thing.
20 Again, where is the authority, the
21 primary authority to resolve those -- those
22 matters?

Page 537

1 A. In the states.
2 Q. And I know it's difficult to generalize
3 about 50 states, but do those states generally
4 have procedures, special procedures for something
5 like an election contest?
6 A. Yes, sir.
7 Q. And do you know if Pennsylvania had
8 such procedures?
9 A. Yes, sir.
10 Q. And those procedures call for expedited
11 treatment of such election contests?
12 A. Yes, sir.
13 Q. Now, under what sorts of circumstances
14 is it appropriate to bring a challenge to a
15 state-run election in a federal court?
16 In other words, what types of issues do
17 the federal courts have jurisdiction over?
18 A. Well, the federal courts have
19 jurisdiction in cases involving federal laws,
20 where the statutory laws are constitutional laws.
21 So there's an argued violation of the, you know,
22 Nineteenth Amendment, or the Fourteenth Amendment

Page 538

1 or the First Amendment, or something like that,
2 the case could be brought in federal court, would
3 be brought as an ordinary -- what's known as a
4 section 1983 case, an ordinary civil case, which
5 would concern whether state officers, acting under
6 color of their authority, violated federal law.
7 Q. And so those would be constitutional
8 challenges to the state procedures. Is that
9 correct?
10 A. Well, they could be statutory, as well.
11 Q. Federal statute?
12 A. Yes.
13 Q. Okay. But the -- the federal
14 government does not have the authority generally
15 to enforce the state statutes, right?
16 A. Well, there could be situations where
17 state statutory claims are brought along with
18 federal statutory claims and the federal courts
19 might decide those. Typically they defer to the
20 states and they don't decide those unless they
21 absolutely have to.
22 Q. Now there's something called the

Page 539

1 Anderson Verdict Test. Are you familiar with
2 that?
3 A. Yes, sir.
4 Q. And what is that?
5 A. It's a case that applies to Equal
6 Protection challenges of mostly garden variety or
7 administrative questions. In Anderson vs.
8 Celebrezze, itself, presidential candidate John
9 Anderson from the 1970's was challenging the --
10 the length of the period before the election that
11 an independent candidate had to file signatures
12 and things like that. And the Burdick case, which
13 was about the same era, concerned Hawaii's -- the
14 constitutionality of Hawaii's write-in -- sorry,
15 yeah, write-in voting provisions.
16 And the case -- and sorry, and to be
17 more responsive, the test itself basically
18 balances the burden on the individual interest
19 against the weightiness of the state's interest,
20 and it's kind of a sliding scale or balancing
21 test. And it gives the states much deference.
22 Q. And when you say "much deference," what

Page 540

1 would an individual have to show -- what kind of a
2 burden would the individual have to meet to show
3 that the state procedure was unconstitutional?
4 A. Usually a very heavy one.
5 Q. Okay. Now you've -- you've watched --
6 listened to the hearing -- watched the hearings I
7 guess is a better way to say it so far, correct?
8 A. Yes, sir.
9 Q. And did you hear Mr. Giuliani's
10 testimony yesterday about a Substantive Due
11 Process argument arising from the inadequacy of
12 the Pennsylvania security procedures for counting
13 mail-in ballots?
14 A. Yes, sir.
15 Q. Specifically the lack of observation?
16 A. Yes, sir.
17 Q. Okay. And -- and do you have an
18 opinion on the validity of -- or on the viability
19 of that argument?
20 A. I would agree with the 3rd Circuit,
21 which said that the --
22 MR. KAMINS: I would object. I would

Page 541

1 object to, Madam Chair, to the question.
2 CHAIRMAN BERNIUS: Overruled.
3 THE WITNESS: I would agree with the
4 3rd Circuit which said that the Substantive Due
5 Process Clause does not -- it does not regulate
6 the distance to the -- how close observers have to
7 be to the actual counting of the votes or what
8 their particular vantage point has to be, because
9 that's a matter of state law.
10 Q. And you're referring to the 3rd Circuit
11 opinion in the Boockvar case, correct?
12 A. Yes, sir.
13 MR. FOX: Let -- let's put that up.
14 That would be Disciplinary Counsel Exhibit 16.
15 BY MR. FOX:
16 Q. And this is the 3rd Circuit opinion to
17 which you're referring?
18 A. Yes, sir.
19 MR. FOX: Okay, and if you will go to
20 page nine, Bates stamp 9, and if you'll look -- if
21 you'll blow up the -- the second paragraph on the
22 second column. That's the one.

Page 542

1
2 BY MR. FOX:
3 Q. Is this the language to which you were
4 referring in the -- that dealt with the
5 substantive process issue?
6 A. Yes, sir.
7 Q. And just read to us the language to
8 which you had alluded.
9 A. "Count seven alleges that
10 Philadelphia's Board of Elections violated Due
11 Process by obstructing poll watchers and
12 representatives, but nothing in the Due Process
13 Clause requires having poll watchers or
14 representatives, let alone watchers from outside a
15 county or less than 18 feet away from the nearest
16 table.
17 "The campaign cites no authority for
18 these propositions -- for those propositions and
19 we know of none. Ditto for Notice and Cure
20 procedures. And the campaign litigated and lost
21 that claim under state law, too.
22 "The Pennsylvania Supreme Court held

Page 543

1 that the Election Code requires only that poll
2 watchers be in the room, not that they be within
3 any specific distance of the ballots." And then
4 it cites In Re Canvassing Observation.
5 MR. FOX: Okay. Thank you. We can put
6 that down now.
7 BY MR. FOX:
8 Q. Can you give us some idea of the
9 frequency with which the federal courts intervene
10 in state-conducted elections?
11 A. It's very infrequent.
12 Q. Now there's a case that we've -- that's
13 been mentioned here from the 3rd Circuit --
14 CHAIRMAN BERNIUS: I'm sorry. Excuse
15 me, Mr. -- Mr. Fox. I didn't hear the answer.
16 Was it very "frequent" or very "infrequent"?
17 MR. FOX: I'm going to let the --
18 THE WITNESS: Very infrequent.
19 CHAIRMAN BERNIUS: Oh, thank you.
20 Sorry.
21 MR. FOX: That's okay.
22 THE WITNESS: No, I'm sorry.

Page 544

1
2 BY MR. FOX:
3 Q. We've -- we've had testimony about a
4 case from the 3rd Circuit called Marks v. Stinson,
5 S-t-i-n-s-o-n.
6 Are you familiar with that case?
7 A. Yes, sir.
8 Q. And that was a case where the court
9 intervened in a state election, was it not?
10 A. Yes, sir.
11 Q. And -- and tell us about that case
12 and -- and why the -- the court did intervene in
13 that particular case.
14 A. It was a case involving a Senate
15 candidate from Philadelphia, and there were
16 allocations -- there were allegations which were
17 supported in the record by much evidence that the
18 democratic candidate, Stinson, had conspired with
19 members -- the two members of the local election
20 board to basically file absentee ballots that were
21 illegal, and at one point -- this is -- they were
22 rejected by the workers at the election board when

Page 545

1 they were originally submitted and the -- they
2 were ordered, against the law, to somehow be fixed
3 and more ballots were sent out. It was a scheme
4 concerning many, many ballots in the regime where
5 there was not "no-excuse" in mail voting. This
6 was still the days of absentee voting where you
7 could only obtain an absentee ballot for very
8 specified -- a particular set of reasons.

9 And in that case the 3rd Circuit found
10 that the district court's findings that there was
11 extensive and deep fraud, which could have
12 effected the outcome of the election, it was
13 upheld, although in its initial decision it
14 reversed the district court's remedy, which was to
15 declare candidate Marks the winner of the
16 election. And the -- the 3rd Circuit said that,
17 unless it be could shown that, but for the
18 constitutional misconduct and violation, the other
19 candidate would have actually won the election,
20 that he could not be declared the winner.

21 But when it was shown that the
22 candidate could have won the election, the remedy

Page 546

1 was up to the discretion of the district court.
2 While, the district court couldn't declare the
3 winner -- the loser the actual winner, the
4 district court could grant an injunction against
5 the certification of the votes, could declare that
6 the seat was vacant and allow the state
7 authorities to carry on, could order a new
8 election... all that.

9 Then the case went back to district
10 court because the -- there was this question about
11 whether, in -- although in the initial district
12 court proceeding it was not shown that the
13 irregularity -- the constitutional -- but for the
14 constitutional violation, candidate Marks would
15 have won, that was still an open question. And so
16 the 3rd Circuit sent it back for the district
17 court for more proceedings and there were, as a I
18 understand it, three experts involved. There was
19 one for each candidate and then Professor Orly
20 Ashenfelter from Princeton University. And
21 basically, remarkably, all three experts,
22 including the expert for the candidate who had won

Page 547

1 the election with the invalid absentee ballots
2 agreed that candidate Marks would have won but for
3 the constitutional violation.

4 And so at that point the distinct court
5 declared candidate Marks the winner, and that went
6 up to the 3rd Circuit and was affirmed. Cert was
7 sought but was not granted.

8 Q. And -- and do you remember what the
9 margin of victory for the winning candidate was
10 initially in that election?

11 A. I believe it was five -- around 500
12 votes.

13 Q. Okay. Now the other case that I want
14 to talk about is Bush v. Gore, which I take it you
15 have some familiarity with?

16 A. Yes.

17 Q. And explain if you will to the panel
18 what the issue was in Bush v. Gore.

19 A. Well, in the Bush v. Gore decision, the
20 Florida Supreme Court had ordered a recount and --
21 of some ballots, and the standard under Florida
22 law was that the ballots should be counted for the

Page 548

1 candidate who -- where the intent of the voter
2 could be determined, and the Florida Supreme Court
3 instructed that the recount should be conducted
4 under that standard.

5 The Bush campaign complained to the
6 United States for, among other reasons -- to the
7 United States Supreme Court, for among other
8 reasons, that this created an Equal Protection
9 violation, because the intent of the voter
10 standard, although that was the official standard
11 of the state of Florida, was ambiguous and
12 uncertain enough that as different districts, in
13 fact different individual workers could interpret
14 it differently for the same ballot.

15 So, for example, some might have, in
16 a -- in a jurisdiction that used punch card
17 voting, some might have counted a dimpled chad as
18 revealing the intent of the voter, whereas another
19 worker might have not. There are other kinds of
20 technologies involved and things like that. And
21 the supreme -- the United States Supreme Court
22 said that, when a single official or state

Page 549

1 institution, here in the Florida Supreme Court,
2 has the capability of instructing that a recount
3 proceed with more definite standards that wouldn't
4 lead to these kinds of differences in
5 interpretation, that, you know, could be
6 arbitrary, that it has to do so. And that if it
7 doesn't, as it didn't here, because it just
8 instructed the recount to proceed under the vague
9 or intent of the voter standard, there was Equal
10 Protection violation. And so it halted the
11 recount.
12 Q. Now what was the split with the court
13 in that case?
14 A. It was seven to two.
15 Q. Okay. What did the court say --
16 what if anything did the court say about the
17 limited nature of its ruling?
18 A. The court basically, as Mr. -- I
19 believe Mr. Giuliani stated, it gave indications
20 that it was not the -- the decision was not to be
21 applied too broadly and across the board, and it
22 hasn't been.

Page 550

1 MR. FOX: Let -- let's take a looked at
2 Respondent's 37, which is the opinion of Bush v.
3 Gore. And you've gone right to the page that I
4 want you to go to I think, which is page 37-6. Is
5 that where we are? No, you're on four I think.
6 And if you -- I don't think that's it either. No,
7 we're still on page four. We need to go to six.
8 Okay, if you could just highlight the two
9 paragraphs in the right column that begin with
10 "the recount process". That's right.
11 BY MR. FOX:
12 Q. And can you point here to the language
13 that suggests that the case is pretty much limited
14 to its -- its facts?
15 A. That would be the last sentence of the
16 first paragraph: "Our consideration is limited to
17 the present circumstances, for the problem of
18 Equal Protection in election processes generally
19 presents many complexities."
20 Q. Okay. And did the court also comment
21 on the ability of local entities to conduct
22 elections in different manners or by different

Page 551

1 systems?
2 A. Yes. You see a mention of that in the
3 first sentence of the next paragraph: "The
4 question before the court is not whether local
5 entities in the exercise of their expertise may
6 develop different systems for implementing
7 elections".
8 Q. Okay. Now you said a moment ago that
9 the case has not been followed -- frequently been
10 followed.
11 Is that -- is that correct?
12 A. Yes, sir.
13 Q. Are -- are you aware of any case in
14 which a federal court has overturned an election
15 based on Bush v. Gore?
16 A. No, sir.
17 Q. All right. Since it was decided,
18 right?
19 A. No, sir.
20 Q. Okay. All right. Let's turn to the
21 procedures in Pennsylvania in 2020. Are you
22 familiar with something called Act 77.

Page 552

1 A. Yes, sir.
2 Q. And what is Act 77?
3 A. Act 77 was passed in 2019 I believe and
4 it moved the state from tradition of just
5 traditional absentee voting, which was allowed
6 with specific reasons, to more general mail-in
7 voting at the request of the elector.
8 Q. And in general what was the process
9 that a voter had to go through if he or she wished
10 to vote by mail?
11 A. Well, a voter who had -- a voter had to
12 be already registered, of course, and then that
13 voter had to apply for a ballot. And the first
14 statewide ballot would have been the primary of
15 2020. And the court -- the person had to, you
16 know, state that they were eligible to vote and
17 fill out other information that was, you know,
18 required by the state to apply for the vote, and
19 then also I believe state whether they wanted the
20 system to be registered for absent -- continue to
21 be able to do mail-in balloting -- balloting in
22 the general election, as well.

Page 553

1 Q. Just to stop on that last point for the
2 moment. What you're suggesting is that, if you
3 applied in the primary election, you could
4 indicate whether you wanted to vote in subsequent
5 elections by mail?
6 A. I'm not sure it's in all subsequent
7 elections. That's the way it is in some
8 jurisdictions. But I believe that it was -- you
9 could indicate at least for the general election
10 that year.
11 Q. Okay. What if any requirement of proof
12 of identification did Act 77 impose?
13 A. I believe that you had to send in a
14 copy of your driver's license, if I'm not sure.
15 Q. Okay. The pandemic, as we all know,
16 began in roughly six months after Act 77 was
17 enacted.
18 What was the effect on that in the
19 mail-in voting in Pennsylvania in -- in the 2020
20 elections?
21 A. Well, many more people were interested
22 in mail-in voting after the pandemic began,

Page 554

1 because it meant that they wouldn't have any
2 issues with social distancing in going to the
3 polls.
4 Q. Okay. Now, prior to the general
5 election in 2020, was there litigation in the
6 state courts concerning the procedures that were
7 to be followed in implementing Act 77?
8 A. Yes, sir.
9 Q. All right. Are you familiar with a
10 Pennsylvania Supreme Court called Pennsylvania
11 Democratic Party v. Boockvar?
12 A. Yes, sir.
13 Q. Can you just tell us what the
14 Pennsylvania Supreme Court held in that case.
15 A. Well there were, if I remember, five
16 major holdings. Perhaps the most important one in
17 this litigation was that the election boards were
18 not required to do Notice and Cure, but the court
19 didn't say that they could not do it, that it
20 wasn't permissible.
21 The court also held that the use of
22 drop boxes was okay.

Page 555

1 It held further that mail-in ballots
2 dated 8:00 p.m. on Election Day and received up to
3 three days later could be counted.
4 It held that ballots that came in that
5 were not contained in secrecy envelopes could not
6 be counted.
7 And it upheld residency requirements
8 for poll -- sort of canvass observers.
9 Q. Now, this was a statutory
10 interpretation of Act 77. Is that correct?
11 A. Yes.
12 Q. And what was the rationale behind the
13 reasoning that the court gave when it said that
14 the election boards were not required to offer
15 Notice of Cure?
16 A. It said that there wasn't language in
17 the statute that indicated that obligation.
18 Q. And did it point to any language in the
19 statute that forbade that obligation?
20 A. No, sir.
21 Q. Okay. All right, now let me come to
22 another pre-election ruling in the state court,

Page 556

1 and that was -- sorry, let me come to a
2 pre-election ruling in the federal court. There
3 is a case called In Re November 3rd, 2020 General
4 Election -- sorry, sorry. I got myself tangled
5 up. It's still -- it is the state court. So
6 let's go back, start again.
7 The Pennsylvania Supreme Court opinion,
8 in In Re November 3rd, 2020 General Election.
9 Are you familiar with that opinion?
10 A. Yes, sir.
11 Q. Is that -- that -- that's an opinion
12 that is called a king's bench jurisdiction matter.
13 What's a king's bench jurisdiction
14 matter in Pennsylvania?
15 A. I believe that's a form of the Supreme
16 Court's original jurisdiction.
17 Q. Okay. And again, was this another
18 statutory interpretation case?
19 A. Yes, sir.
20 Q. Tell us what the Supreme Court held in
21 that case.
22 A. Well, there are two primary holdings:

Page 557

1 the one was that the election boards were not to
2 make signature comparisons in canvassing, and the
3 second was that the canvass observers could not
4 challenge the mail-in ballots in the canvassing
5 process.
6 So it noted that -- I'm sorry. It
7 noted that -- it noted that people could challenge
8 mail-in voters up to the Friday before the
9 election, but once the ballot came in and you
10 could end the canvassing process, no one could
11 object because of any, you know, problem with say
12 the outside envelope or something like that. That
13 had to be done by the canvass workers themselves.
14 Q. Do you remember what the court's
15 rationale was for why the signature comparison
16 wasn't to be done during the canvassing process?
17 A. Well, one of them was that they weren't
18 very good at it. The people who were -- who would
19 be charged with doing it weren't very good at it
20 and it would lead to error.
21 Q. Okay. Now I want to focus on
22 pre-election litigation in the federal court.

Page 558

1 There's -- and -- and these titles are
2 confusing, because they're all quite similar, but
3 there's a case called Donald Trump for President
4 vs. Boockvar, which is decided in the Western
5 District of Pennsylvania in October of 2020.
6 Are you familiar with that case?
7 A. Yes, sir.
8 Q. All right. And first of all, that case
9 discusses something called "Pullman abstention".
10 What is Pullman abstention?
11 A. Pullman abstention is a doctrine where
12 the -- when federal courts are deciding a case
13 which involves at some level interpretation of
14 state law and they believe that the state law is
15 not -- it's actually clear and it's important
16 enough, that they encourage the parties to go to
17 state court to get an authoritative interpretation
18 of what state law means, and then the -- the --
19 the parties can come back to the federal court
20 and, once that's decided, to continue with the
21 litigation.
22 Q. And -- and had the federal court in

Page 559

1 this Donald Trump for President vs. Boockvar case
2 engaged in Pullman abstention prior to the
3 issuance of this opinion?
4 A. Yes, sir.
5 Q. Tell us about that, if you will.
6 A. Well the -- the -- the federal courts
7 basically said, you know, hold up, we need a --
8 these are big, important state law questions;
9 there hasn't been enough litigation in the state
10 courts for us to make a good determination of
11 what -- how the states court were decided, and of
12 course their interpretation would be
13 authoritative.
14 So the parties went to court ultimately
15 to -- state court, all the way to the state
16 Supreme Court, and once these issues were decided,
17 they came back to the federal court, and the
18 federal court could decide all the remaining
19 issue.
20 Q. And when they went to the state Supreme
21 Court, that was in one of the cases that we just
22 discussed a moment ago, correct?

Page 560

1 A. Yes, sir.
2 Q. All right. Now, did the federal court
3 also issue a ruling about standing in the Donald
4 Trump for President vs. Boockvar case?
5 A. Yes. It's standing ruling was that
6 possible vote dilution wasn't enough to give the
7 Trump campaign standing.
8 Q. Okay. But did the court make an
9 alternative ruling on the merits, in addition to
10 its standing ruling?
11 A. Yes, sir. It weighed in three
12 different merits claims, it held that guards were
13 not required at drop boxes and it ultimately
14 agreed -- as it should have -- with the
15 Pennsylvania Supreme Court that there was no
16 signature comparison required and that the
17 residency requirements for canvass observers were
18 okay.
19 Q. Okay. Do you remember the procedure --
20 well, let me just -- this came up on a motion for
21 summary judgment, correct?
22 A. Yes.

Page 561

1 Q. And what was the standard of review
2 that the federal court applied to the state
3 procedures?
4 A. It applied the rational basis test.
5 Q. And --
6 A. Which is --
7 Q. Go ahead. I was just going to ask you
8 to explain a little bit more what that means.
9 A. Sure. There are, in constitutional
10 review, three different so-called tiers of
11 scrutiny: there's reduced scrutiny, intermediate
12 scrutiny and strict scrutiny. Reduced scrutiny is
13 the weakest of the three, and it generally
14 requires that the procedures that are being
15 challenged in order to survive constitutional
16 scrutiny be rationally related to legitimate
17 governmental purpose.
18 Q. All right.
19 A. And it gives the state some deference
20 on both the means and the ends part of that,
21 whether something is rationally related and
22 whether the governmental interest is legitimate.

Page 562

1 Q. All right, I want to turn now to
2 litigation that arose while the election
3 canvassing was going on.
4 Are you aware in Philadelphia of
5 litigation that began during the canvassing
6 process of the mail-in ballots?
7 A. Yes.
8 Q. And -- and tell us about that
9 litigation, if you will.
10 A. Well, there was the vantage point
11 litigation, if you will, which challenged the
12 positional requirements of where the canvass
13 observers had to be in relation to the actual
14 canvassers. The -- the claim -- the challenge is
15 based on the claim that they were too far away or
16 otherwise in a position where they couldn't
17 actually observe the canvassing as closely as they
18 should have been able to.
19 Q. And was this -- in what court was this
20 litigated. I mean only that by state or federal,
21 not the particular name of it.
22 A. Well, it was -- it's sort of related --

Page 563

1 it was sort of pursued in both.
2 Q. Well, I'm not -- I'm sorry. I'm going
3 to come to the Boockvar litigation in a moment. I
4 mean -- so that was a bad question. So let's just
5 focus on the local litigation for a second.
6 What was the -- what was the litigation
7 in the local court about?
8 A. This was in state court, and the trial
9 court, which is the commonwealth court, decided
10 that this was okay, that there is no problem.
11 The intermediate appellate court
12 decided that there was a problem and thought that
13 the -- held that the observers should I believe
14 have been able to get within six feet or so of the
15 actual canvassers, and then that was overturned by
16 the Pennsylvania Supreme Court.
17 Q. And the (indistinguishable) Supreme
18 Court case was called In Re Canvassing
19 Observation. Is that right?
20 A. Yes.
21 Q. And tell us what that case held.
22 A. That case held that the state statute

Page 564

1 did not give people, observers the right to get
2 close enough so that they could note whether the
3 out -- the requirements for the outside envelope
4 were actually carried out, and as part of its
5 reasoning it said there is no right for -- you
6 know, noting that there was no right for the
7 canvassers to actually object to any kind of
8 problems there. And it pointed to the statutory
9 language, which I believe was they had a right to
10 be in -- "in the room," and said that, under those
11 circumstances, the statute didn't grant the
12 canvass observers the right to the kind of
13 proximity they were requesting.
14 Q. Now during the course of this
15 litigation in the state courts -- and I think this
16 is where you were going before I interrupted
17 you -- was there a compromise in another
18 litigation that was brought in federal court in
19 Philadelphia?
20 A. Yes, sir. There was a federal -- there
21 was a federal case brought and the federal
22 judge -- there was an informal settlement there,

Page 565

1 which allowed, you know, more than I believe the
2 statutory allowed amount of observers for each
3 party to observe, and allowed much closer
4 proximity than there had been before.
5 Q. All right, now I want to turn to the
6 Donald Trump for President, Inc., v. Boockvar case
7 in the Middle District of Pennsylvania. And --
8 and first let's just take an overview of the case,
9 and then we'll come back and go over some of the
10 specific issues.
11 MR. FOX: Would you show the witness
12 please Disciplinary Counsel Exhibit 5.
13 MR. LEVENTHAL: Is that Judge Brann?
14 MR. FOX: Yes.
15 MR. KAMINS: Brann.
16 MR. LEVENTHAL: Brann, sorry.
17 BY MR. FOX:
18 Q. So this is -- all right. All right.
19 So do you know -- this was a case in
20 front of Judge Brann. I'm going to lead a little
21 bit, because I don't think there's anything
22 controversial about this.

Page 566

1 Do you know when -- can you determine
2 when it was filed?
3 A. November the 9th, 2020.
4 Q. And the plaintiffs were whom?
5 A. The plaintiffs were the Donald J. Trump
6 for President, Inc., which was the campaign, and
7 then two individuals: Lawrence Roberts and David
8 John Henry.
9 Q. And the defendants were whom?
10 A. The Pennsylvania Secretary of State,
11 Kathy Boockvar, and then seven election boards for
12 various counties.
13 Q. Okay. What is your understanding of
14 Mr. Giuliani's role in this matter.
15 A. I'm honestly a little bit uncertain.
16 This was some participation in Mr. Giuliani -- by
17 Mr. Giuliani in this complaint. It's not --
18 it's -- excuse me. I may be confusing this with
19 the first amended complaint, with is coming up
20 earlier. This is -- this I believe that Mr.
21 Giuliani was responsible for this complaint.
22 Q. Okay. Now let's look at that first

Page 567

1 amended complaint, which is Disciplinary Counsel
2 Exhibit 6. Can you determine when that was filed?
3 A. November the 15th, 2020.
4 Q. Was there any change in the parties?
5 A. No, sir.
6 Q. And your understanding of Mr.
7 Giuliani's role in this one.
8 A. This is the one where my understanding
9 is a little less certain. In a Colorado
10 deposition I believe Mr. Giuliani indicated that
11 he was -- when he started the writing the
12 complaint, but in yesterday's testimony he
13 indicated that he was responsible for maybe only
14 10 or 10% of some paragraphs, so that his
15 participation was much less.
16 Q. Okay. Mr. Giuliani did not sign this
17 complaint, correct?
18 A. No, sir.
19 MR. FOX: All right. Let's now put up
20 Disciplinary Counsel Exhibit 8, which is the
21 transcript of the oral argument.
22 BY MR. FOX:

Page 568

1 Q. I take it you've read this document?
2 A. Yes, sir.
3 Q. When was the oral argument conducted?
4 A. November the 17th, 2020.
5 Q. And what was Mr. Giuliani's role in the
6 oral argument?
7 A. Mr. Giuliani argued for -- was primary
8 counsel for the plaintiffs.
9 MR. FOX: And then finally let's put up
10 Disciplinary Counsel Exhibit 9, and this is the
11 motion but we've all had plenty of testimony about
12 the second amended complaint.
13 BY MR. FOX:
14 Q. Tell us when that was filed.
15 A. It was filed on November the 18th,
16 2020.
17 Q. And were there any change in the
18 parties?
19 A. No, sir.
20 Q. And did Mr. Giuliani sign this
21 complaint?
22 A. Yes, sir.

Page 569

1 Q. And in addition to this complaint, were
2 there some ancillary pleadings or filings that
3 were filed along with it, or a day or so later?
4 A. Yes, sir.
5 Q. And just tell us generally what those
6 were.
7 A. It was a request for a temporary
8 restraining order, various forms of injunctive
9 relief, and I believe a memo supporting them.
10 Q. Okay. Was this complaint and these
11 ancillary proceedings ever -- strike that.
12 Were this complaint and the ancillary
13 proceedings ever accepted for filing?
14 A. No, sir.
15 MR. FOX: All right. We can take that
16 down now.
17 BY MR. FOX:
18 Q. Now having gone through the overview,
19 let's go back a little bit to some of the claims.
20 First in the initial complaint, what --
21 can -- can -- can you tell us what claims were
22 pled in that initial complaint?

