

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

CASE NUMBER: 1:24-cr-00034-RDB

RODNEY BURTON,)
Defendant.)

- TRANSCRIPT OF PROCEEDINGS -
LAFLE-FRYE/ATTORNEY INQUIRY HEARING
BEFORE THE HONORABLE ERIN ASLAN
UNITED STATES MAGISTRATE JUDGE
Thursday, February 12, 2026
Baltimore, Maryland

A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: CHRISTINA HOFFMAN, ESQUIRE
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FOR THE DEFENDANT:

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Proceedings Recorded by FTR GOLD
Transcript Produced by Computer-Aided Transcription

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

P R O C E E D I N G S**(10:10 a.m.)**

MS. HOFFMAN: This is United States v. Rodney Burton; Criminal Number RDB-24-004. I'm Christina Hoffman on behalf of the United States and we're here for a combined Lafler-Frye hearing and attorney inquiry hearing.

THE COURT: Okay, very well.
For the defense?

MR. FLOWERS: For the defense, Kobie Flowers on behalf of Mr. Rodney Burton.

THE COURT: Okay. Good morning to you both. Good to see you, Mr. Burton. You may be seated.

Okay, so let's start with the Lafler component first. Let me get my folder. And so the purpose of the Lafler hearing, Mr. Burton, the purpose of the Lafler hearing which is what we're going to do first here this morning, it's to confirm that you understand what you've been charged with and the associated maximum penalties should you be convicted of the pending charges. And we want to also confirm that you've been made aware of any plea offers that have been extended to you and that the benefits that those offers might confer about you and that notwithstanding any benefit you might gain by accepting a plea offer, that you nonetheless are rejecting the plea offer and intending to proceed to trial.

So that's the general purpose of today's proceeding,

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 okay?

2 **THE DEFENDANT:** Thank you very much.

3 **MR. FLOWERS:** If I may, Your Honor?

4 **THE COURT:** Yes, you may.

5 **MR. FLOWERS:** With respect to the attorney inquiry
6 and also this Lafler-Frye hearing, there are some
7 attorney/client privilege and work-product information that
8 we'd like to share with the Court in an ex parte forum. So I
9 would defer to the Court as to when we should do that. But
10 there is certainly information that myself, Mr. Burton would
11 like to share with the Court, again, ex parte.

12 **THE COURT:** Okay, so we're going to take this one at
13 a time. Thank you for that, Mr. Flowers.

14 First off, I think we need to do the Lafler which is an
15 open court proceeding and does not bear on anything related to
16 the attorney/client relationship.

17 And then we will pivot to the attorney/client inquiry.
18 Although I will tell you as a matter of practice I always
19 start with the Government counsel participating so in case
20 there's anything they want to put on the record, and then I
21 typically exclude Government counsel and seal the courtroom so
22 that we can have a fulsome discussion.

23 But I have some questions for you about whether or not we
24 should conduct an attorney inquiry hearing in this matter.
25 But let's start with the Lafler hearing portion of it, okay?

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 Okay. So Mr. Burton -- and you can sit down. I'm not
2 quite ready for you yet. You're welcome to stand, but you may
3 tire and I don't know what your shoes look like, but I'm not
4 asking you to participate as of yet.

5 So Mr. Burton, the operative charging document, meaning
6 the one that's in place now is as I understand it the
7 superseding indictment which is ECF No. 69 and that is the
8 charging document that we're going to review today. And, of
9 course, Counsel, if I've misspoken you'll do us all a favor by
10 correcting the record if there's any omission or mistake on my
11 part.

12 So this charging document was returned on December 10th
13 of 2025. In Count One of the superseding indictment you're
14 charged, Mr. Burton, with conspiracy to commit wire fraud.
15 That's an alleged violation -- let me get there -- of Title 18
16 United States Code § 1349. If you were to be convicted of
17 that offense, the maximum penalty under the statute would be
18 20 years' imprisonment, three years of supervised release, and
19 a maximum fine of either \$250,000 or two times the gain or
20 loss involved in the alleged criminal conduct.

21 In Counts Two and Three you're charged with wire fraud.
22 This is an alleged violation of Title 18 United States Code §
23 1343. In each of those counts if you were to be convicted the
24 maximum penalty under the statute is 20 years' imprisonment,
25 three years of supervised release, and a \$250,000 fine; or two

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 times the gain or loss as a result of the alleged conduct.

2 In Counts Four through Ten, so that's Four, Five, Six,
3 Seven, Eight, Nine and Ten you're charged with money
4 laundering. And that's an alleged violation of Title 18
5 United States Code § 1957 and § 2. If you were to be
6 convicted of these offenses, the maximum penalty under the
7 statute is ten years in prison, three years of supervised
8 release, and a maximum fine of either \$250,000 or two times
9 the amount of the criminally derived property.

10 And finally, in Count Eleven, you're charged with
11 operating an unlicensed money transmitting business. This is
12 an alleged violation of Title 18 United States Code § 1960 and
13 § 2. If you were to be convicted of this offense, the maximum
14 penalty under the statute is five years in prison, three years
15 of supervised release and a maximum fine of \$250,000.

16 Okay. So Counsel, Ms. Hoffman, Mr. Flowers, have I
17 accurately summarized the pending charges and the associated
18 maximum penalties?

19 **MS. HOFFMAN:** Yes, Your Honor.

20 **MR. FLOWERS:** You have, Your Honor.

21 **THE COURT:** Okay, thank you.

22 So I understand from my review of the docket that trial
23 in this matter is scheduled to begin on Monday, June 1, 2026
24 before the Honorable Judge Bennett. Can you please tell me,
25 Ms. Hoffman, has the Government extended any plea offers to

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 the defense?

2 **MS. HOFFMAN:** Yes, we have. And I'd like to kind of
3 start from the beginning because as Your Honor mentioned, this
4 is a superseding indictment. The defendant was originally
5 charged on February -- he was indicted on February 7th of 2024
6 with just one count of conspiracy to operate an unlicensed
7 money transmitting business in violation of 18 United States
8 Code 1960 which as Your Honor mentioned carries just a
9 five-year maximum prison sentence.

10 So when that indictment was still the operative
11 indictment, we had a reverse proffer with the defendant and
12 his counsel that was on July 21st of 2025. So Government
13 counsel sat down with the defendant and his lawyers in person
14 for about two hours. We showed him the highlights of the
15 evidence as we saw them and we explained the terms of a plea
16 offer that we would be willing to seek approval for. And that
17 was eventually reduced to writing which I'll get to in a
18 minute.

19 But we explained that the plea offer we'd be willing to
20 seek approval for would have the defendant plead to the
21 conspiracy to operate an unlicensed money transmitting
22 business which carried a five-year statutory max. We
23 explained how we calculated the guidelines and that we
24 believed it would result in a guidelines range of 41 to 51
25 months. We explained that we would be willing to cap our

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 recommendation at the low end of the guidelines, the resulting
2 guidelines and that the defendant would be free to argue for
3 what we've called the safe harbor provision which is a
4 particular provision under Guideline § 2S1.3(b)(3). That, if
5 applicable, would reduce the guidelines drastically so we
6 explained that we would oppose that, but that the defendant
7 would be free to argue for it.

8 And we also explained to the defendant at that reverse
9 proffer that we believe that the evidence supported additional
10 charges including wire fraud and money laundering charges.
11 And that if we were not able to reach a plea agreement, that
12 we would be likely to seek a superseding indictment. And that
13 the statutory maximums for those crimes would be significantly
14 higher. So we explained that the max for money laundering was
15 ten years in prison and for wire fraud was 20 years in prison.

16 We then did extend a plea offer with those terms. It was
17 sent to Mr. Flowers on August 5th of 2025 and was set to
18 expire on August 22nd of 2025. And I would like to -- I think
19 the proper thing to do and what I'd like to do is enter it as
20 a sealed exhibit in the record. I think it's appropriate for
21 it to be under seal because obviously we don't want Judge
22 Bennett -- the reason we do this in front of Your Honor and
23 not Judge Bennett is to keep the Court not involved in plea
24 negotiations. So I'd like to enter this as a sealed exhibit.

25 **THE COURT:** Well, just because it's sealed, I mean,

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 Judge Bennett still has access to sealed documents.

2 **MS. HOFFMAN:** That's right. But I think given the
3 nature of the hearing I think he would know not to look at it
4 at least until after the -- at least while the case is
5 pending. So in the event that there is later some sort of
6 Lafler-Frye challenge then, of course, the exhibit can be
7 unsealed. But I think the way I've done it in the past and
8 the way I think it's proper to do it is to enter it for now as
9 a sealed exhibit.

10 **THE COURT:** Any objection, Mr. Flowers?

11 **MR. FLOWERS:** Objection, Your Honor. The reason
12 also that I'm concerned about the sealed is that not only can
13 Judge Bennett see sealed documents, but also just for the
14 public to be able to have access to sealed documents.

15 My understanding of the Lafler hearing is to put on the
16 record kind of what the Government has already and is going to
17 continue to put on the record. Also putting in sealed
18 documents on the record I don't think is needed for a
19 Lafler-Frye hearing, given the purpose of a Lafler-Frye
20 hearing and also, obviously given the purpose that in the
21 United States, courts are open to the public.

22 **THE COURT:** Well, I think the substance of the
23 exhibit has certainly been made available for the public
24 record given that she has, Ms. Hoffman has put forward the
25 material terms of that offer here in open court and it's being

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 recorded through FTR. But I do see the value in terms of
2 should there be an appellate issue it would be helpful to have
3 a supporting exhibit for the reviewing entity.

4 So I'm going to permit you to file that under seal and
5 the substance of it is available to the public through her
6 oral representation.

7 **MS. HOFFMAN:** Thank you.

8 **MR. FLOWERS:** If I could then, Your Honor, I'd like
9 to just see the document before it's put under seal because
10 there were at least two plea agreements.

11 **THE COURT:** Certainly.

12 **MS. HOFFMAN:** Yes. There were two and I am making
13 my way to the second. So that was the first plea offer. As I
14 said --

15 **THE COURT:** Let's pause a moment so Mr. Flowers can
16 have the benefit of reviewing the document before you proceed
17 with your proffer.

18 **MR. FLOWERS:** Thank you, Your Honor.

19 **THE COURT:** So also, Ms. Hoffman, since there are
20 multiple offers, let's pause here. Why don't you hand that up
21 please, if you'd be so kind, to Mr. McDonough and we will mark
22 this and enter it as Exhibit 1 which will be filed under seal.

23 So again, Mr. Burton, the purpose of today is to make
24 sure that you have awareness of what these plea offers were
25 and are, should they still be pending, and that you have

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 nonetheless decided to proceed to trial. And so let's pause
2 there.

3 This plea offer was apparently reduced to writing and
4 transmitted to Mr. Flowers on August 5, 2025.

5 Mr. Flower, did you receive this written plea offer?

6 **MR. FLOWERS:** I did, Your Honor.

7 **THE COURT:** And did you communicate that to Mr.
8 Burton?

9 **MR. FLOWERS:** I did communicate this with Mr.
10 Burton.

11 **THE COURT:** Mr. Burton, were you made aware --
12 please rise. Were you made aware of the August 5, 2025 plea
13 offer that the Government tendered?

14 **THE DEFENDANT:** Yes, I know that there were a couple
15 of them that I was made aware of and I believe this might be
16 the first one and there might also be a second one.

17 **THE COURT:** We're going to get to the second one in
18 a moment, but it's easier to go one at a time. Were you made
19 aware of the terms of the plea offer extended -- well,
20 communicated orally and then reduced to writing on letter
21 dated August 5, 2025?

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** Okay, thank you. You may be seated.
24 Ms. Hoffman, please proceed.

25 **MS. HOFFMAN:** Thank you.

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 In an email from Mr. Flowers dated September 12th of
2 2025, Mr. Flowers relayed that the defendant would accept the
3 plea offer if certain changes were made. The Government then
4 made most of those requested changes. Specifically the
5 changes were to eliminate some of the restitution language in
6 the plea offer because we had determined that restitution
7 likely did not apply in the context of a 1960 offense. And
8 also to change some of the language in the statement of facts
9 to omit an admission to the defendant's knowledge of fraud,
10 and instead to essentially hash that issue out at sentencing.

11 So we made those requested changes and then we made a
12 second plea offer in a letter dated September 17th of 2025.
13 It was set to expire September 19th of 2025, although in a
14 later email we extended the deadline to September 26th of
15 2025. And so I have that second plea offer as well which I'd
16 like to enter as sealed Exhibit Number 2 and I'm happy to pass
17 it up.

18 **THE COURT:** Thank you. If you'd be so kind as to
19 provide that to Mr. Flowers.

20 **MR. FLOWERS:** Your Honor, again, I'll defer to the
21 Court about this, kind of the back and forth discussion and
22 kind of how the plea offers are being characterized, the
23 defense certainly has a different view of that. So we
24 certainly can just wait until the Government perhaps gets to a
25 good breaking point, then I would certainly like to add some

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 more information for the record.

