

# EXHIBIT K

Page 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----x

ORAL CLARKE, ROMANCE REED, GRACE  
PEREZ, PETER RAMON, ERNEST TIRADO,  
and DOROTHY FLOURNOY,

Plaintiffs, INDEX NO. EF002460-2040

vs.

TOWN OF NEWBURGH and TOWN BOARD  
OF THE TOWN OF NEWBURGH,  
Defendants.

-----x

Remote videotaped deposition of A.K.  
SANDOVAL-STRAUSZ, taken via Zoom, on Monday,  
September 9, 2024, beginning at approximately 10:00  
a.m., before Maureen E. Broderick, Registered  
Professional Reporter and Notary Public in and of  
the Commonwealth of Pennsylvania.

Page 2

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Russ Strain, Videographer

Page 3

1

2

## EXAMINATION INDEX

3

## WITNESS

## PAGE

4

Andrew K. Sandoval-Strausz

5

By Ms. DiRago

6

6

7

## EXHIBIT INDEX

8

## NAME

## DESCRIPTION

## PAGE

9

## Defendants

10

11

Exhibit 1

June 2024 Expert Report

14

of Andrew K.

12

Sandoval-Strausz

13

Exhibit 2

Land + Air + Water

126

Article

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Page 4

1 VIDEO OPERATOR: Good morning. We're now  
2 on the record. The time is approximately  
3 10:10 a.m., September 9, 2024. Please note  
4 that this deposition is being conducted  
5 virtually. All video recording depends on the  
6 quality of the camera and Internet connection  
7 of the participants. What is seen from the  
8 witness and heard on the screen is what will be  
9 recorded. Audio and video recording will  
10 continue to take place unless all parties agree  
11 to go off the record.

12 This is media unit 1 of the video-recorded  
13 deposition of Dr. A.K. Sandoval-Strausz, Ph.D.,  
14 taken by counsel for the defendants in the  
15 matter of Oral Clarke, et al., versus the Town  
16 of Newburgh, et al., filed in the Supreme Court  
17 for the State of New York, County of Orange,  
18 case number EF002460-2024.

19 This deposition is being conducted  
20 remotely using virtual technology. My name is  
21 Russ Strain from Veritext. I'm the  
22 videographer. The court reporter is Maureen  
23 Broderick from Veritext.

24 I'm not authorized to administer the oath.  
25 I'm not related to any party in this action,

Page 5

1 nor am I financially interested in the outcome.

2 Counsel and all present will state their  
3 appearance and affiliation for the record,  
4 beginning with the noticing attorney.

5 MS. DiRAGO: This is Molly DiRago, and I  
6 represent defendants.

7 MS. GREENWOOD: This is Ruth Greenwood,  
8 and I represent plaintiffs.

9 MR. IMAMURA: David Imamura, representing  
10 plaintiffs.

11 MR. DAVIS: Samuel Davis, representing  
12 plaintiffs.

13 MR. STILL: Stephen Still, also  
14 representing the plaintiffs.

15 VIDEO OPERATOR: Thank you. Would the  
16 court reporter now please swear in the witness.

17 - - -

18 ANDREW K. SANDOVAL-STRAUSZ,  
19 Ph.D., having been first duly  
20 sworn to tell the truth, was  
21 examined and testified as  
22 follows:

23 - - -

24 EXAMINATION

25 - - -

1 BY MS. DiRAGO:

2 Q Good morning. Did plaintiffs' counsel  
3 instruct you to make any assumptions when you  
4 prepared your report?

5 A No.

6 Q How long did it take you to write your  
7 report?

8 A About maybe 25 hours.

9 Q Does that include research that you did  
10 for the report?

11 A Yes.

12 Q Did you have any assistance drafting the  
13 report?

14 A No.

15 Q Did you perform all the research and data  
16 analysis in your report?

17 A I did.

18 Q And did anybody assist you?

19 A No.

20 Q How long did the at-large voting system --  
21 how long ago did the at-large voting system get  
22 implemented in New York?

23 A Sorry. How long did it get implemented,  
24 what?

25 Q In New York.

Page 7

1 MS. GREENWOOD: Objection. Vague.

2 THE WITNESS: I mean, it depends on the  
3 jurisdiction. In some there were challenges  
4 in, I believe, 1965 to change them. So it  
5 depends on the locality really.

6 BY MS. DiRAGO:

7 Q What about Newburgh, the Town of Newburgh?

8 A I do not know when it began.

9 Q Do you know how it was created in  
10 Newburgh?

11 A I do not.

12 Q You mention in your report a case called  
13 Serratto v. Mount Pleasant. Can you tell me what  
14 that case is about?

15 A Yes, I can. It is a voting rights case  
16 under the New York State Voting Rights Act, the  
17 newer one, at the state level, involving a different  
18 jurisdiction.

19 Q What jurisdiction?

20 A Well, that's Mount Pleasant, Town of Mount  
21 Pleasant.

22 Q Was that, is that case about an at-large  
23 voting system?

24 A Yes, it is.

25 Q What are your opinions in that case?



Page 8

1           A       I more or less did the same kind of  
2       analysis that I have for this case, based on the 11  
3       listed factors. And I found that most or all of  
4       them were pleasant -- excuse me -- were present in  
5       Mount Pleasant.

6           Q       So in what ways is your analysis -- I'm  
7       sorry.

8                         In what ways is your opinion in the  
9       Mount Pleasant case different from your opinion in  
10      this case, if at all?

11          A       Basically, it's similar at the federal  
12      state level, different at the county level because  
13      they're different counties. The comparative cases I  
14      use, I refer to some of the comparative cases in  
15      both. The Mount Pleasant case is specifically about  
16      Latinos, and this case is about African Americans  
17      and Latinos.

18          Q       Is there a difference in the history of  
19      discrimination between Newburgh and Mount Pleasant?

20                       MS. GREENWOOD: I'm just going to object  
21      on the grounds of relevance.

22                       MS. DiRAGO: I don't know that's a proper  
23      objection.

24      BY MS. DiRAGO:

25          Q       But you can go ahead.

Page 9

1           A       In some aspects, yes; in some aspects, no.  
2       I have a more detailed understanding of the history  
3       of Newburgh as opposed to Mount Pleasant, which is,  
4       of course, a number of villages in a large  
5       municipality.

6                    So, yeah, they're on opposite sides of the  
7       Hudson. The local political culture is a  
8       little bit different, yeah.

9       BY MS. DiRAGO:

10           Q       But you found the history of  
11       discrimination in Mount Pleasant?

12           A       There is definitely a -- well, let me  
13       rephrase.

14                    There is almost certainly a history  
15       of discrimination in Mount Pleasant that is quite  
16       similar to the history of discrimination in  
17       Newburgh.

18           Q       Did you find in Mount Pleasant that  
19       members of the protected class had been elected to  
20       office?

21           A       I did not find any evidence in that case  
22       that the members of the protected class had been  
23       elected to office, no.

24           Q       And then what about -- as you can probably  
25       tell, I'm going through the factors under the

Page 10

1 NY VRA. So the third factor is the use of any  
2 voting qualification, prerequisite to voting law,  
3 ordinance, standard, practice, procedure,  
4 regulation, or policy that may enhance the dilutive  
5 effects of the election scheme.

6 What did you find on that factor in  
7 Mount Pleasant?

8 A Is it permissible for me to pull this up  
9 just so I can be sure that I'm following along? I  
10 have it on my computer.

11 MS. GREENWOOD: Professor, I think you  
12 should only look at things that the, you are  
13 provided by defense counsel.

14 So, defense counsel, if you want to  
15 provide him to help refresh his memory, you're  
16 welcome to put that in as an exhibit.

17 BY MS. DiRAGO:

18 Q I'm just asking to the extent you  
19 remember.

20 A Remind me which factor that is. That is  
21 the --

22 Q The third factor.

23 A What is that factor again?

24 Q The use of any voting qualification,  
25 prerequisite to voting law, ordinance, standard,

Page 11

1 practice, procedure, regulation, or policy that may  
2 enhance the dilutive effects of the election scheme.

3 A One of those, I specifically said my  
4 research and my abilities do not touch on those  
5 areas. That is what I remember what I said.

6 There is another about dilutive  
7 voting where I gave a fairly complete account of the  
8 ways that at-large voting originated, its effects,  
9 et cetera. So there was one that I said that's not  
10 in my competency. There's another I said, yes, it  
11 is.

12 Q But you don't remember which is which?

13 A Could I just see the document. That way  
14 we could --

15 Q I don't have the document. You can  
16 provide me the document. I don't have it. That's  
17 why I'm asking you.

18 MS. GREENWOOD: No. Don't bring up any  
19 documents. Witness, just answer to the best of  
20 your knowledge, sitting here today.

21 THE WITNESS: Yeah, I don't remember which  
22 of the lettered items I said "I don't know" to  
23 and which I said, "I do know. Here's what I  
24 know" to.

25 BY MS. DiRAGO:

Page 12

1 Q Okay. Is it fair to say that your opinion  
2 in Mount Pleasant was the same as your opinion here?

3 A Mostly, but not in particular areas. I  
4 think I would hesitate to make that kind of a broad  
5 statement. So in some areas, yes; in some, no.

6 Q Have you testified in that case yet?

7 A I have not.

8 Q Have you testified at a deposition in that  
9 case?

10 A I have not.

11 Q Do you plan to?

12 A If asked.

13 Q Okay. Is the, have you finished writing  
14 your report in that case?

15 A So we're talking about Mount Pleasant  
16 here?

17 Q Yes.

18 A Yes, I have.

19 Q Are you writing another report in that  
20 case for Mount Pleasant?

21 A I am not in the process of writing  
22 anything new for Mount Pleasant, no.

23 Q What was your compensation in that case --

24 A It was --

25 Q -- per hour?

Page 13

1           A       Yes, \$300 per hour.

2           Q       What is the City of LA v. Patel, or can  
3 you describe that case for me?

4           A       Sure. That was a Fourth Amendment case in  
5 which the City of Los Angeles wanted to be able to  
6 look at hotel guest registers -- they didn't have  
7 big books anymore like they used to -- in order to  
8 do effectively public safety, potentially, of  
9 counter-terrorism work.

10                         And the question was, essentially,  
11 was that -- they wanted to be able to sort of just  
12 walk in and do that without a warrant, if I remember  
13 correctly. That brought up the, is this illegal  
14 search kind of an issue?

15                         And because I wrote a book on hotels  
16 and because hotel guest registers were a big part of  
17 the culture of hotels, weirdly, both sides claimed  
18 to use my work in support of their respective  
19 positions; one, of course that it was an illegal  
20 search and seizure; and the other, of course, that  
21 it was not.

22           Q       What book on hotels did you write?

23           A       It's called Hotel: An American History.  
24 It was published by Yale University Press in 2007.

25           Q       Generally, I mean, I'm curious. What is

Page 14

1       that book about?

2           A       It is a general history of the cultural  
3       and architectural form of the hotel as we know it  
4       today from its origins in the United States in its  
5       modern form in the 1790s, really through its  
6       development into the 20th century.

7           Q       So you were not a witness in that case?

8           A       I was not.

9           Q       You weren't compensated in that case, I  
10      assume?

11          A       That is correct; I was not compensated.

12               MS. DiRAGO: I'm going to introduce the  
13      first exhibit.

14                               (Exhibit Defendant-1 was marked  
15                               for identification.)

16      BY MS. DiRAGO:

17          Q       Tell me if you're able to view the exhibit  
18      now. Can you let me know if you can see it?

19          A       Essentially, when it comes up in the  
20      folder?

21          Q       Sometimes you have to refresh it or click  
22      it or something.

23          A       Okay. I'll try that.

24          Q       It says: Your exhibit has been  
25      introduced. Okay. Good.

Page 15

1           A       I can see that.

2           Q       This is your report that you wrote for  
3 this case; is that correct?

4           A       That looks like it, yes.

5           Q       Great. And I think -- let's see.

6                    Yeah, so at the bottom, I believe you  
7 can scroll through the pages. Do you see that?

8           A       Yes, I can see that.

9           Q       Okay. Good.

10                   Did plaintiff's counsel provide you  
11 with the data or documents that you used in  
12 preparing this report?

13          A       No.

14          Q       What data or documents did you rely on  
15 when you prepared your report?

16          A       Right. Well, if you want to start with  
17 the data, that's a little bit easier. There's a  
18 site called Social Explorer, which I can access  
19 through Penn State University. And what it does is,  
20 essentially, it maps census data going all the way  
21 back to 1790 and all the way up to the most recent  
22 census data.

23                   So this allows me to do a couple of  
24 things. One, to visualize pretty much anything I  
25 want, like, percentage homeowners versus percentage



Page 16

1 renters, average income, percentages of people of  
2 different classified races, ethnicities,  
3 nationalities, et cetera.

4 And then it also allows me to, you  
5 know, click on particular census tracts and then  
6 produce a report that gives me in a beautiful Excel  
7 document all of the data.

8 It's used pretty consistently by  
9 professionals in sociology, history, geography,  
10 other fields, because it's been very carefully  
11 checked. It's a really terrific research tool.

12 So for the exhibits where I'm citing  
13 percentages, income levels, differentials, those  
14 kinds of things, that is where all of that data  
15 comes from.

16 I also cited --

17 Q Oh, can I just stop you right there,  
18 though, really quickly about that data. The data in  
19 Social Explorer, is it just from the census, all the  
20 censuses that they've had?

21 A The part I use is -- Social Explorer also  
22 has everything from election data to public health  
23 data to crime data. But the part that I use is just  
24 the census, yes.

25 Q Go on. I'm sorry.

Page 17

1           A       I also used a great many books on history  
2 because some of the subject matters are kind of  
3 generally known to me, but you always want to go  
4 back to look to be sure.

5                   I used, I searched in both Spanish  
6 and English language media for coverage of  
7 particular events.

8                   I pulled up articles from --  
9 basically, Penn State has a subscription to a site  
10 where you can pull up any academic article pretty  
11 much ever. So I pulled up quite a few of those.  
12 Did newspaper searches through newspapers.com; did  
13 video searches under the names of members of the  
14 town council; used the news search, just because  
15 that sort of pulls up things that are newsworthy  
16 under the names of members of the town council, of  
17 other political figures who represent, have within  
18 their constituencies the Town of Newburgh.

19                   Yeah, that's -- there may be other  
20 things that I'm forgetting just because there were  
21 so many of them, but that's the kind of thing I did.

22           Q       It's not a memory test. If there's  
23 anything you can't remember, that's fine.

24                   I'd like to direct your attention to,  
25 back to your report. So on page 3 -- I'm sorry, not

Page 18

1 page 3.

2 Section 3.

3 A Okay.

4 Q You have, I guess, on your second  
5 paragraph here -- that's page 7 blending over to  
6 page 8. You have sort of a summary of your  
7 opinions. Are these still your opinions that you  
8 hold today?

9 A Yes.

10 Q Do you have any additional opinions that  
11 are relevant here that are not in your report?

12 A I do not.

13 Q And all of the opinions in your report,  
14 are they still accurate today?

15 A Yes. To my knowledge, they are.

16 Q What methodologies did you use to draft  
17 your report or in your research?

18 A Basically, knowing parts of history that  
19 were relevant to this community and race relations  
20 in it. So, for example, the question came up, you  
21 know: What might be some state-level history that  
22 might bear upon this case?

23 Because I'm from New York and grew up  
24 with a lot of Puerto Ricans, it was fairly well  
25 known that the literacy test of 1921 had been

Page 19

1 essentially highly discriminatory toward them.

2 So knowing that, I'd sort of be like,  
3 all right, so what's the leading work on Puerto  
4 Ricans? It's a book called Puerto Rican Citizens,  
5 so I had to go look up the part of that book to make  
6 sure I had the answers as I remembered them.

7 Just one more example -- there could  
8 be plenty of others -- it's knowing where to find  
9 the details of, let's say, the language protections  
10 in the 1975 modifications to the Voting Rights Act  
11 of 1965.

12 So I know that a historian at  
13 Princeton had written an article on that. So it's  
14 sort of seeing things that are relevant or mentioned  
15 in the case or material to the case, going back and  
16 looking at them really carefully, and figuring out  
17 which are really relevant that could be put into  
18 this report.

19 Q So you started with an opinion about the  
20 literacy tests and its effect on Puerto Ricans?

21 A No. I started with claims about the  
22 literacy test and its effect on the Puerto Ricans.  
23 That's the kind of thing you have to check, right?  
24 That's a truth claim. But to go back and say, all  
25 right, so people who have really specialized in

Page 20

1 voting rights in that era, the history of Puerto  
2 Ricans in that era, is that substantiated by them?

3 Again, a lot of the ways people  
4 remember history is sort of impressionistic, does  
5 not depend on documents, does not depend on context  
6 at the time. So for every truth claim, you have to  
7 go find the best accounts with documentary evidence  
8 of exactly what was, in fact, happening at the time.

9 Q Did you read anything that had opinions  
10 that differed from yours?

11 A Again, I didn't, I didn't really have an  
12 opinion on the, let's say, the 1921 New York State  
13 law.

14 Q Is that the literacy test?

15 A Correct. So, I mean, again, a lot of  
16 these subject matters I knew what had been written,  
17 but I didn't really have opinions. I have knowledge  
18 of what scholars have said when studying this, what  
19 aspects of a thing are very well understood, what  
20 aspects of a thing are kind of contested, on what  
21 basis.

22 So sometimes, you know, I also had to  
23 be cognizant of in the event that there's  
24 disagreement within the scholarly literature, I had  
25 to know exactly what the nature of that disagreement

Page 21

1 was just in case I, you know, had to cite that.

2 So I think, you know, I don't,  
3 methodologically speaking, as a historian, I don't  
4 think of what I think as opinions; I think of what I  
5 think as familiarity with the existing literature,  
6 in which case I go and check and make sure I have it  
7 right, or unfamiliarity, in which I go back and  
8 check and make sure that I know what I'm talking  
9 about.

10 Q In what areas is there disagreement among  
11 the scholars that are related to your opinions here?

12 A I think the only one that comes to mind  
13 right now is the precise way the discrimination was  
14 or was not practiced by the Home Owners' Loan  
15 Corporation, Federal Housing Administration from its  
16 inception in 1933 through the completion of the last  
17 loans in the early 1950s.

18 And that was a really interesting  
19 thing to go back and look at. That's one of those  
20 that I had kind of known that a colleague of mine  
21 had written some really interesting material that  
22 sort of changed the way we thought about mortgage  
23 discrimination a little bit.

24 So, again, I just went back and  
25 thought, Okay, I know LaDale Winling knows a lot

Page 22

1 about that, so I went back and looked at what he was  
2 saying and what others who had written about it had  
3 said.

4 Q And did that change your views at all on  
5 that subject?

6 A Again, I would say it changed my  
7 understanding of the way that mortgage  
8 discrimination worked. Again, I knew that, I knew  
9 that the old story that Kenneth T. Jackson of  
10 Columbia University found in articles that led up to  
11 his award-winning 1985 book Crabgrass Frontier --  
12 the articles that led up to his 1985 award-winning  
13 book crabgrass Frontier: The Suburbanization of the  
14 United States, the historian's name is Kenneth T.  
15 Jackson. And it was he who really discovered and  
16 highlighted the role of the federal government in  
17 effectively nationalizing discriminatory lending  
18 practices that had been sort of local and  
19 idiosyncratic.

20 Generally speaking, again, there's a  
21 slightly different story of there were two phases of  
22 what the Home Owners' Loan Corporation did. There  
23 was one that was often called the rescue feds from  
24 1933 to '35. There was another that was the, I  
25 guess, more general lending phase from 1935 to, I

Page 23

1 forget if it's 1951 or 1953, but the early '50s.

2 The presumption had been that the  
3 rescue phrase from '33 to '35 had lent in a  
4 discriminatory way primarily affecting black people.

5 But then historians went back and  
6 looked and said, actually, if you do the incredibly  
7 detailed, painstaking research of going through  
8 individual communities, seeing to whom an emergency  
9 rescue mortgage, essentially federally backed  
10 refinancing had been offered, then a number of  
11 people said: Hey, this is interesting. This  
12 actually was not racially discriminatory. It was  
13 almost identical, the percentage of applicants given  
14 loans, whether they were black or white. So that's  
15 a pretty big change.

16 What did not change was that after  
17 the rescue phase, when the federal government got  
18 into the business of guaranteeing mortgages, that  
19 the reports that they used at the federal level  
20 adopted a lot of very discriminatory local uses.

21 So, for example, if you read the  
22 actual reports that underwriters, savings and loans  
23 would use deciding whether to lend to somebody or  
24 not, they're full of language like: This is an area  
25 with a lot of blacks and Spanish; and it is,



Page 24

1       therefore, declining. Or this used to be a good  
2       neighborhood; but, unfortunately, there are -- I'm  
3       trying to remember the exact very invidious  
4       vocabulary used. It wasn't invasions. It wasn't  
5       incursions. I think it was intrusions of black or  
6       Puerto Rican.

7                       It was mostly, again, first and  
8       foremost, the discrimination was against black  
9       people. That was nationwide. Because Latinos were  
10      much more regional, you found mostly in the  
11      Northeast discrimination against Puerto Ricans.

12                     And in the Southwest, you saw  
13      discrimination against people specifically  
14      designated as Mexicans or as Spanish-speaking.

15                     So there, coming back to the actual  
16      findings, you do see that, for example, black people  
17      were turned down for mortgages in about two-thirds  
18      of the cases that they should have gotten those  
19      mortgages because they had equal qualifications to  
20      white people asking for mortgages in the same  
21      neighborhood.

22                     So that second phase, the historical  
23      understanding has not changed.

24                     Q       The second phase being the lending phase?

25                     A       Yes.

Page 25

1 Q And does that affect Newburgh, the Town of  
2 Newburgh any differently than other towns in  
3 New York or across the country?

4 A No. I do not believe it does.

5 Q When was the Town of Newburgh created?

6 A The Town of Newburgh is very old. Sort of  
7 the turn of the, very late 18th century. I think it  
8 was like 1796 or thereabouts.

9 Actually, I take that back. That may  
10 be the City of Newburgh. The Town of Newburgh was  
11 carved out a little bit later.

12 Is that mentioned in my report?  
13 Because maybe we should go back to that.

14 Q You would probably know better than me.

15 A All right. Let's see here.

16 Is it permissible for me to use a  
17 text search on my computer where I have a copy of  
18 the exact same document over here?

19 Q That's fine with me. As long as that's  
20 all you're looking at is your financial report,  
21 yeah, that's fine.

22 If you look at anything else, I would  
23 just like you to tell me what you're looking at.

24 A Absolutely. I promise to do that.

25 Q It looks like you can use a search

Page 26

1 function on the Exhibit Share, too.

2 A Here we go. So, and I will find it. It  
3 is in section, it's the local section. So I'll get  
4 you the page number on the document that we are  
5 sharing.

6 Q Page 19?

7 A Page 19, exactly. I'd read as instructed  
8 under the heading Local, midway down page 19: The  
9 Town of Newburgh developed as an early suburb of the  
10 City of Newburgh, becoming a separate jurisdiction  
11 in 1965 when the latter was rechartered as a city.  
12 For most of its history, it remained quite small,  
13 being not much more populous in 1920 than it had  
14 been in 1870 with around 4,000 inhabitants in both  
15 years.

16 Q Thank you.

17 And the town was mostly white for a  
18 very long time, correct?

19 A That is correct.

20 Q Until about when?

21 A Until about the '70s. Essentially, coming  
22 back to my methodology, the census data, even though  
23 in other parts of the country, it began to sort of  
24 break people down by race, nationality, Hispanic,  
25 not Hispanic, et cetera, as early as the 1930s, in

Page 27

1 this particular jurisdiction, they did not break  
2 that down until the 1980s -- or, excuse me, until  
3 the 1980 census specifically.

4 From having looked at a couple of  
5 books and encyclopedia entries on Newburgh, I had  
6 the sense that there almost certainly were some  
7 people of color beginning in the 1970s. But as I  
8 state in my report, they become much more numerous  
9 in 1980 and thereafter.

10 Q I believe you testified that you don't  
11 know when the at-large voting system began in  
12 Newburgh; is that correct?

13 A That's correct.

14 Q Was it in place before the 1970s?

15 MS. GREENWOOD: Objection; form.

16 THE WITNESS: I do not know.

17 BY MS. DiRAGO:

18 Q So you don't look to see if it was in  
19 place before the 1970s?

20 A I do not believe I found that in my  
21 reading about Newburgh, I think would be the answer  
22 there.

23 Q This case is all about Newburgh's at-large  
24 voting system, and you don't know if it was in place  
25 at all in the 1970s?

Page 28

1           A       I guess I just, again, since I was looking  
2       at a question of how it worked in the present, not  
3       really. I think the other thing that is probably  
4       relevant in that respect is that since this is a  
5       case involving racial disparities, as you pointed  
6       out, there were almost no people of color in the  
7       area, you know, from probably around mid-century.

8                       So even if there -- regardless of  
9       when at-large voting was introduced, any  
10      discriminatory effect it might have had, and I  
11      believe I do say this in my report, would have been  
12      essentially invisible because there were just  
13      virtually no people of color to discriminate against  
14      in voting.

15           Q       Was the at-large voting system in place in  
16      the 1980s, if you know?

17                   MS. GREENWOOD: Objection; form.

18                   THE WITNESS: I do not know.

19      BY MS. DiRAGO:

20           Q       Do you know if it was in place in the  
21      1990s?

22                   MS. GREENWOOD: Objection; form.

23                   THE WITNESS: I do not.

24      BY MS. DiRAGO:

25           Q       What about the, what about year 2000?

Page 29

1           A       Again, I do not know exactly when it came  
2       into effect. The impression that I had from the  
3       research is it had been there at least for a few  
4       decades. But, essentially, I was looking for some  
5       specific, aha, it came into existence at this point;  
6       and just didn't seem to find anything that called  
7       attention to when it might have been introduced.

8       BY MS. DiRAGO:

9           Q       And you don't have an opinion as to  
10      whether it was created in order to discriminate  
11      against people of color, correct?

12          A       Well, again, the question of opinion, I  
13      believe that the way that I resolved that question  
14      in the report was to say that at-large voting  
15      systems, broadly speaking, when they were introduced  
16      in various places around the United States, in  
17      around the 19 aughts, teens, and '20s, where in many  
18      cases, and I cite a couple of articles and a book  
19      about this, were put in place specifically to  
20      disenfranchise, marginalized kinds of people.

21                   Sometimes it was they were racially  
22      different; sometimes they were ethnically different.  
23      In some cases there was a, I guess, a religious  
24      overlay of not trusting Catholics very much. But I  
25      tried to separate out the two questions of: Was

Page 30

1     this particular voting system deliberately  
2     instituted in the Town of Newburgh in order to  
3     discriminate against people of color?

4                     And the question of: Does a, an  
5     at-large system like that, by the nature of how it  
6     works, discriminate against people of color?

7                     And, generally speaking, the findings  
8     are that it does.

9             Q     So you did not find any evidence that the  
10    at-large voting system in Newburgh was created in  
11    order to discriminate against anyone, correct?

12            A     I did not find any evidence of that kind;  
13    that is correct.

14            Q     So you don't have an opinion as to whether  
15    it was put into place specifically to discriminate  
16    against people in Newburgh; is that right?

17            A     I would say I don't have any findings. I  
18    try to ease away from the term "opinion" because  
19    that tends to suggest separated out from the  
20    documentary record.

21                     I did not find anything written that  
22    referred to the creation of an at-large voting  
23    system, as you said, with the intent to  
24    discriminate.

25            Q     You do understand that you are here

Page 31

1 because you've provided expert opinions in this  
2 case, right?

3 A That's correct.

4 Q So what I, it's my job to find out what  
5 your opinions are.

6 MS. GREENWOOD: Is that a question?

7 MS. DiRAGO: Was someone talking?

8 THE WITNESS: Sorry.

9 BY MS. DiRAGO:

10 Q I thought someone else said something.

11 Go ahead.

12 A I guess the way I'm thinking about it is  
13 I'm reporting what my findings are.

14 Q So on page 9 of your report -- actually,  
15 it goes onto page 13, you discuss discrimination at  
16 the federal level; is that right?

17 A That's correct.

18 Q Has this discrimination that you discussed  
19 affected the residents of the Town of Newburgh  
20 different from other residents of New York or across  
21 the country?

22 A I think it affected people in Newburgh  
23 much like it affected people elsewhere, certainly in  
24 the metropolitan area and the region, and probably  
25 nationally because a lot of the historical



Page 32

1 literature on things like lending discrimination,  
2 things like slavery and emancipation, things like  
3 voting, things like civil rights, are composed of  
4 individual case studies.

5 So there will be, if you're doing the  
6 civil rights movement, there will be one in  
7 Montgomery, Alabama, one in Selma, Alabama, one in,  
8 you know, sort of very different realm in this or  
9 that parish of Louisiana, and the, especially  
10 mortgage lending literature, is based on places like  
11 Detroit, Chicago, Baltimore, New York, et cetera.

12 And, again, there are some findings  
13 in literatures of that kind that are very  
14 place-specific and others that are pretty much it  
15 looks more or less the same as it did everywhere  
16 else.

17 And I think that the kinds of things  
18 that we're talking about at the federal level worked  
19 fairly similarly across the country with one major  
20 exception, that being in places where slavery lasted  
21 longer or less long. But everything else, for  
22 example, discrimination in mortgage lending only  
23 becomes illegal in 1968, so that's a pretty big  
24 change nationally, right?

25 In 1948, there's a case that outlaws

Page 33

1 racial covenants. So that's nationally. So I'd say  
2 that, generally speaking, certainly in this section  
3 which deals with federal issues, these mostly work  
4 nationwide, yes.

5 Q You mentioned a couple exceptions where  
6 slavery lasted longer or less long. Do any of those  
7 exceptions apply to the State of New York?

8 A Yes. The State of New York essentially  
9 had a gradual emancipation scheme such that people  
10 born before it was passed would remain enslaved up  
11 to a certain age; the children of people who were  
12 born, I guess, before it but to people who were  
13 gradually emancipated afterward would be enslaved  
14 until they were a certain age.

15 The upshot of this was that slavery  
16 continued. Unlike in other places further north  
17 especially, slavery continued to exist in the State  
18 of New York until 1827.

19 Q But it didn't continue in Newburgh at a  
20 different rate than the rest of the state; is that  
21 right?

22 A That's correct. That was determined by  
23 state statute, so everywhere in New York was subject  
24 to exactly the same laws.

25 Q Page 13, you talk about New York State and

Page 34

1 the history of discrimination in New York. So I  
2 have the same question: Does anything that you  
3 discuss in this section affect the residents of the  
4 Town of Newburgh in a different way than the  
5 residents of any other town in New York?

6 A If you're talking about the state section  
7 that runs from the heading state on page 13 until  
8 the end of that section on page 16, that is all  
9 state-level stuff. And to my knowledge, all of that  
10 works the same throughout New York because I'm  
11 talking about state level statutes.

12 Let's see. There's a little like,  
13 let's say -- there are examples from, let's say,  
14 New York City, which was the place where a lot of  
15 people who moved to the Newburgh area after 1968  
16 because they could, that that essentially affected  
17 them -- I guess it affected the history of Latinos  
18 in Newburgh, not because it was specific to  
19 Newburgh, but because migrants to Newburgh mostly  
20 came from New York City; so the kinds of  
21 disenfranchisement and discrimination that existed  
22 at the center of the metropolitan area influenced  
23 what happened elsewhere.

24 In other respects, let's say, the  
25 1821 revision of the state constitution that

Page 35

1 specified very noticeably that property requirements  
2 to vote were removed from white people and imposed  
3 upon black people, that worked throughout the state.  
4 So that affects Newburgh in the same way it would  
5 any other part of New York.

6 Q You have an example on page 16 towards the  
7 end of the state section about the 2001 statewide  
8 elections. And you write that New York officials  
9 had calculated that the Voting Rights Act's  
10 provisions required 779 Spanish language  
11 interpreters to ensure equitable participation.  
12 However, these officials only fielded 523  
13 interpreters. One-third short of its  
14 self-identified requirement.

15 Do you know the reason why only 523  
16 interpreters were hired? And this is across  
17 New York state, right?

18 A That's correct.

19 Q So do you know the reason why only 523  
20 interpreters were hired?

21 A I do not recall the reason why.

22 Q Did anyone in the Town of Newburgh  
23 contribute to not hiring the number of interpreters  
24 that was needed?

25 A On that particular item, I do not have

Page 36

1 data or other kinds of information on whether that  
2 involved Newburgh.

3 Q So then you begin your discussion of the  
4 county at page 16. And Newburgh is located in  
5 Orange County, correct?

6 A That's correct.

7 Q So on page 17, you discussed United  
8 States v. Orange County.

9 A That's correct.

10 Q So in this case, was there an allegation  
11 of a violation of a law at that time? And if so,  
12 what law was it?

13 A Yeah. The 1875 revision of the Voting  
14 Rights Act of 1965 specifically included protections  
15 for language groups. The 1965 act had included a  
16 very specific stipulation for, essentially, Puerto  
17 Ricans in New York. And a series of federal  
18 lawsuits under the 1965 act under those provisions  
19 gradually broadened the applicability of those  
20 protections to other language groups, most notably  
21 Native American, people who spoke Native American  
22 languages in places like New Mexico and Arizona.

23 And so those were essentially  
24 codified in the 1975 revisions to the Voting Rights  
25 Act to create a very, I guess, specific statutory

Page 37

1 basis for causes of action when language-based  
2 discrimination could be alleged.

3 Q Was the Town of Newburgh accused of doing  
4 anything unlawful in this case?

5 A I do not think the Town of Newburgh  
6 specifically was implicated. I believe it was  
7 county-level officials who had jurisdiction over  
8 elections throughout the county. Again, I do not  
9 know or I, I do not recall that there were  
10 Newburgh-specific allegations in United States v.  
11 Orange County in 2012.

12 Q And if you had found that, you would have  
13 put it in your report, right?

14 A Yes, I would have put that in my report,  
15 had I found it.

16 Q And in this case, U.S. v. Orange County,  
17 the Department of Justice had done an investigation  
18 of Orange County; is that correct?

19 A That's my understanding.

20 Q So if the Department of Justice found  
21 evidence of a violation in Orange County, if it  
22 found it in Newburgh, it probably would have brought  
23 a case against Newburgh, too; right?

24 MS. GREENWOOD: Objection; form.

25 THE WITNESS: I mean, I'm not a litigator,

Page 38

1           so I don't have sort of a civil procedure  
2           position on that. I would guess, having read  
3           cases like these, is sometimes they bring cases  
4           within particular towns. I know that there was  
5           a case about specifically school elections.  
6           And in other cases, they bring actions against  
7           entire counties. It really just depends who  
8           was responsible for conducting elections in  
9           that jurisdiction.

10       BY MS. DiRAGO:

11           Q       What was the case about school elections  
12           that you're referring to?

13           A       I would have to go look that up. It may  
14           or may not be in this report. I think it might be  
15           in something else I have written.

16                       If we like, I can, we can take a  
17           couple of minutes; I can go and see if it is in one  
18           of those reports. But that was just sort of an  
19           example I wanted to throw out of differing units  
20           being the subject of litigation.

21           Q       No. That's fine.

22           A       Okay.

23           Q       So then you also discuss Molina v. Orange  
24           County. That's at the bottom of page 17. You say  
25           that: This case directly implicated both the Town

Page 39

1 of Newburgh and the City of Newburgh.

2 So my question to you is: How did  
3 that case implicate both the town and City of  
4 Newburgh?

5 A Basically, there had been a disagreement  
6 about redirecting, as there always are. And it  
7 seemed as if an agreement had been come to between,  
8 I presume, the political parties about how exactly  
9 to do the reapportionment and redistricting. And  
10 that was sort of moving forward quite smoothly.

11 And having, again, read the, that  
12 particular case, there was a, either an elected  
13 official or a party official in the Town of Newburgh  
14 that essentially said: Well, wait. I don't like  
15 how you're changing the profile of people  
16 ethnoracially in my town.

17 So, again, I think it's using the  
18 slightly more procedural antiseptic language of the  
19 law, but it seemed very strongly to suggest that a  
20 mutually agreed-to deal was suddenly busted up by  
21 somebody in the Town of Newburgh who said: I don't  
22 like you changing my districts.

23 And because race was involved, that,  
24 I guess, raised questions as to what had been  
25 intended. And that is --



Page 40

1 Q Sorry. I didn't mean to cut you off.

2 A That's all.

3 Q What do you mean intended? That was  
4 intended by who, the Town of Newburgh?

5 A By the official in the Town of Newburgh  
6 who objected to the way that redistricting was being  
7 done. Again, it does not specify that the person  
8 said anything potentially illegal like: I don't  
9 want these kinds of people in my district, or  
10 anything like that.

11 It was just, again, merely using a  
12 validly neutral language saying they objected to the  
13 means of apportionment late in the process.

14 Q So there's no evidence that that official  
15 objected based on anything related to race, right?

16 MS. GREENWOOD: Objection; form.

17 THE WITNESS: Let me think about how to  
18 answer that exactly. So if we look at my  
19 report on page 18, I write that two elected  
20 officials from the Town of Newburgh opposed the  
21 redrawn districts because they felt their  
22 incumbency would be placed at additional risk.

23 That is nonrace-specific language, but in  
24 a case about racial discrimination. So I do  
25 not know exactly what the nature of the

Page 41

1 objection was. But I, I believed it may have  
2 been implied that that was why they thought  
3 their incumbency would be placed at additional  
4 risk.

5 BY MS. DiRAGO:

6 Q Okay. But there's no evidence that it had  
7 anything to do with race, right?

8 A I have not seen any documents or any kind  
9 of textual or other evidence that said this was  
10 about race, that's correct.

11 Q The only evidence that may have implied it  
12 was that it was in a case about race; is that your  
13 testimony?

14 A I would honestly have to go back and look  
15 at the case again to see what the exact phrasing  
16 was.

17 Q Okay.

18 A So I guess the answer is: I'm not sure.

19 Q I'm guessing if there was anything  
20 expressly about race, you would have put it in your  
21 report, right?

22 A Possibly, if I thought it was relevant.

23 Q So then as a result of this case, the  
24 Molina case, a Special Master drew a map that was  
25 compliant with the Voting Rights Act, right?

Page 42

1           A       That's correct.

2           Q       That was in 2013, right?

3           A       I believe that's in 20 -- yeah, because  
4       the other case was 2012. That was 2013, to the best  
5       of my knowledge.

6           Q       And then have you seen any other examples  
7       of voter suppression in Newburgh since 2013?

8                   MS. GREENWOOD: Objection; form.

9                   THE WITNESS: I do not think my report  
10       includes specific incidents of accused voter  
11       suppression in the Town of Newburgh after that,  
12       though I do cite various different kinds of  
13       practices of voter suppression since then in a  
14       number of other municipalities on the basis of  
15       at-large voting systems.

16       BY MS. DiRAGO:

17           Q       So if there were any other -- strike that.

18                   If there were evidence of any other  
19       acts of voter suppression in the Town of Newburgh,  
20       you would have put that in your report, right?

21           A       I imagine that I would have, if I had  
22       found that.

23           Q       Then if you could turn to page 19 -- or at  
24       least I'll be discussing your section on page 19  
25       where you call it local, and you have a discussion

Page 43

1 of discrimination on a more local level; is that  
2 right?

3 A That's correct.

4 Q Here, we've kind of already discussed  
5 this, but you said for most years between 1870 to  
6 1920, the Town of Newburgh was virtually all white;  
7 is that right?

8 A That's correct. I have not seen any  
9 evidence that it was anything but. And I should say  
10 that, basically, the entire West Chester and Orange  
11 County sort of up the Hudson on both sides' areas  
12 were virtually all white.

13 So both through specific examinations  
14 of data that is specific to Newburgh and comparisons  
15 with every other county, municipality that was  
16 functionally just like it within the New York metro  
17 area, these were virtually all white.

18 Q When you say "New York metro area," do you  
19 mean the metro area of New York City?

20 A That's correct.

21 Q So you consider the Town of Newburgh to be  
22 within the metro area of New York City?

23 A Yes.

24 Q How far is it from New York City, roughly?

25 A It's probably about -- let's see, because

Page 44

1 it's just on one side of the bridge there, what we  
2 used to call the Tappan Zee, probably about an hour.  
3 You can take, you can go across and take the train  
4 down the Hudson, obviously, or you can drive. But  
5 it's probably like 45, 50 miles, something like  
6 that.

7 Q So are there -- maybe you don't know this.  
8 Are there a lot of people who live in Newburgh and  
9 commute and work in New York City?

10 A Yes. Definitely.

11 (Reporter clarification.)

12 THE WITNESS: I grew up in the area. It  
13 was called the Tappan Zee then. I just forget  
14 what they renamed it as.

15 BY MS. DiRAGO:

16 Q I grew up in Chicago, but my dad lives in  
17 New York. So I am familiar with the Tappan Zee  
18 Bridge.

19 Where did you grow up, actually?  
20 Might as well ask you now.

21 A I was born in the Bronx. I lived in the  
22 Bronx or in Manhattan until nineteen seventy, I  
23 believe, eight, at which point my mother took us to  
24 live in Pelham Manor, which is part of Pelham, which  
25 is pretty much the first suburb across the city

Page 45

1 limits to north of New York City.

2 I also, my parents were divorced when  
3 I was 3. My father had a home in, I think what is  
4 the village of Carmel, but the mailing address is  
5 Stormville, so sort of up there a little outside  
6 Brewster.

7 So I more or less have been, more or  
8 less I spent a fair amount of time in a whole bunch  
9 of the towns in the area everywhere from 1980 to  
10 about 1994.

11 Q When you say "the area," what area are you  
12 talking about?

13 A Basically, West Chester County, Putnam  
14 County, and when we cross the bridge, a little bit  
15 of Orange County.

16 Q Referring back to your page 19 in your  
17 report, you discuss racially restrictive covenants.  
18 Did you find any evidence of those covenants in any  
19 Newburgh property deeds?

20 A I did not have the opportunity due to, I  
21 guess, my circumstances and ability to travel to  
22 actually go and find the recorder of deeds or  
23 whichever land office in the town would have  
24 documents of that kind. And for that reason, I  
25 based my opinion on a researcher who had

Page 46

1 specifically gone through -- and I'll see if I cite  
2 that -- 75 percent of municipalities had specific  
3 rules of those kinds in place.

4 I also want to add that that is only  
5 one of a number of ways that municipalities and  
6 other units used to discriminate against people of  
7 color. Again, the fact that West Chester and Putnam  
8 County were overwhelmingly white and non-Hispanic  
9 through 1970 when lots of people were trying to move  
10 out of the city for more affordability, to avoid  
11 crime, et cetera, is very, very suggestive evidence  
12 that there were a number of modes of discrimination  
13 steering by real estate agents, custom, unfriendly  
14 looks, the threat of violence, or a whole bunch of  
15 ways.

16 But, again, the effect in the Town of  
17 Newburgh and that entire county, West Chester and  
18 Putnam, the effect was very, very clear. Again,  
19 just to give one example, I moved out of New York  
20 City where I went to a really international,  
21 multiracial, multiethnic school and to a public  
22 school in Pelham. And it was one black kid, Thomas  
23 Miller, and he was adopted by a white family. It  
24 was very, very conspicuous, right, that suddenly at  
25 the city limit, the ethnoracial profile looks

Page 47

1 dramatically different.

2 Q So you mentioned 75 percent of  
3 municipalities have specific racially restrictive  
4 covenants. And that was according to, I think you  
5 mentioned a person's name; is that right?

6 A Once again, would it be okay if I look at  
7 only this document on my computer using a text  
8 search to see if I can find this?

9 Q Sure. Yes.

10 A I can't find that statistic -- let me  
11 text-search three quarters.

12 Q On the bottom of page 19, if it helps, you  
13 said: One leading historian has estimated that  
14 four-fifths of properties in the suburbs of New York  
15 City contain such covenants.

16 Is that the one you're thinking --

17 A That's the one. Eighty percent rather  
18 than 75. Thank you for finding that for me.

19 Q That is according to David Roediger,  
20 R-O-E-D-I-G-E-R?

21 A That's correct.

22 Q So this, was he looking at towns in  
23 New York?

24 A I'd have to go back and check his  
25 footnotes in that book, but let's see.



Page 48

1                   Toward Whiteness, page 176, let me  
2       check my exact wording: One leading historian has  
3       estimated that four-fifths of properties in the  
4       suburbs of New York City contain such covenants.