Page 570

1 A. The initial complaint had versions of
2 the complaints that remained in the -- sorry, the
3 claims that remained in the first amended
4 complaint, which sounded in Equal Protection and
5 Due Process, largely aimed at challenging the
6 notice to secure -- the application to Notice and
7 Cure -- the application for Notice and Cure
8 process, and then also of the challenges to the
9 vantage point restrictions. But the initial --
10 the initial complaint also contained claims that
11 they're now called -- go into the independent
12 state legislature theory that said -- that
13 basically made the argument that state
14 administrators or state executives could not
15 actually issue or make the kind of interpretations
16 of law they had because that kind of authority
17 belonged only to the state legislature.
18 Q. I want to just pause on that for a
19 moment, because that issue kind of disappears.
20 So tell us what happened to that issue
21 in the case?
22 A. That was in the first -- the initial

Page 571

1 complaint dropped from the first amended complaint
2 appears again in several counts in the second
3 amended complaint. It did not appear much in the
4 oral argument at all because it did not -- was not
5 in the first amended complaint. Then when the
6 plaintiffs appealed the loss before the district
7 court, before the 3rd Circuit, the 3rd Circuit
8 said that they did not have standing to raise --
9 just in passing said they didn't -- they didn't
10 have standing to raise those claims because of a
11 prior 3rd Circuit decision called, I believe -- I
12 may mess up the pronunciation -- either Bognet or
13 Bognay (phon).
14 Q. Okay. All right. I'm going to largely
15 ignore the -- you called it the independent state
16 legislature, sometimes called the Electors and
17 Election Clause claims?
18 A. Yes, sir.
19 Q. Okay. To go back to the initial
20 complaint, what if anything did the initial
21 complaint say about fraud?
22 A. The initial complaint was clear that

Page 572

1 there was fraud, although it was a little bit less
2 clear actually what the fraud consisted of. It
3 appeared to most directly allege that there had
4 been intentional misdealings and perhaps concerted
5 activity between various election boards and
6 certainly within election boards to wrongfully
7 deny candidate Trump votes.
8 Q. Now, can you just go into federal court
9 and file a case challenging a state election
10 claiming that there was election fraud, or do you
11 have to allege more than that?
12 A. In any case involving fraud, Federal
13 Rule of Civil Procedure 9 requires that all of the
14 elements, except for state of mind, be pled with
15 particularity which means certain amount of
16 specificity beyond the normal complaint
17 requirements bearing on the circumstances around
18 the fraud.
19 Q. And is election -- does -- does
20 election fraud in a state election raise a federal
21 claim in and of itself?
22 A. The type of claim that it raises is a

Page 573

1 Due Process claim of the Marks vs. Stinson type
2 where, if you can show very bad behavior, if you
3 will, particularly if you can show that the
4 candidate collaborated or conspired in it, that
5 can establish a constitutional violation.
6 Q. So is it fair to say that election
7 fraud has to amount to a Substantive Due Process
8 violation before it raises the federal claim?
9 A. Yes, sir.
10 Q. Okay. Now to go to the first amended
11 complaint, just tell us briefly how the claims
12 changed in that complaint.
13 A. Right. I'm sorry, I didn't hear.
14 Q. My apology.
15 In the first amended complaint, how did
16 the claims that were pled change?
17 A. The first amendment complaint pretty
18 much dropped out the grand fraud claims but
19 continued to press the vantage point,
20 observational boundary claim and the Notice and
21 Cure claim.
22 Q. And then to come to the second amended

Page 574

1 complaint, how did the claims change in that
2 complaint?
3 A. The fraud claims came back in.
4 Q. All right. And with respect to the
5 question of intentionality of the state
6 authorities, how -- how, if in any way, did that
7 change in the second amended complaint?
8 A. Well, the second amended complaint
9 alleged intentional -- based on intentional
10 conspiracy among various local officials. It was
11 clear that I believe it alleged it within election
12 boards, but it's not clear whether it alleged it
13 across election boards or not.
14 Yesterday Mr. Giuliani testified that
15 in fact this was -- he was interested in his oral
16 argument before the district court in keeping open
17 the possibility that there was an interstate fraud
18 conspiracy. So -- but that did not appear in the
19 first amendment -- amended complaint. And indeed
20 the second amended complaint seemed to be limited
21 to fraud within election boards.
22 Q. And -- and let me -- let me call your

Page 575

1 attention to Disciplinary Counsel Exhibit 9, and I
2 want to look at the first part, which is the
3 motion for leave to file and page eight of that
4 document.
5 MR. FOX: And if you -- if you'll blow
6 up the paragraph 20, just -- just on page eight --
7 well that's -- yeah, that's fine, just on page
8 eight.
9 BY MR. FOX:
10 Q. You'll see there it says, "The
11 plaintiffs will also show that defendant's conduct
12 was part of an improper scream to favor Biden over
13 Trump by counting improper votes in violation of
14 Equal Protection, Due Process and Electors and
15 Election Clauses under the Constitution and Civil
16 Rights Act".
17 Had -- had the first -- I'm sorry, had
18 the first complaint been as explicit with respect
19 to this intentionality element?
20 A. Do you mean the first amended
21 complaint?
22 Q. No, the first complaint.

Page 576

1 A. The first complaint. No. The first
2 complaint was not so clear.
3 Q. Okay. Now I -- I want to come to the
4 relief that was sought, but since we're at a
5 particular appropriate point, let's -- let's
6 continue with this document on that issue.
7 MR. FOX: And let's go down -- no, no,
8 stay right where we were, but I want -- yeah,
9 that's right, the bottom sentence, the last
10 sentence of 20 and then going onto 21.
11 BY MR. FOX:
12 Q. You'll -- you'll see here it says, "The
13 plaintiffs will seek the remedy of Trump being
14 declared the winner of illegal votes cast in
15 Pennsylvania in the 2020 general election and thus
16 the recipient of Pennsylvania's electors".
17 Had any federal -- aside from Marks v.
18 Stinson, are you aware of any federal court that
19 had ever provided such relief?
20 A. No, sir.
21 Q. And -- okay, that's all there -- that's
22 all the questions I have.

Page 577

1 MR. FOX: So now let's go to the actual
2 second amended complaint and I want to look at the
3 relief that was requested in the complaint itself.
4 Go to please to page 122, paragraph 325.
5 BY MR. FOX:
6 Q. You'll see here where the -- well, why
7 don't -- why don't you just read to us what the --
8 the relief that's asked for in this paragraph is.
9 A. "That as a result of defendant's
10 violation of the United States Constitution and
11 violations of other federal and state election
12 laws, this court should enter an order,
13 declaration and/or injunction that prohibits
14 defendant's from certifying the results of the
15 2020 presidential general election in Pennsylvania
16 on a statewide basis."
17 Q. Are you aware of any other case where
18 that relief, the -- prohibiting the defendant from
19 certifying the results of the election, has been
20 provided?
21 A. No, sir.
22 Q. Let's look at the next -- let's look

Page 578

1 at -- sorry, paragraph 326, and just read to us
2 the relief that's requested there.
3 A. "Ultimately that, as a result of
4 defendant's violations of the United States
5 Constitution and violations of other federal and
6 state election laws, this court should enter an
7 order, declaration and/or injunction prohibiting
8 defendants from certifying the results of the
9 general elections which include the tabulation of
10 unauthorized votes, including mail ballots which
11 did not meet the statutory requirements, mail
12 ballots which were cured without authorization,
13 and any other vote cast in violation of law.
14 "Instead compel defendants to certify
15 the results of the election based solely on the
16 legal votes."
17 Q. In an -- in an election involving
18 secret ballots --
19 (Background noise.)
20 MR. FOX: I'm sorry, is somebody saying
21 something?
22 MR. KAMINS: No.

Page 579

1 MR. FOX: I heard something. I don't
2 know if there is an objection or.
3 MR. KAMINS: No, no objection.
4 MR. FOX: Okay, I'm sorry.
5 BY MR. FOX:
6 Q. In an -- in an election involving
7 secret ballots, after they are cast, is there any
8 way to determine which ballots don't meet the
9 statutory requirements or were cured or otherwise
10 cast in violation of the law?
11 A. Only if they were segregated in the
12 appropriate categories.
13 Q. And so if they he weren't segregated,
14 how -- how could a court impose this remedy?
15 A. It's difficult to imagine how you would
16 be able to tell which were the ballots in one --
17 which were illegal and which weren't after they've
18 all been mixed together.
19 Q. Okay. Let's look at paragraph 327, and
20 read just the relief that's requested there.
21 A. "Alternatively that, as a result of
22 defendant's violations of the United States

Page 580

1 Constitution and violations of other federal and
2 state election laws, this court should enter an
3 order, declaration and/or injunction that the
4 results of the 2020 presidential election are
5 defective in providing for the Pennsylvania
6 General Assembly to choose Pennsylvania's
7 electors."
8 Q. Again, has -- has any court ever
9 imposed such a remedy in any election in the
10 United States of America?
11 A. No, sir.
12 Q. What's that -- what would be the
13 authority of the Pennsylvania General Assembly to
14 choose Pennsylvania's electors if somehow there --
15 well, in other words, a problem with the election?
16 A. The claim would be that its authority
17 under Article 2 to choose the method of the
18 electors somehow allowed it to make this kind of
19 decision even after a general election.
20 Q. So -- so, to -- to be a little more
21 specific, Article 2 gives the legislature some
22 authority as to how electors are going to be

Page 581

1 chosen, correct?
2 A. Yes, sir.
3 Q. Does Article 2 require the Pennsylvania
4 or any other state to pick the presidential
5 electors by an open election?
6 A. No, sir. In fact, for much of the time
7 that, you know, of our country's founding, some
8 states choose -- you know, the legislatures would
9 choose the electors themselves.
10 Q. But once a state adopts a law saying
11 that they're going to be chosen by federal
12 electors, can the legislature just decide the
13 issue anyway?
14 A. That's under -- that time of issue is
15 very unclear and it's up -- this is -- this may be
16 part of the implications of the case that's being
17 argued in the Supreme Court tomorrow in fact. But
18 there hasn't ever been a case where a court has
19 issued that kind of relief.
20 Q. Now yesterday, and I think again today,
21 Mr. Giuliani testified about the relief that he
22 was seeking with -- specifically with respect to

Page 582

1 the Equal Protection arguments on behalf of the
2 two voters whom he represented.
3 Do you -- do you recall him testifying
4 about that?
5 A. Yes, sir.
6 Q. Did you understand the relief that he
7 said he was seeking?
8 A. Not really.
9 Q. Okay. And -- ad do you see a prayer or
10 a request for relief at any place in the -- that
11 resembled whatever that request was in any place i
12 these three complaints that he filed?
13 A. No, sir.
14 Q. And did allude to it in his oral
15 argument in front of Judge Brann?
16 A. No, sir.
17 Q. So let's go to the oral argument in
18 front of Judge Brann.
19 What did Mr. Giuliani argue as a
20 factual basis for his claims before Judge Brann --
21 let me -- before I get to that.
22 What was the position that Mr. Giuliani

Page 583

1 took before Judge Brann as to whether he was
2 arguing fraud?
3 A. He initially said that he was arguing
4 fraud, and then when Justice Brann stated that
5 fraud -- fraud claims are subject to the
6 heightened specificity requirements of Federal
7 Rule of Civil Procedure 9, he backed off that and
8 said that he wasn't characterize -- he's making
9 allegations about what happened and what the
10 procedures are and some of the problems within,
11 but he wasn't characterizing them as fraud.
12 Q. Okay. And at -- at that time which one
13 of the -- the three complaints was the one that
14 Judge Brann -- justice -- Judge Brann was
15 considering?
16 A. The first amended complaint.
17 Q. And that's the one that didn't have any
18 fraud allegations, right?
19 A. Yes, sir.
20 Q. Okay. And -- and so, what arguments
21 did Mr. Giuliani advance to establish that there
22 was fraud in the 2020 presidential election in

Page 584

1 Pennsylvania?
2 A. He made several different kinds of
3 argument. I start discussing these in my report
4 in paragraph 20.
5 Q. Would you like to refer to that or?
6 A. I would be happy to refer to it, if I
7 may, just because that way I would be able to do
8 better than just stumbling through it.
9 MR. FOX: Sure.
10 Is there any objection to that?
11 MR. KAMINS: No -- no objection.
12 MR. FOX: Okay. Go ahead, then. You
13 know, we don't need to put it up. We don't need
14 to put the report up. He just needs to refer to
15 it in his testimony.
16 BY MR. FOX:
17 Q. All right. So tell us the arguments
18 that he made.
19 A. So he relied on several different types
20 of allegations to make his case. He found it in
21 various different categories...
22 The first was that statements by

Page 585

1 various authorities about the potential for
2 mail-in ballot fraud evidenced fraud in the 2020
3 Pennsylvania election.
4 Secondly, the misconduct in
5 jurisdictions outside Pennsylvania during prior
6 elections and during the 2020 election itself
7 somehow evidenced fraud in the defendant counties
8 in the 2020 -- defendant Pennsylvania counties in
9 the 2020 election.
10 Third, that apparent misconduct in some
11 Pennsylvania jurisdictions during prior elections
12 was evidence of fraud in the defendant counties in
13 the 2020 election.
14 Fourth, the alleged election
15 administration irregularities in three
16 non-defendant Pennsylvania jurisdictions were
17 evidence of fraud in the defendant counties in
18 that election.
19 Fifth, the observational boundaries
20 imposed generally on all candidates and party
21 representatives during the canvassing process was
22 evidence of fraud in the defendant counties in the

Page 586

1 2020 election.
2 And six that certain statistical
3 studies or figures related to the mail-in ballots
4 were evidence of fraud in the definitive counties
5 in that electio.
6 And seven, that additional proof that
7 was referenced generally by -- to the district
8 court, was evidence of fraud in the elections.
9 And I take it that that's what he was
10 referring to in the 20 -- 240 or so affidavits
11 that he mentioned this morning.
12 Q. Now with respect to the first four of
13 those categories -- the potential for fraud in
14 mail-in ballots; historical -- or fraud in other
15 jurisdictions; historical examples of fraud in
16 Pennsylvania; and fraud in other counties in
17 Pennsylvania -- was any of that evidence of fraud
18 in the seven counties that he sued?
19 A. No, sir.
20 Q. And -- and with respect to the last
21 three, were the observational boundaries evidence
22 of fraud?

Page 587

1 A. No, sir.
2 Q. Okay. And what -- I'm sorry. I've
3 gotten lost in the other two. You said it was
4 statistical.
5 Did -- did he provide what statistical
6 evidence he had?
7 A. He provided there was -- the evidence
8 changed at various times. So for example, he
9 tried to -- he introduced statistical evidence in
10 the -- before the Pennsylvania state legislative
11 hearing by a colonel -- I believe it was Colonel
12 Waldron. He also introduced some evidence by a
13 Mr. McCredies (phon) -- I believe his name was Mr.
14 McCredies at some point about -- which was
15 quasi-statistical about the difficulty of -- how
16 it would have been impossible to actually count
17 the -- the ballots with the speed that they
18 reported as being counted statewide in the 2020
19 election.
20 Q. And were either of those gentlemen --
21 did either of those gentlemen disclose that they
22 had any expertise in this area?

Page 588

1 A. No, sir.
2 Q. What was Mr. -- Colonel Waldron's
3 background?
4 A. Let me see here. That appears in
5 paragraph 34 of my report. He -- Mr. Waldron did
6 not make -- has never made public, as far as I've
7 been able to see, the basis for his statistics,
8 which is based on so-called statistical spikes
9 coming in, and so it's simply not been able to be
10 tested.
11 As for his expert qualifications, as he
12 acknowledged directly to Mr. Giuliani during the
13 state legislative hearing, he wasn't quote -- he
14 was, quote, "not a statistician" and he "didn't do
15 well in math". I also describes himself on his
16 LinkedIn page, as of the time I did the report,
17 quote, as "The founder of Forklift Driver and
18 Floor Sweeper at One Shot Distillery and Brewery
19 in Dripping Springs, Texas," and he lists no
20 administrative -- no election administration in
21 his work history.
22 Q. And what about with respect to Mr.

Page 589

1 McCredies? Do you recall what his qualifications
2 were?
3 Actually, was it -- it wasn't his
4 analysis. What did Mr. McCredie base his
5 statistics on?
6 A. Mr. McCredies based his claim that
7 the -- the ballots could not have been canvassed
8 as quickly as they were, on a remark by former
9 Mercer County. Pennsylvania election
10 administrator; that on the basis of that
11 administrator's past experience, it would have
12 taken his county -- it took his county two point
13 five days to process 655 provisional ballots in I
14 believe the primary election of 2020, and then
15 extrapolates from that to impute a statewide
16 maximum processing speed from that one
17 jurisdiction's ability to handle the canvassing in
18 one -- that one election.
19 Q. Now, you mentioned that these experts
20 were presented to the -- the Pennsylvania
21 legislative hearing. That's -- that's something
22 that occurred at Gettysburg some weeks later,

Page 590

1 correct?
2 A. Yes, sir.
3 Q. All right. With respect to the
4 argument before Judge Brann. Did he present any
5 statistical evidence at all at that point?
6 A. I don't believe so.
7 Q. And -- and then the other thing you
8 said was that the affidavits, which I think we've
9 all discussed.
10 A. Yes.
11 Q. Now I want to talk about what
12 constitutional violations that he alleged. What
13 were the constitutional violations that he alleged
14 to Judge Brann with respect to Notice and Cure?
15 A. The Notice and Cure claim was based on
16 the notion that, allowing voters in the seven
17 defendant counties to cure deficiencies in their
18 mail-in ballots diluted the vote of the two voters
19 in the two other counties which didn't permit
20 cure.
21 Q. Did he also have an Equal Protection
22 argument with respect to Notice and Cure in which

Page 591

1 he somehow relied on Bush v. Gore?
2 A. Yes, sir. In that he claimed that it
3 was a violation of Bush vs. Gore because different
4 election boards were administering the rule
5 differently.
6 Q. And what did Bush v. Gore have to say
7 about different localities having different
8 procedures?
9 A. That it wasn't making a holding on
10 that.
11 Q. And -- and you also read us the
12 language earlier in which it -- it acknowledged
13 that those things occurred, correct?
14 A. Correct.
15 Q. All right. Now with respect to
16 observational boundaries, what was Mr. Giuliani's
17 constitutional argument about those?
18 A. The constitutional -- constitutional
19 argument that appeared in the complaint, the first
20 amended complaint, was that, by imposing these
21 positional boundaries, the election boards were
22 making it more evenhandedly on republican and

Page 592

1 democratic observers. The election boards were in
2 fact making it more difficult for republican
3 observers to challenge absentee ballots that were
4 being administered in democratic majority
5 jurisdictions.
6 Q. And -- and what constitutional
7 violation was that?
8 A. That was mostly Equal Protection, but
9 also Substantive Due Process. They were somewhat
10 run together in different complaints.
11 Q. What if any evidence did Mr. Giuliani
12 present that the Biden observers had been treated
13 differently from the Trump observers?
14 A. In the oral argument and the first
15 amended complaint, basically none. And the
16 courts, both the district court and the court of
17 appeals, found that.
18 Q. Found?
19 A. That they were treated evenhandedly.
20 Q. Yeah, okay.
21 A. That they were treated evenhandedly.
22 Q. Right, okay. No, your voice dropped

Page 593

1 off a little.
2 A. Oh, I'm sorry.
3 Q. And what if any evidence did he present
4 of improper vote counting in the -- before Judge
5 Brann?
6 A. None.
7 Q. And how did Judge Brann in the district
8 court resolve these issues?
9 A. Justice -- justice -- Judge Brann held
10 that the -- the democratic observers and
11 republican observers were basically treated
12 evenhandedly, and so there was no violation.
13 Q. And what did he find with respect to --
14 oh, that's Equal Protection. What about with the
15 argument about substantive process and the
16 observational boundaries? What did Judge Brann
17 find about that?
18 A. Well, the substantive Due Process
19 argument in the first complaint Judge Brann
20 considered to be the overall or overarching fraud
21 claims, and he thought that Mr. Giuliani had
22 withdrawn them.

Page 594

1 Q. Okay. Now was Judge Brann's opinion
2 appealed to the 3rd Circuit?
3 A. Yes, sir.
4 Q. And what actually was the issue that
5 was appealed to the 3rd Circuit?
6 A. The actual issue appealed to the 3rd
7 Circuit was whether Justice Brann had erred by not
8 allowing the filing of the second amended
9 complaint.
10 MR. FOX: And can we put up
11 Disciplinary Counsel Exhibit 16, please.
12 BY MR. FOX:
13 Q. And do you recognize this as the 3rd
14 Circuit opinion?
15 A. Yes, sir.
16 Q. All right. I want to -- I want to
17 refer to you -- you to three specific --
18 CHAIRMAN BERNIUS: Mr. Fox, before you
19 continue, how much more do you have for this
20 witness?
21 MR. FOX: You know, I -- if -- if -- I
22 would say that I -- I have -- after this 3rd

Page 595

1 Circuit I have -- I'm going to ask him a little
2 bit about the provisions of Rule 11, then I'm
3 going to ask him for his opinions. I could
4 probably -- it's 5:00. I mean, I'm sure I
5 can wrap it up by 5:30, but if you want --
6 CHAIRMAN BERNIUS: Yeah, he's going
7 to -- he's going to have to continue tomorrow in
8 any event, so I think this might be an appropriate
9 time to break for the day.
10 MR. FOX: Okay.
11 CHAIRMAN BERNIUS: Anything else we
12 need to discuss before we recess?
13 Again, Mr. Fox --
14 MR. KAMINS: Mr. Chair, I just wanted
15 to -- as far as tomorrow's schedule, we want to
16 plan for our witnesses. We should have them
17 available for -- I'm not sure time wise. We
18 should plan for the afternoon, or --
19 CHAIRMAN BERNIUS: I would -- no, I
20 think that --
21 How much time do you have, Mr. Fox, on
22 time.

Page 596

1 MR. FOX: I'm going to finish with Mr.
2 Ortiz in 15 to 30 minutes.
3 MR. KAMINS: Oh, okay.
4 MR. LEVENTHAL: All right, so we'll
5 plan -- we'll plan then for the morning, sometime
6 in the morning.
7 CHAIRMAN BERNIUS: You'll advise Mr.
8 Fox who you're calling?
9 MR. LEVENTHAL: He knows.
10 MR. KAMINS: No, we've given him a list
11 of --
12 MR. FOX: Well, but I don't know which
13 ones in which order, as the chair ordered at the
14 outset.
15 CHAIRMAN BERNIUS: You can do that --
16 you can do that when we -- off the record but I --
17 I want you to tell him who you're going to call
18 and in what order tomorrow, so he --
19 MR. KAMINS: Yes, we will do that.
20 CHAIRMAN BERNIUS: We will do this in
21 a -- in a civilized fashion.
22 MR. KAMINS: Everything is civilized.

1 CHAIRMAN BERNIUS: Anything else we
2 need to discuss?
3 Okay, thanks. We're adjourned for the
4 day. See you at 9:00 a.m. tomorrow.
5 (Whereupon at 5:02 p.m. the hearing
6 stood in recess until Wednesday, December 7, at
7 9:00 a.m.)
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1 CERTIFICATE OF NOTARY PUBLIC
2 I, KIM M. BRANTLEY, C.S.R., the officer
3 before whom the foregoing hearing was taken, do
4 hereby, certify that the proceedings were taken by
5 me in stenotype and thereafter reduced to
6 typewriting under my direction; that said hearing
7 is a true record of the proceedings; that I am
8 neither counsel for, related to, nor employed by
9 any of the parties to the action in which this
10 hearing was taken; and, further, that I am not a
11 relative or employee of any counsel or attorney
12 employed by the parties hereto, nor financially or
13 otherwise interested in the outcome of this
14 action.
15
16
17 KIM M. BRANTLEY, C.S.R.
18 Notary Public in and for
19 the District of Columbia
20
21 My commission expires: October 31, 2024
22

A		
A-117 274:16	346:13 371:5 534:14	330:11 346:19 349:7
a.m 273:2 423:21 597:4,7	541:7 546:3 562:13	385:12,13
abandoned 311:9,13	563:15 577:1 594:6	affidavits 285:11,19
363:18	ad 272:3 273:2 274:2	288:17 289:12,18
abandoning 311:11,13	582:9	293:10 294:5,14 295:1
abated 527:2	ADA 531:21	296:6 298:16 329:17,18
Abelson 417:7	add 294:4 312:20 340:10	330:14 334:9 341:7,14
ability 315:22 477:4	340:10 341:2 490:22	342:3 347:17 380:15
521:10,11 522:8 550:21	491:16	381:7 475:3 502:21
589:17	added 339:5 340:21	519:14,15,18 520:4
able 297:19 314:1 360:8	480:17 486:17 487:6,18	522:14 527:10 586:10
362:17 365:5,11 376:7	488:1	590:8
385:8 386:2 388:21	adding 340:8 482:13	affirm 528:21
477:4 493:15 552:21	addition 295:11 438:4	affirmed 418:18,19 547:6
562:18 563:14 579:16	560:9 569:1	afternoon 595:18
584:7 588:7,9	additional 341:2 344:15	aggravation 278:2
aborted 353:4	380:4 470:11 491:18	aggregate 505:16
absence 424:19	525:2 586:6	ago 308:3 374:6 376:19
absent 425:4 552:20	address 333:12	471:22 551:8 559:22
absentee 319:4 332:17	addressed 435:16	agree 309:2 312:6 323:2
335:5 355:12 371:5	adequately 345:19	339:9 341:18 350:1
390:2 397:19 398:3	adjourned 597:3	361:8 367:16 379:1
420:22 425:10 438:19	adjournment 278:9	399:6 401:13 414:13
439:8 446:7 450:1	279:22 281:4	421:15,16 425:14 435:8
458:19 503:21 504:9,18	adjudicate 314:2	467:16,22 470:16
544:20 545:6,7 547:1	adjusted 328:21	499:19 510:10 523:10
552:5 592:3	administered 531:21	540:20 541:3
absolutely 331:20 359:7	592:4	agreed 350:16,19,19
381:4 455:15 490:21	administering 591:4	398:21 457:18 493:8
522:18 538:21	administration 585:15	511:20 512:3 517:14
absorbed 455:10	588:20	523:8 526:1 547:2
abstention 558:9,10,11	administrative 277:6,11	560:14
559:2	539:7 588:20	agreement 289:3 477:15
absurd 327:17,18 350:15	administrator 589:10	ahead 289:9 347:10
522:17,18	administrator's 589:11	354:7 422:14 440:21
accept 328:4 500:19	administrators 570:14	446:3 449:16 453:16
acceptable 281:22	admissibility 461:19	476:5 561:7 584:12
accepted 363:5 421:19	admission 289:3,4	Aidala 275:5,15
569:13	admit 462:20 466:22	aimed 570:5
access 345:5 527:7	467:13	alerted 395:13
accurately 477:5	admitted 456:11 461:14	Alito 309:18 443:5 445:1
acknowledged 517:21	462:11,15 467:15,21	allegation 380:11 453:3
588:12 591:12	489:10	allegations 289:13 292:1
act 310:13 322:18 442:21	admitting 460:21 470:6	303:19 305:16 312:22
535:8,13,19 551:22	adopted 443:6	329:16 331:22 339:6
552:2,3 553:12,16	adopts 581:10	340:2 380:4,16 487:11
554:7 555:10 575:16	advance 583:21	487:14 490:4,16 503:6
acted 499:20,21	advantage 340:12	544:16 583:9,18 584:20
acting 482:7 538:5	adversaries 410:9 414:21	allege 303:5,7 306:4
action 477:5,16 480:11	415:1,7	342:2 499:19 572:3,11
598:9,14	advice 314:5 495:8	alleged 294:7,9 301:2
active 299:20,21	advise 281:14 596:7	302:16 305:2 326:4,10
activities 476:20	advisors 531:22	329:19 330:9 574:9,11
activity 572:5	advisory 281:21	574:12 585:14 590:12
actual 278:17 334:5	advocate 350:18	590:13
	affidavit 294:1 298:17	allegedly 374:7 498:7

537:22 538:1 573:17 574:19 amendments 416:15 America 580:10 amount 327:18,18 342:22 514:13 565:2 572:15 573:7 amounts 295:14 an-- 524:10 analyses 299:10 analysis 298:21 360:1 589:4 ancillary 569:2,11,12 and/or 364:12 438:18 577:13 578:7 580:3 Anderson 539:1,7,9 anger 296:16 announced 358:12 anonymous 320:20 answer 304:10 408:11,14 409:9 420:14 426:18 427:5,12,16 428:1,6 430:8,18 447:1 450:10 450:11,12 452:4,5,6,9 452:21 480:16 482:2 509:6 526:18,21,21 543:15 answered 427:6 answering 361:17 365:9 368:12 485:6 answers 356:12,13 Antarctica 320:4 anybody 400:12 anyway 295:2 392:16 581:13 apart 334:14 apologies 449:10 apologize 281:3 315:14 345:11 361:22 370:13 383:12 431:9 434:10 463:12 510:11 apology 573:14 apparent 585:10 apparently 296:15 443:6 521:10 appeal 302:11 303:16,21 317:15 336:2 appealed 571:6 594:2,5,6 appeals 272:1,10 440:6 592:17 appear 312:20 329:16 353:12 366:19 491:6 571:3 574:18 APPEARANCES 274:1 275:1 appeared 572:3 591:19	appears 288:12 383:6 441:8 571:2 588:4 appellate 425:17,21 426:1 477:6 563:11 Appellee 477:3 Appellee's 477:5 application 440:16 443:9 443:19 444:11 453:19 570:6,7 applications 397:19 398:3 applied 310:3,3,5 339:15 401:15 441:17 453:19 454:2 495:6 549:21 553:3 561:2,4 applies 414:1 539:5 apply 322:7 339:10 406:12 552:13,18 appoint 535:9 appointed 518:18 535:17 appreciate 409:6 appropriate 281:17 463:1 467:19 477:11 498:20 537:14 576:5 579:12 595:8 approval 438:19 515:17 approved 409:16,16 439:6 488:5 approving 360:12 approximately 296:6 arbitrary 438:18 549:6 area 297:16 395:18 480:6 587:22 areas 532:20 arena 507:3 arguable 337:1 argue 309:4,5,20 312:19 313:20 315:21 322:9 337:1 349:22 350:3 351:2 355:9 376:6 384:18 391:7 392:19,19 404:7 410:19,21 411:8 420:12 489:1,6 582:19 argued 314:8,9 333:4 367:19 368:11,12 378:14,17 379:15 391:18 393:22 395:20 403:14 410:15 417:2,5 537:21 568:7 581:17 arguing 316:9 348:15 368:14 373:5,7 379:2 387:10,15 392:1,5 399:13 420:8 583:2,3 argument 278:20 285:9 285:10 291:15 306:11 308:9 309:9 310:8,10	310:18 311:3,9,14,16 314:16 316:15 317:8 318:13 336:2 337:7,17 346:11 350:12,15,17,18 362:4 367:6,15,21,22 368:3,3 372:18 378:3 379:9 381:17 384:7,22 388:10 391:6 393:3,16 394:10 407:12 415:5 420:4 444:17 445:3,5 453:18 455:1,11 456:22 459:7 468:13 507:18 523:6,7,9 540:11,19 567:21 568:3,6 570:13 571:4 574:16 582:15,17 584:3 590:4,22 591:17 591:19 592:14 593:15 593:19 arguments 314:15 315:16 325:20 333:2 350:21,22 392:20 394:13,14 395:6 395:8,9 582:1 583:20 584:17 arises 280:5 281:9 453:18 arising 346:11 540:11 Arizona 301:8,11,12 304:8 363:16 508:8 Arlington 483:22 484:3 arose 401:9 562:2 Article 324:22 364:1 403:2,4,5,6 534:1 580:17,21 581:3 articles 325:9 375:21 376:10 377:15,21 532:3 Ascoli 529:19 Ashenfelter 546:20 aside 340:8 382:15 396:2 407:9 487:13 535:18 576:17 asked 285:10,14,18 286:1 288:3 298:5 300:18 322:5,7 323:4 353:6 354:17,18 365:20,22 366:13 367:10 368:9,11 463:4 468:12 473:18 481:18 509:20 512:13 514:10,21 517:2 577:8 asking 298:5 299:12 315:1 319:16 320:6 327:22 328:7,10 331:2 342:20 351:21 352:1,9 352:12 353:22 354:1,17 363:22 366:5,7,20 390:21 423:3 429:6 aspects 504:3 532:12 assemble 506:13	assembled 484:9,11 assembly 352:5 428:15 580:6,13 assert 317:5 364:1 asserted 366:14,16 510:14 assistant 274:15 492:5,8 assistants 385:18 455:20 associate 530:16 association 347:4 410:7 472:16,17 assume 304:13 486:2 508:4 Assuming 287:22 attach 509:5 attached 509:6 attachments 509:1 attempted 295:18 attempts 297:22 attendant 435:14 attention 434:7 440:14 508:7 575:1 attitude 375:4 attorney 274:8,10 275:22 469:2 482:7,12,13 519:9 520:16,20 524:10 535:9 598:11 attorneys 277:12 attribute 321:11,12 audio 285:19 308:13 auditorium 479:16,17 August 286:1,5 287:4,5 287:15 429:21 authenticated 467:20 authentication 471:7 authoritative 558:17 559:13 authorities 546:7 574:6 585:1 authority 385:22 395:16 396:1 399:18 402:11 407:10 534:7,19 536:4 536:20,21 538:6,14 542:17 570:16 580:13 580:16,22 authorization 578:12 authorized 291:19 310:14 476:19 available 279:14 295:12 299:9,16 322:16 458:10 511:6 595:17 Avenue 275:6 avoid 281:10 award 328:13 aware 292:13 300:21 304:16,20 413:17 415:9
---	---	---	---