2 **THE COURT:** That's fine. I will grant you leave to
3 do so. I will note, however, that I think the driving purpose
4 of the hearing is to make sure we know what the Government
5 extended. And so even if you received or interpreted it
6 differently, their offers are reduced to writing and we just
7 need to make sure and confirm that Mr. Burton has had
8 knowledge of what these offers were. And so I welcome your
9 commentary, but at the end of the day we just need to make
10 sure they wrote down what they wrote down and that you
11 communicated it to Mr. Burton and Mr. Burton understood what
12 was communicated. But I'm happy to hear from you in a moment,
13 okay?

14 So I have here what will be marked as Exhibit Number 2.
15 It will be filed under seal. It's a letter from the United
16 States Attorney's Office dated September 17, 2025.

17 Mr. Flowers, did you receive this letter dated September
18 17, 2025?

19 **MR. FLOWERS:** Yes, Your Honor.

20 **THE COURT:** Did you communicate this to Mr. Burton?

21 **MR. FLOWERS:** I did, Your Honor.

22 **THE COURT:** Mr. Burton, was the substance of this
23 letter and the plea offer contained therein communicated to
24 you?

25 **THE DEFENDANT:** Yes, it was, Your Honor.

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 **THE COURT:** Okay, thank you very much. You may be
2 seated.

3 Ms. Hoffman, were there any further plea offers extended?

4 **MS. HOFFMAN:** There were no further plea offers, but
5 just to sort of complete the record here, in an email dated
6 September 26th of 2025, so the day the second plea offer was
7 set to expire, Mr. Flowers relayed that the defendant rejected
8 the plea offer. And we later, of course, superseded the
9 indictment on December 10th as Your Honor mentioned and did
10 bring additional charges of wire fraud conspiracy, wire fraud,
11 and money laundering.

12 **THE COURT:** Okay. And have any additional offers
13 been extended with respect to the current charges?

14 **MS. HOFFMAN:** No, there have been no offers
15 extended.

16 **THE COURT:** Okay, very well.

17 And so, Mr. Flowers -- so we have understood that -- I
18 know you want to say something. Just indulge me just a moment
19 longer.

20 So Mr. Burton, I want to make sure that we put on the
21 record that we've established that you've received each of the
22 two plea offers that were extended. Ms. Hoffman has said that
23 they were rejected. I want to confirm with you that you can
24 assert this either individually or by way of Mr. Flowers might
25 be safer, that you rejected those offers and your intention is

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 to proceed to trial as scheduled on June 1st.

2 Do you want to put the husher on, please?

3 **MR. FLOWERS:** Thank you, Your Honor.

4 **(Whereupon, Mr. Flowers conferred privately with the**
5 **defendant off the record.)**

6 **MR. FLOWERS:** Thank you, Your Honor, for the Court's
7 indulgence.

8 **THE COURT:** Of course.

9 **MR. FLOWERS:** I communicated with Mr. Burton. It is
10 certainly true that by email on I believe September 26th I
11 communicated to the Government that we rejected the plea
12 offer. That's an email September 26th at 6:56 p.m.

13 However, Your Honor, I would like to have Mr. Burton
14 address the Court a little bit more about what his
15 understanding of that rejection was ex parte and not in front
16 of the Government.

17 **THE COURT:** Okay, well --

18 **MR. FLOWERS:** And I think Mr. Burton agrees that on
19 September the 26th we rejected the plea offer, but there is
20 some more information that certainly the Court should be aware
21 of and certainly Mr. Burton would like to share with the
22 Court.

23 **THE COURT:** But why does this need to be done in an
24 ex parte fashion?

25 **MR. FLOWERS:** Because it's all attorney/client

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 privilege.

2 **THE COURT:** I just need to know, did you accept or
3 reject the plea offers? We have Ms. Hoffman stating that she
4 received communication from counsel that you rejected the
5 offer and Mr. Flowers has confirmed the same.

6 Mr. Burton, did you reject each of the plea offers that
7 was extended to you? It's a yes or a no.

8 **THE DEFENDANT:** I rejected the first one; not the
9 second one.

10 **THE COURT:** You did not reject the second plea
11 offer?

12 **THE DEFENDANT:** I did not. I signed the second one.

13 **THE COURT:** Ms. Hoffman.

14 **MS. HOFFMAN:** That was never communicated to us. I
15 don't believe that that is true based on the representations
16 that Mr. Flowers has made to us. He stated to us on September
17 26th that the defendant rejected the offer. There was never a
18 signed offer that was sent to us.

19 **THE COURT:** Okay. And so you indicated
20 previously -- let me pull up my -- that there was a time limit
21 on the September 17th offer.

22 **MS. HOFFMAN:** Yes. It was originally set to expire
23 on September 19th and that was because we had already extended
24 this previous offer which had been open for some time. We
25 were, in our view, simply making some minor changes at the

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 request of the defense. And so when we made that second offer
2 it was set to expire two days later. The defense did request
3 an extension which we granted, so we granted an extension
4 until September 26th of 2025. And that is the day that Mr.
5 Flowers communicated to us that the defendant rejected the
6 plea.

7 **THE COURT:** Well, I think it would be prudent at
8 this point in time for you to enter the email response as an
9 exhibit in this matter.

10 **MS. HOFFMAN:** Yes. And I do have the entire email
11 chain which I'm happy to show it to Mr. Flowers and I believe
12 that it would also be appropriate to enter that under seal.

13 **THE COURT:** Okay, would you please be so kind as to
14 share that with Mr. Flowers? Why don't you have a seat,
15 though, and the defendant can be seated as well.

16 **MR. FLOWERS:** If we could have the husher on, Your
17 Honor.

18 **THE COURT:** You may.

19 **(Whereupon, Mr. Flowers conferred privately with the**
20 **defendant off the record.)**

21 **THE COURT:** Okay, gentlemen, are you finished
22 reviewing Government Exhibit 3?

23 **MR. FLOWERS:** We have, Your Honor.

24 **THE DEFENDANT:** May I speak?

25 **THE COURT:** I think you'd be wise to speak through

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 counsel at present. Put the husher back on.

2 **MR. FLOWERS:** Thank you, Your Honor.

3 **(Whereupon, Mr. Flowers conferred privately with the**
4 **defendant off the record.)**

5 **THE COURT:** Gentlemen, we're going to need to move
6 on because we have some other matters to cover today and we
7 have other proceedings we need to get to. So I'm sure you can
8 have further conversation, but my only question to you is did
9 you send that email, Mr. Flowers?

10 **MR. FLOWERS:** Yes, Your Honor.

11 **THE COURT:** And do you have any reason to doubt the
12 authenticity of the email that was offered as Exhibit 3?

13 **MR. FLOWERS:** Not at all, Your Honor.

14 **THE COURT:** And without getting into the substance
15 of the conversation because certainly we don't want that on
16 the record, did you send that email after having consulted
17 with Mr. Burton?

18 **MR. FLOWERS:** Yes, Your Honor.

19 **THE COURT:** And asking his views on the pending
20 offer that was extended by way of letter dated September 17,
21 2025?

22 **MR .FLOWERS:** I did, Your Honor, but I want to be
23 clear that Mr. Burton does have more context about what
24 happened there that we'd like to share with the Court ex
25 parte. But the emails are absolutely correct. They are

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 authentic. They are the email that I sent. They give a good
2 version of the back and forth between the Government and the
3 defense.

4 **THE COURT:** Okay, that's fine. I'll let you make
5 your record afterwards. But suffice it to say the offer was
6 extended. It had a deadline. On the date of the deadline Mr.
7 Flowers communicated a response rejecting the offer after
8 having spoken with Mr. Burton and being advised and counseled
9 on as to his use.

10 Okay, thank you. Would you pass that up so we can mark
11 that as an exhibit?

12 Ms. Hoffman, did you have any further communications with
13 Mr. Flowers with respect to any plea offers, past or future?

14 **MS. HOFFMAN:** As I mentioned, no other plea offers
15 were made.

16 **THE COURT:** That wasn't my question. Did you have
17 any communication with Mr. Flowers? You may be seated,
18 gentlemen. Did you have any further communication with Mr.
19 Flowers following his email of September 26, 2025 with respect
20 to the plea offer that had been extended?

21 **MS. HOFFMAN:** Yes, in that just recently -- and I
22 don't have the email with me today, but I believe it was about
23 three days ago Mr. Flowers reached out by email. I'm sure I
24 can probably pull it up on my phone, and asked whether the
25 Government would agree to having Mr. Burton accept -- I want

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 to make sure I use the exact language.

2 "Is the Government amenable to allowing the defense to
3 plead guilty to the plea we rejected back in September 2025?"
4 That was by email dated February 8th of 2026. And the
5 Government responded, I guess it was me who responded, "We are
6 not amenable to reextending the offer that Mr. Burton rejected
7 in September 2025."

8 **THE COURT:** Okay. So why don't we -- if you'd be so
9 kind, why don't we mark that as an exhibit as well.

10 **MR. FLOWERS:** Very well, Your Honor. I'll mark this
11 as Government's Exhibit 3 under seal.

12 **THE COURT:** Sure. Who is tendering it, Government
13 or defense?

14 **MS. HOFFMAN:** Either one. I mean, it doesn't
15 matter. Yeah, we can have it Government sealed Exhibit 4 if
16 that's easier. Whatever is easier.

17 **THE COURTROOM DEPUTY:** Government's Exhibit 4, Your
18 Honor.

19 **THE COURT:** Very well.
20 Have you had any other communications with respect to
21 plea offers whether they were prior or current?

22 **MS. HOFFMAN:** I don't believe so, no.

23 **THE COURT:** Okay, thank you.

24 Go ahead, Mr. Flowers.

25 **MR .FLOWERS:** So I will say, Your Honor, so between

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 Government's Exhibit 3 and the Government's Exhibit 4, I think
2 on Government's Exhibit 3 there is indication of talking about
3 the plea and the fact that I reached out to speak with Ms.
4 Hoffman's supervisor about the plea. So that is contained in
5 the Government exhibits.

6 **THE COURT:** Okay, very well.

7 So if I understand the chronology, there was a plea offer
8 extended -- let me see if I have it down -- August 5, 2025 as
9 memorialized in writing. That was rejected. There was a
10 second plea offer extended, September 26, 2025. That's when
11 it was memorialized in writing. That was rejected --

12 **MS. HOFFMAN:** September 17th.

13 **THE COURT:** September 17th, thank you, with a
14 deadline of September 26th. It was rejected by way of email
15 on that same date. And then recently, approximately three
16 days ago the defense has sought to resurrect a previously
17 rejected plea offer.

18 **MR. FLOWERS:** That's correct, Your Honor.

19 **THE COURT:** Okay.

20 **MR. FLOWERS:** I think there's one more important
21 thing that should be noted and I think Ms. Hoffman just
22 misspoke or perhaps I misheard, but Mr. Burton was originally
23 charged on two counts.

24 **THE COURT:** Okay.

25 **MR. FLOWERS:** Conspiracy under 18 U.S.C. 371,

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 five-year max and that is in the indictment docket number 16;
2 and then the second count is 18 U.S.C. 1960, operating an
3 unlicensed money transmitting business.

4 **THE COURT:** Okay. Thank you for the clarification.

5 Okay, so I understand now that there's some additional
6 information and I guess ordinarily I would ask you, Mr.
7 Burton, if it's your intention to reject the plea offers and
8 proceed to trial, but at present it sounds like that's not the
9 appropriate question because you may want to accept the plea
10 offer that expired, but the Government -- that plea offer is
11 no longer available.

12 **MR. FLOWERS:** Your Honor, if I could just consult
13 with Mr. Burton.

14 **THE COURT:** Sure.

15 **(Whereupon, Mr. Flowers conferred privately with the**
16 **defendant off the record.)**

17 **MR. FLOWERS:** Your Honor, just so that the record is
18 clear, the rejection of the plea was done by email by way of
19 me as the lawyer. Mr. Burton does have a different viewpoint
20 of the rejection of the plea. He did not send those emails; I
21 did send those emails. To be clear, and I think the Court has
22 already brought this out, I sent those emails after having had
23 discussions with Mr. Burton. I think it's important that the
24 Court understand some of those discussions. Those were all
25 attorney/client privilege and were product discussions and

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 we'd like to bring the Court into those discussions in an ex
2 parte form, if possible.

3 **THE COURT:** Okay, so let's press pause there because
4 it sounds like we're bleeding into the second component. And
5 we will just for folks in the gallery, as Mr. Flowers has just
6 indicated, we are about to discuss some matters pertaining to
7 the attorney/client relationship and for that reason we're
8 going to have to seal the courtroom because just if any one of
9 you were up here, we were talking about conversations you had
10 with your lawyer, we would want to make sure that we protect
11 that by not allowing others to listen in on what those
12 privileged communications were. But before we get to sealing
13 the courtroom, I will permit you but I want to just ask a few
14 questions.

