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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                 |   |                       |
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| USA             | , | DOCKET NO.            |
|                 |   | 1:20-cr-00228-MHC     |
| Plaintiff,      |   |                       |
| vs.             |   | Atlanta, Georgia      |
|                 |   | Friday, June 23, 2023 |
| Daniel Eric Jay |   |                       |
| Defendant.      |   |                       |

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE MARK H. COHEN  
UNITED STATES DISTRICT COURT JUDGE

Appearance of Counsel:

|                |                                                     |
|----------------|-----------------------------------------------------|
| For Plaintiff: | John Russell Phillips, Esq.<br>Bernita Malloy, Esq. |
| For Defendant: | L. Burton Finlayson, Esq.                           |

|                 |                                                                                                                                                                                                  |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Court Reporter: | Judith M. Wolff, CRR<br>Official Court Reporter<br>1914 United States Courthouse<br>75 Ted Turner Drive, S.W.<br>Atlanta, Georgia 30303-3361<br>(404) 215-1317<br>judith_wolff@gand.uscourts.gov |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

1 (Court was called to order at 10:07 a.m.)

2 THE COURT: Please be seated.

3 This is the case of United States of America vs.  
4 Daniel Eric Jay, Criminal Indictment No. 20-cr-228.

5 Will counsel for the parties please identify  
6 themselves for the record.

7 MR. PHILLIPS: Good morning, Your Honor. Russell  
8 Phillips and Bernita Malloy for the United States.

9 And, Your Honor, I would like to also present Ben  
10 Shipp who is an intern at our office, a student at Harvard Law  
11 School.

12 And this is Monika Staeva, Special Agent from the  
13 FBI. And of course you know Stephanie Schuessler from the  
14 probation office.

15 THE COURT: Morning, counsel.

16 MR. FINLAYSON: Morning, Your Honor. Leigh Finlayson  
17 for Mr. Jay.

18 THE COURT: Good morning, Mr. Finlayson.

19 This is a sentencing hearing following the  
20 defendant's plea of guilty to Count 1 of the second  
21 superseding indictment, charging him with the offense of  
22 conspiracy to commit wire fraud, in violation of 18 United  
23 States Code, Sections 1343 and 1349, and Count 5 of the same  
24 indictment charging him with the offense of bank fraud, in  
25 violation of 18 United States Code, Section 1344.

Friday, June 23, 2023

1           In accordance with Rule 32 of the Federal Rules of  
2 Criminal Procedure, the United States Probation office has  
3 conducted a presentence investigation and prepared a  
4 presentence report, a copy of which has been provided to both  
5 the government and the defendant.

6           Mr. Finlayson, have you and your client had an  
7 opportunity to read and discuss the presentence report?

8           MR. FINLAYSON: We have, Your Honor.

9           THE COURT: It appears from the record that on behalf  
10 of the defendant there are no objections to the findings of  
11 fact and conclusions of law; is that correct?

12          MR. FINLAYSON: That is correct, Your Honor.

13          THE COURT: All right. And is there still an  
14 objection from the government as to the proper increase that  
15 should be provided for role in the offense?

16          MR. PHILLIPS: Yes, Your Honor.

17          THE COURT: All right. The government contends that  
18 paragraph 134, which would impose a two-level increase to the  
19 base offense level in accordance with Section 3B1.1(c) of the  
20 guidelines, because defendant was either an organizer, leader,  
21 manager or supervisor in the criminal activity is not  
22 sufficient because, the government contends, that the  
23 defendant was a manager or supervisor in the criminal activity  
24 that involved five or more persons or was otherwise extensive.

25          So, Mr. Phillips, why do you think I should go that

1 route?

2 MR. PHILLIPS: Your Honor, we believe that the  
3 three-level increase is appropriate and necessary for several  
4 reasons.

5 First, the only issue that the Court needs to resolve  
6 is whether the criminal activity involved five or more  
7 participants or was otherwise extensive. The defendant admits  
8 that he played a managerial or supervisory role in the  
9 offense. He admits that; we know that because he agrees that  
10 at least a two-level role enhancement is appropriate.

11 In order to get the two-level role enhancement, he  
12 had to have played a role as a manager or supervisor. So  
13 here, the only issue we're talking about is whether there were  
14 five or more criminal participants or whether the scheme was  
15 otherwise extensive.

16 THE COURT: And are you talking about the Ponzi  
17 scheme here or the PPP loan?

18 MR. PHILLIPS: I'm talking about the criminal  
19 activity, Your Honor. That's the way the guidelines refer to  
20 it. It's not broken down into separate schemes; it's all the  
21 activity.

22 THE COURT: Well, the reason I ask that is because  
23 with respect to Mr. Sargent, Michael Sargent, the Sargent  
24 brother who did not pass, the government did not recommend a  
25 role enhancement for him with respect to the Ponzi scheme. So

1 I would assume that you're focusing more on the PPP loan  
2 scheme with respect to Mr. Jay because -- are you telling me  
3 that in the government's view, Mr. Jay was that much more  
4 culpable as a -- well, not a leader, but a manager or  
5 supervisor in this activity than Mr. Sargent was, who got  
6 zilch in terms of role enhancement.

7 I have to assume that you're looking more at the  
8 PPP loan than you are at the Ponzi scheme, but if I'm wrong,  
9 tell me where I'm wrong.

10 MR. PHILLIPS: Your Honor, I respectfully would cite  
11 that that's not the government's position.

12 There was no evidence that the government had that  
13 Mike Sargent was supervising other people. I think that's a  
14 separate issue from culpability. He clearly was recruiting  
15 victims. He was going online with his brother --

16 THE COURT: Who did Jay supervise in the Ponzi  
17 scheme?

18 MR. PHILLIPS: Your Honor, he supervised a number of  
19 different people, including Joey Crivelli, I filed a  
20 sentencing memorandum that explained the roles that each of  
21 these people played, and at page 7 of my sentencing memo, I  
22 talk about Joey Crivelli and Carrie Capone.

23 First of all, the defendant admits in the PSR that --

24 THE COURT: You filed a sentencing memo in the Jay  
25 case?

1 MR. PHILLIPS: Yes, Your Honor.

2 THE COURT: Under what case number?

3 MR. PHILLIPS: It's 120-cr-228.

4 THE COURT: Yeah, that's -- well, I swear I looked at  
5 that this morning, and I did not see it. Why don't you give  
6 me --

7 MR. PHILLIPS: I filed it on June 6, Your Honor.  
8 Three weeks ago.

9 THE COURT: All right. Can you give me a copy,  
10 please.

11 MR. PHILLIPS: Yes, Your Honor.

12 MS. MALLOY: I have a copy.

13 The Court has a copy.

14 MR. PHILLIPS: Your Honor, I'm handing up a copy of  
15 the government's sentencing memorandum to the courtroom  
16 deputy.

17 THE COURT: All right. Give me a moment.

18 MR. PHILLIPS: Yes, Your Honor.

19 (Pause.)

20 THE COURT: Okay. Go ahead.

21 MR. PHILLIPS: So, Your Honor, the government had no  
22 evidence that Mike Sargent was supervising other people. In  
23 order for this enhancement to apply, whether it's a two-level,  
24 three-level, or a four-level role increase, the government has  
25 to prove that the defendant supervised at least one other

1 person who was criminally responsible. We didn't have that  
2 information or that evidence with respect to Mike Sargent.

3           Clearly, he was culpable. He's out there recruiting  
4 women through these online dating sites and taking advantage  
5 of them, taking money from them under false pretenses. So  
6 that's what he pleaded guilty to was the Ponzi scheme. He was  
7 not involved in the bank fraud, as the Court already said.

8           We believe that there are at least ten criminally  
9 responsible participants in this scheme. The defendant admits  
10 in the PSR, in paragraph 134, that he, quote, recruited Joey  
11 Crivelli and Carrie Capone into this criminal activity and  
12 caused them to create phony documents to support his and  
13 Fayne's criminal scheme to obtain fraudulent PPP loan. That's  
14 a quote.

15           The Eleventh Circuit has said that the act of  
16 recruiting others to participate in the scheme by itself is  
17 sufficient for Court to apply a three-level role enhancement.  
18 And I cite a couple of cases on page 7 from the Eleventh  
19 Circuit holding that.

20           So those are the first two, joint --

21           THE COURT: Well, let me just tell you this because I  
22 just had a case within the last couple of weeks where I had a  
23 defendant who were recruiting something -- who recruited two  
24 people, and the government asked for a two-level increase,  
25 which I imposed.

1 I can't tell you how many times the government has  
2 stood where you are standing and have recruitment of people,  
3 and we have got a two-level role increase because that's what  
4 the government has asked for.

5 So it's just a little -- I have to be consistent.  
6 One of the things I have to guard against is imposing  
7 different standards against different defendants when the  
8 argument is similar.

9 So if the government, Mr. Phillips, came before me  
10 every single time there was recruitment of a couple of people  
11 into the scheme and asked for a three-level increase, I would  
12 have to go back and resentence about two dozen people because  
13 the government asked for two levels.

14 So why, in this case, should I depart from what I  
15 have done from what the government has asked me to do in other  
16 cases based on recruitment?

17 And you may have other arguments, and I think you do  
18 as I read your memo just now, but if it's just recruitment,  
19 you're going to have a tough time getting me to do three  
20 levels when it's just contradictory to what the government has  
21 asked me to do in the past.

22 MR. PHILLIPS: Your Honor, that's not my case.

23 THE COURT: Well, it's not your case, but it's your  
24 office.

25 MR. PHILLIPS: I mean, I led by saying that he

1 recruited those two individuals. That's not my only evidence  
2 with respect to this defendant or with respect to those two  
3 criminal participants.

4 THE COURT: Okay. Okay.

5 MR. PHILLIPS: So in addition to recruiting them into  
6 the scheme, he caused them to manufacture fake documents.  
7 Joey Crivelli did that for purposes of both the Ponzi scheme  
8 and the bank fraud. Carrie Capone was only involved in the  
9 bank fraud.

10 But I quote emails in the sentencing memo where the  
11 defendant is directing both of those people to manufacture  
12 fraudulent documents for purposes of carrying out the criminal  
13 activity.

14 So not only did he recruit them, but he supervised  
15 them, he directed them in writing to commit fraud.

16 THE COURT: And I have had more than one, a major  
17 bank fraud case that the United States Attorney's Office  
18 brought where we had a leader, undisputed leader, like  
19 Mr. Fayne in this case, where he got two or three other  
20 individuals involved in recruiting others to create fraudulent  
21 documents for mortgage fraud and other bank fraud where the  
22 second level people were the ones supervising two or three  
23 others to do the forged documents.

24 So we had the leader who got the four-level increase.  
25 We had the middlemen or woman in this case, who got two level

1 increases, and then we had the recruitees who got no role  
2 because they were just brought in to doctor a few documents  
3 here and there.

4           So the problem I'm having again is that in those  
5 cases, the government urged me to do a two-level increase for  
6 those middle-level people that actively recruited people and  
7 then supervised them as they were forging tax documents and  
8 other forms in order to perpetrate the fraud.

9           So once again, I'm just -- I'm at a little bit of a  
10 loss to say why, if Mr. Jay was basically doing what those  
11 people were doing, getting the two-level increase they were  
12 getting, why I should do a three-level increase for him in  
13 this case.

14           MR. PHILLIPS: Your Honor, I can explain that very  
15 simply.

16           The question is, were there at least five people who  
17 were criminally responsible? Do they meet the definition of a  
18 participant? That's one thing.

19           Or was the scheme otherwise extensive? We believe it  
20 was both. We have at least ten people who were participants.  
21 The Court is focusing on a narrower version of issues that  
22 pertain to role enhancements than what I'm required to prove.

23           With respect, I'm only required to prove that there  
24 were five or more people who were criminally responsible. And  
25 so if the Court finds that there were five or more people who

1 were criminally responsible, the Court should apply the  
2 three-level role increase because that's what separates it  
3 from the two-level role increase.

4           You only get two levels if the scheme was not  
5 otherwise extensive or if there were not five or more criminal  
6 participants.

7           Here, as outlined in the sentencing memo, we have at  
8 least ten people who were criminally responsible. So the  
9 courts have said, Your Honor, that a party who gives knowing  
10 aid in some part of the criminal enterprise is, quote,  
11 criminally responsible. They are a participant within the  
12 meaning of the guidelines.

13           So for the reasons that I have outlined in the brief,  
14 first of all, we have the defendant himself, who is criminally  
15 responsible. And I cite cases from the Eleventh Circuit where  
16 they say that the defendant himself should count.

17           We also have Maurice Fayne; he's number two. The  
18 court knows that he's criminally responsible. The court  
19 already found that.

20           Then we have Mike Sargent; the court convicted him as  
21 well. He was criminally responsible, and his brother who was  
22 indicted by the grand jury, so they found probable cause to  
23 believe that he was a criminally responsible participant in  
24 the Ponzi scheme, but he died before he was held accountable.

25           But I cited cases in the brief that say that just

1 because somebody died doesn't mean that they can't be a  
2 criminally responsible participant.

3           So including the defendant, those are four people who  
4 were indicted. So if my math is correct, I only have to prove  
5 to the Court's satisfaction that there was at least one other  
6 person who was criminally responsible. And because the  
7 defendant has admitted in the PSR, in paragraph 134, that he  
8 recruited Crivelli and Capone into the scheme, along with the  
9 additional evidence of what those people did, manufacturing  
10 fake documents for purposes of furthering the scheme, they are  
11 criminally responsible, Your Honor. They meet the definition  
12 of a participant, and the defendant has really not even  
13 contested that.

14           In addition, we have this man named Darren Brown.  
15 Darren Brown is a man who lived in Texas; he's the one who  
16 introduced defendant Jay to Fayne and the Sargent brothers.  
17 He was involved in the conspiracy as well. And if the Court  
18 will recall, at Mike Sargent's sentencing, we had a lady whose  
19 initials are EL who came into court and spoke to the court and  
20 talked about being a victim. She is also described in the PSR  
21 in this case, and she gave very moving -- a very moving  
22 account of how she was defrauded by Mike Sargent in what's  
23 really a romance fraud scheme that was part of this Ponzi  
24 scheme.

25           But he pretended to be in love with her and took

1 money from her under false pretenses, allegedly for purposes  
2 of this investment in Fayne's trucking company.

3 This Darren Brown that I'm talking about went with  
4 Mike Sargent to meet that lady, and he took -- he, Darren  
5 Brown, took, he said 6- to 7,000 in cash from that lady and  
6 deposited it into Mike Sargent's bank account.

7 And this is what he told the FBI.

8 Darren Brown said that the purpose of that meeting  
9 was to quote, get money from EL for Fayne's trucking deal. So  
10 clearly, he was a criminally responsible participant.

11 And if the Court will recall also that extremely  
12 inflammatory and shocking text message from Mark Sargent to  
13 Darren Brown, same person we're talking about, where he said,  
14 we're all going to rot in jail, and he used a lot of curse  
15 words, and he talked about what the government was going to  
16 charge them with because this was a scheme, and that they all  
17 knew it was a scheme. And that's cited on page 10 of my  
18 brief. I quote that.

19 So Darren Brown is aware that this is a fraud, and he  
20 is taking money from one of the victims and depositing it into  
21 Mike Sargent's bank account. Clearly, he is criminally  
22 responsible; he is a participant within the meaning of the  
23 guidelines.