415:16,20 416:14,20 417:4,14 418:4,8 419:15,17,18 513:14 551:13 562:4 576:18 577:17 AZADEH 275:11	385:9 386:2,20 389:1,6 390:2,6,20 392:15 398:7,15 420:22 421:13 421:18,18 435:18 438:16,20 441:1 446:8 446:16 450:1 454:20 473:11 477:4 497:14 505:1,3,5,19,20,22 540:13 543:3 544:20 545:3,4 547:1,21,22 555:1,4 557:4 562:6 578:10,12,18 579:7,8 579:16 586:3,14 587:17 589:7,13 590:18 592:3 bar 272:9,11 347:4 410:7 472:16,17 488:14 barriers 517:22 Barry 275:4 288:1 base 589:4 based 284:22 298:21 306:6 307:14 318:16 326:15 330:6 331:3 342:7 350:7 352:10,13 353:11 355:4 356:3 361:6 375:20 377:20,20 377:21 390:9 404:12 408:6 443:13,14 495:5 500:2,20 501:12 551:15 562:15 574:9 578:15 588:8 589:6 590:15 bases 285:13 basic 311:7 basically 277:13 382:5 443:13 444:10 503:15 515:15 539:17 544:20 546:21 549:18 559:7 570:13 592:15 593:11 basis 327:1 328:8,11 341:13 350:22 367:1 384:6 491:14 498:10 509:18 510:9 511:9 513:12 561:4 577:16 582:20 588:7 589:10 basketball 479:18 Bates 541:20 bathroom 478:2 Beach 374:10,18 bearing 572:17 becoming 313:8 began 367:22 506:19,21 530:18 553:16,22 562:5 begging 488:8 beginning 288:14 289:11 313:3 323:15 346:5 353:11 359:9 391:12 438:4 501:22	begins 358:2,7 begun 326:11,17 behalf 273:5 274:10 275:2 278:21 283:6 330:20 432:16 500:4,15 510:14 525:9 529:8,12 582:1 behavior 573:2 belief 453:3 believe 277:19 298:15 309:16 312:4 327:18 329:7,17 330:1 347:3 362:9 369:13 374:3 387:14,14,15 390:11 400:10 402:10 471:2 480:13 485:20 496:17 512:2 515:18 519:9 523:12 535:13 536:12 536:15 547:11 549:19 552:3,19 553:8,13 556:15 558:14 563:13 564:9 565:1 566:20 567:10 569:9 571:11 574:11 587:11,13 589:14 590:6 believed 324:21 512:3 belonged 570:17 bench 556:12,13 benefit 277:11 321:20 404:6 benefited 347:15 Berkley 531:13 Bernie 455:1 457:5,7 460:8 465:4 509:17,17 Bernius 274:3 277:2,10 279:4,15 280:2 281:6 281:19 282:2,11,19,22 315:5,8,11,15 316:1 337:21 356:4,18 357:6 357:11,15 361:15,20 364:22 365:5 366:4,7 366:11 407:6 416:6,19 422:20 423:7,15,19 424:4 431:14,17 432:10 432:12 434:2 442:22 443:15 449:11 456:11 461:18 463:6,15 466:5 467:2,22 470:16,20 471:8 478:9,15 479:1 481:7,9,13,15 482:5,17 483:2,12,20 484:8,13 484:20 485:10,14 486:1 486:8,15,21 487:5,17 488:2,17 489:8,14,17 490:2,13 491:3,19 492:12,20 493:2,11,22	494:7,14,19,22 495:10 495:17,19 496:2,7,14 496:22 497:6,22 498:5 498:11,17,22 499:9,13 500:1,12,20 501:10,18 502:2,10,17 503:4,13 505:9,15 506:1,5,10 507:8,12,17 508:1,10 508:14,18,22 509:8 510:6,11,18 511:15,21 512:9,13,13 514:10 516:6 519:13 523:14 525:1,4 526:3 527:18 527:21 528:4,10,15,20 529:4 532:22 533:2 541:2 543:14,19 594:18 595:6,11,19 596:7,15 596:20 597:1 Bertuna 275:5,15 best 330:21 343:5 366:8 401:5 410:6 435:10,18 455:6 471:20 506:15 better 290:7 300:17 308:22 314:3 350:11 516:3 540:7 584:8 beyond 329:2 397:10 405:19 572:16 Biden 303:2,9 321:13 338:18 347:10 360:17 439:3 575:12 592:12 bifurcated 277:14 big 371:9,11 372:4 475:1 559:8 Biggs 300:13 binoculars 355:19 391:21 392:7,8,10,12,21 bipartisan 532:9 bit 298:3 310:7 318:12 356:19 381:4 409:6 456:15 467:9 474:20 475:16 532:5 561:8 565:21 566:15 569:19 572:1 595:2 bits 295:5 blanche 434:5 blow 359:16 369:5 370:2 409:6 427:19 433:2 541:21 575:5 board 272:2,5 297:5,7,10 297:13 398:8 477:9 542:10 544:20,22 549:21 boards 338:15 347:10 438:10,14 554:17 555:14 557:1 566:11 572:5,6 574:12,13,21
---	---	---	--

<p>591:4,21 592:1 Bob's 292:10 Bobb 465:5 509:16 body 402:18 535:1,2 Bognay 571:13 Bognet 571:12 boiled 307:2 Bondi 469:2 472:6 Boockvar 309:19 436:11 452:15 497:7 516:7 541:11 554:11 558:4 559:1 560:4 563:3 565:6 566:11 Boockvar's 495:9 book 336:10 BORAZZAS 275:21 357:8 478:12,20 528:12 Boris 474:2,2,19 509:20 Boston 530:19 bother 505:6 bottom 358:2 449:1 576:9 bound 352:19 354:20 404:7 boundaries 517:20 519:19 520:8 585:19 586:21 591:16,21 593:16 boundary 573:20 bounds 428:16 bounty 398:2 boxes 554:22 560:13 branch 435:19 Brann 311:15 314:16 316:16 317:2 348:15 362:5,13 366:15 367:6 367:15 372:19 381:18 382:16 383:17 385:1,22 387:10 393:3 394:10,15 395:20 396:2 407:12 409:10 410:16 414:15 416:1,12 418:15 507:15 565:15,16,20 582:15,18 582:20 583:1,4,14,14 590:4,14 593:5,7,9,16 593:19 594:7 Brann's 304:18 594:1 Brantley 272:22 273:3 598:2,16 Brawn 565:13 breach 352:11 break 337:12,19,22,22 356:5,22 357:3 422:18 422:19,21 423:3,12,17 449:13 478:3,6 528:6 528:11 595:9</p>	<p>breakout 357:8 478:13 528:13 Brewery 588:18 Breyer 530:19,21,21 brief 383:8,13 428:10 448:17 449:6 469:9,13 477:6 509:4 527:17 briefing 467:6 483:8 briefly 284:6 524:18 573:11 bring 292:12 330:8 374:15 376:5 485:7 499:14 511:22 528:5 537:14 broad 376:3 501:4 broader 502:7 broadly 476:16 477:2 549:21 brought 326:14 395:10 500:14 512:17 514:18 515:8,15 538:2,3,17 564:18,21 Broward 374:10,18 Brozost 274:7 512:11,12 512:21 513:6,10,17 514:11,15 515:2,10 516:5,17 517:12,18 518:9,22 519:5,18 520:6,12,15,18 521:1,9 521:21 522:6,8,12,19 523:11 built 307:6 328:15 bunch 374:17 377:6 burden 351:3 539:18 540:2 burdens 435:16 Burdick 539:12 bus 416:3 Bush 329:1 364:6 395:21 396:3 400:18,20 401:9 401:15 404:10,21,21 405:7 407:10 547:14,18 547:19 548:5 550:2 551:15 591:1,3,6 by-mail 438:22</p> <hr/> <p style="text-align: center;">C</p> <p>C 274:3 277:1 C.S.R 272:22 598:2,16 calculation 385:8 California 531:12 call 299:1 317:21 321:3 412:10 469:4,5 537:10 574:22 596:17 call-in 379:17 called 283:2 402:21</p>	<p>405:14 411:12 420:21 424:15 492:13 509:11 509:15,15,16 520:16 529:8,18 538:22 544:4 551:22 554:10 556:3,12 558:3,9 563:18 570:11 571:11,15,16 calling 596:8 camera 357:12 campaign 302:20 303:1,2 303:8,9 338:19 398:10 477:6,8 482:3,14,20 483:7 484:1,2 486:7 494:12 542:17,20 548:5 560:7 566:6 campaigns 314:14 Campus 446:7 canceled 296:22 297:1 389:6 390:6,21 candidate 321:19,21 338:18 353:18 374:2 379:8 539:8,11 544:15 544:18 545:15,19,22 546:14,19,22 547:2,5,9 548:1 572:7 573:4 candidates 318:16 585:20 Cannon 475:19 476:2 479:6 523:3 525:17 Canon 350:19 canvass 360:11 420:21 424:9 450:1 555:8 557:3,13 560:17 562:12 564:12 canvassed 589:7 canvassers 562:14 563:15 564:7 canvassing 338:20 345:6 438:15 448:6 476:17,20 543:4 557:2,4,10,16 562:3,5,17 563:18 585:21 589:17 capability 549:2 capacity 482:14 car 455:11 472:6 card 548:16 carefully 305:6 CAROLYN 274:5 carried 340:4 564:4 carry 546:7 carte 434:5 Carter 368:20 370:4 532:10 Carter/Baker 386:17 case 276:2 297:21 302:7 312:12 317:4 326:13,14 326:15 327:14 343:2</p>	<p>348:15 354:15,16 355:10,10 361:3 365:12 378:9 386:8 392:6,6 396:6,7,9 397:3,9 399:16,18,21 401:14,15 407:1,17,18 410:11 411:12,13 412:4,4,9,13 412:17 413:6,22 414:1 417:4 418:12,22 419:1 419:13 420:8,10,21 421:1,5,16,22 422:3,16 424:9,10,15 426:21,22 427:4 429:4 431:13 439:16 440:5,8,14,15 444:5,18 446:13,19 447:10,17,22 448:8 449:7,19,20,21 450:20 451:2 454:3,5 463:13 485:8 489:1 492:11,18 496:9,20 498:9,16 501:22 502:1,13 504:3 504:16 508:3 510:10 511:18 524:7,13,17 538:2,4,4 539:5,12,16 541:11 543:12 544:4,6 544:8,11,13,14 545:9 546:9 547:13 549:13 550:13 551:9,13 554:14 556:3,18,21 558:3,6,8 558:12 559:1 560:4 563:18,21,22 564:21 565:6,8,19 570:21 572:9,12 577:17 581:16 581:18 584:20 cases 299:6 307:3 313:2 327:11 334:13 380:1 392:21 395:19,20 399:16,20 407:22 414:19,21 417:3 465:4 487:9 515:15 537:19 559:21 cast 292:15 298:8,12 301:4 302:21 305:3 318:17 320:12 321:7 335:9 353:17 354:2 358:17 396:17 499:3,5 499:6,7 504:11 515:22 517:17 534:11 576:14 578:13 579:7,10 categories 296:14 298:19 505:4 579:12 584:21 586:13 category 294:18 300:8 385:5 504:1 caught 374:15 cause 480:10 515:18</p>
--	--	--	--

<p>caused 417:9 caved 347:11 Celebrezze 539:8 cert 445:10,11 547:6 certain 284:22 317:4 328:15,17 337:8 385:5 397:18 457:4 459:5 464:3,18 472:10 490:16 535:10 567:9 572:15 586:2 certainly 309:21 316:11 366:17 394:20 395:13 404:5 487:4 500:18 523:5 572:6 CERTIFICATE 598:1 certification 546:5 certified 328:17 certify 329:11 578:14 598:4 certifying 324:20 577:14 577:19 578:8 certiorari 439:19 440:4 443:7,12 444:2,3,4,12 444:13 cetera 278:22 286:19 459:4 chad 548:17 chads 355:13 405:22 406:2 chair 274:4 278:16 337:11,20 365:19 395:1 444:8 456:16 460:20 466:11 467:18 485:4,4 541:1 595:14 596:13 Chairman 277:2,10 279:4,15 280:2 281:6 281:19 282:2,11,19,22 315:5,8,11,15 316:1 337:21 356:4,18 357:6 357:11,15 361:15,18,20 364:22 365:5 366:4,7 366:10,11 407:6 416:6 416:19 422:19,20 423:7 423:15,19 424:4 431:14 431:17 432:12 434:2 442:22 443:15 449:3,11 456:11 461:18 463:6,15 466:5 467:2,22 470:16 471:8 478:9,15 479:1 481:7,9,13,15 482:5,17 483:2,12,20 484:8,13 484:20 485:10,14 486:1 486:8,15,21 487:5,17 488:2,17 489:8,14,17 490:2,13 491:3,19 492:12,20 493:2,11,22</p>	<p>494:7,14,19,22 495:10 495:17,19 496:2,7,14 496:22 497:6,22 498:11 498:17,22 499:9,13 500:1,12,20 501:10,18 502:2,10,17 503:4,13 505:9,15 506:1,5,10 507:8,12,17 508:1,10 508:14,18,22 509:8 510:6,11,18 511:15,21 512:9 519:13 523:14 525:1,4 526:3 527:18 527:21 528:4,10,15,20 529:4 532:22 533:2 541:2 543:14,19 594:18 595:6,11,19 596:7,15 596:20 597:1 challenge 321:22 322:1 404:12 456:5 477:10 497:3 513:11 519:1,6 537:14 557:4,7 562:14 592:3 challenged 454:20 561:15 562:11 challenges 538:8 539:6 570:8 challenging 336:19 496:15 513:20 515:13 515:13,16 539:9 570:5 572:9 chance 313:7,15 334:19 362:20 363:4 394:17 407:7 455:9 516:22 chances 516:3 change 403:21 517:4 567:4 568:17 573:16 574:1,7 changed 309:14,20 362:21 363:21 365:21 367:1 385:2 414:2 491:1 573:12 587:8 changes 311:4 445:14 492:8 493:5 515:14,16 changing 306:19,19,20 308:4 311:1,7 385:19 character 280:8 characterization 421:16 characterize 583:8 characterizing 583:11 charge 481:18 482:3 charged 557:19 Charges 408:11 chart 451:11 454:7 check 296:21 337:4 checked 474:16,18 488:12 504:13</p>	<p>Chicago 376:18 chief 403:9 457:8,11,17 457:20 531:22 choose 516:2 580:6,14,17 581:8,9 choosing 534:8 chosen 516:17 534:10 581:1,11 Christiani 295:8 509:16 Christiani's 292:11 Christie 465:5 Christina 287:21 292:9 509:16 Christine 475:19 Christmas 365:3 chronology 481:16 circle 449:13 circuit 300:22 301:18 302:9 303:4,22,22 304:17 305:1 314:13,17 315:2,19 317:3,5 396:5 396:6 404:11,16 411:13 418:18 440:7,22 441:3 443:10 445:9,12,15 508:2 530:19 540:20 541:4,10,16 543:13 544:4 545:9,16 546:16 547:6 571:7,7,11 594:2 594:5,7,14 595:1 Circuit's 441:15 442:14 circular 522:7 circumstances 343:5 356:1 386:11 400:21 405:8 420:10 494:2 535:10 537:13 550:17 564:11 572:17 circumstantial 291:10 299:5 citation 412:19 414:6 cite 372:19 383:7,11 385:21 400:13 414:22 420:22 422:7 426:18 439:13 cited 338:3 393:2,7 395:8 396:1 403:8,11,12 411:7,7,10,11 412:6,19 413:6 414:20 421:16 422:3,16 427:5 429:4 431:3 451:7 cites 542:17 543:4 cities 372:20 534:20 citing 401:18,18 citizens 301:20 326:6 495:2 city 339:20 340:13,19 373:10 376:17 530:17</p>	<p>civil 376:14 532:16,17,21 538:4 572:13 575:15 583:7 civilized 389:19 596:21 596:22 claim 311:17 314:11 317:20 318:1 344:5 378:22 379:7 480:12 497:9,12,13 499:15 501:11 504:8 510:13 511:2,22 542:21 562:14 562:15 572:21,22 573:1 573:8,20,21 580:16 589:6 590:15 claimed 492:6 503:20 591:2 claiming 572:10 claims 285:13 317:6 349:19 391:19 490:16 500:14 538:17,18 560:12 569:19,21 570:3 570:10 571:10,17 573:11,16,18 574:1,3 582:20 583:5 593:21 clarify 289:6,7,9 443:16 481:10 clause 308:9 310:7,15 311:17 314:11 316:10 317:6 318:2 324:22 364:2 403:2,6,7 404:13 481:4 490:10 534:2,6 541:5 542:13 571:17 Clauses 575:15 clear 285:16 307:1 318:18 388:14 390:4 402:15,16,17 405:16 427:9 447:21 461:1 464:4 523:5 558:15 571:22 572:2 574:11,12 576:2 clearer 445:21 clearly 289:11 364:6 441:9 451:4 462:4 522:13 clerked 530:22 clerkship 530:18,20 531:3 client 325:22 326:1,16 330:21 331:1 337:8 351:2 355:7 404:6 482:8 523:10 clients 494:20 524:4 close 346:12,21 541:6 564:2 closely 562:17 closer 336:14 393:9,10,14</p>
--	---	--	--

<p>526:1,12 565:3 closest 402:18 480:3 closing 309:15 cochaired 531:19 cocounsel 396:9,11 492:6 494:5 Code 543:1 codefendant 511:12 collaborated 573:4 colleagues 314:6 college 530:4,6 534:11 colloquially 376:16 colonel 587:11,11 588:2 color 538:6 Colorado 567:9 Columbia 272:1,10 273:5 598:17 column 349:1,17 541:22 550:9 combined 502:8 come 284:2 294:8,9 302:1 309:16 322:21 330:11 383:10 398:3 408:4 415:6 416:22 417:12 426:12 488:20 492:20 493:4 510:4 516:1 536:17 555:21 556:1 558:19 563:3 565:9 573:22 576:3 coming 472:7 507:15 566:19 588:9 commander 482:19 commencing 273:2 comment 334:7 351:7 356:15 550:20 commission 371:22 532:1 532:6,7,9 598:21 committed 375:1 committee 272:3 273:3 274:2 277:16 278:6 339:11 531:20 common 297:20 312:21 379:9 524:14 commonly 323:8 commonwealth 428:21 436:11 438:9 476:15 477:1,14 563:9 compared 378:10 comparison 439:5,7 445:6 557:15 560:16 comparisons 557:2 compatible 487:8 compel 578:14 compelling 408:8 compiled 454:16 complain 410:9 412:1</p>	<p>complained 339:19 392:11 527:11 548:5 complaint 301:1,2 303:11 304:19 305:4,20 306:3 306:3 307:22,22 308:10 310:10 311:20 312:6,10 312:18 314:12 317:19 317:21 323:4 326:12,15 330:8 331:3,5,13,14,17 331:22 332:1,5,12,12 332:14 334:10 338:5 339:3 340:22 341:21 342:6,12,18,18 343:3 343:16,21 344:3,16,17 344:22 346:2 350:6 351:9,18 353:8,10,11 356:3 358:1,14 368:15 390:10,13 394:11,12 397:10 399:10 404:12 409:13 418:12 436:14 437:9,10,17 480:10,18 480:19 486:10,18 487:7 488:5 489:9,19,20,22 490:3,5,8,15,17,19 491:5,5,6,13,14,17,21 491:22 492:2,3 493:6 493:10,12 506:14 509:7 514:8,14 566:17,19,21 567:1,12,17 568:12,21 569:1,10,12,20,22 570:1,4,10 571:1,1,3,5 571:20,21,22 572:16 573:11,12,15,17 574:1 574:2,7,8,19,20 575:18 575:21,22 576:1,2 577:2,3 583:16 591:19 591:20 592:15 593:19 594:9 complaints 313:19 322:5 329:21 355:2 407:11 410:10 507:14 570:2 582:12 583:13 592:10 complete 279:11 368:2 441:22 completed 397:9 399:10 completely 329:4 353:21 367:5 536:13,15 complex 300:15 complexities 550:19 compliance 477:5 complicated 448:13 complication 520:2 complied 522:22 comport 360:13 445:2 compromise 564:17 conceivable 502:7</p>	<p>concept 363:22 389:18 concern 345:17 491:11 538:5 concerned 365:3 416:1 499:13 539:13 concerning 545:4 554:6 concerted 572:4 concluded 282:6 283:8 283:15,22 concludes 528:3 conclusion 307:7 315:18 315:21 337:2 399:5 402:1 414:18 521:5 conclusions 327:4 conclusive 410:2,12 conclusory 341:19 concomitant 435:16 concur 451:13 concurrence 447:20 448:15,21 condition 497:15 conduct 360:16 368:6 438:14 533:18 534:15 550:21 575:11 conducted 308:2 377:10 548:3 568:3 conducting 309:10 conference 484:4 conferring 403:9 confidentiality 435:17 confronted 294:10 confuse 495:20 confused 301:10 303:10 316:7 318:19 347:3 520:7 confusing 318:20 319:16 450:18 451:14 471:22 495:8 558:2 566:18 confusion 312:5 414:7 Congressional 534:4 536:14 connection 461:17 conscience 377:7 consent 525:22 consequences 324:13 consider 354:19 414:10 considerably 295:1 consideration 280:22 400:20 550:16 considered 299:4 337:16 494:2 593:20 considering 441:16 444:2 583:15 consisted 572:2 consolidated 313:21 consolidating 313:2</p>	<p>conspiracy 362:10 366:15 367:17 368:4 373:11,14 574:10,18 conspired 544:18 573:4 constant 339:21 constituted 441:2 constitutes 350:12 constitution 310:16 325:1 364:2 402:10,15 403:3 425:2 428:17 433:11 575:15 577:10 578:5 580:1 constitution's 424:21 constitutional 311:4 339:14,14 402:15 425:10 428:20 439:2 517:10 534:1 537:20 538:7 545:18 546:13,14 547:3 561:9,15 573:5 590:12,13 591:17,18,18 592:6 constitutionality 336:19 539:14 constitutionally 425:9 contact 507:5 contained 287:10 289:12 290:12,18 490:5 555:5 570:10 contemplates 476:16 contemporaneously 487:16 contend 373:1 contending 389:2 content 503:16 contention 332:20 389:15 403:19 contentions 374:22 contest 397:4 537:5 contests 329:6 537:11 context 309:3 359:5 375:10 384:17 388:13 401:10 contingent 278:12 continuation 277:3 continue 278:5,8 316:3 434:22 435:1 478:17 552:20 558:20 576:6 594:19 595:7 continued 272:15 273:1 275:1 283:5 525:8 573:19 continuous 279:9 contours 435:15 contract 352:11 contradicted 518:4 contrary 336:13 499:7</p>
--	---	---	---

<p>contravention 435:7 contributed 312:17 contribution 489:12 contributions 278:21 controlled 338:14 377:4 controversial 325:8 565:22 controversy 329:3 convention 402:16 479:20 480:2 conversation 293:4 506:20 convicted 376:18 convictions 377:6 convince 402:9 coordinate 512:18 copies 285:11 copy 359:14 553:14 Corey 469:1 correct 281:18 288:7 305:4 307:11 310:16 324:20,21 328:1,8,18 328:19 331:14 334:19 336:16 339:3 345:6,20 346:2,13 351:1 362:14 371:7 372:21 375:14 378:15 380:9,16,17 381:19 382:2,13,14 385:3 391:16 396:6,7 396:14,17,22 397:4,19 398:10,16 401:10,12 402:22 405:10,11 406:13,20 409:13 410:18 411:19 413:7,16 414:12 418:13,16,19 419:2 421:1 426:3 429:1 439:9,10 446:20 460:16 462:3 486:12,14 490:1,22 495:13,14 496:10 500:16 503:3 512:19,20 513:4,5,13 516:11 518:2 519:1,11 520:9 523:4 528:8 538:9 540:7 541:11 551:11 555:10 559:22 560:21 567:17 581:1 590:1 591:13,14 corrected 430:17 434:11 correctly 290:21 319:4 344:6 451:7 503:10 corresponds 475:2 corruption 377:6 counsel 274:13,15 275:12 275:18 278:1 283:2,6 284:8 286:10 301:18 316:13 332:7 347:21</p>	<p>411:17 422:5,9 484:16 494:3 529:9,12 533:4 541:14 565:12 567:1,20 568:8,10 575:1 594:11 598:8,11 Counsel's 276:2 362:6 408:12 424:12 432:19 count 297:8 317:20 318:1 319:14 320:10,16 324:7 346:10 368:7 384:21 401:11 436:1 441:1 499:15 505:6,8 542:9 587:16 counted 313:7 319:11 320:9 324:10,10 330:3 332:18 333:8 334:22 335:3,7,14 360:5 382:13 384:20 385:6,9 385:16 386:14,21 391:9 442:10,17 446:17 498:2 498:7 500:11 504:14,15 505:1 547:22 548:17 555:3,6 587:18 counterparts 507:6 counties 295:5 360:5 387:11 388:4 391:9 496:4,6,6,13,21 497:8 497:10,17,17,19 498:3 499:2,21 500:5 501:17 501:17,19 511:2,5 512:1,4,6 516:8,18,19 516:21 527:9 534:19 566:12 585:7,8,12,17 585:22 586:4,16,18 590:17,19 counting 324:7 335:2 339:21 347:8 360:17 385:16 392:14 435:18 527:6 540:12 541:7 575:13 593:4 countries 389:22 390:1 country 278:22 327:5 373:9 389:19 391:4 457:13 483:9,15 487:9 country's 581:7 counts 480:14,15,17 481:1 490:9 571:2 county 293:4,7 321:7 332:18 333:8 338:15 339:20 344:4,6 374:10 374:10,18 438:10,14 454:20 456:5 464:1 495:3,4,12,12 496:3,8 497:15 498:16 499:5,16 499:20 501:1 535:15 542:15 589:9,12,12</p>	<p>couple 277:6 400:2 505:20,21 course 339:17 348:8 368:15 373:16 399:9 485:6 518:17 532:4 552:12 559:12 564:14 court 272:1,10 273:3 277:8,9 284:20 288:5 313:18 314:4,8 315:3 322:7,10,16,17,18,21 323:7,19 325:3,5,12 326:6 328:6 333:19 336:3,12,20 340:15 343:2 346:18 348:3,11 349:6 350:9 352:2,17 352:22 353:16 354:18 355:20,22 364:3 371:21 380:9,14 396:6 398:13 398:19 399:22 400:19 402:1 403:14 405:9,12 406:10,11 413:14,15 421:5,12 424:15 425:16 425:18,20,21 426:1,1 426:20,22 428:14,21 429:3 430:13,14,22 439:5,22 440:6 443:7 444:1,6 445:1,8,20 446:12,14,19 447:15 451:12 459:5 476:2 477:1 486:10 501:1 502:3 515:20,20,22 516:4 517:7 520:7,10 520:21 521:10 524:4 537:15 538:2 542:22 544:8,12 546:1,2,4,10 546:12,17 547:4,20 548:2,7,21 549:1,12,15 549:16,18 550:20 551:4 551:14 552:15 554:10 554:14,18,21 555:13,22 556:2,5,7,20 557:22 558:17,19,22 559:11,14 559:15,16,17,18,21 560:2,8,15 561:2 562:19 563:7,8,9,9,11 563:16,18 564:18 571:7 572:8 574:16 576:18 577:12 578:6 579:14 580:2,8 581:17,18 586:8 592:16,16 593:8 court's 315:19 328:3 476:15 477:14 479:6 521:22 545:10,14 556:16 557:14 courts 324:16 350:10 451:13 537:17,18</p>	<p>538:18 543:9 554:6 558:12 559:6,10 564:15 592:16 cover 503:15 504:19 covered 535:19 COVID 518:1 crazy 350:17 created 438:7 497:14 548:8 creates 414:7 creating 497:20 512:7 credible 520:20 criminal 376:12 critical 349:22 386:17 400:8 criticize 445:20 CROSS 276:3 432:15 cross-examination 365:12 525:8 crucial 473:7 cry 399:7 cure 303:7 309:7 318:13 433:17 434:20,21 435:2 435:3,9 436:9 453:5 495:6 496:12,16 497:2 497:19 500:6,9 501:5 501:13,14 503:7 504:2 516:7,10 542:19 554:18 555:15 570:7,7 573:21 590:14,15,17,20,22 cured 578:12 579:9 cures 373:10 curing 497:14 custody 509:10</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 276:1 277:1 Daley 373:15 damage 327:14 damning 354:12 Dan 528:18 Daniel 276:5 528:17,19 529:7,15 darn 307:1 374:5 data 333:22 334:4 date 285:22 287:1,3,11 287:14,15 309:15 328:17 360:13 377:19 412:22 413:9 414:6,8 419:10 426:13 440:17 441:2 446:15 451:17 534:9,10,12,12 dated 421:13,19 450:7,14 450:21 555:2 dates 377:19 430:10 David 494:15 566:7</p>
--	--	--	---