15 This was scheduled initially for an attorney inquiry
16 hearing and typically the attorney inquiry hearing is an
17 opportunity for -- and I'm talking in generalities, it's
18 typically an opportunity for the defendant and appointed
19 counsel to raise issues with respect to the relationship, the
20 attorney/client relationship. And the inquiry for the Court
21 is whether or not there exists good cause to appoint new
22 counsel in the case. And that's governed by case law and a
23 series of factors that the Court is to consider.

24 The challenge I have and again, Mr. Flowers, I hear you
25 and I understand. We will allow you and Mr. Burton to put

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 things on the record with respect to the plea offer, but I'm
2 not quite sure how we get to an attorney inquiry hearing given
3 that you are retained. And the basis of your relationship is
4 a contractual agreement between you and Mr. Burton and the
5 Court has no role in deciding whether or not that relationship
6 continues, absent ruling on a motion for withdrawal.

7 So help me understand why you think we need to do an
8 attorney inquiry hearing, given that you're not appointed
9 counsel.

10 **MR. FLOWERS:** Right. Two responses to the Court's
11 question about the attorney inquiry hearing. One, Judge
12 Bennett suggested that we have an attorney inquiry hearing in
13 front of the Court; and then number two, the nature of that
14 hearing does have to do with resources that create a conflict.

15 **THE COURT:** I understand. So I'm going to
16 foreshadow for you where I'm going to land on this and then I
17 will absolutely allow you the opportunity to create your
18 record and I will do so in a sealed courtroom so that you have
19 protection for the privileged communications.

20 However, I will note that I have no authority and no
21 ability to intervene in the relationship between you because
22 as I tell many defendants who come before me, there's two ways
23 to get a lawyer: You can use your own money to hire a lawyer
24 of your choice; or if you can't afford to do so you can ask
25 the Court to appoint counsel to represent you at no cost. And

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 typically it's the latter, but in this case it's the former.
2 Mr. Burton has elected to use resources to hire counsel of his
3 choice. And, I mean, I never represented clients in that
4 manner, but I am imagining that there's some contractual
5 agreement, a retainer agreement, there's some agreement
6 between the private parties that does not involve the Court.
7 And so the only way the Court would become involved in this is
8 due to the proximity of the trial date. There's a trial date
9 set for June 1. And under the local rules there's a procedure
10 set forth in local rule I believe it's 101.2(a) which governs
11 the withdrawal of appearance of counsel representing
12 individuals. And that requires leave of Court if the counsel
13 has entered an appearance or certain other circumstances.

14 But the long and the short of it, I did have the
15 opportunity to speak with the presiding judge this morning,
16 Judge Bennett, and his view and my view is that if there's a
17 reason why there needs to be new counsel in place, then Mr.
18 Flowers, you need to file a motion to withdraw. But I really
19 have no role in this.

20 The only role I might have is if you were to withdraw and
21 Mr. Burton were to seek appointment of counsel, then I would
22 need to review his financial eligibility for such appointment
23 in which case you are welcome to prepare a financial affidavit
24 for the Court to consider.

25 I would caution you, however, that that affidavit would

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 be signed under the penalty of perjury. And as you well know,
2 Mr. Flowers, as I'm sure you would counsel Mr. Burton, there's
3 a federal offense for making false statements on a document
4 such as that under a Title 18 United States Code § 1001.

5 So why don't you take a moment to talk with him about
6 that. And in particular I'd like you to explain that if he
7 does want to prepare an affidavit, what are the consequences
8 that could flow from any false statement that may be contained
9 in such an affidavit. Again, I'm not suggesting that there
10 would be; I'm doing that out of an abundance of caution to
11 make sure that you have an awareness of the landscape, given
12 that you need the benefit of counsel to understand actions and
13 consequences.

14 **(Whereupon, Mr. Flowers conferred privately with the**
15 **defendant off the record.)**

16 **MR. FLOWERS:** Thank you, Your Honor. We would like
17 to go ahead and have an attorney inquiry, understanding what
18 the Court has said. If that is not the vehicle that the Court
19 and the presiding judge want to ride in, certainly we can do a
20 motion to withdraw. I would like to make an oral motion to be
21 able to do that, fill out the financial affidavit.

22 As the Court is well aware when I filed the motion for an
23 attorney inquiry, the Government did not file any motion for a
24 Lafler-Frye hearing, yet we're having the Lafler-Frye hearing.

25 So I do want to expedite this. The trial date as the

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 Court is well aware and as Mr. Burton is well aware is
2 approaching very quickly. So I do want to work with some
3 alacrity.

4 **THE COURT:** Okay.

5 Ms. Hoffman, is there anything you want to put on the
6 record?

7 **MS. HOFFMAN:** Yes. Just briefly. We have no
8 objection to Mr. Flowers' oral motion to withdraw and, in
9 fact, in light of what has come to light during the
10 Lafler-Frye portion of this hearing, I think it sounds like
11 that is prudent because there is clearly some either a
12 disagreement between the parties about what happened in
13 September of 2025, or a failure to communicate Mr. Burton's
14 true intention. And so we do think that that is prudent so
15 that we can ensure that we're protecting against a claim of
16 ineffective assistance of counsel.

17 **THE COURT:** Okay, thank you for that.

18 And so I want to just -- I didn't hear what Mr. Flowers
19 said the same way that you heard. What I heard him say is
20 that he spoke with his client and that he -- after speaking
21 with his client, again not intruding into the protected sphere
22 of what the content of their conversation was, but
23 understanding Mr. Flowers is a very experienced and capable
24 attorney and an officer of this court, that he spoke with the
25 client and he communicated a rejection of that offer and that

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 there was no further communication on his part until only a
2 few days ago with respect to that.

3 So I heard that a little bit differently. Nonetheless,
4 as I noted previously, this matter is set for trial and this
5 is not a case where we have appointed counsel. There is no
6 inquiry for me to conduct as to whether there's good cause to
7 appoint new counsel because it's a contractual relationship
8 among private parties. And if any motion were to be filed it
9 would be ruled upon by His Honor Judge Bennett. And so I
10 think you should file that motion just in an effort to as you
11 said to move with alacrity which is a fun word that I like and
12 was a pleasure to read. So that if you want to have Mr.
13 Burton fill out a financial affidavit and recognizing that
14 he's going to be sworn to it, I can make a finding of his
15 financial eligibility for counsel, in which case that will
16 already have everything in place. You can file your motion,
17 Judge Bennett will rule on it and should he grant the motion
18 then they can make arrangements to secure representation for
19 Mr. Burton.

20 But I'm going to stay in my lane and my sphere of
21 authority which would be reviewing the financial affidavit for
22 financial eligibility.

23 **MS. HOFFMAN:** And just for the Court's awareness,
24 we're not aware of any conflict with the Federal Public
25 Defender's Office. There is one CJA attorney who did

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 represent a different defendant in the case, John Van Hoven so
2 he would be conflicted. But as I'm standing here today I
3 cannot think of any other conflicts with CJA lawyers.

4 **THE COURT:** Okay, very well. So with that I'm
5 hesitant to call it an attorney inquiry hearing because I
6 don't think that's an appropriate vehicle, but I will say that
7 I'm going to seal the courtroom because it sounds like there's
8 a facet of Lafler-Frye hearing that will involve divulging
9 privileged communication to the client, attorney/client. So
10 for that reason I will seal it.

11 So I find the very nature of the next part of the
12 Lafler-Frye hearing which has also been styled I guess an
13 attorney inquiry hearing involves the disclosure of sensitive
14 and confidential matters between the defendant, Mr. Burton and
15 his attorney, Mr. Flowers. These matters concern the
16 attorney/client relationship, including communications that
17 are otherwise protected by privilege. For this reason this
18 portion of the hearing will be closed not only to the public,
19 but also for counsel for the Government. There's a compelling
20 judicial interest in ensuring that defendants such as Mr.
21 Burton's Sixth Amendment rights are safeguarded by the Court
22 and public access to this portion of the hearing or the record
23 thereof would undermine his Sixth Amendment right. I conclude
24 that permitting public access to the record of this next
25 component of the hearing is not warranted and that there are

02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

1 no alternatives to sealing that would protect the important
2 interests at stake. The electronic record and any transcripts
3 of this portion of the hearing shall remain sealed by the
4 Court.

5 And so ladies and gentlemen, I'm going to have to ask you
6 to please rise and step out of the courtroom. Ms. Hoffman,
7 you're excused and we won't make any decisions here other than
8 his financial eligibility for appointment of counsel should it
9 come to that at a future point in time.

10 **MS. HOFFMAN:** Does Your Honor want me to wait
11 outside or am I free to go?

12 **THE COURT:** I do not. You are free to go. It would
13 be a waste of your time.

14 **MR. FLOWERS:** Your Honor, if I could grab something
15 from Mr. Burton's family members.

16 **THE COURT:** Yes.

17 **MR. FLOWERS:** Thank you.

18 **(Whereupon, the requested excerpt of the transcript**
19 **is complete.)**
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02/12/2026 United States of America v. Rodney Burton - Lafler-Frye/Attorney Inquiry Hearing

CERTIFICATE OF OFFICIAL REPORTER

I, Nadine M. Bachmann, Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that the foregoing is a correct transcript of the audio-recorded proceedings in the above-entitled matter, audio recorded via FTR Gold on February 11, 2026, and transcribed from the audio recording to the best of my ability and that said transcript has been compared with the audio recording.

Dated this 24th day of February, 2026.

