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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR 07-543

:  
-against- :  
United States Courthouse  
Brooklyn, New York

RUSSELL DEFREITAS :  
ABDUL KADIR :

Defendants. : July 13, 2010  
9:00 o'clock a.m.

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TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE DORA L. IRIZARRY  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government: LORETTA E. LYNCH  
United States Attorney  
BY: MARSHALL MILLER  
JASON JONES  
BERIT BERGER  
ZAINAB AHMAD  
Assistant United States Attorneys  
271 Cadman Plaza East  
Brooklyn, New York

For the Defendants: MILDRED WHALEN, ESQ.  
LEN KAMDANG, ESQ.  
Federal Defenders  
Attorneys for R. DeFreitas,

KAFAHNI NKRUMAH, ESQ.  
TONI MESSINA, ESQ.  
Attorneys for A. Kadir

1 Court Reporter: Gene Rudolph  
2 225 Cadman Plaza East  
3 Brooklyn, New York  
(718) 613-2538

4 Proceedings recorded by mechanical stenography, transcript  
5 produced by computer-aided transcription.

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9 (The following occurred in the absence of the jury.)

10 THE COURT: Please be seated. Have a seat.

11 Is everybody all set?

12 MR. JONES: Yes, Your Honor.

13 MS. WHALEN: Yes, Your Honor.

14 THE COURT: Okay. First let's bring in Mr. Francis.

15 MR. MILLER: Your Honor, if I could put one thing

16 very quickly on the record, one sentence?

17 THE COURT: Okay, sure.

18 MR. MILLER: I just wanted to alert the Court that I

19 have spoken with defense counsel.

20 THE COURT: That was more than one sentence. I'm  
21 sorry. I couldn't resist.

22 MR. MILLER: It's one run-on sentence, Your Honor.

23 I have spoken with defense counsel and alerted them

24 that Detective Michael Hanratty, who we turned over 3500

25 material for, had asked me whether he could go on a work trip

1 and I have asked defense counsel -- we did not -- we decided  
2 not to call Detective Hanratty, asked defense counsel if they  
3 wanted to call Detective Hanratty and have been informed that  
4 so long as Detective Addonizio is available, and he is not  
5 going anywhere, that Detective Hanratty would not be needed.

6 I wanted to put that on the record. I will allow  
7 him to go off on his work trip, with the Court's permission.

8 THE COURT: If the defense has no objection, I don't  
9 see why I should have any.

10 MR. KAMDANG: Your Honor, I think that's fine. We  
11 did review the 3500 material. Just to remind the Court of who  
12 this witness is, he was one of the people who was at that  
13 meeting.

14 THE COURT: I remember.

15 MR. KAMDANG: Since Detective Addonizio is here, I  
16 think we can make the point we need to make through him.

17 THE COURT: Okay.

18 MR. KAMDANG: Hopefully.

19 MR. NKRUMAH: No objection, Your Honor.

20 THE COURT: Okay. Perhaps Mr. Addonizio has an  
21 objection. That's beside the point.

22 MR. JONES: Your Honor, the only other thing before  
23 we get the witness, I was provided just this morning with  
24 several transcripts by Ms. Whalen.

25 THE COURT: Yes. I received courtesy copies as

1 well.

2 MR. JONES: Some of these I've never seen before.  
3 Some of them are ours. I don't know if they will become a  
4 problem or not, depending on what she asks Mr. Francis.

5 I will say that on a quick flip through it  
6 does -- there is portion here where the conversation between  
7 Rutherford and the witness -- where Rutherford tells the  
8 witness that he -- that he doesn't -- should not be anxious or  
9 something along those lines. We've already talked about this  
10 once. Our objection was anything Rutherford says is hearsay.  
11 I don't know if Ms. Whalen is attempting to go through that  
12 again. I don't think it is appropriate.

13 THE COURT: I'm sorry?

14 MR. JONES: Your Honor, I'm sorry to raise this this  
15 morning. I just got them.

16 Again, I don't think it is appropriate to elicit  
17 what Rutherford said and I believe that was Your Honor's prior  
18 ruling. I think that's hearsay.

19 THE COURT: Ms. Whalen?

20 MS. WHALEN: Your Honor, the transcripts that I have  
21 given are simply for refreshing recollection. I am not going  
22 to ask him about what Rutherford said. I am going to be  
23 inquiring as to the witness' state of mind at that point.

24 I believe that Ms. Messina did try to cover this but  
25 I think she was going more for what Rutherford said, which is

1 why it was denied. I am not going for what Rutherford said.  
2 I am going for what this witness' state of mind was. If it  
3 refreshes his recollection, fine. If it doesn't, it doesn't.

4 Again, with respect to the transcripts, I am -- I  
5 wasn't trying to sandbag anyone. I did them last night  
6 because the Court indicated that it was more comfortable using  
7 transcripts than refreshing with the recordings. That's why  
8 they were given over this morning. I may not use them if the  
9 witness doesn't need to be refreshed.

10 MR. JONES: I am not suggesting counsel was  
11 sandbagging at all, Your Honor. I don't mean -- I don't mean  
12 to say that. I raise it now instead of side bar so we don't  
13 have big confusion at side bar.

14 THE COURT: Okay.

15 MR. JONES: That's why I said that.

16 THE COURT: It sounds like everybody is on the same  
17 plane, as far as that is concerned.

18 It has seemed to run a little bit more smoothly  
19 using the documents to refresh recollection. So at least,  
20 again, I am not foreclosing any possibilities here, as I had  
21 said before, trials are a fluid thing. But it has seemed to  
22 flow a little bit more smoothly proceeding in that way.

23 Okay. I guess at this point we are ready for the  
24 witness to come in.

25 If there is nothing else, we will bring in the jury

1 as well.

2 MS. WHALEN: Yes, Your Honor. There is nothing else  
3 from the defense.

4 (Witness present.)

5 (Jury present.)

6 THE COURT: Jury entering.

7 Nobody should have cellphones in here.

8 THE MARSHAL: I've got it.

9 THE COURT: Okay. You may all be seated.

10 Good morning, ladies and gentlemen.

11 As you know, we are going to have a somewhat  
12 abbreviated day. We will have a little bit longer mid-morning  
13 break today. We will end about 2:30 this afternoon.

14 Do the parties agree that all of our jurors are  
15 present and properly seated?

16 The government?

17 MR. JONES: Yes, Your Honor.

18 THE COURT: Defense?

19 MR. NKRUMAH: Yes, Your Honor.

20 MS. WHALEN: Yes, Your Honor.

21 THE COURT: Okay. This is continued  
22 cross-examination of Mr. Francis.

23 Good morning, sir.

24 THE WITNESS: Good morning.

25 THE COURT: I remind you, sir, that you are still

Francis-cross-Whalen

3360

1 under oath.

2 THE WITNESS: Yes.

3 THE COURT: This is cross-examination by Ms. Whalen  
4 as to Mr. DeFreitas.

5 You may proceed when you are ready.

6 S T E V E N F R A N C I S ,

7 called as a witness, having been previously duly  
8 sworn, was examined and testified as follows:

9 CROSS-EXAMINATION

10 BY MS. WHALEN: (Continued)

11 Q Good morning, Mr. Francis.

12 A Good morning.

13 Q Yesterday when we were talking we finished the  
14 conversation at the point where Mr. DeFreitas had flown to  
15 Guyana for the first time in your knowing him.

16 Is that correct?

17 A Yes.

18 Q Okay. So now this next set of questions I am going to  
19 ask you are going to deal with the time period when  
20 Mr. DeFreitas was in Guyana and you were still in New York  
21 City.

22 Okay?

23 A Yes.

24 Q Now, when Mr. DeFreitas went to Guyana, you continued to  
25 be in telephone contact with him, is that right?

Francis-cross-Whalen

3361

1 A Yes.

2 Q And did you also continue to speak with Dawood and  
3 Ponytail?

4 A Yes.

5 Q Okay. Now, when Mr. DeFreitas went down there, he called  
6 you shortly after he arrived, isn't that correct?

7 A It's possible. I have to actually recollect my thoughts.  
8 But we've had some conversations where he was there and I was  
9 in -- while -- while Sheik Mohammed was in Guyana and I was in  
10 the states, yes.

11 Q Okay. I'm sorry. My question was poorly worded.

12                   Shortly -- let me just rephrase it.

13                   Shortly after you got there, did Mohammed -- did  
14 Mr. DeFreitas call you and tell you he now knew more details  
15 about the plan?

16 A When I got where?

17 Q When you were in New York and Mr. DeFreitas was in  
18 Guyana, shortly after he arrived, did he call you and say he  
19 knew more details about the plan?

20 A I don't recall that. You have to refresh my memory, if  
21 you like.

22 Q Okay. I am going to show, if I can, the witness only, a  
23 document that has previously been marked Government  
24 Exhibit 3500-SF-19.

25                   Mr. Francis, if you could just take a minute and



Francis-cross-Whalen

3362

1 read this document and see if it refreshes your recollection?

2 (Pause.)

3 A Yes, I recollect now, the information.

4 Q Okay. That you had a phone call with him shortly after  
5 he got to Guyana, is that correct?

6 A I am not sure. It doesn't -- I am not sure if it was  
7 shortly after or -- but I remember the conversation.

8 Q Okay. At this point -- you know what, let me just do  
9 something real quick.

10 I am going to show you what's been marked as  
11 Government Exhibit 3500-SF-17. You looked at it yesterday.

12 A Yes.

13 Q Okay. I am just asking to you look at the second  
14 paragraph.

15 A Yes.

16 Q Okay. And then just look at the top right-hand corner.

17 A Yes.

18 Q The date.

19 Now I am going to put 3500-SF-19 back up for you and  
20 just ask you to look at the date.

21 A Okay. Yes.

22 Q This conversation took place shortly after Mr. DeFreitas  
23 arrived in Guyana, correct?

24 A It could be. Like I said, I remember the conversation.

25 I don't know how -- I don't remember exactly how short was the

Francis-cross-Whalen

3363

1 period between his departing and the conversation.

2 Q Okay. In any event, you had this conversation with  
3 Mr. DeFreitas and he told you that -- he told you that the  
4 plan was ready to move forward, is that right?

5 A The conversation actually he --

6 Q Why don't you start answering my questions. Then if it  
7 is not clear, you can give a longer answer.

8 A Okay.

9 Q So he tells you the plan is ready to move forward, right?

10 A I don't recall the exact words that he used.

11 Q Okay. But the gist, what he meant to convey to you, the  
12 information he meant to convey, was that the plan was ready to  
13 move forward, right?

14 A The plan was moving forward ever since before he left.

15 Q Okay. But he told you that -- he told you that the money  
16 was in place for the plan, correct?

17 A As I recall, the -- if you allow me to explain to you as  
18 I recall? He was puzzled on -- on how -- how technical, how  
19 high tech was the plot itself. At no point I remember him  
20 telling me whether -- he needed to understand the plot or he  
21 did not. He said, they say it's high tech, it's high tech  
22 and I don't know what they mean by high tech. They say they  
23 can fly a plane here any time without being detected.

24 He was going to find out more about how high tech it  
25 was.

Francis-cross-Whalen

3364

1 Q So it is your recollection that this conversation just  
2 dealt with the high tech of the plan, is that correct?

3 A As I understand, yes.

4 Q Okay. So --

5 THE COURT: I'm sorry. I am sorry to interrupt your  
6 flow.

7 You said the high tech that they were talking about.  
8 What do you mean by "they"?

9 THE WITNESS: Okay. The -- Sheik Mohammed had  
10 mentioned that there were people in Guyana and in Trinidad  
11 that were involved in the plot and he said he called four, six  
12 people, whatever that were involved, and he mentioned that he  
13 understood his role in the plot. He told me more or less the  
14 idea of what kind of role they were looking for in me. They  
15 needed more people involved in the states which he didn't  
16 trust anybody else, and he was going to Guyana to find out how  
17 high tech was this plot going to be based on the information  
18 he was given. He wasn't given the details, but he understood  
19 already that it was high tech program, that they counted on  
20 Mohammed on the knowledge he had of the JFK, the routes, the  
21 understanding of where the landmarks were and he was just  
22 going to find out exactly what they meant by high tech.

23 Q Okay. So let me just stop you there.

24 All of that information that you have given  
25 beforehand, about Mohammed calling people, meeting four to six

Francis-cross-Whalen

3365

1 people, all of that information is what Mr. DeFreitas told you  
2 before he came to Guyana, is that your recollection?

3 A Not exactly. You just said that they needed four, six  
4 people. He said before he traveled that -- about four to six  
5 people were involved.

6 Q Okay. I'm sorry.

7 A Which is different.

8 Q But again, all of that information that you just relayed  
9 your testimony, your recollection is that Mr. DeFreitas told  
10 you all of that before he went to Guyana, is that correct?

11 A Before he went to Guyana he told me that he met -- not  
12 understand exactly what they meant by high tech, but he  
13 understand his role. He was approaching his knowledge of the  
14 JFK and he needed to find out exactly what high tech was going  
15 to be and really what kind of role will I play, would I, Annas  
16 play, in the JFK plot.

17 Q Quickly, if you can do a yes or no answer, all of that  
18 information that you just gave me the second time about the  
19 high tech, that's your recollection of the discussion that you  
20 had with Mr. DeFreitas that was refreshed by 3500-SF-19, is  
21 that correct?

22 A No.

23 You show me something that I -- that actually I can  
24 hear, which I appreciate, but I still is the same recollection  
25 that I recollect and actually I have now understand clearly

Francis-cross-Whalen

3366

1 that before he left the only thing he was concerned about was  
2 knowing how high tech this attack was going to be.

3 Q Okay. Now, when Mr. DeFreitas was in Guyana, he called  
4 you on a number of occasions for you to do things for him  
5 unconnected with the plot, isn't that correct?

6 A Yes.

7 Q And he asked to you get money from his sister to bring in  
8 Guyana, isn't that correct?

9 A Yes.

10 He asked me to collect monies for him, yes.

11 Q Yes.

12 So he -- I think he asked to you collect monies from  
13 a number of people. It was from his sister, a friend, his  
14 nephew, his business partner. There were a number of people  
15 he was asking to you collect money from?

16 A I don't think that's 100 percent correct.

17 Q Okay. Let me show you something.

18 Who do you think he asked you to get money from?

19 A He asked me to go to a friend of his, actually, a lady  
20 named Mary Nayah, which actually was Abdollah's wife, and he  
21 claimed that actually she was holding his benefit card and she  
22 would actually cash the benefit card and food stamps and she  
23 was giving him money for it.

24 Q Okay. Let me just ask you, I am not asking you where the  
25 money was coming from. I am just asking, didn't he ask you to

Francis-cross-Whalen

3367

1 go to a number of people and collect money?

2 A He asked me to go to her.

3 Q Could I show you what's been marked as Government  
4 Exhibit 3500-26. Sorry.

5 THE COURT: That's SF-26?

6 MS. WHALEN: Yes. I'm sorry. 3500-SF-26.

7 Q I would ask you to read the third paragraph. You can  
8 read the whole document, but I think the information is in the  
9 third paragraph.

10 (Pause.)

11 A Yes.

12 Q Okay. Does that refresh your recollection that --

13 A Yes.

14 Q You were asked to collect money from a number of people,  
15 isn't that correct?

16 A Yes.

17 Q Okay. His -- Abdollah, who was Mary Nayah's husband,  
18 right?

19 A Yes.

20 Q Mr. DeFreitas's nephew, isn't that right?

21 A Yes, you are right.

22 Q And then his business partner, is that right?

23 A Yes, yes. Now I remember, yes.

24 Q Also, Dawood asked you to run an errand for him, isn't  
25 that correct, while you were in the states still?

Francis-cross-Whalen

3368

1 A He asked me a few favors, yes, that's correct.

2 Q Okay. One of them was to pick up a box of clothes from  
3 his wife?

4 A To pick up, yes, some -- something from his wife, yes.

5 Q You know what, I -- shortly before you left New York --

6 At this point you were going to go to Guyana,  
7 correct?

8 You made the arrangement?

9 A Which point?

10 Q When Mr. DeFreitas was in Guyana and you were still in  
11 New York City?

12 A The first trip, is that correct?

13 Q The first trip.

14 A Yes.

15 Q You made plans to go to Guyana, correct?

16 A Yes.

17 I was asked to go down, yes.

18 Q Okay. Then at one point -- did you originally think you  
19 were going to be staying with Mr. DeFreitas when you went to  
20 Guyana?

21 A I don't know exactly where -- at that point I don't think  
22 I had a -- it was a specific place for me to stay. They were  
23 arranging where I was going to stay.

24 Q Okay.

25 A Meaning Sheik Mohammed and Sheik Dawood.

Francis-cross-Whalen

3369

1 Q Sorry.

2 Eventually it worked out that you were going to stay  
3 with Sheik Dawood; is that correct?

4 A Yes.

5 Q Okay. Now, this next set of questions I am going to be  
6 asking you is going to deal with the time that you were in  
7 Guyana for the first time and Mr. DeFreitas was in Guyana with  
8 you.

9 A Okay. Yes.

10 Q Just to sort of anchor us timewise, I am going to show  
11 you -- well, let me ask you, do you remember the -- what day  
12 it was that you flew to Guyana?

13 A I can't recall the exact day, no.

14 Q Okay. Let me show you what's previously been marked  
15 Government's Exhibit 3500-SF-34.

16 Let me see if this refreshes your recollection as to  
17 the day that you flew.

18 (Pause.)

19 A Yes.

20 Q Okay. Does it refresh your recollection?

21 A Yes.

22 Q Do you remember what day you flew?

23 A According to what I just read here, is September 20,  
24 2006.

25 Q Okay. But other than what's in the report, do you



Francis-cross-Whalen

3370

1 remember the exact date?

2 A I told you that I didn't remember. Actually, you showed  
3 me a report I may say the date that I flew.

4 Q The report says it, but I am just asking -- the reason I  
5 show you these documents is to see if they trigger your  
6 memories.

7 Does this trigger your memory as to when you flew?

8 A Ma'am, I cannot recall the exact date or the exact moment  
9 of my flight.

10 Q Okay.

11 A Like I said, I am reading the paper according to the  
12 report.

13 THE COURT: If I can just stop you there. That  
14 report is not in evidence. So you can't read that out loud.

15 THE WITNESS: Oh, okay.

16 THE COURT: The question is whether once you read  
17 that, does that spark your memory as to the exact date? If  
18 you don't remember, you don't remember.

19 THE WITNESS: I can recall the events that took  
20 place on my traveling, but I cannot recall if it was a day of  
21 the week specifically or on a specific date.

22 THE COURT: Okay.

23 THE WITNESS: But I remember exactly like some of  
24 the events that took place on the particular day that I flew  
25 to Guyana.

Francis-cross-Whalen

3371

1 Q Okay. But in any event, if you don't remember the exact  
2 date, do you remember that you flew at the end of September?

3 A I flew in September sometime, yes.

4 Q Okay. When you got to Guyana, you were picked up at the  
5 airport, I believe you testified, by Mr. DeFreitas and Dawood,  
6 another individual named Yussuf, and then I think Ponytail was  
7 either at the airport or he met up with you guys shortly  
8 afterwards, is that right?

9 A Yes.

10 Q That first day in Guyana, you didn't have any discussions  
11 of the plot, is that correct?

12 A Not that I recall.

13 Q Okay. But about a few days later, let's say, you spoke  
14 about the plot with Ponytail and Dawood, isn't that correct?

15 A I remember speaking with them. I don't know if it's few  
16 days after or -- or shortly after. I believe that -- I  
17 remember Yussuf was present on the day that I arrived for most  
18 part and they did not want to discuss the plot in front of  
19 Yussuf.

20 Q Okay.

21 A The reason why they didn't spoke about it.

22 Q Okay.

23 A How soon after I came in, it was fairly soon. I don't  
24 know if it was the next day, two days later or fairly soon  
25 that we speak about it, yes.

Francis-cross-Whalen

3372

1 Q Okay. The first time you spoke about the plot in Guyana  
2 you were just with Ponytail and Dawood, isn't that right?

3 A I am not sure. I cannot tell you if it was the first  
4 time with me and Ponytail or if actually the first I spoke to  
5 Dawood first. I was staying with Dawood. More than likely we  
6 probably touch up on the plot actually vaguely.

7 Q Okay.

8 A Before Mohammed. But Dawood was actually always --  
9 always -- his best interest -- as I remember, the only reason  
10 why Sheik Dawood would not speak about the plot is because he  
11 wanted all of us to be present as we speak.

12 Q Okay. So that's why I'm saying, Dawood wanted more than  
13 one person to be present, isn't that correct?

14 A He wanted all of us to be present, yes.

15 Q Okay. So a few days after you arrive, you have a  
16 meeting, but Mr. DeFreitas wasn't able to come. Isn't that  
17 correct?

18 A He wasn't present at some of the meetings, yes.

19 Q Okay. So initially you had a meeting with Ponytail and  
20 Dawood and Mr. DeFreitas was not there?

21 A Yes. As I recall, it was some meetings that he wasn't --  
22 that Sheik Mohammed was not present, yes.

23 Q Okay. At least at one of these meetings Mr. -- Dawood  
24 brought up -- let me turn this around so we know who we are  
25 talking about.

Francis-cross-Whalen

3373

1           At one of these -- at one of the first meetings  
2 Dawood brought up the fact that they were going to try to  
3 contact someone from Al Qaeda; is that correct?

4 A     Yes, I recall that.

5 Q     And at the first meetings, Dawood didn't give the man's  
6 name; isn't that correct?

7 A     I believe so, yes. I don't remember him saying the name  
8 of the beginning of the conversations.

9 Q     Okay. And Ponytail -- but at that point I think Dawood  
10 said that the guy, the Al Qaeda guy was in Trinidad, isn't  
11 that correct?

12 A     Not really.

13 Q     Okay. Not really, you don't remember, or not really, I  
14 am not correct?

15 A     No. He did not say that the guy was in Trinidad  
16 immediately after he spoke about the guy.

17 Q     Okay.

18 A     He mentioned that the guy was hiding in Guyana, possibly,  
19 possibly if he is not in Guyana, was in Trinidad. That was  
20 the first conversation sometime.

21 Q     Okay. So you are saying that at the first conversation  
22 with Ponytail and Dawood, Dawood didn't tell you he was in  
23 Trinidad or he said maybe he's in Trinidad?

24 A     No. At the beginning when I was -- when I was introduced  
25 to the idea of the guy from Al Qaeda, that was making believe

Francis-cross-Whalen

3374

1 he was in Guyanese but he was Saudi. He said that the guy was  
2 in -- was in Guyana. He was spotted. He was actually wanted,  
3 so he kind of was moving around and as far as he understood,  
4 he hide in interior and then he told me that it was a  
5 possibility that he had moved to Trinidad.

6 Q Okay. Now, you said there were a number of meetings  
7 where Mr. DeFreitas -- where you were talking to Ponytail and  
8 Dawood and Mr. DeFreitas wasn't there, I think you said that?

9 A Yes.

10 Q The meetings that Mr. DeFreitas was not there for were  
11 generally the ones that took place at the beginning of your  
12 trip to Guyana, is that correct?

13 A Yes.

14 Q Okay. At some point you again met with Dawood and  
15 Ponytail and they started talking about making a trip to  
16 Trinidad, isn't that correct?

17 A At some point there was discussed the matter of Trinidad.  
18 I don't know exactly -- that's when actually Sheik Dawood said  
19 that his findings were that Shukrijumah or the individual that  
20 was -- that was the Al Qaeda was -- has knowledge or  
21 understanding that he was no longer in Guyana, he had moved to  
22 Trinidad. It was the best interest of Sheik Dawood to get to  
23 Trinidad to actually get in touch with his contact or his  
24 Al Qaeda.

25 Q Okay. But when he's telling you about going to Trinidad,

Francis-cross-Whalen

3375

1 Dawood also said he wanted you and Ponytail to come to  
2 Trinidad as well, isn't that correct?

3 A He wanted all of us actually to go to Trinidad, not  
4 only -- not only -- not only Ponytail. He said we should all,  
5 including Sheik Mohammed, we should all travel to Trinidad, to  
6 find Shukrijumah and present the plot to him.

7 Q Okay. But there were a series of meetings about this  
8 plot, isn't that correct?

9 MR. JONES: Objection.

10 THE COURT: I will allow it.

11 You may answer the question.

12 A Yes. It was -- it was some meetings, but not -- it was  
13 nothing -- nothing concrete or definite. It was just  
14 introductions about the -- you know, the -- which individual  
15 was putting into the plate, which actually Sheik Dawood said  
16 that he had -- he wanted to see the contact and Ponytail, I  
17 mentioned what he was able to do according to his ability.

18 Q Okay. What I mean asking you specifically is, when you  
19 were in Guyana, you had a number of meetings with Ponytail and  
20 Dawood, isn't that right?

21 A Not several. But few of them, yes.

22 Q And then there were a number of meetings with Ponytail,  
23 Dawood and Mr. DeFreitas, isn't that correct?

24 A Yes.

25 Q And then there were a number of meetings with Ponytail,

Francis-cross-Whalen

3376

1 Dawood, Mr. DeFreitas and Rutherford, is that correct?

2 A Yes.

3 Q Okay. And at these meetings, different things were  
4 discussed, isn't that correct?

5 Different aspects of this plot, isn't that correct?

6 A Only when Sheik Rutherford joined in, that's when the  
7 conversation kind of switched a little bit because Rutherford  
8 was actually bringing something to the plate that was not  
9 actually available at the time that he wasn't available. Ever  
10 since the beginning of the conversations, has maintained the  
11 same concept and the same ideals except when Rutherford joined  
12 in, that he was again trying to bring in something slight  
13 different to the plate.

14 Q Okay. When you first met -- when you first are having  
15 meetings with Ponytail and Dawood, Dawood brings up the issue  
16 of going to Trinidad to see the Al Qaeda guy, is that correct?

17 A Yes.

18 Q And then at that same meeting, Ponytail says, I want you  
19 and/or Dawood says, I want you and Ponytail to come to  
20 Trinidad, isn't that correct?

21 A No.

22 Q Okay. You have another meeting with Ponytail and Dawood  
23 and Mr. DeFreitas, and at that next meeting Ponytail then  
24 said, Mr. DeFreitas, we want you to come as well?

25 MR. JONES: Objection.

Francis-cross-Whalen

3377

1 THE COURT: Sustained.

2 Q You have -- actually, you know what, the -- you had a  
3 meeting with Ponytail and Dawood and Mr. DeFreitas, isn't that  
4 correct?

5 A Yes.

6 Q Okay. In Guyana?

7 A We have several meetings together, yes.

8 Q Several meetings together.

9 I guess what I am trying to do is to just sort of  
10 get things in order. I understand that it has been more than  
11 three years for you.

12 MR. JONES: Objection.

13 THE COURT: If you can kind of cut the preface and  
14 get to the question.

15 MS. WHALEN: Okay.

16 Q You had a meeting -- I guess what I am asking you is, do  
17 you recall specific individual meetings or do you recall  
18 things that were discussed at a series of meetings?

19 A From the very beginning, like I said, the plot never  
20 changed. Everybody spoke their part and what I was actually  
21 going to be doing in the plot, and like I said, Sheik  
22 Rutherford, he -- he's a different story. He's the one that  
23 actually was coming new into the program and so he brought his  
24 new -- his new input, which actually was the part of  
25 explosives, and that he was actually acknowledging Abu Bakr



Francis-cross-Whalen

3378

1 which actually will help find Shukrijumah, but nothing  
2 changed. It was the same, the same plot, the same ideals from  
3 the beginning, until Rutherford and then again Rutherford only  
4 added that he was able to provide the gel explosives and that  
5 he provide the contact that will get to Abu Bakr that will  
6 find Shukrijumah. Everything else is the same.

7 THE COURT: If I can just I hope maybe clarify. I  
8 guess the question is, before Rutherford came into the  
9 picture, before he came into the meetings, the meetings that  
10 you had with Dawood, Ponytail and with Mr. DeFreitas and  
11 yourself, what was discussed at those meetings was always the  
12 same?

13 THE WITNESS: Yes. Because the --

14 THE COURT: Okay.

15 THE WITNESS: Yes.

16 THE COURT: Continue.

17 Q Before Rutherford joined the plan, okay, at some point  
18 Dawood decided that you and Ponytail and Mr. DeFreitas were  
19 going to go to Trinidad, is that correct?

20 A Only when DeFreitas was present was actually that blurted  
21 out.

22 Q Okay. So that conversation only took place when  
23 Mr. DeFreitas was present at the meeting, is that correct?

24 A As I remember.

25 Dawood was very careful to speak in the absence of

Francis-cross-Whalen

3379

1 Sheik Mohammed. He will speak about his part and he will  
2 allow Ponytail to speak on his part, but we were not allowed  
3 to speak about Sheik Mohammed's part until he  
4 was -- until he was present.

5 Q It would really be helpful if you can answer things yes  
6 or no or just short answers. You have explained a number of  
7 times. If you can just short -- answer the short questions,  
8 I'd appreciate it.

9 When the plan was for you and Dawood and Ponytail to  
10 go and Mr. DeFreitas to go to Trinidad, you were expecting, or  
11 was it discussed that you would go to Trinidad after Dawood's  
12 wife had joined him in Guyana for Ramadan?

13 A I don't know that Sheik Dawood -- Dawood's wife was  
14 coming to Guyana for Ramadan. Really the -- the decision of  
15 going -- of going after or in-between it was his. I don't  
16 know actually if he was actually looking forward to that or  
17 not. I don't remember that.

18 Q You don't remember him discussing that with you?

19 A I remember that he was waiting for his wife.

20 Q Okay.

21 A I will have to actually give a little thought to it  
22 because I don't want to embellish.

23 Q Let me show you something that might help you with your  
24 thoughts. Okay?

25 A Thank you.

Francis-cross-Whalen

3380

1 Q I am going to show you what's been marked as Government  
2 Exhibit 3500-SF-40 and I am going to ask you to look at the  
3 fourth paragraph. I think that will be the most helpful.  
4 Again, you can read the whole thing.

5 (Pause.)

6 A Yes. I remember some of the -- I have some recollection.

7 Q Okay. So the plan was that when Dawood's wife came to  
8 Guyana for Ramadan, you guys were going to go to Trinidad,  
9 isn't that correct?

10 A I don't -- again, I don't recall that and --

11 Q Okay. Now, as you said, at some point Rutherford became  
12 involved in this plan, isn't that correct?

13 A Yes.

14 Q And I think you testified that you met Rutherford at a  
15 mosque?

16 A New mosque.

17 Q At new mosque.

18 You also did -- did Dawood introduce you to him?

19 A No.

20 He acknowledged the brother, they exchange greetings  
21 in the mosque. People exchange greetings when we were doing  
22 Salah.

23 Q Did Nero formally introduce you and say Rutherford, this  
24 is Mr. Francis?

25 A No.

Francis-cross-Whalen

3381

1 Q Okay. At some point did Rutherford -- did Dawood ask you  
2 to invite Rutherford to a meeting about the plot?

3 A I don't recall that.

4 Actually it was the opposite. Sheik Rutherford was  
5 the one that invited me to the office. I brought it to the  
6 attention of Sheik Dawood. I said I don't know this guy. I  
7 don't know what he is asking me to come down to his office.  
8 He say well, I know the guy. I know of the guy and if he  
9 invite you to it, then we should go to his office.

10 Q Okay.

11 A And meet him.

12 Q When you said "we," did you understand this invitation to  
13 be you and Dawood and Ponytail and Mr. DeFreitas or just you?

14 A This I think invitation was towards me and, again, I -- I  
15 am not -- I was staying with Sheik Dawood. So I ask him if he  
16 knew the brother that was inviting me to his office.

17 Q I understand that.

18 I am just asking you who did you think the  
19 invitation included, just you, or Dawood and Ponytail and  
20 Mr. DeFreitas?

21 A He invited me per se to his office.

22 Q To his office.

23 When you had that meeting with Rutherford at his  
24 office, did Dawood ask you to talk to him about the plot or to  
25 invite him to one of Dawood's meetings?

Francis-cross-Whalen

3382

1 A No. Actually, that -- that didn't happen.

2 Q That didn't happen.

3 Now, at some point there was a meeting between  
4 you --

5 A One second. Going back to the question.

6 Q Right.

7 A You said if -- if -- before the meeting took place  
8 between Rutherford, Sheik Dawood and I, or in the meeting with  
9 Sheik Dawood, Rutherford and I was -- was he asked to be  
10 partaking in any meetings after that?

11 Q What I am asking you -- and thank you for letting me know  
12 you don't understand.

13 A Yes.

14 Q You met -- I think you testified you met Rutherford at  
15 the mosque, correct?

16 A Yes.

17 Q It is your testimony that Rutherford then invited you to  
18 come to his office, correct?

19 A Yes.

20 Q And you spoke to Dawood about that to make sure that  
21 Rutherford was an okay guy; right?

22 A Yes.

23 Q Okay. When you spoke to Dawood, did Dawood ask you to  
24 talk to Rutherford to see if he'd be interested in this JFK  
25 plan?

Francis-cross-Whalen

3383

1 A No.

2 Q Okay. When you went to Rutherford's office the first  
3 time, it was just you, right?

4 A No. It was me and Sheik Dawood.

5 Q Sheik Dawood did come with you to that meeting?

6 A Of course.

7 Q Okay. When you go to that meeting with Sheik Dawood, did  
8 Sheik Dawood bring up the plan with Rutherford at that  
9 meeting?

10 A Yes.

11 Q Okay. After that meeting, there was a plan to have  
12 Ponytail and Mr. DeFreitas as well as Dawood and yourself meet  
13 with Rutherford, isn't that correct?

14 A Yes.

15 Q Okay. And there was a meeting scheduled and everybody  
16 said they would come, but in the end nobody showed up, isn't  
17 that right?

18 A I don't recall that, but it's possible that it happened.  
19 I need some recollection, if you like.

20 Q Sure.

21 I am going to show you what's been marked as  
22 Government Exhibit 3500-SF-49.

23 Again, I am just trying to show you the most  
24 relevant portion. I think the most relevant portions would be  
25 the fifth, sixth and seventh, these last three paragraphs.

Francis-cross-Whalen

3384

1 (Pause.)

2 When you finish, if you look up.

3 (Pause continues.)

4 Okay. I am just going to show you the back page,  
5 the second page.

6 (Pause.)

7 Okay. Does this refresh your recollection as to  
8 whether there was a meeting where nobody showed up?

9 A Actually, like I said, I remember that there was a person  
10 that showed up at the meeting and then no one showed up  
11 afterwards.

12 Q Okay. But it was -- I think Mr. DeFreitas showed up and  
13 said he'd be back for the meeting and then he never came, is  
14 that correct?

15 A That's correct.

16 Q In the end, it was just you and Rutherford waiting for  
17 everyone else, isn't that correct?

18 A Yes.

19 Q And Ponytail and Dawood never showed up at all, isn't  
20 that right?

21 A Yes.

22 Q Okay. This meeting is taking place in the middle of  
23 October, isn't that correct?

24 A Yes.

25 Q When are you supposed to come back to New York?

Francis-cross-Whalen

3385

1           You have a return plane ticket, isn't that right?

2           THE COURT: I'm sorry. Can we have a year?

3           MS. WHALEN: Sorry. 2006.

4   Q       So when are you -- when are you supposed to come back to  
5   New York, if you remember?

6   A       October 28th maybe. October -- the end of October.

7   Q       So you only have a week or two left in Guyana at this  
8   point, isn't that right?

9   A       Yes.

10   Q       Now, Mr. DeFreitas during the end of October comes and  
11   tells you that he isn't going back to New York because he  
12   doesn't have a place to stay, isn't that right?

13   A       No, that's not correct.

14   Q       Okay. What is your recollection that he told you?

15   A       He had some business to take care of there. He said that  
16   when he returned back, he will need me to help him get a place  
17   to stay, which is a little bit different.

18   Q       Okay. So you don't remember him saying, I am not coming  
19   back to New York because I don't have a place to stay?

20   A       Not at all.

21   Q       Okay. He didn't say would you look -- he said would you  
22   look for me for a place to stay because otherwise I may have  
23   to go back to Georgia?

24   A       No.

25                He said to me that he needed a place to stay because



Francis-cross-Whalen

3386

1 his family members, the one that he was staying with, he  
2 didn't want to stay with them any longer and if I could help  
3 him get a place to stay. That's what he said.

4 Q While these meetings were going on between you and Dawood  
5 and Rutherford and Ponytail and Mr. DeFreitas, you learned  
6 that there wasn't a lot of trust in this group, isn't that  
7 correct?

8 A There was issues that started arising in the group, yes.

9 Q All right. One of those issues was Rutherford was  
10 concerned that Ponytail was an informant, isn't that right?

11 A No; DeFreitas was concerned.

12 Q Okay. Are you sure it wasn't -- wasn't Rutherford the  
13 one who was saying that Ponytail should strip down at the next  
14 meeting so they could confirm he wasn't wearing a wire?

15 A I don't recall, but that's possible.

16 Those conversations again that  
17 DeFreitas -- DeFreitas or Sheik Mohammed, he was mentioning  
18 that he was uneasy with him and Sheik Dawood said that one  
19 time he walk him into a place where like a police department,  
20 whatever, and so everybody started getting a little nervous  
21 and suspicious. I --

22 Q Okay. There were also problems between Dawood and  
23 Mr. DeFreitas at this point as well, weren't there?

24 A Yes.

25 Q Okay. They were having personal disputes, not related to

Francis-cross-Whalen

3387

1 the plot, isn't that right?

2 A Yes.

3 Q And at one point didn't Dawood tell you that he didn't  
4 trust Mr. DeFreitas because Mr. DeFreitas was a Shiite?

5 A Yes.

6 Q Okay. And you had the -- shortly before you left Guyana,  
7 you had one last meeting with some of the people involved in  
8 the plot, isn't that correct?

9 A Yes.

10 Q Do you remember that meeting specifically?

11 A I remember that -- of the overall meetings and the  
12 discussions and what was expected and what will be happening  
13 in the next few weeks or months.

14 Q Okay. So they were talking to you about what was going  
15 to be happening when you went back to New York when they were  
16 still in Guyana, isn't that correct?

17 A Yes.

18 Q Okay. This was the meeting that Rutherford suggested a  
19 date for this plot of December 25th?

20 A He didn't suggest it, December 25, 2006.

21 He suggested that it should be carried out on  
22 Christmas eve, which means actually the 24th, I believe. He  
23 said Christmas eve. The reason being is because it's the  
24 most --

25 Q Not the reason, just the date.

Francis-cross-Whalen

3388

1           So at this point he didn't say specifically  
2 December 25th. It's your recollection he just said Christmas  
3 eve?

4 A     He mentioned Christmas eve, yes.

5 Q     Okay. And at this point Dawood was saying that he still  
6 wanted to present the plan to Shukrijumah?

7           At this point he actually mentioned the guy's name,  
8 Shukrijumah, isn't that correct?

9 A     Yes.

10 Q    This was the first time that he had actually used the  
11 person's name, right?

12 A    He used the Shukrijumah more than once.

13 Q    Okay. Over -- while you were in Guyana for the first  
14 time?

15 A    Yes.

16 Q    And when Dawood talked about Shukrijumah at this meeting  
17 Rutherford said that he knew the man as well, isn't that  
18 correct?

19 A    He mentioned that he knew who he was talking about, yes.

20 Q    He knew of him. He didn't specifically mean that he knew  
21 him personally?

22 A    He said that he knew of him.

23 Q    But Dawood was sort of presenting it as if he actually  
24 knew the person personally, isn't that correct?

25 A    Yes.

Francis-cross-Whalen

3389

1 Q Now, Mr. DeFreitas wasn't at this last meeting, was he?

2 A He was present at the meetings that we were having. I  
3 can't tell you right now whether he was in the last or in the  
4 first. He was present at the meeting and he was in agreement  
5 with what was going on, yes.

6 Q Okay. But at one of the meetings Nero told you that he  
7 wanted you to go and surveil JFK Airport, isn't that correct?

8 A Sheik Rutherford as well as Nero wanted us, meaning Sheik  
9 Mohammed and I, to surveil the airport and so Sheik Mohammed  
10 also was in favor and interest of it too.

11 Q Okay. At the specific meeting where Dawood asked you to  
12 surveil JFK Airport, Mr. DeFreitas wasn't there; isn't that  
13 correct?

14 A I can't tell you that.

15 Q You can't remember?

16 A I don't remember.

17 Q Okay. I am going to show you what's been marked as  
18 3500-SF-54. Actually, I just ask you to read the first page.  
19 When you finish, I will show you the second page.

20 (Pause.)

21 (Continued on next page.)

22

23

24

25

Francis-cross-Whalen

3390

1 CONTINUED CROSS-EXAMINATION

2 BY MS. WHALEN:

3 Q Actually the last page, first paragraph. The rest of the  
4 page doesn't pertain to this.

5 (Pause.)

6 Q This meeting is taking place at the end of October; isn't  
7 that correct?

8 A Yes.

9 Q This was a meeting that was taking place shortly before  
10 you were returning to New York; isn't that correct?

11 A Yes.

12 Q Mr. Defreitas wasn't at this meeting; isn't that  
13 correct?

14 A No.

15 Q At this meeting Nero suggested or said that he wanted you  
16 and Mohammed to surveil JFK Airport; isn't that correct?

17 A No.

18 Q During this time period when you were in Guyana, you were  
19 reporting to Mr. Napoli as often as you could; isn't that  
20 correct?

21 A I'm sorry?

22 Q When you were in Guyana this first time, you were  
23 reporting back to Mr. Napoli, Louie Napoli the whole time when  
24 you were there; isn't that correct?

25 A Yes.

Francis-cross-Whalen

3391

1 Q When you did report to him, you tried to be as complete  
2 and accurate as you could; isn't that correct?

3 A That is correct.

4 Q Your job was to be his eyes and ears in Guyana; isn't  
5 that correct?

6 A Yes.

7 Q Just one final question or series of questions about this  
8 time period. Did you bring cash money with you to Guyana?

9 A I brought some cash money, yes.

10 Q Do you remember how much it was?

11 A No.

12 Q When you were in Guyana did you lend money to anyone?

13 A Yes.

14 Q Do you remember --

15 A Not lend, actually. A person, an Imam's wife was  
16 traveling to the U.S. He asked me for a favor. He said my  
17 wife is traveling to the U.S. in the afternoon and I just need  
18 to exchange some currency if you have it. I need \$100. I'll  
19 give it to you in Guyanese money since you're staying here.  
20 I'll give it to you this afternoon. Took months to get it  
21 back.

22 Q Other than this \$100, did you buy things like souvenirs  
23 or anything like that?

24 A I bought some stuff to bring back, yes.

25 Q Did you treat people to meals, like you and Dawood and

Francis-cross-Whalen

3392

1 Ponytail went to a restaurant, were you the person paying the  
2 bill?

3 A Not all the time.

4 Q Some of the time?

5 A Some of the time I paid. Sometimes they paid. I was  
6 staying in Dawood's house. I wasn't really buying the food  
7 there. I wasn't paying for a hotel. I think if we were out  
8 in the streets, we were eating a meal, the first meal when I  
9 got there, they paid for it, was very expensive.

10 Q Then you repaid the favor, paid for some meals?

11 A I bought some meals as well, yes.

12 Q Did you make any charitable donations when you were down  
13 there?

14 A I don't recall. I don't know. Maybe the jum'ah prayers.

15 Q These are small amounts of money, not large?

16 A I didn't carry large amounts of money.

17 Q The next set of questions is going to cover the time when  
18 you were in New York and Mr. Defreitas was still in Guyana,  
19 okay?

20 A Yes.

21 Q That would have been -- you came back the end of  
22 October. He came to New York City January 1st. This would  
23 have been November and December of 2006, right?

24 A Yes.

25 Q When you came back to New York City and Mr. Defreitas was

Francis-cross-Whalen

3393

1 supposed to join you to go out to JFK, that was the plan when  
2 you left Guyana, right?

3 A Yes.

4 Q He was supposed to come back within a week or two of you  
5 coming back to New York. That was the original plan, right?

6 A No.

7 Q He wasn't supposed to come back?

8 A He was supposed to come back, not one or two weeks after  
9 I came back.

10 Q Had at some point you became concerned because you  
11 expected him to come back before January 1st; isn't that  
12 correct?

13 A Sheik Mohammed wanted to come back before January. Sheik  
14 Rutherford had always mentioned he was going to send him the  
15 1st or 2nd of January.

16 Q That was always the plan, the 1st or 2nd of January?

17 A He had always mentioned that. He mentioned it several  
18 times that his plan was to send him here 1st or 2nd of January  
19 and Sheik Mohammed wanted to come back before, couldn't come  
20 back before. Something happened. That held him back a little  
21 bit.