<p>day 279:22 313:18 347:8 348:14 379:18 380:2,3 418:22 419:4 424:20 425:1,5 455:8,10 457:2 468:19,20,21 472:4,4 481:17,17 504:6 505:5 506:19 527:2,3,3,7 529:21 555:2 569:3 595:9 597:4</p> <p>days 322:12 347:12 397:12 418:6 419:1,16 420:1 514:5 527:6 545:6 555:3 589:13</p> <p>DC 274:10,17 275:12,18 431:21 432:18 436:20 448:19 483:13</p> <p>DCX4 452:8</p> <p>dead 303:17,17,18,20</p> <p>deadline 328:21 329:1,10</p> <p>deadlines 328:15 329:2,4</p> <p>deal 299:22 394:3 469:4 475:1 491:10</p> <p>dealt 374:1 474:19 542:4</p> <p>debate 291:9</p> <p>December 272:13 597:6</p> <p>decide 277:17 278:6 279:20 280:14,17 321:12 326:8 352:3 538:19,20 559:18 581:12</p> <p>decided 350:4 362:22 400:9 408:6 412:20 413:15 417:8 429:18 516:19 522:15,15 551:17 558:4,20 559:11 559:16 563:9,12</p> <p>decides 522:3</p> <p>deciding 558:12</p> <p>decision 282:10,12 353:2 364:5 404:17 435:8,14 445:2 450:18 496:15 497:3 508:3 517:7 521:16 522:3,17,18 536:1 545:13 547:19 549:20 571:11 580:19</p> <p>decisions 364:3 451:12 451:12</p> <p>declaration 577:13 578:7 580:3</p> <p>declarations 283:9,12 284:1 285:11 287:10,22 288:3 291:2,6,7 293:11 294:2,6 340:6 380:15 502:19,20,20 503:5 505:11 506:2,6,11 507:13,21 508:12</p>	<p>509:10</p> <p>declare 545:15 546:2,5</p> <p>declared 320:12 337:6 358:17 360:21 545:20 547:5 576:14</p> <p>declares 307:5</p> <p>deduct 320:19</p> <p>deducted 320:15 321:10</p> <p>deem 322:11</p> <p>deemed 323:7 520:20</p> <p>deep 545:11</p> <p>defective 580:5</p> <p>defend 366:6 367:11</p> <p>defendant 302:22 338:14 360:5 495:12 496:9 498:2 499:1 577:18 585:7,8,12,17,22 590:17</p> <p>defendant's 438:18 575:11 577:9,14 578:4 579:22</p> <p>defendants 387:11 456:6 496:13 566:9 578:8,14</p> <p>Defendants' 360:16</p> <p>defending 312:5 356:16</p> <p>defense 523:6</p> <p>defenses 389:9</p> <p>defer 538:19</p> <p>deference 539:21,22 561:19</p> <p>deficiencies 590:17</p> <p>define 291:11</p> <p>defined 307:21</p> <p>defining 305:11,17</p> <p>definite 549:3</p> <p>definitely 390:1,15,16</p> <p>definitive 586:4</p> <p>degree 415:4</p> <p>Delaware 295:5</p> <p>delay 280:13 394:21 419:9</p> <p>delegates 311:6</p> <p>delegation 325:6 364:9</p> <p>deleted 490:18 511:10</p> <p>deletions 492:1</p> <p>deliberate 338:15 341:1</p> <p>deliberately 339:2 392:17</p> <p>democracies 391:5</p> <p>democrat 321:22 355:15 363:10</p> <p>democratic 339:11 340:13,19 362:21 373:10 436:6 452:14 472:20 518:19 544:18 554:11 592:1,4 593:10</p> <p>democrats 322:1 338:14</p>	<p>339:1,19 341:1 393:22 394:3,4 518:11,14,16 518:18</p> <p>demonstrably 364:19</p> <p>demonstrate 292:14 424:18</p> <p>denial 304:18 379:13 439:6 495:5</p> <p>denied 294:11 296:4,11 306:19 335:20 345:5 440:20 443:8 444:3 499:16 500:22 512:1</p> <p>denominated 320:7</p> <p>deny 572:7</p> <p>Department 314:7</p> <p>Depending 501:3,20</p> <p>depends 291:11 356:11 356:21 376:3</p> <p>deposition 567:10</p> <p>deprived 306:13 504:17 511:7 521:11</p> <p>DeSantis 374:18</p> <p>DeSantis/Scotto 374:16</p> <p>descends 324:11</p> <p>describe 290:8 372:7 376:16 445:3 471:12,15 471:16 479:9,12,14,15</p> <p>described 492:7 506:20</p> <p>describes 479:13 588:15</p> <p>describing 494:5</p> <p>description 468:10</p> <p>deserve 282:18</p> <p>designated 425:1</p> <p>designed 382:1,2,10</p> <p>detail 277:11</p> <p>detailed 285:12</p> <p>determinate 402:4</p> <p>determination 277:20 278:7,8 297:7 536:4 559:10</p> <p>determinations 406:12 406:13</p> <p>determine 313:12 334:4 334:12 353:18 364:8 374:11 391:2 477:8 566:1 567:2 579:8</p> <p>determined 308:5 346:20 534:17 548:2</p> <p>determines 534:22</p> <p>determining 442:9,11</p> <p>Detroit 293:6</p> <p>develop 405:1 511:19 551:6</p> <p>developed 397:7</p> <p>devolved 534:18</p> <p>Diamond 525:16 526:12</p>	<p>died 302:3</p> <p>difference 372:5 496:6</p> <p>differences 549:4</p> <p>different 288:13 292:4,5 294:16 296:14 307:4 310:19 313:22 320:8,8 332:1 367:5 400:15 405:1 410:8 453:20,20 480:2 496:4,5 503:12 503:19 504:6 531:9 548:12,13 550:22,22 551:6 560:12 561:10 584:2,19,21 591:3,7,7 592:10</p> <p>differently 303:9 305:18 379:8 548:14 591:5 592:13</p> <p>difficult 379:7 537:2 579:15 592:2</p> <p>difficulties 370:12,22 382:11</p> <p>difficulty 312:2 371:2 587:15</p> <p>dilute 499:2</p> <p>diluted 438:17 498:12,15 499:12 511:10,11 590:18</p> <p>dilutes 498:8</p> <p>dilution 498:4 499:14 502:9 560:6</p> <p>dimpled 548:17</p> <p>dire 276:5 529:11</p> <p>direct 276:3 283:5 290:12 290:18 291:7,11 298:7 299:5 300:19 303:19 326:7 434:7 452:13 485:8 533:6</p> <p>directed 353:17 438:14</p> <p>direction 598:6</p> <p>directly 306:4 320:10 398:9 511:9 572:3 588:12</p> <p>disagree 350:10 361:8 364:15 404:2</p> <p>disagreed 493:12</p> <p>disagreement 312:11 435:12</p> <p>disagrees 350:9</p> <p>disappeared 419:2</p> <p>disappears 570:19</p> <p>disavowed 331:13,16</p> <p>disbarment 410:1</p> <p>discarded 332:22</p> <p>disciplinary 272:7 274:10 274:13,15 275:12,18 276:2 277:3 278:1</p>
---	--	---	---

283:2,6 284:8 301:17 316:12 332:7 347:21 362:6 408:12 422:5,9 424:11 529:8,12 533:4 541:14 565:12 567:1,20 568:10 575:1 594:11 discipline 325:20 350:9 disciplined 372:12 disclose 587:21 disclosure 510:3 discounted 450:22 discovery 359:22 360:2 398:14 464:6 discretion 328:3 546:1 discrimination 338:17 discuss 278:15 281:8 395:18 424:14 595:12 597:2 discussed 283:22 287:11 293:5 559:22 590:9 discusses 558:9 discussing 284:1 584:3 discussion 284:4 318:3,4 323:15 420:21 514:17 514:17,19 533:16 disgust 296:16 dismiss 440:7 444:7 dismissal 404:12 dismissed 418:15 disparate 438:4,18 497:15 512:7 display 533:3 dispute 402:19 disputes 536:18 disputing 351:20 373:6 disrupted 308:14 dissent 443:17,18,19 446:21 451:13 475:22 476:4,9,12 477:17 dissented 440:21 dissenters 350:19 451:3 523:4 dissents 444:9 476:10 distance 476:19 503:8 541:6 543:3 distancing 348:5 554:2 Distillery 588:18 distinct 547:4 distinction 371:20 district 272:1,9 273:4 315:2,19 320:1 321:18 321:19 396:6 398:12,19 494:8 545:10,14 546:1 546:2,4,9,11,16 558:5 565:7 571:6 574:16 586:7 592:16 593:7	598:17 districts 321:22 322:1 368:1 548:12 disturb 477:17 Ditto 542:19 divided 296:1 533:21 Docket 272:5,7 277:4 doctrine 401:21 558:11 document 342:4 352:10 352:13 358:21 359:1,15 378:20 379:11 409:14 437:8 455:2,5 465:16 467:4,15,20 469:7 568:1 575:4 576:6 documentary 279:6 documents 284:2,5,22 292:2 304:12 379:18 454:22 457:6 461:5,6,7 461:11 463:20 464:14 464:18,19,20 465:1,2,6 468:7,10 469:6 470:6,9 470:13,14 472:9 505:11 510:2,2,3 Doe 442:3 doing 299:19 313:13 327:21 339:1 340:12 352:22 354:19 387:2 392:18 423:5 453:17 473:8 476:22 523:2 557:19 dollars 352:12,13 Dominion 327:16 Donald 338:18 482:14 494:12 558:3 559:1 560:3 565:6 566:5 dont' 455:19 doubt 451:15 Dr 473:22 509:18 draft 487:6,7 drafting 486:10 Drama 530:9 draw 414:14,18 416:11 440:13,13 drew 414:14 Dripping 588:19 Driver 588:17 driver's 553:14 drop 554:22 560:13 dropped 571:1 573:18 592:22 Droz 300:11 455:5 462:13 463:1 465:8,10 Droz's 462:2,7,10,21 due 306:7,9,12,15,18 307:11,17 309:3,5,21 310:1 346:11 354:3	360:18 389:18 435:6 481:1 490:9 495:5 500:14 540:10 541:4 542:10,12 570:5 573:1 573:7 575:14 592:9 593:18 duly 529:9 duplicative 293:14 duties 425:6 duty 325:16 404:7 dye 515:22 <hr/> E E 276:1 277:1,1 424:1,1 E-mail 275:8 earlier 324:18 359:1 402:2 417:11 454:3 463:20 464:19 477:18 480:5 525:20,21 566:20 591:12 early 359:19 454:16 458:9 519:9 easier 351:12 easily 452:2 edification 476:1 editorials 375:6 educational 530:3 effect 470:14 501:9,21 518:8 525:18 553:18 effected 522:9 545:12 effectively 488:4 effectuating 433:13 effort 310:21 441:4 512:18 efforts 509:9 eight 296:19 349:2,3 358:5 359:13 374:21 407:15 409:1,2,4 412:19 413:2 473:15 527:6,7 575:3,6,8 either 278:20 289:22 293:8 321:19 453:22 472:15 550:6 571:12 587:20,21 electio 535:14 586:5 election 279:3 290:12,13 291:7,8 292:15 297:5,6 297:6,10,13 299:6 307:5,14 308:2,4,9 309:11 310:15 314:11 319:7 320:1 322:3 323:1 324:20 326:9 328:14,16 329:6 331:6 335:16 336:15 338:15 346:21 347:9 348:4 349:9 352:9 353:17	358:18 364:11 372:19 373:2,3,22 374:2,7,12 374:13,16 375:2 376:2 377:9,11,12,18 378:2 379:4 387:2 396:19 397:3 398:2,8 399:1,13 399:19 400:6,8 401:11 401:16 405:17 424:20 425:1,5 438:10,11,14 438:15 442:12,13 443:9 443:10,20 444:3,4,11 444:11 447:17 458:14 461:4 467:5 468:19,21 481:3,4,17,17 482:15 500:19 501:2,9,21 504:6 513:20 515:9,11 516:15 531:15,17,18,20 532:1,2,3,8,12,20 534:15 535:5,14 536:6 536:13,14,17 537:5,11 537:15 539:10 543:1 544:9,19,22 545:12,16 545:19,22 546:8 547:1 547:10 550:18 551:14 552:22 553:3,9 554:5 554:17 555:2,14 556:4 556:8 557:1,9 562:2 566:11 571:17 572:5,6 572:9,10,19,20,20 573:6 574:11,13,21 575:15 576:15 577:11 577:15,19 578:6,15,17 579:6 580:2,4,9,15,19 581:5 583:22 585:3,6,9 585:13,14,18 586:1 587:19 588:20 589:9,14 589:18 591:4,21 592:1 election's 307:6 election/elector's 310:7 elections 311:17 325:4 372:21 373:3 374:20 375:14,18 389:21 402:4 403:6 404:13 405:2 433:12 450:13,14 513:12 517:6 533:18 534:2,4,22 535:5 542:10 543:10 550:22 551:7 553:5,7,20 578:9 585:6,11 586:8 Elections/Electors 317:6 elector 311:17 316:10 424:17 425:3 481:3 552:7 electoral 326:8 534:11 electors 308:9 310:15 314:11 316:10 318:2
--	---	--	--

321:15 358:19 364:8 403:6 404:13 424:22 534:6,8,9,10 571:16 575:14 576:16 580:7,14 580:18,22 581:5,9,12 element 386:18 575:19 elements 441:9 572:14 elevated 402:14 eleven 436:21 eligible 552:16 eliminate 401:7,7 eliminated 363:14 elimination 363:13 email 275:9 286:14 287:2 emerging 410:11 emphasize 511:16,18 employed 299:15 442:1 598:8,12 employee 388:7 598:11 employees 518:20 employment 530:12,13 531:2 enacted 428:17 553:17 encourage 558:16 encourages 438:8 ended 465:3 endorses 477:1 ends 561:20 enforce 340:15 538:15 engaged 338:15 559:2 English 530:9 enormously 514:6 ensuring 438:10 enter 524:3,7 577:12 578:6 580:2 entered 348:4 384:20 388:9 504:8,18 525:16 entering 473:4,11 entire 310:18 320:22 365:21 373:9 485:11 498:16 501:15 entities 405:1 550:21 551:5 entitled 435:22 499:2,5,6 499:22 500:3 501:13 523:9 entity 405:8 enumerated 425:9 envelope 333:13 334:14 557:12 564:3 envelopes 555:5 environment 438:7 Epshteyn 474:2,2 509:20 equal 294:14 306:7 307:17 309:3,6,9 310:2 310:5 318:13 354:4	360:18 378:21 379:7,9 379:13 380:5 401:19,21 406:16 433:12 438:1 453:18 454:1 481:2 490:9 492:6 500:14 510:13 511:1 539:5 548:8 549:9 550:18 570:4 575:14 582:1 590:21 592:8 593:14 equally 296:1 equitable 327:22 328:5,7 329:9 equity 322:18 352:17 era 539:13 erred 594:7 error 557:20 errors 435:7 escape 511:17 especially 433:10 ESPOSITO 440:11 450:3 452:6,9,21 459:15 463:10 466:17 espoused 444:10 ESPOZITO 275:14 446:4 ESQUIRE 274:3,7,12,14 275:3,4,17,20 essentially 310:11 363:22 445:8 483:21 484:16 486:9 490:18 establish 368:18 393:1 425:12 573:5 583:21 established 403:19 404:3 405:12 424:17 513:7,11 513:19 estimate 298:21 299:1 301:7,9 estimated 502:21 et 278:22 286:19 459:4 Europe 387:7 evenhandedly 591:22 592:19,21 593:12 event 595:8 eventually 363:12 everybody 292:5 424:4 470:21 484:6 Everybody's 478:15 evidence 278:1,2,11 279:6,7 281:12 290:12 290:18 291:7,10,11,13 291:14,14,17 298:6,7 298:11 300:19 308:1 329:8 330:7 334:17 342:16,17 354:12 363:11 373:3 375:1,22 376:8 378:1,11 379:3	379:13,14 380:18,20 397:20 398:21 409:12 412:10 456:9 459:3,4 460:19 471:5 474:14 533:5 544:17 585:12,17 585:22 586:4,8,17,21 587:6,7,9,12 590:5 592:11 593:3 evidenced 585:2,7 exact 317:18 320:19 520:19 exactly 280:10 305:11 361:9 366:2 374:10 457:19 491:9 493:16 496:19 examination 283:5 333:15 432:15 533:6 examine 313:8 388:16 389:12 examined 283:4 333:10 388:15 391:2 529:10 examining 336:15 424:5 example 291:18 294:5 303:7 309:7,14 321:9 323:6 338:8 343:15 345:4 362:19 363:8 376:9 504:1 518:18 548:15 587:8 examples 509:5 586:15 excellent 488:16 exception 384:4 394:8 exceptions 389:8 394:4 425:9 518:15 excluded 313:6 380:6 385:7 472:8 504:22 505:2,5,19 527:11 excluding 338:19 exclusion 354:9 360:10 503:18,18 exclusive 306:17 excuse 305:19,19 351:6 406:19 465:15 475:12 485:5 526:4 543:14 566:18 executed 503:22 executive 275:22 307:1 515:16 517:8,8 executives 570:14 exercise 445:22 551:5 exhaust 514:21 exhibit 283:10 284:2,8,9 284:13 286:8 287:8,9 288:2 301:18 302:10 316:13 332:7 347:21 351:8,12 357:21 358:4 358:5 362:6 369:14,15	369:15,16 371:2 372:14 408:13 413:1 422:6,9 424:12 426:7,17,20 431:6,10,21,21,22,22 432:1,2,9,19,19,20 434:6 439:12,12 443:22 447:13 448:19,20 449:9 454:9,10,14 456:12,14 458:4,5 459:12,13 460:5 463:7,10,11 464:2 466:1,22 467:15 467:17 469:10 470:15 471:4 475:6,10,15,21 479:5 508:21 533:4 541:14 565:12 567:2,20 568:10 575:1 594:11 exhibits 291:2 381:16 382:16 426:6 458:2 460:18,21 461:5,8,12 464:7 509:2 existed 373:11 471:2 exists 306:22 374:4 expandable 484:4 expect 331:2,10 352:9 expected 326:15,17 356:1 382:22 487:1 expecting 328:9 expedited 328:8,11 513:12 537:10 experience 531:14 589:11 expert 275:18 298:14 299:3,5,10 303:20 459:3 462:11,13,21 513:15 532:20 533:10 546:22 588:11 expertise 551:5 587:22 experts 299:7,8,14,15 300:6 398:20 546:18,21 589:19 expires 598:21 explain 288:14 441:4 447:6,15 464:19,21 510:13 547:17 561:8 explained 472:2 514:2 515:4 explains 463:3 explanation 292:2 explanations 297:14,15 explicit 575:18 explicitly 404:22 427:4 express 435:12 expressed 310:22 extant 429:12 extended 403:16,18 extending 309:18 extensive 397:7 545:11
---	--	--	---

<p>extent 281:10 435:5 487:11 extenuating 420:10 extra 295:15 extraordinary 355:22 extrapolates 589:15 extrapolation 459:4 extremely 290:1</p> <hr/> <p style="text-align: center;">F</p> <p>F 412:19 424:1 face 336:4 339:14 503:7 fact 294:10 312:1,22 314:12 315:6 330:11,13 330:15 334:8 335:11 337:8 342:14,15,15 346:10,12 349:8 364:10 369:11 376:15 384:20 398:1 409:12 411:15 412:3 414:9,9,15 416:11,22 417:4 470:5 471:2 500:2,21 509:12 548:13 574:15 581:6,17 592:2 factors 313:5 facts 309:4 314:1 326:4 330:19 341:2,20 342:13 343:16,20 344:4,15 346:1 349:21 353:7 364:10 367:19 391:19 393:2,2 395:3,8,9 397:7 399:7 408:6 550:14 factual 285:12 366:18 367:17 394:12,14 582:20 fail 336:22 352:21 failed 365:19 379:6 447:2 failure 297:19 440:22 fair 322:8 330:22 332:6 368:13 438:12,12 450:20 482:22,22 488:17 503:9 573:6 fairly 294:13 345:15 532:18 faith 350:16 367:1 fall 425:8 false 504:8 falsely 504:18 familiar 326:22 417:22 418:1 420:7 485:15 539:1 544:6 551:22 554:9 556:9 558:6 familiarity 547:15 far 307:12 311:1,2 322:20 325:5 327:13 330:18,19 399:7 406:8</p>	<p>540:7 562:15 588:6 595:15 fashion 328:5 439:1 596:21 fashioned 323:13 fast 468:2 faster 314:3 fathers 402:11 favor 309:5,6 338:17 360:17 438:17 439:3 575:12 favorable 325:22 fax 397:11 federal 307:8,9,13,17 313:18 326:5 353:15 364:16 397:3 439:2 477:16 486:10 516:3 532:1 533:17,19 534:5 534:8 535:4,9,16,20 536:12,14 537:15,17,18 537:19 538:2,6,11,13 538:18,18 543:9 551:14 556:2 557:22 558:12,19 558:22 559:6,17,18 560:2 561:2 562:20 564:18,20,21,21 572:8 572:12,20 573:8 576:17 576:18 577:11 578:5 580:1 581:11 583:6 feed 308:13 feeling 505:7 feet 355:18 392:15 479:7 479:7 480:3 518:7 542:15 563:14 felt 487:8 515:18 524:17 field 382:5 473:10 521:7 fields 479:14,15 480:4 fifteen-minute 357:7 Fifth 274:16 275:6 585:19 Fifty-three 412:14,15 figure 429:11 451:11 476:13 493:15 figured 293:19 408:4 figures 586:3 figuring 408:3 file 293:8 295:10 304:18 357:22 358:13 419:6,16 419:21 436:19 504:7 527:10,15 539:11 544:20 572:9 575:3 filed 301:1 312:10 322:5 331:20 353:8 357:22 397:2,3 408:11,15 411:18 418:11,22 486:11,16 488:6 489:19</p>	<p>489:20 492:8,9 493:6 566:2 567:2 568:14,15 569:3 582:12 files 461:3 470:12 filing 491:21 507:14 569:13 594:8 filings 569:2 fill 552:17 filled 441:2 446:16 final 327:3 348:10 516:13 516:14 finally 532:15 568:9 Financial 411:12 412:3 financially 598:12 find 290:5 294:17 300:11 302:15 327:11 329:15 330:5 381:1 399:17,20 407:15 409:20 428:19 465:4 593:13,17 findings 545:10 fine 318:7 368:17 391:14 488:15 575:7 finish 365:2 382:4,7 387:19 409:19 415:2 421:9 423:13 457:9 470:8 493:3 596:1 finished 292:4 353:3 356:22 357:2 372:9 423:10 458:19 478:8,8 480:7 finishes 463:13 fired 374:19 firm 472:18 492:15 first 277:7 284:7,18 287:11 294:14 299:9 312:9 331:13,16 343:21 344:3,17 345:3 346:4,6 346:7 348:22 351:18 353:20 361:4 368:15 370:15 386:9 387:17 391:19 399:16 400:3 407:18 410:1 418:22 426:9,15 427:20,21 429:16 434:18 468:22 480:18 481:15 483:10 488:12 489:19,21 490:3 490:8,18 491:4,5,22 492:3,13 493:6,8,10,12 499:3 500:11 506:14,19 506:22 514:7,8,14 517:21 524:14 529:9 533:15 538:1 550:16 551:3 552:13 558:8 565:8 566:19,22 569:20 570:3,22 571:1,5 573:10,15,17 574:19</p>	<p>575:2,17,18,20,22 576:1,1 583:16 584:22 586:12 591:19 592:14 593:19 fit 279:8 324:2 five 296:18 297:21 313:19 317:11 321:15 326:19 332:14 337:12 337:19 348:13 368:8 373:9 385:13 427:15,18 434:14 441:9 487:15 489:7 547:11 554:15 589:13 five- 293:12 347:8 five-minute 478:10 fix 325:12 374:12 407:3,3 418:6 fixed 325:10,13 545:2 Fizzano 475:19 Fizzano's 525:18 flawless 374:21 flesh 329:15 Floor 275:6 588:18 Florida 355:14 547:20,21 548:2,11 549:1 focus 284:5 287:12 310:6 351:15 362:4 415:7 557:21 563:5 focused 406:10 focusing 314:10 foggy 515:14 folder 287:21 follow 322:2 355:22 397:16 404:9 428:19 469:8 498:19 follow-up 525:5 followed 335:12 355:21 499:6 513:21 517:16 518:4 551:9,10 554:7 following 433:21 477:9 497:18 512:4 follows 283:4 529:10 fool 400:12 foot 479:13 football 382:5 473:10 479:14,15 480:4 521:7 forbade 555:19 Ford 532:10 foregoing 598:3 foreigners 320:1 forestall 460:21 forget 406:1,4 457:1 Forgive 300:18 forgot 525:6 forgotten 364:4 463:22 464:9,11 468:8 495:3</p>
---	---	--	--

<p>Forklift 588:17 form 305:15 433:22 453:3 556:15 formal 509:7 former 469:2 481:18 512:17 532:9 589:8 forms 569:8 forth 286:16 535:6 Forty-four 466:19 Forty-three 460:1 forward 311:16 317:14 318:22 532:14 found 289:18 290:8,9,11 290:14 318:20,22,22 381:10 488:15 491:18 492:9 545:9 584:20 592:17,18 founder 588:17 founding 402:11 581:7 four 284:1 296:18 308:1 316:20 317:1 321:15 347:12 381:18,22 382:10 420:17 434:14 450:19 461:5 487:15 550:5,7 586:12 Fourteenth 537:22 Fourth 585:14 Fox 274:12 282:19,21 283:7 284:12,15 286:3 286:4,11,13 288:22 289:1,7,8 301:17,21 302:2,5,8,9,12,14,19 308:17,21 312:2 314:19 316:3,4,12,14,18,21 317:10,12 318:7,9 326:21 332:9,15 336:17 338:2,7,12 341:10,17 342:20 343:12,14 344:12,14 345:8,14,16 347:5,13,16,20 348:1 348:19 349:4,15 351:5 351:8,14 356:4,6,8,9,11 356:16,20 357:2,18 358:5,11 359:3,6,12,16 359:18 361:10 362:2 365:15,19 366:12 367:3 368:13 369:5,10 370:2 370:3,7,8,10,14,19 371:1,4 372:13,16 378:6,7 382:9 383:10 383:14 384:14,16 387:21 388:1 393:18,21 406:21 407:8 409:5,8 410:22 411:2 412:7,12 412:15,16 413:3 415:12 415:15,18,19 416:3,9</p>	<p>416:10,21 420:15,19 422:9,12,15 423:8,9 424:5,7 426:11,14 427:8,13,17,19 428:2,4 428:5,8,12 429:16,20 430:10 431:8 433:18,22 439:4 441:12 444:16 446:22 450:11 456:10 460:20 462:6,9,22 463:12 464:5,16,16,17 465:21 466:13 467:11 467:14,18 469:15,20 470:2,5,8 471:3 479:4 480:9 481:7,8 483:17 525:1,3,11,15,19 526:11 527:18,20 528:1 528:8,16,17 529:5,13 532:19 533:3,7,12,14 541:13,15,19 542:2 543:5,7,15,17,21 544:2 550:1,11 565:11,14,17 567:19,22 568:9,13 569:15,17 575:5,9 576:7,11 577:1,5 578:20 579:1,4,5 584:9 584:12,16 594:10,12,18 594:21 595:10,13,21 596:1,8,12 Fox's 447:12,13 508:10 framers 402:17 frankly 382:17 386:16 508:5 fraud 290:12 291:8,15 306:4,4,6,6,8 307:4,13 307:14,19,22,22,22 309:22 363:11 364:13 371:7,14,14,16 372:1,3 372:6,19 373:2,4,22 374:2 375:1,7,13,18,22 376:11,17,19 377:4,9 377:16 379:3 386:19 438:8 480:11 503:6 545:11 571:21 572:1,2 572:10,12,18,20 573:7 573:18 574:3,17,21 583:2,4,5,5,11,18,22 585:2,2,7,12,17,22 586:4,8,13,14,15,16,17 586:22 593:20 fraud' 369:2 fraudulent 301:3 302:17 302:21 305:2,15 306:12 313:10 fraudulently 292:14 298:8 398:15 free 433:12 438:12</p>	<p>frequency 543:9 frequent 377:16 543:16 frequently 415:10,16 416:15 551:9 Friday 557:8 Friess 464:6,10 front 283:16 304:9 314:16 316:16 348:15 359:11 366:14 367:6,15 367:20 372:18 382:16 383:17 384:22 385:16 385:22 395:19 398:12 398:18 565:20 582:15 582:18 full 427:21 function 517:9 519:3 fundamental 306:14 funded 457:3,3 funny 474:10 further 283:3 319:9 423:17 441:11 481:5 526:5 555:1 598:10 furthest 480:4 future 312:22 355:5 421:6,12,18 450:13,14 451:5,8,16 519:4</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 277:1 game 306:20 347:19 games 479:18,18 garden 539:6 gather 339:18 474:3 geared 330:22 gee 329:22 general 292:20,21 352:5 358:18 375:4 384:6 428:15 438:11 458:14 469:2 482:19 505:7 511:10 535:7,9 536:14 552:6,8,22 553:9 554:4 556:3,8 576:15 577:15 578:9 580:6,13,19 General's 314:7 generalize 537:2 generally 381:14 405:14 513:14 537:3 538:14 550:18 561:13 569:5 585:20 586:7 generis 399:17 genesis 418:2 gentleman 300:12 343:1 gentlemen 315:5,8 514:9 587:20,21 Georgia 363:16 getting 365:3 379:2 380:2</p>	<p>380:4 404:10 405:19 473:4 483:10 Gettysburg 285:20 589:22 gigantic 479:16,17 Giuliani 272:6,16 276:4 277:4 279:19 280:13,17 280:21 282:5,9,17 283:1,8 284:10 297:3 300:22 303:15 308:16 314:10 315:7 316:6 331:12 333:17 335:15 338:3 342:11 343:18 353:6,14 356:10,18 357:12 358:12 359:17 361:15 364:22 366:13 367:4 369:12 370:16 371:17 377:9 402:20 407:2 409:9 410:15 413:5,18 416:10 419:6 419:15 421:2 423:2 424:8 432:4,22 440:19 441:14 444:22 454:12 457:10 462:19 463:19 470:11 479:4 480:9 481:9 485:8 507:8 512:10,16 517:19 523:11,16,20 526:6,13 527:22 549:19 566:16 566:17,21 567:10,16 568:7,20 574:14 581:21 582:19,22 583:21 588:12 592:11 593:21 Giuliani's 278:21 308:13 461:3 528:3 540:9 566:14 567:7 568:5 591:16 give 277:8 278:10 281:20 299:22 359:21 382:19 384:18 394:17 397:14 397:15 418:5 427:12 431:20 446:3 447:17 448:16 449:5 455:4,7 467:9 468:20 488:8 509:4,19,21 528:22 543:8 560:6 564:1 given 314:5,6 325:2 342:21 355:19 362:18 392:8 398:15 400:20 402:11 406:11 418:21 454:21,21,22 455:2 457:5 460:8,9,14 464:8 495:8 509:22 518:4 596:10 gives 523:5 534:6 539:21 561:19 580:21</p>
---	---	---	--