-S-

NADINE M. BACHMANN RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

\$	2S1.3(b)(3) [1] - 7:4	advised [1] - 18:8	6:20	bear [1] - 3:15
\$250,000 [4] - 4:19, 4:25, 5:8, 5:15	3	affidavit [7] - 24:23, 24:25, 25:7, 25:9, 25:21, 27:13, 27:21	approximately [1] - 20:15	become [1] - 24:7
1	3 [5] - 16:22, 17:12, 19:11, 20:1, 20:2	afford [1] - 23:24	argue [2] - 7:2, 7:7	BEFORE [1] - 1:8
1 [3] - 5:23, 9:22, 24:9	36 [1] - 1:14	after [5] - 8:4, 17:16, 18:7, 21:22, 26:20	arrangements [1] - 27:18	begin [1] - 5:23
1001 [1] - 25:4	371 [1] - 20:25	afterwards [1] - 18:5	ask [4] - 21:6, 22:13, 23:24, 29:5	beginning [1] - 6:3
101.2(a) [1] - 24:10	4	against [1] - 26:15	asked [1] - 18:24	behalf [2] - 2:5, 2:10
10:10 [1] - 2:2	4 [3] - 19:15, 19:17, 20:1	ago [3] - 18:23, 20:16, 27:2	asking [2] - 4:4, 17:19	being [3] - 8:25, 11:22, 18:8
10th [2] - 4:12, 13:9	41 [1] - 6:24	agree [1] - 18:25	ASLAN [1] - 1:8	believe [8] - 7:9, 10:15, 14:10, 15:15, 16:11, 18:22, 19:22, 24:10
11 [1] - 30:7	4th [1] - 1:14	agreement [5] - 7:11, 23:4, 24:5	assert [1] - 13:24	believed [1] - 6:24
12 [1] - 1:9	5	agreements [1] - 9:10	assistance [1] - 26:16	benefit [3] - 2:22, 9:16, 25:12
12th [1] - 11:1	5 [4] - 10:4, 10:12, 10:21, 20:8	agrees [1] - 14:18	associated [2] - 2:18, 5:17	benefits [1] - 2:21
1343 [1] - 4:23	51 [1] - 6:24	ahead [2] - 19:24, 25:17	ATTORNEY [1] - 1:14	Bennett [9] - 5:24, 7:22, 7:23, 8:1, 8:13, 23:12, 24:16, 27:9, 27:17
1349 [1] - 4:16	5th [1] - 7:17	Aided [1] - 1:24	attorney [16] - 2:6, 3:5, 3:24, 22:15, 22:16, 23:2, 23:8, 23:11, 23:12, 25:17, 25:23, 26:24, 27:25, 28:5, 28:13, 28:15	best [1] - 30:8
16 [1] - 21:1	6	alacrity [2] - 26:3, 27:11	Attorney's [1] - 12:16	between [7] - 18:2, 19:25, 23:4, 23:21, 24:6, 26:12, 28:14
1601 [1] - 1:18	69 [1] - 4:7	alleged [6] - 4:15, 4:20, 4:22, 5:1, 5:4, 5:12	attorney/client [9] - 3:7, 3:16, 3:17, 14:25, 21:25, 22:7, 22:20, 28:9, 28:16	bit [2] - 14:14, 27:3
17 [3] - 12:16, 12:18, 17:20	6:56 [1] - 14:12	allow [2] - 22:25, 23:17	audio [4] - 30:5, 30:6, 30:7, 30:9	bleeding [1] - 22:4
17th [4] - 11:12, 15:21, 20:12, 20:13	7	allowing [2] - 19:2, 22:11	audio-recorded [1] - 30:5	both [1] - 2:11
18 [8] - 4:15, 4:22, 5:4, 5:12, 6:7, 20:25, 21:2, 25:4	7th [1] - 6:5	already [4] - 8:16, 15:23, 21:22, 27:16	August [6] - 7:17, 7:18, 10:4, 10:12, 10:21, 20:8	breaking [1] - 11:25
1957 [1] - 5:5	8	alternatives [1] - 29:1	authentic [1] - 18:1	briefly [1] - 26:7
1960 [4] - 5:12, 6:8, 11:7, 21:2	8th [1] - 19:4	although [2] - 3:18, 11:13	authenticity [1] - 17:12	bring [2] - 13:10, 22:1
19th [2] - 11:13, 15:23	A	always [1] - 3:18	authority [2] - 23:20, 27:21	brought [1] - 21:22
1:24-cr-00034-RDB [1] - 1:4	a.m [1] - 2:2	amenable [2] - 19:2, 19:6	available [3] - 8:23, 9:5, 21:11	Burton [42] - 2:4, 2:10, 2:12, 2:15, 3:10, 4:1, 4:5, 4:14, 9:23, 10:8, 10:10, 10:11, 12:7, 12:11, 12:20, 12:22, 13:20, 14:9, 14:13, 14:18, 14:21, 15:6, 17:17, 17:23, 18:8, 18:25, 19:6, 20:22, 21:7, 21:13, 21:19, 21:23, 22:25, 23:4, 24:2, 24:21, 25:2, 26:1, 27:13, 27:19, 28:14
1st [1] - 14:1	ability [2] - 23:21, 30:8	Amendment [2] - 28:21, 28:23	Avenue [1] - 1:18	BURTON [1] - 1:5
2	able [3] - 7:11, 8:14, 25:21	AMERICA [1] - 1:3	aware [10] - 2:20, 10:11, 10:12, 10:15, 10:19, 14:20, 25:22, 26:1, 27:24	Burton's [3] - 26:13, 28:21, 29:15
2 [4] - 5:5, 5:13, 11:16, 12:14	above-entitled [1] - 30:6	among [1] - 27:8	awareness [3] - 9:24, 25:11, 27:23	business [4] - 5:11, 6:7, 6:22, 21:3
20 [3] - 4:18, 4:24, 7:15	absent [1] - 23:6	amount [1] - 5:9	B	BY [2] - 1:13, 1:17
20009 [1] - 1:19	absolutely [2] - 17:25, 23:17	anything [3] - 3:15, 3:20, 26:5	Bachmann [1] - 30:3	C
2024 [1] - 6:5	abundance [1] - 25:10	apparently [1] - 10:3	BACHMANN [1] - 30:14	C [2] - 1:11, 2:1
2025 [22] - 4:13, 6:12, 7:17, 7:18, 10:4, 10:12, 10:21, 11:2, 11:12, 11:13, 11:15, 12:16, 12:18, 13:6, 16:4, 17:21, 18:19, 19:3, 19:7, 20:8, 20:10, 26:13	accept [4] - 11:2, 15:2, 18:25, 21:9	appearance [2] - 24:11, 24:13	back [4] - 11:21, 17:1, 18:2, 19:3	calculated [1] - 6:23
2026 [5] - 1:9, 5:23, 19:4, 30:7, 30:11	accepting [1] - 2:23	appellate [1] - 9:2	Baltimore [2] - 1:10, 1:15	call [1] - 28:5
21st [1] - 6:12	access [4] - 8:1, 8:14, 28:22, 28:24	applicable [1] - 7:5	based [1] - 15:15	called [1] - 7:3
22nd [1] - 7:18	accurately [1] - 5:17	apply [1] - 11:7	basis [1] - 23:3	can't [1] - 23:24
24th [1] - 30:11	actions [1] - 25:12	appoint [3] - 22:21, 23:25, 27:7		cannot [1] - 28:3
26 [2] - 18:19, 20:10	add [1] - 11:25	appointed [3] - 22:18, 23:8, 27:5		
26th [8] - 11:14, 13:6, 14:10, 14:12, 14:19, 15:17, 16:4, 20:14	additional [4] - 7:9, 13:10, 13:12, 21:5	appointment [3] - 24:21, 24:22, 29:8		
	address [1] - 14:14	approaching [1] - 26:2		
	admission [1] - 11:9	appropriate [4] - 7:20, 16:12, 21:9, 28:6		
		approval [2] - 6:16,		

<p>cap [1] - 6:25 capable [1] - 26:23 carried [1] - 6:22 carries [1] - 6:8 case [9] - 3:19, 8:4, 22:22, 24:1, 24:23, 27:5, 27:15, 28:1 CASE [1] - 1:4 cause [2] - 22:21, 27:6 caution [2] - 24:25, 25:10 certain [2] - 11:3, 24:13 certainly [11] - 3:10, 8:23, 9:11, 11:23, 11:24, 11:25, 14:10, 14:20, 14:21, 17:15, 25:19 CERTIFICATE [1] - 30:1 Certified [1] - 30:4 certify [1] - 30:4 chain [1] - 16:11 challenge [2] - 8:6, 22:24 change [1] - 11:8 changes [5] - 11:3, 11:4, 11:5, 11:11, 15:25 characterized [1] - 11:22 charged [7] - 2:17, 4:14, 4:21, 5:3, 5:10, 6:5, 20:23 charges [6] - 2:19, 5:17, 7:10, 13:10, 13:13 charging [3] - 4:5, 4:8, 4:12 Charles [1] - 1:14 choice [2] - 23:24, 24:3 CHRISTINA [1] - 1:13 Christina [1] - 2:4 chronology [1] - 20:7 circumstances [1] - 24:13 CJA [2] - 27:25, 28:3 claim [1] - 26:15 clarification [1] - 21:4 clear [3] - 17:23, 21:18, 21:21 clearly [1] - 26:11 client [4] - 26:20, 26:21, 26:25, 28:9 clients [1] - 24:3 closed [1] - 28:18 Code [6] - 4:16, 4:22, 5:5, 5:12, 6:8, 25:4 combined [1] - 2:5</p>	<p>come [3] - 23:22, 26:9, 29:9 commentary [1] - 12:9 commit [1] - 4:14 communicate [4] - 10:7, 10:9, 12:20, 26:13 communicated [10] - 10:20, 12:11, 12:12, 12:23, 14:9, 14:11, 15:14, 16:5, 18:7, 26:25 communication [5] - 15:4, 18:17, 18:18, 27:1, 28:9 communications [5] - 18:12, 19:20, 22:12, 23:19, 28:16 compared [1] - 30:9 compelling [1] - 28:19 complete [2] - 13:5, 29:19 component [3] - 2:13, 22:4, 28:25 Computer [1] - 1:24 Computer-Aided [1] - 1:24 concern [1] - 28:15 concerned [1] - 8:12 conclude [1] - 28:23 conduct [4] - 3:24, 4:20, 5:1, 27:6 confer [1] - 2:21 conferred [5] - 14:4, 16:19, 17:3, 21:15, 25:14 confidential [1] - 28:14 confirm [4] - 2:17, 2:19, 12:7, 13:23 confirmed [1] - 15:5 conflict [2] - 23:14, 27:24 conflicted [1] - 28:2 conflicts [1] - 28:3 Connecticut [1] - 1:18 consequences [2] - 25:7, 25:13 consider [2] - 22:23, 24:24 conspiracy [5] - 4:14, 6:6, 6:21, 13:10, 20:25 consult [1] - 21:12 consulted [1] - 17:16 contained [3] - 12:23, 20:4, 25:8 content [1] - 26:22 context [2] - 11:7, 17:23</p>	<p>continue [1] - 8:17 continues [1] - 23:6 contractual [3] - 23:4, 24:4, 27:7 conversation [3] - 17:8, 17:15, 26:22 conversations [1] - 22:9 convicted [5] - 2:18, 4:16, 4:23, 5:6, 5:13 correct [3] - 17:25, 20:18, 30:5 correcting [1] - 4:10 cost [1] - 23:25 counsel [23] - 3:19, 3:21, 6:12, 6:13, 15:4, 17:1, 22:19, 22:22, 23:9, 23:25, 24:2, 24:11, 24:12, 24:17, 24:21, 25:2, 25:12, 26:16, 27:5, 27:7, 27:15, 28:19, 29:8 Counsel [2] - 4:9, 5:16 counseled [1] - 18:8 count [2] - 6:6, 21:2 Count [2] - 4:13, 5:10 Counts [2] - 4:21, 5:2 counts [2] - 4:23, 20:23 couple [1] - 10:14 course [4] - 4:9, 8:6, 13:8, 14:8 Court [27] - 3:8, 3:9, 3:11, 7:23, 11:21, 14:14, 14:20, 14:22, 17:24, 21:21, 21:24, 22:1, 22:20, 22:23, 23:5, 23:13, 23:25, 24:6, 24:7, 24:12, 24:24, 25:18, 25:22, 26:1, 28:21, 29:4 COURT [59] - 1:1, 2:7, 2:11, 3:4, 3:12, 5:21, 7:25, 8:10, 8:22, 9:11, 9:15, 9:19, 10:7, 10:11, 10:17, 10:23, 11:18, 12:2, 12:20, 12:22, 13:1, 13:12, 13:16, 14:8, 14:17, 14:23, 15:2, 15:10, 15:13, 15:19, 16:7, 16:13, 16:18, 16:21, 16:25, 17:5, 17:11, 17:14, 17:19, 18:4, 18:16, 19:8, 19:12, 19:19, 19:23, 20:6, 20:13, 20:19, 20:24, 21:4, 21:14, 22:3, 23:15, 26:4,</p>	<p>26:17, 28:4, 29:12, 29:16, 30:14 court [3] - 3:15, 8:25, 26:24 Court's [3] - 14:6, 23:10, 27:23 COURTROOM [1] - 19:17 courtroom [6] - 3:21, 22:8, 22:13, 23:18, 28:7, 29:6 courts [1] - 8:21 cover [1] - 17:6 create [2] - 23:14, 23:17 crimes [1] - 7:13 criminal [1] - 4:20 Criminal [1] - 2:4 criminally [1] - 5:9 CRR [1] - 30:14 current [2] - 13:13, 19:21</p>	<p>Defender's [1] - 27:25 defense [10] - 2:8, 2:9, 6:1, 11:23, 16:1, 16:2, 18:3, 19:2, 19:13, 20:16 defer [2] - 3:9, 11:20 DEPUTY [1] - 19:17 derived [1] - 5:9 determined [1] - 11:6 did [26] - 7:16, 10:5, 10:6, 10:7, 10:9, 11:7, 12:17, 12:20, 12:21, 13:9, 15:2, 15:6, 15:10, 15:12, 16:2, 17:8, 17:16, 17:22, 18:12, 18:16, 18:18, 21:20, 21:21, 24:14, 25:23, 27:25 didn't [1] - 26:18 different [3] - 11:23, 21:19, 28:1 differently [2] - 12:6, 27:3 disagreement [1] - 26:12 disclosure [1] - 28:13 discuss [1] - 22:6 discussion [2] - 3:22, 11:21 discussions [4] - 21:23, 21:24, 21:25, 22:1 DISTRICT [2] - 1:1, 1:1 DIVISION [1] - 1:2 divulging [1] - 28:8 do [24] - 2:16, 3:9, 3:14, 4:9, 7:19, 7:22, 8:8, 9:1, 12:3, 14:2, 16:10, 17:11, 23:7, 23:14, 23:18, 23:24, 25:19, 25:21, 25:25, 26:2, 26:14, 29:12, 30:4 docket [2] - 5:22, 21:1 document [6] - 4:5, 4:8, 4:12, 9:9, 9:16, 25:3 documents [4] - 8:1, 8:13, 8:14, 8:18 does [8] - 3:15, 14:23, 17:23, 21:19, 23:14, 24:6, 25:7, 29:10 doing [1] - 25:10 done [3] - 8:7, 14:23, 21:18 doubt [1] - 17:11 down [5] - 4:1, 6:13, 12:10, 20:8 drastically [1] - 7:5 driving [1] - 12:3</p>
---	---	---	---	---