24 Next is a lady named Ganell, G-A-N-E-L-L, Tubbs. She  
25 is also known as Aunt G. She is Maurice Fayne's aunt, and she

1 was his right-hand man. She did all of his, for lack of a  
2 better term, Photoshop work. She created fake documents for  
3 Fayne at his direction and filed them with companies that  
4 regulated or -- not companies, but agencies that regulated the  
5 trucking industry. She filed fake documents with banks. She  
6 was involved in Fayne's fraudulent Texas driver's license that  
7 he had in the name of a man named Duron Porter.

8 She was involved in communications with Ponzi  
9 investors. She is having very explicit conversations with  
10 Fayne that I have outlined in my brief on page 11, where she  
11 talks about her knowing, understanding that they are running a  
12 Ponzi scheme, and she is assisting Fayne in doing the  
13 administerial work associated with keeping that scheme going.

14 And in addition, she pleaded guilty to a \$400,000  
15 fraudulent PPP loan of her own in the Eastern District of  
16 Arkansas, and she was sentenced in that case, and I talk about  
17 that on page 12 of my brief.

18 Clearly, she is a criminally responsible participant.

19 Then we have a man named Tyriece Vaughn, he received  
20 \$175,000 of the PPP loan proceeds from Fayne, and Fayne  
21 directed him to make payments to people who were involved in  
22 the Ponzi scheme. He was a middleman who had recruited these  
23 people, and Fayne tells him, as I outline on page 13 of my  
24 brief, I want you to send 60K to Patrick, 65K to Victor, 15K  
25 for your NFL guy, 15K to you, and 175K to this woman who is a

Friday, June 23, 2023

1 victim, named Jimia Cain.

2 And he does that, and then Fayne wires the money to  
3 him, and he carries out Fayne's instructions. He is a  
4 criminally responsible participant in the Ponzi scheme.

5 Next, we have Kawanza Wilkins --

6 THE COURT: So is it the government's position that  
7 if the leader of the scheme recruits five people into the  
8 scheme and a codefendant recruits, let's just say one person  
9 into the scheme, you add five plus one, and that applies to  
10 both defendants.

11 MR. PHILLIPS: Well, Your Honor, I think the Court is  
12 focusing on recruitment. But the issue that the government  
13 has to prove is whether the person meets the definition of a  
14 participant. That's what the guidelines talk about.

15 THE COURT: But you're not answering my question  
16 because, again, my -- you can get my concern, Mr. Phillips.  
17 My concern is you're asking me to do what some of your  
18 colleagues don't ask me to do in other cases.

19 So I'm trying to figure out why I should do it in  
20 this case where I haven't done it in other cases.

21 And what I'm hearing you telling me, and I may be  
22 hearing you wrong, and correct me if I'm wrong, and I am  
23 focusing on recruitment because a lot of times the government  
24 does, too. So here's the point; the point I'm making is, and  
25 I think everyone in this courtroom agrees, that Maurice Fayne,

1 as I think I said at Mr. Sargent's hearing, the driver of the  
2 car. And that the Sargent brothers and Mr. Jay were the gears  
3 of that car. And that if any of those gears had stopped, if  
4 any of those people had stopped what they were doing,  
5 Mr. Fayne couldn't have done what he did. So they were active  
6 participants in what happened.

7 But Fayne was the driver. So a lot of what you're  
8 telling me here is that Fayne recruited, Fayne did this, Fayne  
9 did this, but because now you're taking the position that well  
10 that's one, you count him, you can count him, you can count  
11 her, and put that on Jay to be able to increase the role from  
12 a two to a three.

13 And my point is that -- is it the government's  
14 position that you get to the -- and I know you're saying he  
15 gets to the five without even talking about all the Fayne  
16 people, but is it the government's position that you can just  
17 add all the folks that the leader recruits into a scheme on  
18 top of what the codefendant recruits to get to the five?

19 MR. PHILLIPS: Yes.

20 THE COURT: Okay. Well, that's -- that's news to me.

21 MR. PHILLIPS: Here's the reason that that is my  
22 position, and I respectfully believe that that is the law,  
23 Your Honor. And that is because we have to go back to what  
24 the guidelines say. We have to prove that somebody is a  
25 participant. That means they're criminally responsible in

1 some way for the scheme.

2 As I said earlier, that they provided knowing aid in  
3 some part of the criminal enterprise. That makes them a  
4 participant. You don't stop being a participant in the  
5 criminal activity because you were recruited into the scheme  
6 by the leader.

7 So recruitment is just one way that a person shows  
8 that he is a leader, a supervisor, a manager. It's not the  
9 only way; it's one way.

10 The guidelines talk about other things, like --

11 THE COURT: So why didn't Sargent get a three-level  
12 reduction? He was involved in the same scheme that you say  
13 involved five or more people. It doesn't matter whether he  
14 recruited them or not based on what you just told me, so these  
15 people were all involved in the Ponzi scheme as you said,  
16 what's the difference if Mr. Sargent didn't have direct  
17 contact with them, that you just told me it doesn't matter  
18 that Maurice Fayne was the one that recruited them, it's part  
19 of the same criminal activity.

20 So the Ponzi scheme was the same criminal activity.

21 MR. PHILLIPS: That's true, Your Honor. But the  
22 difference is in order to get this role enhancement, not only  
23 does the government have to show that there were five or more  
24 criminally responsible participants, we have to show that the  
25 defendant, who is getting that role enhancement, supervised at

1 least one of those people. That's the difference.

2           You got to have the number of participants, but then  
3 you have to show, on the other hand, that the defendant, who  
4 is getting a role increase, actively supervised one of those  
5 criminally responsible participants.

6           He didn't have to supervise all of them, he just has  
7 to supervise at least one of them. And we didn't have the  
8 supervision evidence with respect to Mike Sargent. We had the  
9 number of participants. The Court is correct; you do lump  
10 them all together because that determines what kind of a  
11 scheme you have.

12           It goes to the issue of how many participants there  
13 were. It also goes to the issue of whether the scheme was  
14 otherwise extensive. But if there is not evidence that the  
15 defendant against whom you want to apply the role increase  
16 supervised or managed or directed at least one of those  
17 people, he can't get a role increase.

18           That's the difference, Your Honor.

19           THE COURT: Okay.

20           MR. PHILLIPS: So here, we have both. We have at  
21 least ten participants, and we have clear evidence that the  
22 defendant, Dan Jay, supervised a number of those people, more  
23 than one. I only have to show one, but he supervised at least  
24 Crivelli and Capone.

25           And there is also evidence in the brief, Your Honor,

1 that he sued --

2 THE COURT: For a lot of cases that I have heard  
3 before where a member of your office has come before me  
4 involving mortgage fraud and bank fraud where I have had  
5 codefendants clearly supervising more than one person in  
6 preparing fictitious documents in order to perpetrate the  
7 fraud when the government urged me to apply a two-level role  
8 enhancement, that was an error of the government?

9 MR. PHILLIPS: Your Honor, I'm not familiar with the  
10 facts of the cases that the Court is citing, so I have to  
11 defer to the Court on that. The Court is aware of those  
12 facts; I'm not.

13 THE COURT: Okay.

14 MR. PHILLIPS: And I believe that I am accurately  
15 describing the guidelines and the relevant Eleventh Circuit --

16 THE COURT: Your co-counsel is shaking her head. Do  
17 you disagree with what I just said? If I'm wrong, tell me.

18 MS. MALLOY: Based on what I know, I believe that  
19 that's correct. I mean, Mr. Phillips is correct in terms of  
20 --

21 THE COURT: Okay. Well, because you weren't in the  
22 courtroom when your colleagues made the two-level increase  
23 argument.

24 MS. MALLOY: Right. That's the problem.

25 THE COURT: That's the problem. That's why I'm up

1 here, because I hear all the cases and you don't, so I have  
2 got to be the one to determine what is fair.

3 MS. MALLOY: Right.

4 THE COURT: Look, Mr. Jay is going to get a severe  
5 prison sentence out of this case. We're talking about whether  
6 the guideline goes up a little bit because of this or not. I  
7 understand that.

8 But I just -- my concern, and it is a continuing  
9 concern, it's not just in this case, is the consistency of the  
10 government's arguments in other cases.

11 So one of the 3553(a) factors, as you well are aware  
12 that I have to consider is to make sure that there is no  
13 disparity.

14 I mean, that's my job, not yours. So when I see  
15 there may be something disparate, I have got to consider that.

16 MR. PHILLIPS: I understand that, Your Honor. And I  
17 certainly would not stand up here and try to talk the Court  
18 into doing something that I believed was inconsistent. Not in  
19 this case or if I had knowledge of other cases that the  
20 Court --

21 THE COURT: I'm not blaming you for it. I'm not. I  
22 really am not. I'm just trying to be fair.

23 MR. PHILLIPS: I understand. But my job is to  
24 explain the law and the facts of this case, and I don't  
25 believe that we have done anything in this case with respect

1 to the other people who were convicted that's inconsistent.

2 THE COURT: I hear you.

3 MR. PHILLIPS: Mr. Fayne got a four-level role  
4 increase, Sargent got none, but I had evidence of five or more  
5 participants with Fayne and clearly evidence of him  
6 supervising at least one person.

7 So I just would like to point out on page 2 of my  
8 brief, the Eleventh Circuit case that I cited, Riveras, 401  
9 Federal Appeals 413, where the Eleventh Circuit said to apply  
10 the role enhancement, any role enhancement under 3B1.1, the  
11 court must find that the defendant directed at least one other  
12 participant.

13 So we have that here. We did not have that with  
14 respect to Mike Sargent. So I don't believe I'm asking the  
15 Court to do anything that's inconsistent.

16 So the defendant is not contesting that he should  
17 receive a two-level role increase. He's only contesting  
18 whether he should get that additional one level.

19 So let me just finish, Your Honor --

20 THE COURT: Sure.

21 MR. PHILLIPS: -- and I'll wrap this up. I know I  
22 have spent a lot of the Court's time just talking about this  
23 issue.

24 But Kawanza Wilkins is the final person. She is a  
25 person who was supervised and directed by Maurice Fayne, not

1 by Dan Jay, but clearly, she is a criminally responsible  
2 participant.

3 But let me just finish with respect to the people  
4 that Dan Jay supervised.

5 So not only Crivelli and Capone because they  
6 manufactured fake documents at his direction, but if the Court  
7 would look at the bottom of page 9 of my sentencing memo, the  
8 last paragraph. And I talk about in a text message that  
9 defendant Jay sent to Mike Sargent on November 5, 2017,  
10 defendant Jay said, quote, I got Darren, meaning Darren Brown,  
11 using Christian's bond as story for 6K. Any luck for you?

12 So this is Ponzi language, Your Honor. Mike Sargent  
13 and Dan Jay are talking about part of the Ponzi scheme that  
14 they were running. He said I have got somebody doing  
15 something as a story to get 6K. He uses those words. As a  
16 story. It's clearly fraud.

17 So that is an example that on at least that one  
18 occasion, Dan Jay is supervising Darren Brown. He says I got  
19 Darren using this fake stuff as a story to steal \$6,000 from  
20 an investor.

21 So that's three people this defendant participated --  
22 this defendant supervised/managed.

23 So we have got five or more participants, and we have  
24 the defendant supervising at least one of those criminally  
25 responsible participants.

Friday, June 23, 2023

1           For those reasons, I believe that the Court should  
2 find that the three-level role enhancement is appropriate.

3           And finally, even if the Court were to find that we  
4 didn't have five participants, the Court should find that the  
5 scheme was, quote, otherwise extensive. That's the phrase  
6 that's used in the sentencing guidelines.

7           And the guidelines don't offer much guidance as to  
8 what that term "otherwise extensive" means. And some judges,  
9 as a result, have looked to the dictionary for definitions to  
10 help them out with that.

11           So I have cited some of those on page 16 of the  
12 brief, and the Eleventh Circuit has said that in determining  
13 whether the criminal activity was otherwise extensive, courts  
14 should look at, quote, the length and scope of the criminal  
15 activity as well as the number of persons involved.

16           So this is important, Judge, because even if you find  
17 that my office has been inconsistent in other cases in  
18 defining to this Court what a participant is, you don't have  
19 to worry about that here because this scheme was "otherwise  
20 extensive."

21           And we know that --

22           THE COURT: Well, I have had other schemes that the  
23 government has also brought before me in sentencing that are,  
24 I don't know whether to call them extensive or not, but they  
25 involve over a dozen people, they involve a large number of

1 fraudulent documents, it was sort of a factory situation,  
2 almost like a -- you had some people doing forgeries, you had  
3 some people doing document preparation, there were different  
4 roles for different people in the scheme.

5           So once again, the government never argued for three  
6 levels for those individuals who were supervising others as  
7 part of a rather large scheme. I mean, was it extensive?  
8 Some might argue it was extensive.

9           So again -- and again, I'm not saying all this as a  
10 critique of anything that you are arguing about this case  
11 necessarily. I'm saying it as a critique of the consistency  
12 of what the United States Attorney's Office argues before me  
13 when you have got fraud schemes that are not all that  
14 different in terms of the scope, the number of people  
15 involved, and the supervision of the middle-level people.

16           So that's what's hanging me up here. I got to be  
17 honest with you.

18           So I hear what you're saying, Mr. Phillips. I don't  
19 say that your argument is necessarily flawed, but I have got  
20 to consider what I have done in other cases that are similar.

21           MR. PHILLIPS: Yes, Your Honor.

22           THE COURT: Okay.

23           Thank you.

24           MR. PHILLIPS: Thank you for allowing me to talk.

25           THE COURT: Sure.

1 Mr. Finlayson.

2 MR. FINLAYSON: We did spend a lot of time on one  
3 point.

4 THE COURT: We did.

5 MR. FINLAYSON: I appreciate that, Your Honor,  
6 because every point does make a difference and does count.

7 Your Honor, Mr. Phillips has done something here  
8 today, and I realize how he gets it wrong and how  
9 Ms. Schuessler got it right. He repeatedly used the singular  
10 in terms of the offense, the scheme, and he is commingling, if  
11 you will, the two different counts of conviction here in  
12 trying to smush them together and say, oh, we take these  
13 people from here, and we take these people from here, and  
14 that's how we get to the five.

15 And that's, with all due respect, that's just not the  
16 way we should do it because if that were allowed, you could  
17 have a three-count indictment where there are two people  
18 supervising in one count, two people supervising in a  
19 different count, and two people supervising in a third count,  
20 and you say well -- and the defendant maybe had some  
21 supervisory role in the second count but not in the other two  
22 counts, and you say, well, we're going to add that all  
23 together and get to the five and give him the three-point  
24 bump. And that's what the government is trying to do here.

25 So I think when you really read what Ms. Schuessler

1 wrote, it's like in the Ponzi scheme, there is no evidence  
2 that he was a supervisor leader. Furthermore, Mike Sargent  
3 didn't get any kind of role enhancement.

4 And Mr. Phillips has said two or three times today we  
5 didn't have any evidence Mike Sargent supervised anybody.  
6 With all due respect, he supervised and directed his own  
7 brother Mark repeatedly. He supervised and directed Darren  
8 Brown repeatedly. And they have that evidence. They had  
9 those emails.

10 If the government wanted to make the same arguments  
11 about role as to Mike Sargent, they could have done so, but  
12 they didn't. And again, he got zero, and we have agreed to  
13 eat two.

14 And in some ways, do I regret that because  
15 Mr. Phillips has sort of taken that concession of the two and  
16 sort of tried to twist it against us to say, if you admitted  
17 that, you are really getting three, and I think that goes too  
18 far.