5                   So I would have to go look at  
6       page 176 in that book to find the exact methodology  
7       that Dr. Roediger used. But I -- I mean, he's a  
8       really, really great historian, so I'd be very  
9       surprised if he got that wrong.

10           Q       I'm not, I'm not saying he got it wrong.  
11       I was, mostly want to know if it's based on New York  
12       municipalities or national.

13           A       I presume that the wording there, right,  
14       specifies that, specifies the suburbs of New York  
15       City, right?

16           Q       There's nothing that you saw specific to  
17       the Town of Newburgh, right?

18           A       That is correct.

19           Q       So on page 20, you say: Many of the  
20       city's leaders effectively managed a peaceful  
21       integration of the municipality.

22           A       That's the City.

23           Q       So that's the City of Newburgh?

24           A       Yes, that's correct.

25           Q       So the sentence before, you say: In

Page 49

1 Newburgh, the resultant racial conflicts became  
2 national news as the migration of a relatively small  
3 number of black families to the City of Newburgh set  
4 in motion a heated political contest.

5 A Yes. Should have referred to in the City  
6 of Newburgh; that's correct.

7 Q So these are both about the city, these  
8 two statements?

9 A Well, that is correct. But I think it's  
10 worth noting here that what this is leading up to is  
11 that the Town of Newburgh becomes a fairly classic  
12 white-flight suburb of the City of Newburgh, right?  
13 So remember that the way that race works is that,  
14 or, actually, racial discrimination works is that it  
15 often works at different scales, right?

16 So the initial racially restrictive  
17 practices, whether they be covenants, steering,  
18 everyday threats, mob actions, typically held black  
19 people especially, but sometimes also Puerto Ricans,  
20 but especially black people within the City of  
21 New York and within a whole bunch of other cities  
22 across the national unfortunately.

23 Then, with the advent of the civil  
24 rights movement, individual black families were  
25 emboldened to say, you know: We have these rights

Page 50

1 in theory to live where we wish. That's supposed to  
2 be the law of the land. Let's actually try and do  
3 it.

4 And when black families would try and  
5 do that, the results could vary very dramatically.  
6 In some places there were, you know, as I cite. In  
7 other places there's mob violence, hundreds or  
8 thousands of people threatening black families,  
9 throwing explosives at their homes, et cetera.

10 In the City of Newburgh, right,  
11 noticeably they avoided that; right? So that  
12 initially a certain number of black families move  
13 in, and there's a strong enough sense that, you  
14 know, racial equality is an idea whose time has come  
15 and, you know, that essentially works in terms of  
16 the residential integration.

17 But, right, then I sort of talk about  
18 that particular supervisor who came in, City Manager  
19 Mitchell; and then suddenly there was -- not  
20 suddenly. There was an explicit racialized  
21 conflict, which, as I mentioned, led to an actual  
22 documentary about essentially race baiting in the  
23 City of Newburgh. It was roughly at that point that  
24 some, some white people who lived in the City of  
25 Newburgh decided it was time to go, and they moved

Page 51

1 out to various other parts of the area. The Town of  
2 Newburgh was one of those.

3 Q So I'm going to unpack some of that.

4 A Sure.

5 Q So at least in your report, you talk about  
6 the heated political contest in the City of  
7 Newburgh. What political contest was that?

8 A All right. Well, remember, let's first  
9 think about what people are seeing on the news in  
10 like 1960, 1961, et cetera. So this is, this is the  
11 era of freedom rides, right, and of lunch counter  
12 sit-ins.

13 So, nationally, there's very much a  
14 great awareness that African Americans are going  
15 into places and into situations which have been  
16 segregated by typically law and custom. And  
17 sometimes there's a peaceful integration like in the  
18 City of Dallas, which is definitely in the south;  
19 and in other cases there's the famous North Carolina  
20 example where they're pouring ketchup and mustard  
21 and just being awful to black people. So that's the  
22 national context.

23 The local context, right, is that  
24 this new city manager, McDowell Mitchell, is  
25 appointed; and suddenly he's like: We've got to

1 look into these welfare payments.

2 These welfare payments had been being  
3 made for a very long time, and nobody really raised  
4 a problem. And it was pretty obvious that the  
5 reason was that they were going mostly to white  
6 people.

7 This is a pretty well-established,  
8 repeated kind of thing in the United States history,  
9 that certain kinds of benefits, as long as they're  
10 being enjoyed by white people, are not  
11 controversial.

12 Once black people seek to exercise  
13 these kinds of benefits -- I'm not just talking  
14 about, like, benefits. I'm talking about stuff like  
15 asking to vote, asking to live in whatever  
16 neighborhood they wanted. But in this case it was  
17 welfare benefits.

18 Suddenly, McDowell starts using very  
19 angry language, right, calling them stuff like  
20 undeserving parasites.

21 So suddenly, the provision of  
22 welfare, the vast majority of who is recipients in  
23 Newburgh are white people, suddenly becomes very  
24 politicized when a few black people started  
25 demanding them.

Page 53

1 Mitchell, you know, gains a national  
2 political profile. I think he either loses  
3 reelection or is simply dismissed or removed from  
4 power in the City of Newburgh and then goes on to  
5 work with people like, as I say in the report on  
6 page 21, Barry Goldwater, George Wallace, and the  
7 White Citizens' Councils.

8 So this is a guy who does a lot of  
9 really explicitly racist things, first in Newburgh  
10 and then elsewhere.

11 So the national civil rights struggle  
12 is being very much instantiated in Newburgh in 1961.  
13 So you just have this very racialized understanding  
14 of who belongs where. So that's kind of the context  
15 for how, again, the outlying municipalities of the  
16 City of Newburgh operate.

17 Q Okay. So the heated political contest is  
18 what you were just describing about the welfare  
19 payments?

20 A Mm-hmm. Correct.

21 Q And then just for the record, I think the  
22 guy's name is Joseph McDowell Mitchell; is that  
23 right?

24 A That's correct.

25 Q Because I think you maybe referred to him

Page 54

1 as McDowell and Mitchell, and I just wanted to  
2 confirm that's the same person.

3 A Yeah. I'm sorry. That's like a hold-over  
4 from the Spanish thing where people, like,  
5 throughout Latin America, you have your father's  
6 name and then your mother's name. There, you assume  
7 like the first one is the one they use.

8 With English names like that, I  
9 sometimes take --

10 Q That makes sense. Got it. Got it. I  
11 just wanted, I had to look that up. I wanted to be  
12 clear for the record. Okay. That makes sense.

13 Again, all of the stuff about the  
14 city manager, McDowell Mitchell, refers to the City  
15 of Newburgh and not the Town of Newburgh, right?

16 A That is correct.

17 Q In fact, I think you said people moved out  
18 of the City of Newburgh and possibly to the Town of  
19 Newburgh because they didn't like what this guy was  
20 doing; is that right?

21 A That is correct.

22 I'm sorry. Let me revise that.

23 Q Yeah.

24 A Often, it's because they did like what  
25 this guy was doing unfortunately. Right? So,

Page 55

1 essentially, the way that worked is that you have a  
2 overwhelmingly white City of Newburgh that is  
3 integrated in a manageable and peaceful way in the  
4 very late '50s and early '60s. That's going fine.

5 Joseph McDowell Mitchell is  
6 appointed. Suddenly he like really emphasizes the  
7 problem of race. So, essentially, people who are  
8 uncomfortable living near black people often moved  
9 out. This is an absolutely national kind of thing  
10 as in literally you can go neighborhood by  
11 neighborhood through individual cities, city by city  
12 throughout the entire United States. The great  
13 majority of white people were not willing to have  
14 black neighbors, even when those black neighbors  
15 made as much or more money they did.

16 Even when those black neighbors were  
17 old, even when those black neighbors were veterans,  
18 even when those black neighbors were ministers.  
19 That was just a very, very tragically sadly  
20 widespread sense among the great majority,  
21 definitely not all, but the great majority of whites  
22 in American suburbs that when black people came, it  
23 was time to go.

24 Before that, when black people came  
25 to their part of the city, it was time to go. So



Page 56

1     there's literally -- you can trace double migrations  
2     from the city to the suburbs and then from a  
3     suburban municipality to an outlying area of a  
4     suburban municipality to avoid black people.

5           Q     You didn't find any of this in the Town of  
6     Newburgh specifically, did you?

7           A     Well, this is not the kind of action that  
8     usually leaves a historical record. Right? There's  
9     no piece of paper that anybody signs saying: I'm  
10    moving out of here because I don't want to have  
11    black neighbors.

12                   Occasionally you do find that, again,  
13    because there in many places are mob actions. But  
14    as the historian Amanda Seligman in her book Block  
15    by Block points out, there were many different ways  
16    that white people responded to the arrival of black  
17    people in their neighborhood. And what we call  
18    white flight, right, when they actually leave, was  
19    often sort of fairly quiet but only happened after  
20    other kinds of things like intimidation, violence,  
21    et cetera, were tried.

22                   When you ask, "Was there any  
23    documentary evidence?" this is not the kind of thing  
24    where you see documentary evidence.

25           Q     I didn't ask for just documentary

Page 57

1 evidence. Did you find any evidence of that in  
2 Newburgh, in the Town of Newburgh?

3 A I spoke to a long-time resident of the  
4 town, did not mention why I was asking about this,  
5 and said: What can you tell me about, like --  
6 because I had found the Battle of Newburgh thing, I  
7 said: What can you tell me about, like, on the  
8 ground, what were race relations like around that  
9 whole thing?

10 And he said, you know: That was like  
11 a massive embarrassment for the town because they  
12 had done so well with integration. They had really  
13 believed in the civil rights movement. And, you  
14 know, for Joseph McDowell Mitchell to suddenly have  
15 gotten into power and politicized, that was -- like  
16 everybody will remember when the City of Newburgh  
17 became national news. And that, the person said,  
18 was like -- that's when a lot of folks began to move  
19 out, especially, again -- he said there are plenty  
20 of folks who stayed in the City of Newburgh, very  
21 specifically to make a statement that they were not  
22 going to be among the people who ran away from  
23 having black neighbors.

24 The person indicated that that was  
25 often the case with people who went to, not just to

Page 58

1 the Town of Newburgh, but other areas nearby.

2 Q So, I mean, that sounds to me like there  
3 are a lot of people who left because they didn't  
4 like that this racist person was on the city  
5 council.

6 MS. GREENWOOD: Objection; form.

7 BY MS. DiRAGO:

8 Q Is that your understanding?

9 A No. In that case, I described it poorly,  
10 for which I apologize.

11 The people who were embarrassed by  
12 Joseph McDowell Mitchell were the people who tended  
13 to stay. They say: We don't want to be identified  
14 as a racist town, so we're not going to run away  
15 from here.

16 It's the people that did not want to  
17 have black neighbors who are the ones who left.

18 Q But you don't have evidence of that in  
19 Newburgh, in the City of Newburgh or the Town of  
20 Newburgh, right?

21 A Again, that's not the kind of decision  
22 that usually leaves evidence.

23 Q So that's no?

24 A I'd say that it would require a lot more  
25 archival research to find any evidence of that, and

Page 59

1 I did not have time or occasion to do that kind of  
2 archival research.

3 Q So you don't have evidence of that?

4 A I don't have documentary evidence of that,  
5 no.

6 VIDEO OPERATOR: Counsel, we have five  
7 minutes before we need to change the media.

8 MS. DiRAGO: Okay. Thank you. Just give  
9 me another minute and we'll take a break.

10 BY MS. DiRAGO:

11 Q I just want to drill down on that. Is the  
12 evidence that you do have from the person that you  
13 spoke to who is a long-time resident?

14 A That's correct.

15 Q Is there any other evidence that you have  
16 of that?

17 A Haven't had the time to look for it, so I  
18 do not have other evidence of that.

19 Q What is this person's name who is a  
20 long-time resident?

21 A Sure. Mark Christopher Carnes,  
22 C-A-R-N-E-S.

23 Q And how do you know this person?

24 A He is a historian at the University where  
25 I went to undergrad, and I knew from the late '80s

Page 60

1 he mentioned that he lived in Newburgh.

2 Q The Town of Newburgh or the City of  
3 Newburgh?

4 A The City.

5 Q How long did he live there?

6 A From the '50s on.

7 Q Is he still there today?

8 A Yes, I believe he is.

9 MS. DiRAGO: Why don't we take a break.  
10 We'll take maybe 10 minutes and then come back.

11 THE WITNESS: All right.

12 MS. DiRAGO: Thank you.

13 VIDEO OPERATOR: Off the record at 11:36.

14 This will end media number 1.

15 (Brief recess.)

16 VIDEO OPERATOR: Back on the record at  
17 11:48. Beginning of media number 2.

18 BY MS. DiRAGO:

19 Q You're probably aware of this. You're  
20 still under oath. Are you having trouble hearing  
21 me?

22 A Basically, my speakers are not the best.  
23 I can hear you about 98 percent of the time.  
24 Anytime I can't, I absolutely will ask you to repeat  
25 it because you don't ever want to respond to

Page 61

1 something you're not sure you heard right.

2 Q Yes. That's what I was going to ask you  
3 to do. I changed my microphone, switched to a  
4 different one, so hopefully that maybe helps. Yes,  
5 let me know if you can't hear me.

6 I'm just trying to remember where we  
7 picked up -- where we left off. Your report  
8 mentions and you've sort of testified a bit about  
9 evidence of death threats and throwing explosives,  
10 you mentioned, when black newcomers move into an  
11 all-white or majority-white town.

12 Did you see any evidence of that in  
13 the Town of Newburgh?

14 A I did not.

15 Q Is the Town of Newburgh and the City of  
16 Newburgh next to each other, adjacent?

17 A Yes, they are.

18 Q The bottom of page 21 of your report, and  
19 I don't want to read the whole sentence, you're --  
20 but, actually, at the top of page 22, you say: The  
21 City's growing black population moved, too, in an  
22 effort to avoid residential integration or other  
23 kinds of proximity to African Americans.

24 MS. GREENWOOD: Objection to form. Just  
25 the beginning of the sentence you left off.

Page 62

1 MS. DiRAGO: It's just such a long  
2 sentence.

3 BY MS. DiRAGO:

4 Q I will start from the end dash on page 21.  
5 You say: A place where white people  
6 seeking to avoid the City's growing black  
7 population --

8 Well, you know what? It doesn't make  
9 sense without the whole sentence. I will read the  
10 whole sentence.

11 The Town of Newburgh had for decades  
12 been overwhelmingly populated by non-Hispanic white  
13 people. But beginning in the 1960s, it was more  
14 readily identifiable as a white-flight suburb of the  
15 City of Newburgh, a place where white people seeking  
16 to avoid the City's growing black population moved  
17 to in an effort to avoid residential integration or  
18 other kinds of proximity to African Americans.

19 We've sort of covered this, but I  
20 want to make sure that that's what we were  
21 discussing when I asked you if you have evidence of  
22 this. And you said the evidence you have is from  
23 Mark Christopher Carnes.

24 Was there anyone else that had told  
25 you that they moved or that they knew of people who

Page 63

1 moved from the City of Newburgh to the Town of  
2 Newburgh to avoid the proximity of African  
3 Americans?

4 A Well, to amend the -- I guess two things.  
5 One, I did not speak to anybody else about the  
6 history of the city and Town of Newburgh.

7 Q Okay.

8 A The second is that when a municipality  
9 stays at about the same population for a pretty long  
10 time and then starts to grow right around the civil  
11 rights era, in a lot of cases, that's very strong  
12 circumstantial evidence that the reason it began to  
13 grow was because it was a white-flight suburb.

14 I mean, if you look at the entire  
15 New York City metropolitan area itself, the suburbs  
16 were pretty small throughout about 1950, and then  
17 they grew dramatically.

18 And this was exactly the same time  
19 that the civil rights movement happened. And  
20 there's lots of very clear, whether you're looking  
21 at Mecklenburg County North Carolina, whether you're  
22 looking at the New York metro area, the Chicago  
23 metro area, the LA metro area, that this was the  
24 absolute pattern is when you see sudden outlying  
25 population growth simultaneous with, or especially



Page 64

1 right after, substantial civil rights activity.

2 That's almost always why, right?

3 If a community is decade after decade  
4 after decade about the same population and then  
5 suddenly it grows meaningfully, that's very, very  
6 strong circumstantial evidence, especially if it's,  
7 again, almost entirely white people at that time.  
8 That's what all of metropolitan New York looked  
9 like.

10 Q You mentioned earlier in your testimony  
11 that people would move from New York City for  
12 reasons of affordability and to avoid crime.  
13 Couldn't those be the reasons that people moved from  
14 metro New York to outside of metro New York?

15 A Crime did not rise significantly in  
16 America until about the mid 1960s, and the very  
17 rapid growth of the suburbs began in the 1940s. So,  
18 no, it was not to avoid crime. It could be to avoid  
19 high housing costs. But, again, that's sort of part  
20 of the story because the only people that could get  
21 mortgages in outlying areas were white people.

22 Q So you mentioned even your family moved  
23 from Manhattan to outside of New York City. Was  
24 that for racial reasons?

25 A No. It's because the Son of Sam killer.

Page 65

1 My mom was 4'11". And like a single woman,  
2 especially a 4'11" single woman, New York City,  
3 1977; you wanted to get out of there with your only  
4 son.

5 Q So it was crime?

6 A Again, that was in 1977, '78. What I was  
7 suggesting was that white flight out of New York  
8 started in the '40s.

9 Q But what we're talking about from the City  
10 of Newburgh to the Town of Newburgh was, it looks  
11 like more like the '60s or '70s or '80s.

12 A After the '60s, yeah.

13 Q After the '60s.

14 So today it looks like the, it is --  
15 the Town of Newburgh has about 31-, almost 32,000  
16 people, looking at the bottom of page 22. And  
17 61.6 percent are white alone or categorized  
18 themselves as white alone. 15.4 percent are black  
19 or African American alone. 25.2 percent are  
20 Hispanic or Latino. And 3.1 percent are Asian  
21 alone.

22 A That's correct.

23 Q At the top of page 23, you say that: The  
24 town's longstanding, non-Hispanic white residents  
25 found themselves in something of a demographic

1 crisis.

2 What do you mean by that?

3 A Sure. Basically, in a community of --  
4 ideally you have old people; you have kind of  
5 child-bearing age people, some of them choosing to  
6 have children; and, you know, the children stick  
7 around and become, you know, teachers at the school,  
8 parishioners at the church, et cetera. And you have  
9 probably elder care for the older people.

10 So a community or a state or even a  
11 nation that hits that right balance, like that's  
12 about how it should be: people paying into Social  
13 Security, people taking out of Social Security. But  
14 if young people start to move out or the people who  
15 live there choose not to start families, or for  
16 whatever reason there's simply not enough rising,  
17 like, population, then you've got a problem because  
18 the schools might have to lay off teachers. You've  
19 got a problem because the local public works is not  
20 going to be able to find people to do the road  
21 paving. You've got a problem because the old people  
22 who need elder care do not have people in proximity  
23 who can be hired to do that kind of work.

24 So any municipality that suddenly  
25 sees its population dropping, especially at the

Page 67

1 younger end, faces problems.

2 Also, of course, if suddenly there  
3 aren't new people to buy the homes of folks who pass  
4 away or move out, if you start seeing vacant  
5 housing, that's incredibly bad. And if you talk to  
6 a real estate agent, it's the worst thing that can  
7 happen is that a house is vacant.

8 So like many other parts of America,  
9 at different times and places, they just were  
10 running out of young people and running out of  
11 renters and buyers. And that's kind of when -- I  
12 mean, it is essentially semi-coincidental and semi  
13 not. We can get into the deep weeds of that. I'm  
14 happy to.

15 But, basically, that's about the time  
16 due to a combination of factors that black, Latino,  
17 and a small but significant Asian American  
18 population begin to be the fellow townspeople of the  
19 Town of Newburgh.

20 Q So black, Latino, to some extent, Asian  
21 Americans start moving into the Town of Newburgh.  
22 What year, roughly, did that start happening?

23 A You can see it -- you can see that, again,  
24 because they only begin keeping census records that  
25 break down race starting in the 1980 census. You

Page 68

1 can see in the 1980 census that there are a small  
2 but not insignificant number of black and Latino  
3 people especially. And then that sort of is growing  
4 through the '80s, through the '90s, et cetera.

5 I believe in my report, I sort of go  
6 through the gradual demographic growth of the  
7 nonwhite-Anglo population.

8 Q So before that, it was white people moving  
9 into the Town of Newburgh because they didn't want  
10 to live near people of color; is that right?

11 A Some of them, yes. But, yeah, that's --

12 Q But then black and Latinos start moving  
13 in. What is the reason for that?

14 A Probably the Housing Act of 1968, right?  
15 Remember that in American law, there's nothing  
16 illegal about literally -- I mean, it didn't  
17 necessarily happen this way, that somebody comes and  
18 says, Hey, I'd like to come look at your house. And  
19 you notice that they're this or that race. And you  
20 say, Oh, no, I don't want to sell to you.

21 That was perfectly legal until 1968.

22 So, essentially, again, there are  
23 suddenly, due to federal law, new opportunities for  
24 people of color to buy into markets that they had  
25 been effectively shut out of for a great many years

1 before that.

2 Q So then on the bottom of page 23, you talk  
3 about the picnic that occurred, I guess, in  
4 September 1992 in the Town of Newburgh that was  
5 essentially a rally for a Ku Klux Klan member.

6 A Correct.

7 Q So about a hundred people attended that  
8 event, right?

9 A (Indicating.)

10 Q But then there was a neighboring  
11 counter-rally in the City of New York where nearly  
12 3,000 people --

13 A Newburgh.

14 Q You're right. I'm sorry.

15 -- City of Newburgh, where nearly  
16 3000 people attended; is that right?

17 A That's correct.

18 Q So as a historian, doesn't this tell you  
19 that the Newburgh area had many more people that  
20 rejected white supremacy than supported it?

21 A I guess it would tell me two things.

22 One, yes, exactly what you said.

23 And, two, there was not a  
24 counter-demonstration or anything that I could find  
25 in the Town of Newburgh.

Page 70

1                   So to me, sort of thinking of myself  
2     in the moment, if I am an elected official of the  
3     Town of Newburgh and it becomes very public  
4     knowledge that there's been a Klan rally in my town,  
5     if I were -- put it this way: If I imagine myself,  
6     somebody who believes in quality and does not  
7     believe in white supremacy, if I were an elected  
8     official in that town, I'd want to have an actual  
9     demonstration in that town.

10                   The fact there was a  
11     counter-demonstration in the City of Newburgh,  
12     that's great. But the yawning absence for me is:  
13     Why wasn't there one in the town?

14           Q     It wasn't sponsored by the Town of  
15     Newburgh, right?

16           A     The Klan rally?

17           Q     Correct.

18           A     That is correct.

19           Q     And you don't even know if anyone from  
20     Newburgh attended the rally, right?

21           A     Well, the guy who lived and owned property  
22     in the Town of Newburgh that had the sign company,  
23     he invited everyone into town for the rally. So at  
24     least him.

25           Q     What sign company -- sorry.

Page 71

1                               What sign company are you talking  
2       about?

3               A       It may not be in my report. Basically, if  
4       you read the articles about that particular Klan  
5       rally, it was on the grounds of a sign company in  
6       the Town of Newburgh owned by a guy who lived in the  
7       Town of Newburgh.

8               Q       And he organized the rally?

9               A       I can't remember if he organized or  
10      hosted. I think those might be indistinguishable.  
11      But he certainly welcomed them onto his property to  
12      have their event.

13              Q       So is that the reason why you say that  
14      Newburgh was a desirable location to convene  
15      meetings and recruit people to the Ku Klux Klan?

16              A       I mean, that is the, that is the  
17      documentary evidence. I believe it says in at least  
18      one of those articles, and, honestly, it was  
19      definitely sort of said to people north of New York  
20      City when that thing happened, there was a sort of,  
21      yeah, that makes sense, right. The Klan had  
22      determined, right, that they could recruit anywhere  
23      they wanted, but they had made a habit of trying to  
24      find people in the Newburgh area.

25              Q       How do you know that?



Page 72

1           A       Again, first, because that big event  
2 happened in 1992. And because I lived in the area  
3 at that time, you know, when something like that  
4 comes out in the newspaper, people talk to each  
5 other. One of the things we said is like, yeah,  
6 Newburgh, sadly. Right.

7                       It was sort of known that there, it  
8 had been known that there were other perhaps not  
9 reported but very real incidents of white  
10 supremacists organizing there. I had to look around  
11 the newspaper to see if I could find it. But  
12 that's, it may have been sort of at the infra level  
13 that doesn't get picked up by the newspaper. But  
14 nobody was surprised by this, unfortunately.

15           Q       So you grew up sort of thinking the Town  
16 of Newburgh is racist?

17           A       I heard people saying that there were  
18 racists organizing in the Town of Newburgh. I  
19 don't, you know, I don't think it's meaningful to  
20 call a town entirely racist; just that there were  
21 those kinds of people that seemed to kept coming  
22 back to find adherence around there.

23           Q       And you started hearing that at what age?

24           A       I mean, really like probably late, late  
25 '80s. I guess, I was probably 17 then. I went to a

Page 73

1 school that drew from a lot of outlying areas, and  
2 then I went to college in New York that drew from a  
3 lot of parts of New York.

4 So, you know, we just sort of, when  
5 there was stuff in the news, we'd have conversations  
6 about it. And so that's the kind of source of, I  
7 guess, conventional wisdom from people I knew.

8 Q Do you think that colored your opinions in  
9 this case?

10 A I mean, it certainly made me aware of  
11 where to look, right? As soon as I was like, oh,  
12 Newburgh? Town and City? I like literally punched  
13 in "Newburgh, Ku Klux Klan," because I had, you  
14 know, known about that at the time.

15 So, again, that's the City of  
16 Newburgh versus the Town of Newburgh, so that didn't  
17 bring with it any specific thoughts about the town.  
18 But, but just that I -- again, what the historians  
19 do methodologically is evaluate truth claims, right?  
20 That's how you, like, debunk a conspiracy, right?  
21 If a bunch of people are claiming such-and-such, you  
22 go look for the documentary evidence of it or not  
23 of it.

24 You know, I went and tried to figure  
25 out, okay, so I know that that rally happened. What

Page 74

1 are the circumstances? And that's sort of where I  
2 found the documentary evidence of exactly what  
3 happened. So that's the sort of the basis of what I  
4 wrote in this report rather than any, like, feeling  
5 I had before.

6 Q So you started with the truth claim that  
7 the Town of Newburgh had a lot of racist people in  
8 it and then went to see if you could debunk it?

9 MS. GREENWOOD: Objection; form.

10 THE WITNESS: I went to see whether it was  
11 true. It wasn't sort of an attempt to debunk.

12 Methodologically, you don't want to go  
13 into a research task hoping that you'll find  
14 something. That's going to activate all kinds  
15 of, like, source bias and consciously and  
16 subconsciously where you look.

17 This is something that professors warn  
18 graduate students about, is if you go into  
19 something really hoping to find X or Y, you've  
20 really got to be on your guard.

21 So I went into this trying to figure out  
22 what actually happened because I'm not going  
23 to, like, put my opinion into a court document.  
24 I'm going to put my findings into a court  
25 document.

Page 75

1 BY MS. DiRAGO:

2 Q But you went into it with the truth claim  
3 that the people, a lot of people in the Town of  
4 Newburgh are racist, sounds like.

5 MS. GREENWOOD: Objection; form.

6 THE WITNESS: No. I went into it with  
7 the, precisely speaking, the, there were white  
8 supremacist organizers in the City of Newburgh.  
9 Because, honestly, I don't think I really  
10 distinguished City versus Town of Newburgh  
11 anytime before this, so...

12 BY MS. DiRAGO:

13 Q Is that true for most people in New York?  
14 You kind of lump them together?

15 MS. GREENWOOD: Objection. Calls for  
16 speculation.

17 THE WITNESS: I don't know.

18 BY MS. DiRAGO:

19 Q So what are all the truth claims that you  
20 started with before you wrote your report?

21 A I knew that there had been a big Klan  
22 rally there 1992. So our report that asks for what  
23 is the totality of circumstances for the Town of  
24 Newburgh, then I immediately had to, again, like,  
25 having been alerted that the Town and City of

Page 76

1 Newburgh were two different things, then it was,  
2 okay, there was a Klan rally. Exactly where was it?  
3 Exactly what happened? Exactly what didn't happen?

4 So I immediately found that, you  
5 know, the rally was in the Town of Newburgh. The  
6 counter-rally was in the City of Newburgh. And  
7 that's, again, what I wrote in my report.

8 Q Did you find any other evidence of the KKK  
9 in the Town of Newburgh?

10 A I did not.

11 Q Did you watch the Battle of Newburgh?

12 A I think I watched about half of it.

13 Q How long is it?

14 A I think it's --

15 Q Roughly?

16 A 52 minutes, I think.

17 Q Where can I find it?

18 A It's online. If you, like, put the  
19 "Battle of Newburgh" into, like, a YouTube, it's  
20 there.

21 Q So the next factor that, the next New York  
22 Voting Rights factor that you discuss is on page 24:  
23 The extent to which members of the protected class  
24 have been elected to office and the political  
25 subdivision.

Page 77

1                   And your first sentence says: None  
2                   of the current town council members and supervisor  
3                   of Newburgh is black or Hispanic.

4                   What did you do in order to figure  
5                   that out or to make that conclusion?

6           A        Sure. One, I looked up who the current  
7                   town's council members and supervisors are, just  
8                   sort of read accounts of them. I think I looked at  
9                   some of the, like, literally click and find the  
10                  minutes of various meetings. I think there may be,  
11                  can't remember if there's video of certain meetings.  
12                  I just sort of looked up their biography and tried  
13                  to determine if any of them were phenotypically  
14                  black or Hispanic.

15                       Certainly it was part of the  
16                   Complaint in the case, I guess, corresponding to  
17                   this item (b), was that none were black or Hispanic.  
18                   So, again, trying to figure out a truth claim, I  
19                   went and sort of tried to do that.

20                       And then I believe I looked at the  
21                   answer provided by the folks who are being sued and  
22                   did not say either in those documents or did not see  
23                   either those documents or any sort of documentation  
24                   in Spanish- or English-language media that any of  
25                   them were black or Hispanic.

Page 78

1 I can definitely tell you for  
2 Spanish-language media, the first Latino anything in  
3 any area, Olympic athlete, town council, you know,  
4 academy award for best supporting, people pick up on  
5 that because, you know, Los Primeros, this or that,  
6 is kind of a big deal.

7 So I did not see any evidence, either  
8 in the form of a response from the defendants or in  
9 the documentary record, that suggested visually in  
10 any other way that any of them was black or  
11 Hispanic.

12 Q Are you fluent in Spanish?

13 A Yeah. I'm doing an interview tomorrow in  
14 Spanish.

15 Q Did you grow up speaking Spanish?

16 A It's my first language, actually.

17 Q Oh, okay. Did you encounter anything  
18 about James Manley in your research of the elected  
19 officials in the Town of Newburgh?

20 A I did not, no.

21 Q He's Puerto Rican, and he was on the town  
22 council.

23 A Oh.

24 Q Do you know what races since like 1980  
25 that a black or Hispanic has run for office in

1 Newburgh?

2 A I was unable to find that in the time  
3 frame assigned, no.

4 Q So you don't know if there are any races  
5 where a black or Hispanic ran for an elected office  
6 in the Town of Newburgh?

7 A I did not find evidence of that, that I  
8 put in the report. And as you're about to ask, I  
9 would have put that in the report.

10 Q What about Asian Americans? Did you look  
11 into whether they ran for office in the Town of  
12 Newburgh?

13 A This case didn't involve Asian Americans,  
14 so I didn't specifically look for that, no.

15 Q Is it your opinion that more blacks would  
16 be elected to the town council if it were not for  
17 racism or race-related reasons?

18 A I can't say either way, right. That's a  
19 pretty weighty question. What I can say, would  
20 probably be in like a subsequent session. I will  
21 say just to warm everybody up, right, there is an  
22 existing literature on at-large versus  
23 single-district member elections and municipal  
24 elections. And there are findings about that.

25 Q And the findings are that more blacks or



Page 80

1 Hispanics would be elected if the at-large system  
2 was removed?

3 A I mean, I believe the findings are in  
4 actual cases -- again, coming back to the whole  
5 methodological issue, the findings would be in the  
6 past in municipalities that have switched from  
7 at-large to single-member districts. That has  
8 tended to increase the presence of black and Latino  
9 people on town councils or city councils, depending  
10 on what they call the governing body.

11 Q Were any of those in New York?

12 A It was like a big -- not a longitudinal  
13 study. It was sort of a, one of those sort of  
14 studies, study of studies. So I believe they drew  
15 from a great many different places, and I do not  
16 remember exactly where their cases were from.

17 Though I can say that having myself  
18 done research on the City of Dallas where exactly  
19 this question came up, the result historically was  
20 that when a historically all-white city council  
21 began to diversify, first, they had one handpicked  
22 Latina; then for people who sort of ran for office  
23 in regular election rather than being appointed to  
24 fill a seat.

25 So certainly in a place where I had

Page 81

1 done specific research, Dallas that involved  
2 at-large districts, that is what happened.

3 Q In Newburgh, is it your opinion that  
4 Hispanics would be elected to town council if it  
5 were not for race-related reasons?

6 A I mean, I probably respond to that  
7 probabilistically.

8 Q So let's move on to the next factor.  
9 That's on page 25: The use of any voting  
10 qualification, prerequisite to voting, law,  
11 ordinance, standard, practice, procedure,  
12 regulation, or policy that may enhance the dilutive  
13 effects of the election scheme.

14 It sounds like you believe the  
15 at-large voting system in and of itself is one of --  
16 qualifies under this factor; is that right?

17 A Yes, I -- well, let me think.

18 Yeah, I think as a matter of a fact,  
19 yes.

20 Q Is there anything else, any other  
21 qualification or prerequisite or law, ordinance, or  
22 standard that has a dilutive effect on the election  
23 for blacks or Latinos?

24 A Are we speaking in the present moment?

25 Q Yeah.

Page 82

1           A       In the present moment, it seems as if any  
2 incidents of not offering Spanish-language ballots,  
3 et cetera, seem to have been resolved.

4                       So I believe in this report, I  
5 address myself to the at-large voting system and  
6 kind of the effects of that system.

7           Q       When was the last, you mentioned the  
8 Spanish speaking, I don't know actually how you  
9 referred to it.

10                      Can you tell me what you meant about  
11 that?

12           A       Sure. So as recently as 2012, the Orange  
13 County, County of Orange was sued for not providing  
14 adequate Spanish-language materials and adequate  
15 Spanish-language translators in their elections.  
16 And I believe that they either settled the County --  
17 sorry.

18                      The County either settled or had a  
19 ruling issued against it so that they were required  
20 to essentially fix those issues.

21                      I will say that that was 12 years  
22 ago, but remember that there are at least a couple  
23 of different ways in which that might have an  
24 adverse effect on the propensity of certain people  
25 to vote.

Page 83

1                   One of them is that if it made it  
2                   hard for in this case Latinos to get into politics  
3                   because a lot of their potential, you know,  
4                   strongest supporters had been inadequately provided  
5                   for in previous elections, that tends to, frankly,  
6                   turn people off of voting, right?

7                   If they go and try to vote and they  
8                   can't in Spanish, even though they have a federally  
9                   protected right to do that, that, you know,  
10                  sometimes makes them not want to go back a second  
11                  time.

12                  So both discouraging people from  
13                  coming back and trying again and thereby making it  
14                  hard for potential office seekers who want to appeal  
15                  to Latinos, whether or not they are Latino  
16                  themselves, that can sort of shield to some extent  
17                  their interest in participating in the political  
18                  system because they might say, you know, people have  
19                  really been turned off by this thing that just  
20                  happened not that long ago.

21                  So in addition to the actual  
22                  operation of at-large voting, previous incidents  
23                  involving voting rights might also tend to enhance  
24                  the dilutive effects of the election scheme to bar  
25                  from the statute.

1 Q The what effects?

2 A The dilutive effects of the election  
3 scheme.

4 Q Oh, okay. Did you look into how the Town  
5 of Newburgh accommodates Spanish-speaking voters?

6 A I did not. I essentially went back and  
7 looked at that ruling. And, essentially, it was  
8 they promised to provide for them thereafter.

9 So my assumption was that -- they  
10 haven't been sued for that since, so my assumption  
11 is that they've done that.

12 Q On page 26, you mention someone named  
13 Rick Su. Who is that?

14 A That is the author of the article in the  
15 William & Mary Bill of Rights Journal. That's an  
16 academic journal that Rick Su published in. That's  
17 footnote 32.

18 Q You wrote that he found a split call --  
19 that new immigrant groups found a political system  
20 that was not only uninterested in their vote but was  
21 in many ways specifically structured to discourage  
22 their participation --

23 A Correct.

24 Q Is that specific to the Town of Newburgh?

25 A That is specific to the use of at-large

Page 85

1 elections generally. So I guess my purpose in  
2 including that, as a summation, is it's a good  
3 summary of, in various parts of the country,  
4 depending on where they were, sort of depending on  
5 which marginalized group, I would also say depending  
6 on when it was, sort of which marginalized group  
7 this could be affecting, that in many, many cases  
8 people would show up and find that the system of  
9 elections made it very hard for them to establish,  
10 you know, what at the time would have been equal or  
11 proportionate, proportional representation in things  
12 like city councils.

13 Q Rick Su writes about at-large voting  
14 systems?

15 A I'd have to sort of look at that, but  
16 that's what I cited at four, yeah.

17 Q What about Amy Bridges? I see the next  
18 quote there is attributed to Amy Bridges. Does she  
19 write about at-large voting systems?

20 A Yeah, definitely. That's her -- she wrote  
21 about progressivism in the Southwest. That was a  
22 book that was like way back on my orals list in  
23 like -- sorry. Orals list is, to qualify to become  
24 a Ph.D. candidate, you have to survive a three-hour  
25 ordeal of three professors peppering you with

Page 86

1 questions based on a list of about 50 or 60 books in  
2 each of three fields to making sure that you both  
3 know what the content of those books is and that you  
4 can sort of discuss the ideas.

5 So way back in nineteen ninety, I  
6 think it was seven, when I actually took my oral  
7 exams, Amy Bridges' book on progressives in the  
8 Southwest was like one of the really quality classic  
9 ones. That's sort of where my looking around for  
10 like who else has written on this, who were  
11 Dr. Bridges' co-authors?

12 And she sort of, again, describes the  
13 ways that in the nineteen -- I think there it was in  
14 the nineteen-teens and twenties, a number of groups  
15 that referred to themselves as good government  
16 groups, because you usually want to come up with a  
17 positive-sounding name; but these groups often  
18 considered stuff like immigrants and their  
19 descendants holding political power in their towns  
20 more or less synonymous with corruption. Right?

21 There are certain kinds of prejudice  
22 involved here in those cases as well against  
23 Mexicans, against Catholics, et cetera. But the  
24 bottom line there is that's like a very  
25 well-documented example of among the various times

Page 87

1 when at-large voting systems were substituted for  
2 single-district voting systems with the specific  
3 intent of making sure that the majority population  
4 maintained a hold on power.

5 And, again, I want to emphasize here  
6 that that sort of subsequent quotation from  
7 Professor Su, right, when he writes: People arrived  
8 and found those kinds of electoral structures in  
9 place, those often excluded them, right?

10 So there I was trying to cover both  
11 in some cases at-large systems are deliberately  
12 created to exclude people; in other cases they  
13 merely had the effect of maintaining power in the  
14 hands of a majority despite the presence of a  
15 significant growing minority, whether it be ethnic,  
16 racial, religious, et cetera.

17 Q I think that's what you discussed then in  
18 the next paragraph on page 26, but we can talk about  
19 it. You talk about the grandfather clauses.

20 A Yeah.

21 Q They were used to disenfranchise black  
22 people but not white ones, thus making that entire  
23 category of rules automatically suspect.

24 What category of rules are you  
25 referring to there?



Page 88

1           A       Categories of rules that are facially  
2       racially neutral, but have the effect of  
3       disenfranchising people on a racial basis. Right?

4                       So grandfather clauses were invented  
5       to get around the 15th Amendment giving black men  
6       the right to vote. Right? So that in the era in  
7       which Jim Crow voting was created, from 1877 through  
8       to the early 20th century, people who wanted to make  
9       sure that black people could not vote could not  
10      simply write a rule saying: "Black people can't  
11      vote," right?

12                    Because, frankly, they had  
13      essentially tried to do things like that in 1865,  
14      which was the reason for, first, the 14th Amendment  
15      and then later the 15th Amendment is, after the  
16      Civil War, the freed people had an uncertain -- that  
17      the formerly enslaved people, the freed people, had  
18      a legally uncertain status. And like the first  
19      thing that racist whites in the South attempted to  
20      do was to find ways to write a law saying if a white  
21      person does it, this happens, usually nothing; if a  
22      black person does it, this totally different thing  
23      happens, right?

24                    That brings into existence,  
25      because -- especially Northern, but also the

Page 89

1 Southern republican public is outraged by how brazen  
2 is this effort to functionally semi-re-enslave black  
3 people that they create the 15th Amendment -- I'm  
4 sorry, 14th Amendment. Then, right, specifically to  
5 make sure that black people are not disenfranchised,  
6 they create the 15th Amendment.

7 So every time a law intended to  
8 ensure racial equality is passed, people kept trying  
9 to find workarounds. One of those workarounds was  
10 grandfather clauses, right?

11 If you're -- you're disenfranchised  
12 if you can't do this, unless your grandfather could  
13 vote. But, obviously, the grandfathers of the vast  
14 overwhelming majority of black people had been  
15 enslaved and could not vote or, for that matter, own  
16 property.

17 So grandfather clauses, if anybody or  
18 like some allegedly -- even if it was a legitimately  
19 neutral reason, try to introduce a grandfather  
20 clause --

21 (Reporter clarification.)

22 THE WITNESS: Even if somebody devised a  
23 grandfather clause for some kind of a  
24 legitimate reason, I imagine everyone would  
25 say: Wait a minute. No, no, no. A

Page 90

1 grandfather clause, that is very suspect for  
2 the reasons of what it has been used for  
3 previously and the way it works.

4 So that's sort of a very dramatic example  
5 of the point that I'm trying to make about,  
6 about at-large elections, is that they may or  
7 they may not have been instituted for racially  
8 discriminatory reasons.

9 But in particular, in places like the Town  
10 of Newburgh, once the population begins to  
11 diversify and in conditions where there are  
12 racially polarized kinds of voting, it can, in  
13 effect, function to keep, in this case, Latinos  
14 and black people, out of power.

15 BY MS. DiRAGO:

16 Q What are the preferences of minoritized  
17 communities like African Americans and Latinos? You  
18 mention this on the bottom of page 27.

19 A I'm not basing this not upon for what I  
20 think but past registered voter files studies of who  
21 actually voted and how they, who voted and how they  
22 actually voted. We know that, roughly speaking,  
23 Latinos are about a two-thirds Democratic voting to  
24 one-third Republican voting constituency nationally.

25 Now, this is going to differ a little

Page 91

1 bit because of the 19 nationalities and potential  
2 identities of Latinos and Latinas, right?

3 Some of them are, have been very  
4 consistently more Republican, like Cubans. And some  
5 of them have been more consistently Democratic,  
6 meaning especially Puerto Ricans, who are the most  
7 left-leaning and, therefore, the most Democratic  
8 voting group of people.

9 Going back to the 1930s when Vito  
10 Marcantonio from the Bronx was like this -- sorry,  
11 from Upper Manhattan was this like huge champion of  
12 Puerto Rican voters. So nationally for Latinos,  
13 that's the figure.

14 I also just want to mention that in  
15 the Town of Newburgh, Puerto Ricans are the largest  
16 proportion of the Latino community. African  
17 Americans are -- again, based on the, you know,  
18 voter files from the past, African Americans are the  
19 most democratically leaning constituency in the  
20 United States or about, let's see, since about 1964  
21 definitely, so for the past 59 years.