<p>giving 281:9 389:13 507:9 gloss 410:20 go 278:12 279:11 282:20 284:12,18 285:7 287:8 289:9 290:15 297:10 298:4 300:10 302:2,17 306:8,10 311:8 312:14 316:18,19 317:10 320:9 331:8,12 332:13 335:4 338:6,8 341:8 342:7 344:12 345:8 348:19 349:3,15 351:5,8,9 357:21 358:8,9,10,21 359:3,9,12 367:14 368:18 370:7,12 372:8 372:17 378:2 383:3 384:9,10 386:17 387:8 387:8 390:4 393:19 394:9,10 399:20 400:18 404:21 406:8 407:22 409:1,2 412:17 413:1 415:13 419:13 420:15 422:13 423:16 424:11 429:16 431:21 432:1,20 436:2,13,16,18 439:12 439:13,17 440:10,12,21 443:4,21,22 446:1,3,9 447:9,10 448:3,10,14 448:20 449:2,4,16 452:3 454:9,17 456:12 459:9 475:5,16,21,21 476:4,5,6 485:11 491:13 526:8 530:21 541:19 550:4,7 552:9 556:6 558:16 561:7 565:9 569:19 570:11 571:19 572:8 573:10 576:7 577:1,4 582:17 584:12 god 294:21 372:15 373:22 529:2 goes 321:15 325:5 349:5 358:3 373:17 409:3 420:17 going 278:17 279:5,6,18 280:11,17 281:21 282:9 283:17 300:11 301:22 304:7,15 306:2,10 309:8,10 311:16 312:19 312:19,20,20 313:19,20 313:21 314:2 317:14,14 319:5 322:9,19,19,21 327:9 328:4,5 329:21 331:4,10 336:1 337:21 341:3,8,9,12 350:2</p>	<p>353:1 354:21 356:2 359:21 360:2,8 363:1 367:22 368:5 372:11 374:12 376:4,4 379:13 380:1 382:12,22 383:4 383:10 384:14 385:19 390:15,16 399:14,17,20 399:21 403:13 404:1 405:13 408:5,5 415:13 419:13 422:21 423:16 424:8 430:14 432:5 436:16,18 437:22 438:1 449:3 451:9,16,17,18 453:16 455:11 459:6,19 463:1 466:7 468:2 469:16 471:1 472:10,11 473:20 474:3,10 476:5 476:6 485:5,11 489:1 492:16 503:13,14 512:14 515:4 516:5 519:20 525:13 528:4 532:13 543:17 554:2 561:7 562:3 563:2 564:16 565:20 571:14 576:10 580:22 581:11 595:1,3,6,7 596:1,17 good 283:21,21,21 336:21 343:7 367:1 376:9 391:6 394:3 431:16 469:4 489:16 557:18,19 559:10 Gore 329:1 364:6 395:21 396:3 400:19,20 401:9 401:15 404:10,21,22 405:7 407:10 547:14,18 547:19 550:3 551:15 591:1,3,6 Gorsuch 443:5 Gosh 390:17 gossip 493:18 gotten 417:3 517:1 587:3 governing 425:7 government 333:9 335:12 364:16 392:9 435:20 533:17,17 534:9 538:14 governmental 535:2 561:17,22 governments 535:3 governor 324:19 graduated 530:6 grand 573:18 grant 445:10,10 501:2 502:4 546:4 564:11 granted 440:5 443:7,12 444:2,4,12,12 500:5</p>	<p>511:8 547:7 great 280:21 299:22 488:11 491:10,10 greatly 488:10 grounds 350:8 462:14 group 288:16,16,19 411:12 412:3 454:22 506:22 guarantee 280:10 399:14 guards 560:12 guess 296:15 385:20 388:18 417:11 474:16 482:10 487:2 528:17 540:7 guessing 380:3 515:5 guidance 516:8 534:20 guiding 445:13,14 guy 376:18 452:8 guys 407:21 478:20</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hac 489:10 524:12 half 327:4 388:5 390:20 431:20 473:10 505:5 hall 479:20 480:2 halted 549:10 HAMILTON 274:12 hand 312:13 457:14 handed 381:12 473:19 474:12,15 handle 404:16 589:17 handled 297:10 344:6 486:6 hands 340:17 hanging 405:22 406:2 happen 281:14 363:9 374:1,8 375:5 376:15 394:2 441:17 happened 293:12 294:19 296:10 362:9 374:6,7,8 393:22 408:1 429:13 457:19 485:16 487:15 501:12 514:4 570:20 583:9 happening 343:8 399:19 407:19 happens 300:14 312:14 321:17,19 374:5 375:4 happily 384:18 happy 289:6 395:17 423:13 584:6 harbor 417:16 419:8 hard 408:3 457:1 Harper 403:15 hate 337:9 520:2 Hawaii's 539:13,14</p>	<p>Haynesworth-Murrell 274:5 523:16,19,20 524:1,20 head 347:3 472:18 518:21 526:17 head's 278:10 281:10 headed 374:18 532:9 headquarters 379:19 483:7 484:2 hear 308:15,18,20 357:1 432:7,11,13 466:14 478:19 523:18,21 540:9 543:15 573:13 heard 480:5 520:7 579:1 hearing 272:3,15 273:1,2 274:2 277:3 279:3,9,17 280:20 281:7 297:4 315:22 328:10 331:11 341:4,8 342:8,10 365:2 383:1 424:2 508:7,8 525:22 540:6 587:11 588:13 589:21 597:5 598:3,6,10 hearing's 279:16 hearings 331:10 540:6 hearsay 293:2 heavy 540:4 heck 523:2 heightened 583:6 held 424:16 425:16 440:22 446:14 465:5 536:13,15 542:22 554:14,21 555:1,4 556:20 560:12 563:13 563:21,22 593:9 hell 402:15 403:3 help 365:17 513:18 529:1 helped 342:22 helpful 485:9 489:6 Helter 292:3 Henry 494:16 495:1 497:7 500:3,15 510:19 566:8 herded 487:13 hereto 598:12 Hicks 312:12,16,19 484:22 485:18,20,22 486:9 487:7 488:4,10 492:7,10 493:9 495:15 497:16 512:3 513:3,6 513:18 515:8 524:5,6 524:15 Hicks' 491:13 492:5 hide 431:7 highest 336:12,19 highlight 286:3,11 358:6</p>
--	--	---	---

370:15 436:21 437:3 476:7 550:8 highly 519:10 hired 398:20 historical 376:8 586:14 586:15 history 330:16 363:2 373:13,18 374:9 376:5 377:3 431:4 515:7 588:21 Hoc 272:3 273:2 274:2 hockey 479:18 hold 293:17 314:22,22 337:15,18,18 356:19 437:1 559:7 holding 591:9 holdings 554:16 556:22 holds 476:15 HON 275:3,4 honestly 365:1 493:15 566:15 Honor 433:7 448:16 449:8 454:13 470:19 478:7 480:7 honoring 525:17 hope 282:4,18 304:14 355:5 363:15 487:3 515:21 523:5 hoping 278:18 399:11 HORRELL 274:14 hours 379:17 385:12,12 385:12 407:15 house 363:6 houses 363:9 human 330:16 hundred 313:4 319:22 320:2,12 322:3 325:10 402:2 405:3 505:7,20	302:21 303:18,18 305:3 320:12,14 358:17 383:19 384:1,3,19 385:2 386:3 387:13,16 388:5 389:1 398:22 498:7 500:10 511:5,9 517:1 544:21 576:14 579:17 illegalities 352:8 illegally 306:21 354:2 388:10 497:13 illegitimate 337:17 illusion 340:18 illustrate 495:5 illustrated 441:16 illustrating 319:6 illustration 343:13 imagine 384:2 579:15 immediate 328:9 immediately 295:12 483:6 506:21 520:13 530:13,15 immemorial 473:5 impact 435:17 impetus 518:1 implement 405:2 516:9,9 516:10,19 implementation 405:2 implementing 551:6 554:7 implications 581:16 import 444:8,15 important 313:8 374:6 441:18 455:2 487:8 554:16 558:15 559:8 impose 413:14 553:12 579:14 imposed 580:9 585:20 imposing 351:3 591:20 impossible 342:21 375:5 587:16 impressed 465:10 489:3 impression 386:9 406:6,7 407:18 improper 334:18 335:9 352:22 360:16,17 575:12,13 593:4 improperly 499:20,21 impute 589:15 in-person 425:3,11 438:5 438:22 inaccurate 353:21 364:17 364:20 inadequacy 540:11 inartfully 330:10 incapacity 425:5	incident 506:7,8 incidentally 377:8 incidents 339:17 506:9 include 441:1 458:11,13 470:12 492:2 578:9 included 323:18 340:5 342:2 343:21 350:5 373:15 386:12 461:4,6 461:7 464:7 475:11,13 510:2 including 301:1 307:4 360:9 435:14 438:15 492:7 546:22 578:10 inclusion 360:9 446:15 incomprehensible 337:13 incorrect 444:17 incorrectly 350:3 412:5 increasing 379:3 indecipherable 367:12 430:21 452:15 independent 389:16 390:3 402:21 539:11 570:11 571:15 independently 387:5 indicate 332:16 553:4,9 indicated 512:16 518:11 519:8 555:17 567:10,13 indicates 286:15 indicating 465:19 491:2 indication 296:9 409:11 indications 549:19 indifferent 295:3 indisputably 441:18 indistinguishable 563:17 individual 442:11 484:14 484:15 510:14,19 539:18 540:1,2 548:13 individuals 566:7 influenced 352:20 influencing 353:1 informal 564:22 information 299:22 300:3 379:22 453:3 456:21 461:2 464:10 467:6 469:19 470:1 471:16,17 507:10 552:17 infrequent 543:11,16,18 inherent 340:11 initial 332:1,5 394:11 486:10,18 488:5 489:9 489:18 490:5,15 491:20 492:1 535:12 545:13 546:11 569:20,22 570:1 570:9,10,22 571:19,20 571:22	initially 547:10 583:3 injunction 546:4 577:13 578:7 580:3 injunctions 342:10 injunctive 569:8 injured 511:9 injury 326:15 497:21 498:1 inserting 317:18 inside 410:11 inspect 355:12 390:2 394:5 inspected 383:18 384:2 384:19 386:3,10 387:5 389:16,19 inspection 390:3 391:3 inspector 391:3 392:16 inspectors 313:6 333:7 385:7 487:12 instance 471:1 institution 549:1 instructed 441:21 548:3 549:8 instructing 407:21 549:2 instruction 444:6 instructions 440:7 insufficient 391:22 integrity 386:18 intend 360:1 intended 340:4 intending 317:22 489:6 intense 318:4 intent 548:1,9,18 549:9 intentional 338:16,16 572:4 574:9,9 intentionality 574:5 575:19 interchange 339:22 514:5 514:5 interest 331:1 508:5 539:18,19 561:22 interested 553:21 574:15 598:13 interesting 445:22 interject 288:18,21 intermediate 426:21 561:11 563:11 interpret 450:16 521:19 548:13 interpretation 349:20 350:7 391:7 404:3,4 407:1 441:5,16 442:15 482:22 511:4 549:5 555:10 556:18 558:13 558:17 559:12 interpretations 310:12
I idea 455:18 463:7 501:4 513:22 543:8 identical 346:19 identification 320:2 386:20 412:9 466:6,10 553:12 identified 291:18 384:1 398:14 463:16 identify 300:5 322:4 identifying 298:20 333:22 334:4 identity 438:6 ignore 491:12 571:15 III 274:12 illegal 298:12,14,17,20 299:2 301:4,7,9,19			

570:15 interpreted 325:21 446:19 482:4 512:5 interrupted 564:16 interstate 574:17 intervene 543:9 544:12 intervened 399:22 544:9 interview 473:21 474:4 interviewed 514:9 interviewing 469:5 introduce 376:13 465:16 466:2 469:11 520:2 introduced 313:10 587:9 587:12 inured 404:5 inures 321:20 invalid 307:6 319:20 547:1 invalid- 319:18 invalidate 500:4 invest 412:3 investigating 380:1 investigation 458:6 investigations 299:19 377:9,17 investigator 457:8,11,17 457:20 investigators 379:21 invoke 410:4 involve 293:11 involved 327:9 491:20 520:3 546:18 548:20 involvement 346:8 involves 558:13 involving 336:7 379:19 537:19 544:14 572:12 578:17 579:6 Invst 411:12 412:3 irrational 336:4 irregularities 307:4 352:7 364:12 585:15 irregularity 546:13 irregularly 535:11 irrelevant 416:18 isolation 353:5 issuance 559:3 issue 281:8,9 298:13 304:16 305:10 308:3 317:15 423:10 446:22 503:8,8 516:7 517:19 520:8 536:17 542:5 547:18 559:19 560:3 570:15,19,20 576:6 581:13,14 594:4,6 issued 581:19 issues 488:19 537:16	554:2 559:16 565:10 593:8 Italy 529:20 item 386:12 iterations 516:13 <hr/> J J 338:18 566:5 Jacksonville 374:17 James 368:21 Jane 442:3 JASON 274:14 JAY 274:7 JD 530:11 Jeremy 468:19,19 jerk 331:6 JIM 275:20 Jimmy 368:20 370:4 job 335:17,21 343:5 John 275:3,14 288:1 300:11 416:5 432:20 433:3 442:2 448:4 449:2,17 494:15 539:8 566:8 joined 484:11 joke 327:6 JON 275:17 Joseph 338:18 judge 293:15 304:17 309:18 311:15 314:16 316:16 317:2 331:4 348:15 350:19 362:5,12 366:14 367:6,14,15 372:19 374:5 381:17 382:16 383:17 384:22 385:22 387:10 390:13 393:2 394:10,15 395:20 396:1 400:5 407:12 409:10 410:2,16 414:15 415:8 416:1,12 418:15 445:1 447:20 448:11,14 448:20 451:1,15 454:7 475:18 476:2,11,11 479:6 506:20 507:15 523:3 524:16 525:15,17 526:11 530:19,20,21 564:22 565:13,20 582:15,18,20 583:1,14 583:14 590:4,14 593:4 593:7,9,16,19 594:1 judgeleventhal@aidala... 275:9 judges 350:16 414:20 416:15 440:20 450:19 451:13 523:7,10 judgment 341:22 354:22	440:5 443:11 444:5,14 560:21 July 284:17 288:4 430:2 jurisdiction 293:3 313:14 319:21 320:5 376:5 396:16 410:8 537:17,19 548:16 556:12,13,16 jurisdiction's 589:17 jurisdictions 297:22 316:11 324:3 362:14 373:2 526:16 535:15,18 536:7 553:8 585:5,11 585:16 586:15 592:5 justice 314:7 403:9 531:1 531:3,5 583:4,14 593:9 593:9 594:7 justices 309:17 446:18 justification 327:8 justified 335:10 justifies 510:9 justify 326:4 329:8 <hr/> K Kamins 275:4,5,15 422:22 532:22 533:1 540:22 565:15 578:22 579:3 584:11 595:14 596:3,10,19,22 Kathy 436:11 497:7 566:11 Kearns 312:13 492:4,21 515:8 524:16 keep 415:12 430:19 431:2 431:12 437:5 459:19 472:21 473:3 476:5,5 508:17 keeping 574:16 Kenneth 314:5 kept 385:19,19 494:4 505:22 509:22 Kerik 455:1 457:5 460:10 460:22 461:10,15 464:9 509:17 Kerik's 457:7 Keshel 467:7 Kim 272:22 273:3 598:2 598:16 kind 288:12 293:19 298:21 304:11 365:9 371:9 376:16 377:7 378:16,17 379:9 402:19 455:6 491:12 525:19 539:20 540:1 564:7,12 570:15,16,19 580:18 581:19 Kindly 431:21	kinds 548:19 549:4 584:2 king's 556:12,13 knew 293:19 330:18,19 331:7,7,8 464:20 465:1 465:1 470:11 485:20 493:16 know 278:16,17 279:2,10 279:13,17 280:10 289:17 290:15 291:10 293:20 294:19 295:9 298:10 299:1 300:17 301:13,13 304:4 305:17 307:12 311:7 312:16 314:18 317:17 318:3 321:3 323:12 327:9,17 329:1 334:5,10 335:15 339:13 342:3 346:5,8 347:1 354:15 355:10 356:3,20,21 360:7 361:18 365:1,7,15 373:16,17 376:13,16,21 377:1,8 383:21 384:3 385:12 386:4 388:16 390:1,13 391:6 395:2 395:11,12,12,17 401:17 402:5,8,14 403:1,1 404:2,17,19 412:5 413:19 419:12 426:4 430:1,6 443:11 445:20 454:18,19 458:4 459:19 464:11 465:3 467:1 468:14 471:21 473:10 473:16 474:1 476:12 479:19 483:6,9 485:10 485:19 486:5 488:14 493:14,21 494:6 502:12 507:9,22 508:7 510:5 510:22 513:15 514:3 516:20 517:4 518:21 537:2,7,21 542:19 549:5 552:16,17 553:15 557:11 559:7 564:6 565:1,19 566:1 579:2 581:7,8 584:13 594:21 596:12 knowing 401:5 knowledge 312:10 374:9 474:18 known 419:3,22 430:7,14 513:7 518:19 538:3 knows 388:7 390:13 416:4 454:1 596:9 Kuras 530:16 <hr/> L lack 540:15
---	--	---	---

<p>lacks 453:2 landed 531:19 language 325:3 326:21 339:1 340:9,21 401:3 441:5 443:17 476:16 520:19,19 521:22 522:1 542:3,7 550:12 555:16 555:18 564:9 591:12 large 294:7 298:18 327:6 334:9 472:14 504:1 518:13 largely 570:5 571:14 larger 284:14 302:6 371:15,15 372:6 413:4 501:8 504:1,21 largest 369:1 371:6,13,14 372:1,2 law 307:8,13 311:4 312:22 315:3 319:7 325:9,11 333:16,19 334:20 336:14 346:22 348:6 354:2 360:6 386:9 389:11,17 399:12 403:19 404:4,4 407:4 409:12 442:12 445:14 445:22 453:4,6,21 472:18 488:19 492:15 497:18 499:7,8 511:4 511:12 512:5,7 513:16 515:14 517:3,4,5,10 530:5,11,13,15 531:6,9 531:10,15,16,17,18,20 532:3,6,15,20 538:6 541:9 542:21 545:2 547:22 558:14,14,18 559:8 570:16 578:13 579:10 581:10 Lawrence 494:15 566:7 laws 324:4 537:19,20,20 577:12 578:6 580:2 lawsuit 323:8,9,10 456:6 487:1 lawyer 327:11 329:12 331:4 342:6 347:2 355:5 361:4 418:4 472:15 482:18 484:22 485:3 488:3,12,15 513:7 524:14 lawyers 283:11 284:3,18 312:15 327:4,4 336:18 350:10 361:12 363:10 414:20 484:14 486:2 494:6 516:1 lawyers' 379:20 lay 377:15 laying 342:1,1</p>	<p>Le 529:19 lead 321:20 486:9 488:3 488:18 494:3 549:4 557:20 565:20 leadership 400:9 leading 433:18 434:1 learn 430:5 leave 357:22 358:13 371:10 404:8 487:4 489:1 575:3 leaves 433:13 lectures 325:12 led 309:16 317:18 left 324:12 365:20 371:8 435:19 legal 315:16,18 395:16 396:1 457:20 477:9 484:9,10 499:12 517:1 531:22 578:16 legality 473:7 legislation 428:17 legislative 310:21 435:19 515:17 587:10 588:13 589:21 legislator 402:3 legislature 284:21 288:6 306:22 308:5 310:14,22 311:5,5,8 325:2 326:7 328:21 352:3,5 353:18 362:21 364:1,7,13 396:14 402:3,22 433:14 435:11 517:7 570:12,17 571:16 580:21 581:12 legislatures 304:9 363:3 363:4,5 402:7 581:8 legitimate 311:2 561:16 561:22 length 539:10 lesser 293:10,11 let's 287:1,8 298:4 300:1 306:8 314:21 321:8 326:20 331:12 332:13 338:7,7,8,8,10 343:9 344:12 345:10 347:5,13 347:13,16,20 348:19 351:5,8 362:3 367:14 368:18,18 369:14 370:7 372:8 375:11 377:22,22 378:2 379:10 380:12 384:9,9 387:8,8 390:4 393:18,19 395:15,15 400:18,22,22 408:2,2 409:1,2,17 412:10 413:1 416:22 417:12 420:13 422:5,20 423:15 426:7 471:9 474:3</p>	<p>536:17 541:13 550:1 551:20 556:6 563:4 565:8 566:22 567:19 568:9 569:19 576:5,5,7 577:1,22,22 579:19 582:17 letter 284:16,19 285:3,8 285:17 286:9 288:4 410:7 442:2 497:18 499:6 509:1,4,4 letters 280:8 281:17 level 535:16 558:13 Leven 315:9 Leventhal 275:3 278:16 279:12,16,21 280:7,15 280:19 281:1,16,20 282:1,7 284:11 286:14 288:18,21 289:2 302:7 302:11,13 305:19 311:21 312:8 314:22 315:6,10,11,13,17 337:11,15,18 338:1 341:5 356:7,17 357:1,4 357:13 361:11,14 365:11 370:17,21 371:3 382:7 383:9 406:19,22 407:4,7 415:22 416:5 416:17 422:7,11,13 423:2,6 427:6,11 428:3 428:6,9 429:9 431:5,10 431:18,19 432:3,8,17 433:2,6,8,20 434:6,10 434:12 436:2,4,13,16 436:20 437:3,6 439:11 439:14,17,18 440:9,12 440:18 441:10 443:1,4 443:18 444:21 446:1,5 446:6,9,11 447:9,12,16 448:1,3,5,10,14,18 449:2,7,14,18 450:4 452:3,7,11,12 453:10 454:9,11 456:8,12,19 459:8,10,13,16,18,21 460:1,2,18 461:16,21 462:1,6,18 463:4,9,11 463:18 465:22 466:4,9 466:15,18,21 467:5,12 467:16 468:1,3,6 469:9 469:18,22 470:4,7,18 470:22 471:6,9,11,14 475:5,9,12,15 476:8 477:21 478:2,6,11,17 478:18,21 479:2,3 480:6,8 481:5 482:1 485:4 493:19 506:20 521:15 525:4,6,10,12</p>	<p>525:14 526:4,7,10 527:16 565:13,16 596:4 596:9 Lewandowski 469:2 472:5 liability 277:15 278:13 279:10 license 553:14 lieu 280:8 light 325:21,21 435:13 liked 455:6 likelihood 376:5 limit 361:16 365:9 401:4 limitations 339:10 limited 359:20,20,22 360:2 400:21 549:17 550:13,16 574:20 limits 459:5 Linda 312:13 492:4 515:8 line 307:3 316:20 317:1 368:19,21 378:5 383:3 383:4 384:13,14,15 434:14,16 lines 316:19 317:11 372:17 375:11 378:3 380:12 384:10,11 387:9 387:22 390:5 393:19 LinkedIn 588:16 list 294:17 431:6,11 454:16,20 458:16,18 467:17 470:15,15 474:13,14,14,15,16 475:13 503:18 506:22 596:10 listed 319:13 342:16 listen 468:5 listened 540:6 lists 469:14 588:19 litigants 416:16 litigate 515:19,19 litigated 542:20 562:20 litigation 322:12 381:9 481:19,19 482:4,15,19 483:4 487:2 515:3,9 519:4 520:4 554:5,17 557:22 558:21 559:9 562:2,5,9,11 563:3,5,6 564:15,18 litigation,' 477:11 little 284:14 288:13 295:5 298:3 302:6 303:10 310:7,19 313:9 318:12 318:19 331:9 381:3 405:19 409:6 413:4 423:16 433:3 434:4</p>
--	---	---	---

439:13 441:4 449:17 451:11 454:7 456:15 467:8 475:16 476:6 515:5,14 518:9 520:7 532:5 561:8 565:20 566:15 567:9 569:19 572:1 580:20 593:1 595:1 live 281:5 367:12 lived 495:12 local 379:20 404:22 484:16 515:20 544:19 550:21 551:4 563:5,7 574:10 localities 591:7 locality 534:19 logic 389:13 long 281:7 312:15 331:8 374:6 377:3,3 419:13 463:13,15 493:14 longer 413:13 414:1 445:13 look 282:15 286:2,8 287:11,13 288:11 299:8 300:10 307:21 315:2,19 331:22 332:9 333:21,22 334:3,8,14 337:4 338:7 343:9 345:9,14 347:5 347:16,20 351:11 357:20 358:1 359:4 367:21 368:18 369:14 369:22 373:21 375:11 377:22,22 380:12 383:2 405:15 407:22 408:2,2 408:3,9,17 410:1 420:13,16,18 422:5 426:7,19 427:10,11,14 429:15,22 434:13 436:22 447:19,20 472:12 475:9 490:7 517:16 541:20 566:22 575:2 577:2,22,22 579:19 looked 287:9 327:3,3 335:16 346:18 388:8 391:10 406:5 454:6 473:16,16 515:1 550:1 looking 333:10 395:5 428:1 430:10 432:18 looks 430:1 436:10 loser 546:3 loses 364:18 loss 571:6 lost 365:8 497:11,11 508:5 512:4 515:18 542:20 587:3	lot 292:3 295:2 302:4 305:16 354:6,8 365:1 366:22 373:21 374:3 459:3 472:5 475:2 484:17 485:21 492:14 louder 479:22 luckily 366:1 lunch 356:22 357:3 422:21 423:14,17 luncheon 423:21 Luzerne 495:3 lying 347:4 <hr/> M <hr/> M 272:22 273:3 275:3 598:2,16 ma'am 523:22 524:22 machine 340:13,14,16,20 518:20 Madam 541:1 mail 295:19 296:5,10 299:9 338:20 360:11,12 424:18 536:2 545:5 552:10 553:5 578:10,11 mail-in 332:17 335:17 369:1 371:22 382:12 383:18 386:20 397:13 421:18 425:8,13 428:18 438:5,15,19 439:8 441:1,17,19 446:8 450:1 458:11,18 536:8 536:13,16 540:13 552:6 552:21 553:19,22 555:1 557:4,8 562:6 585:2 586:3,14 590:18 main 293:22 313:5 314:1 484:5 487:22,22 Main-In 420:22 major 310:18 509:14 554:16 majority 289:16 348:21 400:9 451:2 476:14,21 476:22 504:14 592:4 majors 530:7 making 329:21 353:12 361:1,5 406:12,13 410:14 523:6,7 583:8 591:9,22 592:2 man 367:3 mandate 413:14 433:13 mandated 410:17 411:4 mandates 433:11 mandatory 446:16 manner 380:7 438:13 534:4 manners 550:22	March 412:20 458:22 461:12 Marche 529:19 margin 396:21 547:9 Maria 292:11 455:2,4 474:20 mark 412:8 466:9,19,21 469:10 470:18,20 marked 412:11 461:8 466:6 marks 315:2,20 395:20 396:2,5,10,10 397:2 398:22 399:7 400:6 407:9 474:21 544:4 545:15 546:14 547:2,5 573:1 576:17 Marshall 530:8 mask 518:6 masks 340:1 mass 326:1 massive 297:22 310:21 material 442:9,10 486:17 501:8,21 math 588:15 MATINPOUR 275:11 358:4 370:11 378:5 384:13 412:14 matter 272:5 277:4 278:12 287:19 408:12 451:20,22 453:21,22 484:7 513:2,18 541:9 556:12,14 566:14 matters 277:7 297:11 481:19 486:6 536:22 maximum 589:16 mayor 305:20 373:15 517:14 MBA 467:7 McCredie 589:4 McCredies 587:13,14 589:1,6 McLinko 424:10,15 425:16 426:16 429:17 mean 289:6 300:9,11 301:20 303:6 304:5 305:5 307:2 310:17 311:18 312:2 315:3 316:9 319:18 325:18 327:16 329:18 330:5,8 341:21 342:14 344:19 346:15 347:1,6,6 348:17 349:12 350:4 362:17 365:19,22 373:21 376:18,20 386:7 386:16 389:9 390:8 391:11 394:18 399:15	403:21 412:9 414:18 417:2 419:19 421:20 429:10,22 431:2 440:2 444:18 445:4,7 451:4 453:11,14,15 454:5,6 472:22 473:9 480:12 483:5,13 484:9 487:21 488:7 489:11 491:19 492:1 493:18 500:8 502:17 508:5 515:4 517:9 518:20 522:2 536:2 562:20 563:4 575:20 595:4 meaning 294:1 321:18 347:7 365:22 367:1 515:7 meaningful 335:22 349:8 349:14,20 477:7 521:4 521:6,12 522:2,4,10,17 526:15 means 288:1 319:18 324:10 349:14 350:13 389:13 442:19 468:14 522:20 558:18 561:8,20 572:15 meant 336:9 345:11 384:11 472:22 554:1 mechanics 476:17 media 452:7 meet 485:21 540:2 578:11 579:8 meeting 329:10 meets 277:17 278:6 MEGHAN 275:21 Member 272:8 274:6,8 members 544:19,19 memo 569:9 memorandum 464:6 mention 551:2 mentioned 285:9 308:3 525:15 526:11 543:13 586:11 589:19 mentioning 278:4 Mercer 345:18 346:20 347:15 349:7,11,19 350:8 468:20 469:3 479:8 506:21 519:9,13 520:3,16,16,20 589:9 merely 477:3 merits 560:9,12 mess 571:12 met 441:9 468:22 469:3 485:20 486:16 514:7,9 519:9 method 580:17 Mexico 363:19
---	---	---	--