<p>due [1] - 24:8</p> <p>during [1] - 26:9</p>	<p>11:16, 12:14, 16:22, 17:12, 19:11, 19:15, 19:17, 20:1, 20:2</p> <p>exhibit [9] - 7:20, 7:24, 8:6, 8:9, 8:23, 9:3, 16:9, 18:11, 19:9</p> <p>exhibits [1] - 20:5</p> <p>exists [1] - 22:21</p> <p>expedite [1] - 25:25</p> <p>experienced [1] - 26:23</p> <p>expire [5] - 7:18, 11:13, 13:7, 15:22, 16:2</p> <p>expired [1] - 21:10</p> <p>explain [1] - 25:6</p> <p>explained [7] - 6:15, 6:19, 6:23, 6:25, 7:6, 7:8, 7:14</p> <p>extend [1] - 7:16</p> <p>extended [16] - 2:20, 5:25, 10:19, 11:14, 12:5, 13:3, 13:13, 13:15, 13:22, 15:7, 15:23, 17:20, 18:6, 18:20, 20:8, 20:10</p> <p>extension [2] - 16:3</p>	<p>finished [1] - 16:21</p> <p>first [6] - 2:13, 2:16, 3:14, 9:13, 10:16, 15:8</p> <p>Five [1] - 5:2</p> <p>five [4] - 5:14, 6:9, 6:22, 21:1</p> <p>five-year [3] - 6:9, 6:22, 21:1</p> <p>Floor [1] - 1:14</p> <p>flow [1] - 25:8</p> <p>Flower [1] - 10:5</p> <p>flowers [27] - 3:13, 7:17, 9:15, 11:1, 11:19, 12:17, 13:7, 13:17, 13:24, 15:5, 15:16, 16:5, 16:11, 16:14, 17:9, 18:7, 18:13, 18:17, 18:19, 18:23, 19:24, 22:5, 22:24, 24:18, 25:2, 26:18, 26:23</p> <p>Flowers [11] - 2:9, 5:16, 8:10, 10:4, 11:2, 14:4, 16:19, 17:3, 21:15, 25:14, 28:15</p> <p>FLOWERS [37] - 1:17, 1:18, 2:9, 3:3, 3:5, 5:20, 8:11, 9:8, 9:18, 10:6, 10:9, 11:20, 12:19, 12:21, 14:3, 14:6, 14:9, 14:18, 14:25, 16:16, 16:23, 17:2, 17:10, 17:13, 17:18, 17:22, 19:10, 19:25, 20:18, 20:20, 20:25, 21:12, 21:17, 23:10, 25:16, 29:14, 29:17</p> <p>flowers' [1] - 26:8</p> <p>folder [1] - 2:14</p> <p>folks [1] - 22:5</p> <p>following [1] - 18:19</p> <p>FOR [3] - 1:1, 1:12, 1:16</p> <p>foregoing [1] - 30:5</p> <p>foreshadow [1] - 23:16</p> <p>form [1] - 22:2</p> <p>former [1] - 24:1</p> <p>forth [3] - 11:21, 18:2, 24:10</p> <p>forum [1] - 3:8</p> <p>forward [1] - 8:24</p> <p>Four [2] - 5:2</p> <p>fraud [7] - 4:14, 4:21, 7:10, 7:15, 11:9, 13:10</p> <p>free [4] - 7:2, 7:7,</p>	<p>29:11, 29:12</p> <p>front [3] - 7:22, 14:15, 23:13</p> <p>Frye [10] - 2:6, 3:6, 8:6, 8:19, 25:24, 26:10, 28:8, 28:12</p> <p>FRYE/ATTORNEY [1] - 1:8</p> <p>FTR [3] - 1:23, 9:1, 30:7</p> <p>fulsome [1] - 3:22</p> <p>fun [1] - 27:11</p> <p>further [6] - 13:3, 13:4, 17:8, 18:12, 18:18, 27:1</p> <p>future [2] - 18:13, 29:9</p>	<p>guilty [1] - 19:3</p>	
<p>E</p>			<p>G</p>	<p>H</p>	
<p>E [4] - 1:11, 2:1</p> <p>each [3] - 4:23, 13:21, 15:6</p> <p>easier [3] - 10:18, 19:16</p> <p>ECF [1] - 4:7</p> <p>effort [1] - 27:10</p> <p>Eight [1] - 5:3</p> <p>either [5] - 4:19, 5:8, 13:24, 19:14, 26:11</p> <p>elected [1] - 24:2</p> <p>electronic [1] - 29:2</p> <p>Eleven [1] - 5:10</p> <p>eligibility [4] - 24:22, 27:15, 27:22, 29:8</p> <p>eliminate [1] - 11:5</p> <p>email [17] - 11:1, 11:14, 13:5, 14:10, 14:12, 16:8, 16:10, 17:9, 17:12, 17:16, 18:1, 18:19, 18:22, 18:23, 19:4, 20:14, 21:18</p> <p>emails [4] - 17:25, 21:20, 21:21, 21:22</p> <p>end [2] - 7:1, 12:9</p> <p>ensure [1] - 26:15</p> <p>ensuring [1] - 28:20</p> <p>enter [7] - 7:19, 7:24, 8:8, 9:22, 11:16, 16:8, 16:12</p> <p>entered [1] - 24:13</p> <p>entire [1] - 16:10</p> <p>entitled [1] - 30:6</p> <p>entity [1] - 9:3</p> <p>ERIN [1] - 1:8</p> <p>ESQUIRE [2] - 1:13, 1:17</p> <p>essentially [1] - 11:10</p> <p>established [1] - 13:21</p> <p>even [1] - 12:5</p> <p>event [1] - 8:5</p> <p>eventually [1] - 6:17</p> <p>everything [1] - 27:16</p> <p>evidence [2] - 6:15, 7:9</p> <p>ex [6] - 3:8, 3:11, 14:15, 14:24, 17:24, 22:1</p> <p>exact [1] - 19:1</p> <p>excerpt [1] - 29:18</p> <p>exclude [1] - 3:21</p> <p>excused [1] - 29:7</p> <p>Exhibit [11] - 9:22,</p>	<p>F</p>	<p>facet [1] - 28:8</p> <p>fact [2] - 20:3, 26:9</p> <p>factors [1] - 22:23</p> <p>facts [1] - 11:8</p> <p>failure [1] - 26:13</p> <p>false [2] - 25:3, 25:8</p> <p>family [1] - 29:15</p> <p>fashion [1] - 14:24</p> <p>favor [1] - 4:9</p> <p>February [6] - 1:9, 6:5, 19:4, 30:7, 30:11</p> <p>FEDERAL [1] - 30:14</p> <p>federal [1] - 25:3</p> <p>Federal [1] - 27:24</p> <p>few [2] - 22:13, 27:2</p> <p>file [5] - 9:4, 24:18, 25:23, 27:10, 27:16</p> <p>filed [4] - 9:22, 12:15, 25:22, 27:8</p> <p>fill [2] - 25:21, 27:13</p> <p>finally [1] - 5:10</p> <p>financial [8] - 24:22, 24:23, 25:21, 27:13, 27:15, 27:21, 27:22, 29:8</p> <p>find [1] - 28:11</p> <p>finding [1] - 27:14</p> <p>fine [6] - 4:19, 4:25, 5:8, 5:15, 12:2, 18:4</p>	<p>G</p>	<p>G [1] - 2:1</p> <p>gain [3] - 2:22, 4:19, 5:1</p> <p>gallery [1] - 22:5</p> <p>general [1] - 2:25</p> <p>generalities [1] - 22:17</p> <p>gentlemen [4] - 16:21, 17:5, 18:18, 29:5</p> <p>gets [1] - 11:24</p> <p>getting [1] - 17:14</p> <p>give [1] - 18:1</p> <p>given [7] - 8:2, 8:19, 8:20, 8:24, 23:2, 23:8, 25:11</p> <p>GOLD [1] - 1:23</p> <p>Gold [1] - 30:7</p> <p>good [6] - 2:11, 11:25, 18:1, 22:21, 27:6</p> <p>governed [1] - 22:22</p> <p>Government [22] - 3:19, 3:21, 5:25, 6:12, 8:16, 10:13, 11:3, 11:24, 12:4, 14:11, 14:16, 16:22, 18:2, 18:25, 19:2, 19:5, 19:12, 19:15, 20:5, 21:10, 25:23, 28:19</p> <p>Government's [5] - 19:11, 19:17, 20:1, 20:2</p> <p>governs [1] - 24:10</p> <p>grab [1] - 29:14</p> <p>grant [2] - 12:2, 27:17</p> <p>granted [2] - 16:3</p> <p>guess [3] - 19:5, 21:6, 28:12</p> <p>Guideline [1] - 7:4</p> <p>guidelines [5] - 6:23, 6:24, 7:1, 7:2, 7:5</p>	<p>hand [1] - 9:20</p> <p>happened [2] - 17:24, 26:12</p> <p>happy [3] - 11:16, 12:12, 16:11</p> <p>harbor [1] - 7:3</p> <p>hash [1] - 11:10</p> <p>having [5] - 17:16, 18:8, 18:25, 21:22, 25:24</p> <p>he's [1] - 27:14</p> <p>hear [3] - 12:12, 22:24, 26:18</p> <p>heard [3] - 26:19, 27:3</p> <p>HEARING [1] - 1:8</p> <p>hearing [30] - 2:6, 2:15, 3:6, 3:24, 3:25, 8:3, 8:15, 8:19, 8:20, 12:4, 22:16, 23:2, 23:8, 23:11, 23:12, 23:14, 25:24, 26:10, 28:5, 28:8, 28:12, 28:13, 28:18, 28:22, 28:25, 29:3</p> <p>help [1] - 23:7</p> <p>helpful [1] - 9:2</p> <p>hereby [1] - 30:4</p> <p>hesitant [1] - 28:5</p> <p>higher [1] - 7:14</p> <p>highlights [1] - 6:14</p> <p>hire [2] - 23:23, 24:2</p> <p>HOFFMAN [21] - 1:13, 2:3, 5:19, 6:2, 8:2, 9:7, 9:12, 10:25, 13:4, 13:14, 15:14, 15:22, 16:10, 18:14, 18:21, 19:14, 19:22, 20:12, 26:7, 27:23, 29:10</p> <p>Hoffman [14] - 2:4, 5:16, 5:25, 8:24, 9:19, 10:24, 13:3, 13:22, 15:3, 15:13, 18:12, 20:21, 26:5, 29:6</p> <p>Hoffman's [1] - 20:4</p> <p>Honor [36] - 3:3, 5:19, 5:20, 6:3, 6:8, 7:22, 8:11, 9:8, 9:18, 10:6, 10:22, 11:20, 12:19, 12:21, 12:25, 13:9, 14:3, 14:6, 14:13, 16:17, 16:23, 17:2, 17:10, 17:13, 17:18, 17:22, 19:10, 19:18, 19:25, 20:18, 21:12,</p>