22 Q It's your position he was always going to come at the end  
23 of January, wasn't going to come shortly after you came back  
24 to New York?

25 A Sheik Mohammed wanted to come back. Sheik Rutherford



Francis-cross-Whalen

3394

1 said he would buy his ticket for the 1st or 2nd of January.

2 That's actually what winded up happening.

3 Q Isn't it true Mr. Defreitas was delayed because he didn't  
4 have the money to come back, right?

5 A Yes.

6 Q Initially, you sent him -- he asked you to go get money  
7 from someone to send to him; isn't that correct?

8 A Yes.

9 Q You spoke to Rutherford about Mr. Defreitas using that  
10 money to come back to New York; isn't that correct?

11 A I recall speaking about the matter, yes.

12 Q Initially you were sort of saying to Rutherford, you were  
13 asking him if he would pay for Mr. Defreitas to come back to  
14 New York; isn't that correct?

15 A Sheik Rutherford mentioned he would take care of the  
16 tickets of our traveling. He said he would buy the ticket for  
17 Sheik Mohammed for January. Sheik Mohammed wanted to come  
18 back before that, so if he wants to come back before, I guess  
19 he would have to spend his own money. Sheik Rutherford wants  
20 to send him on January 1st or 2nd.

21 Q It's your testimony Sheik Mohammed wanted to come back  
22 before; isn't that correct?

23 A He said he wanted to come back before, sometimes don't.  
24 Usually Sheik Mohammed would change his mind very often what  
25 he wanted to do.

Francis-cross-Whalen

3395

1 Q At some point did you also ask Ponytail to pay for  
2 Mr. Defreitas's ticket to come back?

3 A It's possible I had a discussion like that. I don't  
4 recall it right now. If you want to recollect my memory, I  
5 would appreciate that.

6 Q I'm going to show you what's been marked as  
7 Government Exhibit 3500 S F 64, ask you to read the third  
8 paragraph, if you would.

9 (Pause.)

10 A I'm ready.

11 Q Does that refresh your memory you were calling Guyana to  
12 see if Ponytail or anyone else would pay money for  
13 Mr. Defreitas to come back?

14 A No, I don't recall that. Actually, Ponytail as I  
15 remember, he wants to actually fund the tickets because he  
16 said his connection was taking care of the tickets before.  
17 Actually, he was interested in some smuggling from Pakistan.  
18 He actually was kind of saying that he was taking care of the  
19 tickets actually.

20 Q It was your understanding that Ponytail was going to be  
21 paying for the tickets for Mr. Defreitas to come back to  
22 New York?

23 MR. JONES: Objection.

24 THE COURT: Overruled. I'll allow it.

25 A I didn't say that.

Francis-cross-Whalen

3396

1 Q When you were in New York and everyone else was still in  
2 Guyana, people were getting kind of lax about calling you  
3 back; isn't that correct?

4 A Somewhat. They had failed to call back, yes.

5 Q They weren't calling you back, weren't keeping you in the  
6 loop; isn't that correct?

7 A That's not the issue.

8 Q You were having problems getting them to call you back  
9 and let you know what was going on; isn't that correct?

10 A I specified if it was possible to bring conference calls.  
11 They didn't want it, afraid to actually being picked up by the  
12 authorities. They also, some of them would say their cell  
13 phone was not working. Some of them said they didn't put  
14 money in the card like Sheik Rutherford. I would guess  
15 legitimate excuses actually to my knowledge because I don't  
16 know the unknown. To my knowledge, they had legitimate  
17 excuses why they wasn't getting back at me. I actually  
18 understood that.

19 Q When you called them, you would say look, it's important,  
20 you need to call me back; isn't that correct?

21 MR. JONES: Objection.

22 THE COURT: Sustained.

23 Q Isn't it true that you had conversations, at least with  
24 Sheik Rutherford, where you were saying you've got to call me  
25 back, you have to let me --

Francis-cross-Whalen

3397

1 MR. JONES: Objection.

2 THE COURT: Overruled. You may answer the  
3 question.

4 A Would you repeat the question, please?

5 Q Isn't it true that you were having conversations with  
6 Sheik Rutherford where you were telling him you've got to call  
7 me back, you've got to keep me informed?

8 A This is not the way I spoke to him, no.

9 MS. WHALEN: Your Honor, I would like to play --  
10 sorry.

11 (Pause.)

12 MS. WHALEN: Your Honor, perhaps in keeping with  
13 your prior issues, I'm going to show the witness what's been  
14 previously labled as a transcript from I D 25, session  
15 number 4.

16 MR. JONES: Objection.

17 MS. WHALEN: May we approach, your Honor?

18 THE COURT: Yes.

19 (Continued on next page.)  
20  
21  
22  
23  
24  
25

Francis-cross-Whalen

3398

1 (Side bar.)

2 MS. WHALEN: I've asked the witness if he and Sheik  
3 Rutherford had a conversation where he was telling Sheik  
4 Rutherford you need to call me back, you need to get back in  
5 touch with me. This transcript shows he's having a  
6 conversation with Sheik Rutherford, starts out the second page  
7 at line 3. Mr. Francis says what's going on with the rest of  
8 the story, what's up with the shining and you know what's  
9 going on. Rutherford says well, and Annas says because you  
10 were supposed to get back, meaning I need -- I need some  
11 clarification so I know what I'm going to do because you know.

12 MR. JONES: Maybe I could save time. Judge, I  
13 haven't been objecting to a lot of the speeches that have been  
14 given. I thought we agreed we weren't going to identify,  
15 start talking about this is a recording of this and this, such  
16 and such a dates. It's not appropriate. Show him the  
17 transcript. Let him look at it. If he disagrees with it, we  
18 can address it at that time. You can't be like I'm going to  
19 show you a transcript of a recording that is not in evidence.

20 MS. WHALEN: Since he's didn't have this  
21 conversation, I was going to move the recording into evidence.  
22 I realized I had a transcript, I can move the transcript into  
23 evidence.

24 THE COURT: Let me shortcut this. The best  
25 evidence clearly is the conversation. The transcript is not

Francis-cross-Whalen

3399

1 evidence, particularly since they're speaking in English. The  
2 conversation takes place December 4th, 2006, which is when  
3 Rutherford is involved in the conspiracy. It's in connection  
4 with the conspiracy so why wouldn't the conversation be  
5 admissible?

6 MS. WHALEN: I'll admit the conversation.

7 THE COURT: I don't understand why there would be  
8 an objection from the government as to its admissibility.

9 MR. JONES: First of all, we haven't --

10 MS. WHALEN: This is your transcript.

11 MR. JONES: We have thousands of them. That's why  
12 the court ordered me to turn over the transcripts.

13 MS. WHALEN: Wait a minute. This was the issue we  
14 raised before. We're allowed to impeach, not required to give  
15 you notice of areas of cross-examination. This is not  
16 something I can independently --

17 THE COURT: Let me cut to the chase. This  
18 transcript was prepared by the government.

19 MR. JONES: With edits from the defense.

20 MS. WHALEN: I won't show him the tape.

21 MR. MILLER: Two issues. The first one this is a  
22 long recording. There could be stuff on this recording --  
23 this is a short transcript but we didn't transcribe the entire  
24 recording, have no idea what's on the recording.

25 MS. WHALEN: I'm playing the two portions -- I

Francis-cross-Whalen

3400

1 would rather the recording, because I have the times mapped  
2 out for the portions where he says you're supposed to get back  
3 to me, I intend to play this part.

4 THE COURT: The transcript indicates the clip times  
5 to be 3:11 to 8:00, 5 minutes.

6 MS. WHALEN: There's a clip, 3:11. The second clip  
7 at the end I'm not going to play the entire conversation, just  
8 going to play the portions of the clip.

9 MR. MILLER: We need time to make a determination  
10 whether it's being taken out of context, whether additional  
11 portions should be played, number one.

12 THE COURT: That's your issue on redirect.

13 MR. MILLER: The other issue I have we need time to  
14 check on, my understanding what the witness said of  
15 conversations where we need to be in contact with each other.  
16 He's asked did you tell him you need to get back to me? I  
17 didn't say it in that manner I believe what his testimony was,  
18 the conversation like that.

19 THE COURT: I don't see any reason why the clips  
20 that the defense wants to play, given they are conversations  
21 with Mr. Rutherford and this witness where Rutherford was  
22 still a part of the conspiracy during the time of the  
23 planning, in connection with the conspiracy and then if the  
24 government wants on redirect to play a different portion,  
25 obviously I would hear from the government in that regard.

Francis-cross-Whalen

3401

1 (Pause.)

2 MS. WHALEN: I'll be playing 3:10 but on the  
3 transcript there's something before 3:11, like the silence  
4 before the transcript begins, 3:10 to 3:32. That is the  
5 equivalent of page two, lines 3 to 11 and the second --

6 THE COURT: Page?

7 MS. WHALEN: Page 2, lines 3 to 11. The second  
8 portion of the clip is going to be 7:34 to 8:00 minutes.  
9 That's the equivalent of page 4, lines 22 to 28.

10 MR. JONES: Let me understand what's going into  
11 evidence here. It practice and prayer tapes, the whole  
12 session comes in regardless of what the transcript was  
13 transcribed. I want to understand what you're putting into  
14 evidence.

15 MS. WHALEN: You're right actually. What I have on  
16 the disk, I have the whole session but I would send it to my  
17 computer guy and just have clips I've used taken out so I'll  
18 substitute the disk.

19 MR. JONES: Trinidad, about brother in Guyana --

20 MS. WHALEN: I'm not going to show him that.

21 MR. JONES: That should come in. That's the exact  
22 portion. I don't see why you don't want to put it in.

23 MR. MILLER: Why don't we play the whole tape, save  
24 the time on redirect?

25 MS. WHALEN: If you want me to.



Francis-cross-Whalen

3402

1 MR. JONES: The whole clip.

2 THE MARSHAL: Is that what you want?

3 MR. JONES: The whole tape?

4 MR. MILLER: 3:11 to 8:00 minutes. Otherwise, it's  
5 confusing.

6 MR. JONES: Fine by me.

7 THE COURT: Is that okay with you?

8 MS. WHALEN: That's fine.

9 (Continued on next page.)

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Francis-cross-Whalen

3403

1 (Open court.)

2 THE COURT: We need to first, Ms. Whalen, identify  
3 the recording.

4 MS. WHALEN: Yes, your Honor.

5 THE COURT: I don't believe the jurors have this  
6 transcript that was prepared, but we can later on -- I think  
7 you could just listen along to the conversation. As I  
8 mentioned to you earlier, a number of times, at the end of the  
9 case when you're deliberating, if you need to have any of the  
10 recordings played back, you can just let us know that as well  
11 and by the time, hopefully, that you will get to  
12 deliberations, copies of these transcripts, to the extent they  
13 exist, can be prepared and added to the books so that you can  
14 read along if you need to hear these recordings over again.

15 Just listen carefully.

16 You had marked -- how do you want to mark this?

17 MS. WHALEN: Defendant's Exhibit R D A, A as in  
18 apple.

19 THE COURT: So the record is clear, is a recording  
20 of ID 25, session 4.

21 MS. WHALEN: I'm sorry, the government believes I  
22 marked something yesterday that was Exhibit A.

23 THE COURT: It was never introduced. Why don't we  
24 use R D A? It was just marked for identification with the  
25 3500 number. That was 3500 S F 175.

Francis-cross-Whalen

3404

1 R D A is in evidence. No objection by the  
2 government?

3 MR. JONES: To the audio, no objection. I would  
4 ask the witness be given a copy of the transcript.

5 MS. WHALEN: Certainly.

6 THE COURT: Yes.

7 Just to clarify, this is 3:11 to 8:00?

8 MS. WHALEN: Yes, your Honor.

9 (Tape played.)

10 Q I'll stop it there. The person you're speaking to on the  
11 tape is Rutherford?

12 A Yes.

13 Q The connection is not so good, is it?

14 A Yes.

15 (Tape continues play.)

16 Q This is Mr. Rutherford interrupting his call with you,  
17 taking another call, telling them to call back?

18 A Yes.

19 (Tape continues play.)

20 THE COURT: Can we get the date of that  
21 conversation on the record, please?

22 MS. WHALEN: The date of this conversation is  
23 December 4th, 2006.

24 Q Is that correct?

25 A Yes.

Francis-cross-Whalen

3405

1 Q In the beginning of that conversation or the portion that  
2 we've played -- I don't think it was the exact beginning of  
3 that conversation. You were talking to Rutherford saying you  
4 were supposed to get back to me, what's going on? I need  
5 clarification what I'm going to do; isn't that right?

6 A Yes, what instructions he wants me to perform, yes.

7 Q At the end of the conversation, again you say to him  
8 please keep me informed because I have to prepare myself;  
9 isn't that correct?

10 A Yes.

11 Q In the beginning of this conspiracy, Dawood was the  
12 person who was sort of calling the shots; isn't that correct?

13 A When in Guyana, yes.

14 MS. WHALEN: I'll ask everyone to look at the  
15 transcript binders.

16 Q Look at conversation 201, page 2. The conversation  
17 starts out about Sheik Mohammed disappearing; isn't that  
18 correct?

19 A Yes.

20 Q Dawood is complaining about Sheik Dawood disappearing?

21 A I'm sorry.

22 Q Sheik Dawood is complaining about Mohammed disappearing?

23 A Yes.

24 Q This takes place when you're in New York City still. You  
25 haven't gone to Guyana yet; isn't that correct?

Francis-cross-Whalen

3406

1 A Yes.

2 Q Sheik Dawood says, he's talking about, I think at line  
3 31, Dawood is saying but I said to him, him means Mohammed,  
4 meaning Mr. Defreitas?

5 A Yes.

6 Q Next time you should call. Your response is of course,  
7 indeed. Dawood says you know you shouldn't stay away from  
8 your brother like that and have him worried where you at. You  
9 say no. He says because you, it's, it's a network of trust  
10 from Alah that Alah sent him to me. Alah sent him to  
11 Mr. Defreitas. He's talking about sending him to me with  
12 respect to the plot; isn't that correct?

13 A Yes.

14 Q At that point Dawood was the person who was sort of  
15 running the plot; isn't that correct?

16 A He didn't make that point when he was discussing this  
17 matter. When he was discussing this matter is that it was  
18 nighttime, Sheik Mohammed is away from his house, disappeared.  
19 Guyana is a very dangerous place. He couldn't sleep all  
20 night. He got to find out he stood at Sheik Dawood's sister's  
21 house, mentioned to him that next time you go out at night,  
22 you should let me know that you're okay. It's a very  
23 dangerous place. He's an Imam, meaning it's his  
24 responsibility as an Imam, actually, Mohammed was staying at  
25 his house, too. This conversation is not pertaining to the

Francis-cross-Whalen

3407

1 plot; it's pertaining to his responsibility in Islam to report  
2 to the person just to make sure he's alive, make sure he's  
3 okay.

4 Q None of that portion is in the transcript, what you just  
5 explained?

6 A I'm explaining to you what it means according to the  
7 explanation of Sheik Dawood told me this is the conversation  
8 that took place and this is why I'm explaining to you exactly  
9 what it meant.

10 Q Let's move on to Exhibit 202?

11 THE COURT: Again, I want to remind the jury that  
12 the transcripts are an aid. If you want to hear these  
13 conversations, the tape is the actual evidence and later on  
14 during deliberations, if you want to hear them, you're  
15 entitled to hear them also.

16 MS. WHALEN: I'm using the transcript --

17 THE COURT: Absolutely. You can use it as an aid,  
18 absolutely.

19 Q Looking at page 2, this is a conversation that you're  
20 having with Rutherford; isn't that correct?

21 A Yes.

22 Q This is a conversation that took place on November 17th.  
23 It was before the conversation that I just played for you  
24 which is December 4th, right?

25 A Yes.

Francis-cross-Whalen

3408

1 Q At this point Rutherford has sort of become in charge of  
2 the conspiracy; isn't that correct?

3 A Yes, he's the spokesperson, yes.

4 Q Rutherford at line 35 or actually let's go up to line 22.  
5 He says I'll meet this afternoon or tomorrow morning. Or we  
6 wait until Mohammed start talking about his trip to Trinidad.  
7 After that we start talking about him, way to the states, we  
8 could represent him until he comes back.

9 In this portion Rutherford is talking about  
10 Mohammed?

11 A Yes.

12 Q He's talking, as you know, Mr. Defreitas had some  
13 lawsuits that were pending; isn't that correct?

14 A He had some troubles concerning the law, some other  
15 things, yes.

16 Q They were civil lawsuits, not criminal lawsuits?

17 A I agree.

18 Q One was concerning his home and the other one he was  
19 suing an airline company; isn't that right?

20 A Yes.

21 Q At this point, though, in November and December, there  
22 were hearings or court dates scheduled that his lawyer thought  
23 he should be present for; isn't that correct?

24 A I'm not sure.

25 Q When Rutherford in that last part, line 25, we could

Francis-cross-Whalen

3409

1 represented until he comes back, Rutherford was saying we  
2 could go to court for him until he can come back from the  
3 United States; isn't that what he was saying?

4 A Yes.

5 Q You're asking him then at line 32, you're planning to  
6 send him before December, correct?

7 A Yes.

8 Q Rutherford says I'll try to send him before December but  
9 if he want to spend December, he has to go there the second  
10 day in January, correct?

11 A Yes.

12 Q That's because the price of the tickets dramatically  
13 increase over Christmastime; isn't that right?

14 A No.

15 Q Why was he going to come the 2nd of January?

16 A Because he always said from the beginning he was going to  
17 send him the 1st or 2nd of January.

18 Q Even though here he's saying he's going to try to send  
19 him before December?

20 A Like I said, he always wants to send him the 1st or 2nd.  
21 We had several conversations where he mentioned the 1st or the  
22 2nd. This is one of them. He did send him on the 1st or 2nd  
23 of January. It was his intention to send him on that date.

24 Q At the end of the page, line 41, Rutherford -- we can  
25 start at line 40. Rutherford says to this brother, this



Francis-cross-Whalen

3410

1 brother going to Trinidad, he would come up from Trinidad,  
2 give me certain information, then I'll put Mohammed out to  
3 move. That's Mr. Defreitas, Mr. Mohammed?

4 A Yes.

5 Q Rutherford is telling him -- telling -- is going to be  
6 directing what Mohammed does next; isn't that right?

7 A Yes.

8 Q Then at the top of page 3 you start having a discussion  
9 about the meeting in Trinidad; isn't that correct?

10 A Yes.

11 Q Just reading down the page, you're asking if the meeting  
12 in Trinidad is going to happen before Mohammed comes here and  
13 by that you mean before Mohammed comes back to New York; is  
14 that right?

15 A Yes.

16 Q Further down the page, line 23, you say you're a little  
17 confused. You said you want the people before the meeting of  
18 Trinidad, wanted Mohammed to come here or want this meeting --  
19 Rutherford says no, after the meeting in Trinidad, Mohammed  
20 will come to you, correct?

21 A Yes.

22 Q Again, Rutherford is clearly deciding who is going to go  
23 where when; isn't that right?

24 A Yes.

25 Q Then the next line or the next set of lines, line 29, you

Francis-cross-Whalen

3411

1 say okay, am I supposed to be at the meeting in Trinidad too,  
2 right? Rutherford's said no, but ain't supposed to be in  
3 meeting with Trinidad. When the brother comes back from  
4 Trinidad, then I will indicate to you what time was the  
5 meeting for you to attend, right?

6 A Yes.

7 Q Rutherford is in effect directing you as well; isn't that  
8 correct?

9 A Yes.

10 Q I would like to you look at the transcript for 203. I  
11 would ask you to go to page 3. Maybe I'll play a bit of the  
12 recording, just the very beginning.

13 (Tape begins play.)

14 Q To sort of anchor us, you're making a telephone call to  
15 Dawood; isn't that correct?

16 A Yes.

17 Q That's on December 4th, right?

18 A Yes.

19 Q In this telephone call, I would ask you to go to page 3.  
20 Again, you're talking about in this conversation -- actually,  
21 I'll just play it.

22 (Tape plays.)

23 THE COURT: Are you going to start at page 3?

24 MS. WHALEN: I'm going to start at page 44 --

25 THE COURT: Sorry?

Francis-cross-Whalen

3412

1 MS. WHALEN: I'm sorry, page 2, line 44.

2 THE COURT: You started at the top of page 2?

3 MS. WHALEN: Yes.

4 Q You look surprised. You know where we are?

5 A I was lost.

6 THE COURT: We are all.

7 MS. WHALEN: Sorry.

8 I'm on Exhibit 203. I apologize, page 2, starting  
9 at the top of the page.

10 A I said 44, but it was 44, the second. Let me back it up.

11 (Tape plays.)

12 Q Right now we're at line 12.

13 (Tape continues play.)

14 Q When he mentioned Abdullah here, did you eventually learn  
15 Abdul Nur?

16 A Yes.

17 Q That's Abdul Nur he's talking about?

18 A Yes.

19 (Tape continues play.)

20 Q With this conversation, still talking about somebody  
21 going to Trinidad; is that correct?

22 A Yes.

23 Q It looks like -- well, at line 7, Dawood says he's  
24 thinking we should go to Trinidad because Mohammed doesn't  
25 seem to be certain when he's coming. By that he means --

Francis-cross-Whalen

3413

1 well, he says but I'm thinking we should get down, by that he  
2 means down to Trinidad; isn't that right?

3 A Yes, he's asking Mohammed to go to Trinidad.

4 Q Then it says Mohammed doesn't seem to be certain when  
5 he's coming; isn't that correct?

6 A Coming to the states.

7 Q Then you make the suggestion that it would be more  
8 difficult for him to go to Trinidad first and then back to the  
9 states; isn't that correct?

10 A No, I don't recall me saying that.

11 Q Let's look at line 19. It says okay, this is you  
12 speaking, Annas, okay, so I told Sheik Mohammed it would be  
13 more difficult if we go there, then come back here and you  
14 meant Trinidad, right?

15 A I meant Trinidad.

16 Q Coming back, you meant New York?

17 A Yes, we had a conversation about that, didn't have any  
18 money then --

19 Q Let me finish. You're then saying it would be too much  
20 back and forth if you go to Trinidad, then come back to  
21 New York; isn't that correct?

22 A We didn't have the money to actually be funding back and  
23 forth. That's what I was talking about.

24 Q Let me ask you about that. We didn't have the money?  
25 You weren't supposed to be paying for any of this, were you?

Francis-cross-Whalen

3414

1 A This is correct. This is why I'm saying Mohammed --

2 Q Who was going to be paying for this?

3 A Sheik Mohammed, he has the money so none of them had the  
4 money. I couldn't -- I didn't have money for this operation  
5 that they were talking about. As I mentioned here, I told  
6 Sheik Mohammed, meaning we had a previous conversation about  
7 this. Because of Abdul Nur asking for money and also Sheik  
8 Dawood at some point, everybody talking about money, we had a  
9 conversation that we couldn't be traveling all the time and  
10 this is the reason why I bring up to Sheik Dawood we don't  
11 have the finances, I don't have the finances. I can't be  
12 traveling back and forth. I asked him what do you think? I  
13 won't be able to be traveling. There's nobody paying for  
14 this, all this traveling which means --

15 Q Let me stop you there. You suggest that Mohammed should  
16 come back up, take pictures and then you could go down there,  
17 show the package, do everything at once; isn't that right?

18 A Yes.

19 Q Dawood says I will talk to the sheik when he comes in.  
20 He's referring to Sheik Rutherford; isn't that correct?

21 A Yes.

22 Q Again at the bottom, you say at line 39, just remember  
23 finances are very low. Again, wasn't Rutherford or Ponytail,  
24 weren't they supposed to be getting money to pay for these  
25 trips?

Francis-cross-Whalen

3415

1 A They keep saying the finances was not there at that  
2 moment. I just mentioned what they said.

3 Q You're having to remind them that they don't have the  
4 money to send everybody to Trinidad first and then Mohammed to  
5 JFK?

6 A I didn't remind Sheik Rutherford or Ponytail. What I  
7 told Sheik Dawood of a conversation keep popping up. Ponytail  
8 is saying he was waiting for finances and also Rutherford  
9 saying he was selling the property. He was waiting for the  
10 guy to buy the property or for him to finance. There was no  
11 finances from the people that were financing the trips and I  
12 am reminding Dawood, which is actually not the one that is  
13 buying the tickets, there was conversations about this guy  
14 saying they are waiting for the finances. There's no finances  
15 so all this traveling is going to be happening. How is it  
16 happening? Finances are not there.

17 Q Let me take you back. You say this to Dawood. Then  
18 Dawood says he will talk to the sheik about it,  
19 Sheik Rutherford?

20 A That's correct.

21 Q Dawood and Rutherford and Ponytail, they're all still in  
22 Guyana, right?

23 A Yes.

24 Q But they're talking about financial problems to you and  
25 not to each other?

Francis-cross-Whalen

3416

1 MR. JONES: Objection.

2 THE COURT: Sustained.

3 Q You're saying Ponytail told you finances were low, right?

4 A He mentioned in the group he was waiting for finances to  
5 be cleared from other people.

6 Q I'm not asking about the group. I'm asking you.  
7 Ponytail told you finances were low, right?

8 MR. JONES: Objection, asked and answered.

9 THE COURT: Overruled.

10 A He never told me on my own. He said it in the office.  
11 Rutherford was there. Sheik Mohammed was there. Dawood was  
12 there when Ponytail said repeatedly he was waiting for the  
13 Imams to give money for different things, for the trip, the  
14 Islam care; the money was not there.

15 Q When did that conversation take place? Were you in  
16 New York or Guyana?

17 A When we were in Guyana.

18 Q Now we're talking about you being in New York. Those  
19 guys still are in Guyana. You were having to tell Dawood that  
20 finances are low; is that right?

21 A I mentioned to him they have expressed, Ponytail and  
22 Rutherford had expressed, Rutherford expressed he was waiting  
23 for somebody to buy his property. Ponytail was waiting for  
24 monies to be cleared. There's no finances. Nobody has said I  
25 have a thousand dollars here for this, I have a thousand

Francis-cross-Whalen

3417

1 there. They're all waiting, no finances. You're talking  
2 about all this traveling. Does it actually make sense what  
3 you're talking about? Then goes back to talk to Rutherford --

4 Q Nobody was expecting you to pay for these trips?

5 A No, and I didn't.

6 Q Let me talk to you also a little built, while you're in  
7 New York, these guys are still asking you for things; isn't  
8 that right, still asking you for help and items; isn't that  
9 correct?

10 A Yes.

11 Q Dawood asks you for immigration help; isn't that correct?

12 A Yes.

13 Q Let me play the rest of this conversation. It's not  
14 transcribed so don't look for it in the binder or at least a  
15 portion of this.

16 (Tape plays.)

17 Q Dawood is asking you for help to emigrate to the United  
18 States?

19 A Yes.

20 Q Is he talking about marrying someone to come to the  
21 United States?

22 A Yes.

23 Q Isn't he already married?

24 A According to what he told me, yes. I didn't see the  
25 marriage papers. Yes, he's married.



Francis-cross-Whalen

3418

1 Q He's talking about marrying somebody else to be able to  
2 come to the United States?

3 A Yes.

4 Q He's asking you for help finding a lawyer or you're  
5 volunteering you know a lawyer, right?

6 A Yes, I know lawyers, yes.

7 Q Concerning immigration, correct?

8 A Yes.

9 Q But he's not -- you need more information. Again, he's  
10 not giving you the information that you need, right?

11 A He didn't forward the information. He claimed he needs  
12 help. He had to forward information if he needs help in any  
13 route he decides to take.

14 Q He wasn't sending you that information so you reminded  
15 him you got to send me the information. Otherwise I can't do  
16 anything, right?

17 A I cannot help you unless you send me the information,  
18 yes.

19 Q He also asked you to look for an apartment for his wife;  
20 isn't that correct?

21 A Yes.

22 Q Didn't he also ask you for a telephone, to buy a phone?

23 A He said his phone was down, he needed a phone, yes.

24 Q Mr. Defreitas was also asking you during this time period  
25 to pick up money and send it to him; isn't that correct?

Francis-cross-Whalen

3419

1 A Yes.

2 Q Rutherford was asking you for things like books and  
3 videos, I think cameras for his computer?

4 A Yes.

5 Q At some point you let Rutherford or let Mr. Defreitas  
6 know that you found an apartment for Mr. Defreitas to stay in  
7 when he came back to New York; isn't that correct?

8 A Yes.

9 Q This was an apartment that was actually provided by the  
10 FBI or the JTTF?

11 A Yes.

12 Q Mr. Defreitas never paid you rent for this apartment, did  
13 he?

14 A No, he didn't.

15 Q He was living at this apartment until he was arrested;  
16 isn't that correct?

17 A Yes.

18 Q Approximately six months?

19 A Yes.

20 MS. WHALEN: I don't know if you want to take a  
21 break, Judge. I'm going to be moving on to another time  
22 period.

23 THE COURT: I would like to break maybe in a half  
24 hour. I promised a longer break for this morning. I'm  
25 assuming everybody will hold up for another half hour or do

Francis-cross-Whalen

3420

1 you want to break now? We're going to go until 2:30. It  
2 seems fine by the jury. Let's go.

3 MS. WHALEN: I'm sure you'll stop me if I lose  
4 track of time.

5 THE COURT: I will.

6 Q The next country I'm going to be talking to you about is  
7 from the time period Mr. Defreitas came back to New York City,  
8 the two of you were in New York City and you were taking the  
9 pictures of JFK, okay?

10 A Yes.

11 Q Basically the two-week period from January 1st to  
12 January 13th.

13 A Taking video of JFK, yes.

14 Q You picked up Mr. Defreitas at the airport on New Year's  
15 Day; isn't that correct?

16 A Yes.

17 Q There had been some miscommunication about when he was  
18 supposed to be coming back; isn't that correct?

19 A Yes.

20 Q You talked to him when you picked him up. You said you  
21 were really not happy with the way things were being managed  
22 and this was kind of an example of what was going on with the  
23 group; isn't that correct?

24 A I did admit that, when I told him -- first of all, major  
25 concern in December was that Rutherford had mentioned he would

Francis-cross-Whalen

3421

1 be in touch Christmas Eve. He didn't mention 2006 or 2007.  
2 It was a major concern for everyone's best interest and health  
3 actually I'm informed of these activities so I could inform  
4 the person assigned to me and that was the reason why I  
5 mentioned that.

6 Q Mr. Defreitas and Rutherford and Ponytail and Dawood,  
7 they didn't know you were reporting to Mr. Napoli, did they?

8 A They didn't.

9 Q You were expressing your frustration in saying you have  
10 to call me more and the underlying reason why you were doing  
11 that was because you needed to keep Mr. Napoli informed,  
12 right?

13 A I wasn't frustrated. I'm acknowledging it's important he  
14 keep me informed. Again, I have to inform back to the FBI the  
15 goings-on, the activities.

16 Q You were telling him, in part, saying that you felt there  
17 was a lack of diligence, a procrastination; isn't that  
18 correct?

19 A They need to keep me informed so I could inform the FBI  
20 of any situation, because of the level of sensitivity to blow  
21 up JFK.

22 (Continued on next page.)  
23  
24  
25

Francis - cross/Whalen

3422

1 EXAMINATION BY:

2 Q And based on what had been happening when you were back  
3 in New York and Mr. DeFreitas was still in Guyana, they just  
4 weren't keeping you informed the way you felt they should  
5 have; is that correct?

6 A I need to make sure that I get all the information I can  
7 for the FBI.

8 Q When you picked up Mr. DeFreitas you took him to the FBI  
9 apartment, isn't that correct?

10 A Yes.

11 Q And then I'd like everybody to look at Government  
12 Exhibit 204.

13 THE COURT: That is 204 T?

14 MS. WHALEN: Yes. Right at the top of the page.  
15 52:29.

16 (Tape plays; tape stops.)

17 Q He's telling you that he had a pretty important job at  
18 JFK, isn't that correct?

19 A Yes.

20 Q And he's telling you that he worked there for a long  
21 time, isn't that right?

22 A Yes.

23 (Tape plays; tape stops.)

24 Q So he's telling you he actually knows how to fly the  
25 plane, isn't that right?

Francis - cross/Whalen

3423

1 A Yes.

2 (Tape plays; tape stops.)

3 Q And here he's telling you that -- he's telling you  
4 something that he thinks that if he exposed it he would be  
5 killed, isn't that correct?

6 A Yes.

7 Q And he's telling that you the Israelis or El Al is  
8 shipping false -- shipping crates that contain missiles and  
9 actually are falsely labeled, isn't that correct?

10 A Yes.

11 Q He is explaining that he happened to see the manifest,  
12 right?

13 A Yes.

14 Q And later on, just to save time, if you look at page  
15 three, starting at line six, Mr. DeFreitas says, the best  
16 helicopters of this country, unintelligible, going to Israel.  
17 The Apache aircraft is going to Israel.

18 At some point he was telling you that they were  
19 loading Apache aircraft onto the plane to send to Israel?

20 A Yes.

21 Q Didn't he also tell you at one point that they were  
22 loading tanks with revolving heads to go to Israel?

23 A Yes.

24 Q Going down further into the conversation, the next  
25 paragraph starting at line 18. Mr. DeFreitas starts talking

Francis - cross/Whalen

3424

1 about money and he says, You know, we have to get money for  
2 the family, we have to get money because what happens to your  
3 family when you're gone and they're left behind.

4 So he was talking about getting money for this plot  
5 to help out the families of the people that were going to be  
6 involved, isn't that correct?

7 A Yes.

8 Q So Mr. DeFreitas was also very interested in getting  
9 money for himself, isn't that right?

10 A He was at some point, and then at some point he didn't  
11 want any money anymore.

12 Q So he would go back and forth, sometimes he would say he  
13 wanted money and later on he would say he didn't want money,  
14 isn't that correct?

15 A He changed his mind often about certain things.

16 Q Again, on page four -- not again, but if we go to page  
17 four, line three. Mr. DeFreitas is telling that you he  
18 learned a lot of Yiddish. Isn't that correct?

19 A He learned what?

20 Q I'm sorry. Yiddish, a language that is used sometimes.

21 A Where is that?

22 Q Page four of the transcript, line three. He was telling  
23 you he could speak Yiddish?

24 A He say there that he learn a lot of Yiddish.

25 Q He's telling you that he learned to speak Yiddish to

Francis - cross/Whalen

3425

1 speak to the Israel security?

2 A Yes.

3 Q Later on at paragraph 26 he says, you see them in the  
4 morning, it's Shalom.

5 A Yes.

6 Q Did you ever hear Mr. DeFreitas say anything other than  
7 shalom in Yiddish?

8 A I don't speak Yiddish. No.

9 Q Just to confirm, this conversation was taking place in  
10 the FBI apartment, isn't that correct?

11 A I will have to listen to the actual tape to know if we  
12 were inside the apartment when he mentioned Yiddish or we are  
13 outside or we are away.

14 (Tape plays; tape stops.)

15 Q Do you know where that is taking place?

16 A Yes, I believe because of the quietness that we were not  
17 in the truck.

18 Q On January 2nd, it's safe to assume that you were in the  
19 FBI apartment?

20 A I had a body wire so I cannot tell you. More likely it  
21 was because it's quiet, I know we wasn't in the truck.

22 Q Just to talk about that body wire. The whole time that  
23 you were making these recordings you knew the body wire was  
24 on, isn't that correct?

25 A I'm sorry?



Francis - cross/Whalen

3426

1 Q When you were making these recordings you knew you were  
2 wearing a body wire, right?

3 A Yes.

4 Q When the recordings were made in your truck, you knew  
5 that your truck had been fitted without a camera and the video  
6 and the audio?

7 A I did not know what kind of video or audio, I knew that  
8 it was being recorded inside.

9 Q And that was -- and your telephone calls, you knew those  
10 were being recorded, isn't that correct?

11 A Yes.

12 Q All of those recordings were done with your consent,  
13 right?

14 A Yes.

15 Q Now I'd like to go to Exhibit 205. Starting at the top  
16 of page two, Mr. DeFreitas says, If we wasn't in a hurry, I'd  
17 think we could go to the airport right now.

18 Do you remember that?

19 A Sheik Mohammed, yes, he's mentioning -- number three, if  
20 you like to play it.

21 (Tape plays; tape stops.)

22 THE COURT: Can we just have the day of this  
23 conversation, and the time.

24 MS. WHALEN: The conversation is January 3, 2007.

25 Your Honor, I can't tell you the time.

Francis - cross/Whalen

3427

1 THE COURT: I just noticed.

2 MS. WHALEN: I can tell you the time of the  
3 recording.

4 Q When Mr. Jones was questioning you -- do you remember  
5 when Mr. Jones was questioning you about this conversation,  
6 205, a little while ago?

7 A Mr. Jones?

8 Q Yes, Jason Jones, the prosecutor.

9 A Oh.

10 Q Do you remember when he was talking to you about the  
11 conversation?

12 A What would you like to know about the conversation?

13 Q At the very beginning Mr. DeFreitas says if we wasn't in  
14 a hurry and Mr. Jones asked you if you were ever in a hurry,  
15 and I think your answer was no.

16 A He was in a hurry, Sheik Mohammed. I wasn't in a hurry,  
17 no.

18 Q When Sheik Mohammed is talking here about being in a  
19 hurry, he's talking about he thought he had to pick up a  
20 suitcase from one of his friends, isn't that correct?

21 A I'm not sure.

22 Q Let me go back. This part of the tape is not  
23 transcribed, but I'm going to be -- for the record, I'm going  
24 to be starting at 10 minutes and 45 seconds into the  
25 recording.

Francis - cross/Whalen

3428

1 (Tape plays; tape stops.)

2 Q So Mr. DeFreitas is talking about he thinks he has to go  
3 back to Abdollah's to pick up the suitcase that afternoon,  
4 isn't that correct?

5 A Yes.

6 Q When he said if we wasn't in a hurry, what he meant was  
7 that he was thinking he was in a hurry to get back to  
8 Abdollah's, isn't that right?

9 A No.

10 Q Let me play the rest of this.

11 (Tape plays; tape stops.)

12 Q Mr. DeFreitas here is telling you that he likes to know a  
13 lot of different ways to get places, isn't that correct?

14 A Yes.

15 Q Now, he directs you to the airport -- the rest of the  
16 recording in 205, he's directing you to the airport, isn't  
17 that right?

18 A Yes.

19 Q Okay. Then he's driving around showing you the airport,  
20 isn't that correct?

21 A Yes.

22 Q And this entire drive was conducted on public roads,  
23 isn't that correct?

24 A Yes.

25 Q And Mr. DeFreitas is actually surprised that a number of

Francis - cross/Whalen

3429

1 the areas or the roads are closed off, isn't that right?

2 A Some of the areas were closed down on one side and then  
3 they were open on another side. Some were closed, some were  
4 open.

5 Q Let's look at page four -- I'm going to use the  
6 transcript for awhile -- page four, line 12. He says, No, you  
7 can't go in, you can't go in. They put up a sign, now you  
8 see, look.

9 Right?

10 A Yes.

11 Q And then at line 17 he says, Right? See, when this used  
12 to be an operation you could go in. But this company closed  
13 down.

14 Right?

15 A Yes.

16 Q Page five, lines 21 through 25, you're driving around and  
17 he says, Yeah, yeah, because you can't go in that side  
18 neither. You say okay. He says, See, they getting clever,  
19 since the terrorist thing, but you can turn and go around.

20 Right?

21 A Yes.

22 Q All of this time you were on public roads, isn't that  
23 correct?

24 A Yes.

25 Q Okay. Then going to the bottom of that page, the bottom

Francis - cross/Whalen

3430

1 of page five line 36, Mr. DeFreitas is noticing that they put  
2 up a lot of lights, isn't that right?

3 A Yes.

4 Q And you're commenting that there are stop signs?

5 A Yes.

6 Q He says, Yeah, they put up a lot of lights. He points  
7 out the tower to you, isn't that correct?

8 A Yes.

9 Q Is that the first time that he pointed out the tower to  
10 you?

11 A He point at the tower on many occasions.

12 Q But this is your first trip to JFK with him, isn't that  
13 correct?

14 A Yes.

15 Q And so when he's saying, watch the tower, or look at the  
16 tower, see the tower across the other side, this is the first  
17 time that he's pointing out the tower to you, right?

18 A On that drive, yes.

19 Q On that trip, okay. He tells you at line 17 that they  
20 can see every single place and if you go by that tank, they'll  
21 call the cops to you, correct?

22 A Yes.

23 Q And then at the bottom of the page, line 39, he makes, he  
24 says, you can't stay here. See, look, look, they put up a  
25 fence now.

Francis - cross/Whalen

3431

1 Right?

2 A Yes.

3 Q The following page, line nine, Yes, they put up fences,  
4 now you can't get in?

5 A Yes.

6 Q You say okay, but we can't get in there. Right?

7 A Yes.

8 Q He says, no, we are going to get in?

9 A Yes.

10 Q Mr. DeFreitas never took you anywhere except on public  
11 roads; is that correct?

12 A Yes. He told me to turn around in some areas that he  
13 couldn't access normally and he told me that if we were  
14 stopped how to behave, actually, if we were stopped or  
15 approached by the authorities at any time.

16 Q But the places that he told to you turn around, those  
17 weren't restricted, they were areas that you could turn around  
18 in, isn't that correct?

19 A They were restricted in the position of going in in that  
20 way, but if you turn around, which is more unlikely for a  
21 person that doesn't work there to know, yes.

22 Q So he would drive you to a spot where he thought you  
23 would be able to get in before and when you couldn't, you  
24 would turn around and go someplace else?

25 A I didn't turn around. He asked me to turn around or to

Francis - cross/Whalen

3432

1 move, I didn't know exactly where he was -- whether it was  
2 local. I was told that if we were stopped at any time to  
3 behave like we were lost or that the car broke down.

4 Q Were you stopped at any time?

5 A No.

6 Q Then at page nine, just at the top, he says, Bastards,  
7 they make it complicated for you now but I still remember how  
8 to do it.

9 He's talking about the traffic driving around JFK,  
10 isn't that correct?

11 A No, he said, Remember, I remember how to do it, not how  
12 they do it.

13 Q So he still remembers how to get around the airport,  
14 isn't that right?

15 A Yes.

16 Q And then at line 14, you're driving, and he says, yes,  
17 yes, no more shortcut. Can't catch it no more. He tells you  
18 to make a right because the left turn is illegal, isn't that  
19 right?

20 A Yes.

21 Q Page 16 at line 28. Again, he's saying, you can't turn  
22 with the cut, cut it out, no, they cut it out. You can't turn  
23 no more, they cut it out.

24 Again, that is a reference to a place where you  
25 thought you could drive but you couldn't drive any longer; is

Francis - cross/Whalen

3433

1 that correct?

2 A Yes.

3 Q Did Mr. DeFreitas tell you the last time that he'd been  
4 driving on these roads at JFK?

5 A I don't recall right now.

6 Q Did he tell you what years he stopped working at JFK?

7 A I don't remember.

8 Q Throughout this recording, and I think there is another  
9 recording -- there are a number of recordings of him driving  
10 around -- he was obsessed with the tower at the airport, isn't  
11 that correct?

12 MR. JONES: Objection.

13 THE COURT: Sustained as to form.

14 Q Mr. DeFreitas would talk to you about the tower and he  
15 would say it's the key to security at the airport, isn't that  
16 correct?

17 A Yes.

18 Q And he would talk about how it could see everything,  
19 isn't that correct?

20 A Yes.

21 Q He was convinced that driving through the airport  
22 somebody at the tower would be observing the cars driving  
23 around, isn't that correct?

24 A Yes.

25 Q And he even thought that they had cameras that could pick



Francis - cross/Whalen

3434

1 up license plates from the cars that were driving around,  
2 isn't that correct?

3 A Yes.

4 Q And on this drive he also talked about the pipeline,  
5 isn't that correct, at JFK?

6 A I'm not sure if we spoke about it on the drive, but I  
7 know it was mentioned. I already had acknowledged his  
8 knowledge of the pipeline at this drive.

9 Q Well, let's look at page seven, line 34. You ask him,  
10 Where is the pipeline?

11 Are you there, page seven line 34?

12 A Yes.

13 Q So you say, And where's the pipeline go? Meaning the  
14 pipeline at JFK, right?

15 A Yes.

16 Q And Mr. DeFreitas says, The pipelines, they got them  
17 hidden underground, right?

18 A Yes.

19 Q You say okay. He says, You see that the tanks, the  
20 trucks go there and fill up there, and you say okay. He says  
21 they got them hidden underground, again talking about the  
22 pipes, right?

23 A Yes.

24 Q You say okay, and you know where they at, right? Meaning  
25 you know where the pipelines are under the ground, isn't that

Francis - cross/Whalen

3435

1 right?