22 So the splits there are usually in  
23 the, again, nationally, usually in about the 85 to  
24 15 range Democrat to Republican. So that's what the  
25 past voting patterns have indicated up to the very

1 recent past.

2 Q What is the split among white and  
3 non-Hispanics?

4 A Nationally, roughly 60/40 Republican to  
5 Democrat. It varies a little bit. Again, this is a  
6 very big voting group, so it matters a lot. So  
7 2 or 3 percent variation in the white vote can  
8 change the outcome of an election. Roughly, the  
9 kind of benchmark is about 60/40 Republican to  
10 Democrat.

11 Q So when you talked about the preferences  
12 of minoritized communities like African Americans  
13 and Latinos, you're just talking about Democrat or  
14 Republican?

15 MS. GREENWOOD: Objection; form.

16 THE WITNESS: Not necessarily. There may  
17 be issue-specific preferences where that  
18 breakdown may change a little bit.

19 But broadly speaking, that is the, that's  
20 the only thing like -- that's the only thing  
21 that the empirical research has a basis for,  
22 right?

23 I have not gone and tried to look for, you  
24 know: Do black or Latino people favor  
25 deregulation or regulation? Do they favor

Page 93

1           restriction on abortion rights or expansion of  
2           abortion rights? I don't have the data to say.

3       BY MS. DiRAGO:

4           Q       So there's -- when you made that  
5           statement, you're not thinking of anything, any  
6           specific preferences?

7           A       Well, I mean, the -- remember that what  
8           for a long time was a frequent disengagement between  
9           national issues and local issues has very much gone  
10          away over about the past 15 or 20 years, right? It  
11          used to be crossover voting, let's say, in a state  
12          where there was a Senate race, at the same time it  
13          was a Presidential race, it used to be the case that  
14          lots of people would vote for a Democrat for  
15          president and a Republican for Senator, right? Or a  
16          Republican for President and a Democrat for Governor  
17          in statewide races.

18                       That has fallen dramatically so that  
19          there are literally only one or two of a hundred  
20          Senate seats in which the statewide vote by party  
21          has been different from the, like, the individual  
22          Senator. I think it's pretty much Senator Collins  
23          in Maine and Senator Tester in Montana are the ones  
24          left.

25                       So as a result, particular issues on

Page 94

1     which Democrats or Republicans take particular  
2     positions have been nationalized so that down to the  
3     local and state level, it's not just sort of a party  
4     affiliation; it's a whole bunch of positions that  
5     very strongly correlate with that party  
6     identification.

7           Q     But, again, there's no specific  
8     preferences that you can name that you were thinking  
9     of when you wrote that statement? If there are,  
10    that's fine. But I want to know what they are.

11          A     I think I was not referring to specific  
12    subissues beyond party preference.

13          Q     We'll move on, please, to page 28.

14                   You write: The Latinos are the  
15    largest single nonwhite demographic in Newburgh and  
16    it is worth noting that in regard to Latinos  
17    specifically, district elections have been shown to  
18    benefit Latino voters in exercising political power.

19                   So in this sentence, do you mean  
20    district elections versus the at-large system?

21          A     That's correct. What that study talks  
22    about is that, you know, they'll say -- again, they  
23    have a whole bunch of examples. And then they'll  
24    look at a whole bunch of changes from at-large and  
25    district elections and then they'll take the subset

Page 95

1 of, okay, which are the elections that did yield a  
2 Latino holding, winning an election to office.  
3 They'll go back and retrospectively look at what are  
4 the demographic conditions that lead to that.

5 One of them is that the minoritized  
6 group, whichever one it is, in this case, again,  
7 specifically Latinos, there's a certain percentage  
8 that's literally about 25 percent is the threshold  
9 at which it seems to be, again, based on past  
10 results, seems to be most likely that the move to  
11 district elections will actually result in the  
12 election of a Latino or Latina.

13 Q Got it. That was from what study?

14 A I believe -- let's see. It's Trounstein  
15 and Valdini Trounstein, "Context Matters."

16 MS. GREENWOOD: Counsel, I'm just noting,  
17 it's getting close to the end of a section. I  
18 wonder if a lunch break soon would make sense.

19 MS. DiRAGO: Absolutely. Yes. My  
20 stomach's growling. And you're on the  
21 East Coast, so I know you're probably very  
22 hungry.

23 Yeah, can we go off the record, then.

24 VIDEO OPERATOR: Off the record at 12:42.

25 This will end media number 2.



Page 96

1 (Lunch recess.)

2 VIDEO OPERATOR: Back on the record at

3 1:30. Beginning of media unit 3.

4 BY MS. DiRAGO:

5 Q So I think I'm picking up now on a new  
6 section, if I remember correctly. Page 29, we have  
7 a new factor with the NY VRA.

8 You say: My scholarly work and  
9 research skills have not involved this aspect of the  
10 mechanics of candidacy and campaign finance, and for  
11 that reason, I have not reported any findings on  
12 this factor.

13 So did you look for anything relevant  
14 to this factor?

15 A I took this factor to mean the particulars  
16 of sort of candidate selection before the primaries,  
17 before the sort of general. So, again, I don't  
18 really study that level of it, and that's why I  
19 wrote what I did.

20 Q So you didn't even look into this?

21 A No; I read it and thought that anything I  
22 might, anything that might fall under this, I'd  
23 already said in section C.

24 Q So you didn't do any additional research  
25 for this factor?

Page 97

1           A       That's correct, yes.

2           Q       So then the next one is on page 29 as  
3 well: The extent to which members of the protected  
4 class contribute to political campaigns at lower  
5 rates.

6                       You mentioned here a 2022 study from  
7 the National Bureau of Economic Research. I assume  
8 by its name that that's a national study?

9           A       Yes, it is, because their methodology,  
10 essentially, was placeless. It used online  
11 donations, so not place-specific.

12          Q       So I assume you don't know how many people  
13 in, were in that study that lives in the Town of  
14 Newburgh?

15          A       That is correct.

16          Q       And then we have percentages there on the  
17 next page, on page 30. For small donations, the  
18 proportions were 6.5 percent black, 7.3 percent  
19 Hispanic, and 82.4 non-Hispanic white.

20                       Are these taken from that same study?

21          A       Yes, they are.

22          Q       And then there's more figures in the  
23 remaining, in the remainder of that paragraph. And  
24 those are taken from the same study, I assume.

25          A       Let me look to be sure.

Page 98

1                   Yep, I believe that was the same one,  
2   yeah.

3           Q     In the next paragraph, you quote someone  
4   that is saying: Racial inequality in campaign  
5   contributions is likely to produce racially based  
6   representation of and responsiveness to public  
7   attitudes.

8                   Who said that? Who are you quoting?

9           A     Looks like Grumbach and Sahn is the  
10   footnote I have assigned to that paragraph. So  
11   Grumbach and Sahn.

12          Q     Do you know what the basis is for that  
13   opinion?

14          A     I believe the paper essentially proceeds  
15   from the finding that a lot of officeholders' and  
16   candidates' time is taken up by asking people for  
17   money and that campaigns have become increasingly  
18   expensive, thereby, making candidates and  
19   officeholders effectively more beholden to those who  
20   fund them when they decide what issues to take on.

21                   And if you begin with that assumption  
22   and then look back at empirical data that says that  
23   donations are very, very disproportionately  
24   non-Hispanic white, that's the basis for that  
25   statement.

Page 99

1           Q     Then you mentioned the most influential  
2 academic paper in this area. What academic paper is  
3 that?

4           A     Let's see here.

5                     Sorry. That is somebody knocking at  
6 my door. I'm just ignoring it.

7           Q     If you need to take a break and answer it,  
8 that's fine.

9           A     No. That's quite all right.

10                    Okay. It looks like the Grumbach and  
11 Sahn, and I used the most influential, because when  
12 you read a number of different articles on this  
13 topic, Grumbach and Sahn are always in the  
14 citations.

15           Q     But that article has nothing to do with  
16 the Town of Newburgh, right?

17           A     I do not believe it does.

18           Q     And then this paper you say, you quote  
19 that: For more than three decades have argued that  
20 wealth disparities have biased the campaign finance  
21 system against racial minorities.

22                    So is this saying that it's the  
23 wealth disparities that are causing the difference  
24 in campaign donations?

25           A     No. It's saying the donation disparities.

Page 100

1 I expect they believe those follow from wealth  
2 disparities because it's also pretty well known that  
3 a very large percentage of the wealth gap is a  
4 racial wealth gap.

5 So, for example, the average  
6 non-Hispanic white family has eight times the net  
7 worth of black families on average and six times the  
8 net worth of Latino families on average.

9 So I think that that's the set of  
10 assumptions that they believe drive the donation  
11 gap, though there may be other factors.

12 Q Do you know any of those other factors?

13 A I mean, I could, I could speak about just  
14 the one would involve networks, right? Remember  
15 that it takes a long time to build political  
16 networks to sort of know people and become known  
17 and, therefore, end up on the list of people that  
18 the candidate seeks out, calls up, et cetera.

19 Again, this has taken decades to do  
20 this. So to the extent to which black and Latino  
21 people were discriminated against in the political  
22 realm, that can cause delays and disadvantages  
23 moving across time in who is sort of in a position  
24 to get to know candidates.

25 Q But you can't point to any research or

Page 101

1 evidence showing that black or Latino citizens in  
2 the Town of Newburgh contributed to campaigns at a  
3 lower rate, right?

4 A That's correct.

5 Q The next factor that you discuss is on  
6 page 31: The extent to which members of a protected  
7 class in the state or political subdivision vote at  
8 lower rates than other members of the electorate.

9 You quote or cite to the Pew Hispanic  
10 Center, which reported in 2014 that 51 percent of  
11 Hispanics in New York are eligible to vote, ranking  
12 New York 14th nationwide in the share of the  
13 Hispanic population that is eligible to vote. By  
14 contrast, 79 percent of the state's white population  
15 is eligible to vote.

16 Do you see that difference in the  
17 eligibility to vote as resulting from racism?

18 A I'll answer that in just a second.

19 The reason I looked down just now, I  
20 realized I forgot to turn off my phone, which is  
21 something I'm supposed to do. So I went and  
22 completely turned that off. That's what I was doing  
23 right there, just so you know.

24 Q Thank you. I appreciate that.

25 A Could you restate the question. I'm

Page 102

1 pretty sure I remember, but just to be a hundred  
2 percent sure.

3 Q Yeah. So you quote the statistics from  
4 the Pew Hispanic Center about the differences in  
5 Hispanics and their eligibility to vote versus  
6 non-Hispanic white population eligibility to vote.  
7 I was wondering if you see that as resulting from  
8 racism.

9 A I believe that there are a number of  
10 factors that contribute to that. Racism or, let's  
11 say, discrimination, to be more specific about the  
12 practices, is one of those, yes.

13 Q So how, how does that work? Why would  
14 that affect the eligibility of Hispanics to vote?

15 A Well, if we return to some of the things I  
16 cited in the report, past practices before the 1975  
17 addition to the Voting Rights Act and the many cases  
18 of discrimination afterward -- I mean, just to get  
19 specifics since we're talking about this is a  
20 New York State study, there were controversies and  
21 attempted disenfranchisement in 1972, 1981, 1993  
22 involving things like redistricting, gerrymandering,  
23 not fulfilling federally required accommodations for  
24 non-English speakers.

25 Every single one of those creates an

Page 103

1 instance or multiple instances where in these cases  
2 black and/or Latino, eligible voters, right, or  
3 people eligible to vote are discouraged from voting,  
4 put in a district where they have no chance of  
5 influencing the outcome.

6 Every single one of those kinds of  
7 things that, again, has repeatedly happened in  
8 New York State, even after the 1975 Voting Rights  
9 Act addition, right, tends to turn people off to the  
10 process. So I think that would be a very clearly  
11 identifiable effect.

12 If I could also mention one more,  
13 this goes back a little bit further, but I think  
14 it's really indicative. I was mentioning that in  
15 New York State and in the Town of Newburgh, Puerto  
16 Ricans are the biggest subgroup of Hispanics. Voter  
17 participation on the island of Puerto Rico around  
18 mid-century was typically 80 percent. So when a  
19 group of people who when they're in their part of  
20 the United States are extremely high voter  
21 participators and then that number comes down  
22 dramatically, I believe that tells us something  
23 about the conditions that they're entering into,  
24 right, that they arrive with: I vote by comparison  
25 with Americans with, by comparison with people born



Page 104

1 on the mainland of the United States. Puerto Ricans  
2 are all Americans since 1917. By comparison with  
3 them, they're really active participators. The fact  
4 that their numbers came down so much, again, is  
5 indicative.

6 Q How does that affect their eligibility to  
7 vote?

8 A It doesn't affect their eligibility --  
9 well, I mean, put it this way: From 1921 to 1975,  
10 it absolutely affected their eligibility because  
11 there was a literacy test given only in English. So  
12 that either prevented or, at the very least,  
13 discouraged them.

14 Because, you know, in the historical  
15 literature, it is recorded that many Puerto Ricans  
16 said, I just -- you know, I didn't want to go and be  
17 humiliated even though I had been raised in a, you  
18 know, a U.S.-flagged school in a U.S.-flagged  
19 territory speaking my native language. They didn't  
20 want to be forced to go and sort of look like a kid.

21 Anytime you try to speak a new  
22 language, you're kind of reduced to the status of a  
23 little kid because often you're so clumsy with it.  
24 They didn't want to suffer that humiliation. So the  
25 move from eligible to vote to registered to vote for

Page 105

1 decades, right, is thereby affected.

2 And every subsequent example of, you  
3 know, even after 1975, they go to register to vote  
4 and they're not able to because there are no  
5 Spanish-language materials, that's -- every single  
6 one of those breaks down the eligible to registered  
7 kind of pipeline.

8 Q In terms of the eligibility, what would be  
9 the difference for the statistics for the lower, so  
10 just looking at your report, 51 percent of Hispanics  
11 in New York are eligible to vote. By contrast,  
12 79 percent of the state's white population is  
13 eligible to vote. What would account for that?

14 A Sure. Other potential factors could be  
15 age. The average Latino is considerably younger  
16 than the average non-Hispanic white, not enough to  
17 like explain a differential of 79 percent to  
18 51 percent.

19 And, again, a small amount of that  
20 could be citizenship, although, again, Puerto Ricans  
21 are so very predominant in New York, that that's not  
22 that much of it, I don't think.

23 Q Do you know the percentage of Puerto  
24 Ricans versus other kinds of Hispanics in New York?

25 A I don't have those numbers in front of me

Page 106

1 and don't know them off the top of my head, no.

2 Q Later on in that paragraph you write: It  
3 also found that in New York State, the Latino voting  
4 right was 40.9 percent in 2018 and 38.0 percent in  
5 2022.

6 Does that mean that 40.9 percent of  
7 eligible Latino voters in New York voted in 2018?

8 A Are you asking about, effectively, the  
9 methodology of that study?

10 Q Well, the statement, like what exactly  
11 that statement means, if that's, if that's what that  
12 statement means?

13 A Typically, that, the way that that figure,  
14 the voting rate --

15 Q Yeah.

16 A -- is determined is a fraction of, you  
17 know, people who voted on the top, eligible to vote  
18 on the bottom.

19 Q So it's Latinos that are eligible to vote?

20 A That is what I believe to be the  
21 methodology there, yes.

22 Q And in that study, did they find the  
23 percentage of black voters? I don't see that in  
24 your report.

25 A That was a -- I'm virtually certain that

Page 107

1 was a study specifically about Latinos. So that is  
2 why I only cited Latino figures.

3 Q Then moving on to the next page, same  
4 paragraph, you talk about research from the  
5 Brookings Institution. I was wondering, is that a  
6 national study that you're citing there or was it  
7 New York?

8 (Reporter clarification.)

9 MS. DiRAGO: Brookings Institution?

10 THE WITNESS: Could I ask you to  
11 specify -- oh, there it is.

12 Okay. So William Frey, Brookings  
13 Institution, note 48. That is a national  
14 study, as I recall, just because they also cite  
15 regional differences, parts of the country with  
16 the largest black population. So that is,  
17 necessarily, a national study.

18 BY MS. DiRAGO:

19 Q Did you look at voting turnout rates in  
20 Newburgh, the Town of Newburgh?

21 A The kinds of statistics -- excuse me.

22 Yeah, the kinds of statistics that  
23 are necessary there are really expensive and hard  
24 to, to derive. So part of the answer is: I do not  
25 have any of those statistics, part of the answer is:

Page 108

1 Because those are really expensive to do.

2 Q Is the Hispanic vote increasing, the voter  
3 turnout rates increasing in New York?

4 A Could you say that again, just because the  
5 precise words that you use determine exactly what my  
6 answer is.

7 Q Is the turn out rate for Hispanics in  
8 New York increasing?

9 A The data that -- put it this way: I have  
10 seen -- I have to sort of look and see where it is  
11 here. There is turnout data on Latino turnout in  
12 2018 and 2022. Both, of course, are, quote/unquote,  
13 off-year elections. And that figure fell from 2018  
14 to 2022.

15 And I believe here in the upper half  
16 of page 32, there's a specific statement that the  
17 racial turnout gap has consistently grown since  
18 2012, citing the difference between white and  
19 nonwhite voters.

20 So I can say empirically, definitely  
21 for Latinos and more generalizeably -- I'm being  
22 very careful because you have to look really closely  
23 at this -- the rate between white and nonwhite  
24 voters as a, measured as a turnout cap, has also  
25 been growing. So, yes, on that count as well.

Page 109

1           Q       So I asked you about the turnout rate.  
2       But -- so just generally, are Hispanics -- the rate  
3       at which Hispanics are coming out and voting in  
4       New York, it sounds like, in your opinion, is not  
5       increasing?

6           A       I mean, not in my opinion. Again, we can  
7       try to find the cite, but I can definitely direct  
8       you to -- I remember the specific bar graph that  
9       showed that 2022 to 2018 Latino turnout was lower.

10          Q       Was it growing just -- not compared to  
11       anything, but --

12          A       All right. So --

13               MS. GREENWOOD: Objection to form.

14       BY MS. DiRAGO:

15          Q       So not comparing the rate to anything, but  
16       just in itself, is it increasing, the number of  
17       Hispanics who are eligible voters who are voting, do  
18       you know if that's increasing?

19          A       Yes. I can speak to that. In a way,  
20       that's even more incriminating.

21                   One of the things that people  
22       sometimes do is to say, hey, the number of, you  
23       know, Latinos in colleges is going up, to which the  
24       answer is: Is it going up exactly in proportion to  
25       the larger number of Latinos who are 18 to 25 years

Page 110

1 old? Is it lower than that figure? Is it higher  
2 than that figure?

3 In every single jurisdiction, in  
4 every single case, the absolute number of Latinas  
5 and Latinos has been growing continuously for half a  
6 century and continues to grow, a little bit more  
7 slowly lately.

8 So if you show me a statistic that  
9 is, has exactly the same slope as that curve for  
10 voting participation, I'm like, well, yeah, you'd  
11 expect it to increase because there are just more  
12 such people. If you show me one that's flat, I'm  
13 going to say, well, they're actually, in effect,  
14 losing ground because there are more of them, but  
15 the proportion or the number is actually unchanging.

16 If you show me like the data we're  
17 talking about, where it's actually declining, that's  
18 very bad news because, again, despite the absolute  
19 increase in numbers, depending on how you cite the  
20 statistic, and this is how this often works, that  
21 can look even worse because have you declining line  
22 when you have an increasing population.

23 Q So, in your opinion, the voter turnout  
24 rate of Latinos in New York is not increasing?

25 A The finding that I would cite is that in

Page 111

1 New York State between 2018 and 2022, it's  
2 decreasing.

3 Q And let's talk about the racial turnout  
4 gap. It sounds like that is increasing --

5 A Yes.

6 Q -- since 2012?

7 A That's what the finding that I cite says.

8 Q And can you explain what the racial  
9 turnout gap is?

10 A Sure. The way that that is typically  
11 calculated is the percentage of eligible voters in  
12 each category that actually vote, right? So  
13 occasionally somebody will measure it by  
14 registration. But voting is, I think, where the  
15 rubber hits the road, if you will.

16 So the proportion of non-Hispanic  
17 whites or the difference between the proportion of  
18 non-Hispanic whites who vote and the proportion of  
19 black people, of Latinos -- I have not seen specific  
20 figures for Asian Americans, I want to be clear on  
21 that, but what that exact statistic says, again, we  
22 have not broken that out within the subgroups, but  
23 that disparity does seem to be growing, yes.

24 Q To continue that sentence, it says: This  
25 disparity was growing most quickly in parts of the



Page 112

1 country with the largest black populations, the ones  
2 originally covered by section 5 of the Voting Rights  
3 Act of 1965.

4 Do you have any opinion as to why  
5 that would be the case?

6 A Again, I'd like to separate this out from  
7 opinion. What the Brookings Institution found and  
8 what a number of other commentators have suggested  
9 is essentially Supreme Court jurisprudence involving  
10 preclearance and other parts of the Voting Rights  
11 Act of 1965 have allowed certain kinds of practices  
12 of voter suppression to move forward, which would  
13 have been enjoined by federal law previously.

14 Q So why would that mean that the racial  
15 turnout gap would increase since then?

16 A Because deliberate efforts have been made,  
17 especially as voting has become quite racially  
18 polarized and especially as digital mapping  
19 technology has emerged that allows people in control  
20 of redistricting to very, very carefully manipulate  
21 the borders -- practice is sometimes known as  
22 packing. Practice is sometimes known as cracking --  
23 to effectively reduce the number of representatives  
24 at a number of levels that are elected by,  
25 especially black people. End of sentence.

Page 113

1 Q Did you look at the racial turnout gap in  
2 Newburgh?

3 A I was not able to find any such data  
4 because I'm fairly certain it does not exist.  
5 Again, that's -- most states don't even publish  
6 this. It was just sort of good luck that New York  
7 happened to have it.

8 So, yeah, so I -- I do not believe  
9 that it's broken down geographically that narrowly.  
10 So I had to look for it. But generally finding that  
11 almost nobody has it. Did not find it for Newburgh  
12 specifically, no.

13 Q So you didn't find evidence of any  
14 specific reason in Newburgh why there would be a  
15 difference in voter turnout between different  
16 minority groups, right?

17 MS. GREENWOOD: Objection; form.

18 THE WITNESS: Well, there, yes. I mean,  
19 the existence of at-large elections tends to  
20 reinforce the electoral power of numerical  
21 majorities, which in Newburgh is still  
22 non-Hispanic white people. So that tends to  
23 discourage people from voting. So that's a  
24 pretty clear effect of how elections work with  
25 at-large versus district.

Page 114

1 BY MS. DiRAGO:

2 Q Let's move on to the next page, to the  
3 next factor. This is page 33: The extent to which  
4 members of the protected class are disadvantaged in  
5 areas, including but not limited to education,  
6 employment, health, criminal justice, housing, land  
7 use, or environmental protection.

8 The first sentence you talk about the  
9 seven tracts of the Town of Newburgh. Can you  
10 describe what those are.

11 A Certainly. If you go onto a geodata  
12 system like Social Explorer, which is the one that I  
13 used to produce this report, enumeration by the  
14 census is by a number of features. But they use  
15 tracts, right? So they'll say: This geographic is  
16 tract 103. This geographic area is tract 104.

17 What I did was I pulled up an  
18 official map of the Town of Newburgh on one screen,  
19 pulled up a Social Explorer on the other and, you  
20 know, all but literally with a magnifying glass made  
21 sure that the precise borders of the Town of  
22 Newburgh and the precise border, borders of the  
23 census tracts that I was using in Social Explorer  
24 were exactly the same. Because if they were not,  
25 then I would be providing data that was, in effect,

Page 115

1       erroneous.

2                       I did find that that match was  
3       100 percent literally down to the street. And  
4       knowing that, I was able very quickly and very  
5       easily using Social Explorer to pull up a huge  
6       number of Town of Newburgh-wide statistics,  
7       enumerated specifically by race and ethnic status,  
8       so pretty much non-Hispanic white, black, Latino,  
9       Asian American, other.

10                      I will also say that it gets very  
11       complex because some of those are overlapping. But  
12       I was able to choose exactly the right numbers in  
13       those grids to produce faithful and accurate  
14       statistics on the relative status of these different  
15       groups in the Town of Newburgh.

16               Q       And so are the seven tracts delineated  
17       just by the census, or is there some other use for  
18       these tracts? Or maybe you don't know?

19               A       I have only ever used these tracts. They  
20       are called census tracts, so I believe they are  
21       defined by the census. I think other geodata  
22       programs may use them as one option of how to  
23       enumerate area. But their main use is definitely in  
24       the census.

25               Q       So it sounds like, correct me if I'm

Page 116

1 wrong, that black and Latinos are pretty much spread  
2 evenly among the tracts; is that wrong or right?

3 A I would say they're not highly  
4 concentrated or segregated. There are like some  
5 small differences, but not really big ones.

6 Q So there's not a lot of evidence of racial  
7 segregation within the Town of Newburgh?

8 MS. GREENWOOD: Objection; form.

9 THE WITNESS: That's correct.

10 BY MS. DiRAGO:

11 Q In the statistics that you use -- I think  
12 you've said this, but I want to confirm -- they're  
13 from Social Explorer that you use in this section?

14 A That is correct.

15 Q On page 34, you say: There are large  
16 ethnoracial gaps in income and housing and smaller  
17 ones in education and employment.

18 You talk about the inequalities and  
19 socioeconomic status in Newburgh of non-Hispanic  
20 whites and blacks. And you say: The average amount  
21 of Newburgh's non-Hispanic whites for the annual  
22 per capita income is \$50,839, right?

23 A That's correct.

24 Q And the average for blacks in the Town of  
25 Newburgh is 33,870; is that correct?

Page 117

1           A       That's correct.

2           Q       And for Hispanics, it's \$35,022; is that  
3       right?

4           A       That is correct.

5           Q       Did you look at the median household  
6       income for these groups in the Town of Newburgh?

7           A       I used per capita income because the  
8       households of black, Latino, and white people may be  
9       substantially different in size. So, for example,  
10      if you have, if you have sort of substantial  
11      disparities in the size of the household, that can  
12      really skew the data as to, in fact, how much money  
13      do people have.

14                   If you've got two families living at  
15      one address, if you've got single people living at  
16      one address, those give you really very widely  
17      varying numbers that are not based on actual  
18      experience. That is why I chose to use per capita.

19          Q       You talk about overcrowding on page 35.  
20      To me it seems like the rate of overcrowding is  
21      pretty low in the Town of Newburgh compared to rates  
22      nationally.

23                   Would you agree with that?

24          A       I would have to try to find specific data  
25      to be sure, but I'm fairly certain that, yes, those

Page 118

1 are fairly low numbers.

2 Q What about the rates of homeownership  
3 versus renting? The rates even among blacks and  
4 Latinos of renting, how does that fare to statistics  
5 nationally?

6 A I'd actually have to go and look that up  
7 to be sure. So I don't want to make any statements  
8 based on I kind of just generally think. So that  
9 will be an I don't know.

10 Q Okay. That's fair.

11 Then you say on 35: Notably, these  
12 discrepancies are somewhat wider than one might  
13 expect from the town's educational and work sector  
14 profiles.

15 What do you mean by that?

16 A Sure. The -- so generally speaking, there  
17 are certain sectors like what we might colloquially  
18 call white collar work, often enumerated as  
19 management -- some is retail. Some is industrial,  
20 et cetera -- that tend to have very different rates.  
21 Usually kinds of work like retail, fairly low;  
22 industrial, a little higher; and management, at the  
23 top.

24 What I noted was that the differences  
25 between whites, blacks, and Latinos in the sector --

Page 119

1 and, again, this is sort of a loose category because  
2 individual sectors include a lot of different kinds  
3 of work. The discrepancies were notable but not  
4 really big.

5 But when you look at the actual  
6 income, those are pretty substantial, almost \$51,000  
7 versus, you know, the figures that you were citing  
8 versus almost 34 or a little over 35. That's a lot.

9 So there are two possibilities. One  
10 is that the articulation between sector and income  
11 is looser than usual. Actually, that's the only one  
12 I can think of. So I'll leave it at that.

13 Q Where did you get the data on the  
14 different sectors?

15 A All of that is Social Explorer.

16 Q Do you remember what that data showed  
17 exactly?

18 A I mean, that's like a huge spreadsheet.  
19 So it would take me all day to explain what's on  
20 that spreadsheet. I just put in what I thought were  
21 the most relevant statistics.

22 Q Okay. At the bottom of page 36, you talk  
23 about health insurance. And it looks like the  
24 difference between minority groups and non-Hispanic  
25 whites in having health insurance is pretty minimal;



1 is that right?

2 A It's pretty small, yeah.

3 Q Did you find anything regarding a  
4 difference in healthcare access or provision of  
5 healthcare among blacks, Latinos, and whites?

6 A Again, there are certain things which are  
7 asked by the census and certain things which are not  
8 at the level of census blocks. So I do not believe  
9 that data was on the spreadsheets that were produced  
10 by Social Explorer, so I couldn't really cite it.

11 Q You didn't look at anything else to  
12 determine that?

13 A I didn't want to go and use sources that I  
14 didn't have experience with because there are a  
15 bunch of ways to get that wrong, so I just stuck to  
16 my methodological knitting, so to speak.

17 Q So that's "no"?

18 A That's correct.

19 Q And then it looks like computer ownership  
20 is essentially the same among white and the  
21 protected classes; is that right?

22 A That's correct.

23 Q Now, I'm on 37, page 37. You say: In the  
24 area of environmental protection, the  
25 disproportionate impact of pollution on communities

Page 121

1 of color in the Town of Newburgh was a recurrent  
2 theme as the owners of the Danskammer generating  
3 facility in the northeastern part of the town sought  
4 to put the power plant back into regular service in  
5 2021.

6 MS. DiRAGO: And I will spell Danskammer  
7 for the court reporter. It's  
8 D-A-N-S-K-A-M-M-E-R.

9 BY MS. DiRAGO:

10 Q So I want to ask you about this recurrent  
11 theme. What is the recurrent theme that you're  
12 referencing here?

13 A Sure. There was a coalition of groups  
14 that were weighing in on whether they preferred the  
15 power plant restart or expansion to move forward and  
16 those who did not favor that happening.

17 Among those who did not favor, right,  
18 that sort of greater reactivation of the plant, a  
19 number of them cited environmental racism, right, as  
20 part of the story.

21 And, indeed, there are parts of the  
22 Town of Newburgh that have a substantial number of  
23 black or Hispanic people that are not too far from  
24 the physical location of the plant, right there on  
25 the Hudson River.

Page 122

1                   So there was, I think, a chemist who  
2                   was part of the coalition; there was a sort of a  
3                   local organizer; and there was a U.S.  
4                   representative, Alexandria Ocasio-Cortez, all of  
5                   whom cited environmental justice as one of the  
6                   reasons to oppose the greater reactivation of the  
7                   plant.

8                   Q        So where is the Danskammer plant located?

9                   A        It is essentially very close to the Hudson  
10                  River in fairly eastern extent, eastern part of what  
11                  is legally the town limits of the Town of Newburgh.

12                  Q        Is it in any particular community?

13                  A        It's an industrial facility, so it is --  
14                  basically, if you go directly west or directly, I  
15                  believe, a little bit northwest, there are a couple  
16                  of concentrations of people of color there. I  
17                  essentially did this by, you know, looking at which  
18                  tracts were affected, so that's how I know.

19                  Q        So is it, is it your finding that people  
20                  of color would be more affected by the reopening of  
21                  this plant than non-Hispanic whites in Newburgh?

22                  A        I believe that the people that live in  
23                  those sort of, a couple of those pockets of dense  
24                  population would, yes. But I also want to specify,  
25                  that I'm just looking at the basis of proximity. I

Page 123

1 do not want to hold myself out as a public health  
2 official. But in terms of, are there groups of  
3 people of color near the plant who might be  
4 affected, yes, there are.

5 Q So in these pockets of dense population,  
6 are they majority black or majority Latino?

7 A I would honestly have to go back to my  
8 spreadsheets to be sure about that. Yeah. I'd have  
9 to go back to my spreadsheets. That's very  
10 detailed.

11 Q Okay. Did these pockets of dense  
12 population have a name, like any particular  
13 community name?

14 A I was using just census tract. So I  
15 wasn't sort of using neighborhood designations. So  
16 I honestly don't know the answer to that.

17 Q How is the proposed expansion of the power  
18 plant related to racial disparities in the Town of  
19 Newburgh?

20 A What the opponents of the plant are saying  
21 is that because it would be running more often, it  
22 would emit more pollutants. And those pollutants  
23 could well seep or drift or settle on nearby  
24 communities. I don't remember if they emphasize air  
25 or water, but that was the concern.

Page 124

1 Q Did those groups say that it would affect  
2 blacks or Latinos more than non-Hispanic whites?

3 A That was their clear implication, yes.

4 Q The report mentions that town supervisor  
5 Gil Piaquadio, supported the plan, as did a number  
6 of Orange County officials.

7 Do you know why they supported it?

8 A The reasons that they specified were jobs.  
9 Jobs, jobs, jobs.

10 Q If there is a wealth gap between people of  
11 color and whites, having more jobs would probably  
12 help members of the protected class --

13 MS. GREENWOOD: Objection; form.

14 BY MS. DiRAGO:

15 Q -- right?

16 A I couldn't say either way based on my  
17 data.

18 Q Do you have data that shows that blacks or  
19 Latinos in the Town of Newburgh opposed the plant  
20 more than, say, whites in the Town of Newburgh?

21 A I do not have data of that kind.

22 Q Is that your thought, though, that that  
23 was the case?

24 A I don't want to make any statement not  
25 based on some specific methodology. So I do not

1 have any thoughts or opinions.

2 Q So blacks, the blacks and Latinos of the  
3 Town of Newburgh kind of really wanted the plant,  
4 right?

5 A I have no data suggesting as to why or why  
6 not other than activism and statements by people who  
7 are black or Hispanic or in the case of  
8 Representative Ocasio-Cortez who has very much made  
9 her identity as Puerto Rican and as a minority a  
10 part of the kind of reason that she does what she  
11 does.

12 So those, those would be the bases  
13 upon which one could talk about who opposed the  
14 plant and why, but I do not have any specific data  
15 based on polling or anything else about how exactly  
16 members of those communities did or did not differ  
17 from other groups of people.

18 Q Do you think those people were talking  
19 about -- strike that.

20 You mentioned AOC, and you mentioned  
21 a chemist and a local organizer. Are you referring  
22 to Newburgh, the Town of Newburgh as being majority  
23 black or majority Latino and that is why the plant  
24 might affect blacks or Latinos more?

25 A I don't -- in the statements they've made

1 about the potential environmental effects of the  
2 plant, they did not get into proportions of  
3 populations that -- these are sort of mostly  
4 political rally and public statement kinds of  
5 things, so they didn't specify.

6 MS. DiRAGO: I'm going to introduce  
7 another exhibit. This will be Defendants'  
8 Exhibit 2.

9 (Exhibit Defendant-2 was marked  
10 for identification.)

11 BY MS. DiRAGO:

12 Q It's loading.

13 THE WITNESS: Anyone else seeing it yet?  
14 I don't seem to have it yet.

15 BY MS. DiRAGO:

16 Q There's a bar graph. And it's very slowly  
17 moving. So -- there, it should be done now.

18 A There it is.

19 Q We'll take a look at this. I believe this  
20 is the article that you cited. It's taking a really  
21 long time to load for me. I don't know about you.

22 A Okay.

23 Q So I've highlighted some portions that I  
24 want to refer you to, I guess. There's a statement  
25 highlighted by Gregory Simpson, co-founder of the

Page 127

1 Hudson Valley Environmental Justice Coalition.

2 Was he the community organizer that  
3 you were referring to earlier?

4 A I believe he was, yes.

5 Q And does he live in the Town of Newburgh?

6 A I do not know.

7 Q Then the woman named Maria Ramirez is  
8 quoted. Do you know who that is?

9 A Yes. I sort of went and looked her up  
10 a bit.

11 Q Is she the chemist? She's not the  
12 chemist, is she?

13 A No. He's the chemist.

14 Q Oh, he's the chemist. Okay.

15 She says: It is strategic to place  
16 it in a working-class, poor neighborhood, especially  
17 a neighborhood that's also predominantly people of  
18 color and has a huge undocumented community.

19 Do you agree that the area that the  
20 Danskammer plant is in is predominantly  
21 working-class, poor neighborhood?

22 A That's a very qualitative statement. So I  
23 can't really agree or disagree. I think part of  
24 the, the issue is that they don't kind of specify in  
25 this or that neighborhood, kind of like you were



Page 128

1 asking before.

2 So it's hard for me -- you know, I  
3 have the things that, you know, the couple of  
4 population centers that I found. I do not know if  
5 those correspond with what these two particular  
6 activists have cited.

7 Q And those population centers, are they  
8 predominantly people of color?

9 A I'd have to go look at the spreadsheet.  
10 I'd say I think those might have been the tracts  
11 that had a larger-than-average proportion, but I'd  
12 have to go and look. Again, like the overall area  
13 is about 40 percent black or Latino. So I just  
14 don't remember in exactly which tracts, which  
15 percentages are.

16 Q Did you look at the number of undocumented  
17 people in those communities?

18 A That's not a statistic that anybody can  
19 reliably report.

20 Q And then if you move on down, Hayley  
21 Carlock, Science Hudson's director of environmental  
22 advocacy and legal affairs, says: What this means  
23 is that air quality in the greater Newburgh area is  
24 going to become worse.

25 Do you see that?

Page 129

1           A       I do.

2           Q       It sounds like she is not differentiating  
3       the air quality between non-Hispanic whites and  
4       blacks and Latinos in the Newburgh area.

5                       Do you agree?

6                       MS. GREENWOOD:  Objection.  Calls for  
7       speculation.

8                       THE WITNESS:  I don't know.

9       BY MS. DiRAGO:

10          Q       And then a little -- go ahead.

11          A       I see.  All right.  So we're talking about  
12       the upper, the "What this means" or the "more than  
13       half of Newburgh's residents"?

14          Q       "What this means"?

15          A       "What this means" is, again, greater  
16       Newburgh is a very geographically generalized  
17       statement.  So I don't want to represent that as  
18       reflecting or not reflecting what I found through  
19       the census.  That's her statement.

20          Q       And as you said, you're not an expert in  
21       pollution; you don't know if it would affect the air  
22       all over Newburgh or in just certain communities; is  
23       that right?

24          A       I'm not specialized in that area at all.

25          Q       Down in the next paragraph, it states:

Page 130

1 According to the U.S. Census Bureau, more than half  
2 of Newburgh's residents identify as Hispanic or  
3 Latinx, nearly a quarter identify as black, and more  
4 than a quarter fall below the poverty line.

5 Does that sound like the Town of  
6 Newburgh?

7 A Well, the trick with this page is that  
8 they say Newburgh without specifying what they mean.  
9 Let's see. More than half of Newburgh's residents  
10 identify as Hispanic or Latinx.

11 That does not sound like the Town of  
12 Newburgh because the total proportion there would be  
13 40 percent. So I would deduce that she's talking  
14 about the City of Newburgh in that statement.

15 Q So this entire article might not even be  
16 about the Town of Newburgh?

17 A Well, again, when they say the greater  
18 Newburgh area, I think that would include the Town  
19 of Newburgh. When they specifically specify the  
20 City of Newburgh, then that's not about the Town of  
21 Newburgh.

22 Q Then it says: In 2016, the City was  
23 forced to abandon its water supply due to an  
24 industrial accident at nearby Stewart Air National  
25 Guard Base.

Page 131

1 I believe, did you add this into your  
2 report as well?

3 A (Indicating.)

4 Q No, you don't talk about that.

5 A I don't recall saying anything about that.

6 Q I'm going to move on to the next -- let me  
7 just ask you. You can, I'm not going to ask you  
8 anything more about this article, so you can do what  
9 you want with that. But did you find any evidence  
10 of disparity in the criminal justice system between  
11 blacks, Latinos, and non-Hispanic whites in the Town  
12 of Newburgh?

13 A I honestly don't recall looking for that.

14 Q So you didn't find anything related to  
15 criminal justice in the Town of Newburgh?

16 A That's correct.

17 Q What about a difference in land use among  
18 whites, Latinos, and blacks in the Town of Newburgh?

19 A There were no statistics in the datasets I  
20 was looking at that spoke to that.

21 Q So you didn't find anything relevant to  
22 that factor?

23 A I did not make any comment relative to  
24 that factor and did not find anything; that's  
25 correct.

Page 132

1           Q       So the next section or the next factor is  
2       the extent to which members of the protected class  
3       are disadvantaged in other areas which may hinder  
4       their ability to participate effectively in the  
5       political process.

6                       You say:    See section G.

7                       Can I assume you did not find any  
8       other areas in which members of the protected  
9       classes are disadvantaged in the Town of Newburgh?

10          A        Again, referring back to my methodology,  
11       what I could find in data that I found reliable, I  
12       put in the previous section.  These sort of what  
13       belongs in this section, what belonged in that  
14       section was a tiny bit opaque.  So I thought just,  
15       to be safe, stick it in one; refer the second to the  
16       first.

17          Q        The next factor, then -- we're on page 39,  
18       for the record -- is the use of overt or subtle  
19       racial appeals in political campaigns.  Here you've  
20       expressed the Latino threat narrative.  Can you  
21       explain what that is?

22          A        Sure.  That is a particular very recurrent  
23       set of tropes and claims and images in public  
24       communications, in culture, in speeches, and whatnot  
25       that describes Latinos as a threat for a number of

Page 133

1 reasons.

2 Among these, the allegation that --  
3 and here I'm referring to page 39 and 40 of my  
4 report -- unwilling or incapable of integrating, of  
5 becoming part of the national community. Rather,  
6 they are part of an invading force from South of the  
7 Border that is bent on reconquering land that was  
8 formerly theirs and destroying the American way of  
9 life.

10 So that's sort of a generalized  
11 statement from the anthropologist Leo Chavez. There  
12 are various more specific examples I could add, I  
13 think the most noticeable of which is identifying  
14 Latinos with dangerous immigrants or migrants,  
15 accusing them of taking benefits that they're not  
16 entitled to, accusing them of absorbing government  
17 resources that, in the view of the speaker, they're  
18 not entitled to.

19 There's an entire rhetoric of they're  
20 not from here, whether or not they're U.S. citizens  
21 I might add. There's a whole rhetoric of they're  
22 not from here, and they're taking our stuff. That  
23 can be expressed in a number of ways, and thus  
24 present a -- they present a threat to us.

25 Q What kinds of evidence -- I guess I'm

Page 134

1 referring now to Dr. Chavez. Do you know what kind  
2 of evidence he used to find that this Latino threat  
3 narrative exists?

4 A Sure. It's an entire book. So, for  
5 example, he'll use the illustrations on magazine  
6 covers which illustrate, you know, the immigration  
7 problem. And there will be a lot of, you know,  
8 brown figures sneaking across the border. There  
9 will be a lot of indications of, you know, poverty  
10 or disorder south of the U.S./Mexico border and then  
11 an implication that things are more orderly and  
12 advanced north of the border.

13 There will be images of people sort  
14 of sneaking in. You know, they'll be parachuting  
15 in; they'll be hiding in trucks, et cetera, so that  
16 you have a visual that implies that the only way  
17 that these kinds of people are coming to the United  
18 States is illegally and not talking about, for  
19 example, the much greater legal coming and going  
20 across the border.

21 Remember that the U.S./Mexico border  
22 is the most active migration corridor in the world.  
23 When you have millions of people crossing north to  
24 south and south to north all the time but you only  
25 represent people doing it illegally, that's a very

1 strong statement identifying people of Latin  
2 American heritage phenotypically or in their last  
3 names with disorder, with crime, with invasion,  
4 et cetera.

5 Another example that he uses is  
6 campaign advertisements that essentially say, you  
7 know, Do you want these people in your neighborhood?  
8 And they'll have a picture of some most likely  
9 Salvadorian gang members who are all tattooed and  
10 whatnot.

11 But as Chavez points out, these are  
12 people in El Salvador. So, again, to very  
13 selectively and deliberately take a picture of  
14 brown, tattooed from El Salvador with no evidence  
15 they've ever been to or in the United States and  
16 then say, Do you want these people as your  
17 neighbors? is colloquially super racist.