<p>MFil 530:8 Michigan 508:8 Michigan 299:21 304:8 363:15 microphone 526:20 mid 337:22 mid-afternoon 528:6 middle 306:20 494:7 565:7 midnight 368:7 Migliori 439:21 Mike 509:20 military 319:4 335:5 million 352:12,12 387:12 388:5 390:20 mind 301:16 314:20 361:19 366:3 371:18,18 387:19 390:18 454:8 462:20 468:15 481:11 481:13 493:9 572:14 mine 314:6 489:6 minimum 476:18 ministerial 517:9 Minnesota 363:14 minor 435:6 489:13 minute 279:14 333:17 372:9 388:3 415:7 420:11 427:12,22 431:20 minutes 337:12,19 422:22 478:7 489:7 530:1 596:2 misbehavior 376:14 mischaracterization 521:4 misconduct 545:18 585:4 585:10 misdealings 572:4 misinterpretation 414:7 misquote 369:11 missed 429:11 missing 291:2,3,6 292:13 292:19 298:6,7,11 300:19 misspoke 388:12 misstatement 368:2 mistake 327:12 414:3,5 415:3,4 416:4 430:13 mitigation 278:3 mixed 288:19 579:18 mm-hmm 286:7 316:17 317:9 338:22 343:17 370:5 427:2 428:22 515:12,12 moment 283:11 295:13 300:2 308:3 419:20,21</p>	<p>551:8 553:2 559:22 563:3 570:19 Monday 286:19 287:5 money 327:7 monitor 534:22 monitors 392:22 Montgomery 454:20 456:5 464:1 month 430:15 months 293:9 530:18 553:16 Moore 299:19 403:15 530:16,17 moot 440:8 444:18 morning 284:6 337:22 356:5 521:2 525:20,21 586:11 596:5,6 motion 304:18 332:11 341:22 357:21 358:13 367:7 411:18 443:8 560:20 568:11 575:3 mouth 457:15 move 314:21 316:5 362:3 365:10,17 393:8 418:5 434:4 449:12,12 456:8 460:18 471:10 517:18 532:19 moved 304:6,8 530:22 552:4 moves 277:21 moving 359:19 417:13 multidistrict 487:2 Mundy's 476:12 murderer 326:2 Murrell 523:14 mute 478:20 mutual 340:20 477:15</p> <hr/> <p style="text-align: center;">N</p> <p>N 276:1 277:1 424:1,1,1 name 300:9 364:4 442:6 442:16 504:19 529:14 529:15 562:21 587:13 named 300:12 484:22 names 370:4 469:14 474:3 510:20 narrow 311:6 397:1 national 368:4 373:7,8 512:18 531:22 nationwide 362:10 366:15 367:17 483:3,13 nature 292:22 293:2,14 306:13,19 328:2 498:1 500:13 549:17 near 516:15 nearest 542:15</p>	<p>Nebraska 377:2 necessarily 339:12 351:1 352:20 necessary 322:11 323:7 326:18 425:12 431:2 482:16 need 277:8 278:14 280:5 295:10 360:2 362:8 378:17 384:17 390:6 412:18 448:13 550:7 559:7 584:13,13 595:12 597:2 needed 392:7 needs 329:14 528:18 584:14 negating 501:14 negligent 325:16 negotiate 327:7 neighborhoods 397:18 neither 495:11 496:8 598:8 Nemeroff 417:7 neutral 340:17 Nevada 362:19 363:9,17 never 296:20 301:2 302:20,22 305:2 313:15 314:20 320:20 324:4 325:10 326:12 331:20 342:10 361:19 362:18 366:3 371:18,18 387:19 406:4 407:19 430:17 454:8 459:6 472:19 493:8 499:2 504:9,13 504:14 514:18 521:7 588:6 new 275:7,7 277:7 294:4 322:22 328:14 331:5 338:5,6 339:2 363:19 375:6 399:13 400:6 427:18 500:19 501:2 517:6 530:17 546:7 newspaper 375:20 377:14 newspapers 377:21 Newton 530:17 nexus 354:5 night 293:18 455:10 525:21 nine 296:19 332:8,10 348:21 349:1,2 358:3 373:10 387:9,22 408:17 408:21 541:20 Nineteenth 537:22 no-cure 294:14 no-excuse 425:7,13 545:5 no-question 536:8</p>	<p>nod 526:17 noise 578:19 non-cure 303:6 non-defendant 585:16 nonbinding 277:20 282:12,14 noncitizens 321:8 noon 423:16 nope 355:15,15,16 normal 572:16 normally 330:7 342:4 Notary 273:4 598:1,17 notation 442:1 note 365:19 426:16 476:18 531:17 564:2 noted 366:1 557:6,7,7 notes 290:2 453:5 notice 318:12,17 352:15 418:21 433:16 434:20 434:21 435:2,3,9 436:9 453:5 500:6,6,9 501:13 501:14 503:7 504:2 516:7,10 542:19 554:18 555:15 570:6,6,7 573:20 590:14,15,22 noting 564:6 notion 590:16 notwithstanding 468:1 November 329:12 362:5 393:3 418:12,16,19 438:11 446:8 447:17 450:2,3,5 467:7 525:18 556:3,8 566:3 567:3 568:4,15 number 272:11 294:7,14 294:15 296:2,3,5 298:19 299:2 313:5 318:16 319:21 321:16 321:21 332:10 337:8 339:16 340:1 347:10 362:18 363:21 364:15 364:19 380:2 385:16,19 385:20 391:1,9 398:14 400:1 436:20,21 437:4 448:18 449:22 463:8,16 465:21 466:12,13,16,17 473:3 501:3,6,7 502:21 504:5,10,21 505:2,16 508:21 511:10 512:13 numbers 293:11 296:4 333:6 385:2 396:20 502:7 numerous 325:9 518:5 NW 274:16</p> <hr/> <p style="text-align: center;">O</p>
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<p>O 277:1 424:1,1,1 oath 277:8 363:1 object 282:17 293:15 315:17 433:22 444:16 456:13 460:20 462:16 467:19 469:16 470:5 540:22 541:1 557:11 564:7 objected 462:13 objection 315:12,12 415:22,22 416:17 420:4 434:3 456:10 462:7 463:5 469:20 470:2,17 471:9 533:1 579:2,3 584:10,11 objections 420:5 obligation 330:20 337:7 364:13 555:17,19 obligances 425:5 observation 335:22 336:7 347:11 401:22 448:6 475:19 540:15 543:4 563:19 observational 517:19 519:7,19 520:8 573:20 585:19 586:21 591:16 593:16 observe 334:19 336:9 337:4 346:21 349:9 476:17 477:2,4,7 521:12 522:9 562:17 565:3 observed 332:19,21 507:3,4 observer 345:5,18 391:20 480:3 503:8 observers 336:14 338:20 339:10 340:20 344:6 346:12 382:11 383:19 386:1 479:10 518:22 535:5 541:6 555:8 557:3 560:17 562:13 563:13 564:1,12 565:2 592:1,3,12,13 593:10 593:11 observing 503:19 504:22 519:20 526:14 obstructing 542:11 obtain 545:7 obtained 398:15 obvious 344:20 obviously 278:18 336:9 349:22 354:21 359:20 400:16 401:5 410:4 413:8 429:10 489:18 occupation 425:4</p>	<p>occurred 277:19 362:11 362:13 372:20 375:13 375:19 376:1 589:22 591:13 occurring 476:20 October 558:5 598:21 odd 494:2 offend 515:21 offended 343:7,8 offer 278:1,2 555:14 offered 366:17 367:17 381:17,20 382:16,19 392:21,22 462:17 offering 470:9,14 471:5 office 275:22 280:3 314:7 495:9 508:11,17 533:19 officer 598:2 officers 538:5 offices 379:20 484:7 official 313:11,13 333:10 339:20,20 472:17 524:11 548:10,22 officials 335:16 336:15 344:5 392:9 472:20 518:17 574:10 oh 280:21 281:1 285:4 293:20 294:21 295:22 299:13 302:3 308:19 329:22 332:6 333:20 348:17,17,17 353:6 361:19 363:16 369:8,8 371:3,3,3 373:22 375:4 378:19 434:18 436:18 437:2,22 440:2 443:4 447:8 452:22 454:15 456:13 465:19 466:18 466:19 475:14 478:2 509:3 510:18 525:12 543:19 593:2,14 596:3 okay 282:1 284:13 285:5 285:16 286:8 287:1,6 287:16 288:1,2,15,17 289:21 290:6 291:5 296:7,12 299:17 300:5 300:18 302:13 303:4 307:15,18 308:8 309:13 310:6,9 313:16 315:17 318:6 320:17 322:2 323:2,17 324:1 325:17 331:5,21 332:1,2,6 333:3 334:6 336:5 338:1,11 339:9 340:3,8 340:21 341:11,18 344:11 345:1,3 348:17 349:15 354:17 356:18 357:13 362:3 364:21</p>	<p>365:4 369:9,17 370:6 370:14 372:8 373:19 377:8 378:22 380:8 381:2,11 382:18 384:9 385:10,21 386:6,15 387:19 391:15 393:1,4 394:9 395:15 397:5,17 398:5,12 400:14 401:20 403:18 404:15,18 405:4 405:6 406:5,18 407:2 408:9,20 409:1 410:22 411:9,22 412:15 413:1 413:21 414:4 416:22 418:9 419:5 420:2,6 421:20,22 427:9 428:2 428:13 430:3,11,17 431:8 432:2,14,18 433:6 434:22 436:2 437:4,7,15 438:2 439:11 440:9 441:7,13 442:4 447:5,8,18 448:7 449:19 452:1 453:1 459:1 460:11,14 461:21 463:5,15,16,19 466:3,4 466:21 468:3,16 469:22 470:22 475:4,14 478:9 478:15 479:1,2 484:13 485:13 487:17 489:14 490:13 493:20 495:10 495:18,22 503:4 507:8 507:18 510:6 516:5 517:18 519:5 520:6,22 522:6,12,16,19 527:16 528:10,15 529:4,21 530:3 534:14,21 538:13 540:5,17 541:19 543:5 543:21 547:13 549:15 550:8,20 551:8,20 553:11,15 554:4,22 555:21 556:17 557:21 560:8,18,19 563:10 566:13,22 567:16 569:10 571:14,19 573:10 576:3,21 579:4 579:19 582:9 583:12,20 584:12 587:2 592:20,22 594:1 595:10 596:3 597:3 Omaha 377:2 omnibus 490:10 once 294:17 314:9 520:5 557:9 558:20 559:16 581:10 one's 495:3 one-and-a-half 387:12 ones 290:18 295:12</p>	<p>323:20,21 324:10 339:17 380:5 381:1 383:20,22 384:5,5,6 385:15 399:8 497:20 505:13 510:5 596:13 Op 476:21 open 478:12 487:4 528:12 546:15 574:16 581:5 open-policy 435:13 Opening 357:8 operational 517:22 opinion 281:21 301:18 302:9 314:13 315:3,20 317:3 319:13 348:3,7,9 348:10,13,21 350:1,1 403:9 429:5,17 430:22 443:2,10 445:9 476:21 540:18 541:11,16 550:2 556:7,9,11 559:3 594:1 594:14 opinions 517:1 595:3 opponent 418:6,6 opponents 417:13 419:6 opportunity 349:9 355:12 367:20 394:22 434:20 435:3,9 476:16 477:2 opposed 328:3 opposing 411:17 436:8 optimistic 361:2 option 487:4 oral 278:20 285:9,10 289:19 311:15 316:15 317:8 362:4 381:17 407:12 507:18 567:21 568:3,6 571:4 574:15 582:14,17 592:14 orally 520:1 order 326:5 328:11 336:9 340:15 355:20,22 402:8 428:21 439:3 476:15 477:2,4,14 501:13 525:18 546:7 561:15 569:8 577:12 578:7 580:3 596:13,18 ordered 400:5 545:2 547:20 596:13 ordinary 538:3,4 Oregon 536:11 organized 354:13 orient 485:12 510:21 original 312:18 353:20 401:10 461:11 509:13 509:22 510:3 556:16 originally 363:8 379:15</p>
--	--	---	---

445:10 461:8 545:1 origins 283:12 Only 546:19 Ortiz 275:17 276:5 528:9 528:17,19,20 529:7,15 529:16 532:19 533:9 596:2 ought 280:3,3 out-of-control 350:18 outbreak 518:1 outcome 361:2 501:9 517:6 545:12 598:13 outer 333:13 outset 596:14 outside 373:11 420:9 542:14 557:12 564:3 585:5 outsider 524:12 overall 593:20 overarching 593:20 overinclusive 381:5 464:22 overlap 301:16 309:4 overlooked 394:16 override 534:5 overrule 434:3 overruled 316:1 416:19 426:1 427:4 541:2 overseeing 482:15 overstepped 428:16 overturn 307:14 401:16 overturned 551:14 563:15 overview 565:8 569:18 overwhelming 364:12 Oxford 530:7	427:14,20 429:16 432:1 432:20 435:1 436:20,21 436:22 448:22 449:1 452:8 468:4 541:20 550:3,4,7 575:3,6,7 577:4 588:16 pages 338:9 342:18 343:9 343:10 368:4 391:17 paid 398:1 paint 289:22 Palm 374:10,18 Pam 472:5 pandemic 553:15,22 panel 445:3 475:18 547:17 panel's 440:13 476:1 paper 283:16,17,20 297:19 298:2 313:8,10 313:11,12,13 351:13 354:10 472:13 473:5 474:8 papers 407:14,14 429:8 paragraph 284:19 285:8 286:17 302:18 305:21 319:10 324:8 332:13,14 335:7 338:4,13 344:13 345:9 348:22 349:16 351:16 358:6 359:8,13 359:16 365:21 368:20 378:18 409:2 413:2 420:16,18 424:12,13 427:20,21 428:3,5,8 433:10 541:21 550:16 551:3 575:6 577:4,8 578:1 579:19 584:4 588:5 paragraphs 338:9 343:10 345:15 366:21 550:9 567:14 Paralegal 275:11 paralyzed 326:16 paraphrase 521:19 Pardon 331:15 parens 477:12 part 279:9 282:6 283:10 306:5,6 307:2,20 312:16 334:9 340:6 360:16 362:10 368:12 373:7,12 420:18,18 424:13 426:6 451:13,14 456:4 482:4 487:1 500:10 511:18 518:13 524:19 561:20 564:4 575:2,12 581:16 partially 421:11 participate 303:15,21	participated 355:13 participation 566:16 567:15 particular 279:14 291:13 345:22 450:20 498:9 541:8 544:13 545:8 562:21 576:5 particularity 572:15 particularly 291:18 410:3 435:13 464:22 573:3 parties 273:6 336:8 477:15 525:17 558:16 558:19 559:14 567:4 568:18 598:9,12 partisan 517:17 parts 453:20 480:2 495:6 495:7 party 330:17,17 377:5 389:12 436:6 442:15 467:7 518:19 554:11 565:3 585:20 passage 535:12 passed 320:2 552:3 passing 571:9 patently 289:14 pattern 376:8 pause 383:8,13 428:10 448:17 449:6 570:18 PC 275:5,15 PDF 370:13 Peceno 529:19 pen 337:5 penalty 450:22 Pennsylvania 290:13 291:8 292:16 299:20 300:1,4 301:7 310:19 319:2 324:6 326:7 329:10 333:18 335:16 336:4,13 346:18,22 348:3,6 349:6 354:2,14 358:18 360:6 362:10 373:4,11,12 375:2 376:1 377:10,17 379:4 386:11 389:17,21 424:14 425:16,20,22 426:20 429:3 433:11 436:6 438:8 439:6 452:17 453:4,6 457:12 458:21 467:6 472:17 484:21 494:8 502:3 513:1,10,16 520:11,12 537:7 540:12 542:22 551:21 553:19 554:10 554:10,14 556:7,14 558:5 560:15 563:16	565:7 566:10 576:15 577:15 580:5,13 581:3 584:1 585:3,5,8,11,16 586:16,17 587:10 589:9 589:20 Pennsylvania's 358:19 360:13 435:19 438:16 576:16 580:6,14 pens 330:13,14 487:13 people 279:12,13 280:1 292:7 294:7 295:2,5,17 296:7 297:6,9,12 298:20 299:8 311:12 314:8 329:20 334:18 337:9 340:12,18 373:21 374:3 376:15 379:15 392:7,14 393:8 397:17 402:18 406:11 419:19 420:8 439:7 458:10,12 458:14,18 472:21,21 473:2,11 474:4,5,17,18 474:21 485:21 488:13 496:12 499:21 503:20 504:22 505:2 507:2 509:11 511:3,8 518:5,5 527:10 553:21 557:7,18 564:1 percent 374:14 405:3 percentage 374:11 perfectly 325:14 335:10 335:10 391:13 503:11 performing 438:20 period 293:13 347:9 368:6 471:22 506:12,15 531:8 539:10 periods 531:9 permissible 554:20 permit 335:22 590:19 permitted 536:9 person 330:12 334:5,22 335:1 388:7 389:11,16 424:22 441:22 536:3 552:15 personal 326:14,14 482:12 personality 493:21 personally 408:18 441:20 persuade 472:12 pertains 295:4 Pesce 287:21 petition 436:1 439:19 440:4 444:13 petitioner 435:4,22 436:5 436:7 PHALEN 275:20 phase 277:15,16,21,22
---	---	--	--

278:5,9,13 279:11 281:13 Philadelphia 293:12 295:4 296:2 297:5 301:10 321:7 332:18 333:7 340:14,19 345:6 345:19 363:16 375:13 375:19 376:9,17,19 389:20 391:20 393:8 469:1 479:11 485:3 488:14 507:4 513:8 515:20 518:19 526:15 527:8 544:15 562:4 564:19 Philadelphia's 542:10 phon 476:11 530:17 571:13 587:13 phone 472:6 phoney 504:20 photographs 285:18 286:15 381:18,22 382:10,15 physical 425:4 physically 342:21 picayune 313:9 371:19 pick 377:1,2 429:14 581:4 picked 324:4 377:3 picking 339:22 picture 382:6 piece 298:1 313:12 354:10,12 431:3 472:13 473:5 474:8 pieces 308:1 Pittsburgh 296:2 507:6 place 314:4 319:8 329:20 377:3 410:1 424:20 484:5 499:3 500:11 582:10,11 places 292:4,6 301:8 368:8 425:1 487:15 527:2 534:3 plain 403:3 plaintiff 498:18 plaintiffs 317:4 358:15 358:16 360:1,15,20 494:9,10,13,18 500:21 501:11 502:5 510:15 516:18 566:4,5 568:8 571:6 575:11 576:13 plan 595:16,18 596:5,5 planning 286:18 plant 337:3 522:21 plead 330:20 342:12 343:16 367:21 368:10 368:15	pleaded 368:12,14 pleadings 304:2 394:15 569:2 please 286:5 302:2 316:13 343:12 345:9 347:21 356:17 359:15 361:11 368:13 412:7 422:8 427:12 432:21 434:13 436:3,13,21,22 437:5 439:11 440:9,12 443:4,22 447:20 448:4 448:15,21 452:4 456:2 457:14 459:19 467:4 468:4 469:21 470:3,8 475:5,6,21 476:4,7,9 509:19,21 528:16 529:14 565:12 577:4 594:11 pled 344:16 346:1,3,9 366:17 367:16 368:9 391:18 395:7 569:22 572:14 573:16 plenary 325:2,4 364:7 402:4 plenty 414:19 568:11 plus 350:15 420:9 483:13 point 277:22 285:17 295:7 306:3 313:1 323:16 326:19 347:7,19 357:19 359:1 360:7 366:20 367:11 388:21 389:3 391:2,8 411:15 412:2 419:22 434:4 446:21 458:10 461:20 473:20 482:6 483:17,18 487:12 488:22 492:10 501:7 508:6 513:1 526:5 541:8 544:21 547:4 550:12 553:1 555:18 562:10 570:9 573:19 576:5 587:14 589:12 590:5 pointed 373:6 393:17 395:1 410:20,20 411:3 411:16 564:8 pointing 306:2 373:13,20 374:4 434:6 pole 295:20,22 political 330:16,17 377:5 poll 425:1 535:5,9,16,20 535:21 542:11,13 543:1 555:8 polling 424:19 polls 554:3 poor 331:4 portion 286:12 302:15	360:4,6 479:5 portions 415:14 pose 416:8 posed 365:10 416:7 position 336:11 383:17 383:22 384:7 389:5 394:13 395:9 396:14 410:6 473:14 562:16 582:22 positional 562:12 591:21 possession 292:8,9,10,11 468:11 possibilities 326:20 possibility 313:1 574:17 possible 320:19,20 322:15 327:1 343:5 355:6 388:18 398:13 419:5 560:6 possibly 337:5 376:7 post 444:11 post-election 481:19 potential 371:6,8,13,16 372:2,7 585:1 586:13 potentially 388:18 potted 337:3 522:21 Powell 531:1,3,5 power 311:6 325:4 364:1 364:8 428:16 powerful 300:16 354:15 414:17 415:4 practice 339:13 453:22 501:5 515:3 524:13 531:21 prayer 306:5 351:10,17 352:21 353:9 354:19 355:2,3 358:14 582:9 pre 444:11 pre-election 555:22 556:2 557:22 precedence 355:10 precedent 315:1,18 355:9 444:20,20 445:12 preceding 486:7 precise 435:15 precisely 384:21 477:16 predated 496:19 prediction 361:2 385:14 390:14 predicts 390:11 preliminarily 514:16 preliminary 280:20 282:8,12,14 342:9 prepare 343:1 prepared 296:4 prerequisite 425:12 presence 337:2,3 350:12	350:13 521:6 522:16 524:3 present 273:5 275:10 336:8 341:9 351:22 389:11,12 400:21 550:17 590:4 592:12 593:3 presented 279:9 589:20 presents 550:19 preserve 317:14 322:14 336:1 337:7 350:2 preserved 309:17 313:1 318:5 363:2 preserving 327:1 355:6 386:18 president 328:22 457:17 457:18 472:16 481:18 484:2 512:17 558:3 559:1 560:4 565:6 566:6 presidential 292:15 325:4 326:9 338:17 371:21 374:7 375:2 376:2 399:19 401:7 405:17 513:11,20 515:10 532:2 534:8 539:8 577:15 580:4 581:4 583:22 Presidents 532:10 press 482:10 573:19 pressure 492:15 pressured 514:6 pretend 400:17 pretty 307:1 311:3 318:4 318:21 340:16 347:9 387:5 408:7 454:16 457:4 458:13 460:6 464:3 506:18 515:6 517:9 519:21,22 550:13 573:17 prevailing 362:20 prevented 329:9 prevents 438:9 previous 375:18 515:8 previously 283:3 primarily 533:22 primary 402:3 534:15 536:12,21 552:14 553:3 556:22 568:7 589:14 Princeton 546:20 principal 399:12 485:3 524:14 prior 373:18 376:13 460:4 536:6 554:4 559:2 571:11 585:5,11 prison 473:17 pro 318:15 321:1,3
---	---	--	---

<p>489:10 524:11 probable 277:18 probably 295:8 345:2 394:3 457:2 473:13 483:9 508:5,21 515:1 536:11 595:4 problem 281:10 307:20 392:14 406:9 418:7 434:8,9 441:15 462:9 524:19 526:14 527:1 550:17 557:11 563:10 563:12 580:15 problems 378:9 382:1 519:19 564:8 583:10 procedure 434:21 435:3 435:9,15,17 436:9 453:5 498:20 513:11,19 532:16,18,21 540:3 560:19 572:13 583:7 procedures 397:16 477:10 534:21,22 535:1 537:4,4,8,10 538:8 540:12 542:20 551:21 554:6 561:3,14 583:10 591:8 proceed 282:22 314:15 317:22 463:17 529:4 549:3,8 proceeding 277:13,14,21 330:6 380:21 391:12 394:21 477:18 528:22 533:11 546:12 proceedings 285:20 546:17 569:11,13 598:4 598:7 process 282:15 306:7,9 306:12,15,18 307:11,17 309:3,5,21 310:1 313:13 317:18 326:11 326:18 328:16 346:11 353:12,13 354:4 360:19 363:13 389:18 399:4 476:17 477:10 481:2 482:19 490:9 495:5 500:14 521:12 540:11 541:5 542:5,11,12 550:10 552:8 557:5,10 557:16 562:6 570:5,8 573:1,7 575:14 585:21 589:13 592:9 593:15,18 processes 550:18 processing 346:13 379:22 477:9 589:16 produce 381:20 383:1 508:11,15 produced 461:11 508:16</p>	<p>510:5 product 489:16 professional 272:2 376:17 professor 531:11 532:15 533:9 546:19 prohibit 324:18 453:7,8 prohibiting 577:18 578:7 prohibition 453:16 prohibits 577:13 projection 299:11 prominent 536:11 pronouncing 424:16 pronunciation 571:12 proof 553:11 586:6 proper 496:8 properly 332:19,21 334:22 335:17 451:18 500:3,21 proportions 503:12 proposed 313:11 proposition 386:1 421:17 propositions 542:18,18 prosecuted 513:2 prosecutor 374:3 Protection 306:7 307:17 309:4,6,9 310:2,5 318:13 354:4 360:18 378:21 379:7,9,14 380:5 401:19,21 406:16 438:1 453:18 454:2 481:2 490:9 500:14 510:13 511:1 539:6 548:8 549:10 550:18 570:4 575:14 582:1 590:21 592:8 593:14 prototype 491:16 provable 364:11,19 prove 320:3 331:7 352:9 352:14,14 356:1 358:22 359:21 360:8 361:7 366:22 390:11,12,16 470:10 proved 282:13 346:20 391:21 provide 285:11,12 286:1 435:9 453:9 477:2 587:5 provided 288:10,12 458:7 519:14 576:19 577:20 587:7 providing 286:15 580:5 proving 326:18 provision 318:22 319:2 325:8 417:16 441:3 535:7,10,11</p>	<p>provisional 296:20 297:1 297:8 504:7,12,12 589:13 provisionally 296:8 provisions 419:8 424:21 476:18 495:6 534:1 539:15 595:2 proximity 564:13 565:4 PS 319:5 public 273:4 274:6 284:21 288:7 588:6 598:1,17 publish 467:19 publishing 467:14 pull 343:12 394:12 467:8 Pullman 558:9,10,11 559:2 punch 548:16 purely 519:7 purported 288:2 518:3 purpose 313:17,17 319:6 462:17,19 471:4 524:13 561:17 purposeful 338:17 purposes 325:19 pursue 362:17 pursued 362:19 563:1 pushed 355:20 393:9,15 420:11 put 279:7 283:17 293:15 293:20 294:15 295:9 301:17 303:14 316:12 323:16 326:20 327:6 330:13,14,22 334:14 337:5 342:5,17 343:3 344:21 359:5 365:12 375:9 380:2 393:18,19 401:1 412:7 413:8,8 426:17 450:10,11,12 458:20 460:5 467:17 468:3,4 469:10,13 472:3 479:10 482:10 483:8 487:13 492:15 504:9 541:13 543:5 567:19 568:9 584:13,14 594:10 puts 385:13 putting 284:11 304:13 371:2 440:17 470:13 514:13</p>	<p>442:11 qualify 381:3 quasi-statistical 587:15 question 288:8 290:22 298:4,5 300:20 307:13 314:19 315:3,4 316:2 318:10 364:14 365:8,10 365:20 366:13 367:10 378:13 382:4,8 416:7,8 416:13 417:12 428:15 431:2 432:7 434:1 450:6 453:12,17 456:2 459:22 465:11 468:12 474:6 483:18 541:1 546:10,15 551:4 563:4 574:5 questioned 366:3 questions 361:17 365:14 368:13 424:9 431:15 433:19 435:13 457:9 481:6,8,10 485:6 512:14 526:5 539:7 559:8 576:22 quibbling 349:13 quick 292:2 304:5 423:4 467:10 quickly 330:11 339:18 359:10,10,19 434:4 455:9 474:4 488:13 514:14 525:7 589:8 quite 364:6 400:16 451:4 464:17 474:20 491:15 522:13 524:14 558:2 quote 368:22,22 369:3,8 369:8 371:5 413:22 416:4 477:11 588:13,14 588:17 quotes 434:17,19</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 277:1 424:1 529:15 race 396:13 raise 317:5 419:20 571:8 571:10 572:20 raised 304:17 503:6,7,8 raises 572:22 573:8 ranged 505:19 ranging 505:4 rata 318:15 321:1,3 rational 337:1 341:13 561:4 rationale 404:19 444:10 555:12 557:15 rationally 561:16,21 read 287:13,19 294:22 300:14 302:6,15 304:5</p>
--	--	--	---