2 A Yes.

3 Q And he says, well, you don't, you don't get to know where  
4 they are, and he says because I only drive the truck for one  
5 time and I just go and load up and that was it.

6 When he's talking there, is he talking about driving  
7 a fuel truck?

8 A He mentioned a truck.

9 Q That's what I'm asking you. Did you know what kind of  
10 truck he was talking about?

11 A He mentioned a truck.

12 Q You don't know whether it was a pickup truck, a luggage  
13 truck or a fuel truck?

14 A No.

15 Q And he says he only drove the truck one time, right?

16 A Yes.

17 Q But did you understand him to be talking about knowing  
18 where the pipeline is because he drove a fuel truck once?

19 MR. JONES: Objection.

20 THE COURT: Sustained as to form.

21 Q You don't know what kind of truck he was talking about?

22 A No.

23 Q You're talking about the tanks, right?

24 A Yes.

25 Q You're talking about the pipelines, right?

Francis - cross/Whalen

3436

1 A Yes.

2 Q You're asking if he knows where the pipeline is, right?

3 A I want to know if he know exactly where this pipeline is,  
4 yes.

5 Q Right. He says, you don't get to know where they are  
6 because I only drove the truck for one time and I just go and  
7 load it up and that was it.

8 Did you think he was talking about loading up a fuel  
9 truck one time?

10 MR. JONES: Objection.

11 THE COURT: I will allow it. You may answer the  
12 question.

13 A The conversation was not about a truck, it was about a  
14 pipeline. He mentioned in the previous meeting with  
15 Rutherford, Sheik Dawood, his knowledge of the pipeline and  
16 when we were stopping by the tanks and the tanks were showing  
17 the pipeline in, he mentioned that the pipeline was  
18 underground and if the pipeline was to blow up, not only the  
19 airport would be gone but also Queens will be gone.

20 So I ask him where is the pipeline that you're  
21 talking about? He says underground. So that was sufficient  
22 for me to understand under that the pipeline was not outside  
23 the airport where people would walk on the pipeline, it was  
24 underneath.

25 Where exactly? He said he didn't know exactly where

Francis - cross/Whalen

3437

1 it was, but he knew the pipeline was underneath the ground and  
2 if it was to blow up, it would blow the whole airport and  
3 Queens as well.

4 Q So just to get back to my question. You didn't  
5 understand him to be saying that he had driven a fuel truck  
6 one time based on this statement at lines 11 and 12 of page  
7 eight of the transcript, right?

8 A The conversation was not about a truck. I'm sorry, it  
9 was about a pipeline.

10 Q Then just going to page 14, line three.

11 A Yes.

12 Q Mr. DeFreitas is telling you that they don't issue maps  
13 anymore.

14 A Where exactly are you reading?

15 Q Page 14.

16 A Which line?

17 Q Line three.

18 A Okay.

19 Q It says in bold right beside it, 45:50?

20 A Yes.

21 Q So Mr. DeFreitas is saying, yeah, they don't issue maps  
22 no more, no more maps, no more maps.

23 He was talking about maps of JFK Airport, right?

24 A Yes.

25 Q On page 15, looking at line 33 --

Francis - cross/Whalen

3438

1 A Which one?

2 Q Page 15, the next page.

3 A Okay.

4 Q Line 33. You ask Mr. DeFreitas, okay. So you gonna  
5 sketch it now when you're at home?

6 A Yes.

7 Q And you're referring to the airport when you say "sketch  
8 it"?

9 A Yes.

10 Q And Mr. DeFreitas asks a question and says Huh. Then you  
11 say again, you gonna sketch it now when you're home? And he  
12 says I'll try. Me and you got to sit down and try and do what  
13 we can do.

14 Did you guys ever sit down and sketch the airport?

15 A No. His interest was in videotaping at this point not  
16 sketching.

17 Q Okay. And then page 18, quickly -- I will be finished  
18 with this line of examination in a second.

19 Mr. DeFreitas is talking to you about -- he's  
20 talking to you about Carmine, an Italian, right?

21 Sorry, page 18, we're like looking at line ten. You  
22 see where we are?

23 A Yes, line ten?

24 Q Yes. It says -- you're laughing, and you're laughing and  
25 you said, Yeah, who was with you there all that time? And

Francis - cross/Whalen

3439

1 Mr. DeFreitas says, Well, I was, I was, I was just -- it was  
2 just me and another worker. And you say okay. He says, he  
3 was the lead, a foreman, but I was just a regular worker and  
4 his name was Carmine, he was Italian.

5 Right?

6 A He said that, yes.

7 Q And then he says, He was a real thief. He say you just  
8 shut your mouth up and you just drive and he do all the  
9 talking.

10 Right?

11 A That's what he said, yes.

12 Q And this conversation is part of the conversation that  
13 Mr. DeFreitas was having, telling you about how he used to, I  
14 think he called it thieving cargo; is that correct?

15 A I recall a conversation that he was teaching the men how  
16 to escape the airport without being detected. I don't recall  
17 if it was exactly on this particular moment, this line, but I  
18 remember that he was teaching the people and then they were  
19 ratifying with some of the goods that they would steal, and he  
20 went on actually many different occasions where he was trying  
21 out the security himself and teaching the people, so this  
22 could be one of the guys. I will have to actually review the  
23 whole material to understand what kind of informing he had and  
24 with who.

25 Q Starting at minute 49:57, which is going to put you on

Francis - cross/Whalen

3440

1 page 17 of the transcript right at the top. Are you there?

2 A Yes.

3 (Tape plays; tape stops.)

4 Q So this was one of those occasions where he was telling  
5 you about thieving cargo, right?

6 A Yes.

7 Q And you asked, who was with you all that time, right?

8 A Yes.

9 Q And he said it was just me and another worker, Carmine.  
10 Right?

11 A Yes.

12 Q And he said Carmine was the foreman and I was just a  
13 regular worker, right?

14 A Yes.

15 Q And one last issue with this exhibit. Turning to page  
16 22. I'm going to be starting the transcript at 57:32 into the  
17 recording and hopefully the part I want you to think about is  
18 coming at 57:16.

19 Right here when Mr. DeFreitas talks about the sheik,  
20 he's talking about Sheik Rutherford?

21 A Right.

22 Q And he wants you to make sure that you tell the sheik  
23 that he knows the place well, isn't that right?

24 A Yes.

25 Q And during this trip you didn't stop anywhere in the

Francis - cross/Whalen

3441

1 airport, did you?

2 A I'm not sure if we made a short stop. It's possible that  
3 we made a short stop. I don't think we made a prolonged stop.

4 Q What would the short stop have been for?

5 A I don't know if it was on this particular occasion but I  
6 remember the police came and make a round, and he told me to  
7 be calm and then the guy, the police left and he was saying,  
8 we elude them, we elude them, we got away.

9 I don't know if it happened on this occasion or on a  
10 third occasion, but that was the only small stop that I made  
11 that I remember.

12 Q When you say that's the only small stop, do you mean  
13 that's the only small stop you made all of the times that you  
14 and Mr. DeFreitas were driving at JFK?

15 A No.

16 Q There were other occasions where you made stops at the  
17 airport?

18 A He asked me to stop right in front of the hangar and put  
19 the flashers on, and he also asked me to pretend that the car  
20 broke down so we can take the -- so he can actually take the  
21 video of the hangar, and he also asked me to at some point to  
22 pretend I was kind of lost and the flashers were on I think  
23 and -- but other than that, I don't remember -- yes, we  
24 stopped also next to the tanks of where the water was because  
25 he kept telling me to direct him into the tanks, and I was



Francis - cross/Whalen

3442

1 driving and I didn't want to get in a crash, so I stopped the  
2 car, put the flashers on so I make few stops. I don't  
3 remember how many, but I made more than one stop, yes.

4 Q So the stops that you're talking about, those were stops  
5 that you made while you were doing the video shoots of JFK,  
6 right?

7 A Except for the one where the police came around. I'm not  
8 sure, I think the stop was on this one or another one, I will  
9 have to listen to this tape to remember. But I know if it was  
10 this one then another one where the police came around.

11 Q When the police came around, nobody got out of the car,  
12 nobody questioned you, they just came and turned around and  
13 they left, right?

14 A Yes.

15 Q But every time that you were driving, even if you  
16 stopped, you were always on public roads, isn't that correct?

17 A I can't really recall that I was actually that. I was  
18 pretty much being guided into the places, if it was restricted  
19 or not.

20 Again, I was told that if we go into a place that it  
21 was not, the public was not allowed, we just claim that we  
22 lost and we'll be fine. So really I was just following  
23 instructions.

24 THE COURT: The question I think is -- if I may,  
25 Miss Whalen -- is whether you ever on these trips with -- you

Francis - cross/Whalen

3443

1 mean this trip specifically, Miss Whalen?

2 MS. WHALEN: This trip or actually any of the trips.

3 THE COURT: On any of the trips to JFK with  
4 Mr. DeFreitas, did you go into any of the roads that the  
5 public was not allowed in?

6 THE WITNESS: This is why I said that I'm not  
7 100 percent sure. I don't want to say no we didn't and then  
8 we did.

9 I would say that he was directing me to which road  
10 to go and pretty much I will -- since he told me, listen, be  
11 calm, and if anything happens, just say you lost, don't worry  
12 about it.

13 It was just pretty much, he would say make a right,  
14 make a left. I was just driving. I did not pay attention to  
15 the signs if it say no public allowed whatever, I only pay  
16 attention to the traffic light, if it was green, if it was red  
17 or top sign, but other signs no, because he told me already to  
18 follow his directions.

19 Again, if we get stopped by any circumstance,  
20 whether it was at the tower, fixing the car, police officer  
21 stop, or whatever, I say, Hey, I'm lost, I'm looking my way  
22 around. That will buy us our way out into any jail.

23 Q Did you ever go into an area that was closed off by a  
24 fence or closed off by a barrier?

25 A No. I didn't.

Francis - cross/Whalen

3444

1 THE COURT: All right.

2 Like I promised, I would give you maybe about half  
3 an hour of a break this morning. I hope you took my  
4 suggestion to heart and brought some snacks with you to munch  
5 on this morning.

6 So remember to keep an open mind, not to form or  
7 draw any conclusions about anything that you have seen or  
8 heard here in the courtroom during the course of this case.

9 Remember that this is a little bit longer break so  
10 if you want to use your cell-phones during this break you can,  
11 but remember that you can't talk about this case with anyone,  
12 not among yourselves or with anyone else, you can't look up  
13 anything about this case, do any kind of research about it,  
14 read or listen to or look at anything that might be reported  
15 about this case over any kind of media, whether it's on your  
16 cellphone or anything else, printed or otherwise.

17 I will say we will probably start up again about ten  
18 after 12. We'll give you half an hour. Okay.

19 Enjoy your break.

20 (Jury leaves.)

21 THE COURT: Be seated for just a minute.

22 We're still on cross-examination. You're still on  
23 cross-examination, sir, at this point, so once again, you  
24 cannot discuss your testimony with the government team.

25 You can certainly discuss scheduling with them but

Francis - cross/Whalen

3445

1 not anything concerning your testimony and you're certainly  
2 free to take a break as well until ten after 12.

3 THE WITNESS: Thank you very much.

4 THE COURT: You can step down.

5 (Witness leaves the courtroom.)

6 THE COURT: I had meant to check with you, Miss  
7 Whalen, as to whether Mr. DeFreitas got his prescription  
8 filled?

9 MS. WHALEN: He did.

10 THE COURT: All right. I just wanted to make sure  
11 that that was done.

12 The jury is no longer present, the witness is not  
13 present. Is there anything that the parties want to raise.

14 MS. WHALEN: The only thing I want to raise is, I  
15 had hoped to complete my cross-examination today, but given  
16 the place that I am, I don't think I'm going to. So I know  
17 the government has some scheduling issues with their  
18 witnesses.

19 I think I'll be able to give you a good idea about  
20 how much longer it will take by the end of the day, meaning  
21 tomorrow an hour or two, but probably -- I don't think I'm  
22 going to finish today and I just wanted to give everybody  
23 notice.

24 MR. MILLER: We appreciate that. We don't want to  
25 curtail anything, we just want to be kept informed. We

Francis - cross/Whalen

3446

1 appreciate that.

2 THE COURT: At the end of the day then, counsel, you  
3 can just -- I just need to let the jury go at 2:30, but after  
4 that we can certainly discuss scheduling and proceeding  
5 further and the proposed stipulations and so on.

6 You all can take a break. Ten after 12 by this  
7 court clock.

8 (Recess.)

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Francis - cross/Whalen

3447

1 (Open court.)

2 THE COURT: Will you get the jury, please. Everyone  
3 appears to be here.

4 Are there any legal matters to address before we get  
5 started?

6 MS. WHALEN: No.

7 THE COURT: Perhaps we can move things along.

8 If you want to set up, Miss Whalen, we are going to  
9 get the witness in and then we'll bring in the jury. First  
10 the witness and then the jury.

11 (Pause.)

12 THE COURT: Jury entering.

13 (Jury present.)

14 THE COURT: Be seated, please. Welcome back, ladies  
15 and gentlemen.

16 Do all the parties agree that all of our jurors are  
17 present and properly seated?

18 (All answer in the affirmative.)

19 THE COURT: Welcome back, sir, Mr. Francis.

20 THE WITNESS: Thank you.

21 THE COURT: I remind you, sir, that you are still  
22 under oath.

23 THE WITNESS: Yes.

24 THE COURT: You may inquire when you're ready.

25 Again, a remainder, ladies and gentlemen, that this

Francis - cross/Whalen

3448

1 is continued cross-examination of Mr. Francis by Miss Whalen  
2 on behalf of Mr. DeFreitas.

3 BY MS. WHALEN:

4 Q Mr. Francis, if you could now turn to Government  
5 Exhibit 206 T in your book -- and everybody else as well.

6 Looking at the first page, the date of this  
7 recording is January 3, 2007. Is that right?

8 A Yes.

9 Q Okay. That is the same day as Government Exhibit 2005,  
10 right? If you want to look at the -- not 2005, 205, I'm  
11 sorry.

12 A Yes, it's correct.

13 Q So Government Exhibit 206 is basically a continued  
14 recording of the same drive with Mr. DeFrietas, isn't that  
15 correct?

16 A It's a recording of the same day.

17 Q All right. So again for a minute I'm just going to use  
18 the transcript.

19 When you were talking to Mr. DeFrietas, he was  
20 talking about security during this portion of the drive and  
21 other drives, isn't that correct?

22 A Yes.

23 Q And he was talking about security at the airport, isn't  
24 that right?

25 A Yes.

Francis - cross/Whalen

3449

1 Q In certain locations he would talk about security being  
2 bad, and I will draw your attention to page two, line three  
3 where he says, Well, them tanks, yeah, them tanks, nobody, not  
4 even one security sitting down over there.

5 By that statement he meant there wasn't a security  
6 guard there, right?

7 A Yes.

8 Q And then page three, line 36. He says, in the middle of  
9 that line, Yes, not even a soldier, you're not going to see no  
10 one with a truck or somebody on guard.

11 Right?

12 A Which page again?

13 Q Page three.

14 A Which line?

15 Q Line 36, at the bottom.

16 A All right.

17 Q He says, Yes, not 18 a soldier. You're going to see no  
18 one with a truck or somebody on guard. Regular security  
19 driving a little, little Jeep.

20 He's talking about again security at JFK Airport,  
21 right?

22 A Yes.

23 Q Page six, line two. He says, but, still, they careless.  
24 When he says "they careless," he's talking about the security  
25 at JFK, right?



Francis - cross/Whalen

3450

1 A Yes.

2 Q On other occasions he talks about the security being  
3 pretty extreme, doesn't he?

4 A Yes.

5 Q So, for example, on page four, look at line 29. He says,  
6 even the workers get, call the police for you.

7 When he's talking there, he means that even the  
8 workers at JFK would call security or police, isn't that  
9 right?

10 A Yes. But I'm sorry, the question before you mentioned  
11 this, I would like to repeat the question.

12 Q My question before this was that -- let me rephrase  
13 because I can't remember the question.

14 It was something to the extent that Mr. DeFrietas at  
15 other times would talk about the security at JFK being pretty  
16 extreme. And what I mean by pretty extreme, meaning pretty  
17 tight security?

18 A The case he mention now, he talking about even if the  
19 people see normal activities they will report it immediately  
20 to the authorities. That's not security at the airport, it's  
21 actually the people that work at the airport.

22 Q Look at page seven, line 12. He says, No, won't be good.  
23 Won't be no good -- let me play it actually.

24 I will start at 12:33 into the recording is where  
25 I'll start.

Francis - cross/Whalen

3451

1 (Tape plays; tape stops.)

2 Q Here he's talking about that if the two of you got  
3 stopped, airport police would be coming by, by the thousands,  
4 or by the hundreds, isn't that correct?

5 A That's not what he meant in this conversation.

6 He's speaking about if the tower picks us up  
7 actually using a camera, definitely it will be a national  
8 alert of two guys actually recording the airport at that time  
9 and of course there will be thousands of authorities actually  
10 showing up and questioning us as to what we're doing with a  
11 camera.

12 He's talking about the tower in this particular  
13 instance, if the tower was to pick up that we using a regular  
14 camera.

15 Q Mr. DeFrietas thought the tower was the center of  
16 security at the airport, didn't he?

17 A He mentioned that the tower, it was the main security,  
18 they have main security, yes.

19 Q Just to confirm, you were talking about what kind of  
20 camera to use -- I'll refer you back to page six, line 20.

21 He's talking about getting a high-tech camera,  
22 right?

23 A Yes.

24 Q But he was still saying that if somebody saw you with the  
25 camera, the security at the airport would be airport police by

Francis - cross/Whalen

3452

1 the thousands and then by the hundreds, right?

2 A Yeah. I mentioned that my uncle had a big camera and  
3 that's when he mentioned, again, ratifying that the camera  
4 have to be high-tech, that if we use a regular video camera it  
5 will be actually picked by anyone and we will be actually  
6 detained.

7 (Continued next page)

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Francis-cross-Whalen

3453

1 EXAMINATION CONTINUES

2 BY MS. WHALEN:

3 Q Taking you back to page five, I am going to be starting  
4 the recording at ten minutes and thirty-five seconds into the  
5 recording, which should put us close to line thirty on page  
6 five.

7 (Tape plays; tape stops.)

8 Here he's talking about the accomplishment. The  
9 accomplishment is directing you through JFK, isn't that right?

10 A No.

11 Q What else is he talking about?

12 A The accomplishment is that he have shown to me his  
13 knowledge of JFK, according to the meeting, and what he had  
14 explained in the meeting his knowledge was of the JFK plot.

15 Q Let me just go back to page four and we will pick up that  
16 idea again in a minute. Sorry. Sorry. Page four, line 23.

17 Mr. DeFreitas is saying that you can't go in the  
18 night. You've got to go in the day.

19 When he's talking about that, is he talking about  
20 when you are going in to photograph the airport?

21 A No.

22 At this point he's talking about doing the  
23 surveillance of the airport. First we have to go in in the  
24 daytime, especially when the -- the shifts of the authorities  
25 actually is being changed.

Francis-cross-Whalen

3454

1 Q Okay.

2 A That way we won't be detected as we scope around the  
3 airport.

4 Q Let's go to Government Exhibit 207.

5 (Tape plays; tape plays.)

6 THE COURT: If we could have the --

7 MS. WHALEN: Sorry. I'm sorry. It's taken off  
8 without me.

9 Q We are in Government Exhibit 207, and it's still  
10 January 3rd, the same day. Right?

11 A Yes.

12 Q It looks -- this one gives a time of the recording so the  
13 time is in the evening. I think it says 10:19 pm.

14 A Yes.

15 Q On the cover page?

16 A Yes.

17 Q Okay. This would have been -- you would have been out of  
18 JFK and home by now, right?

19 A We are out of JFK.

20 Q Okay. Do you recall where you were when you guys made  
21 this phone call to Sheik Rutherford?

22 A I will let you know as I listen to the recording.

23 Thank you.

24 Q Okay. So I am just -- I am beginning at the top of page  
25 two.

Francis-cross-Whalen

3455

1 (Tape plays; tape stops.)

2 Actually, I just realized the transcript doesn't  
3 start until four minutes and fifty seconds so I will just go  
4 to that.

5 (Tape plays; tape stops.)

6 Just to confirm --

7 (Tape plays; tape stops.)

8 I'm sorry. Mr. Francis, just to confirm,  
9 Mr. DeFreitas was the person who said mission accomplished and  
10 now you are talking in the conversation, is that correct?

11 A Yes.

12 (Tape plays; tape stops.)

13 Q That's Mr. DeFreitas in the background telling you to  
14 tell Sheik Rutherford how successful you were, right?

15 A He's instructing me to tell him actually of the  
16 accomplishment and actually what I -- and as you see, he's  
17 instructing me how to continue speaking to Sheik Rutherford.

18 Q He's saying, give him an idea of how successful we were.  
19 That's what he said, right?

20 A Yes.

21 (Tape plays; tape stops.)

22 Q Beginning at line 24 on page three, you are saying to  
23 Sheik -- and just to confirm, were speaking with Sheik  
24 Rutherford at this point, right?

25 A Yes.

Francis-cross-Whalen

3456

1 Q Okay. You are saying, I would say I was very impressed  
2 with the memory and the knowledge that Sheik Mohammed had on  
3 the matter.

4 Correct?

5 A Yes.

6 Q Were the people -- did the people -- Sheik Rutherford,  
7 Dawood and Ponytail, did they not think -- let me rephrase  
8 that. I'm sorry. Too many double negatives.

9 Did Sheik Rutherford and Ponytail and Dawood doubt  
10 that Mr. DeFreitas had the knowledge he said he did at JFK?

11 MR. JONES: Objection.

12 THE COURT: Sustained.

13 Q Well, in your discussions with them, they wanted you to  
14 come to JFK -- I'm sorry. Let me place this back.

15 When you were in Guyana you had discussions with  
16 Dawood and Rutherford and Ponytail and Mr. DeFreitas about  
17 what you and Mr. DeFreitas were supposed to do in New York, is  
18 that correct?

19 A Yes.

20 Q You were supposed to go with Mr. DeFreitas to surveil  
21 JFK, isn't that correct?

22 A No.

23 Q Well, Mr. DeFreitas was supposed to take you to JFK and  
24 show you what he knew, isn't that correct?

25 A No.

Francis-cross-Whalen

3457

1 Q What were you supposed to do with him at JFK?

2 A I am supposed to drive him around, to take the  
3 videotaping and pictures of JFK for the JFK plot.

4 Q So you weren't supposed to be checking to make sure that  
5 Mr. DeFreitas really knew what he said he knew?

6 A No.

7 Q Okay. At this point, when you and Mr. DeFreitas -- well,  
8 at this point Mr. DeFreitas wants you to start speaking to the  
9 people -- speaking to Dawood and Rutherford when you call  
10 Guyana, isn't that correct?

11 A He asked me to tell them of the accomplishment of early  
12 on that day and I did what he asked me to do.

13 Q I am not just talking about this telephone conversation.  
14 I am talking about other conversations that you had when you  
15 and Mr. DeFreitas were in New York City and you were calling  
16 people in Guyana.

17 Mr. DeFreitas asked you to speak, isn't that  
18 correct?

19 A Yes.

20 Q Okay. On a number of occasions Mr. DeFreitas was  
21 actually there beside you, right?

22 A Yes.

23 Q He wanted you to tell Rutherford and Dawood what you had  
24 accomplished, isn't that correct?

25 A What he had accomplished.



Francis-cross-Whalen

3458

1 Q He wanted you to talk to them about his accomplishments,  
2 right?

3 A Yes.

4 Q Okay. Did Rutherford or Dawood ever tell that you they  
5 thought that Mr. DeFreitas was a fool?

6 A I don't recall that.

7 Q Did they ever lead you to believe that they thought he  
8 was foolish?

9 A No.

10 Q Okay. They always treated him as if he was telling them  
11 the truth, is that correct?

12 A He always -- they always treated him the same way,  
13 whether they believed he was truthful or not.

14 By this point, after he instructed me to tell them  
15 of the knowledge that he had and me understanding that the  
16 knowledge was correct, they understood clearly that he was  
17 speaking the truth.

18 Q Prior to that, was there any doubt?

19 A If there was any doubt? It was never expressed to me.

20 Q Let's look at Government Exhibit 208. I am going to line  
21 five. Sorry. Page five. I apologize. Page five, line 44.

22 You bring up the camera store. You say there is a  
23 place on 34th. I was looking on the Internet.

24 Is that correct?

25 A Yes.

Francis-cross-Whalen

3459

1 Q And this was actually, I think it's B and H Camera?

2 It is a big camera store in Manhattan?

3 A It's a big camera store.

4 Q Okay. Do you remember the name of it?

5 A I don't remember right now. I know the location.

6 Q Okay. Mr. DeFreitas doesn't know where there is a camera  
7 store?

8 I think on line 15 of that same page you ask him if  
9 he knows another place and he says he doesn't?

10 Right?

11 A He acknowledged the place that I mentioned as knowing the  
12 place and then I asked him if he wants to go there or not  
13 and/or if he knew any other place and he said no.

14 Q Or if he knew?

15 A I -- he asked me to find -- findings on the high tech  
16 camera. I did the findings. I told him there was a high tech  
17 place somewhere in Manhattan. He acknowledged that he knew of  
18 the place. I said, or if you like to go to any other place  
19 that you may know, please let me know. Then he says, I don't  
20 think I know. And then he says yes, I remember of a place.

21 We went there. We drove by the place. The place  
22 was shut down, went out of business. And he instructed me to  
23 go to the place in Manhattan to actually look for the high  
24 tech camera.

25 Q In one of these conversations you were talking about --

Francis-cross-Whalen

3460

1 let's see if I can find it.

2 Going back to Government Exhibit 206, the transcript  
3 on page four. I'm sorry. Actually, on page six.

4 This is where you were talking about the camera in  
5 the car?

6 A Which line? Page six?

7 Q Page six, line 20.

8 A Yes. He mentioned the high tech.

9 Q Okay. I think you said prior to, that you had been  
10 talking about your uncle's camera that was big, right?

11 A Yes.

12 Q Okay. Then later on in this conversation you talk about  
13 getting your cousin's camera, isn't that correct?

14 A Yes.

15 Q Okay. Because your cousin has a small one, right?

16 A A smaller version of a camera, yes.

17 Q Okay. So by January 4th, had you had another  
18 conversation about buying a camera that's not -- that hasn't  
19 been given here?

20 A He mentioned that the camera has to be high tech. These  
21 people that had cameras had normal cameras, I did not  
22 understand how concealed this camera had to be. It is his  
23 decision which camera actually has to be picked for such a  
24 job.

25 Q Did you meet with anyone from the FBI or did you talk to

Francis-cross-Whalen

3461

1 Mr. Napoli about buying a camera before you raised it with  
2 Mr. DeFreitas?

3 A Before raise to him?

4 Q Before you raised it, before you brought it to him?

5 A The matter of the camera was actually brought to us,  
6 meaning getting video or getting pictures on my first trip.

7 Q I'm sorry.

8 A I must have spoken about that long before he came.

9 Q Okay. What I am saying is, you are having a conversation  
10 with Mr. DeFreitas and he says he wants a high tech camera,  
11 right?

12 A That's what he mentions, yes.

13 Q Okay. Then you talk about your cousin's camera because  
14 you think it's small, right?

15 A Yes.

16 Q And then you talk about your uncle's camera, but it is  
17 big, right?

18 A Yes.

19 Q Then the next day you are talking to Mr. DeFreitas about  
20 buying a camera, right?

21 A Yes.

22 Q Okay. What I am asking is, between the time when you  
23 spoke to Mr. DeFreitas about your cousin and your uncle's  
24 camera and the time you talked to him about going to the  
25 camera store on 34th Street, did you have any discussions with

Francis-cross-Whalen

3462

1 Mr. Napoli or anybody else from the FBI or the JTTF about  
2 buying a camera?

3 A I must have mentioned it if it was discussed about, yes.

4 Q Okay. I am just going to take us -- this Government  
5 Exhibit 8, page six.

6 THE COURT: 208?

7 MS. WHALEN: 208. I'm sorry. Government  
8 Exhibit 208. I apologize.

9 It is page six. We are starting at four minutes and  
10 twenty-six seconds.

11 (Tape plays; tape stops.)

12 Q With this portion of the conversation, just because of  
13 Mr. DeFreitas's way of speaking, he's assuming that Sheik  
14 Rutherford is going to tell Sheik Dawood about the  
15 accomplishment, isn't that correct?

16 A He's telling me that -- what he's saying there is clear.  
17 He's saying that Sheik -- Sheik Rutherford speaks to Sheik  
18 Dawood about accomplishment.

19 (Tape plays; tape stops.)

20 Q This conversation, you are just talking about regular  
21 traffic cameras, isn't that correct?

22 A I meant the traffic cameras and actually mentions  
23 something about black boxes, like -- like the -- I ask him  
24 about if it's the same as the planes actually or something  
25 like that.

Francis-cross-Whalen

3463

1 Q Let me just go back, page six, line 36. He says, yeah.  
2 They got cameras hidden, line 36. Yeah, they got cameras  
3 hidden somewhere around here. I am going to show it to you.  
4 It records in a box.

5 Is he talking about just the normal traffic cameras  
6 we have in New York City or is he talking about showing you a  
7 special camera at JFK?

8 A He show me the cameras that were in the -- in the  
9 traffic.

10 Q Okay. Did he ever show you a camera in a box at JFK?

11 A He never show me the camera with a box. Except for that.

12 Q Except for the regular traffic, right?

13 A Yes.

14 Q And just in this same exhibit, going to page ten. We are  
15 going to be starting at 12 minutes and 42 seconds, which  
16 should put us on line 17 of page ten at the transcript.

17 (Tape plays; tape stops.)

18 So right here Mr. DeFreitas is talking about areas  
19 that he could have gotten you into if he played like he was  
20 working, correct?

21 A No.

22 He's saying here that there was free access to those  
23 areas prior to actually them closing them down. Areas that  
24 you mentioned before, that were in -- either closed down or  
25 they had some sort barricades or they were closed down and

Francis-cross-Whalen

3464

1 that's the reason why we didn't enter.

2 Q I am going down on page ten to lines 42 and 43. Are you  
3 there?

4 A Yes.

5 Q Okay. Mr. DeFreitas says, cause they got some place  
6 there I could have gone inside, I play like if I working,  
7 right?

8 A Which line again you are?

9 Q Page ten, line 42.

10 A A hum. He mentioned that there.

11 Q Okay. Now, did Mr. DeFreitas ever take you to his old  
12 job?

13 A No.

14 Q Did he ever introduce you to anyone he had worked with at  
15 JFK?

16 A No. He just pointed his old job to me when he was  
17 driving by --

18 Q He just pointed to a building?

19 A He pointed to how the area has actually grown in the  
20 airport, yes.

21 Q But he never took you inside any place and said I used to  
22 work here, right?

23 A No.

24 Q He didn't introduce you to anyone he worked with, right?

25 A No.

Francis-cross-Whalen

3465

1 Q He didn't tell you specifically when he had worked there,  
2 did he?

3 A He mentioned that he was there, he lasted 20 years. He  
4 was there since like '87 or '89. So there is a timeframe  
5 there but I -- he never told me, I stopped work on this day, I  
6 start working on this day. He mentioned there was a  
7 twenty-year gap and he mentioned something about taking a  
8 picture in '89 or something. So there is a gap, time gap  
9 there.

10 Q So if -- if he took that picture in, let's say, '89,  
11 right, and he said he worked there for twenty years, he would  
12 have just left JFK fairly recently, right?

13 A Not necessarily.

14 Q Okay. Did Mr. DeFreitas ever verify anything he told you  
15 about the air traffic -- about the tower at the airport?

16 A I don't understand the question.

17 Q Did he ever -- he never showed you any reports or any  
18 information as to how the tower was the center of security at  
19 the airport, right?

20 A No.

21 Q Okay. Did he ever show you anything, any copies of  
22 documents that looked like they were the false manifests from  
23 the El Al shipments?

24 A No.

25 Q Did he ever provide you with any evidence of --



Francis-cross-Whalen

3466

1 withdrawn.

2 Let's go to Government Exhibit 209.

3 (Tape plays; tape stops.)

4 Okay. As we just heard, they gave the introduction  
5 for Government Exhibit 209. It is January 4, 2007, right?

6 A Yes.

7 Q It's the same day as Government Exhibit 208, right?

8 A Yes.

9 Q It is just a little later in the day. 208 is 12:55 pm  
10 and 209 is 1:54 pm, right?

11 A Yes.

12 Q I am going to page nine of the transcript. I am going to  
13 start at 16 minutes and 14 seconds into the recording.

14 (Tape plays; tape stops.)

15 Did Mr. DeFreitas ever show you any kind of sketch  
16 or blueprint of the airport?

17 A No.

18 Q Let's go to Government Exhibit 210.

19 (Tape plays; tape stops.)

20 THE COURT: If we could have the date and the time?

21 MS. WHALEN: I'm sorry.

22 Q Again it is January 4, 2007?

23 A Yes.

24 Q And it is 2:18 in the afternoon, is that correct?

25 A Yes.

Francis-cross-Whalen

3467

1 Q Okay. I am going to start the recording and the  
2 transcript equivalent will be page five. We will start at  
3 eight minutes and 28 seconds into the recording, which should  
4 put us up at line four of the transcript on page five.

5 (Tape plays; tape stops.)

6 Mr. Francis, just, while you are making these  
7 recordings, you and Mr. DeFreitas are also commenting on  
8 things that are happening in the traffic around you, isn't  
9 that right?

10 A Yes.

11 Q You are noticing things and you talk about things, isn't  
12 that correct?

13 A Yes.

14 Q Okay.

15 (Tape plays; tape stops.)

16 This again, we talked about it before, Mr. DeFreitas  
17 found cocaine, or he told you that one time he found cocaine  
18 in his luggage when he came back from Guyana; is that correct?

19 A Yes.

20 Q He turned that cocaine into the authorities, isn't that  
21 correct?

22 A Yes.

23 Q He's complaining because he thinks that, as he said here  
24 on line 27, he's done the greatest thing for American citizens  
25 and they didn't even give him a letter of appreciation; is

Francis-cross-Whalen

3468

1 that correct?

2 A Yes.

3 (Tape plays; tape stops.)

4 Q Mr. DeFreitas is talking about a CD here. This -- was  
5 this CD related to a water purification machine?

6 A Yes.

7 Q Okay. This was one of Mr. -- Mr. DeFreitas had a number  
8 of investment ideas, isn't that correct?

9 A Yes.

10 Q This one was where if you purify water five times it  
11 would cure diabetes and breast cancer and prostate cancer,  
12 isn't that correct?

13 A No.

14 Q That's not correct?

15 A No.

16 It's actually -- it was a machine invented by a  
17 Japanese doctor and the person who introduced him to the idea  
18 was Abdollah from 147, which is the one Mary Nahay's husband  
19 and he was being successful at selling the water and so he  
20 introduced him to the idea by saying if you buy this machine  
21 will cost you \$5,000. You can bottle the water and sell the  
22 water for people and this is the business plan they had with  
23 this -- this DVD that he showed.

24 Q Right.

25 But the machine actually purified the water and

Francis-cross-Whalen

3469

1 theoretically it was supposed to cure disease, isn't that  
2 right?

3 A According to the doctor, Japanese doctor, yes.

4 Q Okay. Mr. DeFreitas was also -- wanted you to invest in  
5 this, isn't that right?

6 A Yes.

7 Q Okay. I would ask you to turn to page eight of the  
8 transcript. I am going to be starting at 20 minutes and  
9 37 seconds into the recording, which should get us around line  
10 28 at the bottom.

11 (Tape plays; tape stops.)

12 Now, Mr. DeFreitas, as we said, is trying to get you  
13 to invest \$5,000 in this store, isn't that correct?

14 A Yes.

15 Q You are telling him you don't have the economic ability  
16 to do it, isn't that correct?

17 A Yes.

18 Q When you are saying we have to speak to Sheik Bilal and  
19 Sheik Talib, that's the same person?

20 Sheik Bilal Talib Rutherford, right?

21 A Yes.

22 Q Mr. DeFreitas continues to talk about this with you,  
23 isn't that correct?

24 A Yes.

25 Q Mr. DeFreitas appears to think that you have money to

Francis-cross-Whalen

3470

1 invest even if you are telling him you don't, isn't that  
2 right?

3 A I don't know that.

4 Q Okay. Even after you tell him we have to speak to Sheik  
5 Bilal, he keeps talking to you about the investment, isn't  
6 that correct?

7 A Yes.

8 Q Let's go to Government Exhibit 211:again, it is still --  
9 I'm sorry. It is still January 4, 2007?

10 A Yes.

11 Q It's about 3:00 o'clock in the afternoon?

12 A Yes.

13 Q Now, let me just -- on this drive, this January 4th  
14 drive, are you and Mr. DeFreitas -- let me rephrase.

15 When Mr. DeFreitas is with you on this drive, are  
16 you always in Queens or are you in different areas?

17 A Queens and Brooklyn as well.

18 Q Okay. Now, did you ever live in Queens?

19 A Yes.

20 Q Okay. Did you live near JFK airport?

21 A Yes. No. Not JFK Airport.

22 Q So you lived in Queens, but you didn't live near JFK,  
23 right?

24 A No.

25 (Tape plays; tape stops.)

Francis-cross-Whalen

3471

1 CONTINUED CROSS-EXAMINATION

2 BY MS. WHALEN:

3 Q Let's just start at the beginning of the recording on  
4 page 2, sir.

5 A Okay.

6 (Tape plays.)

7 Q Do you remember whether you're in Queens at this point in  
8 the conversation?

9 A Yes, we are. We're near JFK, I believe not far from JFK.

10 (Tape plays.)

11 Q You're talking about the Long Island Railroad and I  
12 believe you say I never knew after all these years that that  
13 was the Long Island Railroad, right?

14 A Yes.

15 Q This Long Island Railroad is on a public road, right?

16 A Yes, JFK Airport.

17 Q Quickly turning to page three, Mr. Defreitas, at line  
18 eight, he asks you how you think it's going to happen, how  
19 would you like it to happen, referring to the JFK plot, right?

20 A Yes.

21 Q Turning to page four, line 14, we're going to start the  
22 recording at seven minutes and 48 seconds on page four of the  
23 transcript.

24 (Tape plays.)

25 Q Here, just going up the page to line 16, he says because

Francis-cross-Whalen

3472

1 when I tell Long Hair I work at Kennedy, he think I work at  
2 Kennedy just for work sake, not knowing all this amount of  
3 knowledge I have about the place because I never discussed it  
4 with anyone, so he's saying he doesn't think Long Hair  
5 believed him about knowing about Kennedy; isn't that correct?

6 MR. JONES: Objection.

7 THE COURT: Sustained as to form.

8 Q Mr. Defreitas is talking about Long Hair in this portion  
9 of the conversation, correct?

10 A Yes.

11 Q He's talking about Long Hair and saying Long Hair just  
12 think I work in Kennedy just for work sake; isn't that  
13 correct?

14 A That's what he's saying here.

15 Q Did you have the understanding from Mr. Defreitas that  
16 Mr. Defreitas thought that Long Hair didn't think he knew what  
17 he was talking about?

18 A No.

19 Q Let's go down to line 35. Mr. Defreitas says even the  
20 shiek doesn't know I know how all this amount of things like  
21 you saw in two days. None of them know. Again, isn't  
22 Mr. Defreitas saying no one believed him when he told them  
23 what he knew?

24 A No.

25 Q Let's turn to page 6. We're going to be starting at

Francis-cross-Whalen

3473

1 13 minutes and 22 seconds into the recording which should put  
2 us at line 33 of page six of the transcript.

3 (Tape plays.)

4 Q Mr. Defreitas seems to be saying he thinks that you could  
5 draft out a plan, by "plan" did he mean sort of like a sketch  
6 of JFK?

7 A With the knowledge he taught me at this point, he felt  
8 confident to show me confidence I was able to understand  
9 exactly what he knew and just in case the plot needed to be  
10 carried out, I would have the knowledge and understanding at  
11 this point that he had, but in any case, I wouldn't be able  
12 even to do it without him.

13 Q Let's stop for a minute. You've driven with him to JFK  
14 on January 23rd, right?

15 A Yes.

16 Q Driven with him in JFK on January 4th, right?

17 A Yes.

18 Q Based on driving around those two days, he thinks that  
19 you would now be able to sketch out a plan of JFK; is that  
20 correct?

21 A That's what he says there.

22 Q Turning to the next page, page seven, line 15. You ask  
23 him what kind of devastation does he think will happen. You  
24 say devastation, you mean the plot of JFK is carried out,  
25 right?



Francis-cross-Whalen

3474

1 A If the bombing of JFK and the landmarks was to happen,  
2 what does he think actually would be damaging with this, I  
3 asked him.

4 Q At this point were you wearing a body wire?

5 A I'm wearing a wire or the truck is being wired,  
6 either/or.

7 Q But you asked this question, you knew your conversation  
8 was being recorded; isn't that correct?

9 A Yes, also what he asked me before what I think about how  
10 the plan should be carried out which I explained, I did not  
11 have understanding or knowledge of bombing --

12 Q I'm asking you when you had these conversations, you knew  
13 that you were wearing a body wire and it was being recorded by  
14 the car?

15 A Yes.

16 Q Page eight of the transcript. This is going to be at  
17 15 minutes and 47 seconds into the recording which should put  
18 is at line five on page eight.

19 (Tape plays.)

20 Q Again, even though Mr. Defreitas has told you that  
21 security is low, when he talks about this man drifting in  
22 through the waters at the airport, he says the Army is going  
23 to come in, the Navy is going to come in. He said they're  
24 going to have a boat. They had a boat, cars, helicopter, a  
25 train, right?

Francis-cross-Whalen

3475

1 A Yes.

2 Q Going to page nine, looking at line 14, you're asking  
3 him, Mr. Defreitas, so the shiek never discussed with you what  
4 kind of equipment or devices they're going to use?

5 A Right.

6 Q You're referring to Sheik Talib Rutherford there?

7 A No, actually I would have to actually recollect the  
8 audio. Again, there is Sheik Talib and Sheik Dawood. I would  
9 like to hear the audio if possible.

10 Q I'm going to start the recording at 18 minutes and  
11 16 seconds into the recording. I think that would put us on  
12 page nine with Mr. Defreitas speaking in that first paragraph.  
13 Hopefully that will bring back the recollection as to what  
14 Sheik you're talking about?

15 Actually we're now at line 11 on page 9?

16 (Tape plays.)

17 Q Does that help you remember?

18 A He meant at this point Sheik Dawood, which was originally  
19 the one he wants to find out what was the high tech. At this  
20 point Sheik Rutherford had mentioned he had the gel dynamite  
21 which he was able to get, also he knew of Abu Bakr in  
22 Trinidad, actually trying to get to Shukrijumah at this point.

23 Q I didn't understand your answer. When it says so the  
24 shiek never discussed, you're saying this refers to Sheik  
25 Dawood?

Francis-cross-Whalen

3476

1 A Yes, that's correct.

2 Q When you're talking about equipment, you're saying you  
3 guys -- you and Rutherford, Dawood, Ponytail and  
4 Mr. Defreitas had already had the conversation about the kinds  
5 of explosives you were going to be using?

6 A The conversation has not happened yet.

7 Q Okay.

8 A Yet, like I explained to you, the person that he had  
9 spoken about, High Tech was Sheik Dawood and Sheik Rutherford.

10 Q Going to page 11 of this transcript, I'm going to be  
11 starting at 21 minutes and 42 seconds into the recording which  
12 I think would put us at the top or fairly close to the top of  
13 page 11. When he's talking about the shiek here, does he --  
14 sorry, you're talking about the shiek here, you mean  
15 Rutherford or Dawood?

16 A Sheik Rutherford.

17 Q I want to talk to you a little bit about this  
18 conversation: Remember I was taught by other friends to make  
19 bombs in Guyana, you remember that?

20 A Yes.

21 Q When he says "remember," he's referring you to a  
22 conversation that the two of you had had the day before; isn't  
23 that correct?

24 A It was a conversation prior to this conversation.

25 Q In that conversation he told you that he made bombs as a

Francis-cross-Whalen

3477

1 youth in Guyana; isn't that correct?

2 A Yes.

3 Q He told you these bombs were made with chickpeas, carbon,  
4 bamboo, nitro?

5 A I don't recall the elements, but he mentioned he learned  
6 as a youth to make bombs in Guyana.

7 Q I'm going to show you what's been previously marked --  
8 I'm going to show you something to try to refresh your  
9 recollection if that's okay?