18 Q So is it your opinion that opposing  
19 illegal immigration is on its face racist?

20 A That is not my position.

21 Q Is it your opinion that opposing -- strike  
22 that.

23 Is it your opinion that wanting  
24 tougher border control to control legal immigration  
25 is racist in and of itself?



Page 136

1           A       That's not my position.

2           Q       So you have three examples on page 40 --  
3       it starts on page 40 -- of racial appeals in the  
4       Town of Newburgh.

5           A       Correct.

6           Q       You mention Brian Maher, the New York  
7       State Assemblyman for the 101st District; you  
8       mention Stefan Neuhaus, who served as the county  
9       executive of Orange County, which, of course,  
10      Newburgh is in Orange County; and the New York State  
11      Senator Rob Rolison?

12          A       That's correct.

13          Q       You say: All three men are key players in  
14      the May 2023 hoax in which migrants were accused of  
15      displacing veterans in the Town of Newburgh and  
16      which played out in national news coverage.

17          A       That's correct.

18          Q       Did you read about that at the time, like  
19      as it was playing out? Were you aware of that  
20      story?

21          A       Yes.

22          Q       And did you believe it when you first  
23      heard it?

24          A       I reserve judgment on that. Again, coming  
25      back to the whole truth claim, I said, well, that's

Page 137

1 being very widely publicized, let's wait and see if  
2 it's true.

3 Q Then, of course, it turned out not to be  
4 true, correct?

5 A That's correct.

6 Q And it was a woman named Sharon  
7 Toney-Finch who told a lie, I guess, about disabled  
8 veterans who were displaced from a hotel; is that  
9 correct?

10 A I believe it was homeless veterans rather  
11 than disabled ones; but, otherwise, what you've said  
12 is correct.

13 Q I'm sorry. You're right. Sharon  
14 Toney-Finch is who you described as a disabled  
15 veteran; is that right?

16 A That's correct.

17 Q Had you heard of her before you heard of  
18 this story?

19 A No.

20 Q Then in your report you say -- well, you  
21 quote what Assemblyman Maher stated, I guess, in --  
22 was that in a news article there on page 41?

23 A Let me check the footnote. That was in  
24 the New York Post story that first sort of  
25 publicized this allegation.

Page 138

1           Q     And had you heard it from Mr. Maher  
2 before? Did you, had you heard of Mr. Maher before  
3 reading this article?

4           A     I had not.

5           Q     And you state -- I'm sorry.

6                     You're quoting Assemblyman Maher.  
7 And he said: We need to make sure these hotels know  
8 how important it is to respect the service of our  
9 veterans before they kick them out of hotels to make  
10 room. Maher also added, Whether you agree with  
11 asylum seekers being here or not, we can't just  
12 ignore these veterans. They are in our charge that  
13 we are supposed to protect. The New Yorkers and  
14 Americans, we need to put them first.

15                    Is it your conclusion that this is a  
16 racial appeal?

17           A     Yes. Because that is a really clear  
18 Latino threat narrative, right? In the visuals, in  
19 the references, it's really clear that these are  
20 generally people of color, including Latinos. So  
21 when you -- actually, I'm going to amend very  
22 slightly.

23                    I believe that it is possible that  
24 some of the actual migrants -- again, nobody was  
25 being kicked out of a hotel, and we want to be sure

Page 139

1 we come back to that over and over, right? That  
2 when somebody invents a story, leaps on a story,  
3 aggressively publicizes a story that is not true in  
4 a way that generates apprehension, fear, anger,  
5 right, against a particular group of people, we're  
6 in very nasty territory here.

7 Because both in American history and  
8 in the histories of other countries, when a majority  
9 group makes up a very specific kind of a lie about a  
10 minority group, it often becomes license for, at the  
11 very least, anger and discrimination and, at the  
12 very worst, violence.

13 So the reason that I say that this is  
14 a racial appeal is a very carefully crafted lie that  
15 on the one side has very, very deserving people,  
16 right? You want to talk about homeless veterans?  
17 Those are people that we need to provide for, look  
18 out for, a hundred percent, right?

19 And on the other side, it's  
20 immigrants, migrants who are portrayed and  
21 implicitly described as Latino and in some cases  
22 African, but definitely of color. And the story is  
23 these people, them, are unjustly stealing stuff from  
24 these people, us, the deserving ones. That is  
25 super, super, clearly the kind of thing that is in

Page 140

1 the Latino threat narrative category.

2 Q You do know that Ms. Toney-Finch is an  
3 African American woman, right? So clearly not in a  
4 majority group.

5 Or did you not know that?

6 A No, no. I did, in fact, know that. But  
7 anybody can do wrong or be racist, right? It's not  
8 like --

9 Q You mentioned when a majority group makes  
10 up a lie about a minority group. So that's not the  
11 case that we're talking about with this, right?

12 A Again, like, there is, sadly, such a thing  
13 as anti-Latino animus among black people and  
14 anti-black animus among Latino people, right?

15 Q Absolutely.

16 A Since the category of migrant is so  
17 heavily racialized, it may fall into that category.

18 So in terms of the person who made up  
19 the story, yeah, she's, she's black.

20 In terms of the way that story  
21 operates, it doesn't really matter in terms of the  
22 people who are threatened by it, right?

23 So that migrants, especially, or  
24 Latinos, whoever made up the lie, they're threatened  
25 nonetheless. So I think it makes sense to focus on,

Page 141

1     you know, who is being potentially harmed here  
2     rather than, you know, who is doing the making up.

3                 I will say that the fact that these  
4     elected officials very aggressively jumped on this  
5     story and aggressively publicized it, that, I think,  
6     is certainly a, a kind of activity that is going to  
7     potentially cause harm.

8                 It is definitely going to cause, you  
9     know, heartache and very bad feelings among these  
10    people's constituents because, you know, they can  
11    see them not just repeating this story, but, you  
12    know, getting on their phones and saying: I know  
13    the name of a booker at Fox News, and I'm going to  
14    get on that.

15                You know, as I note in the report, 12  
16    different shows on Fox News chose to run with this  
17    story.

18                And whether you're a journalist or  
19    elected official, repeating a lie with great  
20    alacrity and great enthusiasm, especially when  
21    that's a racialized lie, that is a racist thing  
22    to do.

23                Q     Do you have any reason to think that --  
24    and I don't care about the Fox News people.

25                But the three men that you, whose

Page 142

1 names you sort of drag through the mud and call  
2 racist, do you have any reason to think that they  
3 knew it was a lie and repeated it when they knew it  
4 was a lie?

5 MS. GREENWOOD: Objection to form.

6 THE WITNESS: Well, number one, it was a  
7 lie. So you want to stick to that.

8 BY MS. DiRAGO:

9 Q No. I want to know if you think that they  
10 knew it was a lie. Because to me, them knowing a  
11 lie and repeating it would be awful and abhorrent.

12 Not knowing it's a lie and repeating  
13 it, to me, is not abhorrent. To me, it matters. I  
14 think to a jury, it's going to matter.

15 MS. GREENWOOD: Is there a question there,  
16 Counsel?

17 BY MS. DiRAGO:

18 Q Same question: Do you have any reason  
19 whatsoever to believe that these three men knew this  
20 story was a hoax when they repeated it in the news  
21 or in any statement?

22 A I have no way of knowing whether they did  
23 know it was a lie or whether they didn't know it was  
24 a lie. But either way, it is incredibly  
25 irresponsible to -- and, again, sort of looking at

Page 143

1 the record, none of this stuff ever happened. It  
2 would have been very easy to find out by just  
3 literally calling the owner or hotel keeper of that  
4 hotel and asking, right?

5 So hearing something, going right on  
6 the news and repeating it very loudly, using pretty  
7 literally violent language, like it's a slap in the  
8 face, right? That is highly irresponsible, and it  
9 shows a lack of concern for what that story would  
10 mean.

11 But, again, this is very indicative.  
12 They had a choice. They could have, you know, heard  
13 that story and been like, well, you know, let's  
14 check that out before we run onto the national news.

15 Again, this is one little thing that  
16 happened in the Town of Newburgh that a huge number  
17 of people, a huge number of politicians deliberately  
18 made into a national story. And they did that  
19 because they were either trying to propagate a story  
20 that is clear Latino threat narrative racist,  
21 whether they knew or not, right, that is a very  
22 deliberate, very aggressive action that we can sort  
23 of separate out from what was in their hearts.

24 I might add, right, that remember  
25 that these kinds of accusations are often a prelude



Page 144

1 to violence. In this case, that didn't happen, but  
2 remember that beating the rhetorical drum against  
3 immigrants and what they're doing to this country  
4 has, as I mentioned in this report, led to other  
5 people hearing these kinds of stories, absorbing  
6 these kinds of narratives, and then committing  
7 horrible acts of mass violence.

8 So knowing, as these officials surely  
9 did, that these really awful things had been  
10 happening in the past few years, to, nonetheless,  
11 jump onto national television and use, again, slap  
12 in the face is very violent language. The entire  
13 tone as I watched these actual like interviews on TV  
14 was: Let's whip up public anxiety, public anger.  
15 That was really reckless, really irresponsible.

16 And, again, it turned out to be a  
17 lie, which they didn't even try to figure out.  
18 So --

19 Q How do you know they didn't try to figure  
20 it out? Do you know what kind of evidence they  
21 looked at to determine whether it was true?

22 A I mean, literally, the first thing they  
23 could have done would be to call the hotel. And  
24 when somebody did call the hotel, if I remember  
25 correctly, the hotelkeeper said that, no, nothing

Page 145

1     like that had happened.

2                     So I certainly don't know what  
3     methods they did or did not use to get the facts on  
4     the story they were being told. But if they had  
5     taken a little bit of time and effort, they could  
6     have figured it out.

7             Q     Do you think that maybe they were just  
8     pretty angry that homeless veterans, as you say, who  
9     are very, very deserving people, were kicked out of  
10    a hotel; do you think that's what made them angry?

11                    MS. GREENWOOD: Objection; calls for  
12                    speculation.

13    BY MS. DiRAGO:

14             Q     Because what you're saying -- you know,  
15     you talk about slap in the face is violent language.  
16     I think calling people racist without really any  
17     basis is awful. So -- and way worse than saying the  
18     colloquialism slap in the face. So I want to know  
19     if you think possibly they were just incensed  
20     because they thought that homeless veterans were  
21     kicked out on the street.

22                    MS. GREENWOOD: Objection. Calls for  
23                    speculation.

24    BY MS. DiRAGO:

25             Q     That would make me incensed, so is that

Page 146

1 possible? Or do you have any evidence to think that  
2 they're really racist?

3 MS. GREENWOOD: Objection. Calls for  
4 speculation.

5 THE WITNESS: Again, I'm not calling  
6 people racist.

7 BY MS. DiRAGO:

8 Q I think you are. They're knowingly  
9 perpetuating the Latino threat narrative; that's  
10 racist. If someone said that I was doing that, I  
11 would be very --

12 MS. GREENWOOD: Counsel, you think it's so  
13 offensive to call someone racist. Why don't we  
14 just take a moment here and not accuse the  
15 witness of being racist himself. I'm happy for  
16 him to answer questions.

17 MS. DiRAGO: I didn't say he was racist.

18 MS. GREENWOOD: Please go ahead and ask  
19 questions.

20 BY MS. DiRAGO:

21 Q Okay. I don't think you're racist, for  
22 the record.

23 But I do think what you're saying  
24 about these three men is that they're racist.

25 Am I incorrect?

Page 147

1           A       I am saying that this one thing they did,  
2       I think was a racist action. Whether somebody is or  
3       is not racist, that's kind of hard to determine  
4       because it requires, you know, looking into their  
5       soul or something.

6                       So I really, again, want to limit  
7       myself to the evidence of what people do or do not  
8       do. And to hear a story that is very inflammatory  
9       and then run out and go out, again, the national  
10      news and repeat that story in an outraged tone, when  
11      the entire thing is a fabrication, is a very  
12      reckless thing to do.

13           Q       So let's go back to the statement on  
14      page 39 that you quoted from Assemblyman Maher. I  
15      did read it for the record already. It starts with:  
16      "We need to make sure these hotels know," and then  
17      it ends: "We need to put them first."

18                       We were talking about whether that is  
19      racist on its face, that statement -- or whether  
20      that's a racist appeal. I believe you said yes; is  
21      that correct?

22           A       I think that is a racial appeal.

23           Q       I'm sorry. Yes, racial appeal.

24                       What about it makes it a racial  
25      appeal?

Page 148

1           A       Because it repeats a very well-known  
2       category of accusation against a group very much  
3       racialized as Latino in a way that is designed --  
4       and, again, let's remember this entire thing was a  
5       fabrication.

6           Q       I want to put you at the time when he made  
7       those statements. I understand it's a fabrication.  
8       We all know that now. But at the time they were  
9       made.

10          A       I'm sorry. What was the question?

11          Q       In what ways is it a racial appeal?

12          A       It's repealing -- it is repeating a very  
13       well-known anti-Latino trope that classifies Latinos  
14       as invaders, that classifies them as takers of  
15       things that don't belong to them, that classifies  
16       them as stealing resources from deserving Americans.

17                   That is something that has been said  
18       so many times in so many situations. It's like a  
19       classic trope in the same way that, you know, there  
20       are certain racial tropes against black people that  
21       get repeated. And you're like, Oh, yeah, I've heard  
22       this one before. Certain racist tropes against  
23       Asian American people; you're like, I've heard that  
24       one before. Against Native American people.

25                   There are sort of a number of really

Page 149

1 identifiable kinds of stories, which when people  
2 repeat them, you automatically go, ah, this is -- if  
3 somebody says anything about like who controls the  
4 media, you're like, Oh, yeah, I know where this is  
5 going.

6 And this is exactly in that class of  
7 a really well-known racial trope, and they were just  
8 doing it all over again.

9 VIDEO OPERATOR: Counsel, five minutes  
10 before we need to change the media.

11 MS. DiRAGO: Thank you.

12 BY MS. DiRAGO:

13 Q I understand that about the story. So  
14 when I look at the statement -- I mean, I understand  
15 that about the hoax and the story that woman made  
16 up, horrible. When I look at the statement he's not  
17 really making any of those -- he's not repeating any  
18 of those tropes that you've spoke about. He even  
19 says: Whether you agree with asylum seekers being  
20 here or not.

21 So it's like I'm taking this out of  
22 that political realm of whether you care or not.  
23 And it's all aimed at the veterans.

24 So I just don't see in this statement  
25 any of those tropes that you're talking about.

Page 150

1 Am I missing something?

2 A Yeah, I think --

3 Q Again, I mean, the original story, got  
4 you, agree 100 percent.

5 A Yeah, I guess the answer to that, I'd say  
6 you're missing the fact that this is a repetition of  
7 a really well-known formula. There are certain  
8 things, you know, that -- there's really no innocent  
9 way to say: Jews control the media. There's no  
10 innocent way to say, you know: You know those black  
11 people and how they steal things. There's no  
12 innocent way to talk about drunk Indians.

13 It's like any one of those is a  
14 massive red flag precisely because it's such a  
15 well-established story that it sort of plays upon  
16 existing racial tropes.

17 And this is one of those. You may  
18 see it. You may not see it. But that is what  
19 it is.

20 Q And then you speak or you write about  
21 County Executive Neuhaus on page 41. He sued the  
22 owners the Crossroads Hotel and another hotel in  
23 Newburgh and also filed suit against City, excuse  
24 me, against New York City Mayor Eric Abrams [sic].

25 Is that a racial appeal, that he

Page 151

1 filed lawsuits against those people.

2 A I don't think that is a racial appeal, no.

3 Q And then you write that he was on Fox &  
4 Friends. First, I'm sorry. You say that he made --  
5 other officials whose constituents included people  
6 in the Town of Newburgh likewise made conspicuous  
7 public declarations of their outrage about the  
8 alleged displacement of homeless veterans.

9 A Can I quantify that previous statement?  
10 I'm sorry.

11 You asked whether filing suit was a  
12 racial appeal.

13 Q Yeah.

14 A I'd like to amend that to, I'm not sure;  
15 I'd need to think about it.

16 VIDEO OPERATOR: One minute, Counsel.

17 MS. DiRAGO: We've got to go off. Thank  
18 you for the reminder again.

19 VIDEO OPERATOR: Off the record at 3:02.  
20 This will end media number 3.

21 (Brief recess.)

22 VIDEO OPERATOR: The time now is 3:11.  
23 Back on the record. Beginning of media  
24 number 4.

25 MS. DiRAGO: The good news is I think I'm



Page 152

1           pretty close to being done.

2           THE WITNESS:   Okay.

3   BY MS. DiRAGO:

4           Q     Are you aware that Mr. Neuhaus is a  
5   veteran himself?

6           A     I hadn't looked either way, honestly.

7           Q     Is it possible for an elected official to  
8   express outrage that homeless veterans had been  
9   kicked out of a hotel without it being a racial  
10   appeal?

11          A     Well, I think that that's not a faithful  
12   description of what happened.   The key issue is part  
13   who is being claimed as the victim.

14                   And, again, I hope we can revisit the  
15   fact that none of this actually happened.   And we're  
16   giving a lot of the benefit of the doubt here.

17                   The key here is who is being accused  
18   of kicking them out, right?

19                   And I guess when I look back at some  
20   of the, sort of one statement in particular, this  
21   Ecuadorian fellow on page 45 saying:   I understand  
22   that they're upset and think we are invading them,  
23   right?

24                   So this is the situation in which  
25   people understand that false stories are being told

Page 153

1 about them to make others frightened. So if we  
2 think about the totality of the circumstances in  
3 this case, you've got a really large amount, large  
4 number of Latina and Latino constituents of these  
5 political figures who, when they hear them telling  
6 these stories, would immediately recognize that this  
7 was a statement intended to engender fear about them  
8 and kind of a demoralizing effect that's going to  
9 have on people to hear these stories being repeated.  
10 And, again, the whole thing was made up.

11 If we, I think, dwell not so much on,  
12 is there some maybe possibility in the theoretical  
13 world in which this is totally innocent and more on  
14 how did this actual incident affect actual people,  
15 it's a really sad story to have all of these folks  
16 knowing that their State Senator, their county  
17 executives, and others are really super enthusiastic  
18 about repeating lies about them.

19 Q You had me until the last part.

20 Again, I don't see any evidence that  
21 these people knew they were repeating lies. I  
22 understand it turned out to be a lie, and the whole  
23 story is sad. I 100 percent agree with you there.  
24 And the comments that you refer to breaks my heart.

25 But my question --

Page 154

1 MS. GREENWOOD: Counsel, can we just stick  
2 to questions, please.

3 BY MS. DiRAGO:

4 Q My question -- yes, let's stick to  
5 questions and answers.

6 My question is: Could an elected  
7 official express outrage that homeless veterans had  
8 been kicked out of a hotel without it being a racial  
9 appeal?

10 MS. GREENWOOD: Objection; asked and  
11 answered.

12 MS. DiRAGO: It's not been answered. It's  
13 been asked. That's true.

14 BY MS. DiRAGO:

15 Q I'm looking for a yes or no. And then if  
16 you say yes, I will ask you in what ways they can do  
17 that.

18 MS. GREENWOOD: Counsel, he is entitled to  
19 answer how he sees fit. He's an expert. You  
20 have asked him the question. He has answered.

21 He can answer again. I'll let it happen  
22 one more time. But if you don't like the  
23 answers, you can't just keep asking the same  
24 question.

25 THE WITNESS: I guess my last answer will

Page 155

1           be, is that what you asked me is: Is it  
2           possible for an elected official to express  
3           outrage over the displacement of veterans? And  
4           you left it -- without it being racist, right?

5       BY MS. DiRAGO:

6           Q       Right.

7           A       I'm not sure if this was intentional or  
8           not intentional, but that is part of the story,  
9           right?

10                       So whether you meant to do so, you  
11           only described the nonracial part of the story when  
12           the question perhaps should have been: Is it  
13           possible for elected officials to, with great  
14           alacrity, repeat a false story about Latin American  
15           asylum seekers displacing homeless veterans and it  
16           just not be racist?

17                       I would say that as soon as you  
18           repeat a false story with those characteristics,  
19           you're engaged in a racial appeal.

20           Q       Even if you didn't know it was false?

21           A       I think I've addressed that.

22           Q       So that's yes?

23                       MS. GREENWOOD: No, that wasn't his  
24           answer, Counsel.

25                       THE WITNESS: That was not -- yeah.

Page 156

1 BY MS. DiRAGO:

2 Q So we need to have that caveat, because  
3 that was the case here.

4 So with that caveat that they did not  
5 know it was a lie, same answer?

6 A Could I ask you to repeat the entire  
7 question? Because as I've tried to say --

8 Q Yeah. You stated the question and then  
9 answered your own question. So maybe we could --  
10 mine was a lot simpler.

11 I think you, I think you restated the  
12 question to be, summarizing: Could an elected  
13 official express outrage that homeless veterans had  
14 been displaced from a hotel by migrants without it  
15 being a racial appeal?

16 A I think you have to add the term "falsely"  
17 there, right? Like you're --

18 Q I'm asking a specific question. And  
19 whether you want to answer it or not -- I mean, you  
20 can say "I don't know." But I'm asking you that  
21 question, not the question you have in your mind.

22 A Because your question is about a  
23 hypothetical that clearly is not what happened here,  
24 I'm going to decline to answer that question.

25 Q So it clearly did not happen that they

Page 157

1     knew -- you told me that you had no reason to say  
2     they knew it was a lie, those three men that you  
3     disparage in your report. So if you have no reason  
4     to believe that they believed it was a lie, how can  
5     you say it clearly didn't happen here?

6           A     Again, I felt like this question is asked  
7     in a particular way that deliberately includes  
8     particular details and deliberately excludes  
9     particular details that --

10           Q     That's my question.

11           A     I guess I'll say I think we covered this  
12     pretty well and that the way you have asked that  
13     question leads to a particular answer about  
14     something that didn't actually happen. So...

15           Q     It leads to what particular answer?

16           A     I believe that your question is based on  
17     the idea of things we can't know, whether they knew  
18     it was a falsehood or not, and it is based on what  
19     if it were not a lie, effectively.

20           Q     No, no, no, not if it were not a lie.  
21     What if they didn't know it was a lie?

22           A     I guess that is in the sort of realm of  
23     the unknowable. So in a sense, you're asking me to  
24     speculate about what was going on in their heads, to  
25     which I don't have access. Based on what they did

Page 158

1 is sort of what I wrote in that report.

2 Q What I want is your expert opinion on what  
3 is a racial appeal. I'm trying to dig down on your  
4 opinion about what qualifies as a racial appeal  
5 because I think it's very relevant to your opinions  
6 here. So what I'm trying to do is to parse, as an  
7 expert, what is a racial appeal.

8 A question, if someone was  
9 complaining that veterans were kicked out of the  
10 hotel because of the Girl Scout troop that came in  
11 and kicked them out and they were expressing outrage  
12 about that, would that be a racial appeal?

13 A I do not believe that would be, no.

14 Q And so if somebody, if an elected official  
15 expresses outrage that homeless veterans had been  
16 kicked out of a hotel without saying who kicked them  
17 out, would that be a racial appeal?

18 A That would not be a racial appeal, no.

19 Q So if elected officials say they were  
20 kicked out, homeless veterans were kicked out of a  
21 hotel and the reason is because migrants came to the  
22 hotel and the hotel kicked them out, that makes it a  
23 racial appeal?

24 A In the current context in which migrants  
25 have been heavily identified as Latino, then, yes,

Page 159

1 that is a racial appeal.

2 Q And is your answer the same whether the  
3 elected officials knew that that was a hoax or not?

4 A It's much worse if it's a -- first of all,  
5 I guess I would say it is a really racist appeal if  
6 it was a hoax, less so if it was not. And we don't  
7 know whether they knew or not. So I guess I feel  
8 like you're re-asking me a question about what did  
9 they have in their minds --

10 Q I'm asking generally: What is a racial  
11 appeal? Is it just talking about migrants?

12 A In this --

13 Q That's what it seems like. It seems like  
14 the only --

15 (Indecipherable overtalking.)

16 MS. GREENWOOD: Counsel, can you ask your  
17 question again, please.

18 BY MS. DiRAGO:

19 Q It sounds like just the insertion of the  
20 word "migrant" is what changes it for you. That's  
21 what I'm trying to drill down on.

22 A I guess to paraphrase something I said  
23 before, joking about or saying something about  
24 native people controlling the media is not a racial  
25 appeal because there's no, like, long history of



Page 160

1       that, right?

2                       Joking about Jewish people being  
3       drunk is not a racial appeal because it doesn't  
4       depend on a long history of these kinds of things,  
5       right?

6                       Joking about black people liking to  
7       play tic-tac-toe is not a racial appeal because it  
8       is not based on a charge that has been repeated a  
9       whole bunch of times.

10                      What makes this a racial appeal is  
11       the inclusion of migrants, right, racialized as  
12       Latinos, in combination with the allegation, again,  
13       false, that things were being taken from the most,  
14       some of the most respected and vulnerable people in  
15       our community. Again, my uncle is an Air Force  
16       veteran, so I completely respect that.

17                      So there's the combination of pitting  
18       migrants, racialized as Latino, against our most  
19       vulnerable people that make it, yes, a repetition  
20       of: Those people are coming to take things that  
21       don't belong to them and really belong to us. And  
22       that is what makes it a racial appeal.

23               Q       Did you read Dr. Critchlow's report?

24               A       I did.

25               Q       So he cites a statement that Mr. Neuhaus

Page 161

1 said from Fox Business. And the statement is: I  
2 had two -- from Neuhaus: I had two conversations  
3 with the Governor today. Her proposal is to  
4 activate the old military site of Floyd Bennett  
5 Field. I'm a military commander in the reserves. I  
6 was a lieutenant during Hurricane Sandy on that site  
7 where we ran operations. It's a great site to run  
8 refugee operations.

9 Is this statement perpetuating a  
10 Latino threat narrative?

11 A No, I don't believe it is.

12 Q Page 42, you say: For his part, State  
13 Senator Rolison nominated Ms. Toney-Finch for the  
14 State Senate's Women of Distinction Award.

15 Is his nomination of Ms. Toney-Finch  
16 for the State Senate Women of Distinction Award a  
17 racial appeal?

18 A I think that is a non-racialized action in  
19 support of a racial appeal.

20 Q How is nominating a woman for an award in  
21 support of, in support of a racial appeal?

22 A Sure. She went out and completely  
23 fabricated a story that, in its key details, was  
24 intended to play to the racial fears of people,  
25 intended to inspire racial fears of people. He then

Page 162

1 nominated her, right, for this award. You can --

2 Q So you think he nominated her after the  
3 hoax?

4 A I was about to get onto that, right?

5 So, again, all of what you're saying  
6 rests on, I'm sure he didn't know; I'm sure,  
7 et cetera.

8 But, again, if you nominate someone  
9 for an award, that's like a really big statement in  
10 favor of like you know this person; they're really  
11 good, et cetera. That's really putting yourself out  
12 there in certain ways as backing this person up.

13 Apparently he didn't do the most  
14 basic, responsible question-asking to see if it was  
15 true.

16 So to me, the --

17 Q If what was true?

18 A If her entire story was true.

19 Q Are you assuming that he nominated her  
20 after she told her story?

21 A I do not know. What is the, what is the  
22 chronology?

23 Q Wouldn't that matter to you? I mean, if  
24 he nominated her before she even made up the story,  
25 would that be a racial appeal?

Page 163

1           A     No.

2           Q     So wouldn't it be important to figure that  
3 out before saying it is a racial appeal?

4           A     I think you want to have the entire story  
5 correct, yes.

6           Q     So you don't know if it was a racial  
7 appeal because you don't know the chronology of when  
8 he nominated her.

9           A     Again, I'd have to look back at the  
10 statement and see what that looked like.

11          Q     So you agree with me on that. You cannot  
12 make an opinion as you sit here now about whether it  
13 was a racial appeal without knowing the timeline?

14          A     I'd have to look back at that to determine  
15 that, yes.

16          Q     Did Senator Rolison do anything else that  
17 could be considered a racial appeal?

18          A     Is it okay if I have a look at my copy of  
19 the document?

20          Q     Of your report?

21          A     Of my report.

22          Q     Yes. That's fine.

23          A     Yeah, I think I based what I wrote on  
24 Senator Rolison's apology for promoting the false  
25 story and his withdrawal of the previous nomination.

Page 164

1                   So, again, I'd have to check the  
2                   chronology, but that is what I based the -- the  
3                   apology is what I based the wording of that on.

4           Q       Okay. So, yeah. You say: State Senator  
5           Rolison was forced to apologize for promoting the  
6           false story.

7                   What is that statement based on?

8           A       I think I'd have to look back at the  
9           primary story, the primary sources. I think it's  
10          the fallout from displaced veterans hoax article.  
11          But, again, I'd have to look through each part of  
12          that footnote to figure out exactly what the  
13          phrasing I used was based upon precisely.

14          Q       So that is from one of the sources in  
15          footnote 65?

16          A       That's correct.

17          Q       And then Assemblyman Maher also apologized  
18          for propagating the false story, saying: I will  
19          apologize to anyone who felt they were in danger.

20                   Is that, I guess you probably don't  
21          know exactly which source that is from at 65, or do  
22          you?

23          A       I think that's very likely to be  
24          westchester.news12.com, Assembly Member Maher  
25          apologizes for promoting a false claim that a

Page 165

1 Newburgh hotel favored migrants.

2 It is the last item in footnote 65,  
3 which is the link to the story including the words:  
4 Assembly Member Maher apologizes.

5 Again, if I could add --

6 Q Sure.

7 A -- the fact that the Assemblyman says, "I  
8 apologize to anybody who felt they were in danger,"  
9 pretty clearly indicates that he realized he put  
10 people in danger.

11 Q Well, it seems like he realizes that maybe  
12 people felt they were in danger.

13 Let's move on to the next factor.  
14 This is the last one, yes -- no, it's not the last  
15 one, but we're getting close.

16 A significant lack of responsiveness  
17 on the part of elected officials to the  
18 particulars -- to particularized needs of members of  
19 the protected.

20 On page 46.

21 A Yes.

22 Q Is it your opinion that many elected  
23 officials and candidates have been taken to  
24 conspicuously opposing the interests and preferences  
25 of immigrant and Latino communities during campaigns

1 and while in office?

2 A Yes.

3 Q What is your basis for that?

4 A There are many examples of candidates  
5 alleging -- well, let me rephrase.

6 There are many examples of candidates  
7 talking about migrants and the criminality that they  
8 bring with them across the border. That is, from  
9 the top of many tickets down to the local level, an  
10 absolute repeated story over and over and over.

11 So it is a Latino threat narrative in  
12 the sense that it identifies a particular group of  
13 people, again, racialized as Latino, with a  
14 particular set of social conditions, despite the  
15 fact that criminologists studying this subject  
16 matter for many years have found in study after  
17 study using methodology after methodology that  
18 foreign-born people commit fewer crimes, commit  
19 crimes at a lower rate, than American-born people.

20 So in the same way that a false story  
21 about displaced veterans and migrants is a Latino  
22 threat narrative because it accuses racialized  
23 people of doing certain things, which as it turns  
24 out are not true, the accusation that immigrants are  
25 bringing crime to this country is the exact opposite

Page 167

1 of the empirical truth. And that makes it a really,  
2 really Latino threat narrative racial appeal because  
3 they are straight-up making up reality that is the  
4 exact opposite of what we know to be the reality.

5 Q Do you have specific examples of elected  
6 officials in the Town of Newburgh who are not  
7 responsive to the particularized needs of the  
8 members of the protected class?

9 A I believe that what we have been  
10 discussing -- well, I guess two things.

11 One, I think Supervisor Piaquadio,  
12 who -- let me just make sure I have this correct. I  
13 believe he filed suit against the hotel. But let's  
14 be a hundred percent sure that I've got that right.

15 The Town of Newburgh -- okay. I'm on  
16 page 42, the first full paragraph that starts with:  
17 This wave.

18 The second sentence that says: The  
19 Town of Newburgh filed suit against a Crossroads  
20 Hotel on the very same day the New York Post  
21 published its claims about migrants displacing  
22 homeless veterans at the hotel.

23 From the standpoint of, although I'm  
24 not a lawyer, but from the standpoint of due  
25 diligence and haste to file a suit on the basis of



Page 168

1 things that are not true, that seems very hasty and  
2 very suspicious.

3 So I do think that Supervisor  
4 Piaquadio doing that so quickly, and, again, on the  
5 basis of misinformation, could easily be taken as a  
6 sign of tremendous eagerness to propagate particular  
7 kinds of stories, among them a racial threat  
8 narrative, a Latino threat narrative.

9 Q You see that as a lack of responsiveness  
10 to the particularized needs of the Latino  
11 communities in the Town of Newburgh?

12 A Again, anybody -- so in an environment  
13 where that particular story is being propagated, in  
14 an environment where literally the hotelkeeper  
15 received death threats, anybody who could be  
16 identified or imagined, right, as a Latino migrant,  
17 whether because they spoke Spanish, because they  
18 looked a certain way, would suddenly be in a  
19 position of potential great vulnerability and  
20 exposure to danger.

21 Again, one of the things that racial  
22 tropes, that racial appeals often have the effect of  
23 doing is giving people license to commit violence.

24 So I do think that eagerly building  
25 upon a story that falsely accuses migrants,

Page 169

1 identified more or less as Latino, does act against  
2 the interests of those constituents who are, in  
3 fact, Latino.

4 Q In a way that shows a significant lack of  
5 responsiveness to them?

6 A Yes.

7 Q Did you find anything else that  
8 demonstrated a significant lack of responsiveness to  
9 Latinos in the Town of Newburgh?

10 A So are we saying besides this entire  
11 episode?

12 Q Yes. Besides, right, the racial appeals  
13 that you've already -- that we've discussed?

14 A I think that was the basis for my  
15 evidence. I would have to look through -- again,  
16 just to come back to -- let's see.

17 If we're talking about specifically  
18 the Town of Newburgh, then that would be pretty much  
19 it. If we're talking about Orange County, I refer  
20 back, again, to the various lawsuits, including the  
21 one in 2012.

22 Q Did you find any evidence of black racial  
23 appeals in the Town of Newburgh?

24 A I did not see those and, therefore, did  
25 not include them in the report.

Page 170

1 Q Did you find any evidence of a significant  
2 lack of responsiveness on the part of elected  
3 officials to the particularized needs of black  
4 community members in the Town of Newburgh?

5 A That is not in my report, so that is not  
6 something I found.

7 Q Are there any other elected officials that  
8 we have not talked about yet who you saw making  
9 racial appeals affecting the Town of Newburgh?

10 A I do not believe there's anything else in  
11 my report, and so I believe that covers it.

12 Q Let's go to page 46. This is another  
13 factor: Whether the political subdivision has a  
14 compelling policy justification that is  
15 substantiated and supported by evidence for adopting  
16 or maintaining the method of election.

17 A Right. Looking right at it.

18 Q Did you find any statements by town  
19 officials or their attorneys explaining the reason  
20 for their at-large system of town elections?

21 A To the extent that I saw those, it seemed  
22 to be: We already do it this way.

23 Q Beyond what we've already talked about, do  
24 you have examples or evidence where elected  
25 officials show indifference and hostility to

Page 171

1 Hispanic and black constituents?

2 A If it's not in my report, I don't feel the  
3 need to suddenly start talking about it. I'm  
4 sticking to the contents of my report.

5 MS. DiRAGO: I think I'm about done. Can  
6 we just take five minutes. I'll look over my  
7 outline and then come back.

8 THE WITNESS: Sure.

9 MS. GREENWOOD: Off the record. Thanks.

10 VIDEO OPERATOR: Off the record at 3:44.

11 (Brief recess.)

12 VIDEO OPERATOR: Back on the record at  
13 3:48.

14 MS. DiRAGO: I have no further questions  
15 for you. Thank you very much for your time.  
16 There's many times when I wanted to follow up  
17 and ask you questions that were irrelevant to  
18 this case but just sounded interesting.

19 So if I ever see you in New York, I'll buy  
20 you a beer and we can chat about other things,  
21 history of New York and not this case.

22 THE WITNESS: Fantastic.

23 MS. DiRAGO: Thank you.

24 MS. GREENWOOD: No questions from me.

25 Thank you.

Page 172

1 We can go off the record.

2 VIDEO OPERATOR: Counsel, there's no other  
3 questions?

4 MS. DiRAGO: No further questions.

5 VIDEO OPERATOR: One moment, please.

6 The time now is 3:49. This concludes  
7 today's testimony, end of media 4 of 4.

8 COURT REPORTER: Confirming orders. This  
9 was scheduled as a regular delivery, which is  
10 eight to ten days.

11 MR. IMAMURA: We need the final expedited.

12 (Discussion off stenographic record.)

13 MR. IMAMURA: The final Monday, please.

14 (Witness excused.)

15 (Deposition concluded at 3:49 p.m.)  
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Page 173

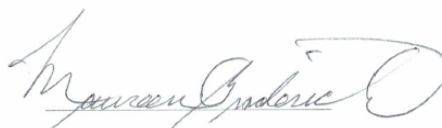
## C E R T I F I C A T E

COMMONWEALTH OF PENNSYLVANIA :

:

COUNTY OF PHILADELPHIA :

I, MAUREEN BRODERICK, Registered Professional Reporter - Notary Public, within and for the Commonwealth of Pennsylvania, do hereby certify that the proceedings, evidence, and objections noted are contained fully and accurately in the notes taken by me of the preceding deposition, and that this copy is a correct transcript of the same.



---

MAUREEN BRODERICK

Registered Professional

Reporter - Notary Public

Page 174

1 ORAL CLARKE, et al vs. TOWN OF NEWBURGH, et al.

2 9/9/2024 - A.K. SANDOVAL-STRAUSZ

3 E R R A T A S H E E T

4 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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6 REASON \_\_\_\_\_

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9 REASON \_\_\_\_\_

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12 REASON \_\_\_\_\_

13 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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15 REASON \_\_\_\_\_

16 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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18 REASON \_\_\_\_\_

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21 REASON \_\_\_\_\_

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23 \_\_\_\_\_

24 A.K. SANDOVAL-STRAUSZ Date

25

Page 175

1 ORAL CLARKE, et al vs. TOWN OF NEWBURGH, et al.

2 9/9/2024 - A.K. SANDOVAL-STRAUSZ

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, A.K. SANDOVAL-STRAUSZ, do hereby declare that

5 I have read the foregoing transcript, I have made

6 any corrections, additions, or changes I deemed

7 necessary as noted on the Errata to be appended

8 hereto, and that the same is a true, correct and

9 complete transcript of the testimony given by me.