19 So when we look at -- again, the Ponzi scheme, the  
20 evidence is not there that Mr. Jay supervised people. When we  
21 get to the PPP fraud scheme, then we start talking about,  
22 well, first of all, who was a criminal participant? The  
23 government has to prove to you that they were criminal  
24 participants. And Mr. Phillips has said, well, the defense,  
25 they admitted in paragraph 134 that Joey Crivelli was a --

1 that he recruited him and he directed him to do things. Just  
2 to be clear, I filed a clarification objection, which the  
3 probation officer included, said we do not concede that Joey  
4 Crivelli was a knowing criminal participant for purposes of  
5 analysis or counting under 31.1, so we have not conceded that  
6 point.

7 And there are several people, several names that the  
8 government has discussed here today saying, oh, they are  
9 criminal participants. That doesn't get it. They can't  
10 just -- we can -- it's nice to throw a label out there, but  
11 there has got to be evidence that people were knowing criminal  
12 participants for purposes of being counted.

13 How do they prove that? They have to prove intent;  
14 they have to prove knowledge. If you are doing a fraud scheme  
15 and you hire an accountant, and the accountant helps you in  
16 the fraud scheme somehow, they may or may not know. But the  
17 government has got to prove, to count that person, to make  
18 them part of that conspiracy, there has got to be some showing  
19 of proof. Just to slap a label on people saying, oh, they  
20 were knowing participants and criminal participants, we're  
21 going to count them for this issue, that's not enough.

22 And with all due respect, there has got to be a  
23 greater showing. And the fact is they didn't indict any of  
24 these people. And Mr. Phillips is right in his argument that  
25 we don't have to indict them, he writes that in his memo, but

1 they don't have to indict them, but there has got to be some  
2 proof that they were knowing criminal participants.

3 Sort of the other overarching scheme here, and it  
4 goes to your question, Your Honor, well if the leader brings  
5 in five people and you bring in one, do you get the five the  
6 leader brought in, and the answer to that is, he said yes, I  
7 say maybe. And in this case, no.

8 And the reason for that is if you read the case law  
9 in this area, when we start counting criminal participants,  
10 it's the law of relevant conduct that governs how we count  
11 criminal participants. What's the law of relevant conduct?  
12 What is the test? What makes other people or other conduct  
13 relevant conduct for purposes of counting in your sentence?  
14 Scope of the agreement and reasonable foreseeability.

15 The scope of Dan Jay's agreement did not cover these  
16 people he's talked about. You can say Carrie Capone, sure.  
17 We can argue Crivelli all day long, perhaps. But these other  
18 folks he has mentioned? Dan Jay, his agreement did not cover  
19 those people at all. He didn't get a piece of what they were  
20 doing. The Aunt G that got prosecuted for her own PPP fraud  
21 up in Tennessee, Dan Jay didn't get any of that money. He  
22 wasn't working with her. He didn't know these people. You  
23 don't have to know them, but you have to have reasonable  
24 foreseeability of them and they have to be within the scope of  
25 your agreement. That's the test of relevant conduct.

1           So this list of names, he just doesn't -- he doesn't  
2 get to five. He doesn't get it.

3           In the PPP side, we have Dan Jay, yes. Maurice  
4 Fayne, yes. Mike Sargent, no. And I originally made a  
5 mistake; I fell for it. I was thinking, well, you have got to  
6 count the Sargents because they were indicted. They were only  
7 indicted in the Ponzi scheme. They were not in the PPP. You  
8 don't count them for the PPP. They didn't do it, apparently.

9           Joey Crivelli, I would say no, but I understand the  
10 argument. I would say it's in the "maybe" category. I don't  
11 think it's enough to meet the test.

12           Carrie Capone is a yes.

13           Darren Brown is a no. Darren Brown was in the Ponzi  
14 scheme side. He doesn't count.

15           Ganell Tubbs, she is down the stream; she is  
16 Mr. Fayne's Aunt G. Dan Jay didn't have an agreement that  
17 covered her. He didn't know her; he never met her. Same with  
18 Tyriece Vaughn. Also not within the scope of Dan Jay's  
19 agreement or within his reasonable foreseeability.

20           The government's argument seems to be Fayne gets all  
21 this money, and he starts doing crooked things down the line  
22 with it or sends it down the line or has other people over  
23 here that he should get three level bump because of those  
24 people.

25           I think it goes too far. It's not within the scope

1 of his agreement, it's not reasonably foreseeable, and it's  
2 not fair.

3 The probation officer got it exactly right. Given  
4 what Mike Sargent got, zero, and we have agreed to two levels,  
5 that is more than enough here in this case.

6 THE COURT: All right.

7 Anything further, Mr. Phillips?

8 MR. PHILLIPS: Just very briefly. Mr. Finlayson  
9 talked about relevant conduct; I just want to address that  
10 issue.

11 He is right; the cases do talk about relevant conduct  
12 when they are talking about the criminal activity and deciding  
13 what the Court should look at to determine whether the scheme  
14 was otherwise extensive and who participated in that scheme.

15 But I want the Court to remember, please, that the  
16 PPP refund, the bank fraud is relevant conduct for the Ponzi  
17 scheme. Why? Because Dan Jay told Maurice Fayne you can get  
18 a PPP loan and use the money to make payments to people  
19 involved in the Ponzi scheme. And that's exactly what Fayne  
20 did. And he made a payment to Mr. Jay, for example. He made  
21 a payment to Mike Sargent. He made that payment that I talked  
22 about earlier to Tyriece Vaughn and directed Vaughn to  
23 distribute the money for him to other people who were involved  
24 in the scheme.

25 So it is relevant conduct.

1           So all of these things are lumped together for  
2 purposes of determining whether there were five or more  
3 participants and determining whether the scheme was otherwise  
4 extensive.

5           But even if the Court says I don't buy that, I'm only  
6 going to look at the Ponzi scheme and determine whether there  
7 were five or more people there or it was otherwise extensive,  
8 the Court should find that it meets both of those tests  
9 because we have Jay, we have Fayne, we have both Sargent  
10 brothers, and we have Crivelli and Darren Brown, who were  
11 criminally responsible participants in the Ponzi scheme.

12           That's at least six people, Judge, who were  
13 criminally responsible participants. They meet the  
14 definition, and the government has met its burden of proving  
15 that the three-level increase is appropriate and necessary in  
16 this case.

17           Thank you.

18           THE COURT: All right. Thank you.

19           Anything further?

20           MR. FINLAYSON: No, Your Honor.

21           THE COURT: Okay. I'm going to overrule the  
22 objection of the government to paragraph 134 of the PSR and  
23 impose a two-level increase to the base offense level in  
24 accordance with Section 3B1.1(c) of the guidelines because the  
25 defendant was an organizer, leader, manager, or supervisor in

1 the criminal activity, but I don't find that the government  
2 has proven by a preponderance of the evidence that he should  
3 be given a three-level increase under Section 3B1.1(b).

4 And let me say that a lot of my ruling here is based  
5 on the inconsistency of positions taken by the United States  
6 Attorney's Office in cases similar to this. And when I'm  
7 talking about cases similar to this, I'm talking about wire  
8 fraud and bank fraud cases.

9 The three-level increase is rare. I rarely have the  
10 government arguing for a three-level increase in any case.  
11 It's usually four or two. That's just the way it has been  
12 since I have been here. And I will tell you that there are at  
13 least two multiple defendant situations that I have been aware  
14 of where that occurred, and you had very much the situation  
15 that Mr. Phillips was talking about, and that is you had the  
16 ultimate leader, like Mr. Fayne who was the puppeteer, if you  
17 will, and then there were two or three mid-level people that  
18 were managers of the fraud scheme who recruited a number of  
19 individuals to participate in the fraud and directed those  
20 individuals in what their conduct was as part of the fraud.

21 And I have imposed regularly two-level increases to  
22 those folks based on the government's arguments in front of  
23 me, some of which have been agreed to by the defense, some of  
24 which have been not agreed to by the defense who have said  
25 don't impose anything, and I thought the evidence supported

1 imposing a two-level increase. I just don't think it supports  
2 it here, so that's why I'm overruling the objection.

3 No other objections from the government; is that  
4 correct?

5 MR. PHILLIPS: That's correct, Your Honor.

6 THE COURT: All right. I will adopt the findings of  
7 fact and conclusions of law in the PSR as to which no  
8 objections have been made.

9 My guideline calculations are as follows using the  
10 2021 edition of the manual. First, as stated in paragraph 129  
11 of the PSR, under Section 3D1.2(d) of the guidelines, all  
12 counts involving substantially the same harm shall be grouped  
13 together into a single group as when the offense level is  
14 determined largely on the basis of the total harm or loss, so  
15 Counts 1 and 5 are treated in the same grouping.

16 As set forth in paragraph 130 of the PSR, the  
17 appropriate guideline for a violation of 18 United States  
18 Code, Section 1349, is found in Section 2X1.1 of the manual,  
19 which instructs, under section A, to apply the base offense  
20 level from the guideline for the substantive offense, plus any  
21 adjustments from such guideline for any intended offense  
22 conduct.

23 Substantive offense is wire fraud under Section 1343,  
24 and the applicable guideline section is Section 2B1.1, which  
25 is also the applicable guideline for a violation of 18 United

1 States Code, Section 1344.

2 Under Section 2B1.1(a)(1), because the offense of  
3 conviction has a statutory maximum term of imprisonment of at  
4 least 20 years, the base offense level is 7.

5 As set forth in paragraph 131 of the PSR, in  
6 accordance with Section 2B1.1(b)(1)(J), 18 levels are added to  
7 the base offense level because the loss amount was greater  
8 than \$3.5 million and less than \$9.5 million.

9 In this case, the parties agree the actual loss in  
10 this case is within the guideline calculation.

11 As set forth in paragraph 132 of the PSR, pursuant to  
12 Section 2B1.1(b)(2)(A)(i), two levels are added to the base  
13 offense level because the offense resulted in substantial  
14 hardship to one or more victims and/or involved ten or more  
15 victims.

16 The evidence in this case shows that the offense  
17 involved at least 20 victims, causing at least one victim to  
18 file for bankruptcy.

19 There are no victim-related adjustments.

20 As set forth in paragraph 134 of the PSR, pursuant to  
21 Section 3B1.1(c), two levels are added to the base offense  
22 level because the defendant was an organizer or leader in the  
23 criminal activity.

24 In this case, the defendant recruited two -- I'm  
25 sorry, in this case, the defendant recruited a number of

1 individuals to facilitate the fraudulent documents used to  
2 obtain the PPP loan.

3           As set forth in paragraph 135 of the PSR, pursuant to  
4 Section 3C1.1, two levels are added to the base offense level  
5 if the defendant willfully obstructed or impeded or attempted  
6 to obstruct or impede the administration of justice with  
7 respect to the investigation, prosecution, or sentencing of  
8 the offense of conviction and the obstructive conduct related  
9 to the defendant's offense of conviction or a closely related  
10 offense.

11           In this case, the defendant failed to appear at the  
12 scheduled trial in this case and absconded from pretrial  
13 supervision.

14           Based on the foregoing, the adjusted offense level is  
15 31.

16           In accordance with paragraph 138 of the PSR, the  
17 defendant receives a two-level downward adjustment for  
18 acceptance of responsibility. That results in a total offense  
19 level of 29.

20           There is a plea agreement in this case in which the  
21 parties have agreed to imposition of all the guidelines that I  
22 have just talked about, with the exception of the role in the  
23 offense adjustment, and we have dealt with that here today.

24           As stated in paragraph 142, the defendant has no  
25 criminal history points, which establishes a criminal history

1 category 1. As set forth in paragraphs 173 to 177, the  
2 defendant does not have the ability to pay a fine within the  
3 guideline range of this case, and he has a substantial  
4 restitution obligation.

5 Sentencing options are as follows. The statutory  
6 penalty for Counts 1 and 5 is a term of imprisonment of up to  
7 30 years and a fine of up to \$1 million or twice the gain or  
8 twice the loss as to each count.

9 There's no mandatory minimum sentence.

10 With a total offense level of 29 and a criminal  
11 history category of one, the custody guideline range is 87 to  
12 108 months. The fine guideline range is 30,000 to \$300,000.

13 There's a restitution obligation of \$4,465,865.55,  
14 which is joint and several with Maurice Fayne and partially  
15 with Mr. Sargent, is that correct, Mr. Phillips? Or not.

16 MR. PHILLIPS: Yes.

17 THE COURT: I think it's partial with respect --

18 MR. PHILLIPS: The Ponzi scheme part --

19 THE COURT: Yes.

20 MR. PHILLIPS: -- but not for the --

21 THE COURT: Not for the PPP part. Correct. Okay.

22 MR. PHILLIPS: That's correct.

23 THE COURT: The special assessment is \$200.

24 Is there any remaining forfeiture in this case?

25 MR. PHILLIPS: No, Your Honor, there is not.

1 THE COURT: The Court could impose the cost of  
2 confinement of 44,258 annually or a cost of supervision of  
3 \$4,454 annually, or both.

4 There is no probation option. There is a term of  
5 supervised release of two to five years as to each count, and  
6 the defendant is a citizen of the United States.

7 Any objection to the guideline calculations as stated  
8 by the Court, on behalf of the government?

9 MR. PHILLIPS: No, Your Honor.

10 THE COURT: Any objection on behalf of the defendant?

11 MR. FINLAYSON: No, Your Honor.

12 THE COURT: All right. Let me hear from the parties  
13 regarding what a fair and reasonable sentence would be in this  
14 case. Concerning the 3553(a) factors, I have reviewed the  
15 sentencing memorandum in this case as well as the supportive  
16 material filed by the defendant.

17 Mr. Phillips.

18 MR. PHILLIPS: Thank you, Your Honor.

19 Your Honor, I think the Court would agree with me  
20 that Maurice Fayne is the most culpable person in this case.  
21 The Court sentenced him to 210 months.

22 Mike Sargent pleaded guilty to a criminal  
23 information, charging him with conspiracy under code section  
24 18 U.S.C. 371, which has a 60-month cap. So the court  
25 sentenced Mike Sargent to the statutory maximum of 60 months.

1 I think defendant Jay should be sentenced somewhere  
2 between those two. He is not as culpable as Fayne. He didn't  
3 get the lion's share of the money; Fayne did. Fayne was  
4 driving the car, as the Court has already said. He's clearly  
5 the most culpable. But Dan Jay is more culpable than Mike  
6 Sargent. First of all, he's involved in more schemes.  
7 Sargent was not involved in the PPP fraud, but Dan Jay was.  
8 In fact, it was Dan Jay's idea for Fayne to apply for a  
9 fraudulent PPP loan. We know that because we have his text  
10 messages, and he tells Fayne, you should do this, and Fayne  
11 says send me the documents, explain to me what's going on, Jay  
12 does, then Jay recruits Carrie Capone to help fill out the  
13 paperwork, and she prepares fraudulent documents and falsely  
14 represents to the bank that she is a CPA, which she was not.

15 So he's more culpable than Mike Sargent.

16 I'm not sure what sentence the Court would have  
17 imposed if there hadn't been a statutory cap of 60 months on  
18 Mike Sargent; whether the Court would have gone above that or  
19 not, I don't know.

20 But I think that a sentence that is within the  
21 guideline range, as the Court said, which is 87 to 108 months,  
22 would be appropriate.

23 If the Court were to sentence the defendant at the  
24 middle of the guideline range, that would be 87 months, by my  
25 calculations. So I think that's an appropriate sentence --

Friday, June 23, 2023

1 THE COURT: 87 is the low end.

2 MR. PHILLIPS: I'm sorry.

3 THE COURT: 87 to 108.

4 MR. PHILLIPS: 97. I can't read my own writing. If  
5 you were to split the difference. There's 21 months  
6 difference between 108 and 87; split the difference, it comes  
7 out to be 97 months. That's what we're asking for, 97 months.