10 A Yes?

11 MS. WHALEN: I'll show him ID 30, session seven.  
12 It's session 6 and 7 are stapled together. I'll show him page  
13 two.

14 Q I'll ask you to read the whole page.

15 A Thank you.

16 (Pause.)

17 Q If you could also read pages 2 and 3.

18 (Pause.)

19 A I remember the conversation.

20 Q When Mr. Defreitas was talking to you about making bombs,  
21 he was talking about making bombs like putting bamboo, carbon  
22 in film cylinders or bottles; is that correct?

23 A No.

24 Q That's not correct?

25 A No, he has explained to me how they have created certain

Francis-cross-Whalen

3478

1 distortion of the wording when actually he's speaking about  
2 grenades, he's saying hot potatoes and chickpeas. At this  
3 point, I believe he's talking about the little, you know, how  
4 the bearings of the cars has little iron balls in it?

5 Q Let me stop you. You had a separate conversation where  
6 he tells you when I say chickpeas, it means ball bearings,  
7 when I say this it means grenade?

8 A He mentions before the hot potatoes is the grenades, yes.

9 Q In this specific conversation that you had the day  
10 before, he's just talking about chickpeas, right?

11 A No.

12 Q He uses the word chickpeas, right?

13 A Yes.

14 Q It's your telling us he said chickpeas, he didn't mean  
15 chickpeas, right?

16 A Yes.

17 Q You're telling us when he said -- what was the grenade?

18 A Hot potato.

19 Q If he talks about hot potato, he means grenade?

20 A Yes. It's a slang they use in Guyana in order not to be  
21 detected.

22 Q When did you have that conversation with him?

23 A We had a prior conversation about that actually. In  
24 Guyana he actually mentioned how actually, he was showing the  
25 statutes, how actually when they were trying to blow them up,

Francis-cross-Whalen

3479

1 they would use the hot potatoes.

2 Q What do you mean by hot potatoes?

3 A He mentioned to me the grenades are actually called hot  
4 potatoes back in Guyana and he explained to me about the  
5 bottles of gasoline that actually are filled in with iron  
6 pieces and gas and then you torch it, throw it. You create an  
7 explosion, hurt people, stuff like that. He mentioned that to  
8 me, yes.

9 Q That was in Guyana, right?

10 A Yes, we spoke about that.

11 Q That conversation was not recorded; is that correct?

12 A I don't know if it was recorded. At that point again I  
13 have used the wire on different occasions. I don't know if  
14 it's recording right now or not. I do remember him mentioning  
15 it to me.

16 Q Let me stop you. I want to go through the time period.  
17 Right now it's January 1st through January 13th, right?

18 A Yes.

19 Q In this portion of the conversation. Before that you had  
20 been in Guyana one time; isn't that right?

21 A That's correct.

22 Q I think you testified that at that time you didn't wear a  
23 body wire because of security concerns; isn't that correct?

24 A Yes.

25 Q If you had this conversation with Mr. Defreitas in

Francis-cross-Whalen

3480

1 Guyana, it would not have been recorded; isn't that correct?

2 A I had three trips to Guyana --

3 Q Mr. Francis, right now we're talking about a conversation  
4 in Government Exhibit 211, right?

5 A Yes.

6 Q We're talking about remember I was taught by other  
7 friends to make bombs in Guyana, right?

8 A Yes.

9 Q This conversation is taking place on January 4th, right?

10 A Yes.

11 Q The transcript that I showed you that was used to refresh  
12 your recollection was from a conversation that you had when  
13 you were in New York with Mr. Francis --

14 A With Mr. Defreitas, Sheik Mohammed, yes.

15 Q When you're talking about a conversation prior to this  
16 conversation where he's mentioning chickpeas, talking about  
17 rum, talking about nitro, if there was a conversation prior to  
18 this in Guyana, it would have been your first trip in Guyana;  
19 isn't that correct?

20 A Yes.

21 Q That trip you weren't wearing a body wire, were you?

22 A No, I wasn't.

23 Q Going further down on page 11 --

24 THE COURT: Are we back --

25 MS. WHALEN: Back on Government Exhibit 211. We're

Francis-cross-Whalen

3481

1 on page 11.

2 Q Page 11?

3 A Yes.

4 Q On line 28, where Mr. Defreitas says if I could get a  
5 rocket, you see that phrase?

6 A Yes.

7 Q Did Mr. Defreitas ever get a rocket?

8 A No.

9 Q To your knowledge had he ever had a rocket before?

10 A No.

11 Q Turning to page 13 of the transcript -- one more thing  
12 before we start, going back to the conversation about the  
13 chickpeas and the rum. When you had conversations about those  
14 issues in New York with Mr. Defreitas, only the two of you  
15 were present; isn't that right?

16 A You mean this conversation?

17 Q The conversation --

18 A Sheik Mohammed and I.

19 Q With Sheik Mohammed, the first one about the chickpeas,  
20 the second reference in government Exhibit 211 to making a  
21 bomb, only you and Mr. Defreitas were present for that  
22 conversation, right?

23 A Yes.

24 Q On page 13 we're up to line six.

25 A Sorry, 213-T?



Francis-cross-Whalen

3482

1 Q Still Government Exhibit 211.

2 A Okay.

3 Q 211, page 13. We're at -- I'll start the recording at  
4 26 minutes and 33 seconds into the recording which puts us at  
5 line six of page 13 of the transcript.

6 (Tape plays.)

7 Q When he's referring to the sheik in both of these --  
8 beginning at line six, again at line 20, he's talking about  
9 the shiek, it's Rutherford?

10 A Yes.

11 Q He's saying he needs you to tell the sheik about the  
12 accomplishments being, right?

13 A Yes.

14 Q He's saying that you've got to tell the shiek to hurry up  
15 and get to Trinidad, correct?

16 A Yes.

17 Q Going to page 14, I'm going to be starting the recording  
18 at 28 minutes and 54 seconds which should put us at line three  
19 of page 14.

20 (Tape plays.)

21 Q Just this conversation, looking up at line ten,  
22 Mr. Defreitas is saying let's say what we see and what can be  
23 done. And they got to let them know. They got to come up  
24 with the best advice. Right now, as I see the way things used  
25 to be done can't be done anymore. You say, okay. He says the

Francis-cross-Whalen

3483

1 technology is too advanced. If the technology is advanced, we  
2 have to behave advanced, come up with supernatural things. He  
3 goes on to say you can't expect people to drive a car and park  
4 on the runway, people are going to see you. When he say the  
5 way things used to be done can't be done anymore, he's talking  
6 about how to get in to do this attack on JFK; isn't that  
7 correct?

8 A He's talking about technology.

9 Q Right, the technology that needs to be used to do this,  
10 right?

11 A Yes.

12 Q He's saying the way things used to be done, they can't be  
13 done anymore, right?

14 A I don't know what he meant by that at that point.

15 Q Then he says we got to come up with supernatural things,  
16 right?

17 A Yes.

18 Q He says at line 30, got ways, maybe we get some rats.  
19 He's talking about sending rats in with explosives?

20 A No.

21 Q What's he talking about?

22 A He's talking about diverting the attention of security by  
23 actually probably sending rats in to frighten the people,  
24 catch the attention of security and if you see after he's  
25 saying, so we can go in, meaning he always believed of six

Francis-cross-Whalen

3484

1 well trained individuals would go in and plant this bomb  
2 device to blow up simultaneously. By him sending a playing of  
3 rats to frighten the people, a lot of attention, allow the  
4 people to come in, do what they have to do, come out and blow  
5 up JFK.

6 Q He was going to send in rats to scare away the security?

7 A No, to create chaos because his mind, what he's actually  
8 explaining here, he's concerned about security, how to elude  
9 the security.

10 Q He's saying that you can elude security with supernatural  
11 things and rats, right?

12 A That's what he said.

13 Q During this time period while you guys were in New York,  
14 Mr. Defreitas was looking at a number of investment schemes;  
15 isn't that right?

16 A Yes.

17 Q We talked about the first one, investing in the water  
18 machine, right?

19 A Yes.

20 Q He also was interested in investing in a plan to make  
21 electricity from falling water that a high school student had  
22 invented?

23 A Yes.

24 Q He was trying to sell that to Sheik Rutherford because  
25 Sheik Rutherford had land with a waterfall?

Francis-cross-Whalen

3485

1 A Yes.

2 Q He was very excited because one of the brothers from the  
3 mosque, Brother John was going to set up a meeting of  
4 investors and he wanted to propose Sheik Rutherford's soap  
5 stone and wood importation into the United States; isn't that  
6 correct?

7 A Brother John is not a Muslim.

8 Q He's not a Muslim?

9 A No.

10 Q Why do they call him brother?

11 A Sheik Mohammed's knowledge. A brother, usually I think  
12 people from the church or maybe affiliated with some other  
13 things are called brothers, but Brother John is not a Muslim  
14 according to my understanding.

15 Q Then also at this time you and Mr. Defreitas met  
16 Mohammed. I'm referring to the Mohammed that eventually gave  
17 you the tickets to go to Trinidad; isn't that correct?

18 A Okay, yes.

19 Q I'm going to call him Undercover Mohammed to distinguish  
20 him from Mr. Defreitas. Undercover Mohammed told you or told  
21 you and Mr. Defreitas when you met with him that he was  
22 planning to come to Guyana for the cricket games. I think it  
23 was going to be the world cup cricket games there?

24 A Yes.

25 Q Mr. Defreitas was very excited because he talked about

Francis-cross-Whalen

3486

1 Guyana, Mr. Defreitas wanted to set him up in a house in  
2 Guyana rather than a hotel; is that correct?

3 A Yes.

4 Q He was calling Sheik Rutherford. He wants to rent cars  
5 for this person. I think he talked about renting a Mercedes  
6 Benz for this person?

7 A I believe he mentioned renting vehicles for the visitors,  
8 yes.

9 Q Arranging cooks and housekeepers, security for the time  
10 when this individual was in Guyana, right?

11 A Yes.

12 Q He was doing that because he thought Undercover Mohammed  
13 was an investor; isn't that right?

14 A He thought that he was a wealthy man.

15 Q He was hopeful that Undercover Mohammed would invest in  
16 the projects for importing soap stone and wood from Guyana;  
17 isn't that correct?

18 A Yes.

19 Q When you and Mr. Defreitas were talking about these  
20 plans, the water purifier, the falling water for electricity  
21 and Brother John's conference and Undercover Mohammed coming  
22 to Guyana, you, too, Mr. Defreitas and yourself, you were also  
23 telling Rutherford about these plans; isn't that correct?

24 A We were discussing the plans, yes.

25 Q With Sheik Rutherford?

Francis-cross-Whalen

3487

1 A Yes.

2 Q Did you also discuss them with Sheik Dawood?

3 A It's possible. I don't know, I'm not sure. I have to  
4 have my memory refresh. If we were having communication with  
5 both of them, they were aware of the matters.

6 Q You at this point know it's January 4th. Shortly -- you  
7 have just driven around JFK, not taken any photographs at this  
8 point, correct, or any videos?

9 A No.

10 Q You haven't done that, right?

11 A No.

12 Q You get a call from Sheik Dawood telling you  
13 Mr. Defreitas has to come back to Guyana for his lawsuit;  
14 isn't that correct?

15 A I would have to refresh my memory.

16 MS. WHALEN: I would like to show the witness  
17 what's been marked as Government Exhibit 3500-SF-79.

18 Q I would ask you to read the third paragraph down.

19 (Pause.)

20 Q Does that refresh your recollection?

21 A Yes.

22 Q Did Sheik Dawood call and say that Mr. Defreitas -- do  
23 you remember having a conversation with Sheik Dawood and  
24 Mr. Defreitas where Sheik Dawood said Mr. Defreitas had to  
25 come back for his lawsuit?

Francis-cross-Whalen

3488

1 A He mentioned he had to come back to Guyana and that the  
2 tickets were purchased for Sheik Mohammed.

3 Q The tickets were purchased for Sheik Mohammed but Sheik  
4 Mohammed wants you to come back, Russell Defreitas wanted you  
5 to come back do Guyana as well; isn't that correct?

6 A Yes.

7 Q You at this point, did you have conversations with  
8 Rutherford or Dawood where they indicated to you that they  
9 would agree to pay for a ticket for you to come to Guyana?

10 A Yes.

11 Q Did they ever pay for that ticket?

12 A No, they never bought the ticket based on the fact Sheik  
13 Mohammed wanted me to travel with him and Sheik Rutherford and  
14 Sheik Dawood wanted me to go on the cheapest flight. Based on  
15 the fact Sheik Mohammed wanted me to fly with him, I got the  
16 ticket to fly with Sheik Mohammed under his instructions.

17 Q But had you a number of conversations with Rutherford and  
18 Dawood where they told you they would be buying the ticket but  
19 then they never did.

20 A Because of what I just mentioned.

21 (Continued on next page.)

22

23

24

25

Francis - cross/Whalen

3489

1 bY MS. WHALEN:

2 Q Isn't it true that you spoke to them and they said they  
3 would buy the ticket but time would go by, you'd speak to them  
4 and they still hadn't bought the ticket, so the price was  
5 going up?

6 A I don't know if the price is going up. I mentioned that  
7 Sheik Mohammed wanted me to travel with him on the same flight  
8 and they was looking for a good deal on the flight, and based  
9 on the information from Sheik Mohammed, I purchased the ticket  
10 that was available to travel with him and I went back with him  
11 as he asked.

12 Q But you had a number of conversations with Rutherford and  
13 Dawood about buying the ticket, isn't that right?

14 A They mentioned they were purchasing and looking for the  
15 best deal for the tickets, as I mentioned before.

16 Q But they never bought the ticket and in the end, to be  
17 able to travel down with Mr. DeFreitas, you bought the ticket,  
18 isn't that correct?

19 A I was instructed from Sheik Mohammed, as I mentioned,  
20 that he wanted me to travel with him and so I did travel with  
21 him.

22 Q And did you pay for that ticket yourself?

23 A It was purchased.

24 Q Sorry?

25 A It was provided by the FBI.



Francis - cross/Whalen

3490

1 Q So you didn't have to pay for that ticket and get  
2 reimbursed?

3 A It was provided by the FBI.

4 Q Okay. So at this point you know you have a limited time  
5 in New York, isn't that correct, you and Mr. DeFreitas have a  
6 limited time that you're still going to be in New York City,  
7 about a week, right?

8 A I would say that there was a short time for us to travel.

9 Q So at this point you started shopping for the video  
10 camera; is that correct?

11 A We, under the instructions of Mohammed, we went to shop  
12 for the video camera that he request for.

13 Q And eventually you went to the camera store in Manhattan;  
14 is that correct?

15 A We went, Sheik Mohammed and I went, yes.

16 Q And at the camera store, did someone assist you when you  
17 were purchasing the camera?

18 A Yes.

19 Q Was that person just a regular clerk at the store or was  
20 that an FBI agent?

21 A That was one of the salesmen.

22 Q Just a regular clerk, had nothing to do with FBI or JTTF?

23 A It had nothing to do with FBI or JTTF, to my knowledge.

24 Q When you were in the store looking for the camera,  
25 Mr. DeFreitas was saying the things he wanted the camera to be

Francis - cross/Whalen

3491

1 able to do to the sales CLERK?

2 A Yes.

3 Q He was telling them that he wanted something high-tech?

4 A Yes.

5 Q That was a word he used a lot, high-tech, and he also  
6 used the word dynamic a lot in the recordings?

7 A Yes.

8 Q And he wanted the video camera to do picture shots as  
9 well as videos; correct?

10 A He wanted the camera to be able to zoom in and out and be  
11 able to be concealed. The camera that he was interested in  
12 did not zoom in or out and so the clerk, salesperson  
13 introduced him to the camera that he agree with, and he asked  
14 me to purchase.

15 Q And this was the camera that you said you never got  
16 reimbursed for, right?

17 A That is correct.

18 Q But you did turn it in as evidence to the FBI; correct?

19 A Yes.

20 Q When you got the camera, did you and Mr. DeFreitas try to  
21 learn how to use it?

22 A The sales clerk explain to us how to use it, and he also  
23 gave us the manual and told us where to look at the manual,  
24 and yes, we actually played with the camera and we both was  
25 learning to use it.

Francis - cross/Whalen

3492

1 Q And Mr. DeFreitas wasn't very good at using the camera,  
2 was he?

3 A No.

4 Q You were better than he was at using the camera; correct?

5 A Yes.

6 Q I'd like to show you -- I'd like to play for you  
7 Exhibit 229 that was introduced into evidence, but I don't  
8 think it's been played yet. There is no transcript for this.

9 MR. KAMDANG: Your Honor, can we have a break?

10 THE COURT: We need to take a very quick break, like  
11 maybe 5, 10 minutes.

12 Remember, you can leave all your things out there,  
13 just put the binders under your seat so you don't trip on  
14 them.

15 Remember to keep an open mind, don't form or draw  
16 any conclusions about the case, don't talk or discuss anything  
17 about the case. You can't use your cell-phones during this  
18 break and don't read or look at or listen to anything that  
19 might be connected with this case. We will be with you  
20 shortly.

21 (Jury leaves.)

22 THE COURT: The jury is no longer present. We will  
23 start up again in ten minutes.

24 You can take a break as well, sir, if you would like  
25 for ten minutes. Remember not to talk about your testimony

Francis - cross/Whalen

3493

1 with the government. You are still under cross-examination.

2 THE WITNESS: Yes.

3 THE COURT: All right. Ten minutes.

4 (Recess.)

5 (Open court.)

6 THE COURT: Are you going to play the video, Miss  
7 Whalen?

8 MS. WHALEN: Yes.

9 THE COURT: How long is the video?

10 MS. WHALEN: Six minutes.

11 THE COURT: All right.

12 I just promised the juror that we would stop at  
13 2:30.

14 Jury entering.

15 (Jury present.)

16 THE COURT: Everyone may be seated.

17 Do the parties agree that all of our jurors are  
18 present and properly seated?

19 (All answer in the affirmative.)

20 THE COURT: Again, this is continued  
21 cross-examination of Mr. Francis by Miss Whalen.

22 Sir, welcome back.

23 THE WITNESS: Thank you.

24 THE COURT: I remind you, sir, that you are still  
25 under oath.

Francis - cross/Whalen

3494

1 THE WITNESS: Yes.

2 THE COURT: You may continue, Miss Whalen.

3 MS. WHALEN: Thank you, your Honor.

4 BY MS. WHALEN:

5 Q I'm going to show you what has been previously marked as  
6 Government Exhibit 229, and it's a video recording.

7 THE COURT: It's in evidence?

8 MS. WHALEN: It is.

9 THE COURT: So that the record is clear.

10 MS. WHALEN: Yes, your Honor.

11 Q It's a video recording from within your -- let me play it  
12 for you a for a second. Look at your monitor.

13 (Tape plays; tape stops.)

14 Q This is the interior of your truck, Mr. Francis?

15 A Yes.

16 Q And the first day that you and Mr. DeFreitas went to JFK  
17 he was filming from the back portion of your truck, I think  
18 you testified, right?

19 A The first time he start filming, he was filming from that  
20 position.

21 Q We just saw Mr. DeFreitas go into the back, right?

22 A Yes.

23 (Tape plays; tape stops.)

24 Q Do you remember the day that you guys were out doing  
25 this?

Francis - cross/Whalen

3495

1 A I remember the events that took place.

2 Q You remember the events that are being shown in the video  
3 camera?

4 A Yes.

5 Q So Mr. DeFreitas is getting set up in the back of the  
6 car, you're adjusting the seats for him and after this where  
7 are you going to go?

8 A To the gate.

9 Q I'm just going to skip ahead to that portion.

10 (Tape plays; tape stops.)

11 Q He's actually in the back asking you to look and tell him  
12 what's on the video camera, right?

13 A At that point he's asking me if the camera is actually  
14 pointing on the window -- I mean what actually the camera is  
15 picking up at this point.

16 Q Now, this video camera, it had one of those display  
17 panels that you could pull aside from the camera, right?

18 A Yes.

19 Q And you could look at the display panel and actually see  
20 what you were filming, right?

21 A Yes.

22 Q Okay. Mr. DeFreitas didn't understand that he could have  
23 seen what the camera was filming just by looking at that  
24 display panel?

25 A No, I don't think that is the position now. He's

Francis - cross/Whalen

3496

1 actually laying on the floor. He has the camera up here and  
2 he's asking me actually if the camera is catching anything at  
3 this particular time.

4 He said that he had pressed the button, it's  
5 recording and he have the hand up. He want me to direct him,  
6 but I'm driving the car and this is what is going on.

7 THE COURT: Let the record reflect that the witness  
8 did a motion holding his right hand up over his head, directly  
9 over his head.

10 Q Okay. But he didn't -- he wanted you to look at the  
11 display, he didn't look at the display?

12 A He's asking me to see what the camera is catching at this  
13 point.

14 (Tape plays; tape stops.)

15 Q Just for that little piece where you're -- I'm sorry.  
16 The record should reflect we're at 1:2:30 into the video  
17 recording.

18 Just a few minutes prior to this, or a few seconds  
19 prior on the video recording, Mr. DeFreitas handed the camera  
20 back up to you; is that right?

21 A Yes.

22 Q And at that point he hadn't turned the camera on, had he?

23 A No.

24 Q And so you needed to turn it on and pass it back to him;  
25 is that correct?

Francis - cross/Whalen

3497

1 A He asked me to press it on.

2 Q Okay.

3 (Tape plays; tape stops.)

4 Q I have just stopped the video at 1:2:44. Just looking at  
5 the camera, you see a long -- the camera is in the center of  
6 the video, and you see a long metal piece coming out of sort  
7 of the center of the camera. Do you see that?

8 A Yes.

9 Q Okay. Isn't that the view finder for the camera?

10 A What do you mean by view finder?

11 Q Where you can look on the camera and see what the camera  
12 is actually filming?

13 A Yes.

14 Q But Mr. DeFreitas wasn't using that to see what he was  
15 filming, he was asking you to look and see what he was  
16 filming, right?

17 A He knew that he could have seen the video but actually  
18 the way, and the position that he was hiding behind, he did  
19 not want to be detected by anyone recording, so that's why  
20 he's pointing out the camera and he's asking me to actually  
21 check what actually camera is picking up, which means that he  
22 has do it at this point.

23 (Tape plays; tape stops.)

24 Q Again, he just passed it up to you to turn it off?

25 A Yes.



Francis - cross/Whalen

3498

1 (Tape plays; tape stops.)

2 Q Where is the on-off button, or the stop button on this  
3 camera?

4 A It had a double action button and one of them, the red  
5 one, was the one for video and the green was to actually  
6 record picture shots.

7 Q So if you wanted to record video you would press the red  
8 button and if you wanted to do picture shots you would press  
9 the green button, right?

10 A Yes.

11 (Tape plays; tape stops.)

12 Q Is Mr. DeFreitas asking you to play back what he has just  
13 recorded while you're driving?

14 A Yes.

15 Q And he couldn't work the video camera to get it to play  
16 back?

17 A No.

18 (Tape plays; tape stops.)

19 Q Mr. Francis, did you and Mr. DeFreitas make any more  
20 recordings that day?

21 A We did more recordings. I don't know if it's  
22 specifically on that day.

23 (Tape plays; tape stops.)

24 MS. WHALEN: We can stop it there.

25 Your Honor, I don't know if you want to stop for the

Francis - cross/Whalen

3499

1 day.

2 THE COURT: Yes. Why don't we stop here.

3 Ladies and gentlemen, we're going to resume again  
4 tomorrow. We will resume tomorrow at 1:30 in the afternoon.  
5 So make sure that, like I said, you have a nice big lunch.

6 It's possible tomorrow we might go until about  
7 6:00 o'clock. We are going to have a pretty full afternoon.  
8 We will still take a break at some point in the middle of the  
9 afternoon, we're not just going to sit straight through, we  
10 will take about a 20-minute break at some point in the middle  
11 of the afternoon.

12 So you know the drill: do not form or draw any  
13 conclusions about anything that's been presented here in this  
14 courtroom; you can't look at, read, view, listen to anything  
15 that might be reported over any kind of media, whether it's  
16 printed, TV, radio, Internet, blogs, anything else, in  
17 connection with this case.

18 You can't do any kind of research over any kind of  
19 media that is connected with this case. You can't talk about  
20 the case among yourselves or with anyone else whatsoever. We  
21 will see you tomorrow at 1:30. Enjoy the rest of the day.

22 (Jury excused.)

23 THE COURT: You can all have a seat.

24 Mr. Francis, you are still under cross-examination  
25 so you can't discuss your testimony again with anybody from

Francis - cross/Whalen

3500

1 the government team and we are also going -- you can talk  
2 scheduling of course, but we're also going to need you back  
3 here tomorrow at 1:30 to continue.

4 THE WITNESS: Thank you.

5 THE COURT: So you can step down and we'll see you  
6 tomorrow at 1:30.

7 (Witness leaves.)

8 (Continued next page)

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1 THE COURT: You can leave those there. The  
2 attorneys will pick them up.

3 THE WITNESS: Yes.

4 THE COURT: Is there anything else that the parties  
5 wanted to raise this afternoon?

6 MR. MILLER: One quick thing.

7 I was approached by a representative of New York  
8 University Law School who asked if they could -- who studies  
9 terrorism cases, a center that studies terrorism cases. They  
10 asked if they could have access to some of the evidence. I  
11 informed my acquaintance there of Your Honor's ruling  
12 previously with respect to media. But I wanted to bring that  
13 up before Your Honor as to whether there would be any problem  
14 with another member of the public from a university reviewing  
15 evidence that has been admitted into evidence. That is, would  
16 you have a problem releasing that?

17 THE COURT: How are they going to use it?

18 MR. MILLER: I think, for review and study.

19 THE COURT: Why do they need to have it now?

20 MR. MILLER: I don't know. I can find out and get  
21 back to Your Honor.

22 THE COURT: I don't see why -- as far as I know,  
23 school is out now. Ask them why they just can't wait until  
24 the end of the trial.

25 MR. MILLER: I will be happy to, Your Honor.

1 THE COURT: We have an understanding with the media,  
2 a gentle person's agreement, with the members of the media. I  
3 certainly don't see any reason why we can't deprive the  
4 academics.

5 But my question is, does it have to be right now? I  
6 haven't even heard from the defense yet. Do you want to wait  
7 and hear some other information before you speak on it?

8 MR. NKRUMAH: Yes.

9 THE COURT: I have a concern once we start letting  
10 it out to other sectors of the public about things that are  
11 getting out, it is like the spoken word. Once it is out, it  
12 is out.

13 MR. MILLER: That's fine, Your Honor.

14 THE COURT: All right.

15 MR. MILLER: That's fine.

16 MR. KAMDANG: There is one issue. It's in terms of  
17 one of the government's experts, Matthew Levitt.

18 THE COURT: Yes?

19 MR. KAMDANG: It's not that we have a problem with  
20 his credentials or anything. It seems that because some of  
21 the testimony which was taken out, some of the things that he  
22 would be testifying about, like Hamas, would no longer be  
23 relevant in this case. I was wondering what the government's  
24 schedule was for calling him because I would be contemplating  
25 filing a motion.

1 I need to review his testimony. If he was going to  
2 be called next week, then I would potentially look to put in  
3 papers on Thursday so that the Court and the government had  
4 time to respond. Obviously, I don't think we should discuss  
5 the merits right now. Just in terms of working out a timing  
6 for papers on that.

7 MR. MILLER: Judge, we previously indicated, Doctor  
8 Levitt's schedule is tight and I believe he is not available  
9 next week. So we were planning to call him as our next  
10 witness, potentially even as we indicated to the Court  
11 previously, out of order depending on the -- how long cross  
12 goes, because of his unavailability next week.

13 I am not sure that -- I don't think we are intending  
14 to elicit information about Hamas. It's not an issue in the  
15 case. We were intending to -- to elicit information about  
16 Hezbollah, which has been the subject of both testimony and  
17 recorded statement, as well as Iran, as well as Shukrijumah  
18 and all the things that have been issues in the trial. We  
19 also did litigate the expert issue.

20 MR. KAMDANG: I think I will speak to the government  
21 about what we think is coming out. Perhaps we can revisit it  
22 tomorrow if it continues to be a dispute.

23 THE COURT: Okay. I will not be available in the  
24 morning.

25 MR. KAMDANG: Okay.

1 THE COURT: It is possible I might be available at  
2 1:00 o'clock but I am not 100 percent sure.

3 MR. KAMDANG: Okay. I am not making an application  
4 right now. I just wanted to get a sense of the timing for  
5 everybody.

6 MS. MESSINA: On behalf of Mr. Kadir, we would join  
7 that only in that the government's letter, they also mention,  
8 testifying about someone named Mohsen Rabbani, who hasn't come  
9 up at all up until now. We would ask if the government still  
10 intends to go forward on that and on whether basis.

11 MR. MILLER: Yes, Your Honor. We litigated this. I  
12 don't know why we are relitigating it at this point. If there  
13 is a problem with testimony we had a briefing schedule. We  
14 argued both sides of the issue. Nothing has changed with  
15 respect to Mr. Rabbani. I am not aware of anything changing  
16 in the case that impacts the litigation that has been  
17 completed and Your Honor has ruled on.

18 THE COURT: I don't understand why we are litigating  
19 now anything about the expert. We had that line about  
20 litigating the expert. I made my rulings about the expert. I  
21 really don't understand.

22 MS. MESSINA: I think in part, Judge, it is  
23 based -- the rulings were based on what the government foresaw  
24 would be coming into evidence in their case and then the  
25 expert would be able to testify to help the jury understand

1 Hezbollah, which did come up, Al Qaeda, which was mentioned,  
2 and I am bringing up just that Mohsen Rabbani is an unknown at  
3 this point. He hasn't been connected to this case at all. I  
4 think -- if it is subject to connection in some way, just  
5 hasn't even been mentioned yet who he is.

6 MR. MILLER: We turned over exhibits that contain  
7 information about Mr. Rabbani that we intend to introduce and  
8 so the expert is appropriately commenting on who that person  
9 is so that the jury can understand the exhibits that will be  
10 introduced, the same as it has been from the very beginning of  
11 the case.

12 THE COURT: There has been way too much motion  
13 practice here. Again, I hate to preclude anything because, as  
14 I said, a trial is a fluid thing. By the same token, I set  
15 motion schedules. There was plenty enough time to litigate  
16 all of this and there is an awful lot that we are litigating  
17 now that should have been brought up before.

18 It may very well be that the defense can just  
19 resolve it in discussion with the government and we will see.

20 If the expert is being taken out of order and there  
21 are some things that are going to be subject to connection,  
22 then it seems to me that his evidence comes in. If it is not  
23 appropriately connected, then the defense can make the motion  
24 at the appropriate time.

25 Okay. See everybody tomorrow at 1:30.



1 MR. NKRUMAH: One thing, Your Honor.

2 THE COURT: Yes?

3 MR. NKRUMAH: For tomorrow's abbreviated schedule,  
4 could we have some lunches provided for Mr. DeFreitas and  
5 Mr. Kadir? Late afternoon snacks? By the time they get back  
6 to the prison, it will be about 8:00 o'clock and they would  
7 have missed dinner. The only thing they would have had is  
8 lunch.

9 THE COURT: I don't know. Can the marshals look  
10 into that?

11 THE MARSHAL: Yes, Your Honor. They will have food  
12 down there, Your Honor.

13 THE COURT: All right. The marshals will look into  
14 that.

15 MR. NKRUMAH: Thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 (Recess until 1:30, July 14, 2010.)

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I N D E S

W I T N E S S :

S T E V E N F R A N C I S 3360

CROSS-EXAMINATION 3360

R D A 3404

§	2	3
<p><b>\$100</b> [2] - 3391:18, 3391:22  <b>\$5,000</b> [2] - 3468:21, 3469:13</p>	<p><b>2</b> [8] - 3401:7, 3405:16, 3407:19, 3412:1, 3412:2, 3412:8, 3471:4, 3477:17</p>	<p><b>3</b> [10] - 3398:7, 3401:5, 3401:7, 3410:8, 3411:11, 3411:19, 3411:23, 3426:24, 3448:7, 3477:17</p>
<p>,</p>	<p><b>20</b> [6] - 3369:23, 3451:20, 3460:7, 3465:3, 3469:8, 3482:8</p>	<p><b>30</b> [2] - 3477:11, 3483:18</p>
<p>'<b>87</b> [1] - 3465:4  '<b>89</b> [3] - 3465:4, 3465:8, 3465:10</p>	<p><b>20-minute</b> [1] - 3499:10  <b>2005</b> [2] - 3448:9, 3448:10  <b>2006</b> [7] - 3369:24, 3385:3, 3387:20, 3392:23, 3399:2, 3404:23, 3421:1</p>	<p><b>31</b> [1] - 3406:3  <b>32</b> [1] - 3409:5  <b>33</b> [4] - 3437:25, 3438:4, 3473:2, 3482:4</p>
<p><b>0</b></p>	<p><b>2007</b> [6] - 3421:1, 3426:24, 3448:7, 3466:5, 3466:22, 3470:9</p>	<p><b>3360</b> [2] - 3507:5, 3507:6  <b>34</b> [2] - 3434:9, 3434:11</p>
<p><b>07-543</b> [1] - 3354:4</p>	<p><b>201</b> [1] - 3405:16  <b>2010</b> [2] - 3354:9, 3506:17</p>	<p><b>3404</b> [1] - 3507:9  <b>34th</b> [2] - 3458:23, 3461:25  <b>35</b> [2] - 3408:4, 3472:19</p>
<p><b>1</b></p>	<p><b>202</b> [1] - 3407:10  <b>203</b> [2] - 3411:10, 3412:8</p>	<p><b>3500</b> [5] - 3355:24, 3356:11, 3395:7, 3403:25</p>
<p><b>10</b> [2] - 3427:24, 3492:11  <b>100</b> [3] - 3366:16, 3443:7, 3504:2  <b>10:19</b> [1] - 3454:13  <b>11</b> [9] - 3401:5, 3401:7, 3437:6, 3475:15, 3476:10, 3476:13, 3480:23, 3481:1, 3481:2  <b>12</b> [8] - 3412:12, 3429:6, 3437:6, 3444:18, 3445:2, 3446:6, 3450:22, 3463:15  <b>12:33</b> [1] - 3450:24  <b>12:55</b> [1] - 3466:9  <b>13</b> [6] - 3354:9, 3473:1, 3481:11, 3481:24, 3482:3, 3482:5  <b>13th</b> [2] - 3420:12, 3479:17  <b>14</b> [9] - 3432:16, 3437:10, 3437:15, 3466:13, 3471:21, 3475:2, 3482:17, 3482:19, 3506:17  <b>147</b> [1] - 3468:18  <b>15</b> [5] - 3437:25, 3438:2, 3459:8, 3473:22, 3474:17  <b>16</b> [4] - 3432:21, 3466:13, 3471:25, 3475:11  <b>17</b> [4] - 3429:11, 3430:19, 3440:1, 3463:16  <b>175</b> [1] - 3403:25  <b>17th</b> [1] - 3407:22  <b>18</b> [5] - 3423:25, 3438:17, 3438:21, 3449:17, 3475:10  <b>19</b> [1] - 3413:11  <b>1:00</b> [1] - 3504:2  <b>1:2:30</b> [1] - 3496:16  <b>1:2:44</b> [1] - 3497:4  <b>1:30</b> [6] - 3499:4, 3499:21, 3500:3, 3500:6, 3505:25, 3506:17  <b>1:54</b> [1] - 3466:10  <b>1st</b> [13] - 3392:22, 3393:11, 3393:15, 3393:16, 3393:18, 3394:1, 3394:20, 3409:17, 3409:20, 3409:21, 3409:22, 3420:11, 3479:17</p>	<p><b>204</b> [2] - 3422:12, 3422:13  <b>205</b> [4] - 3426:15, 3427:6, 3428:16, 3448:10  <b>206</b> [3] - 3448:5, 3448:13, 3460:2  <b>207</b> [2] - 3454:4, 3454:9  <b>208</b> [6] - 3458:20, 3462:6, 3462:7, 3462:8, 3466:7, 3466:9  <b>209</b> [3] - 3466:2, 3466:5, 3466:10  <b>21</b> [2] - 3429:16, 3476:11  <b>210</b> [1] - 3466:18  <b>211</b> [5] - 3480:4, 3480:25, 3481:20, 3482:1, 3482:3  <b>211:again</b> [1] - 3470:8  <b>213-T</b> [1] - 3481:25  <b>22</b> [4] - 3401:9, 3408:4, 3440:16, 3473:1  <b>225</b> [1] - 3355:1  <b>229</b> [2] - 3492:7, 3494:6  <b>23</b> [2] - 3410:16, 3453:16  <b>23rd</b> [1] - 3473:14  <b>24</b> [1] - 3455:22  <b>24th</b> [1] - 3387:22  <b>25</b> [5] - 3387:20, 3397:14, 3403:20, 3408:25, 3429:16  <b>25th</b> [2] - 3387:19, 3388:2  <b>26</b> [2] - 3425:3, 3482:4  <b>27</b> [1] - 3467:24  <b>271</b> [1] - 3354:19  <b>28</b> [6] - 3401:9, 3432:21, 3467:3, 3469:10, 3481:4, 3482:18  <b>28th</b> [1] - 3385:6  <b>29</b> [2] - 3410:25, 3450:5  <b>2:18</b> [1] - 3466:24  <b>2:30</b> [4] - 3359:13, 3420:1, 3446:3, 3493:13  <b>2nd</b> [11] - 3393:15, 3393:16, 3393:18, 3394:1, 3394:20, 3409:15, 3409:17, 3409:20, 3409:22, 3425:18</p>	<p><b>3500-26</b> [1] - 3367:4  <b>3500-SF-17</b> [1] - 3362:11  <b>3500-SF-19</b> [3] - 3361:24, 3362:19, 3365:20  <b>3500-SF-26</b> [1] - 3367:6  <b>3500-SF-34</b> [1] - 3369:15  <b>3500-SF-40</b> [1] - 3380:2  <b>3500-SF-49</b> [1] - 3383:22  <b>3500-SF-54</b> [1] - 3389:18  <b>3500-SF-79</b> [1] - 3487:17  <b>36</b> [5] - 3430:1, 3449:8, 3449:15, 3463:1, 3463:2  <b>37</b> [1] - 3469:9  <b>39</b> [2] - 3414:22, 3430:23  <b>3:00</b> [1] - 3470:11  <b>3:10</b> [2] - 3401:2, 3401:4  <b>3:11</b> [5] - 3400:5, 3400:6, 3401:3, 3402:4, 3404:7  <b>3:32</b> [1] - 3401:4  <b>3rd</b> [1] - 3454:10</p>
		<p><b>4</b></p>
		<p><b>4</b> [6] - 3397:15, 3401:9, 3403:20, 3466:5, 3466:22, 3470:9  <b>40</b> [1] - 3409:25  <b>41</b> [1] - 3409:24  <b>42</b> [4] - 3463:15, 3464:2, 3464:9, 3476:11  <b>43</b> [1] - 3464:2  <b>44</b> [5] - 3411:24, 3412:1, 3412:10, 3458:21  <b>45</b> [1] - 3427:24  <b>45:50</b> [1] - 3437:19  <b>47</b> [1] - 3474:17  <b>48</b> [1] - 3471:22  <b>49:57</b> [1] - 3439:25  <b>4th</b> [9] - 3399:2, 3404:23, 3407:24, 3411:17, 3460:17, 3470:13, 3473:16, 3480:9, 3487:6</p>

<b>5</b>		
<p><b>5</b><sup>[2]</sup> - 3400:5, 3492:11  <b>52:29</b><sup>[1]</sup> - 3422:15  <b>54</b><sup>[1]</sup> - 3482:18  <b>57:16</b><sup>[1]</sup> - 3440:18  <b>57:32</b><sup>[1]</sup> - 3440:16</p>	<p><b>accomplishment</b><sup>[7]</sup> - 3453:8, 3453:9, 3453:12, 3455:16, 3457:11, 3462:15, 3462:18  <b>accomplishments</b><sup>[2]</sup> - 3458:1, 3482:12  <b>according</b><sup>[8]</sup> - 3369:23, 3370:11, 3375:17, 3407:6, 3417:24, 3453:13, 3469:3, 3485:14  <b>accurate</b><sup>[1]</sup> - 3391:2  <b>acknowledged</b><sup>[4]</sup> - 3380:20, 3434:7, 3459:11, 3459:17  <b>acknowledging</b><sup>[2]</sup> - 3377:25, 3421:13  <b>acquaintance</b><sup>[1]</sup> - 3501:11  <b>action</b><sup>[1]</sup> - 3498:4  <b>activities</b><sup>[3]</sup> - 3421:3, 3421:15, 3450:19  <b>actual</b><sup>[2]</sup> - 3407:13, 3425:11  <b>added</b><sup>[2]</sup> - 3378:4, 3403:13  <b>additional</b><sup>[1]</sup> - 3400:10  <b>Addonizio</b><sup>[3]</sup> - 3356:4, 3356:15, 3356:20  <b>address</b><sup>[2]</sup> - 3398:18, 3447:4  <b>adjusting</b><sup>[1]</sup> - 3495:6  <b>admissibility</b><sup>[1]</sup> - 3399:8  <b>admissible</b><sup>[1]</sup> - 3399:5  <b>admit</b><sup>[2]</sup> - 3399:6, 3420:24  <b>admitted</b><sup>[1]</sup> - 3501:15  <b>advanced</b><sup>[3]</sup> - 3483:1, 3483:2  <b>advice</b><sup>[1]</sup> - 3482:24  <b>affiliated</b><sup>[1]</sup> - 3485:12  <b>afraid</b><sup>[1]</sup> - 3396:11  <b>afternoon</b><sup>[13]</sup> - 3359:13, 3391:17, 3391:20, 3408:5, 3428:3, 3466:24, 3470:11, 3499:4, 3499:7, 3499:9, 3499:11, 3501:5, 3506:5  <b>afterwards</b><sup>[2]</sup> - 3371:8, 3384:11  <b>agent</b><sup>[1]</sup> - 3490:20  <b>ago</b><sup>[1]</sup> - 3427:6  <b>agree</b><sup>[6]</sup> - 3359:14, 3408:17, 3447:16, 3488:9, 3491:13, 3493:17  <b>agreed</b><sup>[1]</sup> - 3398:14  <b>agreement</b><sup>[2]</sup> - 3389:4, 3502:2  <b>ahead</b><sup>[1]</sup> - 3495:9  <b>AHMAD</b><sup>[1]</sup> - 3354:18  <b>aid</b><sup>[2]</sup> - 3407:12, 3407:17  <b>aided</b><sup>[1]</sup> - 3355:4  <b>ain't</b><sup>[1]</sup> - 3411:2  <b>air</b><sup>[1]</sup> - 3465:15  <b>aircraft</b><sup>[2]</sup> - 3423:17, 3423:19  <b>airline</b><sup>[1]</sup> - 3408:19  <b>airport</b><sup>[37]</sup> - 3371:5, 3371:7, 3389:9, 3420:14, 3426:17, 3428:15, 3428:16, 3428:19, 3432:13, 3433:10, 3433:15, 3433:21, 3436:19, 3436:23, 3437:2, 3438:7, 3438:14, 3439:16, 3441:1, 3441:17, 3448:23, 3450:20, 3450:21, 3451:3, 3451:8, 3451:16, 3451:25, 3453:20, 3453:23, 3454:3, 3464:20, 3465:15, 3465:19, 3466:16, 3470:20, 3474:22</p>	<p><b>Airport</b><sup>[7]</sup> - 3389:7, 3389:12, 3390:16, 3437:23, 3449:20, 3470:21, 3471:16  <b>Al</b><sup>[9]</sup> - 3373:3, 3373:10, 3373:25, 3374:20, 3374:24, 3376:16, 3423:7, 3465:23, 3505:1  <b>Alah</b><sup>[3]</sup> - 3406:10  <b>alert</b><sup>[2]</sup> - 3355:18, 3451:8  <b>alerted</b><sup>[1]</sup> - 3355:23  <b>alive</b><sup>[1]</sup> - 3407:2  <b>allow</b><sup>[7]</sup> - 3356:6, 3363:17, 3375:10, 3379:2, 3395:24, 3436:11, 3484:3  <b>allowed</b><sup>[5]</sup> - 3379:2, 3399:14, 3442:21, 3443:5, 3443:15  <b>AMERICA</b><sup>[1]</sup> - 3354:4  <b>American</b><sup>[1]</sup> - 3467:24  <b>amount</b><sup>[2]</sup> - 3472:2, 3472:20  <b>amounts</b><sup>[2]</sup> - 3392:15, 3392:16  <b>anchor</b><sup>[2]</sup> - 3369:10, 3411:14  <b>Annas</b><sup>[3]</sup> - 3365:15, 3398:9, 3413:12  <b>answer</b><sup>[11]</sup> - 3363:7, 3365:17, 3375:11, 3379:5, 3379:7, 3397:2, 3427:15, 3436:11, 3447:18, 3475:23, 3493:19  <b>answered</b><sup>[1]</sup> - 3416:8  <b>answering</b><sup>[1]</sup> - 3363:6  <b>answers</b><sup>[1]</sup> - 3379:6  <b>anxious</b><sup>[1]</sup> - 3357:8  <b>Apache</b><sup>[2]</sup> - 3423:17, 3423:19  <b>apartment</b><sup>[9]</sup> - 3418:19, 3419:6, 3419:9, 3419:12, 3419:15, 3422:9, 3425:10, 3425:12, 3425:19  <b>apologize</b><sup>[3]</sup> - 3412:8, 3458:21, 3462:8  <b>APPEARANCES</b><sup>[1]</sup> - 3354:14  <b>apple</b><sup>[1]</sup> - 3403:18  <b>application</b><sup>[1]</sup> - 3504:3  <b>appreciate</b><sup>[5]</sup> - 3365:24, 3379:8, 3395:5, 3445:24, 3446:1  <b>appreciation</b><sup>[1]</sup> - 3467:25  <b>approach</b><sup>[1]</sup> - 3397:17  <b>approached</b><sup>[2]</sup> - 3431:15, 3501:7  <b>approaching</b><sup>[1]</sup> - 3365:13  <b>appropriate</b><sup>[4]</sup> - 3357:12, 3357:16, 3398:16, 3505:24  <b>appropriately</b><sup>[2]</sup> - 3505:8, 3505:23  <b>area</b><sup>[2]</sup> - 3443:23, 3464:19  <b>areas</b><sup>[9]</sup> - 3399:15, 3429:1, 3429:2, 3431:12, 3431:17, 3463:18, 3463:23, 3470:16  <b>argued</b><sup>[1]</sup> - 3504:14  <b>arising</b><sup>[1]</sup> - 3386:8  <b>Army</b><sup>[1]</sup> - 3474:22  <b>arrangement</b><sup>[1]</sup> - 3368:8  <b>arranging</b><sup>[2]</sup> - 3368:23, 3486:9  <b>arrested</b><sup>[1]</sup> - 3419:15  <b>arrive</b><sup>[1]</sup> - 3372:15  <b>arrived</b><sup>[4]</sup> - 3361:6, 3361:18, 3362:23, 3371:17  <b>aside</b><sup>[1]</sup> - 3495:17</p>
<b>6</b>		
<p><b>6</b><sup>[2]</sup> - 3472:25, 3477:12  <b>613-2538</b><sup>[1]</sup> - 3355:2  <b>64</b><sup>[1]</sup> - 3395:7  <b>6:00</b><sup>[1]</sup> - 3499:7</p>		
<b>7</b>		
<p><b>7</b><sup>[2]</sup> - 3412:23, 3477:12  <b>718</b><sup>[1]</sup> - 3355:2  <b>7:34</b><sup>[1]</sup> - 3401:8</p>		
<b>8</b>		
<p><b>8</b><sup>[1]</sup> - 3462:5  <b>8:00</b><sup>[5]</sup> - 3400:5, 3401:8, 3402:4, 3404:7, 3506:6</p>		
<b>9</b>		
<b>A</b>		
<p><b>a.m</b><sup>[1]</sup> - 3354:10  <b>abbreviated</b><sup>[2]</sup> - 3359:12, 3506:3  <b>Abdollah</b><sup>[2]</sup> - 3367:17, 3468:18  <b>Abdollah's</b><sup>[3]</sup> - 3366:20, 3428:3, 3428:8  <b>Abdul</b><sup>[3]</sup> - 3412:15, 3412:17, 3414:7  <b>ABDUL</b><sup>[1]</sup> - 3354:8  <b>Abdullah</b><sup>[1]</sup> - 3412:14  <b>ability</b><sup>[2]</sup> - 3375:17, 3469:15  <b>able</b><sup>[16]</sup> - 3372:16, 3375:17, 3378:4, 3414:13, 3418:1, 3431:23, 3445:19, 3473:8, 3473:11, 3473:19, 3475:21, 3489:17, 3491:1, 3491:10, 3491:11, 3504:25  <b>absence</b><sup>[2]</sup> - 3355:9, 3378:25  <b>absolutely</b><sup>[2]</sup> - 3407:17, 3407:18  <b>Abu</b><sup>[3]</sup> - 3377:25, 3378:5, 3475:21  <b>academics</b><sup>[1]</sup> - 3502:4  <b>access</b><sup>[3]</sup> - 3431:13, 3463:22, 3501:10  <b>accomplished</b><sup>[3]</sup> - 3455:9, 3457:24, 3457:25</p>		