10  
11 \_\_\_\_\_  
12 A.K. SANDOVAL-STRAUSZ

\_\_\_\_\_ Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

16  
17  
18 \_\_\_\_\_  
19 NOTARY PUBLIC



[&amp; - 20th]

Page 1

<b>&amp;</b>	<b>16</b> 34:8 35:6	<b>1950</b> 63:16	<b>1993</b> 102:21
<b>&amp;</b> 84:15 151:3	36:4	<b>1950s</b> 21:17	<b>1994</b> 45:10
<b>0</b>	<b>17</b> 36:7 38:24	<b>1951</b> 23:1	<b>1:30</b> 96:3
<b>02138</b> 2:4	72:25	<b>1953</b> 23:1	<b>2</b>
<b>1</b>	<b>176</b> 48:1,6	<b>1960</b> 51:10	<b>2</b> 3:13 60:17
<b>1</b> 3:11 4:12	<b>1790</b> 15:21	<b>1960s</b> 62:13	92:7 95:25
14:14 60:14	<b>1790s</b> 14:5	64:16	126:8,9
<b>10</b> 60:10	<b>1796</b> 25:8	<b>1961</b> 51:10	<b>20</b> 42:3 48:19
<b>100</b> 115:3	<b>18</b> 40:19	53:12	93:10 175:15
150:4 153:23	109:25	<b>1964</b> 91:20	<b>2000</b> 28:25
<b>101st</b> 136:7	<b>1821</b> 34:25	<b>1965</b> 7:4 19:11	<b>2001</b> 35:7
<b>103</b> 114:16	<b>1827</b> 33:18	26:11 36:14,15	<b>2007</b> 13:24
<b>104</b> 114:16	<b>1865</b> 88:13	36:18 112:3,11	<b>2012</b> 37:11
<b>10601</b> 2:9	<b>1870</b> 26:14	<b>1968</b> 32:23	42:4 82:12
<b>10:10</b> 4:3	43:5	34:15 68:14,21	108:18 111:6
<b>11</b> 8:2	<b>1875</b> 36:13	<b>1970</b> 46:9	169:21
<b>11:36</b> 60:13	<b>1877</b> 88:7	<b>1970s</b> 27:7,14	<b>2013</b> 42:2,4,7
<b>11:48</b> 60:17	<b>18th</b> 25:7	27:19,25	<b>2014</b> 101:10
<b>12</b> 82:21	<b>19</b> 26:6,7,8	<b>1972</b> 102:21	<b>2016</b> 130:22
141:15	29:17 42:23,24	<b>1975</b> 19:10	<b>2018</b> 106:4,7
<b>126</b> 3:13	45:16 47:12	36:24 102:16	108:12,13
<b>12:42</b> 95:24	91:1	103:8 104:9	109:9 111:1
<b>13</b> 31:15 33:25	<b>1917</b> 104:2	105:3	<b>202.560.0590</b>
34:7	<b>1920</b> 26:13	<b>1977</b> 65:3,6	2:5
<b>14</b> 3:11	43:6	<b>1980</b> 27:3,9	<b>2021</b> 121:5
<b>14562</b> 173:20	<b>1921</b> 18:25	45:9 67:25	<b>2022</b> 97:6
<b>14th</b> 88:14 89:4	20:12 104:9	68:1 78:24	106:5 108:12
101:12	<b>1930s</b> 26:25	<b>1980s</b> 27:2	108:14 109:9
<b>15</b> 91:24 93:10	91:9	28:16	111:1
<b>15.4</b> 65:18	<b>1933</b> 21:16	<b>1981</b> 102:21	<b>2023</b> 136:14
<b>1585</b> 2:4	22:24	<b>1985</b> 22:11,12	<b>2024</b> 1:14 3:11
<b>15th</b> 88:5,15	<b>1935</b> 22:25	<b>1990s</b> 28:21	4:3
89:3,6	<b>1940s</b> 64:17	<b>1992</b> 69:4 72:2	<b>20s</b> 29:17
	<b>1948</b> 32:25	75:22	<b>20th</b> 14:6 88:8

[21 - able]

Page 2

<b>21</b> 53:6 61:18 62:4 <b>22</b> 61:20 65:16 <b>227</b> 2:15 <b>23</b> 65:23 69:2 <b>24</b> 76:22 <b>25</b> 6:8 81:9 95:8 109:25 <b>25.2</b> 65:19 <b>26</b> 84:12 87:18 <b>27</b> 90:18 <b>28</b> 94:13 <b>29</b> 96:6 97:2	<b>36</b> 119:22 <b>37</b> 120:23,23 <b>38.0</b> 106:4 <b>39</b> 132:17 133:3 147:14 <b>3900</b> 2:15 <b>3:02</b> 151:19 <b>3:11</b> 151:22 <b>3:44</b> 171:10 <b>3:48</b> 171:13 <b>3:49</b> 172:6,15	<b>50,839</b> 116:22 <b>50s</b> 23:1 55:4 60:6 <b>51</b> 101:10 105:10,18 <b>51,000</b> 119:6 <b>52</b> 76:16 <b>523</b> 35:12,15,19 <b>59</b> 91:21	<b>8</b>
<b>3</b>	<b>4</b>	<b>6</b>	<b>8</b> 18:6 <b>80</b> 103:18 <b>80s</b> 59:25 65:11 68:4 72:25 <b>81</b> 2:8 <b>82.4</b> 97:19 <b>85</b> 91:23
<b>3</b>	<b>4</b>	<b>6</b>	<b>9</b>
<b>3</b> 17:25 18:1,2 45:3 92:7 96:3 151:20 <b>3,000</b> 69:12 <b>3.1</b> 65:20 <b>30</b> 97:17 <b>300</b> 13:1 <b>3000</b> 69:16 <b>31</b> 65:15 101:6 <b>32</b> 84:17 108:16 <b>32,000</b> 65:15 <b>33</b> 23:3 114:3 <b>33,870</b> 116:25 <b>34</b> 116:15 119:8 <b>35</b> 22:24 23:3 117:19 118:11 119:8 <b>35,022</b> 117:2	<b>4</b> 151:24 172:7 172:7 <b>4'11</b> 65:1,2 <b>4,000</b> 26:14 <b>40</b> 128:13 130:13 133:3 136:2,3 <b>40.9</b> 106:4,6 <b>400</b> 2:8 <b>40s</b> 65:8 <b>41</b> 137:22 150:21 <b>42</b> 161:12 167:16 <b>45</b> 44:5 152:21 <b>46</b> 165:20 170:12 <b>48</b> 107:13	<b>6</b> 3:5 <b>6.5</b> 97:18 <b>60</b> 86:1 <b>60/40</b> 92:4,9 <b>60606</b> 2:16 <b>608.999.1240</b> 2:16 <b>60s</b> 55:4 65:11 65:12,13 <b>61.6</b> 65:17 <b>65</b> 164:15,21 165:2	<b>9</b> 1:14 4:3 31:14 <b>9/9/2024</b> 174:2 175:2 <b>90s</b> 68:4 <b>919.607.7010</b> 2:9 <b>98</b> 60:23
		<b>7</b>	<b>a</b>
	<b>5</b>	<b>7</b> 18:5 <b>7.3</b> 97:18 <b>70s</b> 26:21 65:11 <b>75</b> 46:2 47:2,18 <b>779</b> 35:10 <b>78</b> 65:6 <b>79</b> 101:14 105:12,17	<b>a.k.</b> 1:12 4:13 174:2,24 175:2 175:4,12 <b>a.m.</b> 1:15 4:3 <b>abandon</b> 130:23 <b>abhorrent</b> 142:11,13 <b>abilities</b> 11:4 <b>ability</b> 45:21 132:4 <b>able</b> 13:5,11 14:17 66:20 105:4 113:3 115:4,12
	<b>5</b>		
	<b>5</b> 112:2 <b>50</b> 44:5 86:1		

## [abortion - affecting]

Page 3

<b>abortion</b> 93:1,2	<b>accusation</b> 148:2 166:24	<b>acts</b> 42:19	<b>addressed</b> 155:21
<b>abrams</b> 2:7	<b>accusations</b> 143:25	144:7	<b>adequate</b> 82:14
150:24	<b>accuse</b> 146:14	<b>actual</b> 23:22	82:14
<b>abramslaw.c...</b>	<b>accused</b> 37:3	24:15 50:21	<b>adherence</b>
2:10,10	42:10 136:14	70:8 80:4	72:22
<b>absence</b> 70:12	152:17	83:21 117:17	<b>adjacent</b> 61:16
<b>absolute</b> 63:24	<b>accuses</b> 166:22	119:5 138:24	<b>administer</b>
110:4,18	168:25	144:13 153:14	4:24
166:10	<b>accusing</b>	153:14	<b>administration</b>
<b>absolutely</b>	133:15,16	<b>actually</b> 23:6	21:15
25:24 55:9	<b>acknowledge...</b>	23:12 25:9	<b>adopted</b> 23:20
60:24 95:19	175:3	31:14 44:19	46:23
104:10 140:15	<b>act</b> 7:16 19:10	45:22 49:14	<b>adopting</b>
<b>absorbing</b>	36:14,15,18,25	50:2 56:18	170:15
133:16 144:5	41:25 68:14	61:20 74:22	<b>advanced</b>
<b>academic</b> 17:10	102:17 103:9	78:16 82:8	134:12
84:16 99:2,2	112:3,11 169:1	86:6 90:21,22	<b>advent</b> 49:23
<b>academy</b> 78:4	<b>act's</b> 35:9	95:11 110:13	<b>adverse</b> 82:24
<b>access</b> 15:18	<b>action</b> 4:25	110:15,17	<b>advertisements</b>
120:4 157:25	37:1 56:7	111:12 118:6	135:6
<b>accident</b>	143:22 147:2	119:11 138:21	<b>advocacy</b>
130:24	161:18	152:15 157:14	128:22
<b>accommodates</b>	<b>actions</b> 38:6	<b>add</b> 46:4 131:1	<b>affairs</b> 128:22
84:5	49:18 56:13	133:12,21	<b>affect</b> 25:1 34:3
<b>accommodati...</b>	<b>activate</b> 74:14	143:24 156:16	102:14 104:6,8
102:23	161:4	165:5	124:1 125:24
<b>account</b> 11:7	<b>active</b> 104:3	<b>added</b> 138:10	129:21 153:14
105:13	134:22	<b>addition</b> 83:21	<b>affected</b> 31:19
<b>accounts</b> 20:7	<b>activism</b> 125:6	102:17 103:9	31:22,23 34:16
77:8	<b>activists</b> 128:6	<b>additional</b>	34:17 104:10
<b>accurate</b> 18:14	<b>activity</b> 64:1	18:10 40:22	105:1 122:18
115:13	141:6	41:3 96:24	122:20 123:4
<b>accurately</b>		<b>additions</b> 175:6	<b>affecting</b> 23:4
173:13		<b>address</b> 45:4	85:7 170:9
		82:5 117:15,16	

[affects - anytime]

Page 4

<b>affects</b> 35:4	<b>ahead</b> 8:25	<b>america</b> 54:5	<b>annual</b> 116:21
<b>affiliation</b> 5:3	31:11 129:10	64:16 67:8	<b>answer</b> 11:19
94:4	146:18	<b>american</b> 13:23	27:21 40:18
<b>affordability</b>	<b>aimed</b> 149:23	36:21,21 55:22	41:18 77:21
46:10 64:12	<b>air</b> 3:13 123:24	65:19 67:17	99:7 101:18
<b>african</b> 8:16	128:23 129:3	68:15 115:9	107:24,25
51:14 61:23	129:21 130:24	133:8 135:2	108:6 109:24
62:18 63:2	160:15	139:7 140:3	123:16 146:16
65:19 90:17	<b>al</b> 4:15,16	148:23,24	150:5 154:19
91:16,18 92:12	174:1,1 175:1	155:14 166:19	154:21,25
139:22 140:3	175:1	<b>americans</b> 8:16	155:24 156:5
<b>afterward</b>	<b>alabama</b> 32:7,7	51:14 61:23	156:19,24
33:13 102:18	<b>alacrity</b> 141:20	62:18 63:3	157:13,15
<b>age</b> 33:11,14	155:14	67:21 79:10,13	159:2
66:5 72:23	<b>alerted</b> 75:25	90:17 91:17,18	<b>answered</b>
105:15	<b>alexandria</b>	92:12 103:25	154:11,12,20
<b>agent</b> 67:6	122:4	104:2 111:20	156:9
<b>agents</b> 46:13	<b>allegation</b>	138:14 148:16	<b>answers</b> 19:6
<b>aggressive</b>	36:10 133:2	<b>amount</b> 45:8	154:5,23
143:22	137:25 160:12	105:19 116:20	<b>anthropologist</b>
<b>aggressively</b>	<b>allegations</b>	153:3	133:11
139:3 141:4,5	37:10	<b>amy</b> 85:17,18	<b>anti</b> 140:13,14
<b>ago</b> 6:21 82:22	<b>alleged</b> 37:2	86:7	148:13
83:20	151:8	<b>analysis</b> 6:16	<b>antiseptic</b>
<b>agree</b> 4:10	<b>allegedly</b> 89:18	8:2,6	39:18
117:23 127:19	<b>alleging</b> 166:5	<b>andrew</b> 3:4,11	<b>anxiety</b> 144:14
127:23 129:5	<b>allowed</b> 112:11	5:18	<b>anybody</b> 6:18
138:10 149:19	<b>allows</b> 15:23	<b>angeles</b> 13:5	56:9 63:5
150:4 153:23	16:4 112:19	<b>anger</b> 139:4,11	89:17 128:18
163:11	<b>amanda</b> 56:14	144:14	140:7 165:8
<b>agreed</b> 39:20	<b>amend</b> 63:4	<b>anglo</b> 68:7	168:12,15
<b>agreement</b> 39:7	138:21 151:14	<b>angry</b> 52:19	<b>anymore</b> 13:7
<b>ah</b> 149:2	<b>amendment</b>	145:8,10	<b>anytime</b> 60:24
<b>aha</b> 29:5	13:4 88:5,14	<b>animus</b> 140:13	75:11 104:21
	88:15 89:3,4,6	140:14	

[aoc - attempted]

Page 5

<b>aoc</b> 125:20 <b>apologize</b> 58:10 164:5,19 165:8 <b>apologized</b> 164:17 <b>apologizes</b> 164:25 165:4 <b>apology</b> 163:24 164:3 <b>apparently</b> 162:13 <b>appeal</b> 83:14 138:16 139:14 147:20,22,23 147:25 148:11 150:25 151:2 151:12 152:10 154:9 155:19 156:15 158:3,4 158:7,12,17,18 158:23 159:1,5 159:11,25 160:3,7,10,22 161:17,19,21 162:25 163:3,7 163:13,17 167:2 <b>appeals</b> 132:19 136:3 168:22 169:12,23 170:9 <b>appearance</b> 5:3 <b>appearances</b> 2:1	<b>appended</b> 175:7 <b>applicability</b> 36:19 <b>applicants</b> 23:13 <b>apply</b> 33:7 <b>appointed</b> 51:25 55:6 80:23 <b>apportionment</b> 40:13 <b>appreciate</b> 101:24 <b>apprehension</b> 139:4 <b>approximately</b> 1:14 4:2 <b>architectural</b> 14:3 <b>archival</b> 58:25 59:2 <b>area</b> 23:24 28:7 31:24 34:15,22 43:17,18,19,22 44:12 45:9,11 45:11 51:1 56:3 63:15,22 63:23,23 69:19 71:24 72:2 78:3 99:2 114:16 115:23 120:24 127:19 128:12,23 129:4,24	130:18 <b>areas</b> 11:5 12:3 12:5 21:10 43:11 58:1 64:21 73:1 114:5 132:3,8 <b>argued</b> 99:19 <b>arizona</b> 36:22 <b>arrival</b> 56:16 <b>arrive</b> 103:24 <b>arrived</b> 87:7 <b>article</b> 3:13 17:10 19:13 84:14 99:15 126:20 130:15 131:8 137:22 138:3 164:10 <b>articles</b> 17:8 22:10,12 29:18 71:4,18 99:12 <b>articulation</b> 119:10 <b>asian</b> 65:20 67:17,20 79:10 79:13 111:20 115:9 148:23 <b>asked</b> 12:12 62:21 109:1 120:7 151:11 154:10,13,20 155:1 157:6,12 <b>asking</b> 10:18 11:17 24:20 52:15,15 57:4 98:16 106:8	128:1 143:4 154:23 156:18 156:20 157:23 159:8,10 162:14 <b>asks</b> 75:22 <b>aspect</b> 96:9 <b>aspects</b> 9:1,1 20:19,20 <b>assembly</b> 164:24 165:4 <b>assemblyman</b> 136:7 137:21 138:6 147:14 164:17 165:7 <b>assigned</b> 79:3 98:10 <b>assist</b> 6:18 <b>assistance</b> 6:12 <b>assume</b> 14:10 54:6 97:7,12 97:24 132:7 <b>assuming</b> 162:19 <b>assumption</b> 84:9,10 98:21 <b>assumptions</b> 6:3 100:10 <b>asylum</b> 138:11 149:19 155:15 <b>athlete</b> 78:3 <b>attempt</b> 74:11 <b>attempted</b> 88:19 102:21
---	--	--	---

[attended - believe]

Page 6

<b>attended</b> 69:7 69:16 70:20 <b>attention</b> 17:24 29:7 <b>attitudes</b> 98:7 <b>attorney</b> 5:4 <b>attorneys</b> 170:19 <b>attributed</b> 85:18 <b>audio</b> 4:9 <b>aughts</b> 29:17 <b>author</b> 84:14 <b>authorized</b> 4:24 <b>authors</b> 86:11 <b>automatically</b> 87:23 149:2 <b>avenue</b> 2:4 <b>average</b> 16:1 100:5,7,8 105:15,16 116:20,24 128:11 <b>avoid</b> 46:10 56:4 61:22 62:6,16,17 63:2 64:12,18 64:18 <b>avoided</b> 50:11 <b>award</b> 22:11,12 78:4 161:14,16 161:20 162:1,9 <b>aware</b> 60:19 73:10 136:19	152:4 <b>awareness</b> 51:14 <b>awful</b> 51:21 142:11 144:9 145:17	<b>ballots</b> 82:2 <b>baltimore</b> 32:11 <b>bar</b> 83:24 109:8 126:16 <b>barry</b> 53:6 <b>base</b> 130:25 <b>based</b> 8:2 32:10 37:1 40:15 45:25 48:11 86:1 91:17 95:9 98:5 117:17 118:8 124:16,25 125:15 157:16 157:18,25 160:8 163:23 164:2,3,7,13 <b>bases</b> 125:12 <b>basic</b> 162:14 <b>basically</b> 8:11 17:9 18:18 39:5 43:10 45:13 60:22 66:3 67:15 71:3 122:14 <b>basing</b> 90:19 <b>basis</b> 20:21 37:1 42:14 74:3 88:3 92:21 98:12,24 122:25 145:17 166:3 167:25 168:5 169:14	<b>battle</b> 57:6 76:11,19 <b>bear</b> 18:22 <b>bearing</b> 66:5 <b>beating</b> 144:2 <b>beautiful</b> 16:6 <b>becoming</b> 26:10 133:5 <b>beer</b> 171:20 <b>began</b> 7:8 26:23 27:11 57:18 63:12 64:17 80:21 <b>beginning</b> 1:14 5:4 27:7 60:17 61:25 62:13 96:3 151:23 <b>begins</b> 90:10 <b>beholden</b> 98:19 <b>believe</b> 7:4 15:6 25:4 27:10,20 28:11 29:13 37:6 42:3 44:23 60:8 68:5 70:7 71:17 77:20 80:3,14 81:14 82:4,16 95:14 98:1,14 99:17 100:1,10 102:9 103:22 106:20 108:15 113:8 115:20 120:8 122:15,22 126:19 127:4
---	--	--	--

[believe - bring]

Page 7

131:1 136:22	72:1 75:21	97:18 100:7,20	<b>border</b> 114:22
137:10 138:23	78:6 80:12	101:1 103:2	133:7 134:8,10
142:19 147:20	92:6 116:5	106:23 107:16	134:12,20,21
157:4,16	119:4 162:9	111:19 112:1	135:24 166:8
158:13 161:11	<b>biggest</b> 103:16	112:25 115:8	<b>borders</b> 112:21
167:9,13	<b>bill</b> 84:15	116:1 117:8	114:21,22
170:10,11	<b>biography</b>	121:23 123:6	<b>born</b> 33:10,12
<b>believed</b> 41:1	77:12	125:7,23	44:21 103:25
57:13 157:4	<b>bit</b> 9:8 15:17	128:13 130:3	166:18,19
<b>believes</b> 70:6	21:23 25:11	140:13,14,19	<b>bottom</b> 15:6
<b>belong</b> 148:15	45:14 61:8	148:20 150:10	38:24 47:12
160:21,21	91:1 92:5,18	160:6 169:22	61:18 65:16
<b>belonged</b>	103:13 110:6	170:3 171:1	69:2 86:24
132:13	122:15 127:10	<b>blacks</b> 23:25	90:18 106:18
<b>belongs</b> 53:14	132:14 145:5	79:15,25 81:23	119:22
132:13	<b>black</b> 23:4,14	116:20,24	<b>brazen</b> 89:1
<b>benchmark</b>	24:5,8,16 35:3	118:3,25 120:5	<b>break</b> 26:24
92:9	46:22 49:3,18	124:2,18 125:2	27:1 59:9 60:9
<b>benefit</b> 94:18	49:20,24 50:4	125:2,24 129:4	67:25 95:18
152:16	50:8,12 51:21	131:11,18	99:7
<b>benefits</b> 52:9	52:12,24 55:8	<b>blending</b> 18:5	<b>breakdown</b>
52:13,14,17	55:14,14,16,17	<b>block</b> 56:14,15	92:18
133:15	55:18,22,24	<b>blocks</b> 120:8	<b>breaks</b> 105:6
<b>bennett</b> 161:4	56:4,11,16	<b>board</b> 1:6	153:24
<b>bent</b> 133:7	57:23 58:17	<b>body</b> 80:10	<b>brewster</b> 45:6
<b>best</b> 11:19 20:7	61:10,21 62:6	<b>book</b> 13:15,22	<b>brian</b> 136:6
42:4 60:22	62:16 65:18	14:1 19:4,5	<b>bridge</b> 44:1,18
78:4	67:16,20 68:2	22:11,13 29:18	45:14
<b>better</b> 25:14	68:12 77:3,14	47:25 48:6	<b>bridges</b> 85:17
<b>beyond</b> 94:12	77:17,25 78:10	56:14 85:22	85:18 86:7,11
170:23	78:25 79:5	86:7 134:4	<b>brief</b> 60:15
<b>bias</b> 74:15	80:8 87:21	<b>booker</b> 141:13	151:21 171:11
<b>biased</b> 99:20	88:5,9,10,22	<b>books</b> 13:7 17:1	<b>bring</b> 11:18
<b>big</b> 13:7,16	89:2,5,14	27:5 86:1,3	38:3,6 73:17
23:15 32:23	90:14 92:24		166:8

[bringing - cause]

Page 8

<b>bringing</b> 166:25 <b>brings</b> 88:24 <b>broad</b> 12:4 <b>broadened</b> 36:19 <b>broadly</b> 29:15 92:19 <b>broderick</b> 1:15 4:23 173:9,21 <b>broken</b> 111:22 113:9 <b>bronx</b> 44:21,22 91:10 <b>brookings</b> 107:5,9,12 112:7 <b>brought</b> 13:13 37:22 <b>brown</b> 134:8 135:14 <b>build</b> 100:15 <b>building</b> 168:24 <b>bunch</b> 45:8 46:14 49:21 73:21 94:4,23 94:24 120:15 160:9 <b>bureau</b> 97:7 130:1 <b>business</b> 23:18 161:1 <b>busted</b> 39:20	<b>buy</b> 67:3 68:24 171:19 <b>buyers</b> 67:11 <b>c</b> <b>c</b> 59:22 96:23 173:2,2 <b>calculated</b> 35:9 111:11 <b>call</b> 42:25 44:2 56:17 72:20 80:10 84:18 118:18 142:1 144:23,24 146:13 <b>called</b> 7:12 13:23 15:18 19:4 22:23 29:6 44:13 115:20 <b>calling</b> 52:19 143:3 145:16 146:5 <b>calls</b> 75:15 100:18 129:6 145:11,22 146:3 <b>cambridge</b> 2:4 <b>camera</b> 4:6 <b>campaign</b> 96:10 98:4 99:20,24 135:6 <b>campaigns</b> 97:4 98:17 101:2 132:19 165:25	<b>candidacy</b> 96:10 <b>candidate</b> 85:24 96:16 100:18 <b>candidates</b> 98:16,18 100:24 165:23 166:4,6 <b>cap</b> 108:24 <b>capita</b> 116:22 117:7,18 <b>care</b> 66:9,22 141:24 149:22 <b>careful</b> 108:22 <b>carefully</b> 16:10 19:16 112:20 139:14 <b>carlock</b> 128:21 <b>carmel</b> 45:4 <b>carnes</b> 59:21 62:23 <b>carolina</b> 51:19 63:21 <b>carved</b> 25:11 <b>case</b> 4:18 7:12 7:14,15,22,25 8:2,9,10,15,16 9:21 12:6,9,14 12:20,23 13:3 13:4 14:7,9 15:3 18:22 19:15,15 21:1 21:6 27:23 28:5 31:2 32:4	32:25 36:10 37:4,16,23 38:5,11,25 39:3,12 40:24 41:12,15,23,24 42:4 52:16 57:25 58:9 73:9 77:16 79:13 83:2 90:13 93:13 95:6 110:4 112:5 124:23 125:7 140:11 144:1 153:3 156:3 171:18 171:21 <b>cases</b> 8:13,14 24:18 29:18,23 38:3,3,6 51:19 63:11 80:4,16 85:7 86:22 87:11,12 102:17 103:1 139:21 <b>categories</b> 88:1 <b>categorized</b> 65:17 <b>category</b> 87:23 87:24 111:12 119:1 140:1,16 140:17 148:2 <b>catholics</b> 29:24 86:23 <b>cause</b> 100:22 141:7,8
--	--	--	--



[causes - city]

Page 9

<b>causes</b> 37:1	141:6 145:2	<b>chavez</b> 133:11	<b>citations</b> 99:14
<b>causing</b> 99:23	<b>certify</b> 173:12	134:1 135:11	<b>cite</b> 21:1 29:18
<b>caveat</b> 156:2,4	<b>cetera</b> 11:9	<b>check</b> 19:23	42:12 46:1
<b>census</b> 15:20,22	16:3 26:25	21:6,8 47:24	50:6 101:9
16:5,19,24	32:11 46:11	48:2 137:23	107:14 109:7
26:22 27:3	50:9 51:10	143:14 164:1	110:19,25
67:24,25 68:1	56:21 66:8	<b>checked</b> 16:11	111:7 120:10
114:14,23	68:4 82:3	<b>chemist</b> 122:1	<b>cited</b> 16:16
115:17,20,21	86:23 87:16	125:21 127:11	85:16 102:16
115:24 120:7,8	100:18 118:20	127:12,13,14	107:2 121:19
123:14 129:19	134:15 135:4	<b>chester</b> 43:10	122:5 126:20
130:1	162:7,11	45:13 46:7,17	128:6
<b>censuses</b> 16:20	<b>challenges</b> 7:3	<b>chicago</b> 2:16	<b>cites</b> 160:25
<b>center</b> 34:22	<b>champion</b>	32:11 44:16	<b>cities</b> 49:21
101:10 102:4	91:11	63:22	55:11
<b>centers</b> 128:4,7	<b>chance</b> 103:4	<b>child</b> 66:5	<b>citing</b> 16:12
<b>century</b> 14:6	<b>change</b> 7:4 22:4	<b>children</b> 33:11	107:6 108:18
25:7 28:7 88:8	23:15,16 32:24	66:6,6	119:7
103:18 110:6	59:7 92:8,18	<b>choice</b> 143:12	<b>citizens</b> 19:4
<b>certain</b> 33:11	149:10 174:4,7	<b>choose</b> 66:15	53:7 101:1
33:14 50:12	174:10,13,16	115:12	133:20
52:9 77:11	174:19	<b>choosing</b> 66:5	<b>citizenship</b>
82:24 86:21	<b>changed</b> 21:22	<b>chose</b> 117:18	105:20
95:7 106:25	22:6 24:23	141:16	<b>city</b> 13:2,5
112:11 113:4	61:3	<b>christopher</b>	25:10 26:10,11
117:25 118:17	<b>changes</b> 94:24	59:21 62:23	34:14,20 39:1
120:6,7 129:22	159:20 175:6	<b>chronology</b>	39:3 43:19,22
148:20,22	<b>changing</b> 39:15	162:22 163:7	43:24 44:9,25
150:7 162:12	39:22	164:2	45:1 46:10,20
166:23 168:18	<b>characteristics</b>	<b>church</b> 66:8	46:25 47:15
<b>certainly</b> 9:14	155:18	<b>circumstances</b>	48:4,15,22,23
27:6 31:23	<b>charge</b> 138:12	45:21 74:1	49:3,5,7,12,20
33:2 71:11	160:8	75:23 153:2	50:10,18,23,24
73:10 77:15	<b>chat</b> 171:20	<b>circumstantial</b>	51:6,18,24
80:25 114:11		63:12 64:6	53:4,16 54:14

[city - communities]

Page 10

54:14,18 55:2 55:11,11,25 56:2 57:16,20 58:4,19 60:2,4 61:15 62:15 63:1,6,15 64:11,23 65:2 65:9 69:11,15 70:11 71:20 73:12,15 75:8 75:10,25 76:6 80:9,18,20 85:12 130:14 130:20,22 150:23,24 <b>city's</b> 48:20 61:21 62:6,16 <b>civil</b> 32:3,6 38:1 49:23 53:11 57:13 63:10,19 64:1 88:16 <b>claim</b> 19:24 20:6 74:6 75:2 77:18 136:25 164:25 <b>claimed</b> 13:17 152:13 <b>claiming</b> 73:21 <b>claims</b> 19:21 73:19 75:19 132:23 167:21 <b>clarification</b> 44:11 89:21 107:8	<b>clarke</b> 1:2 4:15 174:1 175:1 <b>class</b> 9:19,22 76:23 97:4 101:7 114:4 124:12 127:16 127:21 132:2 149:6 167:8 <b>classes</b> 120:21 132:9 <b>classic</b> 49:11 86:8 148:19 <b>classified</b> 16:2 <b>classifies</b> 148:13,14,15 <b>clause</b> 89:20,23 90:1 <b>clauses</b> 87:19 88:4 89:10,17 <b>clear</b> 46:18 54:12 63:20 111:20 113:24 124:3 138:17 138:19 143:20 <b>clearly</b> 103:10 139:25 140:3 156:23,25 157:5 165:9 <b>click</b> 14:21 16:5 77:9 <b>clinic</b> 2:2 <b>close</b> 95:17 122:9 152:1 165:15	<b>closely</b> 108:22 <b>clumsy</b> 104:23 <b>coalition</b> 121:13 122:2 127:1 <b>coast</b> 95:21 <b>codified</b> 36:24 <b>cognizant</b> 20:23 <b>coincidental</b> 67:12 <b>collar</b> 118:18 <b>colleague</b> 21:20 <b>college</b> 73:2 <b>colleges</b> 109:23 <b>collins</b> 93:22 <b>colloquialism</b> 145:18 <b>colloquially</b> 118:17 135:17 <b>color</b> 27:7 28:6 28:13 29:11 30:3,6 46:7 68:10,24 121:1 122:16,20 123:3 124:11 127:18 128:8 138:20 139:22 <b>colored</b> 73:8 <b>columbia</b> 22:10 <b>combination</b> 67:16 160:12 160:17 <b>come</b> 39:7 50:14 60:10	68:18 86:16 139:1 169:16 171:7 <b>comes</b> 14:19 16:15 21:12 68:17 72:4 103:21 <b>coming</b> 24:15 26:21 72:21 80:4 83:13 109:3 134:17 134:19 136:24 160:20 <b>commander</b> 161:5 <b>comment</b> 131:23 <b>commentators</b> 112:8 <b>comments</b> 153:24 <b>commit</b> 166:18 166:18 168:23 <b>committing</b> 144:6 <b>commonwealth</b> 1:17 173:4,11 <b>communicati...</b> 132:24 <b>communities</b> 23:8 90:17 92:12 120:25 123:24 125:16 128:17 129:22 165:25 168:11
--	--	--	---

## [community - controversies]

Page 11

<b>community</b> 18:19 64:3 66:3,10 91:16 122:12 123:13 127:2,18 133:5 160:15 170:4 <b>commute</b> 44:9 <b>company</b> 70:22 70:25 71:1,5 <b>comparative</b> 8:13,14 <b>compared</b> 109:10 117:21 <b>comparing</b> 109:15 <b>comparison</b> 103:24,25 104:2 <b>comparisons</b> 43:14 <b>compelling</b> 170:14 <b>compensated</b> 14:9,11 <b>compensation</b> 12:23 <b>competency</b> 11:10 <b>complaining</b> 158:9 <b>complaint</b> 77:16 <b>complete</b> 11:7 175:9	<b>completely</b> 101:22 160:16 161:22 <b>completion</b> 21:16 <b>complex</b> 115:11 <b>compliant</b> 41:25 <b>composed</b> 32:3 <b>computer</b> 10:10 25:17 47:7 120:19 <b>concentrated</b> 116:4 <b>concentrations</b> 122:16 <b>concern</b> 123:25 143:9 <b>concluded</b> 172:15 <b>concludes</b> 172:6 <b>conclusion</b> 77:5 138:15 <b>conditions</b> 90:11 95:4 103:23 166:14 <b>conducted</b> 4:4 4:19 <b>conducting</b> 38:8 <b>confirm</b> 54:2 116:12	<b>confirming</b> 172:8 <b>conflict</b> 50:21 <b>conflicts</b> 49:1 <b>connection</b> 4:6 <b>consciously</b> 74:15 <b>consider</b> 43:21 <b>considerably</b> 105:15 <b>considered</b> 86:18 163:17 <b>consistently</b> 16:8 91:4,5 108:17 <b>conspicuous</b> 46:24 151:6 <b>conspicuously</b> 165:24 <b>conspiracy</b> 73:20 <b>constituencies</b> 17:18 <b>constituency</b> 90:24 91:19 <b>constituents</b> 141:10 151:5 153:4 169:2 171:1 <b>constitution</b> 34:25 <b>contain</b> 47:15 48:4 <b>contained</b> 173:13	<b>content</b> 86:3 <b>contents</b> 171:4 <b>contest</b> 49:4 51:6,7 53:17 <b>contested</b> 20:20 <b>context</b> 20:5 51:22,23 53:14 95:15 158:24 <b>continue</b> 4:10 33:19 111:24 <b>continued</b> 33:16,17 <b>continues</b> 110:6 <b>continuously</b> 110:5 <b>contrast</b> 101:14 105:11 <b>contribute</b> 35:23 97:4 102:10 <b>contributed</b> 101:2 <b>contributions</b> 98:5 <b>control</b> 112:19 135:24,24 150:9 <b>controlling</b> 159:24 <b>controls</b> 149:3 <b>controversial</b> 52:11 <b>controversies</b> 102:20
---	--	---	--

[convene - criminality]

Page 12

<b>convene</b> 71:14 <b>conventional</b> 73:7 <b>conversations</b> 73:5 161:2 <b>copy</b> 25:17 163:18 173:15 <b>corporation</b> 21:15 22:22 <b>correct</b> 14:11 15:3 20:15 26:18,19 27:12 27:13 29:11 30:11,13 31:3 31:17 33:22 35:18 36:5,6,9 37:18 41:10 42:1 43:3,8,20 47:21 48:18,24 49:6,9 53:20 53:24 54:16,21 59:14 65:22 69:6,17 70:17 70:18 84:23 94:21 97:1,15 101:4 115:25 116:9,14,23,25 117:1,4 120:18 120:22 131:16 131:25 136:5 136:12,17 137:4,5,9,12,16 147:21 163:5 164:16 167:12 173:15 175:8	<b>corrections</b> 175:6 <b>correctly</b> 13:13 96:6 144:25 <b>correlate</b> 94:5 <b>correspond</b> 128:5 <b>corresponding</b> 77:16 <b>corridor</b> 134:22 <b>corruption</b> 86:20 <b>cortez</b> 122:4 125:8 <b>costs</b> 64:19 <b>council</b> 17:14 17:16 58:5 77:2,7 78:3,22 79:16 80:20 81:4 <b>councils</b> 53:7 80:9,9 85:12 <b>counsel</b> 2:11,17 4:14 5:2 6:2 10:13,14 15:10 59:6 95:16 142:16 146:12 149:9 151:16 154:1,18 155:24 159:16 172:2 <b>count</b> 108:25 <b>counter</b> 13:9 51:11 69:11,24	70:11 76:6 <b>counties</b> 8:13 38:7 <b>countries</b> 139:8 <b>country</b> 25:3 26:23 31:21 32:19 85:3 107:15 112:1 144:3 166:25 <b>county</b> 1:1 4:17 8:12 36:4,5,8 37:7,8,11,16,18 37:21 38:24 43:11,15 45:13 45:14,15 46:8 46:17 63:21 82:13,13,16,18 124:6 136:8,9 136:10 150:21 153:16 169:19 173:6 <b>couple</b> 15:23 27:4 29:18 33:5 38:17 82:22 122:15 122:23 128:3 <b>course</b> 9:4 13:19,20 67:2 108:12 136:9 137:3 <b>court</b> 1:1 4:16 4:22 5:16 74:23,24 112:9 121:7 172:8	<b>covenants</b> 33:1 45:17,18 47:4 47:15 48:4 49:17 <b>cover</b> 87:10 <b>coverage</b> 17:6 136:16 <b>covered</b> 62:19 112:2 157:11 <b>covers</b> 134:6 170:11 <b>crabgrass</b> 22:11,13 <b>cracking</b> 112:22 <b>crafted</b> 139:14 <b>create</b> 36:25 89:3,6 <b>created</b> 7:9 25:5 29:10 30:10 87:12 88:7 <b>creates</b> 102:25 <b>creation</b> 30:22 <b>crime</b> 16:23 46:11 64:12,15 64:18 65:5 135:3 166:25 <b>crimes</b> 166:18 166:19 <b>criminal</b> 114:6 131:10,15 <b>criminality</b> 166:7
--	---	--	---

## [criminologists - depending]

Page 13

<b>criminologists</b> 166:15 <b>crisis</b> 66:1 <b>critchlow's</b> 160:23 <b>cross</b> 45:14 <b>crossing</b> 134:23 <b>crossover</b> 93:11 <b>crossroads</b> 150:22 167:19 <b>crow</b> 88:7 <b>cubans</b> 91:4 <b>cultural</b> 14:2 <b>culture</b> 9:7 13:17 132:24 <b>curious</b> 13:25 <b>current</b> 77:2,6 158:24 <b>curve</b> 110:9 <b>custom</b> 46:13 51:16 <b>cut</b> 40:1	127:20 <b>dash</b> 62:4 <b>data</b> 6:15 15:11 15:14,17,20,22 16:7,14,18,18 16:22,23,23 26:22 36:1 43:14 93:2 98:22 108:9,11 110:16 113:3 114:25 117:12 117:24 119:13 119:16 120:9 124:17,18,21 125:5,14 132:11 <b>datasets</b> 131:19 <b>date</b> 174:24 175:12 <b>david</b> 2:7 5:9 47:19 <b>davis</b> 2:3 5:11 5:11 <b>day</b> 119:19 167:20 175:15 <b>days</b> 172:10 <b>deal</b> 39:20 78:6 <b>deals</b> 33:3 <b>death</b> 61:9 168:15 <b>debunk</b> 73:20 74:8,11 <b>decade</b> 64:3,3,4 <b>decades</b> 29:4 62:11 99:19	100:19 105:1 <b>decide</b> 98:20 <b>decided</b> 50:25 <b>deciding</b> 23:23 <b>decision</b> 58:21 <b>declarations</b> 151:7 <b>declare</b> 175:4 <b>decline</b> 156:24 <b>declining</b> 24:1 110:17,21 <b>decreasing</b> 111:2 <b>deduce</b> 130:13 <b>deeds</b> 45:19,22 <b>deemed</b> 175:6 <b>deep</b> 67:13 <b>defendant</b> 14:14 126:9 <b>defendants</b> 1:8 2:17 3:9 4:14 5:6 78:8 126:7 <b>defense</b> 10:13 10:14 <b>defined</b> 115:21 <b>definitely</b> 9:12 44:10 51:18 55:21 71:19 78:1 85:20 91:21 108:20 109:7 115:23 139:22 141:8 <b>delays</b> 100:22 <b>deliberate</b> 112:16 143:22	<b>deliberately</b> 30:1 87:11 135:13 143:17 157:7,8 <b>delineated</b> 115:16 <b>delivery</b> 172:9 <b>demanding</b> 52:25 <b>democrat</b> 91:24 92:5,10,13 93:14,16 <b>democratic</b> 90:23 91:5,7 <b>democratically</b> 91:19 <b>democrats</b> 94:1 <b>demographic</b> 65:25 68:6 94:15 95:4 <b>demonstrated</b> 169:8 <b>demonstration</b> 69:24 70:9,11 <b>demoralizing</b> 153:8 <b>dense</b> 122:23 123:5,11 <b>department</b> 37:17,20 <b>depend</b> 20:5,5 160:4 <b>depending</b> 80:9 85:4,4,5 110:19
<b>d</b>			
<b>d</b> 47:20 121:8 <b>dad</b> 44:16 <b>dallas</b> 51:18 80:18 81:1 <b>danger</b> 164:19 165:8,10,12 168:20 <b>dangerous</b> 133:14 <b>danskammer</b> 121:2,6 122:8			

[depends - disagreement]

Page 14

<b>depends</b> 4:5 7:2 7:5 38:7	<b>detailed</b> 9:2 23:7 123:10	56:15 61:4 67:9 76:1	60:12,18 62:1 62:3 75:1,12
<b>deponent</b> 175:3	<b>details</b> 19:9	80:15 82:23	75:18 90:15
<b>deposition</b> 1:12 4:4,13,19 12:8 172:15 173:15	157:8,9 161:23	88:22 93:21	93:3 95:19
<b>deregulation</b> 92:25	<b>determine</b> 77:13 108:5 120:12 144:21 147:3 163:14	99:12 113:15 115:14 117:9 118:20 119:2 119:14 141:16	96:4 107:9,18 109:14 114:1 116:10 121:6,9 124:14 126:6
<b>derive</b> 107:24	<b>determined</b> 33:22 71:22 106:16	<b>differential</b> 105:17	126:11,15 129:9 142:8,17
<b>descendants</b> 86:19	<b>detroit</b> 32:11	<b>differentials</b> 16:13	145:13,24 146:7,17,20
<b>describe</b> 13:3 114:10	<b>developed</b> 26:9	<b>differentiating</b> 129:2	149:11,12 151:17,25
<b>described</b> 58:9 137:14 139:21 155:11	<b>development</b> 14:6	<b>differently</b> 25:2	152:3 154:3,12
<b>describes</b> 86:12 132:25	<b>devised</b> 89:22	<b>differing</b> 38:19	154:14 155:5
<b>describing</b> 53:18	<b>differ</b> 90:25 125:16	<b>dig</b> 158:3	156:1 159:18
<b>description</b> 3:8 152:12	<b>differed</b> 20:10	<b>digital</b> 112:18	171:5,14,23 172:4
<b>deserving</b> 139:15,24 145:9 148:16	<b>difference</b> 8:18 99:23 101:16 105:9 108:18 111:17 113:15 119:24 120:4 131:17	<b>diligence</b> 167:25	<b>direct</b> 17:24 109:7
<b>designated</b> 24:14	<b>differences</b> 102:4 107:15 116:5 118:24	<b>dilutive</b> 10:4 11:2,6 81:12 81:22 83:24 84:2	<b>directly</b> 38:25 122:14,14
<b>designations</b> 123:15	<b>different</b> 7:17 8:9,12,13 9:8 16:2 22:21 29:22,22 31:20 32:8 33:20 34:4 42:12 47:1 49:15	<b>dimamura</b> 2:10	<b>director</b> 128:21
<b>designed</b> 148:3		<b>dirago</b> 2:14 3:5 5:5,5 6:1 7:6 8:22,24 9:9 10:17 11:25 14:12,16 27:17 28:19,24 29:8 31:7,9 38:10 41:5 42:16 44:15 58:7 59:8,10 60:9	<b>disabled</b> 137:7 137:11,14
<b>desirable</b> 71:14			<b>disadvantaged</b> 114:4 132:3,9
<b>despite</b> 87:14 110:18 166:14			<b>disadvantages</b> 100:22
<b>destroying</b> 133:8			<b>disagree</b> 127:23
			<b>disagreement</b> 20:24,25 21:10 39:5

[discourage - dramatically]

Page 15

<b>discourage</b> 84:21 113:23	<b>discussed</b> 31:18 36:7 43:4	<b>displacing</b> 136:15 155:15	<b>documentation</b> 77:23
<b>discouraged</b> 103:3 104:13	87:17 169:13	167:21	<b>documented</b> 86:25
<b>discouraging</b> 83:12	<b>discussing</b> 42:24 62:21	<b>disproportion...</b> 120:25	<b>documents</b> 11:19 15:11,14
<b>discovered</b> 22:15	167:10	<b>disproportion...</b> 98:23	20:5 41:8
<b>discrepancies</b> 118:12 119:3	<b>discussion</b> 36:3 42:25 172:12	<b>distinction</b> 161:14,16	45:24 77:22,23
<b>discriminate</b> 28:13 29:10	<b>disenfranchise</b> 29:20 87:21	<b>distinguished</b> 75:10	<b>doing</b> 32:5 37:3
30:3,6,11,15,24	<b>disenfranchis...</b> 89:5,11	<b>district</b> 40:9	54:20,25 78:13
46:6	<b>disenfranchis...</b> 34:21 102:21	79:23 87:2	101:22 134:25
<b>discriminated</b> 100:21	<b>disenfranchis...</b> 88:3	94:17,20,25	141:2 144:3
<b>discrimination</b> 8:19 9:11,15	<b>disengagement</b> 93:8	95:11 103:4	146:10 149:8
9:16 21:13,23	<b>dismissed</b> 53:3	113:25 136:7	166:23 168:4
22:8 24:8,11	<b>disorder</b> 134:10 135:3	<b>districts</b> 39:22	168:23
24:13 31:15,18	<b>disparage</b> 157:3	40:21 80:7	<b>donation</b> 99:25
32:1,22 34:1	<b>disparities</b> 28:5	81:2	100:10
34:21 37:2	99:20,23,25	<b>diversify</b> 80:21	<b>donations</b> 97:11,17 98:23
40:24 43:1	100:2 117:11	90:11	99:24
46:12 49:14	123:18	<b>divorced</b> 45:2	<b>door</b> 99:6
102:11,18	<b>disparity</b> 111:23,25	<b>document</b> 11:13,15,16	<b>dorothy</b> 1:3
139:11	131:10	16:7 25:18	<b>double</b> 56:1
<b>discriminatory</b> 19:1 22:17	<b>displaced</b> 137:8	26:4 47:7	<b>doubt</b> 152:16
23:4,12,20	156:14 164:10	74:23,25	<b>dr</b> 4:13 48:7
28:10 90:8	166:21	163:19	86:11 134:1
<b>discuss</b> 31:15	<b>displacement</b> 151:8 155:3	<b>documentary</b> 20:7 30:20	160:23
34:3 38:23		50:22 56:23,24	<b>draft</b> 18:16
45:17 76:22		56:25 59:4	<b>drafting</b> 6:12
86:4 101:5		71:17 73:22	<b>drag</b> 142:1
		74:2 78:9	<b>dramatic</b> 90:4
			<b>dramatically</b> 47:1 50:5
			63:17 93:18
			103:22

[drew - emit]

Page 16

<b>drew</b> 41:24 73:1,2 80:14 <b>drift</b> 123:23 <b>drill</b> 59:11 159:21 <b>drive</b> 44:4 100:10 <b>dropping</b> 66:25 <b>drum</b> 144:2 <b>drunk</b> 150:12 160:3 <b>due</b> 45:20 67:16 68:23 130:23 167:24 <b>duly</b> 5:19 <b>dwell</b> 153:11	<b>eastern</b> 122:10 122:10 <b>easy</b> 143:2 <b>economic</b> 97:7 <b>ecuadorian</b> 152:21 <b>education</b> 114:5 116:17 <b>educational</b> 118:13 <b>ef002460-2024</b> 4:18 <b>ef002460-2040</b> 1:4 <b>effect</b> 19:20,22 28:10 29:2 46:16,18 81:22 82:24 87:13 88:2 90:13 103:11 110:13 113:24 114:25 153:8 168:22 <b>effectively</b> 13:8 22:17 48:20 68:25 98:19 106:8 112:23 132:4 157:19 <b>effects</b> 10:5 11:2,8 81:13 82:6 83:24 84:1,2 126:1 <b>effort</b> 61:22 62:17 89:2 145:5	<b>efforts</b> 112:16 <b>eight</b> 44:23 100:6 172:10 <b>eighty</b> 47:17 <b>either</b> 39:12 53:2 77:22,23 78:7 79:18 82:16,18 104:12 124:16 142:24 143:19 152:6 <b>el</b> 135:12,14 <b>elder</b> 66:9,22 <b>elected</b> 9:19,23 39:12 40:19 70:2,7 76:24 78:18 79:5,16 80:1 81:4 112:24 141:4 141:19 152:7 154:6 155:2,13 156:12 158:14 158:19 159:3 165:17,22 167:5 170:2,7 170:24 <b>election</b> 2:2,20 10:5 11:2 16:22 80:23 81:13,22 83:24 84:2 92:8 95:2 95:12 170:16 <b>elections</b> 35:8 37:8 38:5,8,11 79:23,24 82:15	83:5 85:1,9 90:6 94:17,20 94:25 95:1,11 108:13 113:19 113:24 170:20 <b>electoral</b> 87:8 113:20 <b>electorate</b> 101:8 <b>eligibility</b> 101:17 102:5,6 102:14 104:6,8 104:10 105:8 <b>eligible</b> 101:11 101:13,15 103:2,3 104:25 105:6,11,13 106:7,17,19 109:17 111:11 <b>emancipated</b> 33:13 <b>emancipation</b> 32:2 33:9 <b>embarrassed</b> 58:11 <b>embarrassment</b> 57:11 <b>emboldened</b> 49:25 <b>emerged</b> 112:19 <b>emergency</b> 23:8 <b>emit</b> 123:22
<b>e</b>			
<b>e</b> 1:15 47:20,20 59:22 121:8 173:2,2 174:3 174:3,3 <b>eagerly</b> 168:24 <b>eagerness</b> 168:6 <b>earlier</b> 64:10 127:3 <b>early</b> 21:17 23:1 26:9,25 55:4 88:8 <b>ease</b> 30:18 <b>easier</b> 15:17 <b>easily</b> 115:5 168:5 <b>east</b> 95:21			