8 The reason we think that's a fair and appropriate  
9 sentence under 3553(a) is because -- well, a number of  
10 factors. Obviously, these are extremely serious crimes.  
11 Participating in a Ponzi scheme where there are 19 victims,  
12 individual victims from different states, from Texas and  
13 Arkansas and Washington State and others, is clearly an  
14 extensive scheme.

15 The scheme lasted more than seven years, from March  
16 2013 through May 2020, and resulted in a total loss of more  
17 than \$4.4 million to those victims.

18 So 19 individuals in seven different states. Plus,  
19 we have got a PPP fraud that involved a federally insured bank  
20 and the United States Small Business Administration.

21 Taking advantage of your fellow citizens and stealing  
22 money that was intended to help people who were already  
23 hurting during a pandemic. That money was money that the  
24 taxpayers of the United States had committed to try to support  
25 small businesses and keep people employed and keep businesses

1 open during the pandemic.

2           And this defendant and Maurice Fayne decided they  
3 would steal as much of it as they could get their hands on.  
4 In fact, they were shocked at how much they were able to get,  
5 and they got it just by creating phony paperwork. They filled  
6 out an application that said that Fayne had more than 100  
7 employees in his trucking company and a monthly payroll of  
8 more than a million and a half dollars. They just made it up  
9 and just sent it in, and the government said, trying to  
10 control this pandemic financially is so important, we don't  
11 have time to properly vet these applications.

12           So if you meet our criteria and you swear that this  
13 is the truth, we're going to give you the money, and that's  
14 what they did.

15           And it worked because it kept the economy going until  
16 people could get back on their feet and get back to work.

17           But people like Jay and Fayne stole a substantial  
18 part of that money that the taxpayers are on the hook for. So  
19 it is an extremely serious crime, and it calls for a serious  
20 sentence. Not only to send the appropriate message that the  
21 United States take these matters very seriously, the court  
22 takes them seriously, but also to appropriately punish the  
23 people who were involved.

24           So we think that sentence of 97 months does that. It  
25 sends the appropriate message. It says this is a serious

1 crime, and it says we're going to punish you, we are going to  
2 deter people in the future as best we can through this  
3 sentence from committing similar crimes in the future.

4 Let's hope we don't have another pandemic, but there  
5 is lots of bank fraud, there's lots of Ponzi schemes out  
6 there, we want to send a message we take this seriously, and  
7 people who are thinking about participating in that type of  
8 criminal activity should be warned that if you do, you are  
9 going to be held accountable and you're going to face a  
10 lengthy prison sentence. So we think it's appropriate for  
11 that reason.

12 It's not harsh; it's not more than is necessary to do  
13 the job. And we think it sends the appropriate message. I  
14 totally agree with what the Court said earlier. It is  
15 extremely important for the Court to be consistent, and I know  
16 the Court has expressed that it wants to do that. We think  
17 that this is -- a 97-month sentence would be an appropriate  
18 sentence because it shows that Maurice Fayne is more culpable  
19 and it shows that Mike Sargent, who only participated in the  
20 one scheme, is less culpable, and Dan Jay's sentence would be  
21 in the middle.

22 So for all of those reasons and all the reasons that  
23 I put in my sentencing memo, Judge, and all of the horrible  
24 factors about what they did to people in this Ponzi scheme, we  
25 think it's an appropriate sentence.

Friday, June 23, 2023

1           If the Court will recall the lady who spoke, she is  
2 just one of those victims.

3           THE COURT: I remember that testimony.

4           MR. PHILLIPS: It was moving. It was just  
5 gut-wrenching to hear that somebody's life is turned upside  
6 down by people who were so callous.

7           And they documented their behavior in text messages,  
8 in emails, and other documents. They left a long paper trail.  
9 So we know that that's what's happened.

10           And I appreciate Mr. Jay coming in and accepting  
11 responsibility, even after he put us to the trouble and  
12 expense of preparing for trial, I know that my office spent a  
13 lot of time and a lot of money getting ready for that trial,  
14 I'm sure the Court did too, and we were all ready to go, and  
15 at the last minute, Mr. Jay didn't show up. And then he ran,  
16 and he's gone for six months, hiding from the government until  
17 he is finally caught and brought to justice.

18           And then, thanks to good lawyering from  
19 Mr. Finlayson, the defendant has changed his attitude, and he  
20 has accepted responsibility, but not before putting the  
21 government to that tremendous trouble and expense of getting  
22 ready for that trial and then running away.

23           So for all of these reasons, Judge, we're asking the  
24 Court to impose a sentence of 97 months.

25           THE COURT: Thank you, Mr. Phillips.

Friday, June 23, 2023

1 Mr. Finlayson.

2 MR. FINLAYSON: With all due respect, 97 is far more  
3 than necessary to meet the appropriate level of justice in  
4 this case. It's more than necessary to meet the deterrence  
5 factors. It is more than necessary when taking into account  
6 the history and characteristics of Mr. Jay.

7 It is sort of interesting when we start looking at  
8 disparities and trying to weigh who is more culpable, who is  
9 more bad, who did more, who was worse. When we go back and we  
10 look at the history and characteristics of Mr. Fayne, he had  
11 criminal history category 4. This was hardly his first rodeo.

12 Mr. Mike Sargent, who got 60 months, he was criminal  
13 history category 3. Mike Sargent had a prior conviction, been  
14 to prison previously for fraud, and then he gets arrested in  
15 Texas on state charges, for fraud, and then continued to  
16 commit more fraud in this case.

17 So Mike Sargent wasn't involved in the PPP fraud, but  
18 he sure was involved in the Ponzi scheme up to his eyeballs,  
19 and he had this record that's significantly worse than  
20 Mr. Jay.

21 Mr. Jay comes before the Court with zero criminal  
22 history points, and the Court may be aware that as of November  
23 1st, the new guideline amendments will come into play,  
24 assuming Congress doesn't meddle with them, which they  
25 probably have got other things to do, the new guidelines will

Friday, June 23, 2023

1 come into play and there will be a new reduction built into  
2 the guidelines for people like Mr. Jay with zero criminal  
3 history points.

4           There will be a two-level reduction built into the  
5 guidelines for zero criminal history points because the  
6 sentencing commission, although I may disagree with them on  
7 many things, I do agree with them on this, that they have  
8 realized and they recognize that zero criminal history points  
9 means something. It's a big deal. It's something that we  
10 don't see every day, and it doesn't apply to every defendant.

11           So the fact that Mr. Jay comes here with zero  
12 criminal history points, this is his first, first conviction  
13 ever. This is his first rodeo. Mike Sargent, it was not his  
14 first rodeo. Mr. Fayne, it was his fifth rodeo.

15           So when you start weighing out what's a fair  
16 sentence, and you compare them, the fact that Mike Sargent  
17 wasn't charged in the PPP, that's -- I submit that's hardly  
18 enough of a distinction to say Mr. Jay is so much worse.

19           Because if you think about what Mr. Phillips just got  
20 up and argued earlier was, well, these really are kind of all  
21 one and the same, the PPP was just part of continuing the  
22 Ponzi, I don't necessarily agree with that, but he said it so  
23 I'm going to run with it, the PPP was just to keep the Ponzi  
24 going.

25           In terms of the Ponzi going, and this is an argument

Friday, June 23, 2023

1 of semantics with probably not a difference. This was much  
2 more than just a flat-out theft or a fraud than it was through  
3 Ponzi. I think there were some payments made back to the  
4 investors, but it wasn't like Bernie Madoff, where there was  
5 all these payoffs going over months and months and months and  
6 years.

7 Not a lot of people got money back from Mr. Fayne.  
8 Mr. Fayne seemed to keep it all.

9 When you look at the bank records and the payments,  
10 there were a couple of people that got a hundred bucks here  
11 and a little bit there, but in terms of like the PPP being  
12 this -- you know, it just -- the facts were much more theft  
13 and fraud than what we normally think of as Ponzi.

14 Again, maybe not a distinction. But I guess the  
15 point it does go to is Maurice Fayne got this money. Dan Jay  
16 did not get this money, and I haven't heard Mr. Phillips put  
17 any kind of number on how much money Dan Jay got, but what we  
18 know is we know there was a \$30,000 check from the PPP that he  
19 used most of it to pay back a loan shark for money that he got  
20 from a loan shark to go to Mr. Fayne.

21 So Dan Jay is going to be ordered to pay back over  
22 \$4 million, and a \$250,000 civil -- separate civil forfeiture,  
23 which, you know, what is that going to do to his life going  
24 forward? That's a huge rock around somebody's neck, trying to  
25 go forward in the world, but it is what it is, he has agreed

Friday, June 23, 2023

1 to it.

2 But the money he got out of this thing, he says  
3 lion's share, I would love to hear a real number. I think, at  
4 one point, we talked maybe it was a number over \$100,000 was  
5 discussed. I would love to hear if we knew exactly, because I  
6 don't. I know there was a \$30,000 check that he got, and  
7 that's what he got. And he is being sentenced for a loss  
8 amount between \$3.5 and \$9 million.

9 So I think that is something, those are many things  
10 you can consider. And I think when we look at Mike Sargent, I  
11 disagree that somehow Mr. Jay is 37 months worse than Mike  
12 Sargent, given Mike Sargent's criminal history and criminal  
13 record of category 3. I just respectfully disagree with that.

14 I'm requesting a variance. I'm requesting a variance  
15 down from the low end. The low end of that range is 87  
16 months. It's level 29. I'm asking for a 60-month sentence.  
17 And I struggled with it. I really thought, well, I should  
18 lowball a little bit. I should ask for 48; I should ask for  
19 54.

20 And then do you shoot it straight, or do you lowball,  
21 thinking, well, the judge is going to split the baby somewhere  
22 in there. And I did not; I did not lowball the number. I  
23 submit that 60 months, which is exactly what Sargent got, is  
24 exactly the right sentence in this case because for the  
25 reasons I have just said.

Friday, June 23, 2023

1           So that's -- that is my real and solid, that's the  
2 real number. I'm not bluffing. That's the number I really do  
3 believe would be fair and reasonable given Mr. Jay's conduct  
4 and his history and characteristics.

5           So why -- what would justify such a variance? Why  
6 would we vary down? It's about a four-level variance,  
7 four-level variance would get me to 25, and the low end of  
8 that is 57. Why would we give this man three points? He was  
9 in this fraud, he stole this money, all these poor victims,  
10 why would we give him four points (sic)?

11           THE COURT: And he fled the court.

12           MR. FINLAYSON: Well, I'm going to talk about that.

13           He fled the court, exactly. Because you are fair,  
14 and you're just, that's why. And this is not your first  
15 rodeo, and you recognize the human condition when people take  
16 care of their elderly parents during COVID, and those elderly  
17 parents then die, and then they get strung out on drugs,  
18 people go off the rails. And I think many of us in this room  
19 have been through that experience.

20           When you lose that last parent, there is nothing like  
21 it in this world. There is nothing you are prepared to  
22 handle.

23           And Dan's family is here, and they went through a lot  
24 of this too, but the last year of his dad's life, bedridden,  
25 Dan taking care of him, and it's a double-edged bittersweet

1 story in that you don't -- you are always happy you got to  
2 have that time with your parent, but it is the most  
3 gut-wrenching, it is the hardest thing any human being,  
4 probably only harder part would be going through it with your  
5 own child. That would be harder.

6 THE COURT: I don't disagree with that, and I have  
7 great sympathy for what the family went through. But during  
8 the COVID pandemic, over a million people lost their lives in  
9 this country. A lot of people, friends of all of ours, family  
10 members died during it.

11 And not many of those people necessarily got involved  
12 in criminal activity because of it, but here's the bottom  
13 line. Even those that were strung out on drugs and stuff, not  
14 many of them had court dates for trials and took it upon  
15 themselves to just say I'm not showing up and fleeing.

16 So it's a heavy burden that you have got,  
17 Mr. Finlayson, on Mr. Jay's behalf, to argue for a variance  
18 from the guidelines in this case because of that.

19 This isn't my first rodeo either, and there are not  
20 many rodeos I have been to where folks that don't show up for  
21 trial get significant variances from the guidelines.

22 So you have got a tough road to hoe, and you are a  
23 great lawyer, and you're doing a great job, but I'm just  
24 telling you there is sometimes a bridge too far.

25 MR. FINLAYSON: And with all due respect, I'm going

1 to cross that bridge because if you think about it, what did  
2 he get for that? He got three points. Where we are right now  
3 in the guidelines is because of exactly what you are talking  
4 about. He didn't show up when he was supposed to. Not the  
5 first person who has ever done that, but you're right; he got  
6 two points for obstruction, and he lost a point for  
7 acceptance.

8           So it's a three-point bump. And I'm not asking for  
9 it all back. I understand that there has got to be some  
10 penalty, and there has got to be payback, and there has got to  
11 be a message to other defendants, hey, you can't not show up.  
12 You're going to get more time, and he is getting more time.

13           Because with 60 months that I'm asking for, if things  
14 had gone as they should have and if Mr. Jay had had his head  
15 together and hadn't made bonehead decisions and he hadn't have  
16 run and fled and lived in the streets and all that, we would  
17 have come in here with a 60-year cap, and we would have been  
18 asking for about 36 months for a lot of these same things we  
19 have already talked about.

20           And I don't think -- the positions would be -- the  
21 room would be completely different, the positions would be  
22 different, and that's what I would be asking for.

23           And do you think -- so I submit that the 60 months is  
24 much more than he would have gotten had he not done what he  
25 did. And I stand by that. It's -- and I'm not asking for it

1 all back. But I'm asking for some of it back.

2 And again, you are right; not everybody that went  
3 through the pandemic and lost people fled and not everybody  
4 got on drugs, but it does explain the situation. The fact of  
5 it is when you really look, when we start looking at the  
6 history and characteristics of Dan Jay, a man with no prior  
7 felony record, and we look at what he did, that behavior, the  
8 fact that he just got through taking care of your father  
9 during COVID and he passes, and he gets on drugs, it doesn't  
10 necessarily justify it, it doesn't excuse it, but it sure  
11 mitigates it, it sure explains it.

12 I wrote a little bit about who Dan Jay was and where  
13 he came from. And I don't know if that means a lot to the  
14 Court or --

15 THE COURT: Look, I'm considering it, and I read it,  
16 and I thought you did a very good memorandum.

17 MR. FINLAYSON: You think about, Bessemer,  
18 Pennsylvania, this little town outside of Pittsburgh, a town  
19 that once was thriving. It was tapped into the steel  
20 industry; the town is in decline. His father was a lineman  
21 for 40 years. A standup blue-collar guy. He grew up in a  
22 tiny house; he was the baby. He's the youngest. His older  
23 sister is like, almost 17 years older than he is. He's the  
24 baby of that family. He's 5 foot 7 tall right now. He wanted  
25 to be somebody.

Friday, June 23, 2023

1           He wanted -- he had dreams. He had visions. He  
2 wanted -- and there is a fine line between delusions of  
3 grandeur and going off and becoming a fraudster. The fact of  
4 it is he wanted to be somebody, and he had -- you know, the  
5 people just blew up in the submarine, down in the ocean; it's  
6 like people take risks, and people do make choices sometimes  
7 that have horrible ramifications, and that has happened to  
8 Mr. Jay.

9           But he didn't set out on this; he doesn't have a  
10 lifetime of fraud. He doesn't have a history of doing it. He  
11 really thought, oh, if I could just do, just, one more, one,  
12 just like if he could make it happen, he could be somebody.

13           He went off to Vegas to be a boxing promoter, and I  
14 have a email that just came in I'm going to read to the Court  
15 from somebody that talks about that.