304:5 305:5 319:5 329:18 335:4 344:21 351:13 359:7 379:10 388:3 394:17 432:9 433:4,5,9 437:7,21 439:20 440:1,2,3,15,19 441:13 443:17 445:16 449:1 452:10,15 455:9 465:2 467:3,3 468:1 476:9,12 479:4 542:7 568:1 577:7 578:1 579:20 591:11 reader 390:18 reading 305:20,21 336:10 437:20 443:2 445:1 519:6 ready 278:12 279:2,11 282:20 357:15,17 reaffirmed 364:5 real 317:21 328:21,22 392:14 423:4 reality 521:6 realize 280:4 362:16 realized 304:7 322:17 483:9 really 295:15 312:2,4,11 314:10 322:19 327:2 331:3,6 333:11 343:6 351:2,15 355:1 356:20 361:19 367:3 371:18,19 391:5 431:1,1 455:10 465:8,10 474:9 484:7 489:15 491:11 501:16 502:3 524:18 582:8 realm 299:4 reason 277:19 297:1,2 300:14 325:9 329:17 336:21 379:18 397:15 400:5 409:20 417:5 424:19 442:6 458:17 478:4 509:22 518:4 reasonable 327:1 341:13 350:7 353:4 523:6 reasoning 555:13 564:5 reasons 425:4 428:19 435:21 465:14 545:8 548:6,8 552:6 reassemble 292:6 recall 316:22 317:7 339:5 339:7 343:22 344:1 345:1 351:17,19 393:15 397:8 400:19 401:8 403:8,11,12 422:4 454:18 455:19 468:11 469:8 483:21 486:9 487:18,19 491:7,8,9	514:20 582:3 589:1 receive 456:21 507:20 received 360:4 458:3 461:2 530:11 555:2 recess 357:7,10 423:22 477:22 478:1,10,14 528:14 595:12 597:6 recipient 358:19 576:16 recognize 316:15 348:2 408:14 594:13 recognized 404:22 recollection 291:22 301:6 351:22 405:19 451:21 460:15 464:4 485:22 recommend 322:20 328:4 recommendations 532:8 532:13 recommended 457:18 reconciled 441:5 reconvene 423:20 record 294:12 330:2 370:18,20 431:5 463:6 472:21 473:3 519:4 528:16 544:17 596:16 598:7 recorded 330:16 333:6 recordings 285:19 records 505:22 recount 401:10,11 405:10 547:20 548:3 549:2,8 549:11 550:10 recounting 349:10 recounts 536:18 recreate 293:18 red 474:21 redacted 456:16,18 reduced 337:3 561:11,12 598:5 reduction 318:15 321:1,4 refer 283:20 284:8,19 285:8 420:20 506:6,7 584:5,6,14 594:17 reference 345:11 490:11 referenced 586:7 references 375:17 referred 285:20 324:18 referring 305:3 312:1 516:6 541:10,17 542:4 586:10 reflect 431:5 reflection 312:11 reflects 524:19 reform 532:1,13 refresh 526:8 refreshed 304:22 refused 313:14 340:15	355:11 refusing 347:12 refute 375:3,9 regard 517:5 regarded 363:11 482:9 511:5 regarding 453:4,4 475:19 regime 545:4 region 529:19 registered 296:17,20,22 552:12,20 registration 504:19 regular 509:18 regularly 532:18 regulate 325:4 541:5 regulations 310:11 Regulatory 531:21 Rehnquist 403:10 404:1 reincorporated 490:11 reiterated 472:5 rejected 290:3 435:6 496:10 544:22 relate 378:2 related 380:6 561:16,21 562:22 586:3 598:8 relates 504:4 relation 562:13 relative 598:11 relay 477:5 release 354:20 482:10 relevant 376:7 533:22 534:1 relied 289:19,19 396:2 407:11 462:19 468:13 484:16 488:10 584:19 591:1 relief 306:5 327:22 328:5 328:8 331:3 351:10,17 353:9,11 354:20 355:2 355:3 358:14 366:20 480:12 502:4 569:9 576:4,19 577:3,8,18 578:2 579:20 581:19,21 582:6,10 relieve 331:2 352:21 435:22 religious 425:5 rely 325:15,15 relying 297:17 377:14 451:20 remain 371:6 476:20 remained 527:1 570:2,3 remaining 526:14 559:18 remanded 440:6 444:5 remark 589:8 remarkably 546:21	remedies 318:11 322:14 323:3,12,14 327:3 400:1 514:22 remedy 318:14 319:6,15 320:7 322:6,8,9,11,13 322:15,20,21 323:1,3 323:14,18,19 324:3,15 324:16,17 327:2,10,13 329:9 357:19 358:16 360:21 386:13 400:2,4 453:7 545:14,22 576:13 579:14 580:9 remember 283:16 285:14 289:15,16 290:3 291:1 293:1 295:8 297:15 301:15 311:11,13 318:3 339:4 344:18,20 345:21 345:22 347:14 348:7,9 348:16,18 349:11 355:13 373:5 377:18 381:13,14,14 391:11 392:1,3,4,5,13 393:11 393:13 396:4,19 397:5 398:5,17,18 399:2,3,4 399:18 400:7 401:2 404:11,14 406:2 451:10 457:19 462:4 465:9 514:2 547:8 554:15 557:14 560:19 remembered 407:19 remind 283:14 311:18 490:7 reminding 397:21 removed 316:8 445:9,11 524:6 repeated 356:12 repeating 293:16 452:14 repetitive 510:12 replete 376:11 report 334:13 368:20 369:17 462:2,8,10,11 532:11 533:10 584:3,14 588:5,16 reported 272:21 374:21 587:18 reporter 273:4 277:8,9 reports 300:15 532:11 represent 295:15 524:4 representation 380:14 447:1 461:10 representatives 476:19 542:12,14 585:21 represented 380:8 494:8 494:11,12 582:2 republican 298:1 313:6 322:1 338:19 339:11
---	--	---	---

355:14 360:10,11 363:6 385:7 391:3 467:6 472:12 487:12 518:8 591:22 592:2 593:11 republicans 321:22 339:18 354:10 355:11 355:18 375:8 394:1,5 473:13 518:12 reputation 377:5 488:11 request 290:19 329:8 353:4 469:1 552:7 569:7 582:10,11 requested 318:11 453:7 461:2 508:11 577:3 578:2 579:20 requesting 477:3 564:13 require 450:20 581:3 required 305:13,13 333:16,19 336:14 337:2 399:13 424:22 451:6 552:18 554:18 555:14 560:13,16 requirement 425:11 441:19 451:8,9 523:1 535:4,20 553:11 requirements 360:14 425:2 435:8 555:7 560:17 562:12 564:3 572:17 578:11 579:9 583:6 requires 334:20 542:13 543:1 561:14 572:13 requiring 453:16 requisite 438:20 requisites 319:13 researching 322:13 resembled 582:11 reservations 410:3 reserve 291:21 315:22 461:14,19 reserving 462:7 reside 497:11 resided 516:18 residency 555:7 560:17 resolve 536:21 593:8 respect 297:9 318:12 415:1 424:9 461:3 534:7,14 536:1 574:4 575:18 581:22 586:12 586:20 588:22 590:3,14 590:22 591:15 593:13 respected 519:10 respective 273:6 respectively 496:7 respond 286:5 respondent 272:7 275:2	277:12,12 278:2 432:16 453:2 525:9 Respondent's 369:15,16 426:7 452:9 466:10 550:2 response 365:13 responsibilities 533:16 responsibility 272:2 533:21 534:16 responsible 491:21 566:21 567:13 responsibly 342:2 responsive 539:17 rest 349:16 388:15 391:4 465:9 502:14 rested 502:15 restraining 326:5 328:11 569:8 restrictions 570:9 result 438:13 472:13 577:9 578:3 579:21 resulting 438:21 results 324:20 328:16 438:11 577:14,19 578:8 578:15 580:4 resume 357:7,16 528:7 resumed 424:3 RET 275:3,4 retained 304:21 retrieve 509:9,12 retrospect 493:8 return 465:6 revealing 548:18 reversal 430:4 476:2 479:6 reverse 428:20 430:15 reversed 429:5 430:15 545:14 review 304:12 325:9 391:16 561:1,10 reviewed 297:4 486:16 reviews 378:20 379:11 409:14 revoke 325:7 RICO 373:17,17 ridiculous 343:3 ridiculously 327:6 right 277:15 278:5,8 279:2,3 281:16 282:18 283:16 287:12 288:1,1 288:2 291:4,4 296:11 297:14 302:17 303:3 305:8 306:14,16,21 307:10,10,17 308:6,11 314:20 315:13 316:9 318:18 324:14 336:5,11	337:6,10,12 339:20 341:16 342:11 343:18 344:3,7,9 346:17 350:2 357:4 358:6,10 363:15 365:21 367:9,13 368:17 368:19 369:18,20 372:8 375:16,19 377:22 387:8 389:3,3 390:7 391:15 393:6 394:1 396:13 397:1,6,13,22 398:6 400:18 401:13 404:8 405:7,17,18 406:1,3,9 406:15,22 407:9 409:17 410:22 411:6,13 412:2 414:13 415:5 418:11,14 418:17 419:20 421:13 423:5,15 424:16 425:18 425:19,22 426:12 427:3 430:5,9 431:14,17 432:5,10,11 436:8,12 437:13 438:3 439:12,15 442:20 443:15 444:22 445:17 447:5,18 448:7 450:8 453:8 455:1 456:20 458:19 459:8 461:16 462:6 464:15,17 465:18,18,20 466:9 468:9 471:8,11,15 475:15,16,17,20,22 476:7 477:7,13,18 479:2 481:20 484:16 486:19 487:20 489:10 489:21 490:20 494:9,20 494:21 497:5 499:16 500:6,8,15,22 504:17 506:2 508:10,12 511:7 511:8 512:9 513:9 514:11 515:2 516:2,15 517:3 519:3 520:14,15 520:17 522:12 527:16 528:8 533:2 538:15 550:3,9,10 551:17,18 551:20 554:9 555:21 558:8 560:2 561:18 562:1 563:19 564:1,5,6 564:9,12 565:5,18,18 567:19 569:15 571:14 573:13 574:4 576:8,9 583:18 584:17 590:3 591:15 592:22 594:16 596:4 Rights 442:20 535:8,19 575:16 ripped 334:13 risk 435:5,10 Ritter 439:21	ROBERT 274:3 Roberts 494:15 495:1 497:7 500:2,15 510:19 566:7 role 282:3,3 457:7 566:14 567:7 568:5 rolling 289:3,4 Roman 509:20 room 476:3,21 479:8,9,20 483:21 484:4 522:3,4 522:16,21 543:2 564:10 rooms 357:9 478:13 528:13 Rosenthal 315:9 roughly 553:16 Rudolph 272:6,16 276:4 277:4 283:1 rule 326:21 341:13 387:6 394:8 409:21 410:4,16 410:18 411:4,5,18 413:10,15 414:2,11,19 414:21,22 415:10 416:2 416:2 417:3,4,14,22 418:2,5 419:7,19 441:18 522:22 572:13 583:7 591:4 595:2 ruled 336:13 363:7 421:6 421:12 450:19 rules 282:16 306:19,20 306:21 308:4 311:7 335:11,11 348:5 ruling 314:17 333:18 334:2,2 336:3,6 461:19 463:2 549:17 555:22 556:2 560:3,5,9,10 run 419:1,17 592:10 running 374:19 Ryan 292:11 455:3,4 474:1 509:18
<hr/> S <hr/>			
S 277:1 424:1,1,1 S-t-i-n-s-o-n 544:5 safe 417:15 419:8 sanction 278:3,11,18,19 409:10,21 410:17 411:5 414:16 416:2,12 sanctioned 327:5,12,20 416:16 sanctions 277:22 278:5,9 281:13 411:18 413:14 417:3,13 418:5 419:7 419:16 sand 518:21 sat 400:3 save 343:2			

<p>saw 285:6 297:3 317:2 331:20 349:19 359:9 386:8 391:18 395:19 443:1 454:18 455:12 473:9,9,14 497:1 522:14 saying 279:5,8 298:10 308:6 317:7 321:9 323:6 326:13 330:14 338:14 349:11 352:13 361:5 366:22 369:8,9 372:1 388:2,4,6,16 411:9 430:13,21 451:8 455:15 471:7 476:3 479:6,7 492:14 501:10 578:20 581:10 says 286:18 334:3 335:6 352:6,7,7 364:6 386:9 389:11 421:21 422:1 428:14 429:2 434:20 435:2 438:3 448:22 451:4,16,19,22 455:18 462:12 521:16 522:13 575:10 576:12 scale 539:20 Scaringi 524:15,17 schedule 595:15 scheduled 281:7 scheme 338:16 341:1 360:16 545:3 scholar 530:8 school 445:22 530:5,11 530:14,15 531:6 schools 531:9,10 scorecard 448:13 scream 575:12 screen 281:2 432:9 460:5 465:18,22 467:8 475:9 525:13 screening 467:10 screwed 383:11 scroll 441:11 456:14 scrutiny 561:11,11,12,12 561:12,16 searching 293:8 seat 546:6 second 277:21 284:13 293:17 301:2 303:11 304:18 305:4 311:19 317:19 331:12,21 338:5 339:2 340:22 344:16,21 346:2,6,8 351:9 357:22 358:13 383:4 393:6 394:11 395:17 424:13 433:10,10 436:14 437:12,14,16,16 446:3</p>	<p>447:18 448:16 449:5 469:9,13 480:10,17 485:5 491:14,17 512:22 534:12 541:21,22 557:3 563:5 568:12 571:2 573:22 574:7,8,20 577:2 594:8 Secondly 585:4 secrecy 555:5 secret 578:18 579:7 Secretary 310:12,13 324:19 436:10 516:7 566:10 section 319:5 324:22 327:10 364:2 403:2 442:19 531:20 534:5 538:4 secure 318:17 570:6 security 540:12 see 279:7 282:16 284:16 284:19 285:1,22 286:6 286:21 287:2,4,18 289:14 295:20 297:10 297:19 298:1 299:11 313:3 317:9,13 325:18 330:1,4 333:11 334:8,9 334:11 336:14,22 343:9 344:10 345:17,19,21 346:13,14,14 347:17 349:5,12,21 352:21 359:17 362:8 369:3,9,9 370:1,4 379:6 383:6 385:11,17 386:2 392:9 392:11,15,17 393:12 406:5 411:14,20 412:20 412:21,22 417:6 421:2 421:3,8 424:13 427:1 428:13 432:4,6 439:13 446:7 447:18 448:10 449:17 451:21 454:7 466:19 472:9 473:4,6 473:14 474:8,22 495:22 505:20,21 508:21 509:17 514:8 522:21 523:1,3 551:2 575:10 576:12 577:6 582:9 588:4,7 597:4 seeing 354:10 380:7 382:12 468:11 505:3,5 505:19 521:7 seek 358:15,16 360:21 576:13 seeking 318:15 361:1 411:18 465:13,15 466:1 466:22 467:12 469:11 581:22 582:7</p>	<p>seeks 435:22 seemingly 476:22 seen 281:1 285:3 521:14 521:17,18 segregated 579:11,13 selected 340:12,19 457:16 Senate 363:6 396:15,16 400:10 544:14 senatorial 536:15 send 290:17,18,20 525:19 553:13 sending 379:16 sense 304:14 323:22 373:8 sent 290:10,14,16,19 364:19 398:7 510:1 525:21 545:3 546:16 sentence 358:2,7 370:15 370:16 421:9 428:14 452:13,16,18 453:1 550:15 551:3 576:9,10 sentences 463:14 separate 295:9 seriously 365:7 368:22 409:22 set 314:1 476:18 517:7 532:1,7 534:3 545:8 Seth 467:7 settled 311:3 settlement 526:12 527:11 564:22 seven 296:19 346:10 387:11 388:4 407:15 473:15 497:8,10 500:5 501:19 527:6 542:9 549:14 566:11 586:6,18 590:16 seventh 434:14,16 527:7 Shakespeare 530:9 Shaler's 476:11 shared 287:21 sheriff 340:15 355:21 shift 395:15 shocked 331:11 343:7 472:7 473:15 shocks 377:7 short 345:15 422:18,19 423:12 531:4 shortly 423:13 513:1 Shot 588:18 show 320:2 341:14 360:2 360:15 362:7 375:16 376:22 379:19 382:1,3 382:11 384:11 391:17 393:11 402:9 412:18</p>	<p>415:21 459:18 467:9 469:14 470:21 471:1,1 540:1,2 565:11 573:2,3 575:11 showed 361:6 382:6 397:11 398:21 399:22 416:14 473:9 showing 277:17 399:3 466:7 shown 545:17,21 546:12 shut 295:6 474:5 sic 350:3 side 290:1 313:21 355:14 sign 304:2 441:21 489:8 567:16 568:20 signature 333:21 360:13 408:20,22 438:7,21 439:5,7 442:17 445:5 557:2,15 560:16 signatures 539:11 signed 287:22 304:11 305:7,9 408:17 441:19 441:22 442:2,15 450:7 450:15,21 489:12 significance 414:14 416:11 significant 349:21 504:5 505:14 signing 442:6 similar 293:5 313:4 334:21 487:14 489:4,5 558:2 simple 450:17,17 simpler 319:1 simply 350:13 462:15 477:7 588:9 single 289:15 297:21 353:16,22 354:10 381:8 405:8 430:20 431:3,13 474:6,8 548:22 singular 484:6 sir 285:21 286:21 307:12 308:22 343:19 344:8 345:7 352:10 355:17 369:19 372:22 375:15 382:4 396:12 406:14,21 408:16 418:20 423:18 426:19 428:11 433:1,15 442:20 453:12 456:7 460:17 481:21 485:2 486:14,20 490:1 496:1 496:13 512:20 522:5 523:13,22 532:17 535:22 537:6,9,12 539:3 540:8,14,16 541:12,18 542:6 544:7</p>
---	---	---	--

544:10 551:12,16,19 552:1 554:8,12 555:20 556:10,19 558:7 559:4 560:1,11 564:20 567:5 567:18 568:2,19,22 569:4,14 571:18 573:9 576:20 577:21 580:11 581:2,6 582:5,13,16 583:19 586:19 587:1 588:1 590:2 591:2 594:3,15 sit 313:19 336:9 339:19 350:13 422:22 525:12 sitting 518:6,17 situation 323:11 353:15 392:13 395:14 472:3 situations 489:4 538:16 situs 377:18 six 296:19 362:12 434:14 452:8 479:6,7 518:7 550:7 553:16 563:14 586:2 six-day 293:13 347:8 Sixteen 475:10 Sixth 275:6 Skelter 292:3 sliding 539:20 slightly 385:2 504:5 small 396:19 smaller 293:10 321:16,21 smart 323:11 367:3 sneaky 367:10 so-called 308:9 417:15 534:2,6 561:10 588:8 social 348:5 554:2 Society 299:20 sole 324:15 402:3 solely 578:15 solemnly 528:21 solicited 397:18 Solicitor 314:7 somebody 280:3 305:14 313:20 398:8 400:3 405:16 410:6 504:18 509:15 578:20 someone's 309:8 somewhat 592:9 soon 282:5,5 458:19 483:6 sorry 288:8 294:22 296:16 298:7 301:15 302:14 307:9 308:15,19 314:18 315:13 332:8 345:10 348:20 351:6 357:1 362:1 369:3,15 370:11 378:13 383:5	387:22 405:15 414:3 426:11 429:19 430:19 431:4 437:2 440:2 447:4 449:3,8 453:13 456:3,13 463:9 475:8 475:22 478:21 484:18 484:20 493:1 495:18 507:11,11 513:16 514:4 517:12 522:5 523:17 539:14,16 543:14,20,22 556:1,4,4 557:6 563:2 565:16 570:2 573:13 575:17 578:1,20 579:4 587:2 593:2 sort 375:8 405:5,5 408:6 490:10 491:16 508:9 536:18 555:8 562:22 563:1 sorts 537:13 sought 435:3 500:4 501:1 547:7 576:4 sound 309:11 sounded 570:4 sounding 481:1 sounds 344:2 397:1 514:4 source 369:1 371:6,13,14 371:16 372:1,2,6 Southern 531:12 speaking 416:5 special 537:4 specific 285:19 301:6 323:18 326:4 373:10 374:9 500:18 543:3 552:6 565:10 580:21 594:17 specifically 301:1 381:13 392:5 420:20 540:15 581:22 Specification 408:11 specificity 307:21 572:16 583:6 specifics 322:9 specified 545:8 specify 323:3,5 534:9 speculate 493:19 speed 512:15 587:17 589:16 spelled 282:16 spend 283:11 spent 297:18,18 469:4 spikes 588:8 spite 337:8 split 549:12 spoke 297:13 416:3 473:22 sponte 414:15 416:12,15	spot 282:10 spread 479:21 480:1 Springs 588:19 staff 275:21 385:18 486:4 486:5 stage 298:22 322:12,15 325:1 359:19 397:10 399:10,11 400:12,15 458:9 stages 526:8 stamp 333:14 541:20 stand 389:20,21 432:5,6 434:10 528:19 standard 442:1 547:21 548:4,10,10 549:9 561:1 standards 405:13 406:12 439:3 549:3 standing 314:14 315:20 315:21 317:5 329:20 432:8 502:13,14,16 504:4 511:12,13,14 518:6 560:3,5,7,10 571:8,10 Starr 314:5 start 308:22 316:19 332:10 338:13 358:8,8 409:18 533:15 556:6 584:3 started 483:8 502:8 531:5 531:17 567:11 starting 348:22 383:3 starts 351:10 state 288:6 307:5 310:12 310:13 315:12 324:19 328:17 336:3,20 353:18 363:3,3,5 364:6,13 394:7 396:14 397:3 400:10 402:2,7,21 405:9 406:10 424:21 425:2 439:1,2 442:12 452:17 453:4,6,20 462:20 468:15 469:20 470:2 488:19 495:7,7 501:15 511:3 514:22 529:14 533:17 534:17 534:18,20 535:3 538:5 538:8,15,17 540:3 541:9 542:21 544:9 546:6 548:11,22 552:4 552:16,18,19 554:6 555:22 556:5 558:14,14 558:17,18 559:8,9,15 559:15,20 561:2,19 562:20 563:8,22 564:15 566:10 570:12,13,14,17	571:15 572:9,14,20 574:5 577:11 578:6 580:2 581:4,10 587:10 588:13 state's 539:19 state-conducted 543:10 state-run 537:15 stated 435:21 463:19 480:9 549:19 583:4 statement 292:22 293:2 341:19 353:21 390:14 425:15 470:10 statements 284:20 285:12 286:19 288:5 289:19 292:13,19 295:17 584:22 states 301:16 310:20 353:9,15 363:7 364:18 387:6 403:3 440:6 444:6 458:21 482:11 483:13,14,18 484:15 533:18 534:3,7,13 536:5,8 537:1,3,3 538:20 539:21 548:6,7 548:21 559:11 577:10 578:4 579:22 580:10 581:8 statewide 353:17 401:16 552:14 577:16 587:18 589:15 stating 480:11 statistical 360:1 398:19 586:2 587:4,5,9 588:8 590:5 statistician 588:14 statistics 415:9,20 416:14 588:7 589:5 statute 324:5 336:7 373:17,17 386:11 441:6 451:19 538:11 555:17 555:19 563:22 564:11 statutes 319:2 320:8 324:5 424:17 425:7 538:15 statutory 329:10 537:20 538:10,17,18 555:9 556:18 564:8 565:2 578:11 579:9 stay 409:3 440:16 443:8,9 443:19 576:8 stayed 385:11 Ste 274:16 stereotype 598:5 Stephen 530:19 stick 300:1 Stinson 315:2,20 395:21
---	---	---	---

396:3,5,22 398:9,20 399:7 407:9 544:4,18 573:1 576:18 Stinson's 397:17 stipulation 525:16 stood 597:6 stop 475:16,22 476:6,7,7 485:5 553:1 stopped 368:7 straight 318:21 strange 330:6 507:7 514:4 strangely 400:7 strategy 362:22 483:4 strayed 298:3 313:16 Street 274:16 strict 397:15,16 517:10 561:12 strike 410:22 569:11 strong 340:16 struck 519:8 stuck 351:1 student 325:11 531:16,17 studies 586:3 stuff 285:18 286:1 405:21 stumbling 584:8 sua 414:15 416:12,15 subject 287:19 325:8 335:13 395:16 461:16 462:21 518:12,15 534:4 583:5 submit 281:13 467:1 submitted 283:10 284:3 364:16 429:7,12,13 430:2,8 461:12 533:10 545:1 subsequent 477:15 514:16 553:4,6 subsequently 421:12 subsidiary 532:11 substained 470:17 substance 470:13 471:21 substantial 321:20 360:3 360:6 363:11 364:12 514:13 substantially 490:22 substantive 306:11,15 307:11 540:10 541:4 542:5 573:7 592:9 593:15,18 succinctly 510:20 sue 497:16 499:16 sued 327:16 352:11 497:7 586:18 suffer 450:21 sufficient 329:8 453:2	502:14 suggest 352:17 388:19 410:13 suggested 400:1 suggesting 323:15 327:13 553:2 suggestion 328:6 350:5 suggests 550:13 suis 399:17 suited 435:10 sum 471:21 summary 341:22 465:10 560:21 summer 530:16 sums 327:7 supervising 405:9 488:4 supplement 294:4 supplemental 293:14 supplied 292:1 377:15 supply 381:6 support 290:2 341:2 346:9,10 366:18 367:8 367:18 380:16 391:19 394:13 395:9 407:11 409:12 411:11 supported 288:4 349:7 353:7,10 544:17 supporting 341:19 342:16,17 569:9 supports 454:4,6 suppose 441:20 442:5 supposed 342:12 368:8 supposedly 461:2 supreme 314:8 325:3,5 325:12 333:19 336:3 346:18 348:3,11 349:6 364:3 400:19 403:14 405:9 406:10,11 424:14 425:16,20,22 426:20 429:3 430:13,14,22 439:5,22 443:7 444:1,6 445:1,8,20 446:12,14 446:19 447:15 451:12 476:2 479:5 517:6 520:7,10,21 521:10,21 542:22 547:20 548:2,7 548:21,21 549:1 554:10 554:14 556:7,15,20 559:16,20 560:15 563:16,17 581:17 sure 295:16 298:1 302:4 303:6 305:11 313:18 318:5 322:2 331:2 339:8 348:17 352:6 359:3,7 378:16,19 381:8 393:14 423:13	430:1 435:2 439:21 445:4 448:9 454:5 455:19 458:13 467:5 469:15 470:4 474:1 479:12,19 481:12 484:17 496:18,19 500:7 515:6 553:6,14 561:9 584:9 595:4,17 surely 301:11 303:12 501:7 523:9 surgery 491:12 surprise 349:18 402:7 surprised 407:16 survive 561:15 Suspended 272:8 suspicious 474:9 sustained 470:17 471:9 swear 528:21 swearing 457:21 460:11 Sweeper 588:18 switch 395:4 switches 451:2 sworn 277:9 283:3 328:22 529:9 system 274:11 379:17,17 425:8,13 552:20 systems 405:1 551:1,6	talking 279:13 281:2 283:9,12 293:3 303:11 304:12 319:2 321:2 327:19 354:14 367:4,5 367:7,9 368:4 369:18 375:12 377:13 379:6,12 380:4 407:4 428:7 433:16 447:22 448:2 449:21 463:7,13 469:5 478:18 506:2 510:16 talks 302:15 tampering 438:9 tangled 556:4 task 433:13 taught 532:16 teaching 531:7,18 532:17 team 457:20 458:6 460:15 472:14,14,15 474:17 484:9,10 tear 329:22 technical 370:12,22 technically 320:14 technologies 548:20 tell 290:16 292:18,20 297:14 304:20,21 311:2 311:12,15 317:17 394:18 395:5 421:10 468:17,18 476:4 497:9 505:13 522:5 530:3 531:14 532:5 533:8,20 544:11 554:13 556:20 559:5 562:8 563:21 568:14 569:5,21 570:20 573:11 579:16 584:17 596:17 telling 304:10 354:12 361:7 371:21 458:3 517:2 Temporarily 272:8 temporary 326:5 328:11 569:7 ten 320:4 345:13 530:1 tendency 386:19 termed 439:4 terms 281:12 488:19 493:12 503:16 534:21 terrible 472:3 test 539:1,17,21 561:4 tested 588:10 testified 283:4 345:18 479:8 502:18 529:10 574:14 581:21 testifies 460:22 461:15 463:3 485:8 testify 281:5 300:12 395:1 463:1 521:9
--	--	---	--