[emphasize - event]

Page 17

<b>emphasize</b> 87:5 123:24	<b>enthusiasm</b> 141:20	<b>equality</b> 50:14 89:8	120:20 122:9 122:17 135:6
<b>emphasizes</b> 55:6	<b>enthusiastic</b> 153:17	<b>equitable</b> 35:11	<b>establish</b> 85:9
<b>empirical</b> 92:21 98:22 167:1	<b>entire</b> 38:7 43:10 46:17	<b>era</b> 20:1,2 51:11 63:11	<b>established</b> 52:7 150:15
<b>empirically</b> 108:20	55:12 63:14 87:22 130:15	88:6	<b>estate</b> 46:13 67:6
<b>employment</b> 114:6 116:17	133:19 134:4 144:12 147:11	<b>eric</b> 150:24	<b>estimated</b> 47:13 48:3
<b>encounter</b> 78:17	148:4 156:6 162:18 163:4	<b>ernest</b> 1:3	<b>et</b> 4:15,16 11:9 16:3 26:25
<b>encyclopedia</b> 27:5	169:10	<b>errata</b> 175:7	32:11 46:11 50:9 51:10
<b>ends</b> 147:17	<b>entirely</b> 64:7 72:20	<b>erroneous</b> 115:1	56:21 66:8 68:4 82:3
<b>engaged</b> 155:19	<b>entitled</b> 133:16 133:18 154:18	<b>especially</b> 32:9 33:17 49:19,20	86:23 87:16 100:18 118:20
<b>engender</b> 153:7	<b>entries</b> 27:5	57:19 63:25 64:6 65:2	134:15 135:4 162:7,11 174:1
<b>english</b> 17:6 54:8 77:24	<b>enumerate</b> 115:23	127:16 140:23 141:20	174:1 175:1,1
102:24 104:11	<b>enumerated</b> 115:7 118:18	<b>esquire</b> 2:3,3,7 2:8,14	<b>ethnic</b> 87:15 115:7
<b>enhance</b> 10:4 11:2 81:12	<b>enumeration</b> 114:13	<b>essentially</b> 13:10 14:19	<b>ethnically</b> 29:22
83:23	<b>environment</b> 168:12,14	15:20 19:1 23:9 26:21	<b>ethnicities</b> 16:2
<b>enjoined</b> 112:13	<b>environmental</b> 114:7 120:24	28:12 29:4 33:8 34:16	<b>ethnoracial</b> 46:25 116:16
<b>enjoyed</b> 52:10	121:19 122:5 126:1 127:1	36:16,23 39:14 50:15,22 55:1	<b>ethnoracially</b> 39:16
<b>enslave</b> 89:2	128:21	55:7 67:12 68:22 69:5	<b>evaluate</b> 73:19
<b>enslaved</b> 33:10 33:13 88:17	<b>episode</b> 169:11	82:20 84:6,7 88:13 97:10	<b>evenly</b> 116:2
89:15	<b>equal</b> 24:19 85:10	98:14 112:9	<b>event</b> 20:23 69:8 71:12
<b>ensure</b> 35:11 89:8			72:1
<b>entering</b> 103:23			

[events - extent]

Page 18

<b>events</b> 17:7	40:18,25 63:18	<b>exclude</b> 87:12	<b>experience</b>
<b>everybody</b>	69:22 74:2	<b>excluded</b> 87:9	117:18 120:14
57:16 79:21	76:2,3,3 80:16	<b>excludes</b> 157:8	<b>expert</b> 3:11
<b>everyday</b> 49:18	80:18 106:10	<b>excuse</b> 8:4 27:2	31:1 129:20
<b>evidence</b> 9:21	108:5 109:24	107:21 150:23	154:19 158:2,7
20:7 30:9,12	110:9 114:24	<b>excused</b> 172:14	<b>explain</b> 105:17
37:21 40:14	115:12 119:17	<b>executive</b> 136:9	111:8 119:19
41:6,9,11	125:15 128:14	150:21	132:21
42:18 43:9	149:6 164:12	<b>executives</b>	<b>explaining</b>
45:18 46:11	164:21	153:17	170:19
56:23,24 57:1	<b>examination</b>	<b>exercise</b> 52:12	<b>explicit</b> 50:20
57:1 58:18,22	3:2 5:24	<b>exercising</b>	<b>explicitly</b> 53:9
58:25 59:3,4	<b>examinations</b>	94:18	<b>explorer</b> 15:18
59:12,15,18	43:13	<b>exhibit</b> 3:7,11	16:19,21
61:9,12 62:21	<b>examined</b> 5:21	3:13 10:16	114:12,19,23
62:22 63:12	<b>example</b> 18:20	14:13,14,17,24	115:5 116:13
64:6 71:17	19:7 23:21	26:1 126:7,8,9	119:15 120:10
73:22 74:2	24:16 32:22	<b>exhibits</b> 16:12	<b>explosives</b> 50:9
76:8 78:7 79:7	35:6 38:19	<b>exist</b> 33:17	61:9
101:1 113:13	46:19 51:20	113:4	<b>exposure</b>
116:6 131:9	86:25 90:4	<b>existed</b> 34:21	168:20
133:25 134:2	100:5 105:2	<b>existence</b> 29:5	<b>express</b> 152:8
135:14 144:20	117:9 134:5,19	88:24 113:19	154:7 155:2
146:1 147:7	135:5	<b>existing</b> 21:5	156:13
153:20 169:15	<b>examples</b> 34:13	79:22 150:16	<b>expressed</b>
169:22 170:1	42:6 94:23	<b>exists</b> 134:3	132:20 133:23
170:15,24	133:12 136:2	<b>expansion</b> 93:1	<b>expresses</b>
173:12	166:4,6 167:5	121:15 123:17	158:15
<b>exact</b> 24:3	170:24	<b>expect</b> 100:1	<b>expressing</b>
25:18 41:15	<b>exams</b> 86:7	110:11 118:13	158:11
48:2,6 111:21	<b>excel</b> 16:6	<b>expedited</b>	<b>expressly</b> 41:20
166:25 167:4	<b>exception</b>	172:11	<b>extent</b> 10:18
<b>exactly</b> 20:8,25	32:20	<b>expensive</b>	67:20 76:23
26:7 29:1	<b>exceptions</b> 33:5	98:18 107:23	83:16 97:3
33:24 39:8	33:7	108:1	100:20 101:6

[extent - financially]

Page 19

114:3 122:10 132:2 170:21 <b>extremely</b> 103:20	<b>factors</b> 8:3 9:25 67:16 100:11 100:12 102:10 105:14	<b>family</b> 46:23 64:22 100:6 <b>famous</b> 51:19 <b>fantastic</b> 171:22	165:12 <b>fensterman</b> 2:7 <b>fewer</b> 166:18 <b>field</b> 161:5 <b>fielded</b> 35:12 <b>fields</b> 16:10 86:2
<b>f</b>	<b>facts</b> 145:3 <b>fair</b> 12:1 45:8 118:10 <b>fairly</b> 11:7 18:24 32:19 49:11 56:19 113:4 117:25 118:1,21 122:10 <b>faithful</b> 115:13 152:11 <b>fall</b> 96:22 130:4 140:17 <b>fallen</b> 93:18 <b>fallout</b> 164:10 <b>false</b> 152:25 155:14,18,20 160:13 163:24 164:6,18,25 166:20 <b>falsehood</b> 157:18 <b>falsely</b> 156:16 168:25 <b>familiar</b> 44:17 <b>familiarity</b> 21:5 <b>families</b> 49:3 49:24 50:4,8 50:12 66:15 100:7,8 117:14	<b>far</b> 43:24 121:23 <b>fare</b> 118:4 <b>father</b> 45:3 <b>father's</b> 54:5 <b>favor</b> 92:24,25 121:16,17 162:10 <b>favorable</b> 165:1 <b>fear</b> 139:4 153:7 <b>fears</b> 161:24,25 <b>features</b> 114:14 <b>federal</b> 8:11 21:15 22:16 23:17,19 31:16 32:18 33:3 36:17 68:23 112:13 <b>federally</b> 23:9 83:8 102:23 <b>feds</b> 22:23 <b>feel</b> 159:7 171:2 <b>feeling</b> 74:4 <b>feelings</b> 141:9 <b>fell</b> 108:13 <b>fellow</b> 67:18 152:21 <b>felt</b> 40:21 157:6 164:19 165:8	<b>fifths</b> 47:14 48:3 <b>figure</b> 73:24 74:21 77:4,18 91:13 106:13 108:13 110:1,2 144:17,19 163:2 164:12 <b>figured</b> 145:6 <b>figures</b> 17:17 97:22 107:2 111:20 119:7 134:8 153:5 <b>figuring</b> 19:16 <b>file</b> 167:25 <b>filed</b> 4:16 150:23 151:1 167:13,19 <b>files</b> 90:20 91:18 <b>filing</b> 151:11 <b>fill</b> 80:24 <b>final</b> 172:11,13 <b>finance</b> 96:10 99:20 <b>financial</b> 25:20 <b>financially</b> 5:1
<b>f</b> 173:2 <b>fabricated</b> 161:23 <b>fabrication</b> 147:11 148:5,7 <b>face</b> 135:19 143:8 144:12 145:15,18 147:19 <b>faces</b> 67:1 <b>facially</b> 88:1 <b>facility</b> 121:3 122:13 <b>fact</b> 20:8 46:7 54:17 70:10 81:18 104:3 117:12 140:6 141:3 150:6 152:15 165:7 166:15 169:3 <b>factor</b> 10:1,6 10:20,22,23 76:21,22 81:8 81:16 96:7,12 96:14,15,25 101:5 114:3 131:22,24 132:1,17 165:13 170:13			

[finch - fulfilling]

Page 20

<b>finch</b> 137:7,14 140:2 161:13 161:15 <b>find</b> 9:18,21 10:6 19:8 20:7 26:2 29:6 30:9 30:12,21 31:4 45:18,22 47:8 47:10 48:6 56:5,12 57:1 58:25 66:20 69:24 71:24 72:11,22 74:13 74:19 76:8,17 77:9 79:2,7 85:8 88:20 89:9 106:22 109:7 113:3,11 113:13 115:2 117:24 120:3 131:9,14,21,24 132:7,11 134:2 143:2 169:7,22 170:1,18 <b>finding</b> 47:18 98:15 110:25 111:7 113:10 122:19 <b>findings</b> 24:16 30:7,17 31:13 32:12 74:24 79:24,25 80:3 80:5 96:11 <b>fine</b> 17:23 25:19,21 38:21	55:4 94:10 99:8 163:22 <b>finished</b> 12:13 <b>first</b> 5:19 14:13 24:7 44:25 51:8 53:9 54:7 72:1 77:1 78:2 78:16 80:21 88:14,18 114:8 132:16 136:22 137:24 138:14 144:22 147:17 151:4 159:4 167:16 <b>fit</b> 154:19 <b>five</b> 59:6 149:9 171:6 <b>fix</b> 82:20 <b>flag</b> 150:14 <b>flagged</b> 104:18 104:18 <b>flat</b> 110:12 <b>flight</b> 49:12 56:18 62:14 63:13 65:7 <b>flournoy</b> 1:3 <b>floyd</b> 161:4 <b>fluent</b> 78:12 <b>focus</b> 140:25 <b>folder</b> 14:20 <b>folks</b> 57:18,20 67:3 77:21 153:15 <b>follow</b> 100:1 171:16	<b>following</b> 10:9 <b>follows</b> 5:22 <b>footnote</b> 84:17 98:10 137:23 164:12,15 165:2 <b>footnotes</b> 47:25 <b>force</b> 133:6 160:15 <b>forced</b> 104:20 130:23 164:5 <b>foregoing</b> 175:5 <b>foreign</b> 166:18 <b>foremost</b> 24:8 <b>forget</b> 23:1 44:13 <b>forgetting</b> 17:20 <b>forgot</b> 101:20 <b>form</b> 14:3,5 27:15 28:17,22 37:24 40:16 42:8 58:6 61:24 74:9 75:5 78:8 92:15 109:13 113:17 116:8 124:13 142:5 <b>formerly</b> 88:17 133:8 <b>formula</b> 150:7 <b>forward</b> 39:10 112:12 121:15	<b>found</b> 8:3 9:10 22:10 24:10 27:20 37:12,15 37:20,22 42:22 57:6 65:25 74:2 76:4 84:18,19 87:8 106:3 112:7 128:4 129:18 132:11 166:16 170:6 <b>founder</b> 126:25 <b>four</b> 47:14 48:3 85:16 <b>fourth</b> 13:4 <b>fox</b> 141:13,16 141:24 151:3 161:1 <b>fraction</b> 106:16 <b>frame</b> 79:3 <b>frankly</b> 83:5 88:12 <b>freed</b> 88:16,17 <b>freedom</b> 51:11 <b>frequent</b> 93:8 <b>frey</b> 107:12 <b>friends</b> 151:4 <b>frightened</b> 153:1 <b>front</b> 105:25 <b>frontier</b> 22:11 22:13 <b>fulfilling</b> 102:23
--	---	--	--

[full - greater]

Page 21

<b>full</b> 23:24 167:16 <b>fully</b> 173:13 <b>function</b> 26:1 90:13 <b>functionally</b> 43:16 89:2 <b>fund</b> 98:20 <b>further</b> 33:16 103:13 171:14 172:4	<b>generating</b> 121:2 <b>geodata</b> 114:11 115:21 <b>geographic</b> 114:15,16 <b>geographically</b> 113:9 129:16 <b>geography</b> 16:9 <b>george</b> 53:6 <b>gerrymanderi...</b> 102:22 <b>getting</b> 95:17 141:12 165:15 <b>gil</b> 124:5 <b>girl</b> 158:10 <b>give</b> 46:19 59:8 117:16 <b>given</b> 23:13 104:11 175:9 <b>gives</b> 16:6 <b>giving</b> 88:5 152:16 168:23 <b>glass</b> 114:20 <b>go</b> 4:11 8:25 16:25 17:3 19:5,24 20:7 21:6,7,19 25:13 26:2 31:11 38:13,17 41:14 44:3 45:22 47:24 48:5 50:25 55:10,23,25 68:5 73:22	74:12,18 83:7 83:10 95:3,23 104:16,20 105:3 114:11 118:6 120:13 122:14 123:7,9 128:9,12 129:10 146:18 147:9,13 149:2 151:17 170:12 172:1 <b>goes</b> 31:15 53:4 103:13 <b>going</b> 8:20 9:25 14:12 15:20 19:15 23:7 51:3,14 52:5 55:4 57:22 58:14 61:2 66:20 74:14,22 74:24 90:25 91:9 109:23,24 110:13 126:6 128:24 131:6,7 134:19 138:21 141:6,8,13 142:14 143:5 149:5 153:8 156:24 157:24 <b>goldwater</b> 53:6 <b>good</b> 4:1 6:2 14:25 15:9 24:1 85:2 86:15 113:6 151:25 162:11	<b>gotten</b> 24:18 57:15 <b>governing</b> 80:10 <b>government</b> 22:16 23:17 86:15 133:16 <b>governor</b> 93:16 161:3 <b>grace</b> 1:2 <b>gradual</b> 33:9 68:6 <b>gradually</b> 33:13 36:19 <b>graduate</b> 74:18 <b>grandfather</b> 87:19 88:4 89:10,12,17,19 89:23 90:1 <b>grandfathers</b> 89:13 <b>graph</b> 109:8 126:16 <b>great</b> 15:5 17:1 48:8 51:14 55:12,20,21 68:25 70:12 80:15 141:19 141:20 155:13 161:7 168:19 <b>greater</b> 121:18 122:6 128:23 129:15 130:17 134:19
<b>g</b>			
<b>g</b> 47:20 132:6 <b>gains</b> 53:1 <b>gang</b> 135:9 <b>gap</b> 100:3,4,11 108:17 111:4,9 112:15 113:1 124:10 <b>gaps</b> 116:16 <b>general</b> 14:2 22:25 96:17 <b>generalizeably</b> 108:21 <b>generalized</b> 129:16 133:10 <b>generally</b> 13:25 17:3 22:20 30:7 33:2 85:1 109:2 113:10 118:8,16 138:20 159:10 <b>generates</b> 139:4			

[greenwood - hearing]

Page 22

<b>greenwood</b> 2:3 5:7,7 7:1 8:20 10:11 11:18 27:15 28:17,22 31:6 37:24 40:16 42:8 58:6 61:24 74:9 75:5,15 92:15 95:16 109:13 113:17 116:8 124:13 129:6 142:5,15 145:11,22 146:3,12,18 154:1,10,18 155:23 159:16 171:9,24 <b>gregory</b> 126:25 <b>grew</b> 18:23 44:12,16 63:17 72:15 <b>grids</b> 115:13 <b>ground</b> 57:8 110:14 <b>grounds</b> 8:21 71:5 <b>group</b> 85:5,6 91:8 92:6 95:6 103:19 139:5,9 139:10 140:4,9 140:10 148:2 166:12 <b>groups</b> 36:15 36:20 84:19 86:14,16,17	113:16 115:15 117:6 119:24 121:13 123:2 124:1 125:17 <b>grow</b> 44:19 63:10,13 78:15 110:6 <b>growing</b> 61:21 62:6,16 68:3 87:15 108:25 109:10 110:5 111:23,25 <b>growling</b> 95:20 <b>grown</b> 108:17 <b>grows</b> 64:5 <b>growth</b> 63:25 64:17 68:6 <b>grumbach</b> 98:9 98:11 99:10,13 <b>guaranteeing</b> 23:18 <b>guard</b> 74:20 130:25 <b>guess</b> 18:4 22:25 28:1 29:23 31:12 33:12 34:17 36:25 38:2 39:24 41:18 45:21 63:4 69:3,21 72:25 73:7 77:16 85:1 126:24 133:25 137:7 137:21 150:5	152:19 154:25 157:11,22 159:5,7,22 164:20 167:10 <b>guessing</b> 41:19 <b>guest</b> 13:6,16 <b>guy</b> 53:8 54:19 54:25 70:21 71:6 <b>guy's</b> 53:22 <b>h</b> <b>h</b> 174:3 <b>habit</b> 71:23 <b>half</b> 76:12 108:15 110:5 129:13 130:1,9 <b>hamilton</b> 2:14 <b>handpicked</b> 80:21 <b>hands</b> 87:14 <b>happen</b> 67:7 68:17 76:3 144:1 154:21 156:25 157:5 157:14 <b>happened</b> 34:23 56:19 63:19 71:20 72:2 73:25 74:3,22 76:3 81:2 83:20 103:7 113:7 143:1,16 145:1 152:12,15 156:23	<b>happening</b> 20:8 67:22 121:16 144:10 <b>happens</b> 88:21 88:23 <b>happy</b> 67:14 146:15 <b>hard</b> 83:2,14 85:9 107:23 128:2 147:3 <b>harm</b> 141:7 <b>harmed</b> 141:1 <b>harvard</b> 2:2 <b>haste</b> 167:25 <b>hasty</b> 168:1 <b>hayley</b> 128:20 <b>he'll</b> 134:5 <b>head</b> 106:1 <b>heading</b> 26:8 34:7 <b>heads</b> 157:24 <b>health</b> 16:22 114:6 119:23 119:25 123:1 <b>healthcare</b> 120:4,5 <b>hear</b> 60:23 61:5 147:8 153:5,9 <b>heard</b> 4:8 61:1 72:17 136:23 137:17,17 138:1,2 143:12 148:21,23 <b>hearing</b> 60:20 72:23 143:5
--	--	--	---

[hearing - hour]

Page 23

144:5 <b>heart</b> 153:24 <b>heartache</b> 141:9 <b>hearts</b> 143:23 <b>heated</b> 49:4 51:6 53:17 <b>heavily</b> 140:17 158:25 <b>held</b> 49:18 <b>help</b> 10:15 124:12 <b>helps</b> 47:12 61:4 <b>hereto</b> 175:8 <b>heritage</b> 135:2 <b>hesitate</b> 12:4 <b>hey</b> 23:11 68:18 109:22 <b>hiding</b> 134:15 <b>high</b> 64:19 103:20 <b>higher</b> 110:1 118:22 <b>highlighted</b> 22:16 126:23 126:25 <b>highly</b> 19:1 116:3 143:8 <b>hinder</b> 132:3 <b>hired</b> 35:16,20 66:23 <b>hiring</b> 35:23 <b>hispanic</b> 26:24 26:25 46:8	62:12 65:20,24 77:3,14,17,25 78:11,25 79:5 97:19,19 98:24 100:6 101:9,13 102:4,6 105:16 108:2 111:16 111:18 113:22 115:8 116:19 116:21 119:24 121:23 122:21 124:2 125:7 129:3 130:2,10 131:11 171:1 <b>hispanics</b> 80:1 81:4 92:3 101:11 102:5 102:14 103:16 105:10,24 108:7 109:2,3 109:17 117:2 <b>historian</b> 19:12 21:3 47:13 48:2,8 56:14 59:24 69:18 <b>historian's</b> 22:14 <b>historians</b> 23:5 73:18 <b>historical</b> 24:22 31:25 56:8 104:14 <b>historically</b> 80:19,20	<b>histories</b> 139:8 <b>history</b> 8:18 9:2,10,14,16 13:23 14:2 16:9 17:1 18:18,21 20:1 20:4 26:12 34:1,17 52:8 63:6 139:7 159:25 160:4 171:21 <b>hits</b> 66:11 111:15 <b>hls</b> 2:20 <b>hmm</b> 53:20 <b>hoax</b> 136:14 142:20 149:15 159:3,6 162:3 164:10 <b>hold</b> 18:8 54:3 87:4 123:1 <b>holding</b> 86:19 95:2 <b>home</b> 21:14 22:22 45:3 <b>homeless</b> 137:10 139:16 145:8,20 151:8 152:8 154:7 155:15 156:13 158:15,20 167:22 <b>homeowners</b> 15:25	<b>homeowners...</b> 118:2 <b>homes</b> 50:9 67:3 <b>honestly</b> 41:14 71:18 75:9 123:7,16 131:13 152:6 <b>hope</b> 152:14 <b>hopefully</b> 61:4 <b>hoping</b> 74:13 74:19 <b>horrible</b> 144:7 149:16 <b>hosted</b> 71:10 <b>hostility</b> 170:25 <b>hotel</b> 13:6,16 13:23 14:3 137:8 138:25 143:3,4 144:23 144:24 145:10 150:22,22 152:9 154:8 156:14 158:10 158:16,21,22 158:22 165:1 167:13,20,22 <b>hotelkeeper</b> 144:25 168:14 <b>hotels</b> 13:15,17 13:22 138:7,9 147:16 <b>hour</b> 12:25 13:1 44:2 85:24
--	--	--	--

[hours - income]

Page 24

<b>hours</b> 6:8	<b>i</b>	<b>illustrate</b> 134:6	<b>implied</b> 41:2,11
<b>house</b> 67:7	<b>idea</b> 50:14	<b>illustrations</b>	<b>implies</b> 134:16
68:18	157:17	134:5	<b>important</b>
<b>household</b>	<b>ideally</b> 66:4	<b>images</b> 132:23	138:8 163:2
117:5,11	<b>ideas</b> 86:4	134:13	<b>imposed</b> 35:2
<b>households</b>	<b>identical</b> 23:13	<b>imagine</b> 42:21	<b>impression</b>
117:8	<b>identifiable</b>	70:5 89:24	29:2
<b>housing</b> 21:15	62:14 103:11	<b>imagined</b>	<b>impressionistic</b>
64:19 67:5	149:1	168:16	20:4
68:14 114:6	<b>identification</b>	<b>imamura</b> 2:7	<b>inadequately</b>
116:16	14:15 94:6	5:9,9 172:11	83:4
<b>hudson</b> 9:7	126:10	172:13	<b>incapable</b>
43:11 44:4	<b>identified</b>	<b>immediately</b>	133:4
121:25 122:9	35:14 58:13	75:24 76:4	<b>incensed</b>
127:1	158:25 168:16	153:6	145:19,25
<b>hudson's</b>	169:1	<b>immigrant</b>	<b>inception</b> 21:16
128:21	<b>identifies</b>	84:19 165:25	<b>incident</b> 153:14
<b>huge</b> 91:11	166:12	<b>immigrants</b>	<b>incidents</b> 42:10
115:5 119:18	<b>identify</b> 130:2	86:18 133:14	72:9 82:2
127:18 143:16	130:3,10	139:20 144:3	83:22
143:17	<b>identifying</b>	166:24	<b>include</b> 6:9
<b>humiliated</b>	133:13 135:1	<b>immigration</b>	119:2 130:18
104:17	<b>identities</b> 91:2	134:6 135:19	169:25
<b>humiliation</b>	<b>identity</b> 125:9	135:24	<b>included</b> 36:14
104:24	<b>idiosyncratic</b>	<b>impact</b> 120:25	36:15 151:5
<b>hundred</b> 69:7	22:19	<b>implemented</b>	<b>includes</b> 42:10
93:19 102:1	<b>ignore</b> 138:12	6:22,23	157:7
139:18 167:14	<b>ignoring</b> 99:6	<b>implicate</b> 39:3	<b>including</b> 85:2
<b>hundreds</b> 50:7	<b>il</b> 2:16	<b>implicated</b> 37:6	114:5 138:20
<b>hungry</b> 95:22	<b>illegal</b> 13:13,19	38:25	165:3 169:20
<b>hurricane</b>	32:23 40:8	<b>implication</b>	<b>inclusion</b>
161:6	68:16 135:19	124:3 134:11	160:11
<b>hypothetical</b>	<b>illegally</b> 134:18	<b>implicitly</b>	<b>income</b> 16:1,13
156:23	134:25	139:21	116:16,22
			117:6,7 119:6



[income - invited]

Page 25

119:10 <b>incorrect</b> 146:25 <b>increase</b> 80:8 110:11,19 112:15 <b>increasing</b> 108:2,3,8 109:5,16,18 110:22,24 111:4 <b>increasingly</b> 98:17 <b>incredibly</b> 23:6 67:5 142:24 <b>incriminating</b> 109:20 <b>incumbency</b> 40:22 41:3 <b>incursions</b> 24:5 <b>indecipherable</b> 159:15 <b>index</b> 1:4 3:2,7 <b>indians</b> 150:12 <b>indicated</b> 57:24 91:25 <b>indicates</b> 165:9 <b>indicating</b> 69:9 131:3 <b>indications</b> 134:9 <b>indicative</b> 103:14 104:5 143:11	<b>indifference</b> 170:25 <b>indistinguish...</b> 71:10 <b>individual</b> 23:8 32:4 49:24 55:11 93:21 119:2 <b>industrial</b> 118:19,22 122:13 130:24 <b>inequalities</b> 116:18 <b>inequality</b> 98:4 <b>inflammatory</b> 147:8 <b>influenced</b> 34:22 <b>influencing</b> 103:5 <b>influential</b> 99:1 99:11 <b>information</b> 36:1 <b>infra</b> 72:12 <b>inhabitants</b> 26:14 <b>initial</b> 49:16 <b>initially</b> 50:12 <b>innocent</b> 150:8 150:10,12 153:13 <b>ins</b> 51:12 <b>insertion</b> 159:19	<b>insignificant</b> 68:2 <b>inspire</b> 161:25 <b>instance</b> 103:1 <b>instances</b> 103:1 <b>instantiated</b> 53:12 <b>instituted</b> 30:2 90:7 <b>institution</b> 107:5,9,13 112:7 <b>instruct</b> 6:3 <b>instructed</b> 26:7 <b>insurance</b> 119:23,25 <b>integrated</b> 55:3 <b>integrating</b> 133:4 <b>integration</b> 48:21 50:16 51:17 57:12 61:22 62:17 <b>intended</b> 39:25 40:3,4 89:7 153:7 161:24 161:25 <b>intent</b> 30:23 87:3 <b>intentional</b> 155:7,8 <b>interest</b> 83:17 <b>interested</b> 5:1 <b>interesting</b> 21:18,21 23:11	171:18 <b>interests</b> 165:24 169:2 <b>international</b> 46:20 <b>internet</b> 4:6 <b>interpreters</b> 35:11,13,16,20 35:23 <b>interview</b> 78:13 <b>interviews</b> 144:13 <b>intimidation</b> 56:20 <b>introduce</b> 14:12 89:19 126:6 <b>introduced</b> 14:25 28:9 29:7,15 <b>intrusions</b> 24:5 <b>invaders</b> 148:14 <b>invading</b> 133:6 152:22 <b>invasion</b> 135:3 <b>invasions</b> 24:4 <b>invented</b> 88:4 <b>invents</b> 139:2 <b>investigation</b> 37:17 <b>invidious</b> 24:3 <b>invisible</b> 28:12 <b>invited</b> 70:23
--	---	---	---

[involve - knocking]

Page 26

<b>involve</b> 79:13 100:14	<b>joseph</b> 53:22 55:5 57:14	<b>kept</b> 72:21 89:8	<b>kinds</b> 16:14
<b>involved</b> 36:2 39:23 81:1 86:22 96:9	58:12	<b>ketchup</b> 51:20	29:20 32:17
<b>involving</b> 7:17 28:5 83:23 102:22 112:9	<b>journal</b> 84:15 84:16	<b>key</b> 136:13 152:12,17 161:23	34:20 36:1 40:9 42:12 46:3 52:9,13
<b>irrelevant</b> 171:17	<b>journalist</b> 141:18	<b>kick</b> 138:9	56:20 61:23
<b>irresponsible</b> 142:25 143:8 144:15	<b>judgment</b> 136:24	<b>kicked</b> 138:25 145:9,21 152:9 154:8 158:9,11	62:18 72:21 74:14 86:21 87:8 90:12
<b>island</b> 103:17	<b>jump</b> 144:11	158:16,16,20 158:20,22	103:6 105:24 107:21,22
<b>issue</b> 13:14 80:5 92:17 127:24 152:12	<b>jumped</b> 141:4	<b>kicking</b> 152:18	112:11 118:21 119:2 126:4 133:25 134:17
<b>issued</b> 82:19	<b>june</b> 3:11	<b>kid</b> 46:22 104:20,23	143:25 144:5,6 149:1 160:4 168:7
<b>issues</b> 33:3 82:20 93:9,9 93:25 98:20	<b>jurisdiction</b> 7:3 7:18,19 26:10 27:1 37:7 38:9 110:3	<b>killer</b> 64:25	<b>kkk</b> 76:8
<b>item</b> 35:25 77:17 165:2	<b>jurisprudence</b> 112:9	<b>kind</b> 8:1 12:4 13:14 17:2,21 19:23 20:20 21:20 30:12 32:13 41:8 43:4 45:24 52:8 53:14 55:9 56:7,23 58:21 59:1 66:4,23 67:11 73:6 75:14 78:6 82:6 89:23 92:9 104:22 105:7 118:8 124:21 125:3,10 127:24,25 134:1 139:9,25 141:6 144:20 147:3 153:8	<b>klan</b> 69:5 70:4 70:16 71:4,15 71:21 73:13 75:21 76:2
<b>items</b> 11:22	<b>justification</b> 170:14	<b>klux</b> 69:5 71:15 73:13	<b>knew</b> 20:16 22:8,8 59:25 62:25 73:7 75:21 142:3,3 142:10,19 143:21 153:21 157:1,2,17 159:3,7
<b>j</b>	<b>k</b>	<b>knitting</b> 120:16	<b>knocking</b> 99:5
<b>jackson</b> 22:9,15	<b>k</b> 3:4,11 5:18 121:8		
<b>james</b> 78:18	<b>keep</b> 90:13 154:23		
<b>jewish</b> 160:2	<b>keeper</b> 143:3		
<b>jews</b> 150:9	<b>keeping</b> 67:24		
<b>jim</b> 88:7	<b>kenneth</b> 22:9 22:14		
<b>job</b> 31:4			
<b>jobs</b> 124:8,9,9 124:9,11			
<b>joking</b> 159:23 160:2,6			

[know - latino]

Page 27

<b>know</b> 7:8,9 8:22 11:22,23 11:24 14:3,18 16:5 18:21 19:12 20:22,25 21:1,2,8,25 25:14 27:11,16 27:24 28:7,16 28:18,20 29:1 32:8 35:15,19 37:9 38:4 40:25 44:7 48:11 49:25 50:6,14,15 53:1 57:10,14 59:23 61:5 62:8 66:6,7 70:19 71:25 72:3,19 73:4 73:14,24,25 75:17 76:5 78:3,5,24 79:4 82:8 83:3,9,18 85:10 86:3 90:22 91:17 92:24 94:10,22 95:21 97:12 98:12 100:12 100:16,24 101:23 104:14 104:16,18 105:3,23 106:1 106:17 109:18 109:23 114:20 115:18 118:9	119:7 122:17 122:18 123:16 124:7 126:21 127:6,8 128:2 128:3,4 129:8 129:21 134:1,6 134:7,9,14 135:7 138:7 140:2,5,6 141:1,2,9,10,12 141:12,15 142:9,23,23 143:12,13 144:19,20 145:2,14,18 147:4,16 148:8 148:19 149:4 150:8,10,10 155:20 156:5 156:20 157:17 157:21 159:7 162:6,10,21 163:6,7 164:21 167:4 <b>knowing</b> 18:18 19:2,8 115:4 142:10,12,22 144:8 153:16 163:13 <b>knowingly</b> 146:8 <b>knowledge</b> 11:20 18:15 20:17 34:9 42:5 70:4	<b>known</b> 17:3 18:25 21:20 72:7,8 73:14 100:2,16 112:21,22 148:1,13 149:7 150:7 <b>knows</b> 21:25 <b>ku</b> 69:5 71:15 73:13 <b>l</b> <b>la</b> 13:2 63:23 <b>lack</b> 143:9 165:16 168:9 169:4,8 170:2 <b>ladale</b> 21:25 <b>land</b> 3:13 45:23 50:2 114:6 131:17 133:7 <b>language</b> 17:6 19:9 23:24 35:10 36:15,20 37:1 39:18 40:12,23 52:19 77:24 78:2,16 82:2,14,15 104:19,22 105:5 143:7 144:12 145:15 <b>languages</b> 36:22 <b>large</b> 6:20,21 7:22 9:4 11:8 27:11,23 28:9 28:15 29:14	30:5,10,22 42:15 79:22 80:1,7 81:2,15 82:5 83:22 84:25 85:13,19 87:1,11 90:6 94:20,24 100:3 113:19,25 116:15 153:3,3 170:20 <b>larger</b> 109:25 128:11 <b>largest</b> 91:15 94:15 107:16 112:1 <b>lasted</b> 32:20 33:6 <b>late</b> 25:7 40:13 55:4 59:25 72:24,24 <b>lately</b> 110:7 <b>latin</b> 54:5 135:1 155:14 <b>latina</b> 80:22 95:12 153:4 <b>latinas</b> 91:2 110:4 <b>latino</b> 65:20 67:16,20 68:2 78:2 80:8 83:15 91:16 92:24 94:18 95:2,12 100:8 100:20 101:1 103:2 105:15
--	--	--	--

[latino - literature]

Page 28

106:3,7 107:2	<b>latinx</b> 130:3,10	<b>legally</b> 88:18	<b>lies</b> 153:18,21
108:11 109:9	<b>law</b> 2:2,20 10:2	122:11	<b>lieutenant</b>
115:8 117:8	10:25 20:13	<b>legitimate</b>	161:6
123:6 125:23	36:11,12 39:19	89:24	<b>life</b> 133:9
128:13 132:20	50:2 51:16	<b>legitimately</b>	<b>likely</b> 95:10
134:2 138:18	68:15,23 81:10	89:18	98:5 135:8
139:21 140:1	81:21 88:20	<b>lend</b> 23:23	164:23
140:13,14	89:7 112:13	<b>lending</b> 22:17	<b>likewise</b> 151:6
143:20 146:9	<b>law.harvard.e...</b>	22:25 24:24	<b>liking</b> 160:6
148:3,13 153:4	2:5,6	32:1,10,22	<b>limit</b> 46:25
158:25 160:18	<b>laws</b> 33:24	<b>lent</b> 23:3	147:6
161:10 165:25	<b>lawsuits</b> 36:18	<b>leo</b> 133:11	<b>limited</b> 114:5
166:11,13,21	151:1 169:20	<b>lettered</b> 11:22	<b>limits</b> 45:1
167:2 168:8,10	<b>lawyer</b> 167:24	<b>level</b> 7:17 8:12	122:11
168:16 169:1,3	<b>lay</b> 66:18	8:12 18:21	<b>line</b> 86:24
<b>latinos</b> 8:16,17	<b>lead</b> 95:4	23:19 31:16	110:21 130:4
24:9 34:17	<b>leaders</b> 48:20	32:18 34:9,11	174:4,7,10,13
68:12 81:23	<b>leading</b> 19:3	37:7 43:1	174:16,19
83:2,15 90:13	47:13 48:2	72:12 94:3	<b>link</b> 165:3
90:17,23 91:2	49:10	96:18 120:8	<b>list</b> 85:22,23
91:12 92:13	<b>leads</b> 157:13,15	166:9	86:1 100:17
94:14,16 95:7	<b>leaning</b> 91:7,19	<b>levels</b> 16:13	<b>listed</b> 8:3
106:19 107:1	<b>leaps</b> 139:2	112:24	<b>literacy</b> 18:25
108:21 109:23	<b>leave</b> 56:18	<b>license</b> 139:10	19:20,22 20:14
109:25 110:5	119:12	168:23	104:11
110:24 111:19	<b>leaves</b> 56:8	<b>lie</b> 137:7 139:9	<b>literally</b> 55:10
116:1 118:4,25	58:22	139:14 140:10	56:1 68:16
120:5 124:2,19	<b>led</b> 22:10,12	140:24 141:19	73:12 77:9
125:2,24 129:4	50:21 144:4	141:21 142:3,4	93:19 95:8
131:11,18	<b>left</b> 58:3,17	142:7,10,11,12	114:20 115:3
132:25 133:14	61:7,25 91:7	142:23,24	143:3,7 144:22
138:20 140:24	93:24 155:4	144:17 153:22	168:14
148:13 160:12	<b>legal</b> 68:21	156:5 157:2,4	<b>literature</b>
169:9	128:22 134:19	157:19,20,21	20:24 21:5
	135:24		32:1,10 79:22

[literature - luck]

Page 29

104:15	<b>local</b> 9:7 22:18	63:14 68:18	<b>looks</b> 15:4
<b>literatures</b>	23:20 26:3,8	72:10 73:11,22	25:25 32:15
32:13	42:25 43:1	74:16 79:10,14	46:14,25 65:10
<b>litigation</b> 38:20	51:23 66:19	84:4 85:15	65:14 98:9
<b>litigator</b> 37:25	93:9 94:3	92:23 94:24	99:10 119:23
<b>little</b> 9:8 15:17	122:3 125:21	95:3 96:13,20	120:19
21:23 25:11	166:9	97:25 98:22	<b>loose</b> 119:1
34:12 45:5,14	<b>locality</b> 7:5	104:20 107:19	<b>looser</b> 119:11
90:25 92:5,18	<b>located</b> 36:4	108:10,22	<b>los</b> 13:5 78:5
103:13 104:23	122:8	110:21 113:1	<b>loses</b> 53:2
110:6 118:22	<b>location</b> 71:14	113:10 117:5	<b>losing</b> 110:14
119:8 122:15	121:24	118:6 119:5	<b>lot</b> 18:24 20:3
129:10 143:15	<b>long</b> 6:6,20,21	120:11 126:19	20:15 21:25
145:5	6:23 25:19	128:9,12,16	23:20,25 31:25
<b>live</b> 44:8,24	26:18 32:21	139:17 149:14	34:14 44:8
50:1 52:15	33:6 52:3,9	149:16 152:19	53:8 57:18
60:5 66:15	57:3 59:13,20	163:9,14,18	58:3,24 63:11
68:10 122:22	60:5 62:1 63:9	164:8,11	73:1,3 74:7
127:5	76:13 83:20	169:15 171:6	75:3 83:3 92:6
<b>lived</b> 44:21	93:8 100:15	<b>looked</b> 22:1	98:15 116:6
50:24 60:1	126:21 159:25	23:6 27:4 64:8	119:2,8 134:7
70:21 71:6	160:4	77:6,8,12,20	134:9 152:16
72:2	<b>longer</b> 32:21	84:7 101:19	156:10
<b>lives</b> 44:16	33:6	127:9 144:21	<b>lots</b> 46:9 63:20
97:13	<b>longitudinal</b>	152:6 163:10	93:14
<b>living</b> 55:8	80:12	168:18	<b>loudly</b> 143:6
117:14,15	<b>longstanding</b>	<b>looking</b> 19:16	<b>louisiana</b> 32:9
<b>llp</b> 2:14	65:24	25:20,23 28:1	<b>low</b> 117:21
<b>load</b> 126:21	<b>look</b> 10:12 13:6	29:4 47:22	118:1,21
<b>loading</b> 126:12	17:4 19:5	63:20,22 65:16	<b>lower</b> 97:4
<b>loan</b> 21:14	21:19 25:22	86:9 105:10	101:3,8 105:9
22:22	27:18 38:13	122:17,25	109:9 110:1
<b>loans</b> 21:17	40:18 41:14	131:13,20	166:19
23:14,22	47:6 48:5 52:1	142:25 147:4	<b>luck</b> 113:6
	54:11 59:17	154:15 170:17	

[lump - mean]

Page 30

<b>lump</b> 75:14 <b>lunch</b> 51:11 95:18 96:1	<b>maintaining</b> 87:13 170:16 <b>major</b> 32:19 <b>majorities</b> 113:21 <b>majority</b> 52:22 55:13,20,21 61:11 87:3,14 89:14 123:6,6 125:22,23 139:8 140:4,9 <b>make</b> 6:3 12:4 19:5 21:6,8 57:21 62:8,20 77:5 88:8 89:5 90:5 95:18 118:7 124:24 131:23 138:7,9 145:25 147:16 153:1 160:19 163:12 167:12 <b>makes</b> 54:10,12 71:21 83:10 139:9 140:9,25 147:24 158:22 160:10,22 167:1 <b>making</b> 83:13 86:2 87:3,22 98:18 141:2 149:17 167:3 170:8 <b>manageable</b> 55:3	<b>managed</b> 48:20 <b>management</b> 118:19,22 <b>manager</b> 50:18 51:24 54:14 <b>manhattan</b> 44:22 64:23 91:11 <b>manipulate</b> 112:20 <b>manley</b> 78:18 <b>manor</b> 44:24 <b>map</b> 41:24 114:18 <b>mapping</b> 112:18 <b>maps</b> 15:20 <b>marcantonio</b> 91:10 <b>marginalized</b> 29:20 85:5,6 <b>maria</b> 127:7 <b>mark</b> 59:21 62:23 <b>marked</b> 14:14 126:9 <b>markets</b> 68:24 <b>mary</b> 84:15 <b>mass</b> 144:7 <b>massachusetts</b> 2:4 <b>massive</b> 57:11 150:14 <b>master</b> 41:24	<b>match</b> 115:2 <b>material</b> 19:15 21:21 <b>materials</b> 82:14 105:5 <b>matter</b> 4:15 81:18 89:15 140:21 142:14 162:23 166:16 <b>matters</b> 17:2 20:16 92:6 95:15 142:13 <b>maureen</b> 1:15 4:22 173:9,21 <b>mayor</b> 150:24 <b>mcdownell</b> 51:24 52:18 53:22 54:1,14 55:5 57:14 58:12 <b>mean</b> 7:2 13:25 20:15 37:25 40:1,3 43:19 48:7 58:2 63:14 66:2 67:12 68:16 71:16 72:24 73:10 80:3 81:6 93:7 94:19 96:15 100:13 102:18 104:9 106:6 109:6 112:14 113:18 118:15 119:18 130:8
---	--	--	---