16           But he didn't set out in life to be where he is right  
17 now. And he has made horrible choices that have put him where  
18 he is right now, but this is not who he was raised to be; this  
19 is not who his family is.

20           And going forward, what do we do here going forward  
21 to do enough but not too much that we make it impossible for  
22 him to ever get out from under it.

23           If we put such a big rock around his neck, is he ever  
24 going to recover? Is he ever going to be able to do something  
25 meaningful for society if we whack him as hard as the

1 government wants to whack him.

2 And I submit that I don't think we need to go to 97  
3 months. And I think a variance would be appropriate.

4 I talked a little bit in my memo about the guideline  
5 inflation from the fraud guidelines, and I don't want to beat  
6 that horse terribly long, but we are way up there because of  
7 various adjustments that have been built into the guideline  
8 system that aren't necessarily rationally based. They are not  
9 empirically based. There is a lot of criticism these days  
10 about the use of the loss table in terms of cranking up these  
11 level of points, and is it really -- is it really relational?  
12 Is that money really worth that much more time in prison? And  
13 does it really show a greater level of culpability? And are  
14 we really measuring culpability the right way? And really, he  
15 got almost every point in the book there.

16 And we didn't object to those facts; the guidelines  
17 are the guidelines, but the Court has the authority to  
18 consider that and consider the guideline inflation when  
19 imposing a reasonable sentence.

20 I'm asking for 27 months off. I'm asking for 27  
21 months from the bottom end of the range, and I think that's  
22 something that could go into that reduction.

23 Going back to the failure to appear, one last thing  
24 on that.

25 He was supposed to plead in December of 2021. And we

1 were all here; he came to court that time. He all thought he  
2 might walk in at the trial, but he came to court for the plea,  
3 and he was shaking, and he was sweating. And I was thinking  
4 cocaine and steroids at the time, but later learned it's more  
5 of the Oxy painkiller department, but sweating and shaking,  
6 and he says no, I can't do it. I'm not doing that plea. But  
7 he clearly was on drugs at that point, in my opinion. And I  
8 think, given his behavior, it was consistent with that as  
9 well.

10 And truthfully, some of his other behavior throughout  
11 the litigation has been consistent with somebody that when he  
12 was out on bond, he was on drugs, he was getting bad advice,  
13 and he was thinking very poorly.

14 He has -- here's another reason why you don't have to  
15 go to the guidelines, it's he has changed his tune. He has  
16 grown. He has turned over a new leaf.

17 The Dan Jay that I represent now is not the Dan Jay I  
18 was representing two years ago. He's an entirely different  
19 person with insights and compassions and empathies from his  
20 day-to-day life in the Robert A. detention center that I  
21 honestly -- I didn't think he was capable of.

22 He is a different -- he is a different man before you  
23 now than he was two years ago. And we don't see that every  
24 day, and maybe we're skeptical, maybe we're all so jaded,  
25 we've done this so long, oh yeah, jailhouse conversion, I

Friday, June 23, 2023

1 don't think that's it. I think it's getting off of drugs and  
2 recognizing what is important.

3 I have talked about Dan wanting -- he wanted to be  
4 somebody. He wanted to be somebody big. He grew up under the  
5 lights. The football field was right behind their house. And  
6 the lights, Friday night, the whole place was lit up like  
7 Christmas, and people would come over after the game. And Dan  
8 had the vision of sports and success and cars and fancy things  
9 and material objects, and he wanted to be that big man, and he  
10 thought those were the important things.

11 And what I see now from him and what I hear now from  
12 him, and it's always sad that it takes this to make people  
13 realize it, the important things are right there. The  
14 important things he realizes now are family. And his own  
15 expressed regret is I'm about to be 47 years old; I don't have  
16 any children. I haven't -- I don't have any family. I don't  
17 have the next generation. And how am I going to have that?  
18 I'm going -- that's a part of my life that I'm going to -- it  
19 looks like I'm going to miss. And it's his own mistake and  
20 his own doing, but it's that recognition of what is important  
21 in life that not everybody gets and not everybody makes, and  
22 not everybody figures it out, even though it's late.

23 So I would ask for that reason as well. Even though  
24 it's late, he has figured it out. And he has behaved well  
25 since he has come back in this case, and he gets it now.

Friday, June 23, 2023

1 Last thing I'll read to Your Honor, and I'll hand it  
2 up.

3 May I approach?

4 THE COURT: Sure.

5 MR. FINLAYSON: (Hanging.)

6 And for the record, this is an email from Michael  
7 Colbert, says he has known Dan Jay since 2015; we are from a  
8 similar part of Pennsylvania. I had known of him and some of  
9 his friends but didn't meet him in person until 2015 through  
10 our love of boxing. We met in Las Vegas through a mutual  
11 friend. Stayed in contact quite often up until the present  
12 time.

13 Dan was always a very clearheaded person. We have  
14 had dozens of conversations about boxing and life in general.  
15 But at or around the beginning of 2022, I noticed a  
16 significant change in our conversations. He seemed to be on  
17 some type of drug, and having a brother who had dealt with  
18 addiction and another best friend going through the same, it  
19 sounded like pain pills to me that he was on.

20 In a later conversation, he admitted to me he was on  
21 pills just to get through his days.

22 Dan is one of the most honest, true, genuine good  
23 people I know. Through his trips to Vegas for work, boxing,  
24 he found some very good friends, and he always treated people  
25 with the utmost respect.

Friday, June 23, 2023

1 I've never known Dan to be on drugs. That is why,  
2 when I noticed the change at the beginning of 2022 over many  
3 phone calls, I became very concerned.

4 I truly hope Dan gets the help that he needs.

5 Thank you. Mike Colbert.

6 And, Your Honor, I think you have got the letters  
7 from his family. I think you realize the kind of people that  
8 he comes from and the kind of place that he comes from, and  
9 the kind of place that he's going back to.

10 So in terms of rehabilitation and what's going to  
11 happen down the road, and what is necessary to do now, I  
12 submit that a below guideline sentence will address all of  
13 those needs.

14 And in terms of the deterrent factors, the sentence  
15 is still -- 60 months is not a short sentence. And the fact  
16 is you have given the same sentence to Mr. Sargent, and  
17 Mr. Fayne got a very large sentence, and so the deterrent  
18 message is out there.

19 And the truth of it is, there is a quote I throw in  
20 some memos from the sentencing commission where they say we're  
21 not even sure that increasing -- there is no corresponding  
22 ratio of increased sentence to deterrent value. There is just  
23 no data to submit that if I give somebody 20 years instead of  
24 ten or ten years instead of five that it's going to have any  
25 kind of corresponding deterrent value.

Friday, June 23, 2023

1           So, Your Honor, I still think that the bridge is  
2 worth crossing, and I don't think 97 months is reasonable; I  
3 don't think 87 months is reasonable.

4           I think given everything here, 60 months would be a  
5 reasonable sentence for Dan Jay.

6           THE COURT: Thank you, Mr. Finlayson.

7           Anything further, Mr. Phillips?

8           MR. FINLAYSON: Not in response to those arguments,  
9 Your Honor. I just wanted to say that, as Mr. Finlayson  
10 reminded me in his remarks, the defendant did agree to a  
11 personal forfeiture money judgment in the amount of \$250,000.

12           So when the Court earlier was going through the PSR,  
13 and you were talking about forfeiture at the time, I  
14 understood you to be asking are there any additional assets  
15 that is forfeited.

16           THE COURT: Right. That's what I was asking.

17           MR. PHILLIPS: Okay. I wasn't referring to the money  
18 judgment. That's separate.

19           THE COURT: Does that need to be in the J&C?

20           MR. PHILLIPS: It needs to be in the oral  
21 pronouncement of sentence.

22           THE COURT: Okay.

23           MR. PHILLIPS: And then I will present a forfeiture  
24 order to the Court, and the Court, if it would, I would ask to  
25 incorporate that into the J&C.

1 THE COURT: All right. Thank you.

2 Mr. Jay, you have what's called the right of  
3 allocution, which is the right to make a statement on your  
4 behalf, or you can just rely on what your attorney,  
5 Mr. Finlayson, has told the Court.

6 Do you wish to make a statement?

7 THE DEFENDANT: I do.

8 THE COURT: Go ahead. You can just stay where you  
9 are. Just make sure the mic is close to you so we can hear  
10 you.

11 THE DEFENDANT: I'm glad I wrote it down. I knew  
12 this would be an emotional thing.

13 Your Honor, I failed to implement three great duties  
14 to God, to my neighbor, and to myself. Your Honor, I failed  
15 to implore God's aim in all of my undertakings. I failed my  
16 neighbor, the investors, by not acting upon the square of  
17 virtue and not applying the golden rule by doing unto them as  
18 I wish they would do unto me.

19 Finally, myself by not avoiding irregularity in  
20 temperance by getting involved in dealings with individuals  
21 who don't share my moral code. That's debasing my profession  
22 and tarnishing my family's good name. I have always strived  
23 to be a peaceful citizen, true to my government and just to my  
24 country.

25 By allowing fear to affect my better judgment and

Friday, June 23, 2023

1 becoming a fugitive, I count this rebellion, choosing not to  
2 patiently submit to legal authority, and instead, be guilty of  
3 dishonorable actions, disrespecting you, Your Honor, the  
4 government, the court, my attorney, and everyone involved in  
5 this case.

6 I choose not to seek counsel, a well-informed  
7 brethren who has always been willing to give me honorable  
8 instruction. While incarcerated, I sought and found solace of  
9 my own distress by extending comfort and consolation to my  
10 fellow detainees, still broken in darkness in their hour of  
11 affliction.

12 Your Honor, it is my intent to travel onward guided  
13 by the principles of brotherly love, relief, and truth that  
14 God has endowed to me by creating me in his image. There have  
15 been duties imposed upon me to cultivate these divine  
16 attributes given me with unremitting care and attention that I  
17 may be able to glorify Him.

18 It is my duty to my neighbors who invested because of  
19 me because I invested or because I influenced them to invest  
20 to repay each of these people in full upon my successful  
21 return to society.

22 I vow to apply time, patience, and perseverance to  
23 rectify the damage I personally caused to each trusted  
24 investor who dealt directly with me.

25 Over the past six years, through all the hardships, I

Friday, June 23, 2023

1 have gone through a metamorphosis similar to that of a  
2 caterpillar becoming a butterfly. Invested with that, I have  
3 been divested. I traveled east to west and west to east again  
4 in search of which was lost. I found Danny Jay in that rural  
5 Pennsylvania town when I returned to honor my father, and for  
6 that, I am eternally grateful.

7 Your Honor, I stand before you a gentleman on a level  
8 hoping to get a square sentence.

9 Realizing more now than ever that my manhood does not  
10 depend upon my position but upon my character. I'm grateful  
11 to God for protecting in the proverbial lion's den and shaping  
12 me through the journey of the past three years. One I never  
13 would have chose on my own, but one my soul needed.

14 And to God, I ask, oh Lord God, is there no help for  
15 the widow's son?

16 THE COURT: All right. Thank you, Mr. Jay.

17 Anything further on behalf of the government?

18 MR. PHILLIPS: No, Your Honor.

19 THE COURT: Anything further on behalf of the  
20 defendant?

21 MR. FINLAYSON: No, Your Honor.

22 THE COURT: All right. Thank you.

23 After reviewing the entire record in this case and in  
24 accordance with the Sentencing Reform Act of 1984, it is the  
25 judgment of the Court that the defendant, Daniel Eric Jay, is

1 hereby committed to the custody of the Bureau of Prisons to be  
2 imprisoned for a term of 87 months as to Counts 1 and 5, to be  
3 served concurrently, for a total sentence of 87 months.

4 The Court also orders the defendant pay to the United  
5 States a special assessment of \$200, which shall be due  
6 immediately.

7 It is further ordered that the defendant make  
8 restitution in the amount of \$4,465,865.55 to the United  
9 States District Court clerk for distribution to the victims of  
10 this offense, and these are going to be the same victims that  
11 are delineated in the J&C that the Court has issued against  
12 Mr. Fayne. It's the same victims and the same amounts as in  
13 that case.

14 The restitution is to be paid jointly and severally  
15 with Michael Fayne for both the PPP loan fraud and the Ponzi  
16 scheme, and joint and several with Michael Sargent with  
17 respect to the Ponzi scheme.

18 Restitution is due immediately. Any restitution  
19 payment that is not paid in full must be paid in monthly  
20 installments from any wages the defendant earns in prison  
21 during any period of incarceration, at a minimum the greater  
22 of \$25 or 50 percent of the deposits in his trust account per  
23 quarter. Any portion of the restitution that's not paid in  
24 full at the time of his release from imprisonment will become  
25 a condition of supervision and paid to the clerk of court for

Friday, June 23, 2023

1 distribution to the victims, and a monthly rate of \$150 plus  
2 25 percent of gross income in excess of \$2500 per month.

3           The defendant is also ordered to pay a \$250,000 money  
4 forfeiture that's been agreed to, and that will be done  
5 pursuant to an order that has presented to the Court, and I'll  
6 incorporate that into the judgment and commitment order. The  
7 Court finds that the defendant does not have the ability to  
8 pay a fine or the cost of his incarceration. The Court will  
9 waive the fine and cost of incarceration in this case.

10           Upon release from imprisonment, the defendant shall  
11 be placed on supervised release for a term of five years on  
12 each of Counts 1 and 5 to run concurrent.

13           Within 72 hours of release from the custody of the  
14 Bureau of Prisons, the defendant shall report in person to the  
15 probation office in the district to which the defendant is  
16 released. I'm also going to recommend that the defendant be  
17 placed in the RDAP program while he is in custody with the  
18 Bureau of Prisons.

19           With respect to the conditions of supervised release,  
20 the Court shall impose the standard conditions of supervised  
21 release, the mandatory conditions which included that the  
22 defendant not commit another federal, state, or local crime,  
23 that he not unlawfully possess a controlled substance, that he  
24 refrain from using unlawfully any controlled substance and  
25 submit to a drug test within 15 days of rerelease from

Friday, June 23, 2023

1 imprisonment, and at least two periodic tests thereafter as  
2 determined by the court, that he make restitution, as I've  
3 already stated, and that he cooperate in the collection of DNA  
4 as directed by his probation officer.

5 I'm also going to impose the following special  
6 conditions of supervised release.

7 That if there is a reasonable suspicion for the  
8 probation office to believe that he's violated a condition of  
9 supervision, they are allowed to conduct a search of his  
10 person, property, residence, vehicles, papers or computers,  
11 and a failure to submit to such a search shall be grounds for  
12 revocation.

13 He agrees to permit confiscation or disposal of any  
14 contraband as a result of such search.

15 He must make a complete disclosure of his finances  
16 and submit to an audit of any financial documents at the  
17 request of his probation officer. He shall not incur any new  
18 credit charges or open any additional lines of credit without  
19 the approval of his probation officer.

20 I have already indicated the \$150 monthly payments  
21 for his restitution obligation.

22 I'm also going to order that he participate in a  
23 substance abuse treatment program, follow the rules and  
24 regulations of that program, submit to substance abuse testing  
25 to determine if he has used a prohibited substance, and that

1 he not again use or possess any controlled substances without  
2 a valid prescription, and that he not use or possess alcohol.

3 He shall pay for the cost of his treatment program  
4 unless he is excused to do so based on his ability to pay by  
5 the probation office.

6 Let me talk about the 3553(a) factors and why I  
7 believe this is a fair and reasonable sentence but not greater  
8 than necessary.

9 First, the nature and circumstances of the offense.  
10 As I have said during some of Mr. Jay's codefendant sentencing  
11 hearings, with respect to the Ponzi scheme part of this  
12 offense, it's one of the most serious fraud offenses that I  
13 have seen since I have been on the bench.