21:17, 25:16, 27:9, 29:10, 29:14 Honorable [1] - 5:24 HONORABLE [1] - 1:8 hours [1] - 6:14 Hoven [1] - 28:1 however [4] - 12:3, 14:13, 23:20, 24:25 husher [3] - 14:2, 16:16, 17:1	J John [1] - 28:1 JUDGE [1] - 1:9 judge [2] - 24:15, 25:19 Judge [9] - 5:24, 7:21, 7:23, 8:1, 8:13, 23:11, 24:16, 27:9, 27:17 judicial [1] - 28:20 July [1] - 6:12 June [3] - 5:23, 14:1, 24:9	leave [2] - 12:2, 24:12 let's [6] - 2:13, 3:25, 9:15, 9:20, 10:1, 22:3 letter [6] - 10:20, 11:12, 12:15, 12:17, 12:23, 17:20 light [2] - 26:9 likely [2] - 7:12, 11:7 limit [1] - 15:20 listen [1] - 22:11 little [2] - 14:14, 27:3 LLP [1] - 1:18 local [2] - 24:9, 24:10 long [1] - 24:14 longer [2] - 13:19, 21:11 look [2] - 4:3, 8:3 loss [2] - 4:20, 5:1 low [1] - 7:1	mentioned [4] - 6:3, 6:8, 13:9, 18:14 Merit [1] - 30:3 might [6] - 2:21, 2:22, 10:15, 10:16, 13:24, 24:20 minor [1] - 15:25 minute [1] - 6:18 misheard [1] - 20:22 misspoke [1] - 20:22 misspoken [1] - 4:9 mistake [1] - 4:10 moment [5] - 9:15, 10:18, 12:12, 13:18, 25:5 Monday [1] - 5:23 money [9] - 5:3, 5:11, 6:7, 6:21, 7:10, 7:14, 13:11, 21:3, 23:23 months [1] - 6:25 morning [3] - 2:11, 2:16, 24:15 motion [11] - 23:6, 24:18, 25:20, 25:22, 25:23, 26:8, 27:8, 27:10, 27:16, 27:17 move [2] - 17:5, 27:11 MR [35] - 2:9, 3:3, 3:5, 5:20, 8:11, 9:8, 9:18, 10:6, 10:9, 11:20, 12:19, 12:21, 14:3, 14:6, 14:9, 14:18, 14:25, 16:16, 16:23, 17:2, 17:10, 17:13, 17:18, 17:22, 19:10, 19:25, 20:18, 20:20, 20:25, 21:12, 21:17, 23:10, 25:16, 29:14, 29:17 Mr [84] - 2:10, 2:12, 2:15, 3:10, 3:13, 4:1, 4:5, 4:14, 5:16, 7:17, 8:10, 9:15, 9:21, 9:23, 10:4, 10:5, 10:7, 10:9, 10:11, 11:1, 11:2, 11:19, 12:7, 12:11, 12:17, 12:20, 12:22, 13:7, 13:17, 13:20, 13:24, 14:4, 14:9, 14:13, 14:18, 14:21, 15:5, 15:6, 15:16, 16:4, 16:11, 16:14, 16:19, 17:3, 17:9, 17:17, 17:23, 18:6, 18:8, 18:13, 18:17, 18:18, 18:23, 18:25, 19:6, 19:24, 20:22, 21:6, 21:13, 21:15, 21:19, 21:23, 22:5, 22:24,	22:25, 23:4, 24:2, 24:17, 24:21, 25:2, 25:14, 26:1, 26:8, 26:13, 26:18, 26:23, 27:12, 27:19, 28:14, 28:15, 28:20, 29:15 Ms [14] - 5:16, 5:25, 8:24, 9:19, 10:24, 13:3, 13:22, 15:3, 15:13, 18:12, 20:3, 20:21, 26:5, 29:6 MS [20] - 2:3, 5:19, 6:2, 8:2, 9:7, 9:12, 10:25, 13:4, 13:14, 15:14, 15:22, 16:10, 18:14, 18:21, 19:14, 19:22, 20:12, 26:7, 27:23, 29:10 much [2] - 3:2, 13:1 multiple [1] - 9:20 myself [1] - 3:10
I imagining [1] - 24:4 important [3] - 20:20, 21:23, 29:1 imprisonment [2] - 4:18, 4:24 including [2] - 7:10, 28:16 indicated [2] - 15:19, 22:6 indication [1] - 20:2 indicted [1] - 6:5 indictment [8] - 4:7, 4:13, 6:4, 6:10, 6:11, 7:12, 13:9, 21:1 individually [1] - 13:24 individuals [1] - 24:12 indulge [1] - 13:18 indulgence [1] - 14:7 ineffective [1] - 26:16 information [5] - 3:7, 3:10, 12:1, 14:20, 21:6 initially [1] - 22:15 inquiry [16] - 2:6, 3:5, 3:17, 3:24, 22:15, 22:16, 22:20, 23:2, 23:8, 23:11, 23:12, 25:17, 25:23, 27:6, 28:5, 28:13 INQUIRY [1] - 1:8 instead [1] - 11:10 intending [1] - 2:24 intention [3] - 13:25, 21:7, 26:14 interest [1] - 28:20 interests [1] - 29:2 interpreted [1] - 12:5 intervene [1] - 23:21 intruding [1] - 26:21 involve [2] - 24:6, 28:8 involved [3] - 4:20, 7:23, 24:7 involves [1] - 28:13 issue [2] - 9:2, 11:10 issues [1] - 22:19	K keep [1] - 7:23 KELLER [1] - 1:18 kind [8] - 6:2, 8:16, 9:21, 11:18, 11:21, 11:22, 16:13, 19:9 know [7] - 4:3, 8:3, 10:14, 12:4, 13:18, 15:2, 25:1 knowledge [2] - 11:9, 12:8 KOBIE [1] - 1:17 Kobie [1] - 2:9	M M [2] - 30:3, 30:14 made [13] - 2:20, 8:23, 10:11, 10:12, 10:15, 10:18, 11:3, 11:4, 11:11, 15:16, 16:1, 18:15 MAGISTRATE [1] - 1:9 making [3] - 9:12, 15:25, 25:3 manner [1] - 24:4 many [1] - 23:22 mark [4] - 9:21, 18:10, 19:9, 19:10 marked [1] - 12:14 MARYLAND [1] - 1:1 Maryland [2] - 1:10, 1:15 material [1] - 8:25 matter [7] - 3:18, 3:24, 5:23, 16:9, 19:15, 27:4, 30:6 matters [4] - 17:6, 22:6, 28:14, 28:15 max [3] - 6:22, 7:14, 21:1 maximum [10] - 2:18, 4:17, 4:19, 4:24, 5:6, 5:8, 5:13, 5:15, 5:18, 6:9 maximums [1] - 7:13 McDonough [1] - 9:21 mean [3] - 7:25, 19:14, 24:3 meaning [1] - 4:5 members [1] - 29:15 memorialized [2] - 20:9, 20:11	N N [2] - 1:11, 2:1 NADINE [1] - 30:14 Nadine [1] - 30:3 nature [3] - 8:3, 23:13, 28:11 need [11] - 3:14, 12:7, 12:9, 14:23, 15:2, 17:5, 17:7, 23:7, 24:18, 24:22, 25:12 needed [1] - 8:18 needs [1] - 24:17 negotiations [1] - 7:24 never [3] - 15:14, 15:17, 24:3 new [3] - 22:21, 24:17, 27:7 next [2] - 28:11, 28:24 Nine [1] - 5:3 nonetheless [3] - 2:23, 10:1, 27:3 NORTHERN [1] - 1:2 Northwest [1] - 1:18 note [2] - 12:3, 23:20 noted [2] - 20:21, 27:4 notwithstanding [1] - 2:22 NUMBER [1] - 1:4 Number [3] - 2:4, 11:16, 12:14 number [2] - 21:1, 23:13	O O [1] - 2:1 objection [3] - 8:10,