[mean - minutes]

Page 31

143:10 144:22	164:24 165:4	<b>methodologi...</b>	158:21,24
149:14 150:3	<b>members</b> 9:19	80:5 120:16	159:11 160:11
156:19 162:23	9:22 17:13,16	<b>methodologi...</b>	160:18 165:1
<b>meaning</b> 91:6	76:23 77:2,7	21:3 73:19	166:7,21
<b>meaningful</b>	97:3 101:6,8	74:12	167:21 168:25
72:19	114:4 124:12	<b>methodologies</b>	<b>migration</b> 49:2
<b>meaningfully</b>	125:16 132:2,8	18:16	134:22
64:5	135:9 165:18	<b>methodology</b>	<b>migrations</b>
<b>means</b> 40:13	167:8 170:4	26:22 48:6	56:1
106:11,12	<b>memory</b> 10:15	97:9 106:9,21	<b>miles</b> 44:5
128:22 129:12	17:22	124:25 132:10	<b>military</b> 161:4
129:14,15	<b>men</b> 88:5	166:17,17	161:5
<b>meant</b> 82:10	136:13 141:25	<b>methods</b> 145:3	<b>miller</b> 46:23
155:10	142:19 146:24	<b>metro</b> 43:16,18	<b>millions</b> 134:23
<b>measure</b>	157:2	43:19,22 63:22	<b>mind</b> 21:12
111:13	<b>mention</b> 7:12	63:23,23 64:14	156:21
<b>measured</b>	57:4 84:12	64:14	<b>minds</b> 159:9
108:24	90:18 91:14	<b>metropolitan</b>	<b>mine</b> 21:20
<b>mechanics</b>	103:12 136:6,8	31:24 34:22	156:10
96:10	<b>mentioned</b>	63:15 64:8	<b>minimal</b> 119:25
<b>mecklenburg</b>	19:14 25:12	<b>mexicans</b> 24:14	<b>ministers</b> 55:18
63:21	33:5 47:2,5	86:23	<b>minorities</b>
<b>media</b> 4:12	50:21 60:1	<b>mexico</b> 36:22	99:21
17:6 59:7	61:10 64:10,22	134:10,21	<b>minoritized</b>
60:14,17 77:24	82:7 97:6 99:1	<b>microphone</b>	90:16 92:12
78:2 95:25	125:20,20	61:3	95:5
96:3 149:4,10	140:9 144:4	<b>mid</b> 28:7 64:16	<b>minority</b> 87:15
150:9 151:20	<b>mentioning</b>	103:18	113:16 119:24
151:23 159:24	103:14	<b>midway</b> 26:8	125:9 139:10
172:7	<b>mentions</b> 61:8	<b>migrant</b> 140:16	140:10
<b>median</b> 117:5	124:4	159:20 168:16	<b>minute</b> 59:9
<b>meetings</b> 71:15	<b>merely</b> 40:11	<b>migrants</b> 34:19	89:25 151:16
77:10,11	87:13	133:14 136:14	<b>minutes</b> 38:17
<b>member</b> 69:5	<b>method</b> 170:16	138:24 139:20	59:7 60:10
79:23 80:7		140:23 156:14	76:16 77:10

[minutes - nationwide]

Page 32

149:9 171:6 <b>misinformation</b> 168:5 <b>missing</b> 150:1,6 <b>mittell</b> 50:19 51:24 53:1,22 54:1,14 55:5 57:14 58:12 <b>mm</b> 53:20 <b>mob</b> 49:18 50:7 56:13 <b>modern</b> 14:5 <b>modes</b> 46:12 <b>modifications</b> 19:10 <b>molina</b> 38:23 41:24 <b>molly</b> 2:14 5:5 <b>molly.dirago</b> 2:17 <b>mom</b> 65:1 <b>moment</b> 70:2 81:24 82:1 146:14 172:5 <b>monday</b> 1:13 172:13 <b>money</b> 55:15 98:17 117:12 <b>monroe</b> 2:15 <b>montana</b> 93:23 <b>montgomery</b> 32:7 <b>morning</b> 4:1 6:2	<b>mortgage</b> 21:22 22:7 23:9 32:10,22 <b>mortgages</b> 23:18 24:17,19 24:20 64:21 <b>mother</b> 44:23 <b>mother's</b> 54:6 <b>motion</b> 49:4 <b>mount</b> 7:13,20 7:20 8:5,9,15 8:19 9:3,11,15 9:18 10:7 12:2 12:15,20,22 <b>move</b> 46:9 50:12 57:18 61:10 64:11 66:14 67:4 81:8 94:13 95:10 104:25 112:12 114:2 121:15 128:20 131:6 165:13 <b>moved</b> 34:15 46:19 50:25 54:17 55:8 61:21 62:16,25 63:1 64:13,22 <b>movement</b> 32:6 49:24 57:13 63:19 <b>moving</b> 39:10 56:10 67:21 68:8,12 100:23 107:3 126:17	<b>mud</b> 142:1 <b>multiethnic</b> 46:21 <b>multiple</b> 103:1 <b>multiracial</b> 46:21 <b>municipal</b> 79:23 <b>municipalities</b> 42:14 46:2,5 47:3 48:12 53:15 80:6 <b>municipality</b> 9:5 43:15 48:21 56:3,4 63:8 66:24 <b>mustard</b> 51:20 <b>mutually</b> 39:20 <b>n</b> <b>n</b> 59:22 121:8 <b>name</b> 3:8 4:20 22:14 47:5 53:22 54:6,6 59:19 86:17 94:8 97:8 123:12,13 141:13 <b>named</b> 84:12 127:7 137:6 <b>names</b> 17:13,16 54:8 135:3 142:1 <b>narrative</b> 132:20 134:3 138:18 140:1	143:20 146:9 161:10 166:11 166:22 167:2 168:8,8 <b>narratives</b> 144:6 <b>narrowly</b> 113:9 <b>nasty</b> 139:6 <b>nation</b> 66:11 <b>national</b> 48:12 49:2,22 51:22 53:1,11 55:9 57:17 93:9 97:7,8 107:6 107:13,17 130:24 133:5 136:16 143:14 143:18 144:11 147:9 <b>nationalities</b> 16:3 91:1 <b>nationality</b> 26:24 <b>nationalized</b> 94:2 <b>nationalizing</b> 22:17 <b>nationally</b> 31:25 32:24 33:1 51:13 90:24 91:12,23 92:4 117:22 118:5 <b>nationwide</b> 24:9 33:4
--	---	--	--



[nationwide - newburgh]

Page 33

101:12	<b>neighbors</b>	101:12 102:20	55:2 56:6 57:2
<b>native</b> 36:21,21	55:14,14,16,17	103:8,15	57:2,6,16,20
104:19 148:24	55:18 56:11	104:21 105:11	58:1,19,19,20
159:24	57:23 58:17	105:21,24	60:1,2,3 61:13
<b>nature</b> 20:25	135:17	106:3,7 107:7	61:15,16 62:11
30:5 40:25	<b>net</b> 100:6,8	108:3,8 109:4	62:15 63:1,2,6
<b>near</b> 55:8 68:10	<b>networks</b>	110:24 111:1	65:10,10,15
123:3	100:14,16	113:6 136:6,10	67:19,21 68:9
<b>nearby</b> 58:1	<b>neuhaus</b> 136:8	137:24 138:13	69:4,13,15,19
123:23 130:24	150:21 152:4	150:24 167:20	69:25 70:3,11
<b>nearly</b> 69:11,15	160:25 161:2	171:19,21	70:15,20,22
130:3	<b>neutral</b> 40:12	<b>newburgh</b> 1:6	71:6,7,14,24
<b>necessarily</b>	88:2 89:19	1:7 4:16 7:7,7	72:6,16,18
68:17 92:16	<b>new</b> 1:1 4:17	7:10 8:19 9:3	73:12,13,16,16
107:17	6:22,25 7:16	9:17 17:18	74:7 75:4,8,10
<b>necessary</b>	12:22 18:23	25:1,2,5,6,10	75:24 76:1,5,6
107:23 175:7	20:12 25:3	25:10 26:9,10	76:9,11,19
<b>need</b> 59:7 66:22	31:20 32:11	27:5,12,21	77:3 78:19
99:7 138:7,14	33:7,8,18,23,25	30:2,10,16	79:1,6,12 81:3
139:17 147:16	34:1,5,10,14,20	31:19,22 33:19	84:5,24 90:10
147:17 149:10	35:5,8,17	34:4,15,18,19	91:15 94:15
151:15 156:2	36:17,22 43:16	34:19 35:4,22	97:14 99:16
171:3 172:11	43:18,19,22,24	36:2,4 37:3,5	101:2 103:15
<b>needed</b> 35:24	44:9,17 45:1	37:10,22,23	107:20,20
<b>needs</b> 165:18	46:19 47:14,23	39:1,1,4,13,21	113:2,11,14,21
167:7 168:10	48:4,11,14	40:4,5,20 42:7	114:9,18,22
170:3	49:21 51:24	42:11,19 43:6	115:6,15 116:7
<b>neighborhood</b>	63:15,22 64:8	43:14,21 44:8	116:19,25
24:2,21 52:16	64:11,14,14,23	45:19 46:17	117:6,21 121:1
55:10,11 56:17	65:2,7 67:3	48:17,23 49:1	121:22 122:11
123:15 127:16	68:23 69:11	49:3,6,11,12	122:21 123:19
127:17,21,25	71:19 73:2,3	50:10,23,25	124:19,20
135:7	75:13 76:21	51:2,7 52:23	125:3,22,22
<b>neighboring</b>	80:11 84:19	53:4,9,12,16	127:5 128:23
69:10	96:5,7 101:11	54:15,15,18,19	129:4,16,22

## [newburgh - objection]

Page 34

130:6,8,12,14 130:16,18,19 130:20,21 131:12,15,18 132:9 136:4,10 136:15 143:16 150:23 151:6 165:1 167:6,15 167:19 168:11 169:9,18,23 170:4,9 174:1 175:1 <b>newburgh's</b> 27:23 116:21 129:13 130:2,9 <b>newcomers</b> 61:10 <b>newer</b> 7:17 <b>news</b> 17:14 49:2 51:9 57:17 73:5 110:18 136:16 137:22 141:13 141:16,24 142:20 143:6 143:14 147:10 151:25 <b>newspaper</b> 17:12 72:4,11 72:13 <b>newspapers.c...</b> 17:12 <b>newsworthy</b> 17:15	<b>nineteen</b> 44:22 86:5,13,14 <b>ninety</b> 86:5 <b>nominate</b> 162:8 <b>nominated</b> 161:13 162:1,2 162:19,24 163:8 <b>nominating</b> 161:20 <b>nomination</b> 161:15 163:25 <b>non</b> 46:8 62:12 65:24 92:3 97:19 98:24 100:6 102:6,24 105:16 111:16 111:18 113:22 115:8 116:19 116:21 119:24 122:21 124:2 129:3 131:11 161:18 <b>nonrace</b> 40:23 <b>nonracial</b> 155:11 <b>nonwhite</b> 68:7 94:15 108:19 108:23 <b>north</b> 33:16 45:1 51:19 63:21 71:19 134:12,23,24 <b>northeast</b> 24:11	<b>northeastern</b> 121:3 <b>northern</b> 88:25 <b>northwest</b> 122:15 <b>notable</b> 119:3 <b>notably</b> 36:20 118:11 <b>notary</b> 1:16 173:10,23 175:13,19 <b>note</b> 4:3 107:13 141:15 <b>noted</b> 118:24 173:13 175:7 <b>notes</b> 173:14 <b>notice</b> 68:19 <b>noticeable</b> 133:13 <b>noticeably</b> 35:1 50:11 <b>noticing</b> 5:4 <b>noting</b> 49:10 94:16 95:16 <b>number</b> 4:18 9:4 23:10 26:4 35:23 42:14 46:5,12 49:3 50:12 60:14,17 68:2 86:14 95:25 99:12 102:9 103:21 109:16,22,25 110:4,15 112:8 112:23,24	114:14 115:6 121:19,22 124:5 128:16 132:25 133:23 142:6 143:16 143:17 148:25 151:20,24 153:4 <b>numbers</b> 104:4 105:25 110:19 115:12 117:17 118:1 <b>numerical</b> 113:20 <b>numerous</b> 27:8 <b>ny</b> 2:9 10:1 96:7 <b>o</b> <b>o</b> 47:20 <b>oath</b> 4:24 60:20 <b>object</b> 8:20 <b>objected</b> 40:6 40:12,15 <b>objection</b> 7:1 8:23 27:15 28:17,22 37:24 40:16 41:1 42:8 58:6 61:24 74:9 75:5,15 92:15 109:13 113:17 116:8 124:13 129:6 142:5 145:11,22 146:3 154:10
---	--	--	---

## [objections - ordinance]

Page 35

<b>objections</b> 173:13	159:3 165:17 165:23 167:6	<b>online</b> 76:18 97:10	<b>opponents</b> 123:20
<b>obvious</b> 52:4	170:3,7,19,25	<b>opaque</b> 132:14	<b>opportunities</b> 68:23
<b>obviously</b> 44:4 89:13	<b>oh</b> 16:17 68:20 73:11 78:17,23	<b>operate</b> 53:16	<b>opportunity</b> 45:20
<b>ocasio</b> 122:4 125:8	84:4 107:11 127:14 148:21	<b>operates</b> 140:21	<b>oppose</b> 122:6
<b>occasion</b> 59:1	149:4	<b>operation</b> 83:22	<b>opposed</b> 9:3 40:20 124:19
<b>occasionally</b> 56:12 111:13	<b>okay</b> 12:1,13 14:23,25 15:9	<b>operations</b> 161:7,8	125:13
<b>occurred</b> 69:3	18:3 21:25	<b>operator</b> 4:1 5:15 59:6	<b>opposing</b> 135:18,21
<b>offensive</b> 146:13	38:22 41:6,17 47:6 53:17	60:13,16 95:24	165:24
<b>offered</b> 23:10	54:12 59:8	96:2 149:9	<b>opposite</b> 9:6 166:25 167:4
<b>offering</b> 82:2	63:7 73:25	151:16,19,22	<b>option</b> 115:22
<b>office</b> 9:20,23 45:23 76:24	76:2 78:17 84:4 95:1	171:10,12	<b>oral</b> 1:2 4:15 86:6 174:1
78:25 79:5,11	99:10 107:12	172:2,5	175:1
80:22 83:14	118:10 119:22	<b>opinion</b> 8:8,9 12:1,2 19:19	<b>orals</b> 85:22,23
95:2 166:1	123:11 126:22	20:12 29:9,12	<b>orange</b> 1:1 4:17 36:5,8 37:11
<b>officeholders</b> 98:15,19	127:14 146:21 152:2 163:18	30:14,18 45:25	37:16,18,21
<b>official</b> 39:13 39:13 40:5,14	164:4 167:15	74:23 79:15	38:23 43:10
70:2,8 114:18	<b>old</b> 22:9 25:6 55:17 66:4,21	81:3 98:13	45:15 82:12,13
123:2 141:19	110:1 161:4	109:4,6 110:23	124:6 136:9,10
152:7 154:7	<b>older</b> 66:9	112:4,7 135:18	169:19
155:2 156:13	<b>olympic</b> 78:3	135:21,23	<b>ordeal</b> 85:25
158:14	<b>once</b> 47:6 52:12 90:10	158:2,4 163:12	<b>order</b> 13:7 29:10 30:2,11
<b>officials</b> 35:8 35:12 37:7	<b>ones</b> 58:17 86:9 87:22 93:23	165:22	77:4
40:20 78:19	112:1 116:5,17	<b>opinions</b> 7:25 18:7,7,10,13	<b>orderly</b> 134:11
124:6 141:4	137:11 139:24	20:9,17 21:4	<b>orders</b> 172:8
144:8 151:5		21:11 31:1,5	<b>ordinance</b> 10:3 10:25 81:11,21
155:13 158:19		73:8 125:1	
		158:5	

[organized - particular]

Page 36

<b>organized</b> 71:8 71:9 <b>organizer</b> 122:3 125:21 127:2 <b>organizers</b> 75:8 <b>organizing</b> 72:10,18 <b>original</b> 150:3 <b>originally</b> 112:2 <b>originated</b> 11:8 <b>origins</b> 14:4 <b>outcome</b> 5:1 92:8 103:5 <b>outlaws</b> 32:25 <b>outlaying</b> 53:15 <b>outline</b> 171:7 <b>outlying</b> 56:3 63:24 64:21 73:1 <b>outrage</b> 151:7 152:8 154:7 155:3 156:13 158:11,15 <b>outraged</b> 89:1 147:10 <b>outside</b> 45:5 64:14,23 <b>overall</b> 128:12 <b>overcrowding</b> 117:19,20 <b>overlapping</b> 115:11	<b>overlay</b> 29:24 <b>overt</b> 132:18 <b>overtalking</b> 159:15 <b>overwhelming</b> 89:14 <b>overwhelmin...</b> 46:8 55:2 62:12 <b>own</b> 89:15 156:9 <b>owned</b> 70:21 71:6 <b>owner</b> 143:3 <b>owners</b> 21:14 22:22 121:2 150:22 <b>ownership</b> 120:19	90:18 94:13 96:6 97:2,17 97:17 101:6 107:3 108:16 114:2,3 116:15 117:19 119:22 120:23 130:7 132:17 133:3 136:2,3 137:22 147:14 150:21 152:21 161:12 165:20 167:16 170:12 174:4,7 174:10,13,16 174:19 <b>pages</b> 15:7 <b>painstaking</b> 23:7 <b>paper</b> 56:9 98:14 99:2,2 99:18 <b>parachuting</b> 134:14 <b>paragraph</b> 18:5 87:18 97:23 98:3,10 106:2 107:4 129:25 167:16 <b>paraphrase</b> 159:22 <b>parasites</b> 52:20 <b>parents</b> 45:2 <b>parish</b> 32:9 <b>parishioners</b> 66:8	<b>parse</b> 158:6 <b>part</b> 13:16 16:21,23 19:5 35:5 44:24 55:25 64:19 77:15 103:19 107:24,25 121:3,20 122:2 122:10 125:10 127:23 133:5,6 152:12 153:19 155:8,11 161:12 164:11 165:17 170:2 <b>participants</b> 4:7 <b>participate</b> 132:4 <b>participating</b> 83:17 <b>participation</b> 35:11 84:22 103:17 110:10 <b>participators</b> 103:21 104:3 <b>particular</b> 12:3 16:5 17:7 27:1 30:1 35:25 38:4 39:12 50:18 71:4 90:9 93:25 94:1 122:12 123:12 128:5 132:22 139:5 152:20 157:7,8
	<p style="text-align: center;"><b>p</b></p> <b>p.m.</b> 172:15 <b>packing</b> 112:22 <b>page</b> 3:3,8 17:25 18:1,5,6 26:4,6,7,8 31:14,15 33:25 34:7,8 35:6 36:4,7 38:24 40:19 42:23,24 45:16 47:12 48:1,6,19 53:6 61:18,20 62:4 65:16,23 69:2 76:22 81:9 84:12 87:18		

[particular - percentages]

Page 37

157:9,13,15	<b>pelham</b> 44:24	71:15,19,24	148:20,23,24
166:12,14	44:24 46:22	72:4,17,21	149:1 150:11
168:6,13	<b>penn</b> 15:19	73:7,21 74:7	151:1,5 152:25
<b>particularized</b>	17:9	75:3,3,13 78:4	153:9,14,21
165:18 167:7	<b>pennsylvania</b>	80:9,22 82:24	159:24 160:2,6
168:10 170:3	1:17 173:4,11	83:6,12,18	160:14,19,20
<b>particulars</b>	<b>people</b> 16:1	85:8 87:7,12	161:24,25
96:15 165:18	19:25 20:3	87:22 88:3,8,9	165:10,12
<b>parties</b> 4:10	23:4,11 24:9	88:10,16,17,17	166:13,18,19
39:8	24:13,16,20	89:3,5,8,14	166:23 168:23
<b>parts</b> 18:18	26:24 27:7	90:14 91:8	<b>people's</b> 141:10
26:23 51:1	28:6,13 29:11	92:24 93:14	<b>pepper</b> 2:14
67:8 73:3 85:3	29:20 30:3,6	97:12 98:16	<b>peppering</b>
107:15 111:25	30:16 31:22,23	100:16,17,21	85:25
112:10 121:21	33:9,11,12	103:3,9,19,25	<b>percent</b> 46:2
<b>party</b> 4:25	34:15 35:2,3	106:17 109:21	47:2,17 60:23
39:13 93:20	36:21 39:15	110:12 111:19	65:17,18,19,20
94:3,5,12	40:9 44:8 46:6	112:19,25	92:7 95:8
<b>pass</b> 67:3	46:9 49:19,20	113:22,23	97:18,18
<b>passed</b> 33:10	50:8,24 51:9	117:8,13,15	101:10,14
89:8	51:21 52:6,10	121:23 122:16	102:2 103:18
<b>past</b> 80:6 90:20	52:12,23,24	122:19,22	105:10,12,17
91:18,21,25	53:5 54:4,17	123:3 124:10	105:18 106:4,4
92:1 93:10	55:7,8,13,22,24	125:6,17,18	106:6 115:3
95:9 102:16	56:4,16,17	127:17 128:8	128:13 130:13
144:10	57:22,25 58:3	128:17 134:13	139:18 150:4
<b>patel</b> 13:2	58:11,12,16	134:17,23,25	153:23 167:14
<b>pattern</b> 63:24	62:5,13,15,25	135:1,7,12,16	<b>percentage</b>
<b>patterns</b> 91:25	64:7,11,13,20	138:20 139:5	15:25,25 23:13
<b>paving</b> 66:21	64:21 65:16	139:15,17,23	95:7 100:3
<b>paying</b> 66:12	66:4,5,9,12,13	139:24 140:13	105:23 106:23
<b>payments</b> 52:1	66:14,14,20,21	140:14,22	111:11
52:2 53:19	66:22 67:3,10	141:24 143:17	<b>percentages</b>
<b>peaceful</b> 48:20	68:3,8,10,24	144:5 145:9,16	16:1,13 97:16
51:17 55:3	69:7,12,16,19	146:6 147:7	128:15

[perez - population]

Page 38

<p><b>perez</b> 1:3</p> <p><b>perfectly</b> 68:21</p> <p><b>perform</b> 6:15</p> <p><b>permissible</b> 10:8 25:16</p> <p><b>perpetuating</b> 146:9 161:9</p> <p><b>person</b> 40:7 54:2 57:17,24 58:4 59:12,23 88:21,22 140:18 162:10 162:12</p> <p><b>person's</b> 47:5 59:19</p> <p><b>peter</b> 1:3</p> <p><b>pew</b> 101:9 102:4</p> <p><b>ph.d.</b> 4:13 5:19 85:24</p> <p><b>phase</b> 22:25 23:17 24:22,24 24:24</p> <p><b>phases</b> 22:21</p> <p><b>phenotypically</b> 77:13 135:2</p> <p><b>philadelphia</b> 173:6</p> <p><b>phone</b> 101:20</p> <p><b>phones</b> 141:12</p> <p><b>phrase</b> 23:3</p> <p><b>phrasing</b> 41:15 164:13</p> <p><b>physical</b> 121:24</p>	<p><b>piaquadio</b> 124:5 167:11 168:4</p> <p><b>pick</b> 78:4</p> <p><b>picked</b> 61:7 72:13</p> <p><b>picking</b> 96:5</p> <p><b>picnic</b> 69:3</p> <p><b>picture</b> 135:8 135:13</p> <p><b>piece</b> 56:9</p> <p><b>pipeline</b> 105:7</p> <p><b>pitting</b> 160:17</p> <p><b>place</b> 4:10 27:14,19,24 28:15,20 29:19 30:15 32:14 34:14 46:3 62:5,15 80:25 87:9 97:11 127:15</p> <p><b>placed</b> 40:22 41:3</p> <p><b>placeless</b> 97:10</p> <p><b>places</b> 29:16 32:10,20 33:16 36:22 50:6,7 51:15 56:13 67:9 80:15 90:9</p> <p><b>plains</b> 2:9</p> <p><b>plaintiff's</b> 15:10</p> <p><b>plaintiffs</b> 1:4 2:11 5:8,10,12</p>	<p>5:14 6:2</p> <p><b>plan</b> 12:11 124:5</p> <p><b>plant</b> 121:4,15 121:18,24 122:7,8,21 123:3,18,20 124:19 125:3 125:14,23 126:2 127:20</p> <p><b>play</b> 160:7 161:24</p> <p><b>played</b> 136:16</p> <p><b>players</b> 136:13</p> <p><b>playing</b> 136:19</p> <p><b>plays</b> 150:15</p> <p><b>pleasant</b> 7:13 7:20,21 8:4,5,9 8:15,19 9:3,11 9:15,18 10:7 12:2,15,20,22</p> <p><b>please</b> 4:3 5:16 94:13 146:18 154:2 159:17 172:5,13</p> <p><b>plenty</b> 19:8 57:19</p> <p><b>pockets</b> 122:23 123:5,11</p> <p><b>point</b> 29:5 44:23 50:23 90:5 100:25</p> <p><b>pointed</b> 28:5</p> <p><b>points</b> 56:15 135:11</p>	<p><b>polarized</b> 90:12 112:18</p> <p><b>policy</b> 10:4 11:1 81:12 170:14</p> <p><b>political</b> 9:7 17:17 39:8 49:4 51:6,7 53:2,17 76:24 83:17 84:19 86:19 94:18 97:4 100:15,21 101:7 126:4 132:5,19 149:22 153:5 170:13</p> <p><b>politicians</b> 143:17</p> <p><b>politicized</b> 52:24 57:15</p> <p><b>politics</b> 83:2</p> <p><b>polling</b> 125:15</p> <p><b>pollutants</b> 123:22,22</p> <p><b>pollution</b> 120:25 129:21</p> <p><b>poor</b> 127:16,21</p> <p><b>poorly</b> 58:9</p> <p><b>populated</b> 62:12</p> <p><b>population</b> 61:21 62:7,16 63:9,25 64:4 66:17,25 67:18 68:7 87:3</p>
---	--	--	--

[population - probably]

Page 39

90:10 101:13 101:14 102:6 105:12 107:16 110:22 122:24 123:5,12 128:4 128:7 <b>populations</b> 112:1 126:3 <b>populous</b> 26:13 <b>portions</b> 126:23 <b>portrayed</b> 139:20 <b>position</b> 38:2 100:23 135:20 136:1 168:19 <b>positions</b> 13:19 94:2,4 <b>positive</b> 86:17 <b>possibilities</b> 119:9 <b>possibility</b> 153:12 <b>possible</b> 138:23 146:1 152:7 155:2,13 <b>possibly</b> 41:22 54:18 145:19 <b>post</b> 137:24 167:20 <b>potential</b> 83:3 83:14 91:1 105:14 126:1 168:19	<b>potentially</b> 13:8 40:8 141:1,7 <b>pouring</b> 51:20 <b>poverty</b> 130:4 134:9 <b>power</b> 53:4 57:15 86:19 87:4,13 90:14 94:18 113:20 121:4,15 123:17 <b>practice</b> 10:3 11:1 81:11 112:21,22 <b>practiced</b> 21:14 <b>practices</b> 22:18 42:13 49:17 102:12,16 112:11 <b>preceding</b> 173:14 <b>precise</b> 21:13 108:5 114:21 114:22 <b>precisely</b> 75:7 150:14 164:13 <b>preclearance</b> 112:10 <b>predominant</b> 105:21 <b>predominantly</b> 127:17,20 128:8	<b>preference</b> 94:12 <b>preferences</b> 90:16 92:11,17 93:6 94:8 165:24 <b>preferred</b> 121:14 <b>prejudice</b> 86:21 <b>prelude</b> 143:25 <b>prepared</b> 6:4 15:15 <b>preparing</b> 15:12 <b>prerequisite</b> 10:2,25 81:10 81:21 <b>presence</b> 80:8 87:14 <b>present</b> 2:20 5:2 8:4 28:2 81:24 82:1 133:24,24 <b>president</b> 93:15 93:16 <b>presidential</b> 93:13 <b>press</b> 13:24 <b>presume</b> 39:8 48:13 <b>presumption</b> 23:2 <b>pretty</b> 15:24 16:8 17:10	23:15 32:14,23 44:25 52:4,7 63:9,16 79:19 93:22 100:2 102:1 113:24 115:8 116:1 117:21 119:6 119:25 120:2 143:6 145:8 152:1 157:12 165:9 169:18 <b>prevented</b> 104:12 <b>previous</b> 83:5 83:22 132:12 151:9 163:25 <b>previously</b> 90:3 112:13 <b>primaries</b> 96:16 <b>primarily</b> 23:4 <b>primary</b> 164:9 164:9 <b>primeros</b> 78:5 <b>princeton</b> 19:13 <b>probabilistica...</b> 81:7 <b>probably</b> 9:24 25:14 28:3,7 31:24 37:22 43:25 44:2,5 60:19 66:9 68:14 72:24,25 79:20 81:6
--	--	--	---

[probably - put]

Page 40

95:21 124:11 164:20 <b>problem</b> 52:4 55:7 66:17,19 66:21 134:7 <b>problems</b> 67:1 <b>procedural</b> 39:18 <b>procedure</b> 10:3 11:1 38:1 81:11 <b>proceedings</b> 173:12 <b>proceeds</b> 98:14 <b>process</b> 12:21 40:13 103:10 132:5 <b>produce</b> 16:6 98:5 114:13 115:13 <b>produced</b> 120:9 <b>professional</b> 1:16 173:10,22 <b>professionals</b> 16:9 <b>professor</b> 10:11 87:7 <b>professors</b> 74:17 85:25 <b>profile</b> 39:15 46:25 53:2 <b>profiles</b> 118:14 <b>programs</b> 115:22	<b>progressives</b> 86:7 <b>progressivism</b> 85:21 <b>promise</b> 25:24 <b>promised</b> 84:8 <b>promoting</b> 163:24 164:5 164:25 <b>propagate</b> 143:19 168:6 <b>propagated</b> 168:13 <b>propagating</b> 164:18 <b>propensity</b> 82:24 <b>proper</b> 8:22 <b>properties</b> 47:14 48:3 <b>property</b> 35:1 45:19 70:21 71:11 89:16 <b>proportion</b> 91:16 109:24 110:15 111:16 111:17,18 128:11 130:12 <b>proportional</b> 85:11 <b>proportionate</b> 85:11 <b>proportions</b> 97:18 126:2	<b>proposal</b> 161:3 <b>proposed</b> 123:17 <b>protect</b> 138:13 <b>protected</b> 9:19 9:22 76:23 83:9 97:3 101:6 114:4 120:21 124:12 132:2,8 165:19 167:8 <b>protection</b> 114:7 120:24 <b>protections</b> 19:9 36:14,20 <b>provide</b> 10:15 11:16 15:10 84:8 139:17 <b>provided</b> 10:13 31:1 77:21 83:4 <b>providing</b> 82:13 114:25 <b>provision</b> 52:21 120:4 <b>provisions</b> 35:10 36:18 <b>proximity</b> 61:23 62:18 63:2 66:22 122:25 <b>public</b> 1:16 13:8 16:22 46:21 66:19 70:3 89:1 98:6	123:1 126:4 132:23 144:14 144:14 151:7 173:10,23 175:19 <b>publicized</b> 137:1,25 141:5 <b>publicizes</b> 139:3 <b>publish</b> 113:5 <b>published</b> 13:24 84:16 167:21 <b>puerto</b> 18:24 19:3,4,20,22 20:1 24:6,11 36:16 49:19 78:21 91:6,12 91:15 103:15 103:17 104:1 104:15 105:20 105:23 125:9 <b>pull</b> 10:8 17:10 115:5 <b>pulled</b> 17:8,11 114:17,19 <b>pulls</b> 17:15 <b>punched</b> 73:12 <b>purpose</b> 85:1 <b>put</b> 10:16 19:17 29:19 30:15 37:13,14 41:20 42:20 70:5 74:23,24 76:18 79:8,9 103:4
--	--	--	--



[put - rally]

Page 41

104:9 108:9 119:20 121:4 132:12 138:14 147:17 148:6 165:9 <b>putnam</b> 45:13 46:7,18 <b>putting</b> 162:11	156:9,12,18,21 156:21,22,24 157:6,10,13,16 158:8 159:8,17 162:14 <b>questions</b> 29:25 39:24 86:1 146:16,19 154:2,5 171:14 171:17,24 172:3,4 <b>quickly</b> 16:18 111:25 115:4 168:4 <b>quiet</b> 56:19 <b>quite</b> 9:15 17:11 26:12 39:10 99:9 112:17 <b>quotation</b> 87:6 <b>quote</b> 85:18 98:3 99:18 101:9 102:3 108:12 137:21 <b>quoted</b> 127:8 147:14 <b>quoting</b> 98:8 138:6	41:12,20 49:13 50:22 55:7 57:8 67:25 68:19 79:17 81:5 93:12,13 115:7 <b>rac</b> es 16:2 78:24 79:4 93:17 <b>racial</b> 28:5 33:1 40:24 49:1,14 50:14 64:24 87:16 88:3 89:8 98:4 99:21 100:4 108:17 111:3,8 112:14 113:1 116:6 123:18 132:19 136:3 138:16 139:14 147:22,23,24 148:11,20 149:7 150:16 150:25 151:2 151:12 152:9 154:8 155:19 156:15 158:3,4 158:7,12,17,18 158:23 159:1 159:10,24 160:3,7,10,22 161:17,19,21 161:24,25 162:25 163:3,6 163:13,17	167:2 168:7,21 168:22 169:12 169:22 170:9 <b>racialized</b> 50:20 53:13 140:17 141:21 148:3 160:11 160:18 161:18 166:13,22 <b>racially</b> 23:12 29:21 45:17 47:3 49:16 88:2 90:7,12 98:5 112:17 <b>racism</b> 79:17 101:17 102:8 102:10 121:19 <b>racist</b> 53:9 58:4 58:14 72:16,20 74:7 75:4 88:19 135:17 135:19,25 140:7 141:21 142:2 143:20 145:16 146:2,6 146:10,13,15 146:17,21,24 147:2,3,19,20 148:22 155:4 155:16 159:5 <b>racists</b> 72:18 <b>raised</b> 39:24 52:3 104:17 <b>rally</b> 69:5,11 70:4,16,20,23
<b>q</b>			
<b>qualification</b> 10:2,24 81:10 81:21 <b>qualifications</b> 24:19 <b>qualifies</b> 81:16 158:4 <b>qualify</b> 85:23 <b>qualitative</b> 127:22 <b>quality</b> 4:6 70:6 86:8 128:23 129:3 <b>quantify</b> 151:9 <b>quarter</b> 130:3,4 <b>quarters</b> 47:11 <b>question</b> 13:10 18:20 28:2 29:12,13 30:4 31:6 34:2 39:2 79:19 80:19 101:25 142:15 142:18 148:10 153:25 154:4,6 154:20,24 155:12 156:7,8	<b>r</b> 47:20,20 59:22 121:8 173:2 174:3,3 <b>race</b> 18:19 26:24 39:23 40:15 41:7,10		

[rally - redirecting]

Page 42

71:5,8 73:25 75:22 76:2,5,6 126:4 <b>ramirez</b> 127:7 <b>ramon</b> 1:3 <b>ran</b> 57:22 79:5 79:11 80:22 161:7 <b>range</b> 91:24 <b>ranking</b> 101:11 <b>rapid</b> 64:17 <b>rate</b> 33:20 101:3 106:14 108:7,23 109:1 109:2,15 110:24 117:20 166:19 <b>rates</b> 97:5 101:8 107:19 108:3 117:21 118:2,3,20 <b>rather</b> 47:17 74:4 80:23 133:5 137:10 141:2 <b>reactivation</b> 121:18 122:6 <b>read</b> 20:9 23:21 26:7 38:2 39:11 61:19 62:9 71:4 77:8 96:21 99:12 136:18 147:15 160:23 175:5	<b>readily</b> 62:14 <b>reading</b> 27:21 138:3 <b>real</b> 46:13 67:6 72:9 <b>reality</b> 167:3,4 <b>realized</b> 101:20 165:9 <b>realizes</b> 165:11 <b>really</b> 7:5 14:5 16:11,18 19:16 19:17,25 20:11 20:17 21:18,21 22:15 28:3 38:7 46:20 48:8,8 52:3 53:9 55:6 57:12 72:24 74:19,20 75:9 83:19 86:8 96:18 103:14 104:3 107:23 108:1,22 116:5 117:12,16 119:4 120:10 125:3 126:20 127:23 138:17 138:19 140:21 144:9,15,15 145:16 146:2 147:6 148:25 149:7,17 150:7 150:8 153:3,15 153:17 159:5 160:21 162:9	162:10,11 167:1,2 <b>realm</b> 32:8 100:22 149:22 157:22 <b>reapportionm...</b> 39:9 <b>reason</b> 35:15 35:19,21 45:24 52:5 63:12 66:16 68:13 71:13 88:14 89:19,24 96:11 101:19 113:14 125:10 139:13 141:23 142:2 142:18 157:1,3 158:21 170:19 174:6,9,12,15 174:18,21 <b>reasons</b> 64:12 64:13,24 79:17 81:5 90:2,8 122:6 124:8 133:1 <b>recall</b> 35:21 37:9 107:14 131:5,13 <b>received</b> 168:15 <b>recent</b> 15:21 92:1 <b>recently</b> 82:12 <b>recess</b> 60:15 96:1 151:21	171:11 <b>rechartered</b> 26:11 <b>recipients</b> 52:22 <b>reckless</b> 144:15 147:12 <b>recognize</b> 153:6 <b>reconquering</b> 133:7 <b>record</b> 4:2,11 5:3 30:20 53:21 54:12 56:8 60:13,16 78:9 95:23,24 96:2 132:18 143:1 146:22 147:15 151:19 151:23 171:9 171:10,12 172:1,12 <b>recorded</b> 4:9 4:12 104:15 <b>recorder</b> 45:22 <b>recording</b> 4:5,9 <b>records</b> 67:24 <b>recruit</b> 71:15 71:22 <b>recurrent</b> 121:1,10,11 132:22 <b>red</b> 150:14 <b>redirecting</b> 39:6
---	--	--	---

## [redistricting - report]

Page 43

<b>redistricting</b> 39:9 40:6 102:22 112:20 <b>redrawn</b> 40:21 <b>reduce</b> 112:23 <b>reduced</b> 104:22 <b>reed</b> 1:2 <b>reelection</b> 53:3 <b>refer</b> 8:14 126:24 132:15 153:24 169:19 <b>references</b> 138:19 <b>referencing</b> 121:12 <b>referred</b> 30:22 49:5 53:25 82:9 86:15 <b>referring</b> 38:12 45:16 87:25 94:11 125:21 127:3 132:10 133:3 134:1 <b>refers</b> 54:14 <b>refinancing</b> 23:10 <b>reflecting</b> 129:18,18 <b>refresh</b> 10:15 14:21 <b>refugee</b> 161:8 <b>regard</b> 94:16 <b>regarding</b> 120:3	<b>regardless</b> 28:8 <b>region</b> 31:24 <b>regional</b> 24:10 107:15 <b>register</b> 105:3 <b>registered</b> 1:15 90:20 104:25 105:6 173:9,22 <b>registers</b> 13:6 13:16 <b>registration</b> 111:14 <b>regular</b> 80:23 121:4 172:9 <b>regulation</b> 10:4 11:1 81:12 92:25 <b>reinforce</b> 113:20 <b>rejected</b> 69:20 <b>related</b> 4:25 21:11 40:15 79:17 81:5 123:18 131:14 <b>relations</b> 18:19 57:8 <b>relative</b> 115:14 131:23 <b>relatively</b> 49:2 <b>relevance</b> 8:21 <b>relevant</b> 18:11 18:19 19:14,17 28:4 41:22 96:13 119:21 131:21 158:5	<b>reliable</b> 132:11 <b>reliably</b> 128:19 <b>religious</b> 29:23 87:16 <b>rely</b> 15:14 <b>remain</b> 33:10 <b>remainder</b> 97:23 <b>remained</b> 26:12 <b>remaining</b> 97:23 <b>remember</b> 10:19 11:5,12 11:21 13:12 17:23 20:4 24:3 49:13 51:8 57:16 61:6 68:15 71:9 77:11 80:16 82:22 93:7 96:6 100:14 102:1 109:8 119:16 123:24 128:14 134:21 143:24 144:2,24 148:4 <b>remembered</b> 19:6 <b>remind</b> 10:20 <b>reminder</b> 151:18 <b>remote</b> 1:12 2:1 <b>remotely</b> 4:20 <b>removed</b> 35:2 53:3 80:2	<b>renamed</b> 44:14 <b>renters</b> 16:1 67:11 <b>renting</b> 118:3,4 <b>reopening</b> 122:20 <b>repealing</b> 148:12 <b>repeat</b> 60:24 147:10 149:2 155:14,18 156:6 <b>repeated</b> 52:8 142:3,20 148:21 153:9 160:8 166:10 <b>repeatedly</b> 103:7 <b>repeating</b> 141:11,19 142:11,12 143:6 148:12 149:17 153:18 153:21 <b>repeats</b> 148:1 <b>repetition</b> 150:6 160:19 <b>rephrase</b> 9:13 166:5 <b>report</b> 3:11 6:4 6:7,10,13,16 7:12 12:14,19 15:2,12,15 16:6 17:25 18:11,13,17
--	--	--	--

[report - rhetorical]

Page 44

19:18 25:12,20 27:8 28:11 29:14 31:14 37:13,14 38:14 40:19 41:21 42:9,20 45:17 51:5 53:5 61:7 61:18 68:5 71:3 74:4 75:20,22 76:7 79:8,9 82:4 102:16 105:10 106:24 114:13 124:4 128:19 131:2 133:4 137:20 141:15 144:4 157:3 158:1 160:23 163:20,21 169:25 170:5 170:11 171:2,4 <b>reported</b> 72:9 96:11 101:10 <b>reporter</b> 1:16 4:22 5:16 44:11 89:21 107:8 121:7 172:8 173:10 173:23 <b>reporting</b> 31:13 <b>reports</b> 23:19 23:22 38:18 <b>represent</b> 5:6,8 17:17 129:17	134:25 <b>representation</b> 85:11 98:6 <b>representative</b> 122:4 125:8 <b>representatives</b> 112:23 <b>representing</b> 5:9,11,14 <b>republican</b> 89:1 90:24 91:4,24 92:4,9 92:14 93:15,16 <b>republicans</b> 94:1 <b>require</b> 58:24 <b>required</b> 35:10 82:19 102:23 175:13 <b>requirement</b> 35:14 <b>requirements</b> 35:1 <b>requires</b> 147:4 <b>rescue</b> 22:23 23:3,9,17 <b>research</b> 6:9,15 11:4 16:11 18:17 23:7 29:3 58:25 59:2 74:13 78:18 80:18 81:1 92:21 96:9,24 97:7 100:25 107:4	<b>researcher</b> 45:25 <b>reserve</b> 136:24 <b>reserves</b> 161:5 <b>resident</b> 57:3 59:13,20 <b>residential</b> 50:16 61:22 62:17 <b>residents</b> 31:19 31:20 34:3,5 65:24 129:13 130:2,9 <b>resolved</b> 29:13 82:3 <b>resources</b> 133:17 148:16 <b>respect</b> 28:4 138:8 160:16 <b>respected</b> 160:14 <b>respective</b> 13:18 <b>respects</b> 34:24 <b>respond</b> 60:25 81:6 <b>responded</b> 56:16 <b>response</b> 78:8 <b>responsible</b> 38:8 162:14 <b>responsive</b> 167:7 <b>responsiveness</b> 98:6 165:16	168:9 169:5,8 170:2 <b>rest</b> 33:20 <b>restart</b> 121:15 <b>restate</b> 101:25 <b>restated</b> 156:11 <b>restriction</b> 93:1 <b>restrictive</b> 45:17 47:3 49:16 <b>rests</b> 162:6 <b>result</b> 41:23 80:19 93:25 95:11 <b>resultant</b> 49:1 <b>resulting</b> 101:17 102:7 <b>results</b> 50:5 95:10 <b>retail</b> 118:19,21 <b>retrospectively</b> 95:3 <b>return</b> 102:15 <b>revise</b> 54:22 <b>revision</b> 34:25 36:13 <b>revisions</b> 36:24 <b>revisit</b> 152:14 <b>rgreenwood</b> 2:5 <b>rhetoric</b> 133:19 133:21 <b>rhetorical</b> 144:2
---	---	---	--