14 The number of people, the victims in this case, upon  
15 which the fraud that was perpetrated by Mr. Fayne, Mr. Jay,  
16 and the Sargent brothers was large. And I have heard from  
17 some of those victims, and these are real people that lost  
18 significant amounts of money because of the conduct of Mr. Jay  
19 and the other defendants in this case.

20 And then when you add the PPP loan on top of that,  
21 it's a horrendous scheme, and it's something that no one put a  
22 gun, Mr. Jay, to your head to force you to do this. You did  
23 this -- I know Mr. Fayne was the leader of this conspiracy,  
24 but he didn't threaten your life, he didn't threaten your  
25 family, you did it voluntarily.

Friday, June 23, 2023

1           And because of your actions, a lot of people got  
2 hurt. And that's a serious offense for which you have to pay  
3 a serious price. And I have sentenced you to the low end of  
4 the guidelines. I could have sentenced you to a higher  
5 amount, but I considered the fact that you don't have any  
6 criminal history, and you finally did come forward and pled,  
7 and so I sentenced you to the low end.

8           I have considered your history and characteristics in  
9 doing so. You don't have a criminal history. You had to go  
10 through a lot of hardship with respect to your parents, and I  
11 know that had an impact on your drug use. There is no  
12 question about that.

13           But I also considered the fact that we were ready to  
14 go, proceed to trial; we were sitting here, and you were  
15 elsewhere. And you got to pay for that, too. And because of  
16 that, I didn't think you were -- a variance was justified from  
17 the low end of the guidelines.

18           Sometimes you make your bed, and you have to lie in  
19 it, and you did in this case.

20           Here's the good thing about it. The good thing are  
21 the people that I see on the screen that have observed this  
22 proceeding. There are a lot of times that I see defendants  
23 sitting where you are, and there is nobody on a screen; there  
24 is nobody in the courtroom. There is just nobody.

25           So I'm always worried when someone comes out of

Friday, June 23, 2023

1 prison what's going to happen? They have got nobody to  
2 support them.

3 But that's not you. You are going to have a lot of  
4 people in your corner to support you. And you know, you are  
5 going to serve a significant amount of time for what you did,  
6 but you are also going to come out of jail a relatively young  
7 man. I say that because I still consider myself a young man,  
8 and I'm a lot older than you are.

9 So you are going to have some time to make this up;  
10 you're going to have the rest of your life, which is hopefully  
11 going to be a considerable portion of your life.

12 These folks that have written letters on your behalf,  
13 that are here watching this proceeding and are supporting you,  
14 and other friends like the gentleman, Mr. Colbert, who wrote  
15 the letter, are going to be in your corner. And you owe it to  
16 them to turn this around. And you're going to have a chance  
17 to do that.

18 I can tell you this, if you are ever involved in  
19 anything like this again, or you are in any court again, you  
20 are basically saying I'm going to spend the rest of my life in  
21 jail. Nobody wants that for you. Not your family, not your  
22 friends.

23 You need to turn it around. And you will have some  
24 years to do that.

25 And some joyful years, hopefully.

Friday, June 23, 2023

1           You have got to pay for what you have done. But you  
2 can prove to everybody who has been supportive of you  
3 throughout this time that their belief in you was worth it  
4 because you turned it around.

5           So everybody wants that for you, and I hope you  
6 accomplish that.

7           I have considered the need for the sentence imposed  
8 to reflect the seriousness of the offense, as I have said, to  
9 afford adequate deterrence, both specific and general, and to  
10 protect the public.

11           I have considered the kinds of sentences available,  
12 the kinds of sentence and the sentencing range established for  
13 this offense as set forth in the guideline. This is a  
14 low-guideline sentence.

15           I have considered the need to avoid disparity. I  
16 think this sentence is a fair sentence, not only in terms of  
17 other fraud cases that I have had but a fair sentence in this  
18 case. Mr. Fayne justifiably got the most severe sentence and  
19 a sentence that was multiples of his codefendants, and it was  
20 earned. I believe, notwithstanding what your lawyer argued,  
21 that you are deserving of a sentence somewhat higher than your  
22 codefendant, Mr. Sargent, got, but it's not approaching what  
23 Mr. Fayne got.

24           So I think it's not a disparate sentence, even in  
25 this case.

Friday, June 23, 2023

1           And I have considered the need to provide restitution  
2 to victims as well.

3           The sentence meets the criteria of punishment  
4 deterrents and incapacitation and is sufficient but not  
5 greater than necessary to comply with the objectives of  
6 Section 3553(a).

7           Does the government have any objection to the  
8 findings of the Court, the guideline calculations, or the  
9 sentence or the manner in which it has been pronounced?

10           MR. PHILLIPS: No, Your Honor. But I thought I heard  
11 the Court say when it was talking about imposing joint and  
12 several restitution that the payment would be joint and  
13 several with Michael Fayne; I may have misheard.

14           THE COURT: I may have misstated that. I meant to  
15 say completely joint and several with respect to Maurice  
16 Fayne, and then joint and several with respect to Michael  
17 Sargent with respect to the Ponzi scheme.

18           MR. PHILLIPS: Thank you, Judge.

19           THE COURT: Thank you.

20           MR. PHILLIPS: With Fayne and Sargent on the --

21           THE COURT: Fayne and Sargent, correct, with respect  
22 to the Ponzi scheme.

23           All right, does the defendant have any objection to  
24 the findings of the Court, the guideline calculations, or the  
25 sentence or the manner in which it has been pronounced?

1 MR. FINLAYSON: Yes, Your Honor. We would object to  
2 the final sentence as being substantively unreasonable.

3 We submit that the 60 months, and as requested, would  
4 be the reasonable sentence in this case.

5 THE COURT: Okay. Thank you, Mr. Finlayson.

6 Mr. Jay, you can appeal your conviction if you  
7 believe your guilty plea was somehow unlawful or involuntary  
8 or if there's some other fundamental defect in the proceedings  
9 that was not weighed by your guilty plea.

10 MR. FINLAYSON: Your Honor, we would request a  
11 designation to Morgan- --

12 THE COURT: Let me finish this, and I'll recognize  
13 you for that.

14 MR. FINLAYSON: Yes, yes.

15 THE COURT: Or if there is some other fundamental  
16 defect in the proceedings that was not waived by your guilty  
17 plea.

18 You also have the statutory right to appeal your  
19 sentence under certain circumstances, particularly if you  
20 think the sentence is contrary to law.

21 However, a defendant may waive those rights as part  
22 of the plea agreement, and as we discussed in your plea  
23 hearing, with very few exceptions, you have waived most of  
24 your rights to appeal the sentence itself.

25 Such waivers are generally enforceable, but if you

1 believe the waiver is somehow unenforceable, you can present  
2 that theory to the appellate court.

3 With few exceptions, any notice of appeal must be  
4 filed within 14 days of judgment entered in your case.

5 If you are unable to pay the cost of your appeal, you  
6 can apply for leave to appeal without payment of fees, and if  
7 you ask the clerk of court, under those circumstances, to  
8 prepare and file a notice of appeal on your behalf, they would  
9 do so.

10 Now, if you have any further questions regarding your  
11 rights to appeal, your attorney, Mr. Finlayson, can provide  
12 you with good advice.

13 Mr. Jay, do you have any questions about anything I  
14 have said at today's hearing?

15 THE DEFENDANT: I do not.

16 THE COURT: Now, Mr. Finlayson, do you have a request  
17 for location?

18 MR. FINLAYSON: Yes, Your Honor. FCI Morgantown,  
19 West Virginia.

20 THE COURT: All right, Mr. Jay, I will recommend to  
21 the Bureau of Prisons that they designate you at that facility  
22 for service of your sentence. It's only a recommendation.  
23 It's up to the Bureau of Prisons to where you actually serve.

24 Any other requests? I'll recommend, as I said, the  
25 RDAP program.

Friday, June 23, 2023

1 MR. FINLAYSON: Thank you, sir.

2 THE COURT: Anything further on behalf of the  
3 government?

4 MR. PHILLIPS: No, Judge. I'll submit that  
5 forfeiture order to the courtroom deputy this afternoon.

6 THE COURT: That's great. Thank you.  
7 Anything further on behalf of the defendant?

8 MR. FINLAYSON: No, Your Honor.

9 THE COURT: All right.

10 Court stands in recess.

11

12 (Proceedings were adjourned at 11:49 a.m.)

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## REPORTER'S CERTIFICATE

I, Judith M. Wolff, Certified Realtime Reporter and Official Court Reporter for the United States District Court for the Northern District of Georgia, with offices at Atlanta, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on Friday, June 23, 2023, in the matter of USA v Daniel Eric Jay, Case No. 1:20-cr-00228-MHC;

That said proceedings in connection with the hearing were reduced to typewritten form by me;

And that the foregoing transcript is a true and accurate record of the proceedings.

This the 10th day of July, 2023.