<p>8:11, 26:8 obviously [2] - 7:21, 8:20 OF [5] - 1:1, 1:3, 1:7, 1:14, 30:1 offense [4] - 4:17, 5:13, 11:7, 25:3 offenses [1] - 5:6 offer [39] - 2:23, 2:24, 6:16, 6:19, 7:16, 8:25, 9:13, 10:3, 10:5, 10:13, 10:19, 11:3, 11:6, 11:12, 11:15, 12:23, 13:6, 13:8, 14:12, 14:19, 15:5, 15:11, 15:17, 15:18, 15:21, 15:24, 16:1, 17:20, 18:5, 18:7, 18:20, 19:6, 20:7, 20:10, 20:17, 21:10, 23:1, 26:25 offered [1] - 17:12 offers [20] - 2:20, 2:21, 5:25, 9:20, 9:24, 11:22, 12:6, 12:8, 13:3, 13:4, 13:12, 13:14, 13:22, 13:25, 15:3, 15:6, 18:13, 18:14, 19:21, 21:7 OFFICE [1] - 1:14 Office [2] - 12:16, 27:25 officer [1] - 26:24 OFFICIAL [2] - 30:1, 30:14 omission [1] - 4:10 omit [1] - 11:9 one [15] - 3:12, 4:6, 6:6, 10:16, 10:17, 10:18, 15:8, 15:9, 15:12, 19:14, 20:20, 22:8, 23:11, 27:25 One [1] - 4:13 open [4] - 3:15, 8:21, 8:25, 15:24 operate [2] - 6:6, 6:21 operating [2] - 5:11, 21:2 operative [2] - 4:5, 6:10 opportunity [4] - 22:17, 22:18, 23:17, 24:15 oppose [1] - 7:6 oral [3] - 9:6, 25:20, 26:8 orally [1] - 10:20 ordinarily [1] - 21:6 originally [3] - 6:4, 15:22, 20:22</p>	<p>others [1] - 22:11 otherwise [1] - 28:17 our [2] - 6:25, 15:25 outside [1] - 29:11 own [1] - 23:23</p> <p style="text-align: center;">P</p> <p>P [3] - 1:11, 2:1 p.m [1] - 14:12 part [3] - 4:11, 27:1, 28:11 parte [6] - 3:8, 3:11, 14:15, 14:24, 17:25, 22:2 participate [1] - 4:4 participating [1] - 3:19 particular [2] - 7:4, 25:6 parties [3] - 24:6, 26:12, 27:8 pass [2] - 11:16, 18:10 past [2] - 8:7, 18:13 pause [4] - 9:15, 9:20, 10:1, 22:3 penalties [2] - 2:18, 5:18 penalty [5] - 4:17, 4:24, 5:6, 5:14, 25:1 pending [5] - 2:19, 5:17, 8:5, 9:25, 17:19 perhaps [2] - 11:24, 20:22 perjury [1] - 25:1 permit [2] - 9:4, 22:13 permitting [1] - 28:24 person [1] - 6:13 pertaining [1] - 22:6 phone [1] - 18:24 pivot [1] - 3:17 place [3] - 4:6, 24:17, 27:16 Plaintiff [1] - 1:3 PLAINTIFF [1] - 1:12 plea [49] - 2:20, 2:23, 2:24, 5:25, 6:15, 6:19, 7:11, 7:16, 7:23, 9:10, 9:13, 9:24, 10:3, 10:5, 10:12, 10:19, 11:3, 11:6, 11:12, 11:15, 11:22, 12:23, 13:3, 13:4, 13:6, 13:8, 13:22, 14:11, 14:19, 15:3, 15:6, 15:10, 16:6, 18:13, 18:14, 18:20, 19:3, 19:21, 20:3, 20:4, 20:7,</p>	<p>20:10, 20:17, 21:7, 21:9, 21:10, 21:18, 21:20, 23:1 plead [2] - 6:20, 19:3 please [7] - 5:24, 9:21, 10:12, 10:24, 14:2, 16:13, 29:6 pleasure [1] - 27:12 point [3] - 11:25, 16:8, 29:9 portion [5] - 3:25, 26:10, 28:18, 28:22, 29:3 possible [1] - 22:2 practice [1] - 3:18 prepare [2] - 24:23, 25:7 present [2] - 17:1, 21:8 presiding [2] - 24:15, 25:19 press [1] - 22:3 previous [1] - 15:24 previously [3] - 15:20, 20:16, 27:4 prior [1] - 19:21 prison [5] - 5:7, 5:14, 6:9, 7:15 private [2] - 24:6, 27:8 privately [5] - 14:4, 16:19, 17:3, 21:15, 25:14 privilege [4] - 3:7, 15:1, 21:25, 28:17 privileged [3] - 22:12, 23:19, 28:9 probably [1] - 18:24 procedure [1] - 24:9 proceed [6] - 2:24, 9:16, 10:1, 10:24, 14:1, 21:8 proceeding [2] - 2:25, 3:15 proceedings [2] - 17:7, 30:6 PROCEEDINGS [1] - 1:7 Proceedings [1] - 1:23 Produced [1] - 1:24 product [2] - 3:7, 21:25 proffer [3] - 6:11, 7:9, 9:17 proper [2] - 7:19, 8:8 property [1] - 5:9 protect [2] - 22:10, 29:1 protected [2] - 26:21, 28:17</p>	<p>protecting [1] - 26:15 protection [1] - 23:19 provide [1] - 11:19 provision [2] - 7:3, 7:4 proximity [1] - 24:8 prudent [3] - 16:7, 26:11, 26:14 Public [1] - 27:24 public [7] - 8:14, 8:21, 8:23, 9:5, 28:18, 28:22, 28:24 pull [2] - 15:20, 18:24 purpose [7] - 2:14, 2:15, 2:25, 8:19, 8:20, 9:23, 12:3 put [10] - 3:20, 8:15, 8:17, 8:24, 9:9, 13:20, 14:2, 17:1, 22:25, 26:5 putting [1] - 8:17</p> <p style="text-align: center;">Q</p> <p>question [4] - 17:8, 18:16, 21:9, 23:11 questions [2] - 3:23, 22:14 quickly [1] - 26:2 quite [2] - 4:2, 23:2</p> <p style="text-align: center;">R</p> <p>R [2] - 1:11, 2:1 raise [1] - 22:19 range [1] - 6:24 RDB-24-004 [1] - 2:4 reach [1] - 7:11 reached [2] - 18:23, 20:3 read [1] - 27:12 ready [1] - 4:2 really [1] - 24:18 Realtime [1] - 30:4 reason [7] - 7:22, 8:11, 17:11, 22:7, 24:17, 28:10, 28:17 receive [2] - 10:5, 12:17 received [3] - 12:5, 13:21, 15:4 recently [2] - 18:21, 20:15 recognizing [1] - 27:13 recommendation [1] - 7:1 record [24] - 3:20, 4:10, 7:20, 8:16, 8:17, 8:18, 8:24, 12:1, 13:5, 13:21,</p>	<p>14:5, 16:20, 17:4, 17:16, 18:5, 21:16, 21:17, 23:1, 23:18, 25:15, 26:6, 28:22, 28:24, 29:2 Recorded [1] - 1:23 recorded [3] - 9:1, 30:5, 30:6 recording [2] - 30:8, 30:9 reduce [1] - 7:5 reduced [4] - 6:17, 10:3, 10:20, 12:6 reextending [1] - 19:6 Registered [1] - 30:3 reject [4] - 15:3, 15:6, 15:10, 21:7 rejected [15] - 13:7, 13:23, 13:25, 14:11, 14:19, 15:4, 15:8, 15:17, 16:5, 19:3, 19:6, 20:9, 20:11, 20:14, 20:17 rejecting [2] - 2:23, 18:7 rejection [4] - 14:15, 21:18, 21:20, 26:25 related [1] - 3:15 relationship [9] - 3:16, 22:7, 22:19, 22:20, 23:3, 23:5, 23:21, 27:7, 28:16 relayed [2] - 11:2, 13:7 release [4] - 4:18, 4:25, 5:8, 5:15 remain [1] - 29:3 REPORTER [2] - 30:1, 30:14 Reporter [2] - 30:3, 30:4 represent [2] - 23:25, 28:1 representation [2] - 9:6, 27:18 representations [1] - 15:15 represented [1] - 24:3 representing [1] - 24:11 request [2] - 16:1, 16:2 requested [3] - 11:4, 11:11, 29:18 requires [1] - 24:12 resources [2] - 23:14, 24:2 respect [8] - 3:5, 13:13, 18:13, 18:19, 19:20, 22:19, 23:1, 27:2</p>
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<p>responded [2] - 19:5 response [2] - 16:8, 18:7 responses [1] - 23:10 restitution [2] - 11:5, 11:6 result [2] - 5:1, 6:24 resulting [1] - 7:1 resurrect [1] - 20:16 retained [1] - 23:3 retainer [1] - 24:5 returned [1] - 4:12 reverse [2] - 6:11, 7:8 review [3] - 4:8, 5:22, 24:22 reviewing [4] - 9:3, 9:16, 16:22, 27:21 ride [1] - 25:19 right [3] - 8:2, 23:10, 28:23 rights [1] - 28:21 rise [2] - 10:12, 29:6 RMR [1] - 30:14 RODNEY [1] - 1:5 Rodney [2] - 2:3, 2:10 role [3] - 23:5, 24:19, 24:20 rule [2] - 24:10, 27:17 ruled [1] - 27:9 rules [1] - 24:9 ruling [1] - 23:6</p>	<p>seat [1] - 16:14 seated [5] - 2:12, 10:23, 13:2, 16:15, 18:17 second [13] - 9:13, 10:16, 10:17, 11:12, 11:15, 13:6, 15:9, 15:10, 15:12, 16:1, 20:10, 21:2, 22:4 secure [1] - 27:18 seek [4] - 6:16, 6:20, 7:12, 24:21 send [4] - 17:9, 17:16, 21:20, 21:21 sensitive [1] - 28:13 sent [4] - 7:17, 15:18, 18:1, 21:22 sentence [1] - 6:9 sentencing [1] - 11:10 September [23] - 11:1, 11:12, 11:13, 11:14, 12:16, 12:17, 13:6, 14:10, 14:12, 14:19, 15:16, 15:21, 15:23, 16:4, 17:20, 18:19, 19:3, 19:7, 20:10, 20:12, 20:13, 20:14, 26:13 series [1] - 22:23 set [8] - 7:17, 11:13, 13:7, 15:22, 16:2, 24:9, 24:10, 27:4 Seven [1] - 5:3 shall [1] - 29:3 share [5] - 3:8, 3:11, 14:21, 16:14, 17:24 shoes [1] - 4:3 short [1] - 24:14 should [10] - 2:18, 3:9, 3:24, 9:2, 9:25, 14:20, 20:21, 27:10, 27:17, 29:8 show [1] - 16:11 showed [1] - 6:14 signed [3] - 15:12, 15:18, 25:1 significantly [1] - 7:13 simply [1] - 15:25 since [1] - 9:19 sit [1] - 4:1 Six [1] - 5:2 Sixth [2] - 28:21, 28:23 some [17] - 3:6, 3:23, 8:5, 11:5, 11:8, 11:25, 14:20, 15:24, 15:25, 17:6, 21:5, 21:24, 22:6, 24:4, 24:5, 26:2, 26:11 something [2] - 13:18,</p>	<p>29:14 sort [2] - 8:5, 13:5 sought [1] - 20:16 sounds [4] - 21:8, 22:4, 26:10, 28:7 speak [4] - 16:24, 16:25, 20:3, 24:15 speaking [1] - 26:20 specifically [1] - 11:4 sphere [2] - 26:21, 27:20 spoke [2] - 26:20, 26:24 spoken [1] - 18:8 stake [1] - 29:2 stand [1] - 4:2 standing [1] - 28:2 start [4] - 2:13, 3:19, 3:25, 6:3 stated [1] - 15:16 statement [2] - 11:8, 25:8 statements [1] - 25:3 STATES [4] - 1:1, 1:3, 1:9, 1:14 States [10] - 2:3, 2:5, 4:16, 4:22, 5:5, 5:12, 6:7, 8:21, 12:16, 25:4 stating [1] - 15:3 statute [4] - 4:17, 4:24, 5:7, 5:14 statutory [2] - 6:22, 7:13 stay [1] - 27:20 step [1] - 29:6 still [3] - 6:10, 8:1, 9:25 Street [1] - 1:14 styled [1] - 28:12 substance [4] - 8:22, 9:5, 12:22, 17:14 such [4] - 24:22, 25:4, 25:9, 28:20 suffice [1] - 18:5 suggested [1] - 23:12 suggesting [1] - 25:9 summarized [1] - 5:17 superseded [1] - 13:8 superseding [4] - 4:7, 4:13, 6:4, 7:12 supervised [4] - 4:18, 4:25, 5:7, 5:15 supervisor [1] - 20:4 supported [1] - 7:9 supporting [1] - 9:3 sure [14] - 9:24, 12:4, 12:7, 12:10, 13:20, 17:7, 18:23, 19:1, 19:12, 21:14, 22:10,</p>	<p>23:2, 25:2, 25:11 sworn [1] - 27:14</p> <p>T</p> <p>take [2] - 3:12, 25:5 talk [1] - 25:5 talking [3] - 20:2, 22:9, 22:17 tell [3] - 3:18, 5:24, 23:22 Ten [2] - 5:2, 5:3 ten [2] - 5:7, 7:15 tendered [1] - 10:13 tendering [1] - 19:12 terms [5] - 6:15, 7:16, 8:25, 9:1, 10:19 thank [19] - 3:2, 3:13, 5:21, 9:7, 9:18, 10:23, 10:25, 11:18, 13:1, 14:3, 14:6, 17:2, 18:10, 19:23, 20:13, 21:4, 25:16, 26:17, 29:17 that's [15] - 2:25, 4:6, 4:15, 5:2, 5:4, 8:2, 12:2, 14:12, 18:4, 19:16, 20:10, 20:18, 21:8, 22:22, 28:6 them [2] - 6:15, 10:15 then [16] - 3:17, 3:20, 7:16, 8:6, 9:8, 10:20, 11:3, 11:11, 11:25, 20:15, 21:2, 23:13, 23:16, 24:17, 24:21, 27:18 there's [14] - 3:20, 4:10, 20:20, 21:5, 23:22, 24:4, 24:5, 24:8, 24:9, 24:16, 25:2, 27:6, 28:7, 28:19 therein [1] - 12:23 thereof [1] - 28:23 thing [2] - 7:19, 20:21 things [1] - 23:1 think [24] - 3:14, 7:18, 7:20, 8:2, 8:3, 8:7, 8:8, 8:18, 8:22, 12:3, 14:18, 16:7, 16:25, 20:1, 20:20, 20:21, 21:21, 21:23, 23:7, 26:10, 26:14, 27:10, 28:3, 28:6 though [1] - 16:15 three [6] - 4:18, 4:25, 5:7, 5:14, 18:23, 20:15 Three [1] - 4:21 through [4] - 5:2, 9:1,</p>	<p>9:5, 16:25 thursday [1] - 1:9 time [7] - 3:13, 10:18, 15:20, 15:24, 16:8, 29:9, 29:13 times [3] - 4:19, 5:1, 5:8 tire [1] - 4:3 Title [5] - 4:15, 4:22, 5:4, 5:12, 25:4 today [5] - 4:8, 9:23, 17:6, 18:22, 28:2 today's [1] - 2:25 transcribed [1] - 30:7 transcript [3] - 29:18, 30:5, 30:8 TRANSCRIPT [1] - 1:7 Transcript [1] - 1:24 Transcription [1] - 1:24 transcripts [1] - 29:2 transmitted [1] - 10:4 transmitting [4] - 5:11, 6:7, 6:21, 21:3 trial [9] - 2:24, 5:22, 10:1, 14:1, 21:8, 24:8, 25:25, 27:4 true [3] - 14:10, 15:15, 26:14 two [12] - 4:19, 4:25, 5:8, 6:14, 9:10, 9:12, 13:22, 16:2, 20:23, 23:10, 23:13, 23:22 Two [1] - 4:21 typically [4] - 3:21, 22:16, 22:18, 24:1</p>
<p>S</p> <p>S [4] - 1:11, 1:14, 2:1, 30:13 safe [1] - 7:3 safeguarded [1] - 28:21 safer [1] - 13:25 said [6] - 9:14, 13:22, 25:18, 26:19, 27:11, 30:8 same [3] - 15:5, 20:15, 26:19 sat [1] - 6:13 saw [1] - 6:15 scheduled [3] - 5:23, 14:1, 22:15 seal [11] - 3:21, 7:21, 9:4, 9:9, 9:22, 12:15, 16:12, 19:11, 22:8, 28:7, 28:10 sealed [13] - 7:20, 7:24, 7:25, 8:1, 8:9, 8:12, 8:13, 8:14, 8:17, 11:16, 19:15, 23:18, 29:3 sealing [2] - 22:12, 29:1</p>	<p>seat [1] - 16:14 seated [5] - 2:12, 10:23, 13:2, 16:15, 18:17 second [13] - 9:13, 10:16, 10:17, 11:12, 11:15, 13:6, 15:9, 15:10, 15:12, 16:1, 20:10, 21:2, 22:4 secure [1] - 27:18 seek [4] - 6:16, 6:20, 7:12, 24:21 send [4] - 17:9, 17:16, 21:20, 21:21 sensitive [1] - 28:13 sent [4] - 7:17, 15:18, 18:1, 21:22 sentence [1] - 6:9 sentencing [1] - 11:10 September [23] - 11:1, 11:12, 11:13, 11:14, 12:16, 12:17, 13:6, 14:10, 14:12, 14:19, 15:16, 15:21, 15:23, 16:4, 17:20, 18:19, 19:3, 19:7, 20:10, 20:12, 20:13, 20:14, 26:13 series [1] - 22:23 set [8] - 7:17, 11:13, 13:7, 15:22, 16:2, 24:9, 24:10, 27:4 Seven [1] - 5:3 shall [1] - 29:3 share [5] - 3:8, 3:11, 14:21, 16:14, 17:24 shoes [1] - 4:3 short [1] - 24:14 should [10] - 2:18, 3:9, 3:24, 9:2, 9:25, 14:20, 20:21, 27:10, 27:17, 29:8 show [1] - 16:11 showed [1] - 6:14 signed [3] - 15:12, 15:18, 25:1 significantly [1] - 7:13 simply [1] - 15:25 since [1] - 9:19 sit [1] - 4:1 Six [1] - 5:2 Sixth [2] - 28:21, 28:23 some [17] - 3:6, 3:23, 8:5, 11:5, 11:8, 11:25, 14:20, 15:24, 15:25, 17:6, 21:5, 21:24, 22:6, 24:4, 24:5, 26:2, 26:11 something [2] - 13:18,</p>	<p>29:14 sort [2] - 8:5, 13:5 sought [1] - 20:16 sounds [4] - 21:8, 22:4, 26:10, 28:7 speak [4] - 16:24, 16:25, 20:3, 24:15 speaking [1] - 26:20 specifically [1] - 11:4 sphere [2] - 26:21, 27:20 spoke [2] - 26:20, 26:24 spoken [1] - 18:8 stake [1] - 29:2 stand [1] - 4:2 standing [1] - 28:2 start [4] - 2:13, 3:19, 3:25, 6:3 stated [1] - 15:16 statement [2] - 11:8, 25:8 statements [1] - 25:3 STATES [4] - 1:1, 1:3, 1:9, 1:14 States [10] - 2:3, 2:5, 4:16, 4:22, 5:5, 5:12, 6:7, 8:21, 12:16, 25:4 stating [1] - 15:3 statute [4] - 4:17, 4:24, 5:7, 5:14 statutory [2] - 6:22, 7:13 stay [1] - 27:20 step [1] - 29:6 still [3] - 6:10, 8:1, 9:25 Street [1] - 1:14 styled [1] - 28:12 substance [4] - 8:22, 9:5, 12:22, 17:14 such [4] - 24:22, 25:4, 25:9, 28:20 suffice [1] - 18:5 suggested [1] - 23:12 suggesting [1] - 25:9 summarized [1] - 5:17 superseded [1] - 13:8 superseding [4] - 4:7, 4:13, 6:4, 7:12 supervised [4] - 4:18, 4:25, 5:7, 5:15 supervisor [1] - 20:4 supported [1] - 7:9 supporting [1] - 9:3 sure [14] - 9:24, 12:4, 12:7, 12:10, 13:20, 17:7, 18:23, 19:1, 19:12, 21:14, 22:10,</p>	<p>23:2, 25:2, 25:11 sworn [1] - 27:14</p> <p>T</p> <p>take [2] - 3:12, 25:5 talk [1] - 25:5 talking [3] - 20:2, 22:9, 22:17 tell [3] - 3:18, 5:24, 23:22 Ten [2] - 5:2, 5:3 ten [2] - 5:7, 7:15 tendered [1] - 10:13 tendering [1] - 19:12 terms [5] - 6:15, 7:16, 8:25, 9:1, 10:19 thank [19] - 3:2, 3:13, 5:21, 9:7, 9:18, 10:23, 10:25, 11:18, 13:1, 14:3, 14:6, 17:2, 18:10, 19:23, 20:13, 21:4, 25:16, 26:17, 29:17 that's [15] - 2:25, 4:6, 4:15, 5:2, 5:4, 8:2, 12:2, 14:12, 18:4, 19:16, 20:10, 20:18, 21:8, 22:22, 28:6 them [2] - 6:15, 10:15 then [16] - 3:17, 3:20, 7:16, 8:6, 9:8, 10:20, 11:3, 11:11, 11:25, 20:15, 21:2, 23:13, 23:16, 24:17, 24:21, 27:18 there's [14] - 3:20, 4:10, 20:20, 21:5, 23:22, 24:4, 24:5, 24:8, 24:9, 24:16, 25:2, 27:6, 28:7, 28:19 therein [1] - 12:23 thereof [1] - 28:23 thing [2] - 7:19, 20:21 things [1] - 23:1 think [24] - 3:14, 7:18, 7:20, 8:2, 8:3, 8:7, 8:8, 8:18, 8:22, 12:3, 14:18, 16:7, 16:25, 20:1, 20:20, 20:21, 21:21, 21:23, 23:7, 26:10, 26:14, 27:10, 28:3, 28:6 though [1] - 16:15 three [6] - 4:18, 4:25, 5:7, 5:14, 18:23, 20:15 Three [1] - 4:21 through [4] - 5:2, 9:1,</p>	<p>9:5, 16:25 thursday [1] - 1:9 time [7] - 3:13, 10:18, 15:20, 15:24, 16:8, 29:9, 29:13 times [3] - 4:19, 5:1, 5:8 tire [1] - 4:3 Title [5] - 4:15, 4:22, 5:4, 5:12, 25:4 today [5] - 4:8, 9:23, 17:6, 18:22, 28:2 today's [1] - 2:25 transcribed [1] - 30:7 transcript [3] - 29:18, 30:5, 30:8 TRANSCRIPT [1] - 1:7 Transcript [1] - 1:24 Transcription [1] - 1:24 transcripts [1] - 29:2 transmitted [1] - 10:4 transmitting [4] - 5:11, 6:7, 6:21, 21:3 trial [9] - 2:24, 5:22, 10:1, 14:1, 21:8, 24:8, 25:25, 27:4 true [3] - 14:10, 15:15, 26:14 two [12] - 4:19, 4:25, 5:8, 6:14, 9:10, 9:12, 13:22, 16:2, 20:23, 23:10, 23:13, 23:22 Two [1] - 4:21 typically [4] - 3:21, 22:16, 22:18, 24:1</p>
<p>S</p> <p>S [4] - 1:11, 1:14, 2:1, 30:13 safe [1] - 7:3 safeguarded [1] - 28:21 safer [1] - 13:25 said [6] - 9:14, 13:22, 25:18, 26:19, 27:11, 30:8 same [3] - 15:5, 20:15, 26:19 sat [1] - 6:13 saw [1] - 6:15 scheduled [3] - 5:23, 14:1, 22:15 seal [11] - 3:21, 7:21, 9:4, 9:9, 9:22, 12:15, 16:12, 19:11, 22:8, 28:7, 28:10 sealed [13] - 7:20, 7:24, 7:25, 8:1, 8:9, 8:12, 8:13, 8:14, 8:17, 11:16, 19:15, 23:18, 29:3 sealing [2] - 22:12, 29:1</p>	<p>seat [1] - 16:14 seated [5] - 2:12, 10:23, 13:2, 16:15, 18:17 second [13] - 9:13, 10:16, 10:17, 11:12, 11:15, 13:6, 15:9, 15:10, 15:12, 16:1, 20:10, 21:2, 22:4 secure [1] - 27:18 seek [4] - 6:16, 6:20, 7:12, 24:21 send [4] - 17:9, 17:16, 21:20, 21:21 sensitive [1] - 28:13 sent [4] - 7:17, 15:18, 18:1, 21:22 sentence [1] - 6:9 sentencing [1] - 11:10 September [23] - 11:1, 11:12, 11:13, 11:14, 12:16, 12:17, 13:6, 14:10, 14:12, 14:19, 15:16, 15:21, 15:23, 16:4, 17:20, 18:19, 19:3, 19:7, 20:10, 20:12, 20:13, 20:14, 26:13 series [1] - 22:23 set [8] - 7:17, 11:13, 13:7, 15:22, 16:2, 24:9, 24:10, 27:4 Seven [1] - 5:3 shall [1] - 29:3 share [5] - 3:8, 3:11, 14:21, 16:14, 17:24 shoes [1] - 4:3 short [1] - 24:14 should [10] - 2:18, 3:9, 3:24, 9:2, 9:25, 14:20, 20:21, 27:10, 27:17, 29:8 show [1] - 16:11 showed [1] - 6:14 signed [3] - 15:12, 15:18, 25:1 significantly [1] - 7:13 simply [1] - 15:25 since [1] - 9:19 sit [1] - 4:1 Six [1] - 5:2 Sixth [2] - 28:21, 28:23 some [17] - 3:6, 3:23, 8:5, 11:5, 11:8, 11:25, 14:20, 15:24, 15:25, 17:6, 21:5, 21:24, 22:6, 24:4, 24:5, 26:2, 26:11 something [2] - 13:18,</p>	<p>29:14 sort [2] - 8:5, 13:5 sought [1] - 20:16 sounds [4] - 21:8, 22:4, 26:10, 28:7 speak [4] - 16:24, 16:25, 20:3, 24:15 speaking [1] - 26:20 specifically [1] - 11:4 sphere [2] - 26:21, 27:20 spoke [2] - 26:20, 26:24 spoken [1] - 18:8 stake [1] - 29:2 stand [1] - 4:2 standing [1] - 28:2 start [4] - 2:13, 3:19, 3:25, 6:3 stated [1] - 15:16 statement [2] - 11:8, 25:8 statements [1] - 25:3 STATES [4] - 1:1, 1:3, 1:9, 1:14 States [10] - 2:3, 2:5, 4:16, 4:22, 5:5, 5:12, 6:7, 8:21, 12:16, 25:4 stating [1] - 15:3 statute [4] - 4:17, 4:24, 5:7, 5:14 statutory [2] - 6:22, 7:13 stay [1] - 27:20 step [1] - 29:6 still [3] - 6:10, 8:1, 9:25 Street [1] - 1:14 styled [1] - 28:12 substance [4] - 8:22, 9:5, 12:22, 17:14 such [4] - 24:22, 25:4, 25:9, 28:20 suffice [1] - 18:5 suggested [1] - 23:12 suggesting [1] - 25:9 summarized [1] - 5:17 superseded [1] - 13:8 superseding [4] - 4:7, 4:13, 6:4, 7:12 supervised [4] - 4:18, 4:25, 5:7, 5:15 supervisor [1] - 20:4 supported [1] - 7:9 supporting [1] - 9:3 sure [14] - 9:24, 12:4, 12:7, 12:10, 13:20, 17:7, 18:23, 19:1, 19:12, 21:14, 22:10,</p>	<p>23:2, 25:2, 25:11 sworn [1] - 27:14</p> <p>T</p> <p>take [2] - 3:12, 25:5 talk [1] - 25:5 talking [3] - 20:2, 22:9, 22:17 tell [3] - 3:18, 5:24, 23:22 Ten [2] - 5:2, 5:3 ten [2] - 5:7, 7:15 tendered [1] - 10:13 tendering [1] - 19:12 terms [5] - 6:15, 7:16, 8:25, 9:1, 10:19 thank [19] - 3:2, 3:13, 5:21, 9:7, 9:18, 10:23, 10:25, 11:18, 13:1, 14:3, 14:6, 17:2, 18:10, 19:23, 20:13, 21:4, 25:16, 26:17, 29:17 that's [15] - 2:25, 4:6, 4:15, 5:2, 5:4, 8:2, 12:2, 14:12, 18:4, 19:16, 20:10, 20:18, 21:8, 22:22, 28:6 them [2] - 6:15, 10:15 then [16] - 3:17, </p>	