<p><b>aspects</b> [1] - 3376:5  <b>assigned</b> [1] - 3421:4  <b>assist</b> [1] - 3490:16  <b>Assistant</b> [1] - 3354:18  <b>assume</b> [1] - 3425:18  <b>assuming</b> [2] - 3419:25, 3462:13  <b>attack</b> [2] - 3366:2, 3483:6  <b>attempting</b> [1] - 3357:11  <b>attend</b> [1] - 3411:5  <b>attention</b> [7] - 3381:6, 3443:14, 3443:16, 3449:2, 3483:22, 3483:24, 3484:3  <b>Attorney</b> [1] - 3354:16  <b>attorneys</b> [1] - 3501:2  <b>Attorneys</b> [3] - 3354:18, 3354:22, 3354:25  <b>audio</b> [5] - 3404:3, 3426:6, 3426:7, 3475:8, 3475:9  <b>authorities</b> [6] - 3396:12, 3431:15, 3450:20, 3451:9, 3453:24, 3467:20  <b>available</b> [7] - 3356:4, 3376:9, 3489:10, 3503:8, 3503:23, 3504:1  <b>aware</b> [2] - 3487:5, 3504:15  <b>awful</b> [1] - 3505:16  <b>awhile</b> [1] - 3429:6</p>	<p><b>BERGER</b> [1] - 3354:17  <b>BERIT</b> [1] - 3354:17  <b>beside</b> [3] - 3356:21, 3437:19, 3457:21  <b>best</b> [7] - 3372:9, 3374:22, 3398:24, 3421:2, 3423:15, 3482:24, 3489:15  <b>better</b> [1] - 3492:4  <b>between</b> [8] - 3357:6, 3363:1, 3379:15, 3382:3, 3382:8, 3386:4, 3386:22, 3461:22  <b>big</b> [7] - 3358:13, 3452:2, 3459:2, 3459:3, 3460:10, 3461:17, 3499:5  <b>Bilal</b> [3] - 3469:18, 3469:20, 3470:5  <b>bill</b> [1] - 3392:2  <b>binder</b> [1] - 3417:14  <b>binders</b> [2] - 3405:15, 3492:13  <b>bit</b> [9] - 3358:18, 3358:22, 3359:12, 3376:7, 3385:17, 3393:21, 3411:11, 3444:9, 3476:17  <b>black</b> [1] - 3462:23  <b>blogs</b> [1] - 3499:16  <b>blow</b> [7] - 3421:20, 3436:18, 3437:2, 3478:25, 3484:2, 3484:4  <b>blueprint</b> [1] - 3466:16  <b>blurtd</b> [1] - 3378:20  <b>boat</b> [2] - 3474:24  <b>body</b> [8] - 3425:20, 3425:22, 3425:23, 3426:2, 3474:4, 3474:13, 3479:23, 3480:21  <b>bold</b> [1] - 3437:19  <b>bomb</b> [2] - 3481:21, 3484:1  <b>bombing</b> [2] - 3474:1, 3474:11  <b>bombs</b> [7] - 3476:19, 3476:25, 3477:3, 3477:6, 3477:20, 3477:21, 3480:7  <b>book</b> [1] - 3448:5  <b>books</b> [2] - 3403:13, 3419:2  <b>bottle</b> [1] - 3468:21  <b>bottles</b> [2] - 3477:22, 3479:5  <b>bottom</b> [6] - 3414:22, 3429:25, 3430:23, 3449:15, 3469:10  <b>bought</b> [6] - 3391:24, 3392:11, 3488:12, 3489:4, 3489:16, 3489:17  <b>box</b> [4] - 3368:2, 3463:4, 3463:10, 3463:11  <b>boxes</b> [1] - 3462:23  <b>break</b> [17] - 3359:13, 3419:21, 3419:23, 3419:24, 3420:1, 3444:3, 3444:9, 3444:10, 3444:19, 3445:2, 3446:6, 3492:9, 3492:10, 3492:18, 3492:24, 3499:8, 3499:10  <b>breast</b> [1] - 3468:11  <b>briefing</b> [1] - 3504:13  <b>bring</b> [13] - 3355:14, 3358:25, 3366:7, 3376:12, 3383:8, 3391:8, 3391:24, 3396:10, 3414:10, 3447:9, 3458:22, 3475:13, 3501:12  <b>bringing</b> [2] - 3376:8, 3505:2  <b>brings</b> [1] - 3376:15  <b>broke</b> [2] - 3432:3, 3441:20  <b>Brooklyn</b> [4] - 3354:7, 3354:19, 3355:2, 3470:17</p>	<p><b>brother</b> [10] - 3380:20, 3381:16, 3401:19, 3406:8, 3409:25, 3410:1, 3411:3, 3485:7, 3485:10, 3485:11  <b>Brother</b> [3] - 3485:3, 3485:13, 3486:21  <b>brothers</b> [2] - 3485:2, 3485:13  <b>brought</b> [9] - 3372:24, 3373:2, 3377:23, 3381:5, 3391:9, 3444:4, 3461:4, 3461:5, 3505:17  <b>building</b> [1] - 3464:18  <b>built</b> [1] - 3417:6  <b>business</b> [5] - 3366:14, 3367:22, 3385:15, 3459:22, 3468:22  <b>button</b> [6] - 3496:4, 3498:2, 3498:4, 3498:8, 3498:9  <b>buy</b> [9] - 3391:22, 3394:1, 3394:16, 3415:10, 3416:23, 3418:22, 3443:22, 3468:20, 3489:3  <b>buying</b> [8] - 3392:6, 3415:13, 3460:18, 3461:1, 3461:20, 3462:2, 3488:18, 3489:13  <b>BY</b> [8] - 3354:16, 3360:10, 3390:2, 3422:1, 3448:3, 3453:2, 3471:2, 3494:4</p>
<b>B</b>		<b>C</b>
<p><b>background</b> [1] - 3455:13  <b>bad</b> [1] - 3449:2  <b>Bakr</b> [3] - 3377:25, 3378:5, 3475:21  <b>ball</b> [1] - 3478:6  <b>balls</b> [1] - 3478:4  <b>bamboo</b> [2] - 3477:4, 3477:21  <b>bar</b> [3] - 3358:12, 3358:13, 3398:1  <b>barricades</b> [1] - 3463:25  <b>barrier</b> [1] - 3443:24  <b>based</b> [9] - 3364:17, 3422:2, 3437:6, 3473:18, 3488:12, 3488:14, 3489:8, 3504:23  <b>basis</b> [1] - 3504:10  <b>Bastards</b> [1] - 3432:6  <b>bearings</b> [2] - 3478:4, 3478:6  <b>became</b> [2] - 3380:11, 3393:10  <b>become</b> [2] - 3357:3, 3408:1  <b>BEFORE</b> [1] - 3354:13  <b>beforehand</b> [1] - 3364:25  <b>beginning</b> [17] - 3373:8, 3373:24, 3374:11, 3376:10, 3377:19, 3378:3, 3405:1, 3405:2, 3405:11, 3409:16, 3411:12, 3427:13, 3454:24, 3455:22, 3471:3, 3482:8, 3505:10  <b>begins</b> [2] - 3401:4, 3411:13  <b>behalf</b> [2] - 3448:2, 3504:6  <b>behave</b> [3] - 3431:14, 3432:3, 3483:2  <b>behind</b> [2] - 3424:3, 3497:18  <b>believes</b> [1] - 3403:21  <b>benefit</b> [2] - 3366:21, 3366:22  <b>Benz</b> [1] - 3486:6</p>	<p><b>Cadman</b> [2] - 3354:19, 3355:1  <b>calm</b> [2] - 3441:7, 3443:11  <b>camera</b> [74] - 3426:5, 3451:7, 3451:11, 3451:14, 3451:20, 3451:21, 3451:25, 3452:2, 3452:3, 3452:4, 3458:22, 3459:2, 3459:3, 3459:6, 3459:16, 3459:24, 3460:4, 3460:10, 3460:13, 3460:16, 3460:18, 3460:20, 3460:22, 3460:23, 3461:1, 3461:5, 3461:10, 3461:13, 3461:16, 3461:20, 3461:24, 3461:25, 3462:2, 3463:7, 3463:10, 3463:11, 3490:10, 3490:12, 3490:13, 3490:16, 3490:17, 3490:24, 3490:25, 3491:8, 3491:10, 3491:11, 3491:13, 3491:15, 3491:20, 3491:24, 3492:1, 3492:4, 3495:3, 3495:12, 3495:13, 3495:14, 3495:16, 3495:17, 3495:23, 3496:1, 3496:2, 3496:12, 3496:19, 3496:22, 3497:5, 3497:7, 3497:9, 3497:11, 3497:20, 3497:21, 3498:3, 3498:15  <b>Camera</b> [1] - 3459:1  <b>cameras</b> [10] - 3419:3, 3433:25, 3460:21, 3462:21, 3462:22, 3463:2, 3463:5, 3463:8  <b>cancer</b> [2] - 3468:11  <b>cannot</b> [6] - 3370:8, 3370:20, 3372:3, 3418:17, 3425:20, 3444:24  <b>car</b> [10] - 3432:3, 3441:19, 3442:2, 3442:11, 3443:20, 3460:5, 3474:14, 3483:3, 3495:6, 3496:6  <b>carbon</b> [2] - 3477:3, 3477:21  <b>card</b> [3] - 3366:21, 3366:22, 3396:14  <b>care</b> [5] - 3385:15, 3394:15, 3395:16</p>	

<p>3395:18, 3416:14  <b>careful</b> [1] - 3378:25  <b>carefully</b> [1] - 3403:15  <b>careless</b> [2] - 3449:23, 3449:24  <b>cargo</b> [2] - 3439:14, 3440:5  <b>Carmine</b> [4] - 3438:20, 3439:4, 3440:9, 3440:12  <b>carried</b> [4] - 3387:21, 3473:10, 3473:24, 3474:10  <b>carry</b> [1] - 3392:16  <b>cars</b> [5] - 3433:22, 3434:1, 3474:24, 3478:4, 3486:4  <b>case</b> [20] - 3403:9, 3444:8, 3444:11, 3444:13, 3444:15, 3450:18, 3473:9, 3473:11, 3492:16, 3492:17, 3492:19, 3499:17, 3499:19, 3499:20, 3502:23, 3503:15, 3504:16, 3504:24, 3505:3, 3505:11  <b>cases</b> [2] - 3501:9  <b>cash</b> [3] - 3366:22, 3391:8, 3391:9  <b>catch</b> [2] - 3432:17, 3483:24  <b>catching</b> [2] - 3496:2, 3496:12  <b>CD</b> [2] - 3468:4, 3468:5  <b>cell</b> [3] - 3396:12, 3444:10, 3492:17  <b>cell-phones</b> [2] - 3444:10, 3492:17  <b>cellphone</b> [1] - 3444:16  <b>cellphones</b> [1] - 3359:7  <b>center</b> [5] - 3451:15, 3465:18, 3497:5, 3497:7, 3501:9  <b>certain</b> [6] - 3410:2, 3412:25, 3413:4, 3424:15, 3449:1, 3477:25  <b>certainly</b> [5] - 3404:5, 3444:25, 3445:1, 3446:4, 3502:3  <b>change</b> [1] - 3394:24  <b>changed</b> [5] - 3377:20, 3378:2, 3424:15, 3453:25, 3504:14  <b>changing</b> [1] - 3504:15  <b>chaos</b> [1] - 3484:7  <b>charge</b> [1] - 3408:1  <b>charitable</b> [1] - 3392:12  <b>chase</b> [1] - 3399:17  <b>cheapest</b> [1] - 3488:14  <b>check</b> [3] - 3400:14, 3445:6, 3497:21  <b>checking</b> [1] - 3457:4  <b>chickpeas</b> [10] - 3477:3, 3478:2, 3478:6, 3478:10, 3478:12, 3478:14, 3478:15, 3480:16, 3481:13, 3481:19  <b>Christmas</b> [5] - 3387:22, 3387:23, 3388:2, 3388:4, 3421:1  <b>Christmastime</b> [1] - 3409:13  <b>church</b> [1] - 3485:12  <b>circumstance</b> [1] - 3443:19  <b>citizens</b> [1] - 3467:24  <b>City</b> [10] - 3360:21, 3368:11, 3392:22, 3392:25, 3405:24, 3420:7, 3420:8, 3457:15, 3463:6, 3490:6  <b>civil</b> [1] - 3408:16  <b>claim</b> [1] - 3442:21  <b>claimed</b> [2] - 3366:21, 3418:11</p>	<p><b>clarification</b> [2] - 3398:11, 3405:5  <b>clarify</b> [2] - 3378:7, 3404:7  <b>clear</b> [4] - 3363:7, 3403:19, 3462:16, 3494:9  <b>cleared</b> [2] - 3416:5, 3416:24  <b>clearly</b> [4] - 3365:25, 3398:25, 3410:22, 3458:16  <b>clerk</b> [4] - 3490:19, 3490:22, 3491:12, 3491:22  <b>CLERK</b> [1] - 3491:1  <b>clever</b> [1] - 3429:18  <b>clip</b> [6] - 3400:4, 3400:6, 3400:8, 3401:8, 3402:1  <b>clips</b> [2] - 3400:19, 3401:17  <b>clock</b> [1] - 3446:7  <b>close</b> [2] - 3453:5, 3476:12  <b>closed</b> [8] - 3429:1, 3429:2, 3429:3, 3429:12, 3443:23, 3443:24, 3463:24, 3463:25  <b>closing</b> [1] - 3463:23  <b>clothes</b> [1] - 3368:2  <b>cocaine</b> [3] - 3467:17, 3467:20  <b>collect</b> [5] - 3366:10, 3366:12, 3366:15, 3367:1, 3367:14  <b>comfortable</b> [1] - 3358:6  <b>coming</b> [16] - 3366:25, 3377:23, 3379:14, 3385:18, 3393:5, 3412:25, 3413:5, 3413:6, 3413:16, 3420:18, 3440:18, 3451:3, 3486:21, 3497:6, 3503:21, 3504:24  <b>commenting</b> [3] - 3430:4, 3467:7, 3505:8  <b>communication</b> [1] - 3487:4  <b>company</b> [2] - 3408:19, 3429:12  <b>complaining</b> [3] - 3405:20, 3405:22, 3467:23  <b>complete</b> [2] - 3391:1, 3445:15  <b>completed</b> [1] - 3504:17  <b>complicated</b> [1] - 3432:7  <b>computer</b> [3] - 3355:4, 3401:17, 3419:3  <b>computer-aided</b> [1] - 3355:4  <b>concealed</b> [2] - 3460:22, 3491:11  <b>concept</b> [1] - 3376:11  <b>concern</b> [3] - 3420:25, 3421:2, 3502:9  <b>concerned</b> [6] - 3358:17, 3366:1, 3386:10, 3386:11, 3393:10, 3484:8  <b>concerning</b> [4] - 3408:14, 3408:18, 3418:7, 3445:1  <b>concerns</b> [1] - 3479:23  <b>conclusions</b> [3] - 3444:7, 3492:16, 3499:13  <b>concrete</b> [1] - 3375:13  <b>conducted</b> [1] - 3428:22  <b>conference</b> [2] - 3396:10, 3486:21  <b>confidence</b> [1] - 3473:8  <b>confident</b> [1] - 3473:8  <b>confirm</b> [6] - 3386:14, 3425:9, 3451:19, 3455:6, 3455:8, 3455:23</p>	<p><b>confused</b> [1] - 3410:17  <b>confusing</b> [1] - 3402:5  <b>confusion</b> [1] - 3358:13  <b>connected</b> [4] - 3492:19, 3499:19, 3505:3, 3505:23  <b>connection</b> [7] - 3395:16, 3399:3, 3400:23, 3404:13, 3499:17, 3505:4, 3505:21  <b>consent</b> [1] - 3426:12  <b>conspiracy</b> [6] - 3399:3, 3399:4, 3400:22, 3400:23, 3405:11, 3408:2  <b>contact</b> [6] - 3360:25, 3373:3, 3374:23, 3375:16, 3378:5, 3400:15  <b>contain</b> [2] - 3423:8, 3505:6  <b>contemplating</b> [1] - 3502:24  <b>context</b> [1] - 3400:10  <b>continue</b> [5] - 3361:2, 3378:16, 3455:17, 3494:2, 3500:3  <b>continued</b> [5] - 3359:21, 3360:24, 3448:1, 3448:13, 3493:20  <b>Continued</b> [8] - 3360:10, 3389:21, 3397:19, 3402:9, 3421:22, 3452:7, 3488:21, 3500:8  <b>CONTINUED</b> [2] - 3390:1, 3471:1  <b>CONTINUES</b> [1] - 3453:1  <b>continues</b> [7] - 3384:3, 3404:15, 3404:19, 3412:13, 3412:19, 3469:22, 3503:22  <b>conversation</b> [93] - 3357:6, 3360:14, 3362:7, 3362:22, 3362:24, 3363:1, 3363:2, 3363:5, 3364:1, 3373:20, 3373:21, 3376:7, 3378:22, 3398:3, 3398:6, 3398:21, 3398:25, 3399:2, 3399:4, 3399:6, 3400:7, 3400:18, 3403:7, 3404:21, 3404:22, 3405:1, 3405:3, 3405:7, 3405:16, 3406:25, 3407:7, 3407:19, 3407:22, 3407:23, 3411:20, 3412:20, 3413:17, 3414:6, 3414:9, 3415:7, 3416:15, 3417:13, 3423:24, 3425:9, 3426:23, 3426:24, 3427:5, 3427:11, 3427:12, 3436:13, 3437:8, 3439:12, 3439:15, 3451:5, 3455:10, 3457:13, 3460:12, 3460:18, 3461:9, 3462:12, 3462:20, 3471:8, 3472:9, 3474:7, 3476:4, 3476:6, 3476:18, 3476:22, 3476:24, 3476:25, 3477:19, 3478:5, 3478:9, 3478:22, 3478:23, 3479:11, 3479:19, 3479:25, 3480:3, 3480:9, 3480:12, 3480:15, 3480:16, 3480:17, 3481:12, 3481:16, 3481:17, 3481:22, 3482:21, 3487:23  <b>conversations</b> [18] - 3361:8, 3373:8, 3376:10, 3386:16, 3396:23, 3397:5, 3400:15, 3400:20, 3407:13, 3409:21, 3415:13, 3457:14, 3459:25, 3474:12, 3481:13, 3488:7, 3488:17, 3489:12  <b>convey</b> [2] - 3363:11, 3363:12  <b>convinced</b> [1] - 3433:21  <b>cooks</b> [1] - 3486:9  <b>copies</b> [3] - 3356:25, 3403:12, 3465:21</p>
--	---	---

<p><b>cops</b> [1] - 3430:21  <b>copy</b> [1] - 3404:4  <b>corner</b> [1] - 3362:16  <b>correct</b> [207] - 3360:16, 3361:6, 3362:5, 3362:23, 3363:16, 3364:2, 3365:10, 3365:21, 3366:5, 3366:8, 3366:16, 3367:15, 3367:25, 3368:1, 3368:7, 3368:12, 3368:15, 3369:3, 3371:11, 3371:14, 3372:13, 3372:17, 3373:3, 3373:6, 3373:11, 3373:14, 3374:12, 3374:16, 3375:2, 3375:8, 3375:23, 3376:1, 3376:4, 3376:5, 3376:16, 3376:20, 3377:4, 3378:19, 3378:23, 3380:9, 3380:12, 3382:15, 3382:18, 3383:13, 3384:14, 3384:15, 3384:17, 3384:23, 3385:13, 3386:7, 3387:8, 3387:16, 3388:8, 3388:18, 3388:24, 3389:7, 3389:13, 3390:7, 3390:10, 3390:13, 3390:16, 3390:20, 3390:24, 3391:2, 3391:3, 3391:5, 3393:12, 3394:7, 3394:10, 3394:14, 3394:22, 3396:3, 3396:6, 3396:9, 3396:20, 3404:24, 3405:9, 3405:12, 3405:18, 3405:25, 3406:12, 3406:15, 3407:20, 3408:2, 3408:13, 3408:23, 3409:6, 3409:10, 3410:9, 3410:20, 3411:8, 3411:15, 3412:21, 3413:5, 3413:9, 3413:21, 3414:1, 3414:20, 3415:20, 3417:9, 3417:11, 3418:7, 3418:20, 3418:25, 3419:7, 3419:16, 3420:15, 3420:18, 3420:23, 3421:18, 3422:5, 3422:9, 3422:18, 3423:5, 3423:9, 3424:6, 3424:14, 3424:18, 3425:10, 3425:24, 3426:10, 3427:20, 3428:4, 3428:13, 3428:20, 3428:23, 3429:23, 3430:7, 3430:13, 3430:21, 3431:11, 3431:18, 3432:10, 3433:1, 3433:11, 3433:16, 3433:19, 3433:23, 3434:2, 3434:5, 3439:14, 3442:16, 3448:12, 3448:15, 3448:21, 3451:4, 3455:10, 3456:4, 3456:18, 3456:21, 3456:24, 3457:10, 3457:18, 3457:24, 3458:11, 3458:16, 3458:24, 3460:13, 3462:15, 3462:21, 3463:20, 3466:24, 3467:12, 3467:18, 3467:21, 3468:1, 3468:8, 3468:12, 3468:14, 3469:13, 3469:16, 3469:23, 3470:6, 3472:5, 3472:9, 3472:13, 3473:20, 3474:8, 3476:1, 3476:23, 3477:1, 3477:22, 3477:24, 3479:11, 3479:21, 3479:23, 3480:1, 3480:19, 3482:15, 3483:7, 3485:6, 3485:17, 3486:2, 3486:17, 3486:23, 3487:8, 3487:14, 3488:5, 3489:18, 3490:5, 3490:10, 3490:14, 3491:9, 3491:17, 3491:18, 3492:4, 3496:25  <b>cost</b> [1] - 3468:21  <b>counsel</b> [6] - 3355:19, 3355:23, 3356:1, 3356:2, 3358:10, 3446:2  <b>counted</b> [1] - 3364:19</p>	<p><b>country</b> [2] - 3420:6, 3423:16  <b>course</b> [5] - 3383:6, 3406:6, 3444:8, 3451:9, 3500:2  <b>court</b> [7] - 3399:12, 3403:1, 3408:22, 3409:2, 3446:7, 3447:1, 3493:5  <b>COURT</b> [120] - 3354:1, 3355:10, 3355:14, 3355:17, 3355:20, 3356:8, 3356:14, 3356:17, 3356:20, 3356:25, 3357:13, 3357:19, 3358:14, 3358:16, 3359:6, 3359:9, 3359:18, 3359:21, 3359:25, 3360:3, 3364:5, 3367:5, 3370:13, 3370:16, 3370:22, 3375:10, 3377:1, 3377:13, 3378:7, 3378:14, 3378:16, 3385:2, 3395:24, 3396:22, 3397:2, 3397:18, 3398:24, 3399:7, 3399:17, 3400:4, 3400:12, 3400:19, 3401:6, 3402:7, 3403:2, 3403:5, 3403:19, 3403:23, 3404:6, 3404:20, 3407:11, 3407:17, 3411:23, 3411:25, 3412:2, 3412:6, 3416:2, 3416:9, 3419:23, 3420:5, 3422:13, 3426:22, 3427:1, 3433:13, 3435:20, 3436:11, 3442:24, 3443:3, 3444:1, 3444:21, 3445:4, 3445:6, 3445:10, 3446:2, 3447:2, 3447:7, 3447:12, 3447:14, 3447:19, 3447:21, 3447:24, 3454:6, 3456:12, 3462:6, 3466:20, 3472:7, 3480:24, 3492:10, 3492:22, 3493:3, 3493:6, 3493:9, 3493:11, 3493:16, 3493:20, 3493:24, 3494:2, 3494:7, 3494:9, 3496:7, 3499:2, 3499:23, 3500:5, 3501:1, 3501:4, 3501:17, 3501:19, 3501:22, 3502:1, 3502:9, 3502:14, 3502:18, 3503:23, 3504:1, 3504:18, 3505:12, 3506:2, 3506:9, 3506:13, 3506:16  <b>Court</b> [6] - 3355:1, 3355:18, 3356:11, 3358:6, 3503:3, 3503:10  <b>Court's</b> [1] - 3356:7  <b>courtesy</b> [1] - 3356:25  <b>Courthouse</b> [1] - 3354:7  <b>courtroom</b> [3] - 3444:8, 3445:5, 3499:14  <b>cousin</b> [2] - 3460:15, 3461:23  <b>cousin's</b> [2] - 3460:13, 3461:13  <b>cover</b> [3] - 3357:24, 3392:17, 3454:15  <b>CR</b> [1] - 3354:4  <b>crash</b> [1] - 3442:1  <b>crates</b> [1] - 3423:8  <b>create</b> [2] - 3479:6, 3484:7  <b>created</b> [1] - 3477:25  <b>credentials</b> [1] - 3502:20  <b>cricket</b> [2] - 3485:22, 3485:23  <b>criminal</b> [1] - 3408:16  <b>cross</b> [11] - 3359:22, 3360:3, 3399:15, 3444:22, 3444:23, 3445:15, 3448:1, 3493:1, 3493:21, 3499:24, 3503:11  <b>CROSS</b> [4] - 3360:9, 3390:1, 3471:1, 3507:6  <b>cross-examination</b> [10] - 3359:22,</p>	<p>3360:3, 3399:15, 3444:22, 3444:23, 3445:15, 3448:1, 3493:1, 3493:21, 3499:24  <b>CROSS-EXAMINATION</b> [4] - 3360:9, 3390:1, 3471:1, 3507:6  <b>cup</b> [1] - 3485:23  <b>cure</b> [2] - 3468:11, 3469:1  <b>currency</b> [1] - 3391:18  <b>curtail</b> [1] - 3445:25  <b>cut</b> [6] - 3377:13, 3399:17, 3432:22, 3432:23  <b>cylinders</b> [1] - 3477:22</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>damaging</b> [1] - 3474:2  <b>dangerous</b> [2] - 3406:19, 3406:23  <b>date</b> [15] - 3362:18, 3362:20, 3370:1, 3370:3, 3370:8, 3370:17, 3370:21, 3371:2, 3387:19, 3387:25, 3404:20, 3404:22, 3409:23, 3448:6, 3466:20  <b>dates</b> [2] - 3398:16, 3408:22  <b>Dawood</b> [113] - 3361:2, 3367:24, 3368:25, 3369:3, 3371:5, 3371:14, 3372:2, 3372:5, 3372:8, 3372:10, 3372:12, 3372:20, 3372:23, 3373:2, 3373:5, 3373:9, 3373:22, 3374:8, 3374:14, 3374:18, 3374:22, 3375:1, 3375:15, 3375:20, 3375:23, 3376:1, 3376:15, 3376:19, 3376:22, 3377:3, 3378:10, 3378:18, 3378:25, 3379:9, 3379:13, 3380:18, 3381:1, 3381:6, 3381:13, 3381:15, 3381:19, 3381:24, 3382:8, 3382:9, 3382:20, 3382:23, 3383:4, 3383:5, 3383:7, 3383:8, 3383:12, 3384:19, 3386:4, 3386:18, 3386:22, 3387:3, 3388:5, 3388:16, 3388:23, 3389:11, 3391:25, 3405:11, 3405:20, 3405:22, 3406:2, 3406:3, 3406:7, 3406:14, 3407:7, 3411:15, 3412:23, 3414:8, 3414:10, 3414:19, 3415:7, 3415:12, 3415:17, 3415:18, 3415:21, 3416:11, 3416:19, 3417:11, 3417:17, 3421:6, 3436:15, 3456:7, 3456:9, 3456:16, 3457:9, 3457:23, 3458:4, 3462:14, 3462:18, 3475:8, 3475:18, 3475:25, 3476:3, 3476:9, 3476:15, 3487:2, 3487:12, 3487:22, 3487:23, 3487:24, 3488:8, 3488:14, 3488:18, 3489:13  <b>Dawood's</b> [6] - 3379:11, 3379:13, 3380:7, 3381:25, 3392:6, 3406:20  <b>days</b> [6] - 3371:13, 3371:16, 3371:24, 3372:15, 3472:21, 3473:18  <b>daytime</b> [1] - 3453:24  <b>deal</b> [4] - 3360:19, 3369:6, 3489:8, 3489:15  <b>dealt</b> [1] - 3364:2  <b>December</b> [14] - 3387:19, 3387:20,</p>
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<p>3388:2, 3392:23, 3399:2, 3404:23, 3407:24, 3408:21, 3409:6, 3409:8, 3409:9, 3409:19, 3411:17, 3420:25</p> <p><b>decided</b> [2] - 3356:1, 3378:18</p> <p><b>decides</b> [1] - 3418:13</p> <p><b>deciding</b> [1] - 3410:22</p> <p><b>decision</b> [2] - 3379:14, 3460:23</p> <p><b>Defendant's</b> [1] - 3403:17</p> <p><b>Defendants</b> [2] - 3354:10, 3354:21</p> <p><b>Defenders</b> [1] - 3354:22</p> <p><b>defense</b> [12] - 3355:19, 3355:23, 3356:1, 3356:2, 3356:8, 3359:3, 3359:18, 3399:19, 3400:20, 3502:6, 3505:18, 3505:23</p> <p><b>definite</b> [1] - 3375:13</p> <p><b>definitely</b> [1] - 3451:7</p> <p><b>Defreitas</b> [176] - 3354:22, 3360:4, 3360:14, 3360:20, 3360:24, 3361:5, 3361:14, 3361:17, 3362:22, 3363:3, 3365:1, 3365:9, 3365:20, 3366:3, 3368:10, 3368:19, 3369:7, 3371:5, 3372:16, 3372:20, 3374:7, 3374:8, 3374:10, 3375:23, 3376:1, 3376:23, 3376:24, 3377:3, 3378:10, 3378:18, 3378:20, 3378:23, 3379:10, 3381:13, 3381:20, 3383:12, 3384:12, 3385:10, 3386:5, 3386:11, 3386:17, 3386:23, 3387:4, 3389:1, 3389:12, 3390:12, 3392:18, 3392:25, 3394:3, 3394:9, 3394:13, 3395:13, 3395:21, 3406:4, 3406:11, 3408:12, 3410:3, 3418:24, 3419:5, 3419:6, 3419:12, 3420:7, 3420:14, 3421:6, 3422:3, 3422:8, 3423:15, 3423:25, 3424:8, 3424:17, 3425:6, 3426:16, 3427:13, 3428:2, 3428:12, 3428:25, 3430:1, 3431:10, 3433:3, 3433:14, 3434:16, 3437:12, 3437:21, 3438:4, 3438:10, 3438:19, 3439:1, 3439:13, 3440:19, 3441:14, 3443:4, 3445:7, 3448:2, 3453:17, 3455:9, 3455:13, 3456:10, 3456:16, 3456:17, 3456:20, 3456:23, 3457:5, 3457:7, 3457:8, 3457:15, 3457:17, 3457:20, 3458:5, 3459:6, 3461:2, 3461:10, 3461:19, 3461:23, 3463:18, 3464:5, 3464:11, 3465:14, 3466:15, 3467:7, 3467:16, 3468:4, 3468:7, 3469:4, 3469:12, 3469:22, 3469:25, 3470:14, 3470:15, 3471:17, 3472:8, 3472:15, 3472:16, 3472:19, 3472:22, 3473:4, 3474:20, 3475:3, 3475:12, 3476:4, 3477:20, 3479:25, 3480:14, 3481:4, 3481:7, 3481:14, 3481:21, 3482:22, 3484:14, 3485:15, 3485:20, 3485:21, 3485:25, 3486:1, 3486:19, 3486:22, 3487:13, 3487:22, 3487:24, 3488:4, 3489:17, 3490:5, 3490:25, 3491:20, 3492:1, 3494:16, 3494:21, 3495:5, 3495:22, 3496:19, 3497:14, 3498:12, 3498:19, 3506:4</p>	<p><b>DEFREITAS</b> [1] - 3354:8</p> <p><b>Defreitas's</b> [3] - 3367:20, 3395:2, 3462:13</p> <p><b>DeFrietas</b> [4] - 3448:14, 3448:19, 3450:14, 3451:15</p> <p><b>delayed</b> [1] - 3394:3</p> <p><b>deliberating</b> [1] - 3403:9</p> <p><b>deliberations</b> [2] - 3403:12, 3407:14</p> <p><b>denied</b> [1] - 3358:1</p> <p><b>departing</b> [1] - 3363:1</p> <p><b>department</b> [1] - 3386:19</p> <p><b>deprive</b> [1] - 3502:3</p> <p><b>details</b> [3] - 3361:14, 3361:19, 3364:18</p> <p><b>detained</b> [1] - 3452:6</p> <p><b>detected</b> [5] - 3363:23, 3439:16, 3454:2, 3478:21, 3497:19</p> <p><b>Detective</b> [6] - 3355:24, 3356:2, 3356:3, 3356:4, 3356:5, 3356:15</p> <p><b>determination</b> [1] - 3400:9</p> <p><b>devastation</b> [2] - 3473:23, 3473:24</p> <p><b>device</b> [1] - 3484:2</p> <p><b>devices</b> [1] - 3475:4</p> <p><b>diabetes</b> [1] - 3468:11</p> <p><b>different</b> [12] - 3365:7, 3376:3, 3376:5, 3376:13, 3377:22, 3385:17, 3400:24, 3416:13, 3428:13, 3439:20, 3470:16, 3479:13</p> <p><b>difficult</b> [2] - 3413:8, 3413:13</p> <p><b>diligence</b> [1] - 3421:17</p> <p><b>dinner</b> [1] - 3506:7</p> <p><b>direct</b> [2] - 3441:25, 3496:5</p> <p><b>directing</b> [5] - 3410:6, 3411:7, 3428:16, 3443:9, 3453:9</p> <p><b>directions</b> [1] - 3443:18</p> <p><b>directly</b> [1] - 3496:8</p> <p><b>directs</b> [1] - 3428:15</p> <p><b>disagrees</b> [1] - 3398:17</p> <p><b>disappeared</b> [1] - 3406:18</p> <p><b>disappearing</b> [3] - 3405:17, 3405:20, 3405:22</p> <p><b>discuss</b> [8] - 3371:18, 3444:24, 3444:25, 3446:4, 3487:2, 3492:16, 3499:25, 3503:4</p> <p><b>discussed</b> [9] - 3374:17, 3376:4, 3377:18, 3378:11, 3379:11, 3462:3, 3472:3, 3475:3, 3475:24</p> <p><b>discussing</b> [4] - 3379:18, 3406:16, 3406:17, 3486:24</p> <p><b>discussion</b> [4] - 3365:19, 3395:3, 3410:8, 3505:19</p> <p><b>discussions</b> [5] - 3371:10, 3387:12, 3456:13, 3456:15, 3461:25</p> <p><b>disease</b> [1] - 3469:1</p> <p><b>disk</b> [2] - 3401:16, 3401:18</p> <p><b>display</b> [5] - 3495:16, 3495:19, 3495:24, 3496:11</p> <p><b>dispute</b> [1] - 3503:22</p> <p><b>disputes</b> [1] - 3386:25</p> <p><b>distinguish</b> [1] - 3485:19</p>	<p><b>distortion</b> [1] - 3478:1</p> <p><b>DISTRICT</b> [3] - 3354:1, 3354:1, 3354:13</p> <p><b>diverting</b> [1] - 3483:22</p> <p><b>Doctor</b> [1] - 3503:7</p> <p><b>doctor</b> [3] - 3468:17, 3469:3</p> <p><b>document</b> [3] - 3361:23, 3362:1, 3367:8</p> <p><b>documents</b> [3] - 3358:19, 3370:5, 3465:22</p> <p><b>dollars</b> [1] - 3416:25</p> <p><b>donations</b> [1] - 3392:12</p> <p><b>done</b> [11] - 3426:12, 3445:11, 3467:24, 3482:23, 3482:25, 3483:5, 3483:12, 3483:13, 3487:10</p> <p><b>DORA</b> [1] - 3354:13</p> <p><b>double</b> [2] - 3456:8, 3498:4</p> <p><b>doubt</b> [3] - 3456:9, 3458:18, 3458:19</p> <p><b>down</b> [31] - 3361:5, 3368:17, 3381:7, 3386:13, 3392:12, 3410:11, 3410:16, 3413:1, 3413:2, 3414:16, 3418:23, 3423:24, 3429:2, 3429:13, 3432:3, 3438:12, 3438:14, 3441:20, 3445:4, 3449:4, 3459:22, 3463:23, 3463:24, 3463:25, 3464:2, 3472:19, 3480:23, 3487:18, 3489:17, 3500:5, 3506:12</p> <p><b>draft</b> [1] - 3473:5</p> <p><b>dramatically</b> [1] - 3409:12</p> <p><b>draw</b> [4] - 3444:7, 3449:2, 3492:15, 3499:12</p> <p><b>drifting</b> [1] - 3474:21</p> <p><b>drill</b> [1] - 3499:12</p> <p><b>drive</b> [17] - 3428:22, 3430:18, 3431:22, 3432:25, 3434:4, 3434:6, 3434:8, 3435:4, 3439:8, 3448:14, 3448:20, 3457:2, 3470:13, 3470:14, 3470:15, 3483:3</p> <p><b>driven</b> [4] - 3437:5, 3473:13, 3473:16, 3487:7</p> <p><b>drives</b> [1] - 3448:21</p> <p><b>driving</b> [19] - 3428:19, 3429:16, 3432:9, 3432:16, 3433:4, 3433:9, 3433:21, 3433:22, 3434:1, 3435:6, 3441:14, 3442:1, 3442:15, 3443:14, 3449:19, 3464:17, 3473:18, 3496:6, 3498:13</p> <p><b>drove</b> [4] - 3435:15, 3435:18, 3436:6, 3459:21</p> <p><b>duly</b> [1] - 3360:7</p> <p><b>during</b> [11] - 3385:10, 3390:18, 3400:22, 3407:14, 3418:24, 3440:25, 3444:8, 3444:10, 3448:20, 3484:13, 3492:17</p> <p><b>DVD</b> [1] - 3468:23</p> <p><b>dynamic</b> [1] - 3491:6</p> <p><b>dynamite</b> [1] - 3475:20</p>
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<p style="text-align: center;"><b>E</b></p> <p><b>early</b> [1] - 3457:11</p> <p><b>ears</b> [1] - 3391:4</p> <p><b>East</b> [2] - 3354:19, 3355:1</p> <p><b>EASTERN</b> [1] - 3354:1</p> <p><b>eating</b> [1] - 3392:8</p> <p><b>economic</b> [1] - 3469:15</p> <p><b>edits</b> [1] - 3399:19</p> <p><b>effect</b> [1] - 3411:7</p> <p><b>eight</b> [6] - 3437:7, 3467:3, 3469:7, 3471:18, 3474:16, 3474:18</p> <p><b>either</b> [2] - 3371:7, 3463:24</p> <p><b>either/or</b> [1] - 3474:6</p> <p><b>EI</b> [2] - 3423:7, 3465:23</p> <p><b>electricity</b> [2] - 3484:21, 3486:20</p> <p><b>elements</b> [1] - 3477:5</p> <p><b>elicit</b> [3] - 3357:16, 3503:14, 3503:15</p> <p><b>elude</b> [4] - 3441:8, 3484:8, 3484:10</p> <p><b>embellish</b> [1] - 3379:22</p> <p><b>emigrate</b> [1] - 3417:17</p> <p><b>end</b> [17] - 3359:13, 3371:2, 3383:16, 3384:16, 3385:6, 3385:10, 3390:6, 3392:21, 3393:22, 3400:7, 3403:8, 3405:7, 3409:24, 3445:20, 3446:2, 3489:16, 3501:24</p> <p><b>English</b> [1] - 3399:1</p> <p><b>enjoy</b> [2] - 3444:19, 3499:21</p> <p><b>enter</b> [1] - 3464:1</p> <p><b>entering</b> [3] - 3359:6, 3447:12, 3493:14</p> <p><b>entire</b> [3] - 3399:23, 3400:7, 3428:22</p> <p><b>entitled</b> [1] - 3407:15</p> <p><b>equipment</b> [2] - 3475:4, 3476:2</p> <p><b>equivalent</b> [3] - 3401:5, 3401:9, 3467:2</p> <p><b>errand</b> [1] - 3367:24</p> <p><b>escape</b> [1] - 3439:16</p> <p><b>especially</b> [1] - 3453:24</p> <p><b>ESQ</b> [4] - 3354:21, 3354:21, 3354:24, 3354:24</p> <p><b>Eve</b> [1] - 3421:1</p> <p><b>eve</b> [4] - 3387:22, 3387:23, 3388:3, 3388:4</p> <p><b>evening</b> [1] - 3454:13</p> <p><b>event</b> [2] - 3363:2, 3371:1</p> <p><b>events</b> [4] - 3370:19, 3370:24, 3495:1, 3495:2</p> <p><b>eventually</b> [4] - 3369:2, 3412:14, 3485:16, 3490:13</p> <p><b>evidence</b> [19] - 3370:14, 3398:19, 3398:21, 3398:23, 3398:25, 3399:1, 3401:11, 3401:14, 3404:1, 3407:13, 3465:25, 3491:18, 3492:7, 3494:7, 3501:10, 3501:15, 3504:24, 3505:22</p> <p><b>exact</b> [9] - 3363:10, 3369:13, 3370:1, 3370:8, 3370:17, 3371:1, 3401:21, 3405:2</p> <p><b>exactly</b> [16] - 3362:25, 3364:22,</p>	<p>3365:3, 3365:12, 3365:14, 3368:21, 3370:23, 3374:18, 3407:8, 3432:1, 3436:3, 3436:25, 3437:14, 3439:17, 3473:9</p> <p><b>examination</b> [11] - 3359:22, 3360:3, 3399:15, 3438:18, 3444:22, 3444:23, 3445:15, 3448:1, 3493:1, 3493:21, 3499:24</p> <p><b>EXAMINATION</b> [6] - 3360:9, 3390:1, 3422:1, 3453:1, 3471:1, 3507:6</p> <p><b>examined</b> [1] - 3360:8</p> <p><b>example</b> [2] - 3420:22, 3450:5</p> <p><b>except</b> [5] - 3376:11, 3431:10, 3442:7, 3463:11, 3463:12</p> <p><b>exchange</b> [3] - 3380:20, 3380:21, 3391:18</p> <p><b>excited</b> [2] - 3485:2, 3485:25</p> <p><b>excused</b> [1] - 3499:22</p> <p><b>excuses</b> [2] - 3396:15, 3396:17</p> <p><b>exhibit</b> [2] - 3440:15, 3463:14</p> <p><b>Exhibit</b> [34] - 3361:24, 3362:11, 3367:4, 3369:15, 3380:2, 3383:22, 3395:7, 3403:17, 3403:22, 3407:10, 3412:8, 3422:12, 3426:15, 3448:5, 3448:9, 3448:13, 3454:4, 3454:9, 3458:20, 3460:2, 3462:5, 3462:8, 3466:2, 3466:5, 3466:7, 3466:18, 3470:8, 3480:4, 3480:25, 3481:20, 3482:1, 3487:17, 3492:7, 3494:6</p> <p><b>exhibits</b> [2] - 3505:6, 3505:9</p> <p><b>exist</b> [1] - 3403:13</p> <p><b>expect</b> [1] - 3483:3</p> <p><b>expected</b> [2] - 3387:12, 3393:11</p> <p><b>expecting</b> [2] - 3379:10, 3417:4</p> <p><b>expensive</b> [1] - 3392:9</p> <p><b>expert</b> [7] - 3503:19, 3504:19, 3504:20, 3504:25, 3505:8, 3505:20</p> <p><b>experts</b> [1] - 3502:17</p> <p><b>explain</b> [2] - 3363:17, 3491:22</p> <p><b>explained</b> [7] - 3379:6, 3407:5, 3453:14, 3474:10, 3476:8, 3477:25, 3479:4</p> <p><b>explaining</b> [4] - 3407:6, 3407:8, 3423:11, 3484:8</p> <p><b>explanation</b> [1] - 3407:7</p> <p><b>explosion</b> [1] - 3479:7</p> <p><b>explosives</b> [4] - 3377:25, 3378:4, 3476:5, 3483:19</p> <p><b>exposed</b> [1] - 3423:4</p> <p><b>expressed</b> [4] - 3416:21, 3416:22, 3458:19</p> <p><b>expressing</b> [1] - 3421:9</p> <p><b>extent</b> [2] - 3403:12, 3450:14</p> <p><b>extreme</b> [3] - 3450:3, 3450:16</p> <p><b>eyes</b> [1] - 3391:4</p>	<p><b>failed</b> [1] - 3396:4</p> <p><b>fairly</b> [4] - 3371:23, 3371:24, 3465:12, 3476:12</p> <p><b>falling</b> [2] - 3484:21, 3486:20</p> <p><b>false</b> [2] - 3423:8, 3465:22</p> <p><b>falsely</b> [1] - 3423:9</p> <p><b>families</b> [1] - 3424:5</p> <p><b>family</b> [3] - 3386:1, 3424:2, 3424:3</p> <p><b>far</b> [4] - 3358:17, 3374:3, 3471:9, 3501:22</p> <p><b>favor</b> [3] - 3389:10, 3391:16, 3392:10</p> <p><b>favours</b> [1] - 3368:1</p> <p><b>FBI</b> [15] - 3419:10, 3421:14, 3421:19, 3422:7, 3422:8, 3425:10, 3425:19, 3460:25, 3462:1, 3489:25, 3490:3, 3490:20, 3490:22, 3490:23, 3491:18</p> <p><b>Federal</b> [1] - 3354:22</p> <p><b>felt</b> [3] - 3421:16, 3422:4, 3473:7</p> <p><b>fence</b> [2] - 3430:25, 3443:24</p> <p><b>fences</b> [1] - 3431:3</p> <p><b>few</b> [9] - 3368:1, 3371:13, 3371:15, 3372:15, 3375:21, 3387:13, 3442:2, 3496:18</p> <p><b>fifth</b> [1] - 3383:25</p> <p><b>fifty</b> [1] - 3455:3</p> <p><b>filing</b> [1] - 3502:25</p> <p><b>fill</b> [1] - 3434:20</p> <p><b>filled</b> [2] - 3445:8, 3479:5</p> <p><b>film</b> [1] - 3477:22</p> <p><b>filming</b> [8] - 3494:17, 3494:19, 3495:20, 3495:23, 3497:12, 3497:15, 3497:16</p> <p><b>final</b> [1] - 3391:7</p> <p><b>finance</b> [1] - 3415:10</p> <p><b>finances</b> [15] - 3414:11, 3414:23, 3415:1, 3415:8, 3415:11, 3415:14, 3415:16, 3416:3, 3416:4, 3416:7, 3416:20, 3416:24, 3417:1</p> <p><b>financial</b> [1] - 3415:24</p> <p><b>financing</b> [1] - 3415:11</p> <p><b>finder</b> [2] - 3497:9, 3497:10</p> <p><b>findings</b> [3] - 3374:19, 3459:15, 3459:16</p> <p><b>fine</b> [8] - 3356:10, 3358:3, 3402:6, 3402:8, 3420:2, 3442:22, 3502:13, 3502:15</p> <p><b>finish</b> [4] - 3384:2, 3389:19, 3413:19, 3445:22</p> <p><b>finished</b> [2] - 3360:13, 3438:17</p> <p><b>first</b> [43] - 3355:14, 3360:15, 3368:12, 3368:13, 3369:7, 3371:10, 3372:1, 3372:3, 3372:4, 3372:5, 3373:1, 3373:5, 3373:20, 3373:21, 3376:14, 3383:2, 3388:10, 3388:13, 3389:4, 3389:18, 3390:3, 3390:22, 3392:8, 3399:9, 3399:21, 3403:2, 3413:8, 3415:4, 3420:24, 3430:9, 3430:12, 3430:16, 3447:9, 3448:6, 3453:23, 3461:6, 3475:12, 3480:18, 3481:19, 3484:17, 3494:16, 3494:19</p>
	<p style="text-align: center;"><b>F</b></p>	
	<p><b>fact</b> [3] - 3373:2, 3488:12, 3488:15</p>	