/s/ Judith M. Wolff, RPR, CRR  
Official Court Reporter

Friday, June 23, 2023

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| <p>MR. FINLAYSON: [20] 2/16 3/8 3/12 25/2 25/5 31/20 37/11 43/2 47/12 48/25 50/17 55/5 57/8 60/21 69/1 69/10 69/14 70/18 71/1 71/8</p> <p>MR. PHILLIPS: [50] 2/7 3/16 4/2 4/18 5/10 5/18 6/1 6/3 6/7 6/11 6/14 6/18 6/21 8/22 8/25 9/5 10/14 15/11 16/19 16/21 17/21 18/20 19/9 19/14 20/16 20/23 21/3 21/21 24/21 24/24 30/8 33/5 36/16 36/18 36/20 36/22 36/25 37/9 37/18 39/2 39/4 42/4 57/17 57/20 57/23 60/18 68/10 68/18 68/20 71/4</p> <p>MS. MALLOY: [4] 6/12 19/18 19/24 20/3</p> <p>THE COURT: [76]</p> <p>THE DEFENDANT: [3] 58/7 58/11 70/15</p>                                                                                                                                                                                                                                                                                                                                                                           | <p><b>2</b></p> <p>20 [3] 34/4 34/17 56/23</p> <p>2013 [1] 39/16</p> <p>2015 [2] 55/7 55/9</p> <p>2017 [1] 22/9</p> <p>2020 [1] 39/16</p> <p>2021 [2] 33/10 52/25</p> <p>2022 [2] 55/15 56/2</p> <p>2023 [3] 1/6 72/11 72/21</p> <p>21 [1] 39/5</p> <p>210 [1] 37/21</p> <p>215-1317 [1] 1/24</p> <p>228 [2] 2/4 6/3</p> <p>23 [2] 1/6 72/11</p> <p>25 [1] 47/7</p> <p>25 percent [1] 62/2</p> <p>27 [2] 52/20 52/20</p> <p>29 [3] 35/19 36/10 46/16</p> <p>2B1.1 [4] 33/24 34/2 34/6 34/12</p> <p>2X1.1 [1] 33/18</p>                                        | <p>22/13 23/19 24/10 26/11 26/21 28/16 30/9 30/11 30/12 30/22 32/7 32/7 32/15 35/22 41/7 41/24 44/19 47/6 47/12 49/1 49/4 49/18 49/19 50/12 50/17 51/15 52/4 52/10 54/3 54/15 55/14 57/13 64/6 65/12 65/20 68/11 70/13</p> <p>above [1] 38/18</p> <p>absconded [1] 35/12</p> <p>abuse [2] 63/23 63/24</p> <p>acceptance [2] 35/18 49/7</p> <p>accepted [1] 42/20</p> <p>accepting [1] 42/10</p> <p>accomplish [1] 67/6</p> <p>accordance [6] 3/1 3/19 31/24 34/6 35/16 60/24</p> <p>account [5] 12/22 13/6 13/21 43/5 61/22</p> <p>accountable [2] 11/24 41/9</p> <p>accountant [2] 27/15 27/15</p> <p>accurate [1] 72/19</p> <p>accurately [1] 19/14</p> <p>act [2] 7/15 60/24</p> <p>acting [1] 58/16</p> <p>actions [2] 59/3 65/1</p> <p>active [1] 16/5</p> <p>actively [2] 10/6 18/4</p> <p>activity [18] 3/21 3/23 4/6 4/19 4/21 5/5 7/11 9/13 17/5 17/19 17/20 23/13 23/15 30/12 32/1 34/23 41/8 48/12</p> <p>actual [1] 34/9</p> <p>actually [1] 70/23</p> <p>add [4] 15/9 16/17 25/22 64/20</p> <p>added [4] 34/6 34/12 34/21 35/4</p> <p>addiction [1] 55/18</p> <p>addition [3] 9/5 12/14 14/14</p> <p>additional [4] 12/9 21/18 57/14 63/18</p> <p>address [2] 30/9 56/12</p> <p>adequate [1] 67/9</p> <p>adjourned [1] 71/12</p> <p>adjusted [1] 35/14</p> <p>adjustment [2] 35/17 35/23</p> <p>adjustments [3] 33/21 34/19 52/7</p> <p>administerial [1] 14/13</p> <p>administration [2] 35/6 39/20</p> <p>admits [4] 4/7 4/9 5/23 7/9</p> <p>admitted [4] 12/7 26/16 26/25 55/20</p> <p>adopt [1] 33/6</p> <p>advantage [2] 7/4 39/21</p> <p>advice [2] 53/12 70/12</p> <p>affect [1] 58/25</p> <p>affliction [1] 59/11</p> <p>afford [1] 67/9</p> <p>after [3] 42/11 54/7 60/23</p> <p>afternoon [1] 71/5</p> <p>again [14] 10/4 10/9 15/16 24/5 24/9 24/9 26/12 26/19 45/14 50/2 60/3 64/1 66/19 66/19</p> <p>against [5] 8/6 8/7 18/15 26/16 61/11</p> <p>agencies [1] 14/4</p> <p>Agent [1] 2/12</p> <p>ago [3] 6/8 53/18 53/23</p> <p>agree [6] 34/9 37/19 41/14 44/7 44/22 57/10</p> <p>agreed [7] 26/12 30/4 32/23 32/24 35/21 45/25 62/4</p> <p>agreement [9] 28/14 28/15 28/18 28/25 29/16 29/19 30/1 35/20 69/22</p> <p>agrees [3] 4/9 15/25 63/13</p> <p>ahead [2] 6/20 58/8</p> <p>aid [2] 11/10 17/2</p> <p>aim [1] 58/15</p> <p>alcohol [1] 64/2</p> <p>all [61] 3/13 3/17 4/20 5/23 6/9 6/17 11/14 13/14 13/16 14/1 16/15 16/17 17/15 18/6 18/10 20/1 24/9 24/13 25/15 25/22 26/6 26/22 27/22 28/17 28/19 29/20 30/6 31/1 31/18 33/6 33/11 35/21 37/12 38/6 41/22 41/22 41/23 42/14 42/23 43/2 44/20 45/5 45/8 47/9 48/9 48/25 49/9 49/16</p> |
| <p><b>\$</b></p> <p>\$\$25 [1] 61/22</p> <p>\$1 [1] 36/7</p> <p>\$100,000 [1] 46/4</p> <p>\$150 [2] 62/1 63/20</p> <p>\$175,000 [1] 14/20</p> <p>\$200 [2] 36/23 61/5</p> <p>\$250,000 [3] 45/22 57/11 62/3</p> <p>\$2500 [1] 62/2</p> <p>\$3.5 [2] 34/8 46/8</p> <p>\$30,000 [2] 45/18 46/6</p> <p>\$300,000 [1] 36/12</p> <p>\$4 [1] 45/22</p> <p>\$4 million [1] 45/22</p> <p>\$4,454 [1] 37/3</p> <p>\$4,465,865.55 [2] 36/13 61/8</p> <p>\$4.4 [1] 39/17</p> <p>\$400,000 [1] 14/14</p> <p>\$6,000 [1] 22/19</p> <p>\$9 [1] 46/8</p> <p>\$9.5 [1] 34/8</p>                                                                                                                                                                                                                                                                                                                                                                        | <p><b>3</b></p> <p>30 [1] 36/7</p> <p>30,000 [1] 36/12</p> <p>30303-3361 [1] 1/23</p> <p>31 [1] 35/15</p> <p>31.1 [1] 27/5</p> <p>32 [1] 3/1</p> <p>3361 [1] 1/23</p> <p>3553 [5] 20/11 37/14 39/9 64/6 68/6</p> <p>36 [1] 49/18</p> <p>37 [1] 46/11</p> <p>371 [1] 37/24</p> <p>3B1.1 [5] 3/19 21/10 31/24 32/3 34/21</p> <p>3C1.1 [1] 35/4</p> <p>3D1.2 [1] 33/11</p>                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>/</b></p> <p>/s [1] 72/24</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>4</b></p> <p>40 [1] 50/21</p> <p>401 [1] 21/8</p> <p>404 [1] 1/24</p> <p>413 [1] 21/9</p> <p>44,258 [1] 37/2</p> <p>47 [1] 54/15</p> <p>48 [1] 46/18</p>                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>A</b></p> <p>all... [13] 50/1 53/1 53/1 53/24<br/>56/12 58/1 58/15 59/25 60/16 60/22<br/>68/23 70/20 71/9</p> <p>allegedly [1] 13/1</p> <p>allocution [1] 58/3</p> <p>allowed [2] 25/16 63/9</p> <p>allowing [2] 24/24 58/25</p> <p>almost [3] 24/2 50/23 52/15</p> <p>along [1] 12/8</p> <p>already [7] 7/7 11/19 38/4 39/22<br/>49/19 63/3 63/20</p> <p>also [19] 2/9 11/17 12/20 13/11<br/>13/25 18/13 18/25 23/23 29/18 33/25<br/>40/22 61/4 62/3 62/16 63/5 63/22<br/>65/13 66/6 69/18</p> <p>although [1] 44/6</p> <p>always [7] 48/1 54/12 55/13 55/24<br/>58/22 59/7 65/25</p> <p>am [5] 15/22 19/14 20/22 54/17 60/6</p> <p>amendments [1] 43/23</p> <p>America [1] 2/3</p> <p>America vs [1] 2/3</p> <p>amount [6] 34/7 46/8 57/11 61/8 65/5<br/>66/5</p> <p>amounts [2] 61/12 64/18</p> <p>analysis [1] 27/5</p> <p>annually [2] 37/2 37/3</p> <p>another [4] 41/4 53/14 55/18 62/22</p> <p>answer [1] 28/6</p> <p>answering [1] 15/15</p> <p>any [38] 16/3 16/4 21/10 22/11 26/3<br/>26/5 27/23 28/21 32/10 33/20 33/21<br/>36/24 37/7 37/10 45/17 48/3 54/16<br/>54/16 56/24 57/14 61/18 61/20 61/21<br/>61/23 62/24 63/13 63/16 63/17 63/18<br/>64/1 65/5 66/19 68/7 68/23 70/3<br/>70/10 70/13 70/24</p> <p>anybody [1] 26/5</p> <p>anything [13] 20/25 21/15 24/10 30/7<br/>31/19 32/25 57/7 60/17 60/19 66/19<br/>70/13 71/2 71/7</p> <p>apparently [1] 29/8</p> <p>appeal [8] 69/6 69/18 69/24 70/3<br/>70/5 70/6 70/8 70/11</p> <p>Appeals [1] 21/9</p> <p>appear [2] 35/11 52/23</p> <p>Appearance [1] 1/16</p> <p>appears [1] 3/9</p> <p>appellate [1] 70/2</p> <p>applicable [2] 33/24 33/25</p> <p>application [1] 40/6</p> <p>applications [1] 40/11</p> <p>applies [1] 15/9</p> <p>apply [11] 6/23 7/17 11/1 18/15 19/7<br/>21/9 33/19 38/8 44/10 59/22 70/6</p> <p>applying [1] 58/17</p> <p>appreciate [2] 25/5 42/10</p> <p>approach [1] 55/3</p> <p>approaching [1] 67/22</p> <p>appropriate [16] 4/3 4/10 23/2 31/15<br/>33/17 38/22 38/25 39/8 40/20 40/25<br/>41/10 41/13 41/17 41/25 43/3 52/3</p> <p>appropriately [1] 40/22</p> <p>approval [1] 63/19</p> <p>are [80]</p> <p>area [1] 28/9</p> <p>aren't [1] 52/8</p> <p>argue [3] 24/8 28/17 48/17</p> <p>argued [3] 24/5 44/20 67/20</p> <p>argues [1] 24/12</p> <p>arguing [2] 24/10 32/10</p> <p>argument [7] 8/8 19/23 24/19 27/24<br/>29/10 29/20 44/25</p> <p>arguments [5] 8/17 20/10 26/10 32/22<br/>57/8</p> <p>Arkansas [2] 14/16 39/13</p> <p>around [6] 45/24 51/23 55/15 66/16<br/>66/23 67/4</p> <p>arrested [1] 43/14</p> <p>ask [8] 4/22 15/18 46/18 46/18 54/23<br/>57/24 60/14 70/7</p> <p>asked [6] 7/24 8/4 8/11 8/13 8/15</p> | <p>8/21</p> <p>asking [15] 15/17 21/14 39/7 42/23<br/>46/16 49/8 49/13 49/18 49/22 49/25<br/>50/1 52/20 52/20 57/14 57/16</p> <p>assessment [2] 36/23 61/5</p> <p>assets [1] 57/14</p> <p>assisting [1] 14/12</p> <p>associated [1] 14/13</p> <p>assume [2] 5/1 5/7</p> <p>assuming [1] 43/24</p> <p>ATLANTA [4] 1/2 1/6 1/23 72/7</p> <p>attempted [1] 35/5</p> <p>attention [1] 59/16</p> <p>attitude [1] 42/19</p> <p>attorney [3] 58/4 59/4 70/11</p> <p>Attorney's [3] 9/17 24/12 32/6</p> <p>attributes [1] 59/16</p> <p>audit [1] 63/16</p> <p>aunt [4] 13/25 13/25 28/20 29/16</p> <p>Aunt G [3] 13/25 28/20 29/16</p> <p>authority [2] 52/17 59/2</p> <p>available [1] 67/11</p> <p>avoid [1] 67/15</p> <p>avoiding [1] 58/19</p> <p>aware [5] 13/19 19/11 20/11 32/13<br/>43/22</p> <p>away [1] 42/22</p> <p><b>B</b></p> <p>baby [3] 46/21 50/22 50/24</p> <p>back [15] 8/12 16/23 40/16 40/16<br/>43/9 45/3 45/7 45/19 45/21 49/9 50/1<br/>50/1 52/23 54/25 56/9</p> <p>bad [2] 43/9 53/12</p> <p>bank [15] 2/24 7/7 9/8 9/9 9/17 9/21<br/>13/6 13/21 19/4 30/16 32/8 38/14<br/>39/19 41/5 45/9</p> <p>bankruptcy [1] 34/18</p> <p>banks [1] 14/5</p> <p>base [8] 3/19 31/23 33/19 34/4 34/7<br/>34/12 34/21 35/4</p> <p>based [9] 8/16 17/14 19/18 32/4<br/>32/22 35/14 52/8 52/9 64/4</p> <p>basically [2] 10/10 66/20</p> <p>basis [1] 33/14</p> <p>be [81]</p> <p>beat [1] 52/5</p> <p>became [1] 56/3</p> <p>because [60] 3/20 3/22 4/9 4/22 5/2<br/>7/21 8/3 8/12 10/2 11/2 12/1 12/6<br/>13/16 15/16 15/23 16/9 16/23 17/5<br/>18/10 19/21 20/1 20/6 22/5 23/16<br/>23/19 25/6 25/16 26/14 29/6 29/23<br/>30/17 31/9 31/24 34/2 34/7 34/13<br/>34/22 38/9 39/9 40/15 41/18 44/5<br/>44/19 46/5 46/24 47/13 48/12 48/18<br/>49/1 49/3 49/13 52/6 59/18 59/19<br/>59/19 64/18 65/1 65/15 66/7 67/4</p> <p>become [1] 61/24</p> <p>becoming [3] 51/3 59/1 60/2</p> <p>bed [1] 65/18</p> <p>bedridden [1] 47/24</p> <p>been [23] 3/4 23/17 32/11 32/12<br/>32/13 32/23 32/24 33/8 38/17 43/13<br/>47/19 48/20 49/17 52/7 53/11 59/7<br/>59/15 60/3 62/4 64/13 67/2 68/9<br/>68/25</p> <p>before [11] 1/13 8/9 11/24 19/3 19/3<br/>23/23 24/12 42/20 43/21 53/22 60/7</p> <p>beginning [2] 55/15 56/2</p> <p>behalf [11] 3/9 37/8 37/10 48/17<br/>58/4 60/17 60/19 66/12 70/8 71/2<br/>71/7</p> <p>behaved [1] 54/24</p> <p>behavior [4] 42/7 50/7 53/8 53/10</p> <p>behind [1] 54/5</p> <p>being [7] 12/20 17/4 27/12 45/11<br/>46/7 48/3 69/2</p> <p>belief [1] 67/3</p> <p>believe [16] 4/2 7/8 10/19 11/23<br/>16/22 19/14 19/18 20/25 21/14 23/1<br/>47/3 63/8 64/7 67/20 69/7 70/1</p> <p>believed [1] 20/18</p> <p>below [1] 56/12</p> | <p>Ben [1] 2/9</p> <p>bench [1] 64/13</p> <p>Bernie [1] 45/4</p> <p>Bernita [2] 1/17 2/8</p> <p>Bessemer [1] 50/17</p> <p>best [2] 41/2 55/18</p> <p>better [2] 14/2 58/25</p> <p>between [4] 38/2 39/6 46/8 51/2</p> <p>big [4] 44/9 51/23 54/4 54/9</p> <p>bit [6] 10/9 20/6 45/11 46/18 50/12<br/>52/4</p> <p>bittersweet [1] 47/25</p> <p>blaming [1] 20/21</p> <p>blew [1] 51/5</p> <p>blue [1] 50/21</p> <p>blue-collar [1] 50/21</p> <p>bluffing [1] 47/2</p> <p>bond [2] 22/11 53/12</p> <p>bonehead [1] 49/15</p> <p>book [1] 52/15</p> <p>both [11] 3/4 9/7 9/11 10/20 15/10<br/>18/20 31/8 31/9 37/3 61/15 67/9</p> <p>bottom [3] 22/7 48/12 52/21</p> <p>boxing [4] 51/13 55/10 55/14 55/23</p> <p>brethren [1] 59/7</p> <p>bridge [3] 48/24 49/1 57/1</p> <p>brief [9] 11/13 11/25 13/18 14/10<br/>14/17 14/24 18/25 21/8 23/12</p> <p>briefly [1] 30/8</p> <p>bring [1] 28/5</p> <p>brings [1] 28/4</p> <p>broken [2] 4/20 59/10</p> <p>brother [5] 4/24 5/15 11/21 26/7<br/>55/17</p> <p>brotherly [1] 59/13</p> <p>brothers [4] 12/16 16/2 31/10 64/16</p> <p>brought [5] 9/18 10/2 23/23 28/6<br/>42/17</p> <p>Brown [13] 12/14 12/15 13/3 13/5<br/>13/8 13/13 13/19 22/10 22/18 26/8<br/>29/13 29/13 31/10</p> <p>bucks [1] 45/10</p> <p>built [3] 44/1 44/4 52/7</p> <p>bump [3] 25/24 29/23 49/8</p> <p>burden [2] 31/14 48/16</p> <p>Bureau [5] 61/1 62/14 62/18 70/21<br/>70/23</p> <p>Burton [1] 1/18</p> <p>Business [1] 39/20</p> <p>businesses [2] 39/25 39/25</p> <p>butterfly [1] 60/2</p> <p>buy [1] 31/5</p> <p><b>C</b></p> <p>Cain [1] 15/1</p> <p>calculation [1] 34/10</p> <p>calculations [5] 33/9 37/7 38/25<br/>68/8 68/24</p> <p>call [1] 23/24</p> <p>called [2] 2/1 58/2</p> <p>callous [1] 42/6</p> <p>calls [2] 40/19 56/3</p> <p>came [6] 8/9 12/19 50/13 51/14 53/1<br/>53/2</p> <p>can [21] 6/9 10/14 15/16 16/10 16/10<br/>16/16 27/10 28/16 28/17 30/17 41/2<br/>46/10 58/4 58/8 58/9 66/18 67/2 69/6<br/>70/1 70/6 70/11</p> <p>can't [7] 8/1 12/1 18/17 27/9 39/4<br/>49/11 53/6</p> <p>cap [3] 37/24 38/17 49/17</p> <p>capable [1] 53/21</p> <p>Capone [9] 5/22 7/11 9/8 12/8 18/24<br/>22/5 28/16 29/12 38/12</p> <p>car [3] 16/2 16/3 38/4</p> <p>care [4] 47/16 47/25 50/8 59/16</p> <p>Carrie [6] 5/22 7/11 9/8 28/16 29/12<br/>38/12</p> <p>carries [1] 15/3</p> <p>carrying [1] 9/12</p> <p>cars [1] 54/8</p> <p>case [56] 2/3 5/25 6/2 7/22 8/14<br/>8/22 8/23 9/17 9/19 9/25 10/13 12/21<br/>14/16 15/20 20/5 20/9 20/19 20/24</p> |