<p>25:4 unlicensed [4] - 5:11, 6:6, 6:21, 21:3 unsealed [1] - 8:7 until [4] - 8:4, 11:24, 16:4, 27:1 up [6] - 9:20, 11:17, 15:20, 18:10, 18:24, 22:9 upon [1] - 27:9 us [6] - 4:9, 15:14, 15:16, 15:18, 16:5 use [4] - 18:9, 19:1, 23:23, 24:2</p>	<p>whether [6] - 3:23, 18:24, 19:21, 22:21, 23:5, 27:6 which [18] - 2:15, 3:14, 4:7, 6:8, 6:17, 6:22, 7:3, 9:22, 11:15, 15:24, 16:3, 16:11, 24:10, 24:23, 27:11, 27:15, 27:21, 28:12 while [1] - 8:4 why [8] - 9:20, 14:23, 16:14, 19:8, 19:9, 23:7, 24:17, 25:5 will [21] - 3:17, 3:18, 9:21, 9:22, 12:2, 12:3, 12:14, 12:15, 19:25, 22:5, 22:13, 22:25, 23:17, 23:18, 23:20, 27:15, 27:17, 28:6, 28:8, 28:10, 28:18 willing [3] - 6:16, 6:19, 6:25 wire [6] - 4:14, 4:21, 7:10, 7:15, 13:10 wise [1] - 16:25 withdraw [4] - 24:18, 24:20, 25:20, 26:8 withdrawal [2] - 23:6, 24:11 without [1] - 17:14 won't [1] - 29:7 word [1] - 27:11 work [2] - 3:7, 26:2 work-product [1] - 3:7 writing [6] - 6:17, 10:3, 10:20, 12:6, 20:9, 20:11 written [1] - 10:5 wrote [2] - 12:10</p>	<p>§</p> <p>§ [8] - 4:16, 4:22, 5:5, 5:12, 5:13, 7:4, 25:4</p>
V		
<p>v [2] - 1:4, 2:3 value [1] - 9:1 Van [1] - 28:1 vehicle [2] - 25:18, 28:6 version [1] - 18:2 very [11] - 2:7, 3:2, 13:1, 13:16, 19:10, 19:19, 20:6, 26:2, 26:23, 28:4, 28:11 via [1] - 30:6 view [4] - 11:23, 15:25, 24:16 viewpoint [1] - 21:19 views [1] - 17:19 violation [5] - 4:15, 4:22, 5:4, 5:12, 6:7</p>		
W		
<p>wait [2] - 11:24, 29:10 want [21] - 2:19, 3:20, 7:21, 13:18, 13:20, 13:23, 14:2, 17:15, 17:22, 18:25, 21:9, 22:10, 22:13, 25:7, 25:19, 25:25, 26:2, 26:5, 26:18, 27:12, 29:10 warranted [1] - 28:25 Washington [1] - 1:19 wasn't [1] - 18:16 waste [1] - 29:13 ways [1] - 23:22 we'd [4] - 3:8, 6:19, 17:24, 22:1 we've [2] - 7:3, 13:21 welcome [3] - 4:2, 12:8, 24:23 whatever [1] - 19:16 Whereupon [6] - 14:4, 16:19, 17:3, 21:15, 25:14, 29:18</p>		
	Y	
	<p>yeah [1] - 19:15 year [3] - 6:9, 6:22, 21:1 years [8] - 4:18, 4:25, 5:7, 5:14, 7:15 years' [2] - 4:18, 4:24 yes [16] - 3:4, 5:19, 6:2, 9:12, 10:14, 10:22, 12:19, 12:25, 15:7, 15:22, 16:10, 17:10, 17:18, 18:21, 26:7, 29:16 yet [3] - 4:2, 4:4, 25:24 you'd [4] - 9:21, 11:18, 16:25, 19:8 you'll [1] - 4:9</p>	