<p><b>fitted</b> [1] - 3426:5  <b>five</b> [12] - 3429:16, 3430:1, 3453:3, 3453:4, 3453:6, 3458:21, 3467:2, 3467:4, 3468:10, 3474:18  <b>fixing</b> [1] - 3443:20  <b>flashers</b> [3] - 3441:19, 3441:22, 3442:2  <b>flew</b> [8] - 3369:12, 3369:17, 3369:22, 3370:3, 3370:7, 3370:24, 3371:2, 3371:3  <b>flight</b> [4] - 3370:9, 3488:14, 3489:7, 3489:8  <b>flip</b> [1] - 3357:5  <b>floor</b> [1] - 3496:1  <b>flow</b> [2] - 3358:22, 3364:6  <b>flown</b> [1] - 3360:14  <b>fluid</b> [2] - 3358:21, 3505:14  <b>fly</b> [4] - 3363:23, 3422:24, 3488:15, 3488:16  <b>follow</b> [1] - 3443:18  <b>following</b> [3] - 3355:9, 3431:3, 3442:22  <b>follows</b> [1] - 3360:8  <b>food</b> [3] - 3366:22, 3392:6, 3506:11  <b>fool</b> [1] - 3458:5  <b>foolish</b> [1] - 3458:8  <b>foreclosing</b> [1] - 3358:20  <b>foreman</b> [2] - 3439:3, 3440:12  <b>foresaw</b> [1] - 3504:23  <b>form</b> [6] - 3433:13, 3435:20, 3444:6, 3472:7, 3492:15, 3499:12  <b>formally</b> [1] - 3380:23  <b>forth</b> [4] - 3413:20, 3413:23, 3414:12, 3424:12  <b>forward</b> [8] - 3363:4, 3363:9, 3363:13, 3363:14, 3379:16, 3418:11, 3418:12, 3504:10  <b>four</b> [18] - 3364:11, 3364:25, 3365:3, 3365:4, 3424:16, 3424:17, 3424:22, 3429:5, 3429:6, 3450:5, 3453:15, 3453:16, 3455:3, 3460:3, 3462:9, 3467:4, 3471:21, 3471:22  <b>fourth</b> [1] - 3380:3  <b>Francis</b> [18] - 3355:14, 3357:4, 3359:22, 3360:11, 3361:25, 3380:24, 3398:7, 3447:19, 3448:1, 3448:4, 3455:8, 3467:6, 3480:3, 3480:13, 3493:21, 3494:14, 3498:19, 3499:24  <b>free</b> [2] - 3445:2, 3463:22  <b>friend</b> [2] - 3366:13, 3366:19  <b>friends</b> [3] - 3427:20, 3476:18, 3480:7  <b>frighten</b> [2] - 3483:23, 3484:3  <b>front</b> [2] - 3371:18, 3441:18  <b>frustrated</b> [1] - 3421:13  <b>frustration</b> [1] - 3421:9  <b>fuel</b> [5] - 3435:7, 3435:13, 3435:18, 3436:8, 3437:5  <b>full</b> [1] - 3499:7  <b>fund</b> [1] - 3395:15  <b>funding</b> [1] - 3413:22</p>	<p style="text-align: center;"><b>G</b></p> <p><b>games</b> [2] - 3485:22, 3485:23  <b>gap</b> [3] - 3465:7, 3465:8  <b>gas</b> [1] - 3479:6  <b>gasoline</b> [1] - 3479:5  <b>gate</b> [1] - 3495:8  <b>gel</b> [2] - 3378:4, 3475:20  <b>Gene</b> [1] - 3355:1  <b>generally</b> [1] - 3374:11  <b>gentle</b> [1] - 3502:2  <b>gentlemen</b> [4] - 3359:10, 3447:15, 3447:25, 3499:3  <b>Georgia</b> [1] - 3385:23  <b>gist</b> [1] - 3363:11  <b>given</b> [10] - 3357:21, 3358:8, 3364:18, 3364:24, 3398:14, 3400:20, 3404:4, 3445:15, 3460:19  <b>goings</b> [1] - 3421:15  <b>goings-on</b> [1] - 3421:15  <b>gonna</b> [2] - 3438:4, 3438:11  <b>goods</b> [1] - 3439:19  <b>Government</b> [27] - 3354:15, 3361:23, 3362:11, 3367:3, 3380:1, 3383:22, 3395:7, 3422:11, 3448:4, 3448:9, 3448:13, 3454:4, 3454:9, 3458:20, 3460:2, 3462:4, 3462:7, 3466:2, 3466:5, 3466:7, 3466:18, 3470:8, 3480:4, 3480:25, 3482:1, 3487:17, 3494:6  <b>government</b> [17] - 3359:16, 3399:8, 3399:18, 3400:24, 3400:25, 3403:21, 3404:2, 3444:24, 3445:17, 3481:20, 3493:1, 3500:1, 3503:3, 3503:20, 3504:9, 3504:23, 3505:19  <b>Government's</b> [1] - 3369:15  <b>government's</b> [3] - 3502:17, 3502:23, 3504:7  <b>greatest</b> [1] - 3467:24  <b>green</b> [3] - 3443:16, 3498:5, 3498:9  <b>greetings</b> [2] - 3380:20, 3380:21  <b>grenade</b> [3] - 3478:7, 3478:17, 3478:19  <b>grenades</b> [3] - 3478:2, 3478:8, 3479:3  <b>ground</b> [2] - 3434:25, 3437:1  <b>group</b> [5] - 3386:6, 3386:8, 3416:4, 3416:6, 3420:23  <b>grown</b> [1] - 3464:19  <b>guard</b> [3] - 3449:6, 3449:10, 3449:18  <b>guess</b> [6] - 3358:23, 3377:9, 3377:16, 3378:8, 3394:18, 3396:14  <b>guided</b> [1] - 3442:18  <b>guy</b> [16] - 3373:10, 3373:15, 3373:16, 3373:18, 3373:25, 3374:1, 3376:16, 3381:6, 3381:8, 3382:21, 3401:17, 3415:10, 3415:13, 3441:7  <b>Guyana</b> [84] - 3360:15, 3360:20, 3360:24, 3361:9, 3361:18, 3362:5, 3362:23, 3364:10, 3364:16, 3365:2,</p>	<p>3365:10, 3365:11, 3366:3, 3366:8, 3368:6, 3368:10, 3368:15, 3368:20, 3369:7, 3369:12, 3370:25, 3371:4, 3371:10, 3372:1, 3373:18, 3373:19, 3374:2, 3374:12, 3374:21, 3375:19, 3377:6, 3379:12, 3379:14, 3380:8, 3385:7, 3387:6, 3387:16, 3388:13, 3390:18, 3390:22, 3391:4, 3391:8, 3391:12, 3392:18, 3393:2, 3395:11, 3396:2, 3401:19, 3405:13, 3405:25, 3406:19, 3415:22, 3416:16, 3416:17, 3416:19, 3422:3, 3456:15, 3457:10, 3457:16, 3467:18, 3476:19, 3477:1, 3477:6, 3478:20, 3478:24, 3479:4, 3479:9, 3479:20, 3480:1, 3480:2, 3480:7, 3480:18, 3485:22, 3486:1, 3486:2, 3486:10, 3486:16, 3486:22, 3487:13, 3488:1, 3488:5, 3488:9  <b>Guyanese</b> [2] - 3374:1, 3391:19  <b>guys</b> [11] - 3371:7, 3380:8, 3416:19, 3417:7, 3438:14, 3439:22, 3451:8, 3454:20, 3476:3, 3484:13, 3494:24</p> <p style="text-align: center;"><b>H</b></p> <p><b>Hair</b> [6] - 3472:1, 3472:4, 3472:8, 3472:11, 3472:16  <b>half</b> [4] - 3419:23, 3419:25, 3444:2, 3444:18  <b>Hamas</b> [2] - 3502:22, 3503:14  <b>hand</b> [3] - 3362:16, 3496:5, 3496:8  <b>handed</b> [1] - 3496:19  <b>hangar</b> [2] - 3441:18, 3441:21  <b>Hanratty</b> [4] - 3355:24, 3356:2, 3356:3, 3356:5  <b>happy</b> [2] - 3420:21, 3501:25  <b>hate</b> [1] - 3505:13  <b>head</b> [2] - 3496:8, 3496:9  <b>heads</b> [1] - 3423:22  <b>health</b> [1] - 3421:2  <b>hear</b> [9] - 3365:24, 3400:25, 3403:14, 3407:12, 3407:14, 3407:15, 3425:6, 3475:9, 3502:7  <b>heard</b> [3] - 3444:8, 3466:4, 3502:6  <b>hearings</b> [1] - 3408:22  <b>hearsay</b> [2] - 3357:10, 3357:18  <b>heart</b> [1] - 3444:4  <b>held</b> [1] - 3393:20  <b>helicopter</b> [1] - 3474:24  <b>helicopters</b> [1] - 3423:16  <b>help</b> [14] - 3378:1, 3379:23, 3385:16, 3386:2, 3417:8, 3417:11, 3417:17, 3418:4, 3418:12, 3418:17, 3424:5, 3475:17, 3504:25  <b>helpful</b> [2] - 3379:5, 3380:3  <b>Hezbollah</b> [2] - 3503:16, 3505:1  <b>hidden</b> [4] - 3434:17, 3434:21, 3463:2, 3463:3  <b>hide</b> [1] - 3374:4</p>
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<p><b>hiding</b> [2] - 3373:18, 3497:18  <b>High</b> [1] - 3476:9  <b>high</b> [26] - 3363:19, 3363:21, 3363:22, 3363:24, 3364:2, 3364:7, 3364:17, 3364:19, 3364:22, 3365:12, 3365:14, 3365:19, 3366:2, 3451:21, 3452:4, 3459:15, 3459:16, 3459:23, 3460:8, 3460:20, 3461:10, 3475:19, 3484:21, 3491:3, 3491:5  <b>high-tech</b> [4] - 3451:21, 3452:4, 3491:3, 3491:5  <b>himself</b> [2] - 3424:9, 3439:21  <b>hold</b> [1] - 3419:25  <b>holding</b> [2] - 3366:21, 3496:8  <b>home</b> [4] - 3408:18, 3438:5, 3438:11, 3454:18  <b>Honor</b> [34] - 3355:12, 3355:13, 3355:15, 3355:22, 3356:10, 3356:19, 3356:22, 3357:14, 3357:20, 3358:11, 3359:2, 3359:17, 3359:19, 3359:20, 3397:9, 3397:12, 3397:17, 3403:4, 3404:8, 3426:25, 3492:9, 3494:3, 3494:10, 3498:25, 3501:13, 3501:21, 3501:25, 3502:13, 3504:11, 3504:17, 3506:1, 3506:11, 3506:12, 3506:15  <b>Honor's</b> [2] - 3357:17, 3501:11  <b>HONORABLE</b> [1] - 3354:13  <b>hope</b> [2] - 3378:7, 3444:3  <b>hoped</b> [1] - 3445:15  <b>hopeful</b> [1] - 3486:15  <b>hopefully</b> [4] - 3356:18, 3403:11, 3440:17, 3475:13  <b>hot</b> [7] - 3478:2, 3478:8, 3478:18, 3478:19, 3479:1, 3479:2, 3479:3  <b>hotel</b> [2] - 3392:7, 3486:2  <b>hour</b> [5] - 3419:24, 3419:25, 3444:3, 3444:18, 3445:21  <b>house</b> [5] - 3392:6, 3406:18, 3406:21, 3406:25, 3486:1  <b>housekeepers</b> [1] - 3486:9  <b>hum</b> [1] - 3464:10  <b>hundreds</b> [2] - 3451:4, 3452:1  <b>hurry</b> [9] - 3426:16, 3427:14, 3427:16, 3427:19, 3428:6, 3428:7, 3482:14  <b>hurt</b> [1] - 3479:7  <b>husband</b> [2] - 3367:17, 3468:18</p>	<p><b>Imam's</b> [1] - 3391:15  <b>Imams</b> [1] - 3416:13  <b>immediately</b> [2] - 3373:16, 3450:19  <b>immigration</b> [2] - 3417:11, 3418:7  <b>impacts</b> [1] - 3504:16  <b>impeach</b> [1] - 3399:14  <b>important</b> [3] - 3396:19, 3421:13, 3422:17  <b>importation</b> [1] - 3485:5  <b>importing</b> [1] - 3486:16  <b>impressed</b> [1] - 3456:1  <b>in-between</b> [1] - 3379:15  <b>included</b> [1] - 3381:19  <b>including</b> [1] - 3375:5  <b>increase</b> [1] - 3409:13  <b>indeed</b> [1] - 3406:7  <b>independently</b> [1] - 3399:16  <b>indicate</b> [1] - 3411:4  <b>indicated</b> [4] - 3358:6, 3488:8, 3503:7, 3503:10  <b>indicates</b> [1] - 3400:4  <b>individual</b> [5] - 3371:6, 3374:19, 3375:14, 3377:17, 3486:10  <b>individuals</b> [1] - 3484:1  <b>inform</b> [3] - 3421:3, 3421:14, 3421:19  <b>informant</b> [1] - 3386:10  <b>information</b> [23] - 3362:3, 3363:12, 3364:17, 3364:24, 3365:1, 3365:8, 3365:18, 3367:8, 3410:2, 3418:9, 3418:10, 3418:11, 3418:12, 3418:14, 3418:15, 3418:17, 3422:6, 3465:18, 3489:9, 3502:7, 3503:14, 3503:15, 3505:7  <b>informed</b> [10] - 3356:3, 3397:7, 3405:8, 3421:3, 3421:11, 3421:14, 3421:19, 3422:4, 3445:25, 3501:11  <b>informing</b> [1] - 3439:23  <b>input</b> [1] - 3377:24  <b>inquire</b> [1] - 3447:24  <b>inquiring</b> [1] - 3357:23  <b>inside</b> [4] - 3425:12, 3426:8, 3464:6, 3464:21  <b>instance</b> [1] - 3451:13  <b>instead</b> [1] - 3358:12  <b>instructed</b> [3] - 3458:14, 3459:22, 3489:19  <b>instructing</b> [2] - 3455:15, 3455:17  <b>instructions</b> [4] - 3405:6, 3442:23, 3488:16, 3490:11  <b>intend</b> [2] - 3400:3, 3505:7  <b>intending</b> [2] - 3503:13, 3503:15  <b>intends</b> [1] - 3504:10  <b>intention</b> [1] - 3409:23  <b>interest</b> [5] - 3372:9, 3374:22, 3389:10, 3421:2, 3438:15  <b>interested</b> [5] - 3382:24, 3395:17, 3424:8, 3484:20, 3491:11  <b>interior</b> [2] - 3374:4, 3494:14  <b>Internet</b> [2] - 3458:23, 3499:16</p>	<p><b>interrupt</b> [1] - 3364:5  <b>interrupting</b> [1] - 3404:16  <b>introduce</b> [5] - 3380:18, 3380:23, 3464:14, 3464:24, 3505:7  <b>introduced</b> [7] - 3373:24, 3403:23, 3468:17, 3468:20, 3491:13, 3492:7, 3505:10  <b>introduction</b> [1] - 3466:4  <b>introductions</b> [1] - 3375:14  <b>invented</b> [2] - 3468:16, 3484:22  <b>invest</b> [4] - 3469:4, 3469:13, 3470:1, 3486:15  <b>investing</b> [2] - 3484:17, 3484:20  <b>investment</b> [3] - 3468:8, 3470:5, 3484:14  <b>investor</b> [1] - 3486:13  <b>investors</b> [1] - 3485:4  <b>invitation</b> [3] - 3381:12, 3381:14, 3381:19  <b>invite</b> [3] - 3381:2, 3381:9, 3381:25  <b>invited</b> [3] - 3381:5, 3381:21, 3382:17  <b>inviting</b> [1] - 3381:16  <b>involved</b> [8] - 3364:11, 3364:12, 3364:15, 3365:5, 3380:12, 3387:7, 3399:3, 3424:6  <b>Iran</b> [1] - 3503:17  <b>IRIZARRY</b> [1] - 3354:13  <b>iron</b> [2] - 3478:4, 3479:5  <b>Islam</b> [2] - 3407:1, 3416:14  <b>Island</b> [3] - 3471:11, 3471:13, 3471:15  <b>Israel</b> [5] - 3423:16, 3423:17, 3423:19, 3423:22, 3425:1  <b>Israelis</b> [1] - 3423:7  <b>issue</b> [12] - 3376:15, 3396:7, 3399:13, 3400:12, 3400:13, 3437:12, 3437:21, 3440:15, 3502:16, 3503:14, 3503:19, 3504:14  <b>issues</b> [7] - 3386:8, 3386:9, 3397:13, 3399:21, 3445:17, 3481:14, 3503:18  <b>Italian</b> [2] - 3438:20, 3439:4  <b>items</b> [1] - 3417:8  <b>itself</b> [1] - 3363:19</p>
<p><b>I</b></p>		<p><b>J</b></p>
<p><b>ID</b> [2] - 3403:20, 3477:11  <b>idea</b> [8] - 3364:14, 3373:25, 3399:24, 3445:19, 3453:16, 3455:18, 3468:17, 3468:20  <b>ideals</b> [2] - 3376:11, 3378:2  <b>ideas</b> [1] - 3468:8  <b>identification</b> [1] - 3403:24  <b>identify</b> [2] - 3398:14, 3403:2  <b>illegal</b> [1] - 3432:18  <b>Imam</b> [2] - 3406:23, 3406:24</p>		<p><b>jail</b> [1] - 3443:22  <b>January</b> [31] - 3392:22, 3393:11, 3393:13, 3393:15, 3393:16, 3393:18, 3393:23, 3394:1, 3394:17, 3394:20, 3409:10, 3409:15, 3409:17, 3409:23, 3420:11, 3420:12, 3425:18, 3426:24, 3448:7, 3454:10, 3460:17, 3466:5, 3466:22, 3470:9, 3470:13, 3473:14, 3473:16, 3479:17, 3480:9, 3487:6  <b>Japanese</b> [2] - 3468:17, 3469:3  <b>JASON</b> [1] - 3354:17  <b>Jason</b> [1] - 3427:8  <b>Jeep</b> [1] - 3449:19  <b>JFK</b> [60] - 3364:20, 3365:14, 3365:16,</p>

<p>3382:24, 3389:7, 3389:12, 3390:16, 3393:1, 3415:5, 3420:9, 3420:13, 3421:21, 3422:18, 3430:12, 3432:9, 3433:4, 3433:6, 3434:5, 3434:14, 3437:23, 3441:14, 3442:5, 3443:3, 3449:20, 3449:25, 3450:8, 3450:15, 3453:9, 3453:13, 3453:14, 3454:18, 3454:19, 3456:10, 3456:14, 3456:21, 3456:23, 3457:1, 3457:3, 3463:7, 3463:10, 3464:15, 3465:12, 3470:20, 3470:21, 3470:22, 3471:9, 3471:16, 3471:19, 3473:6, 3473:13, 3473:16, 3473:19, 3473:24, 3474:1, 3483:6, 3484:5, 3487:7, 3494:16</p> <p><b>job</b> [5] - 3391:4, 3422:17, 3460:24, 3464:12, 3464:16</p> <p><b>John</b> [3] - 3485:3, 3485:7, 3485:13</p> <p><b>John's</b> [1] - 3486:21</p> <p><b>join</b> [2] - 3393:1, 3504:6</p> <p><b>joined</b> [4] - 3376:6, 3376:11, 3378:17, 3379:12</p> <p><b>Jones</b> [5] - 3427:4, 3427:5, 3427:7, 3427:8, 3427:14</p> <p><b>JONES</b> [33] - 3354:17, 3355:12, 3356:22, 3357:2, 3357:14, 3358:10, 3358:15, 3359:17, 3375:9, 3376:25, 3377:12, 3395:23, 3396:21, 3397:1, 3397:16, 3398:12, 3399:9, 3399:11, 3399:19, 3401:10, 3401:19, 3401:21, 3402:1, 3402:3, 3402:6, 3404:3, 3416:1, 3416:8, 3433:12, 3435:19, 3436:10, 3456:11, 3472:6</p> <p><b>JTTF</b> [4] - 3419:10, 3462:1, 3490:22, 3490:23</p> <p><b>judge</b> [2] - 3398:12, 3503:7</p> <p><b>JUDGE</b> [1] - 3354:13</p> <p><b>Judge</b> [2] - 3419:21, 3504:22</p> <p><b>July</b> [2] - 3354:9, 3506:17</p> <p><b>jum'ah</b> [1] - 3392:14</p> <p><b>juror</b> [1] - 3493:12</p> <p><b>jurors</b> [4] - 3359:14, 3403:5, 3447:16, 3493:17</p> <p><b>Jury</b> [5] - 3444:20, 3447:13, 3492:21, 3493:15, 3499:22</p> <p><b>jury</b> [17] - 3354:13, 3355:9, 3358:25, 3359:5, 3359:6, 3407:11, 3420:2, 3445:12, 3446:3, 3447:2, 3447:9, 3447:10, 3447:12, 3492:22, 3493:14, 3504:25, 3505:9</p> <p><b>just1</b> [1] - 3401:17</p>	<p><b>keep</b> [9] - 3397:7, 3405:8, 3415:1, 3415:7, 3421:11, 3421:14, 3421:19, 3444:6, 3492:15</p> <p><b>keeping</b> [3] - 3396:5, 3397:12, 3422:4</p> <p><b>keeps</b> [1] - 3470:5</p> <p><b>Kennedy</b> [4] - 3472:1, 3472:2, 3472:5, 3472:12</p> <p><b>kept</b> [2] - 3441:25, 3445:25</p> <p><b>key</b> [1] - 3433:15</p> <p><b>killed</b> [1] - 3423:5</p> <p><b>kind</b> [22] - 3364:14, 3365:15, 3374:3, 3376:7, 3377:13, 3395:18, 3396:2, 3420:22, 3426:7, 3435:9, 3435:21, 3439:23, 3441:22, 3444:13, 3444:15, 3451:19, 3466:15, 3473:23, 3475:4, 3499:15, 3499:18</p> <p><b>kinds</b> [1] - 3476:4</p> <p><b>knowing</b> [6] - 3360:15, 3366:2, 3435:17, 3459:11, 3472:2, 3472:5</p> <p><b>knowledge</b> [20] - 3364:20, 3365:13, 3374:20, 3396:15, 3396:16, 3434:8, 3436:15, 3453:13, 3453:14, 3456:2, 3456:10, 3458:15, 3458:16, 3472:3, 3473:7, 3473:10, 3474:11, 3481:9, 3485:11, 3490:23</p> <p><b>knows</b> [4] - 3422:24, 3436:2, 3440:23, 3459:9</p>	<p><b>least</b> [4] - 3358:19, 3372:23, 3396:23, 3417:14</p> <p><b>leave</b> [2] - 3492:12, 3501:1</p> <p><b>leaves</b> [4] - 3444:20, 3445:5, 3492:21, 3500:7</p> <p><b>left</b> [12] - 3363:14, 3366:1, 3368:5, 3385:7, 3387:6, 3393:2, 3424:3, 3432:18, 3441:7, 3442:13, 3443:14, 3465:12</p> <p><b>legal</b> [1] - 3447:4</p> <p><b>legitimate</b> [2] - 3396:15, 3396:16</p> <p><b>LEN</b> [1] - 3354:21</p> <p><b>lend</b> [2] - 3391:12, 3391:15</p> <p><b>less</b> [1] - 3364:13</p> <p><b>letter</b> [2] - 3467:25, 3504:7</p> <p><b>letting</b> [2] - 3382:11, 3502:9</p> <p><b>level</b> [1] - 3421:20</p> <p><b>Levitt</b> [1] - 3502:17</p> <p><b>Levitt's</b> [1] - 3503:8</p> <p><b>license</b> [1] - 3434:1</p> <p><b>light</b> [1] - 3443:16</p> <p><b>lights</b> [2] - 3430:2, 3430:6</p> <p><b>likely</b> [2] - 3372:5, 3425:20</p> <p><b>limited</b> [2] - 3490:4, 3490:6</p> <p><b>line</b> [82] - 3398:7, 3406:2, 3408:4, 3408:25, 3409:5, 3409:24, 3409:25, 3410:16, 3410:25, 3412:1, 3412:12, 3412:23, 3413:11, 3414:22, 3423:15, 3423:25, 3424:17, 3424:22, 3429:6, 3429:11, 3430:1, 3430:19, 3430:23, 3431:3, 3432:16, 3432:21, 3434:9, 3434:11, 3437:10, 3437:16, 3437:17, 3437:25, 3438:4, 3438:18, 3438:21, 3438:23, 3439:17, 3449:2, 3449:8, 3449:9, 3449:14, 3449:15, 3449:23, 3450:5, 3450:22, 3451:20, 3453:5, 3453:16, 3455:22, 3458:20, 3458:21, 3459:8, 3460:6, 3460:7, 3463:1, 3463:2, 3463:16, 3464:8, 3464:9, 3467:4, 3467:24, 3469:9, 3471:17, 3471:21, 3471:25, 3472:19, 3473:2, 3473:22, 3474:18, 3475:2, 3475:15, 3481:4, 3481:24, 3482:5, 3482:8, 3482:18, 3482:21, 3483:18, 3504:19</p> <p><b>lines</b> [8] - 3357:9, 3401:5, 3401:7, 3401:9, 3410:25, 3429:16, 3437:6, 3464:2</p> <p><b>listen</b> [9] - 3403:7, 3403:15, 3425:11, 3442:9, 3443:10, 3444:14, 3454:22, 3492:18, 3499:14</p> <p><b>litigate</b> [2] - 3503:19, 3505:15</p> <p><b>litigated</b> [1] - 3504:11</p> <p><b>litigating</b> [3] - 3504:18, 3504:20, 3505:16</p> <p><b>litigation</b> [1] - 3504:16</p> <p><b>live</b> [3] - 3470:18, 3470:20, 3470:22</p> <p><b>lived</b> [1] - 3470:22</p> <p><b>living</b> [1] - 3419:15</p> <p><b>load</b> [2] - 3435:5, 3436:7</p> <p><b>loading</b> [3] - 3423:19, 3423:22, 3436:8</p>
<p style="text-align: center;"><b>K</b></p> <p><b>Kadir</b> [3] - 3354:25, 3504:6, 3506:5</p> <p><b>KADIR</b> [1] - 3354:8</p> <p><b>KAFAHNI</b> [1] - 3354:24</p> <p><b>KAMDANG</b> [10] - 3354:21, 3356:10, 3356:15, 3356:18, 3492:9, 3502:16, 3502:19, 3503:20, 3503:25, 3504:3</p>	<p style="text-align: center;"><b>L</b></p> <p><b>labeled</b> [1] - 3423:9</p> <p><b>labeled</b> [1] - 3397:14</p> <p><b>lack</b> [1] - 3421:17</p> <p><b>ladies</b> [4] - 3359:10, 3447:14, 3447:25, 3499:3</p> <p><b>lady</b> [1] - 3366:19</p> <p><b>land</b> [1] - 3484:25</p> <p><b>landmarks</b> [2] - 3364:21, 3474:1</p> <p><b>language</b> [1] - 3424:20</p> <p><b>large</b> [2] - 3392:15, 3392:16</p> <p><b>last</b> [9] - 3358:5, 3383:25, 3387:7, 3389:1, 3389:3, 3390:3, 3408:25, 3433:3, 3440:15</p> <p><b>lasted</b> [1] - 3465:3</p> <p><b>late</b> [1] - 3506:5</p> <p><b>laughing</b> [2] - 3438:24</p> <p><b>law</b> [1] - 3408:14</p> <p><b>Law</b> [1] - 3501:8</p> <p><b>lawsuit</b> [2] - 3487:13, 3487:25</p> <p><b>lawsuits</b> [3] - 3408:13, 3408:16</p> <p><b>lawyer</b> [3] - 3408:22, 3418:4, 3418:5</p> <p><b>lawyers</b> [1] - 3418:6</p> <p><b>lax</b> [1] - 3396:2</p> <p><b>laying</b> [1] - 3496:1</p> <p><b>lead</b> [2] - 3439:3, 3458:7</p> <p><b>learn</b> [3] - 3412:14, 3424:24, 3491:21</p> <p><b>learned</b> [5] - 3386:5, 3424:18, 3424:19, 3424:25, 3477:5</p> <p><b>learning</b> [1] - 3491:25</p>	