[rican - saw]

Page 45

<b>rican</b> 19:4 24:6 78:21 91:12 125:9 <b>ricans</b> 18:24 19:4,20,22 20:2 24:11 36:17 49:19 91:6,15 103:16 104:1,15 105:20,24 <b>rick</b> 84:13,16 85:13 <b>rico</b> 103:17 <b>rides</b> 51:11 <b>right</b> 15:16 16:17 19:3,23 19:25 21:7,13 25:15 30:16 31:2,16 32:24 33:21 35:17 37:13,23 40:15 41:7,21,25 42:2,20 43:2,7 46:24 47:5 48:13,15,17 49:12,15 50:10 50:11,17 51:8 51:11,23 52:19 53:23 54:15,20 54:25 56:8,18 58:20 60:11 61:1 63:10 64:1,2 66:11 68:10,14 69:8 69:14,16 70:15	70:20 71:21,22 72:6 73:11,19 73:20 79:18,21 81:16 83:6,9 86:20 87:7,9 88:3,6,6,11,23 89:4,10 91:2 92:22 93:10,15 99:9,16 100:14 101:3,23 103:2 103:9,24 105:1 106:4 109:12 111:12 113:16 114:15 115:12 116:2,22 117:3 120:1,21 121:17,19,24 124:15 125:4 129:11,23 137:13,15 138:18 139:1,5 139:16,18 140:3,7,11,14 140:22 143:4,5 143:8,21,24 152:18,23 155:4,6,9 156:17 160:1,5 160:11 162:1,4 167:14 168:16 169:12 170:17 170:17 <b>rights</b> 7:15,16 19:10 20:1 32:3,6 35:9	36:14,24 41:25 49:24,25 53:11 57:13 63:11,19 64:1 76:22 83:23 84:15 93:1,2 102:17 103:8 112:2,10 <b>rise</b> 64:15 <b>rising</b> 66:16 <b>risk</b> 40:22 41:4 <b>river</b> 121:25 122:10 <b>road</b> 66:20 111:15 <b>rob</b> 136:11 <b>roediger</b> 47:19 48:7 <b>role</b> 22:16 <b>rolison</b> 136:11 161:13 163:16 164:5 <b>rolison's</b> 163:24 <b>romance</b> 1:2 <b>room</b> 138:10 <b>roughly</b> 43:24 50:23 67:22 76:15 90:22 92:4,8 <b>rubber</b> 111:15 <b>rule</b> 88:10 <b>rules</b> 46:3 87:23,24 88:1 <b>ruling</b> 82:19 84:7	<b>run</b> 58:14 78:25 141:16 143:14 147:9 161:7 <b>running</b> 67:10 67:10 123:21 <b>runs</b> 34:7 <b>russ</b> 2:20 4:21 <b>ruth</b> 2:3 5:7
			<b>s</b>
			<b>s</b> 2:14 59:22 121:8 174:3 <b>sad</b> 153:15,23 <b>sadly</b> 55:19 72:6 140:12 <b>safe</b> 132:15 <b>safety</b> 13:8 <b>sahn</b> 98:9,11 99:11,13 <b>salvador</b> 135:12,14 <b>salvadorian</b> 135:9 <b>sam</b> 64:25 <b>samuel</b> 2:3 5:11 <b>sanders</b> 2:14 <b>sandoval</b> 1:13 3:4,12 4:13 5:18 174:2,24 175:2,4,12 <b>sandy</b> 161:6 <b>savings</b> 23:22 <b>saw</b> 24:12 48:16 170:8,21

[saying - sense]

Page 46

<b>saying</b> 22:2 40:12 48:10 56:9 72:17 88:10,20 98:4 99:22,25 123:20 131:5 141:12 145:14 145:17 146:23 147:1 152:21 158:16 159:23 162:5 163:3 164:18 169:10 <b>says</b> 14:24 68:18 71:17 77:1 98:22 111:7,21,24 127:15 128:22 130:22 149:3 149:19 165:7 167:18 <b>scales</b> 49:15 <b>scheduled</b> 172:9 <b>scheme</b> 10:5 11:2 33:9 81:13 83:24 84:3 <b>scholarly</b> 20:24 96:8 <b>scholars</b> 20:18 21:11 <b>school</b> 38:5,11 46:21,22 66:7 73:1 104:18	<b>schools</b> 66:18 <b>science</b> 128:21 <b>scout</b> 158:10 <b>screen</b> 4:8 114:18 <b>scroll</b> 15:7 <b>sdavis</b> 2:6 <b>search</b> 13:14,20 17:14 25:17,25 47:8,11 <b>searched</b> 17:5 <b>searches</b> 17:12 17:13 <b>seat</b> 80:24 <b>seats</b> 93:20 <b>second</b> 18:4 24:22,24 63:8 83:10 101:18 132:15 167:18 <b>section</b> 18:2 26:3,3 33:2 34:3,6,8 35:7 42:24 95:17 96:6,23 112:2 116:13 132:1,6 132:12,13,14 <b>sector</b> 118:13 118:25 119:10 <b>sectors</b> 118:17 119:2,14 <b>security</b> 66:13 66:13 <b>see</b> 11:13 14:18 15:1,5,7,8 24:16 25:15	27:18 34:12 38:17 41:15 43:25 46:1 47:8,25 56:24 61:12 63:24 67:23,23 68:1 72:11 74:8,10 77:22 78:7 85:17 91:20 95:14 99:4 101:16 102:7 106:23 108:10 128:25 129:11 130:9 132:6 137:1 141:11 149:24 150:18 150:18 153:20 162:14 163:10 168:9 169:16 169:24 171:19 <b>seeing</b> 19:14 23:8 51:9 67:4 126:13 <b>seek</b> 52:12 <b>seekers</b> 83:14 138:11 149:19 155:15 <b>seeking</b> 62:6,15 <b>seeks</b> 100:18 <b>seem</b> 29:6 82:3 111:23 126:14 <b>seemed</b> 39:7,19 72:21 170:21 <b>seems</b> 82:1 95:9 95:10 117:20	159:13,13 165:11 168:1 <b>seen</b> 4:7 41:8 42:6 43:8 108:10 111:19 <b>seep</b> 123:23 <b>sees</b> 66:25 154:19 <b>segregated</b> 51:16 116:4 <b>segregation</b> 116:7 <b>seizure</b> 13:20 <b>selection</b> 96:16 <b>selectively</b> 135:13 <b>self</b> 35:14 <b>seligman</b> 56:14 <b>sell</b> 68:20 <b>selma</b> 32:7 <b>semi</b> 67:12,12 89:2 <b>senate</b> 93:12,20 161:16 <b>senate's</b> 161:14 <b>senator</b> 93:15 93:22,22,23 136:11 153:16 161:13 163:16 163:24 164:4 <b>sense</b> 27:6 50:13 54:10,12 55:20 62:9 71:21 95:18 140:25 157:23
--	--	---	---

[sense - sorry]

Page 47

166:12 <b>sentence</b> 48:25 61:19,25 62:2 62:9,10 77:1 94:19 111:24 112:25 114:8 167:18 <b>separate</b> 26:10 29:25 112:6 143:23 <b>separated</b> 30:19 <b>september</b> 1:14 4:3 69:4 <b>series</b> 36:17 <b>serratto</b> 7:13 <b>served</b> 136:8 <b>service</b> 121:4 138:8 <b>session</b> 79:20 <b>set</b> 49:3 100:9 132:23 166:14 <b>settle</b> 123:23 <b>settled</b> 82:16,18 <b>seven</b> 86:6 114:9 115:16 <b>seventy</b> 44:22 <b>share</b> 26:1 101:12 <b>sharing</b> 26:5 <b>sharon</b> 137:6 137:13 <b>shield</b> 83:16 <b>short</b> 35:13	<b>show</b> 85:8 110:8,12,16 170:25 <b>showed</b> 109:9 119:16 <b>showing</b> 101:1 <b>shown</b> 94:17 <b>shows</b> 124:18 141:16 143:9 169:4 <b>shut</b> 68:25 <b>sic</b> 150:24 <b>side</b> 44:1 139:15,19 <b>sides</b> 9:6 13:17 43:11 <b>sign</b> 70:22,25 71:1,5 168:6 <b>signature</b> 173:20 <b>significant</b> 67:17 87:15 165:16 169:4,8 170:1 <b>significantly</b> 64:15 <b>signs</b> 56:9 <b>similar</b> 8:11 9:16 <b>similarly</b> 32:19 <b>simpler</b> 156:10 <b>simply</b> 53:3 66:16 88:10 <b>simpson</b> 126:25	<b>simultaneous</b> 63:25 <b>single</b> 65:1,2 79:23 80:7 87:2 94:15 102:25 103:6 105:5 110:3,4 117:15 <b>sit</b> 51:12 163:12 <b>site</b> 15:18 17:9 161:4,6,7 <b>sitting</b> 11:20 <b>situation</b> 152:24 <b>situations</b> 51:15 148:18 <b>six</b> 100:7 <b>size</b> 117:9,11 <b>skew</b> 117:12 <b>skills</b> 96:9 <b>slap</b> 143:7 144:11 145:15 145:18 <b>slavery</b> 32:2,20 33:6,15,17 <b>slightly</b> 22:21 39:18 138:22 <b>slope</b> 110:9 <b>slowly</b> 110:7 126:16 <b>small</b> 26:12 49:2 63:16 67:17 68:1 97:17 105:19	116:5 120:2 <b>smaller</b> 116:16 <b>smoothly</b> 39:10 <b>sneaking</b> 134:8 134:14 <b>social</b> 15:18 16:19,21 66:12 66:13 114:12 114:19,23 115:5 116:13 119:15 120:10 166:14 <b>socioeconomic</b> 116:19 <b>sociology</b> 16:9 <b>somebody</b> 23:23 39:21 68:17 70:6 89:22 99:5 111:13 139:2 144:24 147:2 149:3 158:14 <b>somewhat</b> 118:12 <b>son</b> 64:25 65:4 <b>soon</b> 73:11 95:18 155:17 <b>sorry</b> 6:23 8:7 16:25 17:25 31:8 40:1 54:3 54:22 69:14 70:25 82:17 85:23 89:4 91:10 99:5 137:13 138:5
---	--	---	---

[sorry - spoke]

Page 48

147:23 148:10 151:4,10 <b>sort</b> 13:11 17:15 18:6 19:2,14 20:4 21:22 22:18 25:6 26:23 32:8 38:1,18 39:10 43:11 45:5 50:17 56:19 61:8 62:19 64:19 68:3,5 70:1 71:19,20 72:7 72:12,15 73:4 74:1,3,11 77:8 77:12,19,23 80:13,13,22 83:16 85:4,6 85:15 86:4,9 86:12 87:6 90:4 94:3 96:16,17 100:16,23 104:20 108:10 113:6 117:10 119:1 121:18 122:2,23 123:15 126:3 127:9 132:12 133:10 134:13 137:24 142:1 142:25 143:22 148:25 150:15 152:20 157:22	158:1 <b>sought</b> 121:3 <b>soul</b> 147:5 <b>sound</b> 130:5,11 <b>sounded</b> 171:18 <b>sounding</b> 86:17 <b>sounds</b> 58:2 75:4 81:14 109:4 111:4 115:25 129:2 159:19 <b>source</b> 73:6 74:15 164:21 <b>sources</b> 120:13 164:9,14 <b>south</b> 51:18 88:19 133:6 134:10,24,24 <b>southern</b> 89:1 <b>southwest</b> 24:12 85:21 86:8 <b>spanish</b> 17:5 23:25 24:14 35:10 54:4 77:24 78:2,12 78:14,15 82:2 82:8,14,15 83:8 84:5 105:5 168:17 <b>speak</b> 63:5 100:13 104:21 109:19 120:16 150:20	<b>speaker</b> 133:17 <b>speakers</b> 60:22 102:24 <b>speaking</b> 21:3 22:20 24:14 29:15 30:7 33:2 75:7 78:15 81:24 82:8 84:5 90:22 92:19 104:19 118:16 <b>special</b> 41:24 <b>specialized</b> 19:25 129:24 <b>specific</b> 29:5 32:14 34:18 36:16,25 37:10 40:23 42:10 43:13,14 46:2 47:3 48:16 73:17 81:1 84:24,25 87:2 92:17 93:6 94:7,11 97:11 102:11 108:16 109:8 111:19 113:14 117:24 124:25 125:14 133:12 139:9 156:18 167:5 <b>specifically</b> 8:15 11:3 24:13 27:3 29:19 30:15 36:14 37:6	38:5 46:1 56:6 57:21 79:14 84:21 89:4 94:17 95:7 107:1 113:12 115:7 130:19 169:17 <b>specifics</b> 102:19 <b>specified</b> 35:1 124:8 <b>specifies</b> 48:14 48:14 <b>specify</b> 40:7 107:11 122:24 126:5 127:24 130:19 <b>specifying</b> 130:8 <b>speculate</b> 157:24 <b>speculation</b> 75:16 129:7 145:12,23 146:4 <b>speeches</b> 132:24 <b>spell</b> 121:6 <b>spent</b> 45:8 <b>split</b> 84:18 92:2 <b>splits</b> 91:22 <b>spoke</b> 36:21 57:3 59:13 131:20 149:18 168:17
---	---	---	--



[sponsored - story]

Page 49

<b>sponsored</b> 70:14	101:7 102:20 103:8,15 106:3	104:1 113:5 129:25 134:18	<b>stewart</b> 130:24
<b>spread</b> 116:1	111:1 136:7,10	135:15	<b>stick</b> 66:6
<b>spreadsheet</b> 119:18,20 128:9	138:5 153:16 161:12,14,16 164:4	<b>statewide</b> 35:7 93:17,20	132:15 142:7 154:1,4
<b>spreadsheets</b> 120:9 123:8,9	<b>state's</b> 101:14 105:12	<b>statistic</b> 47:10 110:8,20 111:21 128:18	<b>sticking</b> 171:4
<b>sstill</b> 2:10	<b>stated</b> 137:21 156:8	<b>statistics</b> 102:3 105:9 107:21 107:22,25	<b>stipulation</b> 36:16
<b>standard</b> 10:3 10:25 81:11,22	<b>statement</b> 12:5 57:21 93:5 94:9 98:25	115:6,14 116:11 118:4 119:21 131:19	<b>stop</b> 16:17
<b>standpoint</b> 167:23,24	106:10,11,12 108:16 124:24 126:4,24	<b>status</b> 88:18 104:22 115:7 115:14 116:19	<b>stories</b> 144:5 149:1 152:25 153:6,9 168:7
<b>start</b> 15:16 62:4 66:14,15 67:4,21,22 68:12 171:3	127:22 129:17 129:19 130:14 133:11 135:1 142:21 147:13 147:19 149:14 149:16,24	<b>statute</b> 33:23 83:25	<b>stormville</b> 45:5
<b>started</b> 19:19 19:21 52:24 65:8 72:23 74:6 75:20	151:9 152:20 153:7 160:25 161:1,9 162:9 163:10 164:7	<b>statutes</b> 34:11	<b>story</b> 22:9,21 64:20 121:20 136:20 137:18 137:24 139:2,2 139:3,22 140:19,20 141:5,11,17 142:20 143:9 143:13,18,19 145:4 147:8,10 149:13,15 150:3,15 153:15,23 155:8,11,14,18 161:23 162:18 162:20,24 163:4,25 164:6 164:9,18 165:3 166:10,20 168:13,25
<b>starting</b> 67:25	170:18	<b>statutory</b> 36:25	
<b>starts</b> 52:18 63:10 136:3 147:15 167:16	<b>statements</b> 49:8 118:7 125:6,25 148:7 170:18	<b>stay</b> 58:13	
<b>state</b> 1:1 4:17 5:2 7:16,17 8:12 15:19 17:9 18:21 20:12 27:8 33:7,8,17,20,23 33:25 34:6,7,9 34:11,25 35:3 35:7,17 66:10 93:11 94:3	<b>states</b> 14:4 22:14 29:16 36:8 37:10 52:8 55:12 91:20 103:20	<b>stayed</b> 57:20	
		<b>stays</b> 63:9	
		<b>steal</b> 150:11	
		<b>stealing</b> 139:23 148:16	
		<b>steering</b> 46:13 49:17	
		<b>stefan</b> 136:8	
		<b>stenographic</b> 172:12	
		<b>stephen</b> 5:13	
		<b>steven</b> 2:8	

[straight - supposed]

Page 50

<b>straight</b> 167:3	166:16,17	<b>substantially</b>	<b>suggesting</b> 65:7
<b>strain</b> 2:20	<b>studying</b> 20:18	117:9	125:5
4:21	166:15	<b>substantiated</b>	<b>suggestive</b>
<b>strategic</b>	<b>stuff</b> 34:9 52:14	20:2 170:15	46:11
127:15	52:19 54:13	<b>substituted</b>	<b>suit</b> 150:23
<b>strausz</b> 1:13	73:5 86:18	87:1	151:11 167:13
3:4,12 4:13	133:22 139:23	<b>subtle</b> 132:18	167:19,25
5:18 174:2,24	143:1	<b>suburb</b> 26:9	<b>suite</b> 2:8,15
175:2,4,12	<b>su</b> 84:13,16	44:25 49:12	<b>summarizing</b>
<b>street</b> 2:8,15	85:13 87:7	62:14 63:13	156:12
115:3 145:21	<b>subconsciously</b>	<b>suburban</b> 56:3	<b>summary</b> 18:6
<b>strike</b> 42:17	74:16	56:4	85:3
125:19 135:21	<b>subdivision</b>	<b>suburbanizati...</b>	<b>summation</b>
<b>strong</b> 50:13	76:25 101:7	22:13	85:2
63:11 64:6	170:13	<b>suburbs</b> 47:14	<b>super</b> 135:17
135:1	<b>subgroup</b>	48:4,14 55:22	139:25,25
<b>strongest</b> 83:4	103:16	56:2 63:15	153:17
<b>strongly</b> 39:19	<b>subgroups</b>	64:17	<b>supervisor</b>
94:5	111:22	<b>sudden</b> 63:24	50:18 77:2
<b>structured</b>	<b>subissues</b> 94:12	<b>suddenly</b> 39:20	124:4 167:11
84:21	<b>subject</b> 17:2	46:24 50:19,20	168:3
<b>structures</b> 87:8	20:16 22:5	51:25 52:18,21	<b>supervisors</b>
<b>struggle</b> 53:11	33:23 38:20	52:23 55:6	77:7
<b>stuck</b> 120:15	166:15	57:14 64:5	<b>supply</b> 130:23
<b>students</b> 2:20	<b>subscribed</b>	66:24 67:2	<b>support</b> 13:18
74:18	175:14	68:23 168:18	161:19,21,21
<b>studies</b> 32:4	<b>subscription</b>	171:3	<b>supported</b>
80:14,14 90:20	17:9	<b>sued</b> 77:21	69:20 124:5,7
<b>study</b> 80:13,14	<b>subsequent</b>	82:13 84:10	170:15
94:21 95:13	79:20 87:6	150:21	<b>supporters</b>
96:18 97:6,8	105:2	<b>suffer</b> 104:24	83:4
97:13,20,24	<b>subset</b> 94:25	<b>suggest</b> 30:19	<b>supporting</b>
102:20 106:9	<b>substantial</b>	39:19	78:4
106:22 107:1,6	64:1 117:10	<b>suggested</b> 78:9	<b>supposed</b> 50:1
107:14,17	119:6 121:22	112:8	101:21 138:13

[suppression - terrific]

Page 51

<b>suppression</b> 42:7,11,13,19 112:12 <b>supremacist</b> 75:8 <b>supremacists</b> 72:10 <b>supremacy</b> 69:20 70:7 <b>supreme</b> 1:1 4:16 112:9 <b>sure</b> 10:9 13:4 17:4 19:6 21:6 21:8 41:18 47:9 51:4 59:21 61:1 62:20 66:3 77:6 82:12 86:2 87:3 88:9 89:5 97:25 102:1,2 105:14 111:10 114:21 117:25 118:7 118:16 121:13 123:8 132:22 134:4 138:7,25 147:16 151:14 155:7 161:22 162:6,6 165:6 167:12,14 171:8 <b>surely</b> 144:8 <b>surprised</b> 48:9 72:14	<b>survive</b> 85:24 <b>suspect</b> 87:23 90:1 <b>suspicious</b> 168:2 <b>swear</b> 5:16 <b>switched</b> 61:3 80:6 <b>sworn</b> 5:20 175:14 <b>synonymous</b> 86:20 <b>system</b> 6:20,21 7:23 27:11,24 28:15 30:1,5 30:10,23 80:1 81:15 82:5,6 83:18 84:19 85:8 94:20 99:21 114:12 131:10 170:20 <b>systems</b> 29:15 42:15 85:14,19 87:1,2,11	146:14 160:20 171:6 <b>taken</b> 1:13 4:14 97:20,24 98:16 100:19 145:5 160:13 165:23 168:5 173:14 <b>takers</b> 148:14 <b>takes</b> 100:15 <b>talk</b> 33:25 50:17 51:5 67:5 69:2 72:4 87:18,19 107:4 111:3 114:8 116:18 117:19 119:22 125:13 131:4 139:16 145:15 150:12 <b>talked</b> 92:11 170:8,23 <b>talking</b> 12:15 21:8 31:7 32:18 34:6,11 45:12 52:13,14 65:9 71:1 92:13 102:19 110:17 125:18 129:11 130:13 134:18 140:11 147:18 149:25 159:11 166:7 169:17,19 171:3 <b>talks</b> 94:21	<b>tappan</b> 44:2,13 44:17 <b>task</b> 74:13 <b>tattooed</b> 135:9 135:14 <b>teachers</b> 66:7 66:18 <b>technology</b> 4:20 112:19 <b>teens</b> 29:17 86:14 <b>television</b> 144:11 <b>tell</b> 5:20 7:13 9:25 14:17 25:23 57:5,7 69:18,21 78:1 82:10 <b>telling</b> 153:5 <b>tells</b> 103:22 <b>ten</b> 172:10 <b>tend</b> 83:23 118:20 <b>tended</b> 58:12 80:8 <b>tends</b> 30:19 83:5 103:9 113:19,22 <b>term</b> 30:18 156:16 <b>terms</b> 50:15 105:8 123:2 140:18,20,21 <b>terrific</b> 16:11
--	--	---	--

## [territory - threats]

Page 52

<b>territory</b> 104:19 139:6	52:8 54:4 55:9 56:23 57:6,9	37:5 38:14 39:17 40:17	164:9,23 167:11 168:3
<b>terrorism</b> 13:9	67:6 71:20	42:9 45:3 47:4	168:24 169:14
<b>test</b> 17:22 18:25 19:22 20:14 104:11	83:19 88:19,22 92:20,20 139:25 140:12	49:9 51:9 53:2 53:21,25 54:17 71:10 72:19	171:5 <b>thinking</b> 31:12 47:16 70:1
<b>tester</b> 93:23	141:21 143:15	73:8 75:9	72:15 93:5
<b>testified</b> 5:21 12:6,8 27:10 61:8	144:22 147:1 147:11,12 148:4 153:10	76:12,14,16 77:8,10 81:17 81:18 86:6,13	94:8 <b>third</b> 10:1,22 35:13 90:24
<b>testimony</b> 41:13 64:10 172:7 175:9	<b>things</b> 10:12 15:24 16:14 17:15,20 19:14	87:17 90:20 93:22 94:11 96:5 100:9	<b>thirds</b> 24:17 90:23 <b>thomas</b> 46:22
<b>tests</b> 19:20	32:1,2,2,3,17	103:10,13	<b>thought</b> 21:22 21:25 31:10
<b>text</b> 25:17 47:7 47:11	53:9 56:20 63:4 69:21	105:22 111:14 115:21 116:11	41:2,22 96:21 119:20 124:22
<b>textual</b> 41:9	72:5 76:1	118:8 119:12	132:14 145:20
<b>thank</b> 5:15 26:16 47:18 59:8 60:12 101:24 149:11 151:17 171:15 171:23,25	85:11 88:13 102:15,22 103:7 109:21 120:6,7 126:5 128:3 134:11 144:9 148:15	122:1 125:18 127:23 128:10 130:18 133:13 140:25 141:5 141:23 142:2,9 142:14 145:7 145:10,16,19 146:1,8,12,21 146:23 147:2 147:22 150:2 151:2,15,25 152:11,22 153:2,11 155:21 156:11 156:11,16 157:11 158:5 161:18 162:2 163:4,23 164:8	<b>thoughts</b> 73:17 125:1 <b>thousands</b> 50:8 <b>threat</b> 46:14 132:20,25 133:24 134:2 138:18 140:1 143:20 146:9 161:10 166:11 166:22 167:2 168:7,8 <b>threatened</b> 140:22,24 <b>threatening</b> 50:8 <b>threats</b> 49:18 61:9 168:15
<b>thanks</b> 171:9	150:8,11		
<b>theirs</b> 133:8	157:17 160:4		
<b>theme</b> 121:2,11 121:11	160:13,20 166:23 167:10 168:1,21 171:20		
<b>theoretical</b> 153:12	<b>think</b> 10:11 12:4 15:5 21:2 21:4,4,4,5,12 24:5 25:7 27:21 28:3 31:22 32:17		
<b>theory</b> 50:1			
<b>thereabouts</b> 25:8			
<b>thing</b> 17:21 19:23 20:19,20 21:19 28:3			

[three - tracts]

Page 53

<b>three</b> 47:11 85:24,25 86:2 99:19 136:2,13 141:25 142:19 146:24 157:2 <b>threshold</b> 95:8 <b>throw</b> 38:19 <b>throwing</b> 50:9 61:9 <b>tic</b> 160:7 <b>tickets</b> 166:9 <b>time</b> 4:2 20:6,8 26:18 36:11 45:8 50:14,25 52:3 55:23,25 57:3 59:1,13 59:17,20 60:23 63:10,18 64:7 67:15 72:3 73:14 79:2 83:11 85:10 89:7 93:8,12 98:16 100:15 100:23 126:21 134:24 136:18 145:5 148:6,8 151:22 154:22 171:15 172:6 <b>timeline</b> 163:13 <b>times</b> 67:9 86:25 100:6,7 148:18 160:9 171:16 <b>tiny</b> 132:14	<b>tirado</b> 1:3 <b>today</b> 11:20 14:4 18:8,14 60:7 65:14 161:3 <b>today's</b> 172:7 <b>toe</b> 160:7 <b>together</b> 75:14 <b>told</b> 62:24 137:7 145:4 152:25 157:1 162:20 <b>tomorrow</b> 78:13 <b>tone</b> 144:13 147:10 <b>toney</b> 137:7,14 140:2 161:13 161:15 <b>took</b> 44:23 86:6 96:15 <b>tool</b> 16:11 <b>top</b> 61:20 65:23 106:1,17 118:23 166:9 <b>topic</b> 99:13 <b>total</b> 130:12 <b>totality</b> 75:23 153:2 <b>totally</b> 88:22 153:13 <b>touch</b> 11:4 <b>tougher</b> 135:24 <b>toward</b> 19:1 48:1	<b>towards</b> 35:6 <b>town</b> 1:6,6,7 4:15 7:7,20 17:14,16,18 25:1,5,6,10 26:9,17 30:2 31:19 34:4,5 35:22 37:3,5 38:25 39:3,13 39:16,21 40:4 40:5,20 42:11 42:19 43:6,21 45:23 46:16 48:17 49:11 51:1 54:15,18 56:5 57:2,4,11 58:1,14,19 60:2 61:11,13 61:15 62:11 63:1,6 65:10 65:15 67:19,21 68:9 69:4,25 70:3,4,8,9,13 70:14,22,23 71:6,7 72:15 72:18,20 73:12 73:16,17 74:7 75:3,10,23,25 76:5,9 77:2 78:3,19,21 79:6,11,16 80:9 81:4 84:4 84:24 90:9 91:15 97:13 99:16 101:2	103:15 107:20 114:9,18,21 115:6,15 116:7 116:24 117:6 117:21 121:1,3 121:22 122:11 122:11 123:18 124:4,19,20 125:3,22 127:5 130:5,11,16,18 130:20 131:11 131:15,18 132:9 136:4,15 143:16 151:6 167:6,15,19 168:11 169:9 169:18,23 170:4,9,18,20 174:1 175:1 <b>town's</b> 65:24 77:7 118:13 <b>towns</b> 25:2 38:4 45:9 47:22 86:19 <b>townspeople</b> 67:18 <b>trace</b> 56:1 <b>tract</b> 114:16,16 123:14 <b>tracts</b> 16:5 114:9,15,23 115:16,18,19 115:20 116:2 122:18 128:10 128:14
--	---	---	--

[tragically - units]

Page 54

<b>tragically</b> 55:19	175:8	<b>twenties</b> 86:14	149:13,14
<b>train</b> 44:3	<b>trusting</b> 29:24	<b>two</b> 22:21	152:21,25
<b>transcript</b> 173:16 175:5,9	<b>truth</b> 5:20	24:17 29:25	153:22
<b>translators</b> 82:15	19:24 20:6	40:19 49:8	<b>understanding</b> 9:2 22:7 24:23
<b>travel</b> 45:21	73:19 74:6	63:4 69:21,23	37:19 53:13
<b>tremendous</b> 168:6	75:2,19 77:18	76:1 90:23	58:8
<b>trick</b> 130:7	136:25 167:1	93:19 117:14	<b>understood</b> 20:19
<b>tried</b> 29:25	<b>try</b> 14:23 30:18	119:9 128:5	<b>underwriters</b> 23:22
56:21 73:24	50:2,4 83:7	161:2,2 167:10	<b>undeserving</b> 52:20
77:12,19 88:13	89:19 104:21	<b>typically</b> 49:18	<b>undocumented</b> 127:18 128:16
92:23 156:7	109:7 117:24	51:16 103:18	<b>unfamiliarity</b> 21:7
<b>troop</b> 158:10	144:17,19	106:13 111:10	<b>unfortunately</b> 24:2 49:22
<b>trope</b> 148:13,19	<b>trying</b> 24:3	<b>u</b>	54:25 72:14
149:7	46:9 61:6	<b>u.s.</b> 37:16	<b>unfriendly</b> 46:13
<b>tropes</b> 132:23	71:23 74:21	104:18,18	<b>uninterested</b> 84:20
148:20,22	77:18 83:13	122:3 130:1	<b>unit</b> 4:12 96:3
149:18,25	87:10 89:8	133:20 134:10	<b>united</b> 14:4
150:16 168:22	90:5 143:19	134:21	22:14 29:16
<b>trouble</b> 60:20	158:3,6 159:21	<b>unable</b> 79:2	36:7 37:10
<b>trounstine</b> 95:14,15	<b>turn</b> 25:7 42:23	<b>uncertain</b> 88:16,18	52:8 55:12
<b>troutman</b> 2:14	83:6 101:20	<b>unchanging</b> 110:15	91:20 103:20
<b>troutman.com</b> 2:17	103:9 108:7	<b>uncle</b> 160:15	104:1 134:17
<b>trucks</b> 134:15	<b>turned</b> 24:17	<b>uncomfortable</b> 55:8	135:15
<b>true</b> 74:11	83:19 101:22	<b>under</b> 7:16	<b>units</b> 38:19
75:13 137:2,4	137:3 144:16	9:25 17:13,16	46:6
139:3 144:21	153:22	26:8 36:18,18	
154:13 162:15	<b>turnout</b> 107:19	60:20 81:16	
162:17,18	108:3,11,11,17	96:22	
166:24 168:1	108:24 109:1,9	<b>undergrad</b> 59:25	
	110:23 111:3,9	<b>understand</b> 30:25 148:7	
	112:15 113:1		
	113:15		
	<b>turns</b> 166:23		
	<b>tv</b> 144:13		

[university - vote]

Page 55

<b>university</b> 13:24 15:19 22:10 59:24 <b>unjustly</b> 139:23 <b>unknowable</b> 157:23 <b>unlawful</b> 37:4 <b>unpack</b> 51:3 <b>unquote</b> 108:12 <b>unwilling</b> 133:4 <b>upper</b> 91:11 108:15 129:12 <b>upset</b> 152:22 <b>upshot</b> 33:15 <b>use</b> 8:14 10:1 10:24 13:18 16:21,23 18:16 23:23 25:16,25 54:7 81:9 84:25 108:5 114:7,14 115:17,22,23 116:11,13 117:18 120:13 131:17 132:18 134:5 144:11 145:3 <b>used</b> 13:7 15:11 16:8 17:1,5,14 23:19 24:1,4 44:2 46:6 48:7 87:21 90:2 93:11,13 97:10 99:11 114:13 115:19 117:7	134:2 164:13 <b>uses</b> 23:20 135:5 <b>using</b> 4:20 39:17 40:11 47:7 52:18 114:23 115:5 123:14,15 143:6 166:17 <b>usual</b> 119:11 <b>usually</b> 56:8 58:22 86:16 88:21 91:22,23 118:21	<b>veritext</b> 4:21,23 <b>versus</b> 4:15 15:25 73:16 75:10 79:22 94:20 102:5 105:24 113:25 118:3 119:7,8 <b>veteran</b> 137:15 152:5 160:16 <b>veterans</b> 55:17 136:15 137:8 137:10 138:9 138:12 139:16 145:8,20 149:23 151:8 152:8 154:7 155:3,15 156:13 158:9 158:15,20 164:10 166:21 167:22 <b>victim</b> 152:13 <b>video</b> 4:1,5,9,12 5:15 17:13 59:6 60:13,16 77:11 95:24 96:2 149:9 151:16,19,22 171:10,12 172:2,5 <b>videographer</b> 2:20 4:22 <b>videotaped</b> 1:12	<b>view</b> 14:17 133:17 <b>views</b> 22:4 <b>village</b> 45:4 <b>villages</b> 9:4 <b>violation</b> 36:11 37:21 <b>violence</b> 46:14 50:7 56:20 139:12 144:1,7 168:23 <b>violent</b> 143:7 144:12 145:15 <b>virtual</b> 4:20 <b>virtually</b> 4:5 28:13 43:6,12 43:17 106:25 <b>visual</b> 134:16 <b>visualize</b> 15:24 <b>visually</b> 78:9 <b>visuals</b> 138:18 <b>vito</b> 91:9 <b>vocabulary</b> 24:4 <b>vote</b> 35:2 52:15 82:25 83:7 84:20 88:6,9 88:11 89:13,15 92:7 93:14,20 101:7,11,13,15 101:17 102:5,6 102:14 103:3 103:24 104:7 104:25,25 105:3,11,13
	<b>v</b>		
	<b>v</b> 7:13 13:2 36:8 37:10,16 38:23 <b>vacant</b> 67:4,7 <b>vague</b> 7:1 <b>valdini</b> 95:15 <b>validly</b> 40:12 <b>valley</b> 127:1 <b>variation</b> 92:7 <b>varies</b> 92:5 <b>various</b> 29:16 42:12 51:1 77:10 85:3 86:25 133:12 169:20 <b>vary</b> 50:5 <b>varying</b> 117:17 <b>vast</b> 52:22 89:13		

[vote - went]

Page 56

106:17,19 108:2 111:12 111:18 <b>voted</b> 90:21,21 90:22 106:7,17 <b>voter</b> 42:7,10 42:13,19 90:20 91:18 103:16 103:20 108:2 110:23 112:12 113:15 <b>voters</b> 84:5 91:12 94:18 103:2 106:7,23 108:19,24 109:17 111:11 <b>voting</b> 6:20,21 7:15,16,23 10:2,2,24,25 11:7,8 19:10 20:1 27:11,24 28:9,14,15 29:14 30:1,10 30:22 32:3 35:9 36:13,24 41:25 42:15 76:22 81:9,10 81:15 82:5 83:6,22,23 85:13,19 87:1 87:2 88:7 90:12,23,24 91:8,25 92:6 93:11 102:17 103:3,8 106:3	106:14 107:19 109:3,17 110:10 111:14 112:2,10,17 113:23 <b>vra</b> 10:1 96:7 <b>vs</b> 1:5 174:1 175:1 <b>vulnerability</b> 168:19 <b>vulnerable</b> 160:14,19 <b>w</b> <b>wait</b> 39:14 89:25 137:1 <b>walk</b> 13:12 <b>wallace</b> 53:6 <b>want</b> 10:14 15:16,25 17:3 40:9 46:4 48:11 56:10 58:13,16 59:11 60:25 61:19 62:20 68:9,20 70:8 74:12 83:10,14 86:16 87:5 91:14 94:10 104:16 104:20,24 111:20 116:12 118:7 120:13 121:10 122:24 123:1 124:24 126:24 129:17 131:9 135:7,16	138:25 139:16 142:7,9 145:18 147:6 148:6 156:19 158:2 163:4 <b>wanted</b> 13:5,11 38:19 52:16 54:1,11,11 65:3 71:23 88:8 125:3 171:16 <b>wanting</b> 135:23 <b>war</b> 88:16 <b>warm</b> 79:21 <b>warn</b> 74:17 <b>warrant</b> 13:12 <b>watch</b> 76:11 <b>watched</b> 76:12 144:13 <b>water</b> 3:13 123:25 130:23 <b>wave</b> 167:17 <b>way</b> 11:13 15:20,21 21:13 21:22 22:7 23:4 29:13 31:12 34:4 35:4 40:6 49:13 55:1,3 68:17 70:5 78:10 79:18 85:22 86:5 90:3 104:9 106:13 108:9 109:19 111:10	124:16 133:8 134:16 139:4 140:20 142:22 142:24 145:17 148:3,19 150:9 150:10,12 152:6 157:7,12 166:20 168:18 169:4 170:22 <b>ways</b> 8:6,8 11:8 20:3 46:5,15 56:15 82:23 84:21 86:13 88:20 120:15 133:23 148:11 154:16 162:12 <b>we've</b> 43:4 51:25 62:19 151:17 169:13 170:23 <b>wealth</b> 99:20 99:23 100:1,3 100:4 124:10 <b>weeds</b> 67:13 <b>weighing</b> 121:14 <b>weighty</b> 79:19 <b>weirdly</b> 13:17 <b>welcome</b> 10:16 <b>welcomed</b> 71:11 <b>welfare</b> 52:1,2 52:17,22 53:18 <b>went</b> 21:24 22:1 23:5
--	---	---	---



[went - written]

Page 57

46:20 57:25	97:19 98:24	11:21 14:7	<b>workarounds</b>
59:25 72:25	100:6 101:14	27:16 28:18,23	89:9,9
73:2,24 74:8	102:6 105:12	31:8 37:25	<b>worked</b> 22:8
74:10,21 75:2	105:16 108:18	40:17 42:9	28:2 32:18
75:6 77:19	108:23 113:22	44:12 60:11	35:3 55:1
84:6 101:21	115:8 117:8	74:10 75:6,17	<b>working</b>
127:9 161:22	118:18 120:20	89:22 92:16	127:16,21
<b>west</b> 2:15 43:10	<b>whiteness</b> 48:1	107:10 113:18	<b>works</b> 30:6
45:13 46:7,17	<b>whites</b> 55:21	116:9 126:13	34:10 49:13,14
122:14	88:19 111:17	129:8 142:6	49:15 50:15
<b>westchester.n...</b>	111:18 116:20	146:5,15 152:2	66:19 90:3
164:24	116:21 118:25	154:25 155:25	110:20
<b>whatnot</b> 132:24	119:25 120:5	171:8,22	<b>world</b> 134:22
135:10	122:21 124:2	172:14	153:13
<b>whatsoever</b>	124:11,20	<b>woman</b> 65:1,2	<b>worse</b> 110:21
142:19	129:3 131:11	127:7 137:6	128:24 145:17
<b>whichever</b>	131:18	140:3 149:15	159:4
45:23 95:6	<b>wide</b> 115:6	161:20	<b>worst</b> 67:6
<b>whip</b> 144:14	<b>widely</b> 117:16	<b>women</b> 161:14	139:12
<b>white</b> 2:9 23:14	137:1	161:16	<b>worth</b> 49:10
24:20 26:17	<b>wider</b> 118:12	<b>wonder</b> 95:18	94:16 100:7,8
35:2 43:6,12	<b>widespread</b>	<b>wondering</b>	<b>write</b> 6:6 13:22
43:17 46:8,23	55:20	102:7 107:5	35:8 40:19
49:12 50:24	<b>william</b> 84:15	<b>word</b> 159:20	85:19 88:10,20
52:5,10,23	107:12	<b>wording</b> 48:2	94:14 106:2
53:7 55:2,13	<b>willing</b> 55:13	48:13 164:3	150:20 151:3
56:16,18 61:11	<b>winling</b> 21:25	<b>words</b> 108:5	<b>writes</b> 85:13
61:11 62:5,12	<b>winning</b> 22:11	165:3	87:7
62:14,15 63:13	22:12 95:2	<b>work</b> 13:9,18	<b>writing</b> 12:13
64:7,21 65:7	<b>wisdom</b> 73:7	19:3 33:3 44:9	12:19,21
65:17,18,24	<b>wish</b> 50:1	53:5 66:23	<b>written</b> 19:13
68:8 69:20	<b>withdrawal</b>	96:8 102:13	20:16 21:21
70:7 72:9 75:7	163:25	113:24 118:13	22:2 30:21
80:20 87:22	<b>witness</b> 3:3 4:8	118:18,21	38:15 86:10
88:20 92:2,7	5:16 7:2 11:19	119:3	

[wrong - zoom]

Page 58

<b>wrong</b> 48:9,10 116:1,2 120:15 140:7 <b>wrote</b> 13:15 15:2 74:4 75:20 76:7 84:18 85:20 94:9 96:19 158:1 163:23	<b>year</b> 28:25 67:22 108:13 <b>years</b> 26:15 43:5 68:25 82:21 91:21 93:10 109:25 144:10 166:16 <b>yep</b> 98:1 <b>yield</b> 95:1 <b>york</b> 1:1 4:17 6:22,25 7:16 18:23 20:12 25:3 31:20 32:11 33:7,8 33:18,23,25 34:1,5,10,14,20 35:5,8,17 36:17 43:16,18 43:19,22,24 44:9,17 45:1 46:19 47:14,23 48:4,11,14 49:21 63:15,22 64:8,11,14,14 64:23 65:2,7 69:11 71:19 73:2,3 75:13 76:21 80:11 101:11,12 102:20 103:8 103:15 105:11 105:21,24 106:3,7 107:7 108:3,8 109:4 110:24 111:1	113:6 136:6,10 137:24 150:24 167:20 171:19 171:21 <b>yorkers</b> 138:13 <b>young</b> 66:14 67:10 <b>younger</b> 67:1 105:15 <b>youtube</b> 76:19
<b>x</b>		<b>z</b>
<b>x</b> 1:2,9 74:19		
<b>y</b>		<b>zee</b> 44:2,13,17 <b>zoom</b> 1:13 2:20
<b>y</b> 74:19 <b>yale</b> 13:24 <b>yawning</b> 70:12 <b>yeah</b> 9:6,8 11:21 15:6 17:19 25:21 36:13 42:3 54:3,23 65:12 68:11 71:21 72:5 78:13 81:18,25 85:16 85:20 87:20 95:23 98:2 102:3 106:15 107:22 110:10 113:8 120:2 123:8 140:19 148:21 149:4 150:2,5 151:13 155:25 156:8 163:23 164:4		

## New York Code

## Civil Practice Law and Rules

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(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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