527:14 testifying 304:9 440:15 529:16,18 582:3 testimony 277:16 280:8 299:5 303:20 390:20 392:18 407:5 460:3,4 490:15 497:1 521:2,18 521:18 528:3,21 540:10 544:3 567:12 568:11 584:15 testing 313:11 Texas 588:19 thank 283:19 302:6 356:6 357:4,5,14 366:11 423:18 428:9 431:19 432:2 436:12 478:11 495:22 512:9,12 523:11 523:13 524:1,20,21 527:22 528:2 533:12 543:5,19 thanks 597:3 Theirs 400:15 theme 310:18 theoretically 319:22 322:14 theory 320:13 402:22 403:13,16,18 498:12 511:20 570:12 there' 453:15 they'd 363:1 thing 284:7 340:11 352:18 353:3 356:12 359:19 375:8 397:13 400:7 404:10 408:9 458:10 459:11 463:2 465:5 473:2 508:9 518:12 519:8 525:7 536:19 590:7 things 301:15 304:6 313:9,9 324:2 329:19 330:9,18 338:6 352:15 352:16 362:7 364:14 367:5 378:8 380:7 408:1 420:14 470:11 481:11 485:12 487:22 491:18 532:13 539:12 548:20 591:13 think 280:2 283:13,16,22 284:3,12 290:7 293:6 295:13 298:3 305:10 309:2 312:3,3 316:8 317:20 318:21 319:16 323:13,20,21 324:18 325:19,22 326:10,12 329:12,13 336:20,22 340:16 343:4 348:18,20	349:1 350:11,13 351:3 355:1 356:2,4,21 357:2 358:20,21,22 361:16 362:9,11,12 365:16 367:22 368:1 369:21 370:16 371:20 372:4 375:17 383:11 385:5 387:10,17,20 388:6,6 391:6,7 393:5,7 396:15 400:2,3 401:17 402:13 405:18 411:20,21 413:17 416:6 421:7 424:5,15,20 425:17,18 437:19 444:17 446:2 448:8,12 451:7,22 454:1,16 455:13 458:12 458:21 461:13 462:12 464:6,7,16 465:4 468:9 470:9 474:1,7 479:17 483:3,16 484:21 486:17 491:15 493:16 495:3 502:3,18,20 504:2 507:14 510:9,19 512:14 513:8 516:12,14 517:21 519:2,3,3 520:3 522:17 523:3 524:19 525:20 527:21 550:4,5,6 564:15 565:21 581:20 590:8 595:8,20 thinking 291:4 495:15 497:20 third 285:7 286:17 302:9 390:1 442:15 585:10 Thirty-six 296:7 Thomas 299:19 443:6 thought 289:10 294:3 312:18 316:9 323:14 325:15 326:3,11,20,22 329:13,14 331:4 336:2 336:6 341:3,8 354:11 354:14 363:18,19 377:15 388:13,13 391:5 408:5 409:11 410:5,18 411:5 417:21 443:1 473:1 489:2,2,5 496:22 501:1 502:6 513:17 514:21 515:21,22 516:3 518:11 525:13 563:12 593:21 thousand 320:11 324:12 505:21 thousands 313:5,6 506:9 three 285:19 289:17 293:9,9 296:18 308:1 317:20 318:1 319:10 324:9 335:7 347:11	368:3 391:18 398:19 420:16 424:12 434:13 436:1 440:20 446:18 460:9 478:7 479:15 494:9,18,18,20 502:13 511:13 523:7,10 530:7 531:8 546:18,21 555:3 560:11 561:10,13 582:12 583:13 585:15 586:21 594:17 throw 326:6 352:2 353:22 354:1 throwing 416:2 thrown 353:16 tiers 561:10 till 469:12 493:3 time 279:19 281:7,9 297:18,18 299:10 304:5 315:16 319:17 323:21 325:7 330:16 331:9 336:20 342:22 343:1 344:3 345:3 347:4 350:10 355:4 356:5 362:15,15,17 363:21 364:9 368:7 374:6 379:3 382:17 385:20 386:21,22 394:3 398:1 408:3 414:2 429:12 430:7,8,12 459:6 469:4 472:1 473:5 482:11 486:3 489:10 493:15 506:12,15 507:13,17 508:2 513:2 514:6 524:6 529:21 531:5,9 534:3 581:6,14 583:12 588:16 595:9,17,21,22 times 289:17 340:1 375:6 402:21 473:3 502:19 587:8 timing 419:10 title 454:17 467:3 468:4 titles 558:1 today 477:19 535:13 581:20 told 295:8,18 312:21 330:12 362:8 417:21 468:5 472:6 481:21 482:3 488:15 491:15 507:5,14 520:1 tomorrow 403:14 581:17 595:7 596:18 597:4 tomorrow's 595:15 top 287:4 436:3,3 447:18 topic 449:13 total 388:14 391:8 506:11 531:8	totally 318:18 351:4 364:20 town 529:18 track 365:8 519:22 tradition 552:4 traditional 552:5 training 293:5 transcript 297:4 525:22 567:21 transmission 286:9 transmitted 287:20 transmitting 286:18 transparent 438:12 transpired 526:9 treated 302:22 303:2,8 379:8 472:19 592:12,19 592:21 593:11 treatment 438:4,22 512:7 537:11 trial 293:15 376:4,12,14 410:2 419:21 563:8 tried 288:13 292:12 293:18 393:8 394:9,10 400:2 464:18,21 491:12 520:5 587:9 tripping 449:4 trouble 385:15 511:1 troubled 493:17 518:10 true 329:16 366:15 413:18,20,21 455:15 459:11 598:7 Truly 327:18 Trump 302:22 303:8,8 321:13 338:18,19 354:7 358:16 360:9,10,17,21 364:17 438:17 457:17 457:18 482:14,20 484:2 494:12,17 502:9,15 510:16 511:11 512:8,17 558:3 559:1 560:4,7 565:6 566:5 572:7 575:13 576:13 592:13 Trump's 504:4 truncated 312:7 truth 460:12,13 462:11 470:10 488:9 528:22 529:1,1 try 304:8 343:2 363:17 363:20 365:9,17,18 366:8 374:14 376:22,22 449:9 509:4 516:2 trying 301:14,15 310:6 365:15 366:9 388:20 393:1 400:11 401:3,6 429:11 431:6,12 454:17 454:18 485:12 488:8
---	--	---	---

495:21 505:12,15 510:21 511:17 Tucson 377:2 Tuesday 272:13 286:20 287:16 turn 318:10 357:12 391:12 463:21 464:13 464:15 508:6 551:20 562:1 565:5 turned 294:12 400:4 464:5,19 484:5 turnover 509:14 turns 503:2 Twenty 378:6 Twenty-eight 440:11 Twenty-nine 446:4,5 Twenty-one 422:12 twice 355:20 378:11 two 279:1 280:9 296:14 296:18 298:17 322:12 348:13 368:3 372:5 374:13 384:11,15 395:20 403:4 434:13 441:9 444:9 457:5 478:7 479:13 480:4 482:12,12 490:7,8 494:13,13 496:3,5,6 500:21 501:11 502:4 508:20 511:10 514:5,8 514:9 519:14,15,17 527:2,3 533:22 544:19 549:14 550:8 556:22 566:7 582:2 587:3 589:12 590:18,19 type 572:22 573:1 typed 442:6,16 types 537:16 584:19 typewriting 598:6 Typically 538:19	unconstitutionally 438:17 undated 446:16 undercounting 405:14 underinclusive 381:5 464:21,22 underlined 451:5 underlying 460:13 500:13 understand 282:4 295:16 301:14 314:19 319:1 332:3 342:12 361:20 374:1 378:17 388:2,4 390:19 410:12 426:19 427:3 458:9 461:9 469:16 473:8 475:1 481:16 485:15 492:21 493:4 495:11 498:14 506:5,6 514:3,15 524:18 527:8 546:18 582:6 understanding 490:2,14 503:10 506:16 513:19 566:13 567:6,8 understood 288:10 300:17 312:5 318:14 462:10 482:6 486:22 492:5 493:7 undervoting 405:15 unequal 439:1 unequally 310:4 uneven 438:19 unfair 308:2 309:10 356:15 389:22 Unfairly 353:1 unfortunately 364:4 420:17 uniform 354:9,9 387:6 uniformly 355:11 385:7 394:2 United 353:9,15 387:6 403:2 440:6 444:6 533:18 536:7 548:6,7 548:21 577:10 578:4 579:22 580:10 universal 389:18 397:13 428:18 universe 383:21 505:10 505:18 University 530:8 531:6 531:12 546:20 unmask 528:18 unprecedented 323:10,11 unrealistic 351:4 unspecific 490:12 unusual 336:18 374:5	405:8 407:18 445:7 unusually 368:6 unwaivable 329:5 upheld 545:13 555:7 upset 472:2 474:9 492:14 use 289:14 391:21 491:13 554:21 useless 363:18,19 389:17 usually 397:15 540:4 UVA 531:19	<hr/> V <hr/> v 315:2,20 329:1 364:6 395:20,21 396:2,3,5 399:7 400:18,20 401:9 401:15 403:15 404:10 404:21,21 405:7 407:9 407:10 452:15 544:4 547:14,18,19 550:2 551:15 554:11 565:6 576:17 591:1,6 vacant 546:6 vacated 440:5 443:10,11 444:5,14 445:11 vacates 476:14 vacation 531:4 vague 291:22 549:8 Vaguely 417:17 valid 325:14 333:11 424:19 validity 438:16 540:18 valuable 473:1 value 401:7 vantage 541:8 562:10 570:9 573:19 variety 539:6 various 288:5 295:6 379:20 503:19 532:12 566:12 569:8 572:5 574:10 584:21 585:1 587:8 vary 299:3 vast 289:16 vehemently 296:13 venue 516:2 Verdict 539:1 verification 438:6,7,21 verified 319:10 324:8,9 334:21 335:6 342:5,6 387:1 version 456:17 versions 570:1 vetted 319:3 viability 540:18 vice 524:12 victim 353:19	victory 396:21 547:9 videotapes 284:22 view 441:8 454:4,6 500:22 viewed 290:19,21 vindicated 421:5,7,11 violate 348:6 violated 307:9,10 310:15 354:3,4 410:18 411:5 424:20 428:16 517:3 538:6 542:10 violating 311:3 512:6 violation 277:19 282:13 306:6,7,9,15 307:16 309:5,6,21,22 310:4 360:5,18 406:15 413:15 428:20 439:2 441:3 454:1 537:21 545:18 546:14 547:3 548:9 549:10 573:5,8 575:13 577:10 578:13 579:10 591:3 592:7 593:12 violations 442:8 577:11 578:4,5 579:22 580:1 590:12,13 Virginia 483:22 484:3 531:6 virtual 272:15 273:1 virtually 314:2 visited 531:8 visiting 531:11 vitality 401:22 voice 592:22 void 320:9 384:8 voiding 319:19 Voir 276:5 529:11 Vol 272:9 voracity 457:22 vote 291:19 294:8,10 295:18 296:4,8,15,17 296:20,22 297:1,6 305:13,15 306:13,14 319:17,19,19,20 320:5 320:10,19,22 324:7,11 335:9,13 353:16,22 374:11 405:10 424:18 424:22 439:7 442:12 473:4 498:4,8,9,12,13 498:15,19 499:2,4,7,12 499:14,15,17,22,22 500:3,22 501:14 503:19 503:20,21 504:6,8,12 504:17 511:3,7,8,10,11 512:1 534:11 536:2 552:10,16,18 553:4 560:6 578:13 590:18
--	--	--	--	---

593:4 vote's 319:19 voted 291:19 294:8,9,11 294:12 295:19 296:5,9 299:2 305:14 405:16 458:11,12,14,18 496:3 496:8 504:9 voter 291:18 298:12,14 298:17 301:4 302:21 305:3 335:9,9 369:1 371:7,13,14,16 372:1,2 375:7,12,18 376:11,11 376:17,19 377:4,16 435:5 441:20 442:5 500:5 502:9 548:1,9,18 549:9 552:9,11,11,13 voters 298:20 299:2 301:7,9,20,20 302:3 303:1,2,17,17,18,18,20 305:12,12,12,13 306:13 338:4 397:19 398:8 438:5,22 512:8 557:8 582:2 590:16,18 voters' 438:6,21 votes 295:14 297:8 313:6 318:16,17 319:21 320:3 320:4,11,13,14,15 321:7,9,12,13 324:7 326:6,8 329:11 332:22 333:4,8 354:1,5,6,8 358:17 360:4,18 364:16 387:12 388:5,9 396:17 396:22 398:22 438:16 496:9,12,16 497:2 498:2,7 500:10 501:4 501:12 504:13 541:7 546:5 547:12 572:7 575:13 576:14 578:10 578:16 voting 320:21 397:13 425:3,8,10,11,13 428:18 441:18 442:20 499:1,1 535:8,19 536:8 536:13,16 539:15 545:5 545:6 548:17 552:5,7 553:19,22 vs 439:21 539:7 558:4 559:1 560:4 573:1 591:3	Waldron 587:12 588:5 Waldron's 588:2 walk 320:1 walked 518:5 want 281:13 284:5 289:5 314:1 318:10 326:1 331:22 332:12 338:6 345:14 351:9,15 352:18 357:21 358:1 362:4 365:13 368:17 370:9 372:17 375:17 387:21 389:14 391:17 393:12 394:21 395:18 404:9 408:9 415:12 420:15,16 420:18,20 424:11 426:15,15 427:11 447:6 452:10 468:18 469:14 471:12 475:18 497:16 497:16 510:8 512:22 526:7,8 547:13 550:4 557:21 562:1 565:5 570:18 575:2 576:3,8 577:2 590:11 594:16,16 595:5,15 596:17 wanted 278:10 283:11 322:13 381:21 382:20 402:18 416:13 443:16 487:4 489:1 552:19 553:4 595:14 wants 477:7 478:2 war 483:21 warn 368:22 warrant 409:22 Washington 274:17 292:5 494:4 530:22 wasn't 297:16,16 306:1 312:1,15 318:18 328:10 328:13,13 340:2 350:6 351:20 355:9 377:20 389:6 390:20 400:17 401:18 404:3 407:16 412:4 413:11 425:19 431:12 464:14 471:2 493:14 499:5,5 513:20 554:20 555:16 557:16 560:6 583:8,11 588:13 589:3 591:9 watch 479:17 watched 540:5,6 watchers 295:20,22 360:11 535:5,9,17,20 535:21 542:11,13,14 543:2 waterfront 503:16 way 290:7 292:21 301:8 307:5 312:14 318:5	321:14 323:16 326:21 327:2 329:14 330:22 331:8 336:18 342:4 349:14 354:13 362:22 383:16 385:9 388:16 402:6,6 445:7,16 451:3 453:6 477:8 485:14 495:21 496:12 512:5 514:22 521:13 522:9,10 526:15 540:7 553:7 559:15 574:6 579:8 584:7 Wayne 530:16 ways 295:6 306:18 320:8 322:18 323:10 386:8 445:21 453:20 503:19 we'll 278:8 284:12 356:21 357:6 388:16 406:4 407:2,3 408:10,10 412:8,8 415:6,6 423:19 426:12 478:9 528:10,11 565:9 596:4,5 we're 277:14 278:17,17 279:12 303:11 304:12 314:2 320:5,6 327:19 349:2,13,13 350:2,2 353:2 357:11,20 360:2 360:7 361:1,1 367:4 372:9 377:13 379:12 387:17 399:9,11,13,14 400:12 407:4 415:13 416:1 422:20,21 427:22 432:18 436:16,18 437:19 447:22 448:2 467:14 469:11 473:4,20 474:3 478:7 510:16 528:15 550:7 576:4 597:3 we've 290:10 332:4 370:19 380:13 510:5 543:12 544:3,3 568:11 590:8 596:10 weakest 561:13 Wecht 451:1,15 454:8 Wecht's 447:20 448:11 448:15,20 Wednesday 597:6 week 317:4 375:7 378:11 378:12 weeks 376:19 589:22 weighed 560:11 weightiness 539:19 weighty 451:20,22 went 292:5 293:22 296:21 329:2 333:15 355:15 359:10 363:2	385:15 444:9 454:3 469:1 474:15 492:17 504:13 512:21,22 527:6 530:4,5,7,10 546:9 547:5 559:14,20 weren't 292:7,7,8 298:18 298:18 299:20 304:7 311:16 317:13 322:11 322:19 323:11 332:21 334:21 340:17 346:12 362:17 368:8 387:3,4 389:16 391:13 400:11 431:6 473:8,12 496:11 497:19 499:22 525:17 557:17,19 579:13,17 Western 558:4 whichever 476:13 Whiteboards 483:8 willing 500:19 win 304:7,15 winner 358:17 360:22 545:15,20 546:3,3 547:5 576:14 winning 547:9 wins 364:17 wires 449:4 Wisconsin 320:9 wise 595:17 wished 552:9 withdraw 300:20 334:6 351:7 355:1 364:9 411:16 424:8 492:11,12 492:16,16 withdrawn 380:19 415:18 593:22 withdrew 490:4 withhold 463:2 witness 275:18 279:1 283:2 288:19 289:5 301:19 302:3 306:1 308:19 311:22 312:9 337:13,16 338:11 341:6 345:13 347:6,14,17 349:18 351:6,11 356:15 357:5,14,17 359:5,14 359:18 361:12,18,22 365:4,18 366:6,9 369:7 372:11,15 378:20 379:11 409:14 416:20 422:18 423:4,18 424:6 426:13 427:7,16,22 428:11 429:10,18 431:9 431:12,15,16 432:14 433:4,7 434:7,8 436:15 436:18 437:2 444:19 446:10 447:11,14,21
--	--	---	---

W

W 277:4
wait 333:17 453:11 493:2
waiting 357:11 526:19,20
waive 423:5,6
waived 329:5 425:3

Waldron 587:12 588:5
Waldron's 588:2
walk 320:1
walked 518:5
want 281:13 284:5 289:5
314:1 318:10 326:1
331:22 332:12 338:6
345:14 351:9,15 352:18
357:21 358:1 362:4
365:13 368:17 370:9
372:17 375:17 387:21
389:14 391:17 393:12
394:21 395:18 404:9
408:9 415:12 420:15,16
420:18,20 424:11
426:15,15 427:11 447:6
452:10 468:18 469:14
471:12 475:18 497:16
497:16 510:8 512:22
526:7,8 547:13 550:4
557:21 562:1 565:5
570:18 575:2 576:3,8
577:2 590:11 594:16,16
595:5,15 596:17
wanted 278:10 283:11
322:13 381:21 382:20
402:18 416:13 443:16
487:4 489:1 552:19
553:4 595:14
wants 477:7 478:2
war 483:21
warn 368:22
warrant 409:22
Washington 274:17
292:5 494:4 530:22
wasn't 297:16,16 306:1
312:1,15 318:18 328:10
328:13,13 340:2 350:6
351:20 355:9 377:20
389:6 390:20 400:17
401:18 404:3 407:16
412:4 413:11 425:19
431:12 464:14 471:2
493:14 499:5,5 513:20
554:20 555:16 557:16
560:6 583:8,11 588:13
589:3 591:9
watch 479:17
watched 540:5,6
watchers 295:20,22
360:11 535:5,9,17,20
535:21 542:11,13,14
543:2
waterfront 503:16
way 290:7 292:21 301:8
307:5 312:14 318:5

321:14 323:16 326:21
327:2 329:14 330:22
331:8 336:18 342:4
349:14 354:13 362:22
383:16 385:9 388:16
402:6,6 445:7,16 451:3
453:6 477:8 485:14
495:21 496:12 512:5
514:22 521:13 522:9,10
526:15 540:7 553:7
559:15 574:6 579:8
584:7
Wayne 530:16
ways 295:6 306:18 320:8
322:18 323:10 386:8
445:21 453:20 503:19
we'll 278:8 284:12 356:21
357:6 388:16 406:4
407:2,3 408:10,10
412:8,8 415:6,6 423:19
426:12 478:9 528:10,11
565:9 596:4,5
we're 277:14 278:17,17
279:12 303:11 304:12
314:2 320:5,6 327:19
349:2,13,13 350:2,2
353:2 357:11,20 360:2
360:7 361:1,1 367:4
372:9 377:13 379:12
387:17 399:9,11,13,14
400:12 407:4 415:13
416:1 422:20,21 427:22
432:18 436:16,18
437:19 447:22 448:2
467:14 469:11 473:4,20
474:3 478:7 510:16
528:15 550:7 576:4
597:3
we've 290:10 332:4
370:19 380:13 510:5
543:12 544:3,3 568:11
590:8 596:10
weakest 561:13
Wecht 451:1,15 454:8
Wecht's 447:20 448:11
448:15,20
Wednesday 597:6
week 317:4 375:7 378:11
378:12
weeks 376:19 589:22
weighed 560:11
weightiness 539:19
weighty 451:20,22
went 292:5 293:22
296:21 329:2 333:15
355:15 359:10 363:2

385:15 444:9 454:3
469:1 474:15 492:17
504:13 512:21,22 527:6
530:4,5,7,10 546:9
547:5 559:14,20
weren't 292:7,7,8 298:18
298:18 299:20 304:7
311:16 317:13 322:11
322:19 323:11 332:21
334:21 340:17 346:12
362:17 368:8 387:3,4
389:16 391:13 400:11
431:6 473:8,12 496:11
497:19 499:22 525:17
557:17,19 579:13,17
Western 558:4
whichever 476:13
Whiteboards 483:8
willing 500:19
win 304:7,15
winner 358:17 360:22
545:15,20 546:3,3
547:5 576:14
winning 547:9
wins 364:17
wires 449:4
Wisconsin 320:9
wise 595:17
wished 552:9
withdraw 300:20 334:6
351:7 355:1 364:9
411:16 424:8 492:11,12
492:16,16
withdrawn 380:19
415:18 593:22
withdrew 490:4
withhold 463:2
witness 275:18 279:1
283:2 288:19 289:5
301:19 302:3 306:1
308:19 311:22 312:9
337:13,16 338:11 341:6
345:13 347:6,14,17
349:18 351:6,11 356:15
357:5,14,17 359:5,14
359:18 361:12,18,22
365:4,18 366:6,9 369:7
372:11,15 378:20
379:11 409:14 416:20
422:18 423:4,18 424:6
426:13 427:7,16,22
428:11 429:10,18 431:9
431:12,15,16 432:14
433:4,7 434:7,8 436:15
436:18 437:2 444:19
446:10 447:11,14,21

448:12,22 452:5,10,22 456:18 459:20 466:3,8 466:12,16,20 470:15 471:12 475:7,11,14 477:20,22 478:4,22 481:12,14,21 482:2,9 482:21 483:5,16 484:1 484:10,17 485:2,13,19 486:4,13,20 487:3,10 487:19 488:7,21 489:11 489:15 490:1,6,21 491:8 492:4,13,22 493:7,13,20 494:1,11 494:17,21 495:2,14,18 495:22 496:5,11,17 497:4,12 498:4,6,15,21 499:4,11,18 500:7,16 501:3,16,20 502:6,12 503:2,11,17 505:12,17 506:4,9,18 507:11,16 507:22 508:4,13,16,20 509:3,11 510:7,16,22 511:16 512:2,20 513:5 513:9,14 514:1,12,19 515:3,12 516:12,21 517:13 518:3,14 519:2 519:12,16,21 520:10,13 520:17,21,22 521:3,14 521:17 522:1,7,11,13 522:20 523:13,17,21 524:9,21 527:13 528:2 528:5,7,16,19 529:3,8 532:20 533:4 541:3 543:18,22 565:11 594:20 witnesses 276:3 285:9 341:5,7,9 363:1 469:8 473:21 507:1 520:16 595:16 woman 374:19 women 407:21 won 326:13 398:22 400:6 545:19,22 546:15,22 547:2 word 339:12 342:7 344:2 352:15 364:7 371:8,9 371:11 472:1,1 490:22 521:4 words 290:1 420:3 537:16 580:15 work 312:17 355:19 392:22 400:5 484:5 488:12,13,16 495:21 509:12 514:13 588:21 worked 312:16 340:18 484:15 485:1,17 530:15	532:6 worker 293:2,4,6,6 548:19 workers 387:2 398:2 544:22 548:13 557:13 working 280:4 297:13 379:17 484:6 485:22 486:3,5 514:7 524:5 World 390:1 worry 492:17 worse 303:1 wouldn't 310:2 344:2 386:7 388:21 401:4 404:6 419:1,3,22 421:19 450:20 459:2 517:15 549:3 554:1 wrap 595:5 writ 439:19 440:4 444:13 write 312:6 write-in 539:14,15 writes 375:6 writing 410:7 567:11 writings 402:17 written 532:3,3 wrong 298:15 303:4 330:19 335:1,2 345:11 361:9 383:7 387:18,20 391:16 409:22 413:9 421:10 445:18 449:7 490:14 wrongfully 572:6 wrote 284:17 294:2 354:21 426:5 430:12 520:19 531:16 <hr/> X <hr/> X 272:4,12 276:1 <hr/> Y <hr/> Yale 530:6,10 yeah 279:21 280:15 286:3 286:11 287:16 288:9 289:9 298:9 299:12 302:4 307:8 310:17 316:7 317:9,16 328:2 340:7 341:21 344:9,10 344:19 345:21,22 346:3 346:14 348:8,9,17,18 351:11 352:6 358:8,9 359:7 370:1,5,5 371:9 376:6,14 377:13 379:12 380:10 385:4 387:4 388:12 389:10 392:2 395:12 397:9,21 401:2 401:2,8 403:5,16 405:3 405:6,18 408:22 411:21	412:22 413:8 418:1,8 418:10 421:21 425:17 426:17 427:20 436:15 437:16 446:10 447:2 458:8 459:20 460:9 462:5 466:20 468:9 479:12 480:20 483:5,11 483:16 484:1,18 488:7 488:21 489:11 490:6 496:17 498:17,17 500:16 503:2,11 505:12 506:1 508:4 516:16,21 519:5,16 523:17 539:15 575:7 576:8 592:20 595:6 year 310:22 325:10 419:14 426:3 429:4 531:1,18 553:10 years 322:3 324:6 373:18 374:20,21 377:5 402:2 417:20 418:3 471:22 482:13 531:8,18 yellow 440:3 Yep 396:8 yesterday 283:8,15 284:1 287:9,11 297:3 318:12 321:2 361:21 362:9,12 527:4 540:10 574:14 581:20 yesterday's 567:12 York 275:7,7 375:6 427:18 530:17 young 325:11 <hr/> Z <hr/> Zoom 273:1 <hr/> 0 <hr/> 1 <hr/> 1 324:22 364:2 403:2,5 466:10,15 534:1 1.5M 360:4 388:9,19,22 391:8 1:30 423:20 1:32 424:2 10 296:19 362:13 372:18 385:12 483:17,17 567:14 10% 567:14 10:00 530:2 10:30 337:22 10:45 357:7 100% 313:4 519:22 100,000 330:1,3 10036 275:7	10101 442:19 1058 421:1 422:13 11 296:19 326:21 341:14 375:11 409:21 410:4,16 411:4,18 412:20 413:10 413:15 414:2,11,19,21 414:22 415:10 416:2 417:3,4,14,22 418:2,5 419:7,20 463:10,11 483:18 595:2 11:58 423:21 110 345:12 111 436:22 112 437:4 11th 467:7 12 296:19 302:2 316:18 317:11 385:12 483:19 122 351:10 577:4 123 351:16 1243 426:16 13 296:17,19 297:9 321:6 321:6,9 14 332:13 390:5 15 368:18 375:12 422:21 509:1 596:2 15th 567:3 16 301:18 302:10 368:19 372:17 380:12 424:12 428:8 475:6,10,15 541:14 594:11 1640 530:9 167 338:9,10 168 338:9 16th 455:9 462:3 17 375:11 387:9,22 431:21 432:19 475:21 479:5 17th 286:1,5 362:5 393:3 568:4 18 390:5 393:19 420:16 420:18 542:15 1892 364:5 1895 364:5 18th 568:15 19 385:12 448:18,20 19- 375:2 196 343:10,12 1960 373:15 1960s 535:12 1965 535:8 197 343:11 1970's 535:12 539:9 1978 530:7 1980 530:10 1983 410:16 411:4 412:4 414:10 530:11 538:4
--	---	--	---

1985 531:6 1987 412:20 1993 413:10,13 414:10 415:11,17 416:15 417:9 1994 396:5 1995 536:12 1996 536:14 1st 530:19	22-BD-027 272:6 224 344:13 23 329:12 368:19 369:6 383:3,4 384:10,14 426:8,20 427:18 237255 272:11 23rd 287:4,5 450:2 24 316:19 379:17 383:3,4 384:10,10,14,15 393:20 240 503:3,4 505:11 506:11 586:10 241 421:1 422:11 245 381:6 25 316:19 319:5 378:3,6 386:11 535:15 250 329:17 26 294:16,18 387:9,21 393:19 269 345:15 27 387:21 390:5 271 345:15 279 426:16,22 27th 284:17 418:19 28 380:12 439:12,12 448:22 449:1 283 276:4 29 440:12 2M 326:16 2nd 303:22 412:19	38 454:10,10 39 456:13 391 412:19 3rd 301:18 303:4,22 304:17 305:1 314:13,17 315:1,19 317:3 396:5,6 404:11,16 418:18 421:1 422:13 426:16,22 440:7 440:22 441:3,15 442:14 443:10 445:9,12,14 447:17 448:19 450:3,5 508:2 540:20 541:4,10 541:16 543:13 544:4 545:9,16 546:16 547:6 556:3,8 571:7,7,11 594:2,5,6,13,22	60 373:18 436:20,21 505:3 638-1501 274:18 655 589:13 672,000 385:1 680,000 390:22 682,000 332:22 334:17 338:4 682,479 332:17 682,770 384:21 388:14 389:3 6P 475:20 6th 411:13	
2		4	7	
2 272:9 324:22,22 364:2 364:2 403:2,2,6 429:21 442:19 534:5 580:17,21 581:3 2,000 342:3 2:51 287:7 20 347:21 358:6 359:8,13 359:16 372:18 374:19 378:3 380:13 432:1,20 432:20 440:10 480:3 535:15 575:6 576:10 584:4 586:10 20- 446:2 20-year 374:9 200 447:11 505:7 2000 532:2,8 535:14 20001 274:17 2011 411:13 412:4 413:6 414:1 2018 374:8 2019 552:3 202 274:18 2020 284:17 291:8 292:15 358:18 362:5 373:4 376:1 377:10,12 378:2 379:4 418:13 421:1 438:11 446:8 448:8 450:5 467:5,7 535:14 536:6 551:21 552:15 553:19 554:5 556:3,8 558:5 566:3 567:3 568:4,16 576:15 577:15 580:4 583:22 585:2,6,8,9,13 586:1 587:18 589:14 2020-D253 272:8 277:5 2021 287:7,15 2022 272:13 429:21 439:15 2024 598:21 20B 327:17 21 369:6 418:6,16,22 419:16 420:1 422:6,10 449:9,9,22 576:10 212 275:8 22 378:3 426:17 477:6	240 503:3,4 505:11 506:11 586:10 241 421:1 422:11 245 381:6 25 316:19 319:5 378:3,6 386:11 535:15 250 329:17 26 294:16,18 387:9,21 393:19 269 345:15 27 387:21 390:5 271 345:15 279 426:16,22 27th 284:17 418:19 28 380:12 439:12,12 448:22 449:1 283 276:4 29 440:12 2M 326:16 2nd 303:22 412:19	4 408:13 413:1 424:12 4-0 533:4 4/3 451:3 40 294:19 392:15 456:14 459:15,15 533:4 40,000 396:17 41 459:17,18 42 459:17,19 420 396:22 44 466:17,22 45 330:13 409:2,4 413:2 469:10 486-0011 275:8	7 597:6 70 373:18 504:10,16 505:3 77 310:13 551:22 552:2,3 553:12,16 554:7 555:10 78 417:8 79 338:9 417:8 7M 326:6	
	3	5	8	
	3 438:11 446:8 3:45 528:11 30 417:20 418:3 480:3 596:2 300 285:8 380:15 502:22 503:3 505:7 31 287:15 598:21 3146(a) 386:12 31468(g)(4) 319:5 32 452:13,20 321 351:16 325 577:4 326 578:1 327 579:19 33 284:8,9,10 34 588:5 340 448:18 34d 300:22 35 286:9 305:17 350 476:21 36 283:10 284:2 287:8 288:2 296:6,7 365 276:4 37 550:2 37-6 550:4	5 332:8 565:12 5,000 342:18 5.2 370:15 5:00 595:4 5:02 597:5 5:30 595:5 50 355:18 369:15 373:18 377:5 483:13 537:3 500 342:9 547:11 515 274:16 52 442:19 529 276:5 533 276:6 539 426:22 54 369:16 370:7,10 546 275:6 55 294:16 295:13,17,20 295:22 504:16 591 448:19 5th 309:19 525:19	8 316:13 358:2 362:6 369:16 372:14 567:20 8:00 555:2 80 338:9 80% 313:4 800,000 354:7 815 412:19 89 343:10	9
			9 351:8 357:21 358:4,5 436:20 541:20 568:10 572:13 575:1 583:7 9:00 597:4,7 9:02 273:2 90 343:10 900 320:15 324:12 97 344:12 99 345:8 9th 418:12 566:3	