<p><b>local</b> [1] - 3432:2  <b>location</b> [1] - 3459:5  <b>locations</b> [1] - 3449:1  <b>look</b> [44] - 3362:13, 3362:16, 3362:20, 3380:2, 3384:2, 3385:21, 3385:22, 3396:19, 3398:17, 3405:14, 3405:16, 3411:10, 3412:4, 3413:11, 3417:14, 3418:19, 3422:11, 3423:14, 3429:5, 3429:8, 3430:15, 3430:24, 3434:9, 3444:12, 3444:14, 3448:10, 3450:5, 3450:22, 3458:20, 3459:23, 3491:23, 3492:18, 3494:12, 3495:11, 3495:19, 3496:10, 3496:11, 3497:11, 3497:15, 3499:14, 3503:2, 3506:9, 3506:13  <b>looked</b> [2] - 3362:11, 3465:22  <b>looking</b> [16] - 3364:14, 3379:16, 3407:19, 3437:25, 3438:21, 3443:21, 3448:6, 3458:23, 3475:2, 3482:21, 3484:14, 3489:8, 3489:14, 3490:24, 3495:23, 3497:4  <b>looks</b> [2] - 3412:23, 3454:12  <b>loop</b> [1] - 3396:6  <b>LORETTA</b> [1] - 3354:15  <b>lose</b> [1] - 3420:3  <b>lost</b> [6] - 3412:5, 3432:3, 3441:22, 3442:22, 3443:11, 3443:21  <b>loud</b> [1] - 3370:14  <b>Louie</b> [1] - 3390:23  <b>low</b> [5] - 3414:23, 3416:3, 3416:7, 3416:20, 3474:21  <b>luggage</b> [2] - 3435:12, 3467:18  <b>lunch</b> [2] - 3499:5, 3506:8  <b>lunches</b> [1] - 3506:4  <b>LYNCH</b> [1] - 3354:15</p> <p style="text-align: center;"><b>M</b></p> <p><b>ma'am</b> [1] - 3370:8  <b>machine</b> [5] - 3468:5, 3468:16, 3468:20, 3468:25, 3484:18  <b>main</b> [2] - 3451:17, 3451:18  <b>maintained</b> [1] - 3376:10  <b>major</b> [2] - 3420:24, 3421:2  <b>man</b> [3] - 3388:17, 3474:21, 3486:14  <b>man's</b> [1] - 3373:5  <b>managed</b> [1] - 3420:21  <b>Manhattan</b> [4] - 3459:2, 3459:17, 3459:23, 3490:13  <b>manifest</b> [1] - 3423:11  <b>manifests</b> [1] - 3465:22  <b>manner</b> [1] - 3400:17  <b>manual</b> [2] - 3491:23  <b>mapped</b> [1] - 3400:1  <b>maps</b> [5] - 3437:12, 3437:21, 3437:22, 3437:23  <b>mark</b> [1] - 3403:16  <b>marked</b> [14] - 3361:23, 3362:10, 3367:3, 3369:14, 3380:1, 3383:21, 3389:17, 3395:6, 3403:16, 3403:22,</p>	<p>3403:24, 3477:7, 3487:17, 3494:5  <b>marriage</b> [1] - 3417:25  <b>married</b> [2] - 3417:23, 3417:25  <b>marrying</b> [2] - 3417:20, 3418:1  <b>MARSHAL</b> [3] - 3359:8, 3402:2, 3506:11  <b>MARSHALL</b> [1] - 3354:16  <b>marshals</b> [2] - 3506:9, 3506:13  <b>Mary</b> [3] - 3366:20, 3367:17, 3468:18  <b>material</b> [3] - 3355:25, 3356:11, 3439:23  <b>matter</b> [6] - 3374:17, 3394:11, 3406:17, 3456:3, 3461:5  <b>matters</b> [2] - 3447:4, 3487:5  <b>Matthew</b> [1] - 3502:17  <b>meal</b> [2] - 3392:8  <b>meals</b> [3] - 3391:25, 3392:10, 3392:11  <b>mean</b> [18] - 3358:11, 3363:22, 3364:8, 3375:18, 3388:20, 3410:13, 3441:12, 3443:1, 3450:16, 3473:5, 3473:24, 3476:14, 3478:14, 3479:2, 3481:16, 3495:14, 3497:10  <b>meaning</b> [12] - 3368:25, 3389:8, 3398:10, 3406:4, 3406:23, 3414:6, 3434:13, 3434:24, 3445:20, 3450:16, 3461:6, 3483:25  <b>means</b> [11] - 3387:22, 3406:3, 3407:6, 3412:25, 3413:2, 3414:14, 3450:7, 3478:6, 3478:7, 3478:19, 3497:21  <b>meant</b> [15] - 3363:11, 3363:12, 3364:22, 3365:12, 3407:9, 3413:14, 3413:15, 3413:16, 3428:6, 3445:6, 3449:5, 3451:5, 3462:22, 3475:18, 3483:14  <b>mechanical</b> [1] - 3355:4  <b>media</b> [6] - 3444:15, 3499:15, 3499:19, 3501:12, 3502:1, 3502:2  <b>meet</b> [4] - 3381:11, 3383:12, 3408:5, 3460:25  <b>meeting</b> [48] - 3356:13, 3364:25, 3372:16, 3372:19, 3376:18, 3376:22, 3376:23, 3377:3, 3377:16, 3378:23, 3381:2, 3381:23, 3382:3, 3382:7, 3382:8, 3383:5, 3383:7, 3383:9, 3383:11, 3383:15, 3384:8, 3384:10, 3384:13, 3384:22, 3386:14, 3387:7, 3387:10, 3387:18, 3388:16, 3389:1, 3389:4, 3389:11, 3390:6, 3390:9, 3390:12, 3390:15, 3410:9, 3410:11, 3410:17, 3410:18, 3410:19, 3411:1, 3411:3, 3411:5, 3436:14, 3453:13, 3453:14, 3485:3  <b>meetings</b> [27] - 3372:18, 3372:21, 3372:23, 3373:1, 3373:5, 3374:6, 3374:10, 3375:7, 3375:12, 3375:19, 3375:22, 3375:25, 3376:3, 3376:15, 3377:7, 3377:8, 3377:17, 3377:18, 3378:9, 3378:11, 3381:25, 3382:10, 3386:4, 3387:11, 3389:2, 3389:6  <b>member</b> [1] - 3501:14</p>	<p><b>members</b> [2] - 3386:1, 3502:2  <b>memories</b> [1] - 3370:6  <b>memory</b> [8] - 3361:20, 3370:7, 3370:17, 3395:4, 3395:11, 3456:2, 3487:4, 3487:15  <b>men</b> [1] - 3439:15  <b>mention</b> [3] - 3421:1, 3450:18, 3504:7  <b>mentioned</b> [54] - 3364:10, 3364:12, 3373:18, 3375:17, 3388:4, 3388:7, 3388:19, 3393:14, 3393:17, 3394:15, 3403:8, 3406:21, 3409:21, 3412:14, 3414:5, 3415:2, 3416:4, 3416:21, 3420:25, 3421:5, 3425:12, 3434:7, 3435:8, 3435:11, 3436:14, 3436:17, 3450:10, 3451:17, 3452:2, 3452:3, 3459:11, 3460:8, 3460:20, 3462:3, 3463:24, 3464:10, 3465:3, 3465:6, 3465:7, 3475:20, 3477:5, 3478:24, 3479:3, 3479:7, 3486:7, 3488:1, 3488:20, 3489:6, 3489:14, 3489:15, 3489:19, 3505:1, 3505:5  <b>mentioning</b> [4] - 3386:17, 3426:19, 3479:14, 3480:16  <b>mentions</b> [3] - 3461:12, 3462:22, 3478:8  <b>Mercedes</b> [1] - 3486:5  <b>merits</b> [1] - 3503:5  <b>Messina</b> [1] - 3357:24  <b>MESSINA</b> [3] - 3354:24, 3504:6, 3504:22  <b>met</b> [9] - 3365:11, 3371:7, 3374:14, 3376:14, 3380:14, 3382:14, 3485:15, 3485:21  <b>metal</b> [1] - 3497:6  <b>Michael</b> [1] - 3355:24  <b>mid</b> [1] - 3359:12  <b>mid-morning</b> [1] - 3359:12  <b>middle</b> [4] - 3384:22, 3449:8, 3499:8, 3499:10  <b>might</b> [6] - 3379:23, 3444:14, 3492:19, 3499:6, 3499:15, 3504:1  <b>MILDRED</b> [1] - 3354:21  <b>MILLER</b> [19] - 3354:16, 3355:15, 3355:18, 3355:22, 3399:21, 3400:9, 3400:13, 3401:23, 3402:4, 3445:24, 3501:6, 3501:18, 3501:20, 3501:25, 3502:13, 3502:15, 3503:7, 3504:11, 3505:6  <b>mind</b> [7] - 3357:23, 3358:2, 3394:24, 3424:15, 3444:6, 3484:7, 3492:15  <b>minute</b> [7] - 3361:25, 3399:13, 3439:25, 3444:21, 3448:17, 3453:16, 3473:13  <b>minutes</b> [24] - 3400:5, 3401:8, 3402:4, 3427:24, 3453:4, 3455:3, 3462:9, 3463:15, 3466:13, 3467:3, 3469:8, 3471:22, 3473:1, 3474:17, 3475:10, 3476:11, 3482:4, 3482:18, 3492:11, 3492:23, 3492:25, 3493:3, 3493:10, 3496:18</p>
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<p><b>miscommunication</b> [1] - 3420:17  <b>Miss</b> [8] - 3442:25, 3443:1, 3445:6, 3447:8, 3448:1, 3493:6, 3493:21, 3494:2  <b>missed</b> [1] - 3506:7  <b>missiles</b> [1] - 3423:8  <b>mission</b> [1] - 3455:9  <b>Mohammed</b> [70] - 3361:9, 3361:13, 3364:9, 3364:20, 3364:25, 3368:25, 3372:8, 3372:22, 3375:5, 3379:1, 3386:17, 3389:9, 3390:16, 3393:13, 3393:19, 3393:25, 3394:17, 3394:21, 3394:24, 3405:17, 3405:22, 3406:3, 3406:18, 3406:24, 3408:6, 3408:10, 3410:2, 3410:3, 3410:6, 3410:12, 3410:13, 3410:18, 3410:19, 3412:24, 3413:3, 3413:4, 3413:12, 3414:1, 3414:3, 3414:6, 3414:15, 3415:4, 3416:11, 3426:19, 3427:16, 3427:18, 3456:2, 3480:14, 3481:18, 3481:19, 3485:16, 3485:19, 3485:20, 3486:12, 3486:15, 3486:21, 3488:2, 3488:3, 3488:4, 3488:13, 3488:15, 3488:16, 3489:7, 3489:9, 3489:19, 3490:11, 3490:15  <b>Mohammed's</b> [2] - 3379:3, 3485:11  <b>Mohsen</b> [2] - 3504:8, 3505:2  <b>moment</b> [3] - 3370:8, 3415:2, 3439:17  <b>money</b> [42] - 3363:15, 3366:7, 3366:15, 3366:18, 3366:23, 3366:25, 3367:1, 3367:14, 3391:8, 3391:9, 3391:12, 3391:19, 3392:15, 3392:16, 3394:4, 3394:6, 3394:10, 3394:19, 3395:12, 3396:14, 3413:18, 3413:22, 3413:24, 3414:3, 3414:4, 3414:7, 3414:8, 3414:24, 3415:4, 3416:13, 3416:14, 3418:25, 3424:1, 3424:2, 3424:4, 3424:9, 3424:11, 3424:13, 3469:25  <b>monies</b> [3] - 3366:10, 3366:12, 3416:24  <b>monitor</b> [1] - 3494:12  <b>months</b> [3] - 3387:13, 3391:20, 3419:18  <b>morning</b> [15] - 3356:23, 3357:15, 3358:8, 3359:10, 3359:12, 3359:23, 3359:24, 3360:11, 3360:12, 3408:5, 3419:24, 3425:4, 3444:3, 3444:5, 3503:24  <b>mosque</b> [6] - 3380:15, 3380:16, 3380:17, 3380:21, 3382:15, 3485:3  <b>most</b> [5] - 3371:17, 3380:3, 3383:23, 3383:24, 3387:24  <b>motion</b> [5] - 3496:8, 3502:25, 3505:12, 3505:15, 3505:23  <b>mouth</b> [1] - 3439:8  <b>move</b> [9] - 3363:4, 3363:9, 3363:13, 3398:21, 3398:22, 3407:10, 3410:3, 3432:1, 3447:7  <b>moved</b> [2] - 3374:5, 3374:21</p>	<p><b>moving</b> [3] - 3363:14, 3374:3, 3419:21  <b>MR</b> [65] - 3355:12, 3355:15, 3355:18, 3355:22, 3356:10, 3356:15, 3356:18, 3356:19, 3356:22, 3357:2, 3357:14, 3358:10, 3358:15, 3359:17, 3359:19, 3375:9, 3376:25, 3377:12, 3395:23, 3396:21, 3397:1, 3397:16, 3398:12, 3399:9, 3399:11, 3399:19, 3399:21, 3400:9, 3400:13, 3401:10, 3401:19, 3401:21, 3401:23, 3402:1, 3402:3, 3402:4, 3402:6, 3404:3, 3416:1, 3416:8, 3433:12, 3435:19, 3436:10, 3445:24, 3456:11, 3472:6, 3492:9, 3501:6, 3501:18, 3501:20, 3501:25, 3502:8, 3502:13, 3502:15, 3502:16, 3502:19, 3503:7, 3503:20, 3503:25, 3504:3, 3504:11, 3505:6, 3506:1, 3506:3, 3506:15  <b>MS</b> [66] - 3355:13, 3357:20, 3359:2, 3359:20, 3360:10, 3367:6, 3377:15, 3385:3, 3390:2, 3397:9, 3397:12, 3397:17, 3398:2, 3398:20, 3399:6, 3399:10, 3399:13, 3399:20, 3399:25, 3400:6, 3401:2, 3401:7, 3401:15, 3401:20, 3401:25, 3402:8, 3403:4, 3403:17, 3403:21, 3404:5, 3404:8, 3404:22, 3405:14, 3407:16, 3411:24, 3412:1, 3412:3, 3412:7, 3419:20, 3420:3, 3422:14, 3426:24, 3427:2, 3443:2, 3445:9, 3445:14, 3447:6, 3448:3, 3453:2, 3454:7, 3462:7, 3466:21, 3471:2, 3477:11, 3480:25, 3487:16, 3489:1, 3493:8, 3493:10, 3494:3, 3494:4, 3494:8, 3494:10, 3498:24, 3504:6, 3504:22  <b>munch</b> [1] - 3444:4  <b>Muslim</b> [3] - 3485:7, 3485:8, 3485:13  <b>must</b> [2] - 3461:8, 3462:3</p>	<p>3500:2, 3501:19, 3503:1  <b>needed</b> [10] - 3356:5, 3363:20, 3364:15, 3365:3, 3365:14, 3385:25, 3418:23, 3421:11, 3473:9, 3496:24  <b>needs</b> [4] - 3418:11, 3418:12, 3482:11, 3483:9  <b>negatives</b> [1] - 3456:8  <b>nephew</b> [2] - 3366:14, 3367:20  <b>Nero</b> [4] - 3380:23, 3389:6, 3389:8, 3390:15  <b>nervous</b> [1] - 3386:20  <b>network</b> [1] - 3406:9  <b>never</b> [21] - 3357:2, 3377:19, 3384:13, 3384:19, 3403:23, 3416:10, 3419:12, 3431:10, 3458:19, 3463:11, 3464:21, 3465:5, 3465:17, 3471:12, 3472:3, 3475:3, 3475:24, 3488:12, 3488:19, 3489:16, 3491:15  <b>new</b> [5] - 3377:23, 3377:24, 3380:16, 3380:17  <b>NEW</b> [1] - 3354:1  <b>New</b> [43] - 3354:7, 3354:19, 3355:2, 3360:20, 3361:17, 3368:5, 3368:11, 3384:25, 3385:5, 3385:11, 3385:19, 3387:15, 3390:10, 3392:18, 3392:22, 3392:25, 3393:5, 3393:24, 3394:10, 3394:14, 3395:22, 3396:1, 3405:24, 3410:13, 3413:16, 3413:21, 3416:16, 3416:18, 3417:7, 3419:7, 3420:7, 3420:8, 3420:14, 3422:3, 3456:17, 3457:15, 3463:6, 3480:13, 3481:14, 3484:13, 3490:5, 3490:6, 3501:7  <b>next</b> [29] - 3360:18, 3369:5, 3371:24, 3376:23, 3386:13, 3387:13, 3389:21, 3392:17, 3397:19, 3402:9, 3406:6, 3406:21, 3410:6, 3410:25, 3420:6, 3421:22, 3423:24, 3438:2, 3441:24, 3452:7, 3461:19, 3473:22, 3488:21, 3500:8, 3503:2, 3503:9, 3503:12  <b>nice</b> [1] - 3499:5  <b>night</b> [4] - 3358:5, 3406:20, 3406:21, 3453:18  <b>nighttime</b> [1] - 3406:18  <b>nine</b> [5] - 3431:3, 3432:6, 3466:12, 3475:2, 3475:12  <b>nitro</b> [2] - 3477:4, 3480:17  <b>NKRUMAH</b> [7] - 3354:24, 3356:19, 3359:19, 3502:8, 3506:1, 3506:3, 3506:15  <b>nobody</b> [9] - 3359:7, 3383:16, 3384:8, 3414:13, 3416:24, 3417:4, 3442:11, 3442:12, 3449:3  <b>none</b> [3] - 3407:4, 3414:3, 3472:21  <b>normal</b> [3] - 3450:19, 3460:21, 3463:5  <b>normally</b> [1] - 3431:13  <b>nothing</b> [8] - 3358:25, 3359:2, 3375:13, 3378:1, 3490:22, 3490:23, 3504:14  <b>notice</b> [2] - 3399:15, 3445:23  <b>noticed</b> [1] - 3427:1</p>
<b>N</b>		
	<p><b>Nahay's</b> [1] - 3468:18  <b>name</b> [6] - 3373:6, 3373:7, 3388:7, 3388:11, 3439:4, 3459:4  <b>named</b> [3] - 3366:20, 3371:6, 3504:8  <b>Napoli</b> [7] - 3390:19, 3390:23, 3421:7, 3421:11, 3461:1, 3462:1  <b>national</b> [1] - 3451:7  <b>Navy</b> [1] - 3474:23  <b>Nayah</b> [1] - 3366:20  <b>Nayah's</b> [1] - 3367:17  <b>near</b> [3] - 3470:20, 3470:22, 3471:9  <b>necessarily</b> [1] - 3465:13  <b>need</b> [28] - 3356:16, 3358:9, 3383:19, 3385:16, 3391:17, 3391:18, 3396:20, 3398:4, 3398:10, 3400:9, 3400:13, 3400:15, 3400:16, 3403:2, 3403:9, 3403:14, 3405:4, 3418:9, 3418:10, 3421:19, 3422:6, 3446:3, 3492:10,</p>	

<p><b>noticing</b> [2] - 3430:1, 3467:11  <b>November</b> [3] - 3392:23, 3407:22, 3408:21  <b>number</b> [22] - 3366:4, 3366:13, 3366:14, 3367:1, 3367:14, 3374:6, 3375:19, 3375:22, 3375:25, 3379:6, 3397:15, 3400:11, 3403:8, 3403:25, 3426:19, 3428:25, 3433:9, 3457:20, 3468:7, 3484:14, 3488:17, 3489:12  <b>Nur</b> [3] - 3412:15, 3412:17, 3414:7</p> <p style="text-align: center;"><b>O</b></p> <p><b>o'clock</b> [5] - 3354:10, 3470:11, 3499:7, 3504:2, 3506:6  <b>oath</b> [3] - 3360:1, 3447:22, 3493:25  <b>objecting</b> [1] - 3398:13  <b>objection</b> [21] - 3356:8, 3356:19, 3356:21, 3357:10, 3375:9, 3376:25, 3377:12, 3395:23, 3396:21, 3397:1, 3397:16, 3399:8, 3404:1, 3404:3, 3416:1, 3416:8, 3433:12, 3435:19, 3436:10, 3456:11, 3472:6  <b>observing</b> [1] - 3433:22  <b>obsessed</b> [1] - 3433:10  <b>obviously</b> [2] - 3400:25, 3503:4  <b>occasion</b> [3] - 3441:5, 3441:9, 3441:10  <b>occasions</b> [8] - 3366:4, 3430:11, 3439:20, 3440:4, 3441:16, 3450:2, 3457:20, 3479:13  <b>occurred</b> [1] - 3355:9  <b>October</b> [7] - 3384:23, 3385:6, 3385:10, 3390:6, 3392:22  <b>OF</b> [3] - 3354:1, 3354:4, 3354:12  <b>office</b> [10] - 3381:5, 3381:7, 3381:9, 3381:16, 3381:21, 3381:22, 3381:24, 3382:18, 3383:2, 3416:10  <b>officer</b> [1] - 3443:20  <b>often</b> [3] - 3390:19, 3394:24, 3424:15  <b>old</b> [2] - 3464:11, 3464:16  <b>on-off</b> [1] - 3498:2  <b>once</b> [8] - 3357:10, 3370:16, 3388:12, 3414:17, 3435:18, 3444:23, 3502:9, 3502:11  <b>one</b> [75] - 3355:15, 3355:16, 3355:20, 3355:22, 3356:12, 3368:2, 3368:18, 3372:13, 3372:23, 3373:1, 3377:22, 3381:5, 3381:25, 3382:5, 3384:10, 3386:1, 3386:9, 3386:13, 3386:18, 3387:3, 3387:7, 3389:6, 3391:7, 3393:8, 3399:21, 3400:11, 3408:18, 3409:22, 3415:12, 3423:21, 3427:20, 3429:2, 3435:4, 3435:15, 3436:6, 3436:9, 3437:6, 3438:1, 3439:22, 3440:4, 3440:15, 3442:3, 3442:7, 3442:8, 3442:10, 3449:4, 3449:10, 3449:18, 3454:12, 3459:25, 3460:15, 3467:17, 3468:7, 3468:10, 3468:18,</p>	<p>3472:22, 3475:19, 3479:20, 3481:11, 3481:19, 3484:17, 3485:2, 3490:21, 3495:16, 3498:4, 3498:5, 3501:6, 3502:16, 3502:17, 3506:1  <b>ones</b> [1] - 3374:11  <b>open</b> [5] - 3429:3, 3429:4, 3444:6, 3447:1, 3492:15  <b>Open</b> [2] - 3403:1, 3493:5  <b>operation</b> [2] - 3414:4, 3429:12  <b>opposite</b> [1] - 3381:4  <b>order</b> [4] - 3377:10, 3478:20, 3503:11, 3505:20  <b>ordered</b> [1] - 3399:12  <b>original</b> [1] - 3393:5  <b>originally</b> [2] - 3368:18, 3475:18  <b>otherwise</b> [4] - 3385:22, 3402:4, 3418:15, 3444:16  <b>outside</b> [2] - 3425:13, 3436:22  <b>overall</b> [1] - 3387:11  <b>overruled</b> [3] - 3395:24, 3397:2, 3416:9  <b>own</b> [2] - 3394:19, 3416:10</p> <p style="text-align: center;"><b>P</b></p> <p><b>package</b> [1] - 3414:17  <b>page</b> [120] - 3384:4, 3384:5, 3389:18, 3389:19, 3389:21, 3390:3, 3390:4, 3397:19, 3398:6, 3401:5, 3401:6, 3401:7, 3401:9, 3402:9, 3405:16, 3407:19, 3409:24, 3410:8, 3410:11, 3410:16, 3411:11, 3411:19, 3411:23, 3411:24, 3412:1, 3412:2, 3412:8, 3412:9, 3421:22, 3422:14, 3423:14, 3424:16, 3424:22, 3426:16, 3429:5, 3429:6, 3429:16, 3429:25, 3430:1, 3430:23, 3431:3, 3432:6, 3432:21, 3434:9, 3434:11, 3437:6, 3437:10, 3437:15, 3437:25, 3438:2, 3438:17, 3438:21, 3440:1, 3440:15, 3448:6, 3449:2, 3449:8, 3449:12, 3449:13, 3449:23, 3450:5, 3450:22, 3451:20, 3452:7, 3453:3, 3453:5, 3453:15, 3453:16, 3454:15, 3454:24, 3455:22, 3458:21, 3459:8, 3460:3, 3460:6, 3460:7, 3462:5, 3462:9, 3463:1, 3463:14, 3463:16, 3464:2, 3464:9, 3466:12, 3467:2, 3467:4, 3469:7, 3471:4, 3471:17, 3471:21, 3471:22, 3471:25, 3472:25, 3473:2, 3473:22, 3474:16, 3474:18, 3475:2, 3475:12, 3475:15, 3476:10, 3476:13, 3477:12, 3477:14, 3480:23, 3481:1, 3481:2, 3481:11, 3481:24, 3482:3, 3482:5, 3482:17, 3482:19, 3488:21, 3500:8  <b>pages</b> [1] - 3477:17  <b>paid</b> [5] - 3392:5, 3392:9, 3392:10, 3419:12  <b>Pakistan</b> [1] - 3395:17</p>	<p><b>panel</b> [2] - 3495:19, 3495:24  <b>panels</b> [1] - 3495:17  <b>paper</b> [1] - 3370:11  <b>papers</b> [3] - 3417:25, 3503:3, 3503:6  <b>paragraph</b> [10] - 3362:14, 3367:7, 3367:9, 3380:3, 3390:3, 3395:8, 3423:25, 3425:3, 3475:12, 3487:18  <b>paragraphs</b> [1] - 3383:25  <b>park</b> [1] - 3483:3  <b>part</b> [14] - 3371:18, 3377:20, 3377:24, 3379:1, 3379:2, 3379:3, 3400:3, 3400:22, 3408:25, 3421:16, 3427:22, 3439:12, 3440:17, 3504:22  <b>partaking</b> [1] - 3382:10  <b>particular</b> [5] - 3370:24, 3439:17, 3441:5, 3451:12, 3496:3  <b>particularly</b> [1] - 3399:1  <b>parties</b> [5] - 3359:14, 3445:13, 3447:16, 3493:17, 3501:4  <b>partner</b> [2] - 3366:14, 3367:22  <b>pass</b> [1] - 3496:24  <b>passed</b> [1] - 3497:24  <b>pause</b> [8] - 3362:2, 3367:10, 3369:18, 3380:5, 3384:1, 3384:3, 3384:6, 3389:20  <b>Pause</b> [8] - 3390:5, 3395:9, 3397:11, 3401:1, 3447:11, 3477:16, 3477:18, 3487:19  <b>pay</b> [11] - 3394:13, 3395:1, 3395:12, 3414:24, 3417:4, 3443:14, 3443:15, 3488:9, 3488:11, 3489:22, 3490:1  <b>paying</b> [6] - 3392:1, 3392:7, 3395:21, 3413:25, 3414:2, 3414:13  <b>pending</b> [1] - 3408:13  <b>people</b> [38] - 3356:12, 3364:10, 3364:12, 3364:15, 3364:25, 3365:1, 3365:4, 3365:5, 3366:13, 3366:14, 3367:1, 3367:14, 3380:21, 3387:7, 3391:25, 3396:2, 3410:17, 3415:11, 3416:5, 3424:5, 3436:23, 3439:18, 3439:21, 3450:19, 3450:21, 3456:6, 3457:9, 3457:16, 3460:21, 3468:22, 3479:7, 3483:3, 3483:4, 3483:23, 3484:3, 3484:4, 3485:12  <b>per</b> [1] - 3381:21  <b>percent</b> [3] - 3366:16, 3443:7, 3504:2  <b>perform</b> [1] - 3405:6  <b>perhaps</b> [4] - 3356:20, 3397:12, 3447:7, 3503:21  <b>period</b> [10] - 3360:19, 3363:1, 3390:18, 3391:8, 3418:24, 3419:22, 3420:7, 3420:11, 3479:16, 3484:13  <b>permission</b> [1] - 3356:7  <b>person</b> [19] - 3372:13, 3384:9, 3388:24, 3391:15, 3392:1, 3404:10, 3405:12, 3406:14, 3407:2, 3421:4, 3431:21, 3455:9, 3468:17, 3469:19, 3476:8, 3486:5, 3486:6, 3490:19, 3505:8  <b>person's</b> [2] - 3388:11, 3502:2</p>
--	---	---

<p><b>personal</b> [1] - 3386:25  <b>personally</b> [2] - 3388:21, 3388:24  <b>pertain</b> [1] - 3390:4  <b>pertaining</b> [2] - 3406:25, 3407:1  <b>phone</b> [6] - 3362:4, 3396:13, 3418:22, 3418:23, 3454:21  <b>phones</b> [2] - 3444:10, 3492:17  <b>photograph</b> [1] - 3453:20  <b>photographs</b> [1] - 3487:7  <b>phrase</b> [1] - 3481:5  <b>pick</b> [9] - 3368:2, 3368:4, 3418:25, 3427:19, 3428:3, 3433:25, 3451:13, 3453:15, 3501:2  <b>picked</b> [7] - 3371:4, 3396:11, 3420:14, 3420:20, 3422:8, 3452:5, 3460:23  <b>picking</b> [2] - 3495:15, 3497:21  <b>picks</b> [1] - 3451:6  <b>pickup</b> [1] - 3435:12  <b>picture</b> [6] - 3378:9, 3465:8, 3465:10, 3491:8, 3498:6, 3498:8  <b>pictures</b> [4] - 3414:16, 3420:9, 3457:3, 3461:6  <b>piece</b> [2] - 3496:15, 3497:6  <b>pieces</b> [1] - 3479:6  <b>pipeline</b> [18] - 3434:4, 3434:8, 3434:10, 3434:13, 3434:14, 3435:18, 3436:2, 3436:3, 3436:14, 3436:15, 3436:17, 3436:18, 3436:20, 3436:22, 3436:23, 3437:1, 3437:9  <b>pipelines</b> [3] - 3434:16, 3434:25, 3435:25  <b>pipes</b> [1] - 3434:22  <b>place</b> [50] - 3362:22, 3363:16, 3368:22, 3370:20, 3370:24, 3374:11, 3378:22, 3382:7, 3384:22, 3385:12, 3385:16, 3385:19, 3385:22, 3385:25, 3386:3, 3386:19, 3390:6, 3390:9, 3399:2, 3405:24, 3406:19, 3406:23, 3407:8, 3407:22, 3416:15, 3425:9, 3425:15, 3430:20, 3432:24, 3440:23, 3442:20, 3445:16, 3456:14, 3458:23, 3459:9, 3459:11, 3459:12, 3459:13, 3459:17, 3459:18, 3459:20, 3459:21, 3459:23, 3464:5, 3464:21, 3472:3, 3480:9, 3495:1  <b>places</b> [3] - 3428:13, 3431:16, 3442:18  <b>plan</b> [26] - 3361:15, 3361:19, 3363:4, 3363:9, 3363:12, 3363:14, 3363:16, 3364:2, 3378:17, 3379:9, 3380:7, 3380:12, 3382:25, 3383:8, 3383:11, 3388:6, 3393:1, 3393:5, 3393:16, 3393:18, 3468:22, 3473:5, 3473:19, 3474:10, 3484:20  <b>plane</b> [5] - 3358:17, 3363:23, 3385:1, 3422:25, 3423:19  <b>planes</b> [1] - 3462:24  <b>planning</b> [4] - 3400:23, 3409:5, 3485:22, 3503:9  <b>plans</b> [4] - 3368:15, 3486:20, 3486:23, 3486:24</p>	<p><b>plant</b> [1] - 3484:1  <b>plate</b> [3] - 3375:15, 3376:8, 3376:13  <b>plates</b> [1] - 3434:1  <b>play</b> [26] - 3365:15, 3365:16, 3397:9, 3400:3, 3400:7, 3400:8, 3400:20, 3400:24, 3401:23, 3404:15, 3404:19, 3411:11, 3411:13, 3411:21, 3412:13, 3412:19, 3417:13, 3426:20, 3428:10, 3450:23, 3464:6, 3492:6, 3493:6, 3494:11, 3498:12, 3498:15  <b>played</b> [8] - 3400:11, 3403:10, 3404:9, 3405:2, 3407:23, 3463:19, 3491:24, 3492:8  <b>playing</b> [3] - 3399:25, 3401:2, 3484:2  <b>plays</b> [49] - 3411:22, 3412:11, 3417:16, 3422:16, 3422:23, 3423:2, 3425:14, 3426:21, 3428:1, 3428:11, 3440:3, 3451:1, 3453:7, 3454:5, 3455:1, 3455:5, 3455:7, 3455:12, 3455:21, 3462:11, 3462:19, 3463:17, 3466:3, 3466:14, 3466:19, 3467:5, 3467:15, 3468:3, 3469:11, 3470:25, 3471:6, 3471:10, 3471:24, 3473:3, 3474:19, 3475:16, 3482:6, 3482:20, 3494:13, 3494:23, 3495:10, 3496:14, 3497:3, 3497:23, 3498:1, 3498:11, 3498:18, 3498:23  <b>Plaza</b> [2] - 3354:19, 3355:1  <b>plenty</b> [1] - 3505:15  <b>plot</b> [33] - 3363:19, 3363:20, 3364:11, 3364:13, 3364:17, 3365:16, 3366:5, 3371:11, 3371:14, 3371:18, 3372:1, 3372:6, 3372:10, 3375:6, 3375:8, 3376:5, 3377:19, 3377:21, 3378:2, 3381:2, 3381:24, 3387:1, 3387:8, 3387:19, 3406:12, 3406:15, 3407:1, 3424:4, 3453:14, 3457:3, 3471:19, 3473:9, 3473:24  <b>pm</b> [3] - 3454:13, 3466:9, 3466:10  <b>point</b> [69] - 3356:16, 3356:21, 3357:23, 3358:23, 3360:14, 3362:8, 3363:19, 3368:6, 3368:9, 3368:18, 3368:21, 3373:9, 3374:14, 3374:17, 3378:17, 3380:11, 3381:1, 3382:3, 3385:8, 3386:23, 3387:3, 3388:1, 3388:5, 3388:7, 3393:10, 3395:1, 3406:14, 3406:16, 3408:1, 3408:21, 3414:8, 3419:5, 3423:18, 3423:21, 3424:10, 3430:11, 3438:15, 3441:21, 3444:23, 3453:22, 3455:24, 3457:7, 3457:8, 3458:14, 3471:7, 3473:7, 3473:11, 3474:4, 3475:18, 3475:20, 3475:22, 3478:3, 3479:12, 3483:14, 3487:6, 3487:8, 3488:7, 3490:4, 3490:9, 3495:13, 3495:15, 3496:13, 3496:22, 3497:22, 3499:8, 3499:10, 3504:12, 3505:3  <b>pointed</b> [4] - 3430:9, 3464:16, 3464:18, 3464:19  <b>pointing</b> [3] - 3430:17, 3495:14,</p>	<p>3497:20  <b>points</b> [1] - 3430:6  <b>police</b> [11] - 3386:19, 3441:6, 3441:7, 3442:7, 3442:10, 3442:11, 3443:20, 3450:6, 3450:8, 3451:3, 3451:25  <b>Ponytail</b> [52] - 3361:3, 3371:6, 3371:14, 3372:2, 3372:4, 3372:19, 3373:9, 3373:22, 3374:7, 3374:15, 3375:1, 3375:4, 3375:16, 3375:19, 3375:22, 3375:25, 3376:15, 3376:18, 3376:19, 3376:22, 3376:23, 3377:3, 3378:10, 3378:18, 3379:2, 3379:9, 3381:13, 3381:19, 3383:12, 3384:19, 3386:5, 3386:10, 3386:13, 3392:1, 3395:1, 3395:12, 3395:14, 3395:20, 3414:23, 3415:6, 3415:7, 3415:21, 3416:3, 3416:7, 3416:12, 3416:21, 3416:23, 3421:6, 3456:7, 3456:9, 3456:16, 3476:3  <b>poorly</b> [1] - 3361:11  <b>popping</b> [1] - 3415:7  <b>portion</b> [15] - 3357:6, 3383:24, 3400:24, 3401:8, 3401:22, 3405:1, 3407:4, 3408:9, 3417:15, 3448:20, 3462:12, 3472:8, 3479:19, 3494:17, 3495:9  <b>portions</b> [5] - 3383:24, 3399:25, 3400:2, 3400:8, 3400:11  <b>position</b> [5] - 3393:22, 3431:19, 3494:20, 3495:25, 3497:18  <b>possibilities</b> [1] - 3358:20  <b>possibility</b> [1] - 3374:5  <b>possible</b> [10] - 3361:7, 3383:18, 3386:15, 3395:3, 3396:10, 3441:2, 3475:9, 3487:3, 3499:6, 3504:1  <b>possibly</b> [2] - 3373:18, 3373:19  <b>potato</b> [2] - 3478:18, 3478:19  <b>potatoes</b> [5] - 3478:2, 3478:8, 3479:1, 3479:2, 3479:4  <b>potentially</b> [2] - 3503:2, 3503:10  <b>practice</b> [2] - 3401:11, 3505:13  <b>prayer</b> [1] - 3401:11  <b>prayers</b> [1] - 3392:14  <b>preclude</b> [1] - 3505:13  <b>preface</b> [1] - 3377:13  <b>prepare</b> [1] - 3405:8  <b>prepared</b> [3] - 3399:18, 3403:6, 3403:13  <b>prescription</b> [1] - 3445:7  <b>present</b> [26] - 3359:4, 3359:5, 3359:15, 3371:17, 3372:11, 3372:13, 3372:14, 3372:18, 3372:22, 3375:6, 3378:20, 3378:23, 3379:4, 3388:6, 3389:2, 3389:4, 3408:23, 3445:12, 3445:13, 3447:13, 3447:17, 3481:15, 3481:21, 3492:22, 3493:15, 3493:18  <b>presented</b> [1] - 3499:13  <b>presenting</b> [1] - 3388:23  <b>press</b> [3] - 3497:1, 3498:7, 3498:8  <b>pressed</b> [1] - 3496:4</p>
--	---	---



<p><b>pretend</b> [2] - 3441:19, 3441:22  <b>pretty</b> [9] - 3422:17, 3442:18, 3443:10, 3443:13, 3450:3, 3450:15, 3450:16, 3499:7  <b>previous</b> [2] - 3414:6, 3436:14  <b>previously</b> [9] - 3360:7, 3361:23, 3369:14, 3397:14, 3477:7, 3494:5, 3501:12, 3503:7, 3503:11  <b>price</b> [3] - 3409:12, 3489:4, 3489:6  <b>printed</b> [2] - 3444:16, 3499:16  <b>prison</b> [1] - 3506:6  <b>problem</b> [5] - 3357:4, 3501:13, 3501:16, 3502:19, 3504:13  <b>problems</b> [3] - 3386:22, 3396:8, 3415:24  <b>proceed</b> [1] - 3360:5  <b>proceeding</b> [2] - 3358:22, 3446:4  <b>Proceedings</b> [1] - 3355:4  <b>procrastination</b> [1] - 3421:17  <b>produced</b> [1] - 3355:4  <b>program</b> [2] - 3364:19, 3377:23  <b>projects</b> [1] - 3486:16  <b>prolonged</b> [1] - 3441:3  <b>promised</b> [3] - 3419:24, 3444:2, 3493:12  <b>properly</b> [3] - 3359:15, 3447:17, 3493:18  <b>property</b> [3] - 3415:9, 3415:10, 3416:23  <b>propose</b> [1] - 3485:4  <b>proposed</b> [1] - 3446:5  <b>prosecutor</b> [1] - 3427:8  <b>prostate</b> [1] - 3468:11  <b>provide</b> [3] - 3378:4, 3378:5, 3465:25  <b>provided</b> [5] - 3356:23, 3419:9, 3489:25, 3490:3, 3506:4  <b>public</b> [10] - 3428:22, 3429:22, 3431:10, 3442:16, 3442:21, 3443:5, 3443:15, 3471:15, 3501:14, 3502:10  <b>pull</b> [1] - 3495:17  <b>purchase</b> [1] - 3491:14  <b>purchased</b> [4] - 3488:2, 3488:3, 3489:9, 3489:23  <b>purchasing</b> [2] - 3489:14, 3490:17  <b>purification</b> [1] - 3468:5  <b>purified</b> [1] - 3468:25  <b>purifier</b> [1] - 3486:20  <b>purify</b> [1] - 3468:10  <b>put</b> [24] - 3355:15, 3356:6, 3362:19, 3396:13, 3401:22, 3410:2, 3429:7, 3430:1, 3430:6, 3430:24, 3431:3, 3439:25, 3441:18, 3442:2, 3453:5, 3463:16, 3467:4, 3473:1, 3474:17, 3475:11, 3476:12, 3482:18, 3492:13, 3503:2  <b>puts</b> [1] - 3482:4  <b>putting</b> [3] - 3375:15, 3401:13, 3477:21  <b>puzzled</b> [1] - 3363:18</p>	<p style="text-align: center;"><b>Q</b></p> <p><b>Qaeda</b> [7] - 3373:3, 3373:10, 3373:25, 3374:20, 3374:24, 3376:16, 3505:1  <b>Queens</b> [7] - 3436:19, 3437:3, 3470:16, 3470:17, 3470:18, 3470:22, 3471:7  <b>questioned</b> [1] - 3442:12  <b>questioning</b> [3] - 3427:4, 3427:5, 3451:10  <b>questions</b> [6] - 3360:18, 3363:6, 3369:5, 3379:7, 3391:7, 3392:17  <b>quick</b> [4] - 3357:5, 3362:9, 3492:10, 3501:6  <b>quickly</b> [4] - 3355:16, 3365:17, 3438:17, 3471:17  <b>quiet</b> [1] - 3425:21  <b>quietness</b> [1] - 3425:16</p> <p style="text-align: center;"><b>R</b></p> <p><b>Rabbani</b> [4] - 3504:8, 3504:15, 3505:2, 3505:7  <b>radio</b> [1] - 3499:16  <b>Railroad</b> [3] - 3471:11, 3471:13, 3471:15  <b>raise</b> [6] - 3357:14, 3358:12, 3445:13, 3445:14, 3461:3, 3501:5  <b>raised</b> [3] - 3399:14, 3461:1, 3461:4  <b>Ramadan</b> [3] - 3379:12, 3379:14, 3380:8  <b>rather</b> [2] - 3400:1, 3486:2  <b>ratifying</b> [2] - 3439:19, 3452:3  <b>rats</b> [6] - 3483:18, 3483:19, 3483:23, 3484:3, 3484:6, 3484:11  <b>read</b> [16] - 3362:1, 3367:7, 3367:8, 3369:23, 3370:14, 3370:16, 3380:4, 3389:18, 3395:7, 3403:14, 3444:14, 3477:14, 3477:17, 3487:18, 3492:18, 3499:14  <b>reading</b> [3] - 3370:11, 3410:11, 3437:14  <b>ready</b> [7] - 3358:23, 3360:5, 3363:4, 3363:9, 3363:12, 3395:10, 3447:24  <b>real</b> [2] - 3362:9, 3439:7  <b>realized</b> [2] - 3398:22, 3455:2  <b>really</b> [12] - 3365:15, 3373:12, 3373:13, 3379:5, 3379:14, 3392:6, 3420:21, 3442:17, 3442:22, 3457:5, 3504:21  <b>reason</b> [11] - 3370:4, 3371:21, 3372:9, 3387:23, 3387:25, 3400:19, 3414:10, 3421:4, 3421:10, 3464:1, 3502:3  <b>received</b> [1] - 3356:25  <b>recently</b> [1] - 3465:12  <b>Recess</b> [2] - 3446:8, 3493:4  <b>recess</b> [1] - 3506:17  <b>recollect</b> [5] - 3361:7, 3362:3,</p>	<p>3365:25, 3395:4, 3475:7  <b>recollection</b> [21] - 3357:21, 3358:3, 3358:19, 3362:1, 3364:1, 3365:2, 3365:9, 3365:19, 3365:24, 3367:12, 3369:16, 3369:20, 3380:6, 3383:19, 3384:7, 3385:14, 3388:2, 3475:13, 3477:9, 3480:12, 3487:20  <b>record</b> [10] - 3355:16, 3356:6, 3403:19, 3404:21, 3427:23, 3494:9, 3496:7, 3496:16, 3498:6, 3498:7  <b>recorded</b> [10] - 3355:4, 3426:8, 3426:10, 3474:8, 3474:13, 3479:11, 3479:12, 3480:1, 3498:13, 3503:17  <b>recording</b> [47] - 3398:15, 3398:19, 3398:21, 3399:22, 3399:24, 3400:1, 3403:3, 3403:19, 3411:12, 3427:3, 3427:25, 3428:16, 3433:8, 3433:9, 3440:17, 3448:7, 3448:14, 3448:16, 3450:24, 3451:8, 3453:4, 3453:5, 3454:12, 3454:22, 3466:13, 3467:1, 3467:3, 3469:9, 3471:3, 3471:22, 3473:1, 3474:17, 3475:10, 3475:11, 3476:11, 3479:14, 3482:3, 3482:4, 3482:17, 3494:6, 3494:11, 3496:5, 3496:17, 3496:19, 3497:19  <b>recordings</b> [12] - 3358:7, 3403:10, 3403:14, 3425:23, 3426:1, 3426:4, 3426:12, 3433:9, 3467:7, 3491:6, 3498:20, 3498:21  <b>records</b> [1] - 3463:4  <b>red</b> [3] - 3443:16, 3498:4, 3498:7  <b>redirect</b> [3] - 3400:12, 3400:24, 3401:24  <b>refer</b> [1] - 3451:20  <b>reference</b> [2] - 3432:24, 3481:20  <b>referring</b> [7] - 3414:20, 3438:7, 3471:19, 3475:6, 3476:21, 3482:7, 3485:16  <b>refers</b> [1] - 3475:24  <b>reflect</b> [2] - 3496:7, 3496:16  <b>refresh</b> [11] - 3358:19, 3361:20, 3367:12, 3369:20, 3384:7, 3395:11, 3477:8, 3480:11, 3487:4, 3487:15, 3487:20  <b>refreshed</b> [2] - 3358:9, 3365:20  <b>refreshes</b> [3] - 3358:3, 3362:1, 3369:16  <b>refreshing</b> [2] - 3357:21, 3358:7  <b>regard</b> [1] - 3400:25  <b>regardless</b> [1] - 3401:12  <b>regular</b> [9] - 3439:3, 3440:13, 3449:18, 3451:13, 3452:4, 3462:20, 3463:12, 3490:19, 3490:22  <b>reimbursed</b> [2] - 3490:2, 3491:16  <b>related</b> [2] - 3386:25, 3468:5  <b>relayed</b> [1] - 3365:8  <b>releasing</b> [1] - 3501:16  <b>relevant</b> [3] - 3383:24, 3502:23  <b>relitigating</b> [1] - 3504:12  <b>remainder</b> [1] - 3447:25</p>
---	--	---

<p><b>Remember</b> [1] - 3432:11  <b>remember</b> [70] - 3356:14, 3362:7, 3362:24, 3362:25, 3363:19, 3367:23, 3369:11, 3369:22, 3370:1, 3370:2, 3370:18, 3370:23, 3371:1, 3371:2, 3371:15, 3371:17, 3372:9, 3373:7, 3373:13, 3378:24, 3379:17, 3379:18, 3379:19, 3380:6, 3384:9, 3385:5, 3385:18, 3387:10, 3387:11, 3389:15, 3389:16, 3391:10, 3391:14, 3395:15, 3414:22, 3426:18, 3427:4, 3427:10, 3432:7, 3432:11, 3433:7, 3439:18, 3441:6, 3441:11, 3441:23, 3442:3, 3442:9, 3444:6, 3444:9, 3444:11, 3450:13, 3459:4, 3459:5, 3459:20, 3471:7, 3475:17, 3476:18, 3476:19, 3476:21, 3477:19, 3479:14, 3480:6, 3487:23, 3492:12, 3492:15, 3492:25, 3494:24, 3495:1, 3495:2  <b>remembers</b> [1] - 3432:13  <b>remind</b> [7] - 3356:11, 3359:25, 3407:11, 3415:3, 3415:6, 3447:21, 3493:24  <b>reminded</b> [1] - 3418:14  <b>reminding</b> [1] - 3415:12  <b>rent</b> [2] - 3419:12, 3486:4  <b>renting</b> [2] - 3486:5, 3486:7  <b>repaid</b> [1] - 3392:10  <b>repeat</b> [2] - 3397:4, 3450:11  <b>repeatedly</b> [1] - 3416:12  <b>rephrase</b> [4] - 3361:12, 3450:12, 3456:7, 3470:14  <b>report</b> [8] - 3369:25, 3370:3, 3370:4, 3370:12, 3370:14, 3391:1, 3407:1, 3450:19  <b>reported</b> [2] - 3444:14, 3499:15  <b>Reporter</b> [1] - 3355:1  <b>reporting</b> [3] - 3390:19, 3390:23, 3421:7  <b>reports</b> [1] - 3465:17  <b>represent</b> [1] - 3408:8  <b>representative</b> [1] - 3501:7  <b>represented</b> [1] - 3409:1  <b>request</b> [1] - 3490:12  <b>required</b> [1] - 3399:14  <b>research</b> [2] - 3444:13, 3499:18  <b>resist</b> [1] - 3355:21  <b>resolve</b> [1] - 3505:19  <b>respect</b> [4] - 3358:4, 3406:12, 3501:12, 3504:15  <b>respond</b> [1] - 3503:4  <b>response</b> [1] - 3406:6  <b>responsibility</b> [2] - 3406:24, 3407:1  <b>rest</b> [6] - 3390:3, 3398:7, 3417:13, 3428:10, 3428:15, 3499:21  <b>restaurant</b> [1] - 3392:1  <b>restricted</b> [3] - 3431:17, 3431:19, 3442:18  <b>resume</b> [2] - 3499:3, 3499:4  <b>return</b> [1] - 3385:1</p>	<p><b>returned</b> [1] - 3385:16  <b>returning</b> [1] - 3390:10  <b>review</b> [4] - 3356:11, 3439:22, 3501:18, 3503:1  <b>reviewing</b> [1] - 3501:14  <b>revisit</b> [1] - 3503:21  <b>revolving</b> [1] - 3423:22  <b>right-hand</b> [1] - 3362:16  <b>road</b> [2] - 3443:9, 3471:15  <b>roads</b> [7] - 3428:22, 3429:1, 3429:22, 3431:11, 3433:4, 3442:16, 3443:4  <b>rocket</b> [3] - 3481:5, 3481:7, 3481:9  <b>role</b> [4] - 3364:13, 3364:14, 3365:13, 3365:15  <b>round</b> [1] - 3441:6  <b>route</b> [1] - 3418:13  <b>routes</b> [1] - 3364:20  <b>Rudolph</b> [1] - 3355:1  <b>ruled</b> [1] - 3504:17  <b>ruling</b> [2] - 3357:18, 3501:11  <b>rulings</b> [2] - 3504:20, 3504:23  <b>rum</b> [2] - 3480:17, 3481:13  <b>run</b> [3] - 3355:22, 3358:18, 3367:24  <b>run-on</b> [1] - 3355:22  <b>running</b> [1] - 3406:15  <b>runway</b> [1] - 3483:4  <b>RUSSELL</b> [1] - 3354:8  <b>Russell</b> [1] - 3488:4  <b>Rutherford</b> [115] - 3357:7, 3357:10, 3357:17, 3357:22, 3357:25, 3358:1, 3376:1, 3376:6, 3376:7, 3376:11, 3377:22, 3378:3, 3378:8, 3378:17, 3380:11, 3380:14, 3380:23, 3381:1, 3381:2, 3381:4, 3381:23, 3382:8, 3382:9, 3382:14, 3382:17, 3382:21, 3382:24, 3383:8, 3383:13, 3384:16, 3386:5, 3386:9, 3386:12, 3387:18, 3388:17, 3389:8, 3393:14, 3393:25, 3394:9, 3394:12, 3394:15, 3394:19, 3396:14, 3396:24, 3397:6, 3398:3, 3398:4, 3398:6, 3398:9, 3399:3, 3400:21, 3404:11, 3404:16, 3405:3, 3407:20, 3408:1, 3408:4, 3408:9, 3408:25, 3409:1, 3409:8, 3409:24, 3409:25, 3410:5, 3410:19, 3410:22, 3411:7, 3414:20, 3414:23, 3415:6, 3415:8, 3415:19, 3415:21, 3416:11, 3416:22, 3417:3, 3419:2, 3419:5, 3420:25, 3421:6, 3436:15, 3440:20, 3454:21, 3455:14, 3455:17, 3455:24, 3456:6, 3456:9, 3456:16, 3457:9, 3457:23, 3458:4, 3462:14, 3462:17, 3469:20, 3475:6, 3475:20, 3476:3, 3476:9, 3476:15, 3476:16, 3482:9, 3484:24, 3484:25, 3486:4, 3486:23, 3486:25, 3488:8, 3488:13, 3488:17, 3489:12  <b>Rutherford's</b> [3] - 3383:2, 3411:2, 3485:4</p>	<p style="text-align: center;"><b>S</b></p> <p><b>safe</b> [1] - 3425:18  <b>sake</b> [2] - 3472:2, 3472:12  <b>Salah</b> [1] - 3380:22  <b>sales</b> [2] - 3491:1, 3491:22  <b>salesmen</b> [1] - 3490:21  <b>salesperson</b> [1] - 3491:12  <b>sandbag</b> [1] - 3358:5  <b>sandbagging</b> [1] - 3358:11  <b>Saudi</b> [1] - 3374:1  <b>save</b> [3] - 3398:12, 3401:23, 3423:14  <b>saw</b> [3] - 3451:24, 3472:21, 3494:21  <b>scare</b> [1] - 3484:6  <b>schedule</b> [4] - 3502:24, 3503:8, 3504:13, 3506:3  <b>scheduled</b> [2] - 3383:15, 3408:22  <b>schedules</b> [1] - 3505:15  <b>scheduling</b> [4] - 3444:25, 3445:17, 3446:4, 3500:2  <b>schemes</b> [1] - 3484:14  <b>School</b> [1] - 3501:8  <b>school</b> [2] - 3484:21, 3501:23  <b>scope</b> [1] - 3454:2  <b>se</b> [1] - 3381:21  <b>seat</b> [3] - 3355:10, 3492:13, 3499:23  <b>seated</b> [8] - 3355:10, 3359:9, 3359:15, 3444:21, 3447:14, 3447:17, 3493:16, 3493:18  <b>seats</b> [1] - 3495:6  <b>second</b> [14] - 3362:13, 3365:18, 3382:5, 3384:5, 3389:19, 3398:6, 3400:6, 3401:5, 3401:7, 3409:9, 3412:10, 3438:18, 3481:20, 3494:12  <b>seconds</b> [16] - 3427:24, 3453:4, 3455:3, 3462:10, 3463:15, 3466:13, 3467:3, 3469:9, 3471:22, 3473:1, 3474:17, 3475:11, 3476:11, 3482:4, 3482:18, 3496:18  <b>sectors</b> [1] - 3502:10  <b>security</b> [30] - 3425:1, 3433:15, 3439:21, 3448:20, 3448:23, 3449:1, 3449:4, 3449:5, 3449:18, 3449:20, 3449:24, 3450:2, 3450:8, 3450:15, 3450:17, 3450:20, 3451:16, 3451:17, 3451:18, 3451:25, 3465:18, 3474:21, 3479:23, 3483:22, 3483:24, 3484:6, 3484:8, 3484:9, 3484:10, 3486:9  <b>See</b> [1] - 3429:18  <b>see</b> [45] - 3356:9, 3362:1, 3369:16, 3370:5, 3375:16, 3376:16, 3382:24, 3395:12, 3400:19, 3401:22, 3417:24, 3423:11, 3425:3, 3429:8, 3429:11, 3430:16, 3430:20, 3430:24, 3433:18, 3434:19, 3438:22, 3449:9, 3449:17, 3450:19, 3455:16, 3460:1, 3481:5, 3482:22, 3482:24, 3483:4, 3483:24, 3495:19, 3496:12, 3497:5, 3497:6, 3497:7, 3497:11, 3497:14, 3497:15,</p>
--	--	---

<p>3499:21, 3500:5, 3501:22, 3502:3, 3505:19, 3505:25</p> <p><b>seem</b> [2] - 3412:25, 3413:4</p> <p><b>sell</b> [2] - 3468:21, 3484:24</p> <p><b>selling</b> [2] - 3415:9, 3468:19</p> <p><b>send</b> [18] - 3393:14, 3393:18, 3394:7, 3394:20, 3401:16, 3409:6, 3409:8, 3409:17, 3409:18, 3409:20, 3409:22, 3409:23, 3415:4, 3418:15, 3418:17, 3418:25, 3423:19, 3484:6</p> <p><b>sending</b> [5] - 3406:11, 3418:14, 3483:19, 3483:23, 3484:2</p> <p><b>sense</b> [2] - 3417:2, 3504:4</p> <p><b>sensitivity</b> [1] - 3421:20</p> <p><b>sent</b> [3] - 3394:6, 3406:10</p> <p><b>sentence</b> [3] - 3355:16, 3355:20, 3355:22</p> <p><b>separate</b> [1] - 3478:5</p> <p><b>September</b> [3] - 3369:23, 3371:2, 3371:3</p> <p><b>series</b> [3] - 3375:7, 3377:18, 3391:7</p> <p><b>session</b> [6] - 3397:14, 3401:12, 3401:16, 3403:20, 3477:11, 3477:12</p> <p><b>set</b> [10] - 3355:11, 3360:18, 3369:5, 3392:17, 3410:25, 3447:8, 3485:3, 3486:1, 3495:5, 3505:14</p> <p><b>seven</b> [6] - 3434:9, 3434:11, 3450:22, 3471:22, 3473:22, 3477:11</p> <p><b>seventh</b> [1] - 3383:25</p> <p><b>several</b> [6] - 3356:24, 3375:21, 3377:7, 3377:8, 3393:17, 3409:21</p> <p><b>SF-26</b> [1] - 3367:5</p> <p><b>Shalom</b> [1] - 3425:4</p> <p><b>shalom</b> [1] - 3425:7</p> <p><b>sheik</b> [6] - 3414:19, 3415:18, 3440:19, 3440:22, 3482:7, 3482:11</p> <p><b>Sheik</b> [122] - 3361:9, 3364:9, 3368:25, 3369:3, 3372:10, 3372:22, 3374:18, 3374:22, 3375:5, 3375:15, 3376:6, 3377:21, 3379:1, 3379:3, 3379:13, 3381:4, 3381:6, 3381:15, 3382:8, 3382:9, 3383:4, 3383:5, 3383:7, 3383:8, 3386:17, 3386:18, 3389:8, 3389:9, 3393:13, 3393:19, 3393:25, 3394:15, 3394:17, 3394:19, 3394:21, 3394:24, 3396:14, 3396:24, 3397:6, 3398:2, 3398:3, 3398:6, 3405:17, 3405:20, 3405:22, 3406:2, 3406:18, 3406:20, 3407:7, 3413:12, 3414:3, 3414:6, 3414:7, 3414:10, 3414:20, 3415:6, 3415:7, 3415:19, 3416:11, 3426:19, 3427:16, 3427:18, 3436:15, 3440:20, 3454:21, 3455:14, 3455:17, 3455:23, 3456:2, 3456:6, 3456:9, 3462:13, 3462:14, 3462:17, 3469:18, 3469:19, 3469:20, 3470:4, 3475:6, 3475:8, 3475:14, 3475:18, 3475:20, 3475:24, 3476:9, 3476:16, 3480:14, 3481:18, 3481:19, 3484:24, 3484:25, 3485:4, 3485:11, 3486:4, 3486:25,</p>	<p>3487:2, 3487:12, 3487:22, 3487:23, 3487:24, 3488:2, 3488:3, 3488:12, 3488:13, 3488:14, 3488:15, 3488:16, 3489:7, 3489:9, 3489:19, 3490:15</p> <p><b>shiek</b> [7] - 3472:20, 3475:3, 3475:24, 3476:13, 3476:14, 3482:9, 3482:14</p> <p><b>shifts</b> [1] - 3453:24</p> <p><b>Shiite</b> [1] - 3387:4</p> <p><b>shining</b> [1] - 3398:8</p> <p><b>shipments</b> [1] - 3465:23</p> <p><b>shipping</b> [2] - 3423:8</p> <p><b>shoots</b> [1] - 3442:5</p> <p><b>shop</b> [1] - 3490:11</p> <p><b>shopping</b> [1] - 3490:9</p> <p><b>short</b> [9] - 3362:25, 3379:6, 3379:7, 3399:23, 3441:2, 3441:3, 3441:4, 3490:8</p> <p><b>shortcut</b> [2] - 3398:24, 3432:17</p> <p><b>shortly</b> [15] - 3361:6, 3361:12, 3361:13, 3361:18, 3362:4, 3362:7, 3362:22, 3368:5, 3371:7, 3371:16, 3387:6, 3390:9, 3393:23, 3487:6, 3492:20</p> <p><b>shots</b> [4] - 3405:12, 3491:8, 3498:6, 3498:8</p> <p><b>show</b> [37] - 3361:22, 3362:10, 3365:23, 3366:17, 3367:3, 3369:10, 3369:14, 3370:5, 3379:23, 3380:1, 3383:21, 3383:23, 3384:4, 3389:17, 3389:19, 3395:6, 3397:13, 3398:16, 3398:19, 3399:20, 3401:20, 3414:17, 3456:24, 3463:3, 3463:8, 3463:10, 3463:11, 3465:21, 3466:15, 3473:8, 3477:7, 3477:8, 3477:11, 3477:12, 3487:16, 3492:6, 3494:5</p> <p><b>showed</b> [10] - 3370:2, 3383:16, 3384:8, 3384:10, 3384:12, 3384:19, 3465:17, 3468:23, 3480:11</p> <p><b>showing</b> [5] - 3428:19, 3436:16, 3451:10, 3463:6, 3478:24</p> <p><b>shown</b> [2] - 3453:12, 3495:2</p> <p><b>shows</b> [1] - 3398:5</p> <p><b>Shukrijumah</b> [10] - 3374:19, 3375:6, 3378:1, 3378:6, 3388:6, 3388:8, 3388:12, 3388:16, 3475:22, 3503:17</p> <p><b>shut</b> [2] - 3439:8, 3459:22</p> <p><b>side</b> [6] - 3358:12, 3358:13, 3429:2, 3429:3, 3429:17, 3430:16</p> <p><b>Side</b> [1] - 3398:1</p> <p><b>sides</b> [1] - 3504:14</p> <p><b>sign</b> [2] - 3429:7, 3443:17</p> <p><b>signs</b> [3] - 3430:4, 3443:15, 3443:17</p> <p><b>silence</b> [1] - 3401:3</p> <p><b>simply</b> [1] - 3357:21</p> <p><b>simultaneously</b> [1] - 3484:2</p> <p><b>single</b> [1] - 3430:20</p> <p><b>sister</b> [2] - 3366:7, 3366:13</p> <p><b>sister's</b> [1] - 3406:20</p> <p><b>sit</b> [3] - 3438:12, 3438:14, 3499:9</p> <p><b>sitting</b> [1] - 3449:4</p>	<p><b>situation</b> [1] - 3421:20</p> <p><b>six</b> [21] - 3364:11, 3364:25, 3365:3, 3365:4, 3419:18, 3423:15, 3449:23, 3451:20, 3460:3, 3460:6, 3460:7, 3462:5, 3462:9, 3462:10, 3463:1, 3473:2, 3481:24, 3482:5, 3482:8, 3483:25, 3493:10</p> <p><b>sixth</b> [1] - 3383:25</p> <p><b>sketch</b> [7] - 3438:5, 3438:7, 3438:11, 3438:14, 3466:15, 3473:5, 3473:19</p> <p><b>sketching</b> [1] - 3438:16</p> <p><b>skip</b> [1] - 3495:9</p> <p><b>slang</b> [1] - 3478:20</p> <p><b>sleep</b> [1] - 3406:19</p> <p><b>slight</b> [1] - 3376:12</p> <p><b>small</b> [6] - 3392:15, 3441:10, 3441:12, 3441:13, 3460:15, 3461:14</p> <p><b>smaller</b> [1] - 3460:16</p> <p><b>smoothly</b> [2] - 3358:18, 3358:22</p> <p><b>smuggling</b> [1] - 3395:17</p> <p><b>snacks</b> [2] - 3444:4, 3506:5</p> <p><b>soap</b> [2] - 3485:4, 3486:16</p> <p><b>soldier</b> [2] - 3449:9, 3449:17</p> <p><b>someone</b> [5] - 3373:3, 3394:7, 3417:20, 3490:16, 3504:8</p> <p><b>someplace</b> [1] - 3431:24</p> <p><b>sometime</b> [2] - 3371:3, 3373:20</p> <p><b>sometimes</b> [4] - 3392:5, 3394:23, 3424:12, 3424:20</p> <p><b>somewhat</b> [2] - 3359:11, 3396:4</p> <p><b>somewhere</b> [2] - 3459:17, 3463:3</p> <p><b>soon</b> [3] - 3371:23, 3371:24</p> <p><b>sorry</b> [42] - 3355:21, 3357:13, 3357:14, 3361:11, 3364:5, 3365:6, 3367:4, 3367:6, 3369:1, 3385:2, 3385:3, 3390:21, 3397:10, 3403:21, 3405:21, 3411:25, 3412:1, 3412:7, 3424:20, 3425:25, 3437:8, 3438:21, 3448:11, 3450:10, 3453:16, 3454:7, 3455:8, 3456:8, 3456:14, 3458:21, 3460:3, 3461:7, 3462:7, 3466:21, 3470:9, 3476:14, 3481:25, 3489:24, 3496:15</p> <p><b>sort</b> [11] - 3369:10, 3377:9, 3388:23, 3394:12, 3405:12, 3406:14, 3408:1, 3411:14, 3463:25, 3473:5, 3497:6</p> <p><b>sounds</b> [1] - 3358:16</p> <p><b>souvenirs</b> [1] - 3391:22</p> <p><b>spark</b> [1] - 3370:17</p> <p><b>speaking</b> [14] - 3371:15, 3394:11, 3399:1, 3404:10, 3413:12, 3451:6, 3455:17, 3455:23, 3457:8, 3457:9, 3458:17, 3462:13, 3475:12, 3478:1</p> <p><b>speaks</b> [1] - 3462:17</p> <p><b>special</b> [1] - 3463:7</p> <p><b>specific</b> [5] - 3368:22, 3370:21, 3377:17, 3389:11, 3478:9</p> <p><b>specifically</b> [8] - 3370:21, 3375:18, 3387:10, 3388:1, 3388:20, 3443:1, 3465:1, 3498:22</p> <p><b>specified</b> [1] - 3396:10</p>
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<p><b>speeches</b> [1] - 3398:13  <b>spend</b> [2] - 3394:19, 3409:9  <b>spoken</b> [5] - 3355:19, 3355:23, 3461:8, 3476:9, 3502:11  <b>spokesperson</b> [1] - 3408:3  <b>spot</b> [1] - 3431:22  <b>spotted</b> [1] - 3374:2  <b>stamps</b> [1] - 3366:22  <b>stapled</b> [1] - 3477:12  <b>start</b> [25] - 3363:6, 3398:15, 3408:6, 3408:7, 3409:25, 3410:8, 3411:23, 3411:24, 3444:17, 3450:24, 3450:25, 3455:3, 3457:8, 3465:6, 3466:13, 3467:1, 3467:2, 3471:3, 3471:21, 3475:10, 3481:12, 3482:3, 3492:23, 3494:19, 3502:9  <b>started</b> [6] - 3374:15, 3386:8, 3386:20, 3412:2, 3447:5, 3490:9  <b>starting</b> [14] - 3412:8, 3423:15, 3423:25, 3426:15, 3427:24, 3439:25, 3440:16, 3453:3, 3462:9, 3463:15, 3469:8, 3472:25, 3476:11, 3482:17  <b>starts</b> [3] - 3398:6, 3405:17, 3423:25  <b>state</b> [2] - 3357:23, 3358:2  <b>statement</b> [3] - 3437:6, 3449:5, 3503:17  <b>states</b> [6] - 3361:10, 3364:15, 3367:25, 3408:7, 3413:6, 3413:9  <b>STATES</b> [3] - 3354:1, 3354:4, 3354:13  <b>States</b> [8] - 3354:7, 3354:16, 3354:18, 3409:3, 3417:18, 3417:21, 3418:2, 3485:5  <b>statutes</b> [1] - 3478:25  <b>stay</b> [13] - 3368:22, 3368:23, 3369:2, 3385:12, 3385:17, 3385:19, 3385:22, 3385:25, 3386:2, 3386:3, 3406:7, 3419:6, 3430:24  <b>staying</b> [7] - 3368:19, 3372:5, 3381:15, 3386:1, 3391:19, 3392:6, 3406:24  <b>steal</b> [1] - 3439:19  <b>stenography</b> [1] - 3355:4  <b>step</b> [2] - 3445:4, 3500:5  <b>still</b> [35] - 3359:25, 3360:20, 3365:24, 3367:25, 3368:10, 3387:16, 3388:5, 3392:18, 3396:1, 3400:22, 3405:24, 3412:20, 3415:21, 3416:19, 3417:7, 3417:8, 3422:3, 3432:7, 3432:13, 3444:22, 3447:21, 3449:23, 3451:24, 3454:9, 3470:8, 3470:9, 3482:1, 3489:4, 3490:6, 3493:1, 3493:24, 3499:8, 3499:24, 3504:9  <b>stipulations</b> [1] - 3446:5  <b>stone</b> [2] - 3485:5, 3486:16  <b>stood</b> [1] - 3406:20  <b>stop</b> [26] - 3364:23, 3370:13, 3404:10, 3414:15, 3420:3, 3430:4, 3440:25, 3441:2, 3441:3, 3441:4, 3441:10, 3441:12, 3441:13, 3441:18, 3442:3, 3442:8, 3443:21, 3473:13, 3478:5,</p>	<p>3479:16, 3493:12, 3498:2, 3498:24, 3498:25, 3499:2  <b>stopped</b> [12] - 3431:14, 3432:2, 3432:4, 3433:6, 3441:24, 3442:1, 3442:16, 3443:19, 3451:3, 3465:5, 3497:4  <b>stopping</b> [1] - 3436:16  <b>stops</b> [40] - 3422:16, 3422:23, 3423:2, 3425:14, 3426:21, 3428:1, 3428:11, 3440:3, 3441:16, 3442:2, 3442:4, 3451:1, 3453:7, 3455:1, 3455:5, 3455:7, 3455:12, 3455:21, 3462:11, 3462:19, 3463:17, 3466:3, 3466:14, 3466:19, 3467:5, 3467:15, 3468:3, 3469:11, 3470:25, 3494:13, 3494:23, 3495:10, 3496:14, 3497:3, 3497:23, 3498:1, 3498:11, 3498:18, 3498:23  <b>store</b> [10] - 3458:22, 3459:2, 3459:3, 3459:7, 3461:25, 3469:13, 3490:13, 3490:16, 3490:19, 3490:24  <b>story</b> [2] - 3377:22, 3398:8  <b>straight</b> [1] - 3499:9  <b>Street</b> [1] - 3461:25  <b>streets</b> [1] - 3392:8  <b>strip</b> [1] - 3386:13  <b>student</b> [1] - 3484:21  <b>studies</b> [2] - 3501:8, 3501:9  <b>study</b> [1] - 3501:18  <b>stuff</b> [3] - 3391:24, 3399:22, 3479:7  <b>subject</b> [3] - 3503:16, 3505:4, 3505:21  <b>substitute</b> [1] - 3401:18  <b>successful</b> [3] - 3455:14, 3455:18, 3468:19  <b>sufficient</b> [1] - 3436:21  <b>suggest</b> [2] - 3387:20, 3414:15  <b>suggested</b> [3] - 3387:18, 3387:21, 3390:15  <b>suggesting</b> [1] - 3358:10  <b>suggestion</b> [2] - 3413:7, 3444:4  <b>suing</b> [1] - 3408:19  <b>suitcase</b> [2] - 3427:20, 3428:3  <b>supernatural</b> [3] - 3483:2, 3483:15, 3484:10  <b>supposed</b> [21] - 3384:25, 3385:4, 3393:1, 3393:4, 3393:7, 3393:8, 3398:10, 3400:2, 3405:4, 3411:1, 3411:2, 3413:25, 3414:24, 3420:18, 3456:17, 3456:20, 3456:23, 3457:1, 3457:2, 3457:4, 3469:1  <b>surprised</b> [2] - 3412:4, 3428:25  <b>surveil</b> [5] - 3389:7, 3389:9, 3389:12, 3390:16, 3456:20  <b>surveillance</b> [1] - 3453:23  <b>suspicious</b> [1] - 3386:21  <b>sustained</b> [7] - 3377:1, 3396:22, 3416:2, 3433:13, 3435:20, 3456:12, 3472:7  <b>switched</b> [1] - 3376:7  <b>sworn</b> [1] - 3360:8</p>	<p style="text-align: center;"><b>T</b></p> <p><b>Talib</b> [4] - 3469:19, 3469:20, 3475:6, 3475:8  <b>talks</b> [4] - 3440:19, 3450:2, 3474:21, 3478:19  <b>tank</b> [1] - 3430:20  <b>tanks</b> [9] - 3423:22, 3434:19, 3435:23, 3436:16, 3441:24, 3441:25, 3449:3  <b>tape</b> [70] - 3399:20, 3401:23, 3402:3, 3404:11, 3404:15, 3404:19, 3407:13, 3411:13, 3412:13, 3412:19, 3422:16, 3422:23, 3423:2, 3425:11, 3425:14, 3426:21, 3427:22, 3428:1, 3428:11, 3440:3, 3442:9, 3451:1, 3453:7, 3454:5, 3455:1, 3455:5, 3455:7, 3455:12, 3455:21, 3462:11, 3462:19, 3463:17, 3466:3, 3466:14, 3466:19, 3467:5, 3467:15, 3468:3, 3469:11, 3470:25, 3494:13, 3494:23, 3495:10, 3496:14, 3497:3, 3497:23, 3498:1, 3498:11, 3498:18, 3498:23  <b>Tape</b> [29] - 3404:9, 3411:22, 3412:11, 3417:16, 3422:16, 3422:23, 3423:2, 3425:14, 3426:21, 3428:1, 3428:11, 3440:3, 3471:6, 3471:10, 3471:24, 3473:3, 3474:19, 3475:16, 3482:6, 3482:20, 3494:13, 3494:23, 3495:10, 3496:14, 3497:3, 3497:23, 3498:1, 3498:11, 3498:18  <b>tapes</b> [1] - 3401:11  <b>taught</b> [3] - 3473:7, 3476:18, 3480:6  <b>teaching</b> [3] - 3439:15, 3439:18, 3439:21  <b>team</b> [2] - 3444:24, 3500:1  <b>Tech</b> [1] - 3476:9  <b>tech</b> [25] - 3363:19, 3363:21, 3363:22, 3363:24, 3364:2, 3364:7, 3364:17, 3364:19, 3364:22, 3365:12, 3365:14, 3365:19, 3366:2, 3451:21, 3452:4, 3459:15, 3459:16, 3459:24, 3460:8, 3460:20, 3461:10, 3475:19, 3491:3, 3491:5  <b>technical</b> [1] - 3363:18  <b>technology</b> [4] - 3483:1, 3483:8, 3483:9  <b>telephone</b> [6] - 3360:25, 3411:14, 3411:19, 3418:22, 3426:9, 3457:13  <b>ten</b> [14] - 3438:21, 3438:23, 3444:17, 3445:2, 3446:6, 3453:4, 3463:14, 3463:16, 3464:2, 3464:9, 3482:21, 3492:23, 3492:25, 3493:3  <b>terms</b> [2] - 3502:16, 3503:5  <b>terrorism</b> [2] - 3501:9  <b>terrorist</b> [1] - 3429:19  <b>testified</b> [6] - 3360:8, 3371:5, 3380:14, 3382:14, 3479:22, 3494:18  <b>testify</b> [1] - 3504:25  <b>testifying</b> [2] - 3502:22, 3504:8</p>
---	---	--

<p><b>testimony</b> [12] - 3365:9, 3382:17, 3394:21, 3400:17, 3444:24, 3445:1, 3492:25, 3499:25, 3502:21, 3503:1, 3503:16, 3504:13</p> <p><b>THE</b> [140] - 3354:13, 3355:10, 3355:14, 3355:17, 3355:20, 3356:8, 3356:14, 3356:17, 3356:20, 3356:25, 3357:13, 3357:19, 3358:14, 3358:16, 3359:6, 3359:8, 3359:9, 3359:18, 3359:21, 3359:24, 3359:25, 3360:2, 3360:3, 3364:5, 3364:9, 3367:5, 3370:13, 3370:15, 3370:16, 3370:19, 3370:22, 3370:23, 3375:10, 3377:1, 3377:13, 3378:7, 3378:13, 3378:14, 3378:15, 3378:16, 3385:2, 3395:24, 3396:22, 3397:2, 3397:18, 3398:24, 3399:7, 3399:17, 3400:4, 3400:12, 3400:19, 3401:6, 3402:2, 3402:7, 3403:2, 3403:5, 3403:19, 3403:23, 3404:6, 3404:20, 3407:11, 3407:17, 3411:23, 3411:25, 3412:2, 3412:6, 3416:2, 3416:9, 3419:23, 3420:5, 3422:13, 3426:22, 3427:1, 3433:13, 3435:20, 3436:11, 3442:24, 3443:3, 3443:6, 3444:1, 3444:21, 3445:3, 3445:4, 3445:6, 3445:10, 3446:2, 3447:2, 3447:7, 3447:12, 3447:14, 3447:19, 3447:20, 3447:21, 3447:23, 3447:24, 3454:6, 3456:12, 3462:6, 3466:20, 3472:7, 3480:24, 3492:10, 3492:22, 3493:2, 3493:3, 3493:6, 3493:9, 3493:11, 3493:16, 3493:20, 3493:23, 3493:24, 3494:1, 3494:2, 3494:7, 3494:9, 3496:7, 3499:2, 3499:23, 3500:4, 3500:5, 3501:1, 3501:3, 3501:4, 3501:17, 3501:19, 3501:22, 3502:1, 3502:9, 3502:14, 3502:18, 3503:23, 3504:1, 3504:18, 3505:12, 3506:2, 3506:9, 3506:11, 3506:13, 3506:16</p> <p><b>theoretically</b> [1] - 3469:1</p> <p><b>thief</b> [1] - 3439:7</p> <p><b>thieving</b> [2] - 3439:14, 3440:5</p> <p><b>thinking</b> [3] - 3412:24, 3413:1, 3428:7</p> <p><b>thinks</b> [5] - 3423:4, 3428:2, 3467:23, 3473:4, 3473:18</p> <p><b>third</b> [5] - 3367:7, 3367:9, 3395:7, 3441:10, 3487:18</p> <p><b>thirty</b> [2] - 3453:4, 3453:5</p> <p><b>thirty-five</b> [1] - 3453:4</p> <p><b>thoughts</b> [2] - 3361:7, 3379:24</p> <p><b>thousand</b> [2] - 3416:25</p> <p><b>thousands</b> [4] - 3399:11, 3451:3, 3451:9, 3452:1</p> <p><b>three</b> [15] - 3377:11, 3383:25, 3423:15, 3424:17, 3424:22, 3426:19, 3437:10, 3437:17, 3449:2, 3449:8, 3449:13, 3455:22, 3471:17, 3480:2, 3482:18</p> <p><b>throughout</b> [1] - 3433:8</p> <p><b>throw</b> [1] - 3479:6</p>	<p><b>Thursday</b> [1] - 3503:3</p> <p><b>ticket</b> [17] - 3385:1, 3394:1, 3394:16, 3395:2, 3488:9, 3488:11, 3488:12, 3488:16, 3488:18, 3489:3, 3489:4, 3489:9, 3489:13, 3489:16, 3489:17, 3489:22, 3490:1</p> <p><b>tickets</b> [11] - 3394:16, 3395:15, 3395:16, 3395:19, 3395:21, 3409:12, 3415:13, 3485:17, 3488:2, 3488:3, 3489:15</p> <p><b>tight</b> [2] - 3450:17, 3503:8</p> <p><b>timeframe</b> [1] - 3465:4</p> <p><b>timewise</b> [1] - 3369:10</p> <p><b>timing</b> [2] - 3503:5, 3504:4</p> <p><b>today</b> [3] - 3359:13, 3445:15, 3445:22</p> <p><b>together</b> [3] - 3377:7, 3377:8, 3477:12</p> <p><b>token</b> [1] - 3505:14</p> <p><b>tomorrow</b> [10] - 3408:5, 3445:21, 3499:4, 3499:6, 3499:21, 3500:3, 3500:6, 3503:22, 3505:25</p> <p><b>tomorrow's</b> [1] - 3506:3</p> <p><b>TONI</b> [1] - 3354:24</p> <p><b>took</b> [15] - 3362:22, 3370:19, 3370:24, 3374:11, 3378:22, 3382:7, 3391:20, 3407:8, 3407:22, 3422:8, 3431:10, 3444:3, 3464:21, 3465:10, 3495:1</p> <p><b>top</b> [12] - 3362:16, 3410:8, 3412:2, 3412:9, 3422:14, 3426:15, 3432:6, 3440:1, 3443:17, 3454:24, 3476:12</p> <p><b>torch</b> [1] - 3479:6</p> <p><b>touch</b> [4] - 3372:6, 3374:23, 3398:5, 3421:1</p> <p><b>towards</b> [1] - 3381:14</p> <p><b>tower</b> [18] - 3430:7, 3430:9, 3430:11, 3430:15, 3430:16, 3430:17, 3433:10, 3433:14, 3433:22, 3443:20, 3451:6, 3451:12, 3451:13, 3451:15, 3451:17, 3465:15, 3465:18</p> <p><b>track</b> [1] - 3420:4</p> <p><b>traffic</b> [9] - 3432:9, 3443:16, 3462:21, 3462:22, 3463:5, 3463:9, 3463:12, 3465:15, 3467:8</p> <p><b>train</b> [1] - 3474:25</p> <p><b>trained</b> [1] - 3484:1</p> <p><b>transcribe</b> [1] - 3399:23</p> <p><b>transcribed</b> [3] - 3401:13, 3417:14, 3427:23</p> <p><b>transcript</b> [42] - 3355:4, 3397:14, 3398:5, 3398:17, 3398:19, 3398:22, 3398:25, 3399:10, 3399:18, 3399:23, 3400:4, 3401:3, 3401:4, 3401:12, 3403:6, 3404:4, 3405:15, 3407:4, 3407:16, 3411:10, 3424:22, 3429:6, 3437:7, 3440:1, 3440:16, 3448:18, 3455:2, 3460:2, 3463:16, 3466:12, 3467:2, 3467:4, 3469:8, 3471:23, 3473:2, 3474:16, 3476:10, 3480:11, 3481:11, 3482:5, 3492:8</p> <p><b>TRANSCRIPT</b> [1] - 3354:12</p> <p><b>transcription</b> [1] - 3355:4</p>	<p><b>transcripts</b> [7] - 3356:24, 3357:20, 3358:4, 3358:7, 3399:12, 3403:12, 3407:12</p> <p><b>travel</b> [8] - 3375:5, 3488:13, 3489:7, 3489:10, 3489:17, 3489:20, 3490:8</p> <p><b>traveled</b> [1] - 3365:4</p> <p><b>traveling</b> [10] - 3370:20, 3391:16, 3391:17, 3394:16, 3414:9, 3414:12, 3414:13, 3414:14, 3415:15, 3417:2</p> <p><b>treat</b> [1] - 3391:25</p> <p><b>treated</b> [2] - 3458:10, 3458:12</p> <p><b>TRIAL</b> [1] - 3354:12</p> <p><b>trial</b> [3] - 3501:24, 3503:18, 3505:14</p> <p><b>trials</b> [1] - 3358:21</p> <p><b>tried</b> [1] - 3391:1</p> <p><b>trigger</b> [2] - 3370:5, 3370:7</p> <p><b>Trinidad</b> [44] - 3364:10, 3373:10, 3373:15, 3373:19, 3373:23, 3374:5, 3374:16, 3374:17, 3374:22, 3374:23, 3374:25, 3375:2, 3375:3, 3375:5, 3376:16, 3376:20, 3378:19, 3379:10, 3379:11, 3380:8, 3401:19, 3408:6, 3410:1, 3410:9, 3410:12, 3410:18, 3410:19, 3411:1, 3411:3, 3411:4, 3412:21, 3412:24, 3413:2, 3413:3, 3413:8, 3413:14, 3413:15, 3413:20, 3415:4, 3475:22, 3482:15, 3485:17</p> <p><b>trip</b> [17] - 3355:25, 3356:7, 3368:12, 3368:13, 3374:12, 3374:15, 3408:6, 3416:13, 3430:12, 3430:19, 3440:25, 3443:1, 3443:2, 3461:6, 3480:18, 3480:21, 3492:13</p> <p><b>trips</b> [7] - 3414:25, 3415:11, 3417:4, 3442:25, 3443:2, 3443:3, 3480:2</p> <p><b>troubles</b> [1] - 3408:14</p> <p><b>truck</b> [25] - 3425:17, 3425:21, 3426:4, 3426:5, 3435:4, 3435:7, 3435:8, 3435:10, 3435:11, 3435:12, 3435:13, 3435:15, 3435:18, 3435:21, 3436:6, 3436:9, 3436:13, 3437:5, 3437:8, 3449:10, 3449:18, 3474:5, 3494:14, 3494:17</p> <p><b>trucks</b> [1] - 3434:20</p> <p><b>true</b> [4] - 3394:3, 3396:23, 3397:5, 3489:2</p> <p><b>trust</b> [4] - 3364:16, 3386:6, 3387:4, 3406:9</p> <p><b>truth</b> [2] - 3458:11, 3458:17</p> <p><b>truthful</b> [1] - 3458:13</p> <p><b>try</b> [8] - 3357:24, 3373:2, 3409:8, 3409:18, 3438:12, 3477:8, 3491:20</p> <p><b>trying</b> [9] - 3358:5, 3376:12, 3377:9, 3383:23, 3439:20, 3469:12, 3475:22, 3478:25, 3484:24</p> <p><b>turn</b> [19] - 3372:24, 3399:12, 3429:19, 3431:12, 3431:16, 3431:17, 3431:20, 3431:24, 3431:25, 3432:18, 3432:21, 3432:22, 3448:4, 3469:7, 3472:25, 3491:18, 3496:24, 3497:24</p> <p><b>turned</b> [5] - 3355:24, 3442:12,</p>
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<p>3467:20, 3496:22, 3505:6  <b>turning</b> [5] - 3440:15, 3471:17, 3471:21, 3473:22, 3481:11  <b>TV</b> [1] - 3499:16  <b>twenty</b> [3] - 3462:10, 3465:7, 3465:11  <b>twenty-six</b> [1] - 3462:10  <b>twenty-year</b> [1] - 3465:7  <b>two</b> [21] - 3371:24, 3385:7, 3393:4, 3393:8, 3399:21, 3399:25, 3401:5, 3420:8, 3420:11, 3426:16, 3445:21, 3449:2, 3449:23, 3451:2, 3451:8, 3454:25, 3472:21, 3473:18, 3476:22, 3477:13, 3481:14  <b>two-week</b> [1] - 3420:11</p>	<p>3471:25, 3478:25, 3481:24, 3482:14, 3482:21, 3482:23, 3483:2, 3483:15, 3484:2, 3484:5, 3485:3, 3486:1, 3489:5, 3489:6, 3492:23, 3495:5, 3495:15, 3496:1, 3496:5, 3496:8, 3496:20, 3497:21, 3497:24, 3501:2, 3501:13, 3504:9, 3505:1, 3505:2, 3505:17  <b>uses</b> [1] - 3478:12</p>	<p>3357:20, 3359:2, 3359:20, 3360:10, 3367:6, 3377:15, 3385:3, 3390:2, 3397:9, 3397:12, 3397:17, 3398:2, 3398:20, 3399:6, 3399:10, 3399:13, 3399:20, 3399:25, 3400:6, 3401:2, 3401:7, 3401:15, 3401:20, 3401:25, 3402:8, 3403:4, 3403:17, 3403:21, 3404:5, 3404:8, 3404:22, 3405:14, 3407:16, 3411:24, 3412:1, 3412:3, 3412:7, 3419:20, 3420:3, 3422:14, 3426:24, 3427:2, 3443:2, 3445:9, 3445:14, 3447:6, 3448:3, 3453:2, 3454:7, 3462:7, 3466:21, 3471:2, 3477:11, 3480:25, 3487:16, 3489:1, 3493:8, 3493:10, 3494:3, 3494:4, 3494:8, 3494:10, 3498:24  <b>Whalen</b> [13] - 3356:24, 3357:11, 3357:19, 3360:3, 3403:2, 3442:25, 3443:1, 3445:7, 3447:8, 3448:1, 3493:7, 3493:21, 3494:2  <b>whatsoever</b> [1] - 3499:20  <b>whole</b> [12] - 3367:8, 3380:4, 3390:23, 3401:11, 3401:16, 3401:23, 3402:1, 3402:3, 3425:22, 3437:2, 3439:23, 3477:14  <b>wife</b> [10] - 3366:20, 3368:3, 3368:4, 3379:12, 3379:13, 3379:19, 3380:7, 3391:15, 3391:17, 3418:19  <b>winded</b> [1] - 3394:2  <b>window</b> [1] - 3495:14  <b>wire</b> [11] - 3386:14, 3425:20, 3425:22, 3425:23, 3426:2, 3474:4, 3474:5, 3474:13, 3479:13, 3479:23, 3480:21  <b>wired</b> [1] - 3474:5  <b>withdrawn</b> [1] - 3466:1  <b>witness</b> [22] - 3356:12, 3356:23, 3357:7, 3357:8, 3358:9, 3358:24, 3359:4, 3360:7, 3361:22, 3397:13, 3398:2, 3400:14, 3400:21, 3404:4, 3445:5, 3445:12, 3447:9, 3447:10, 3487:16, 3496:7, 3500:7, 3503:10  <b>WITNESS</b> [17] - 3359:24, 3360:2, 3364:9, 3370:15, 3370:19, 3370:23, 3378:13, 3378:15, 3443:6, 3445:3, 3447:20, 3447:23, 3493:2, 3493:23, 3494:1, 3500:4, 3501:3  <b>witness'</b> [2] - 3357:23, 3358:2  <b>witnesses</b> [1] - 3445:18  <b>wondering</b> [1] - 3502:23  <b>wood</b> [2] - 3485:5, 3486:16  <b>word</b> [4] - 3478:12, 3491:5, 3491:6, 3502:11  <b>worded</b> [1] - 3361:11  <b>wording</b> [1] - 3478:1  <b>words</b> [1] - 3363:10  <b>worker</b> [4] - 3439:2, 3439:3, 3440:9, 3440:13  <b>workers</b> [2] - 3450:6, 3450:8  <b>world</b> [1] - 3485:23  <b>worried</b> [1] - 3406:8</p>
<b>V</b>		
<p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> [2] - 3391:16, 3391:17  <b>unavailability</b> [1] - 3503:12  <b>uncle</b> [1] - 3452:2  <b>uncle's</b> [3] - 3460:10, 3461:16, 3461:23  <b>unconnected</b> [1] - 3366:5  <b>under</b> [10] - 3360:1, 3434:25, 3436:22, 3447:22, 3488:16, 3490:11, 3492:13, 3493:1, 3493:25, 3499:24  <b>Undercover</b> [5] - 3485:19, 3485:20, 3486:12, 3486:15, 3486:21  <b>underground</b> [4] - 3434:17, 3434:21, 3436:18, 3436:21  <b>underlying</b> [1] - 3421:10  <b>underneath</b> [2] - 3436:24, 3437:1  <b>understood</b> [5] - 3364:13, 3364:18, 3374:3, 3396:18, 3458:16  <b>unease</b> [1] - 3386:18  <b>unintelligible</b> [1] - 3423:16  <b>UNITED</b> [3] - 3354:1, 3354:4, 3354:13  <b>United</b> [8] - 3354:7, 3354:16, 3354:18, 3409:3, 3417:17, 3417:21, 3418:2, 3485:5  <b>University</b> [1] - 3501:8  <b>university</b> [1] - 3501:14  <b>unknown</b> [2] - 3396:16, 3505:2  <b>unless</b> [1] - 3418:17  <b>unlikely</b> [1] - 3431:20  <b>up</b> [86] - 3362:19, 3368:2, 3368:4, 3371:4, 3371:7, 3372:6, 3372:24, 3373:2, 3376:15, 3383:8, 3383:16, 3384:2, 3384:8, 3384:10, 3384:12, 3384:19, 3394:2, 3396:11, 3398:8, 3408:4, 3410:1, 3412:10, 3414:10, 3414:16, 3415:7, 3418:25, 3419:25, 3420:14, 3420:20, 3421:21, 3422:8, 3427:19, 3428:3, 3429:7, 3430:2, 3430:6, 3430:24, 3431:3, 3434:1, 3434:20, 3435:5, 3436:7, 3436:8, 3436:18, 3437:2, 3439:8, 3444:12, 3444:17, 3447:8, 3451:6, 3451:10, 3451:13, 3453:15, 3458:22, 3467:4,</p>	<p><b>vaguely</b> [1] - 3372:6  <b>vehicles</b> [1] - 3486:7  <b>verify</b> [1] - 3465:14  <b>version</b> [1] - 3460:16  <b>video</b> [25] - 3420:13, 3426:5, 3426:7, 3441:21, 3442:5, 3452:4, 3461:6, 3490:9, 3490:12, 3491:8, 3493:6, 3493:9, 3494:6, 3494:11, 3495:2, 3495:12, 3495:16, 3496:16, 3496:19, 3497:4, 3497:6, 3497:17, 3498:5, 3498:7, 3498:15  <b>videos</b> [3] - 3419:3, 3487:8, 3491:9  <b>videotaping</b> [2] - 3438:15, 3457:3  <b>view</b> [3] - 3497:9, 3497:10, 3499:14  <b>visitors</b> [1] - 3486:7  <b>volunteering</b> [1] - 3418:5</p>	<p><b>wait</b> [4] - 3399:13, 3408:6, 3501:23, 3502:6  <b>waiting</b> [10] - 3379:19, 3384:16, 3415:8, 3415:9, 3415:14, 3416:4, 3416:12, 3416:22, 3416:23, 3417:1  <b>walk</b> [2] - 3386:19, 3436:23  <b>wants</b> [14] - 3394:18, 3394:19, 3395:15, 3400:20, 3400:24, 3405:6, 3409:20, 3440:22, 3457:8, 3459:12, 3461:10, 3475:19, 3486:4, 3488:4  <b>watch</b> [1] - 3430:15  <b>water</b> [11] - 3441:24, 3468:5, 3468:10, 3468:19, 3468:21, 3468:22, 3468:25, 3484:17, 3484:21, 3486:20  <b>waterfall</b> [1] - 3484:25  <b>waters</b> [1] - 3474:22  <b>ways</b> [2] - 3428:13, 3483:18  <b>wealthy</b> [1] - 3486:14  <b>wear</b> [1] - 3479:22  <b>wearing</b> [6] - 3386:14, 3426:2, 3474:4, 3474:5, 3474:13, 3480:21  <b>week</b> [8] - 3370:21, 3385:7, 3393:4, 3420:11, 3490:7, 3503:2, 3503:9, 3503:12  <b>weeks</b> [2] - 3387:13, 3393:8  <b>welcome</b> [3] - 3447:14, 3447:19, 3493:22  <b>WHALEN</b> [65] - 3354:21, 3355:13,</p>
<b>W</b>		

<b>worry</b> [1] - 3443:11
<b>Y</b>
<b>year</b> [2] - 3385:2, 3465:7 <b>Year's</b> [1] - 3420:14 <b>years</b> [5] - 3377:11, 3433:6, 3465:3, 3465:11, 3471:12 <b>yesterday</b> [3] - 3360:13, 3362:11, 3403:22 <b>Yiddish</b> [8] - 3424:18, 3424:20, 3424:23, 3424:24, 3424:25, 3425:7, 3425:8, 3425:12 <b>YORK</b> [1] - 3354:1 <b>York</b> [42] - 3354:7, 3354:19, 3355:2, 3360:20, 3361:17, 3368:5, 3368:11, 3384:25, 3385:5, 3385:11, 3385:19, 3387:15, 3390:10, 3392:18, 3392:22, 3392:25, 3393:5, 3393:24, 3394:10, 3394:14, 3395:22, 3396:1, 3405:24, 3410:13, 3413:16, 3413:21, 3416:16, 3416:18, 3417:7, 3419:7, 3420:7, 3420:8, 3422:3, 3456:17, 3457:15, 3463:6, 3480:13, 3481:14, 3484:13, 3490:5, 3490:6, 3501:7 <b>yourself</b> [4] - 3378:11, 3383:12, 3486:22, 3489:22 <b>yourselves</b> [2] - 3444:12, 3499:20 <b>youth</b> [2] - 3477:1, 3477:6 <b>Yussuf</b> [3] - 3371:6, 3371:17, 3371:19
<b>Z</b>
<b>ZAINAB</b> [1] - 3354:18 <b>zoom</b> [2] - 3491:10, 3491:12