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| <p><b>C</b></p> <p>case... [38] 20/25 21/8 24/10 28/7<br/>28/8 30/5 31/16 32/10 34/9 34/10<br/>34/16 34/24 34/25 35/11 35/12 35/20<br/>36/3 36/24 37/14 37/15 37/20 43/4<br/>43/16 46/24 48/18 54/25 59/5 60/23<br/>61/13 62/9 64/14 64/19 65/19 67/18<br/>67/25 69/4 70/4 72/12</p> <p>cases [19] 7/18 8/16 10/5 11/15<br/>11/25 15/18 15/20 19/2 19/10 20/1<br/>20/10 20/19 23/17 24/20 30/11 32/6<br/>32/7 32/8 67/17</p> <p>cash [1] 13/5</p> <p>category [6] 29/10 36/1 36/11 43/11<br/>43/13 46/13</p> <p>caterpillar [1] 60/2</p> <p>caught [1] 42/17</p> <p>cause [1] 11/22</p> <p>caused [3] 7/12 9/6 59/23</p> <p>causing [1] 34/17</p> <p>center [1] 53/20</p> <p>certain [1] 69/19</p> <p>certainly [1] 20/17</p> <p>CERTIFICATE [1] 72/2</p> <p>Certified [1] 72/5</p> <p>certify [1] 72/8</p> <p>chance [1] 66/16</p> <p>change [2] 55/16 56/2</p> <p>changed [2] 42/19 53/15</p> <p>character [1] 60/10</p> <p>characteristics [5] 43/6 43/10 47/4<br/>50/6 65/8</p> <p>charge [1] 13/16</p> <p>charged [1] 44/17</p> <p>charges [2] 43/15 63/18</p> <p>charging [3] 2/21 2/24 37/23</p> <p>check [2] 45/18 46/6</p> <p>child [1] 48/5</p> <p>children [1] 54/16</p> <p>choices [2] 51/6 51/17</p> <p>choose [1] 59/6</p> <p>choosing [1] 59/1</p> <p>chose [1] 60/13</p> <p>Christian's [1] 22/11</p> <p>Christmas [1] 54/7</p> <p>Circuit [7] 7/15 7/19 11/15 19/15<br/>21/8 21/9 23/12</p> <p>circumstances [3] 64/9 69/19 70/7</p> <p>cite [3] 5/10 7/18 11/15</p> <p>cited [4] 11/25 13/17 21/8 23/11</p> <p>citing [1] 19/10</p> <p>citizen [2] 37/6 58/23</p> <p>citizens [1] 39/21</p> <p>civil [2] 45/22 45/22</p> <p>clarification [1] 27/2</p> <p>clear [2] 18/21 27/2</p> <p>clearheaded [1] 55/13</p> <p>clearly [12] 5/14 7/3 13/10 13/21<br/>14/18 19/5 21/5 22/1 22/16 38/4<br/>39/13 53/7</p> <p>clerk [3] 61/9 61/25 70/7</p> <p>client [1] 3/6</p> <p>close [1] 58/9</p> <p>closely [1] 35/9</p> <p>co [1] 19/16</p> <p>co-counsel [1] 19/16</p> <p>cocaine [1] 53/4</p> <p>code [6] 2/23 2/25 33/18 34/1 37/23<br/>58/21</p> <p>codefendant [4] 15/8 16/18 64/10<br/>67/22</p> <p>codefendants [2] 19/5 67/19</p> <p>COHEN [1] 1/13</p> <p>Colbert [3] 55/7 56/5 66/14</p> <p>collar [1] 50/21</p> <p>colleagues [2] 15/18 19/22</p> <p>collection [1] 63/3</p> <p>come [8] 19/3 43/23 44/1 49/17 54/7<br/>54/25 65/6 66/6</p> <p>comes [6] 39/6 43/21 44/11 56/8 56/8<br/>65/25</p> <p>comfort [1] 59/9</p> <p>coming [1] 42/10</p> | <p>commingling [1] 25/10</p> <p>commission [2] 44/6 56/20</p> <p>commit [4] 2/22 9/15 43/16 62/22</p> <p>commitment [1] 62/6</p> <p>committed [2] 39/24 61/1</p> <p>committing [1] 41/3</p> <p>communications [1] 14/8</p> <p>companies [2] 14/3 14/4</p> <p>company [2] 13/2 40/7</p> <p>compare [1] 44/16</p> <p>compassions [1] 53/19</p> <p>complete [1] 63/15</p> <p>completely [2] 49/21 68/15</p> <p>comply [1] 68/5</p> <p>computers [1] 63/10</p> <p>concede [1] 27/3</p> <p>conceded [1] 27/5</p> <p>concern [4] 15/16 15/17 20/8 20/9</p> <p>concerned [1] 56/3</p> <p>Concerning [1] 37/14</p> <p>concession [1] 26/15</p> <p>conclusions [2] 3/11 33/7</p> <p>concurrent [1] 62/12</p> <p>concurrently [1] 61/3</p> <p>condition [3] 47/15 61/25 63/8</p> <p>conditions [4] 62/19 62/20 62/21<br/>63/6</p> <p>conduct [15] 28/10 28/11 28/12 28/13<br/>28/25 30/9 30/11 30/16 30/25 32/20<br/>33/22 35/8 47/3 63/9 64/18</p> <p>conducted [1] 3/3</p> <p>confinement [1] 37/2</p> <p>confiscation [1] 63/13</p> <p>Congress [1] 43/24</p> <p>connection [1] 72/15</p> <p>consider [7] 20/12 20/15 24/20 46/10<br/>52/18 52/18 66/7</p> <p>considerable [1] 66/11</p> <p>considered [7] 65/5 65/8 65/13 67/7<br/>67/11 67/15 68/1</p> <p>considering [1] 50/15</p> <p>consistency [2] 20/9 24/11</p> <p>consistent [4] 8/5 41/15 53/8 53/11</p> <p>consolation [1] 59/9</p> <p>conspiracy [5] 2/22 12/17 27/18<br/>37/23 64/23</p> <p>contact [2] 17/17 55/11</p> <p>contends [2] 3/17 3/22</p> <p>contested [1] 12/13</p> <p>testing [2] 21/16 21/17</p> <p>continued [1] 43/15</p> <p>continuing [2] 20/8 44/21</p> <p>contraband [1] 63/14</p> <p>contradictory [1] 8/20</p> <p>contrary [1] 69/20</p> <p>control [1] 40/10</p> <p>controlled [3] 62/23 62/24 64/1</p> <p>conversation [1] 55/20</p> <p>conversations [3] 14/9 55/14 55/16</p> <p>conversion [1] 53/25</p> <p>convicted [2] 11/20 21/1</p> <p>conviction [7] 25/11 34/3 35/8 35/9<br/>43/13 44/12 69/6</p> <p>cooperate [1] 63/3</p> <p>copy [5] 3/4 6/9 6/12 6/13 6/14</p> <p>corner [2] 66/4 66/15</p> <p>correct [13] 3/11 3/12 12/4 15/22<br/>18/9 19/19 19/19 33/4 33/5 36/15<br/>36/21 36/22 68/21</p> <p>corresponding [2] 56/21 56/25</p> <p>cost [6] 37/1 37/2 62/8 62/9 64/3<br/>70/5</p> <p>could [10] 25/16 26/11 37/1 40/3<br/>40/16 51/11 51/12 51/12 52/22 65/4</p> <p>couldn't [1] 16/5</p> <p>counsel [5] 1/16 2/5 2/15 19/16 59/6</p> <p>count [21] 2/20 2/23 11/16 16/10<br/>16/10 16/10 25/6 25/17 25/18 25/19<br/>25/19 25/21 27/17 27/21 28/10 29/6<br/>29/8 29/14 36/8 37/5 59/1</p> <p>Count 5 [1] 2/23</p> <p>counted [1] 27/12</p> <p>counting [3] 27/5 28/9 28/13</p> <p>country [2] 48/9 58/24</p> | <p>counts [7] 25/11 25/22 33/12 33/15<br/>36/6 61/2 62/12</p> <p>couple [4] 7/18 7/22 8/10 45/10</p> <p>course [1] 2/13</p> <p>court [90]</p> <p>Court's [2] 12/5 21/22</p> <p>Courthouse [1] 1/22</p> <p>courtroom [5] 6/15 15/25 19/22 65/24<br/>71/5</p> <p>courts [2] 11/9 23/13</p> <p>cover [2] 28/15 28/18</p> <p>covered [1] 29/17</p> <p>COVID [3] 47/16 48/8 50/9</p> <p>CPA [1] 38/14</p> <p>cr [4] 1/4 2/4 6/3 72/13</p> <p>cranking [1] 52/10</p> <p>create [2] 7/12 9/20</p> <p>created [1] 14/2</p> <p>creating [2] 40/5 59/14</p> <p>credit [2] 63/18 63/18</p> <p>crime [3] 40/19 41/1 62/22</p> <p>crimes [2] 39/10 41/3</p> <p>criminal [48] 2/4 3/2 3/21 3/23 4/6<br/>4/14 4/18 7/11 7/13 9/3 9/12 11/5<br/>11/10 17/3 17/5 17/19 17/20 23/13<br/>23/14 26/22 26/23 27/4 27/9 27/11<br/>27/20 28/2 28/9 28/11 30/12 32/1<br/>34/23 35/25 35/25 36/10 37/22 41/8<br/>43/11 43/12 43/21 44/2 44/5 44/8<br/>44/12 46/12 46/12 48/12 65/6 65/9</p> <p>criminally [25] 7/1 7/8 10/17 10/24<br/>11/1 11/8 11/11 11/14 11/18 11/21<br/>11/23 12/2 12/6 12/11 13/10 13/21<br/>14/18 15/4 16/25 17/24 18/5 22/1<br/>22/24 31/11 31/13</p> <p>criteria [2] 40/12 68/3</p> <p>criticism [1] 52/9</p> <p>critique [2] 24/10 24/11</p> <p>Crivelli [12] 5/19 5/22 7/11 9/7<br/>12/8 18/24 22/5 26/25 27/4 28/17<br/>29/9 31/10</p> <p>crooked [1] 29/21</p> <p>cross [1] 49/1</p> <p>crossing [1] 57/2</p> <p>CRR [2] 1/21 72/24</p> <p>culpability [3] 5/14 52/13 52/14</p> <p>culpable [10] 5/4 7/3 37/20 38/2<br/>38/5 38/5 38/15 41/18 41/20 43/8</p> <p>cultivate [1] 59/15</p> <p>curse [1] 13/14</p> <p>custody [4] 36/11 61/1 62/13 62/17</p> <p><b>D</b></p> <p>dad's [1] 47/24</p> <p>damage [1] 59/23</p> <p>Dan [32] 18/22 22/1 22/4 22/13 22/18<br/>28/15 28/18 28/21 29/3 29/16 29/18<br/>30/17 38/5 38/7 38/8 41/20 45/15<br/>45/17 45/21 47/25 50/6 50/12 53/17<br/>53/17 54/3 54/7 55/7 55/13 55/22<br/>56/1 56/4 57/5</p> <p>Dan's [1] 47/23</p> <p>Daniel [4] 1/7 2/4 60/25 72/12</p> <p>Danny [1] 60/4</p> <p>darkness [1] 59/10</p> <p>Darren [15] 12/14 12/15 13/3 13/4<br/>13/8 13/13 13/19 22/10 22/10 22/18<br/>22/19 26/7 29/13 29/13 31/10</p> <p>data [1] 56/23</p> <p>dates [1] 48/14</p> <p>dating [1] 7/4</p> <p>day [6] 28/17 44/10 53/20 53/20<br/>53/24 72/21</p> <p>days [4] 52/9 55/21 62/25 70/4</p> <p>deal [2] 13/9 44/9</p> <p>dealings [1] 58/20</p> <p>dealt [3] 35/23 55/17 59/24</p> <p>debasing [1] 58/21</p> <p>December [1] 52/25</p> <p>decided [1] 40/2</p> <p>deciding [1] 30/12</p> <p>decisions [1] 49/15</p> <p>decline [1] 50/20</p> <p>defect [2] 69/8 69/16</p> |
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| <b>D</b>                                                                                                                                                                                                          | <b>disposal</b> [1] 63/13<br><b>disrespecting</b> [1] 59/3<br><b>distinction</b> [2] 44/18 45/14<br><b>distress</b> [1] 59/9<br><b>distribute</b> [1] 30/23<br><b>distribution</b> [2] 61/9 62/1<br><b>district</b> [8] 1/1 1/1 1/13 14/15 61/9 62/15 72/6 72/7<br><b>divested</b> [1] 60/3<br><b>divine</b> [1] 59/15<br><b>DIVISION</b> [1] 1/2<br><b>DNA</b> [1] 63/3<br><b>do</b> [55] 3/25 8/15 8/17 8/19 8/21 9/23 10/5 10/12 10/17 15/17 15/18 15/19 18/9 19/16 21/15 25/16 25/24 26/14 27/1 27/3 27/13 28/5 29/8 30/11 38/10 41/8 41/12 41/16 43/25 44/7 45/23 46/20 46/20 47/2 49/23 51/6 51/11 51/20 51/20 51/21 51/24 53/6 56/11 58/6 58/7 58/18 64/4 64/22 66/17 66/24 70/9 70/13 70/15 70/16 72/8<br><b>DOCKET</b> [1] 1/4<br><b>doctor</b> [1] 10/2<br><b>document</b> [1] 24/3<br><b>documented</b> [1] 42/7<br><b>documents</b> [18] 7/12 9/6 9/12 9/21 9/23 10/2 10/7 12/10 14/2 14/5 19/6 22/6 24/1 35/1 38/11 38/13 42/8 63/16<br><b>does</b> [16] 15/2 15/24 17/23 25/6 25/6 36/2 38/12 40/24 45/15 50/4 52/13 57/19 60/9 62/7 68/7 68/23<br><b>doesn't</b> [14] 12/1 17/13 17/17 27/9 29/1 29/1 29/2 29/14 43/24 44/10 50/9 50/10 51/9 51/10<br><b>doing</b> [17] 10/10 10/11 14/12 16/4 20/18 22/14 24/2 24/3 27/14 28/20 29/21 48/23 51/10 53/6 54/20 58/17 65/9<br><b>dollars</b> [1] 40/8<br><b>don't</b> [43] 6/5 15/18 17/4 20/1 20/24 21/14 23/7 23/18 23/24 24/18 27/25 28/1 28/23 29/8 29/10 31/5 32/1 32/25 33/1 38/19 40/10 41/4 44/10 44/22 46/6 48/1 48/6 48/20 49/20 50/13 52/2 52/5 53/14 53/23 54/1 54/15 54/16 54/16 57/2 57/3 58/21 65/5 65/9<br><b>done</b> [12] 8/15 15/20 16/5 20/25 24/20 25/7 26/11 49/5 49/24 53/25 62/4 67/1<br><b>double</b> [1] 47/25<br><b>double-edged</b> [1] 47/25<br><b>down</b> [10] 4/20 29/15 29/21 29/22 42/6 46/15 47/6 51/5 56/11 58/11<br><b>downward</b> [1] 35/17<br><b>dozen</b> [2] 8/12 23/25<br><b>dozens</b> [1] 55/14<br><b>dreams</b> [1] 51/1<br><b>Drive</b> [1] 1/23<br><b>driver</b> [2] 16/1 16/7<br><b>driver's</b> [1] 14/6<br><b>driving</b> [1] 38/4<br><b>drug</b> [3] 55/17 62/25 65/11<br><b>drugs</b> [8] 47/17 48/13 50/4 50/9 53/7 53/12 54/1 56/1<br><b>due</b> [7] 25/15 26/6 27/22 43/2 48/25 61/5 61/18<br><b>during</b> [8] 39/23 40/1 47/16 48/7 48/10 50/9 61/21 64/10<br><b>Duron</b> [1] 14/7<br><b>duties</b> [2] 58/13 59/15<br><b>duty</b> [1] 59/18 | <b>eat</b> [1] 26/13<br><b>economy</b> [1] 40/15<br><b>edged</b> [1] 47/25<br><b>edition</b> [1] 33/10<br><b>either</b> [2] 3/20 48/19<br><b>EL</b> [2] 12/19 13/9<br><b>elderly</b> [2] 47/16 47/16<br><b>Eleventh</b> [7] 7/15 7/18 11/15 19/15 21/8 21/9 23/12<br><b>elsewhere</b> [1] 65/15<br><b>email</b> [2] 51/14 55/6<br><b>emails</b> [3] 9/10 26/9 42/8<br><b>emotional</b> [1] 58/12<br><b>empathies</b> [1] 53/19<br><b>empirically</b> [1] 52/9<br><b>employed</b> [1] 39/25<br><b>employees</b> [1] 40/7<br><b>end</b> [8] 39/1 46/15 46/15 47/7 52/21 65/3 65/7 65/17<br><b>endowed</b> [1] 59/14<br><b>enforceable</b> [1] 69/25<br><b>enhancement</b> [13] 4/10 4/11 4/25 5/6 6/23 7/17 17/22 17/25 19/8 21/10 21/10 23/2 26/3<br><b>enhancements</b> [1] 10/22<br><b>enough</b> [5] 27/21 29/11 30/5 44/18 51/21<br><b>entered</b> [1] 70/4<br><b>enterprise</b> [2] 11/10 17/3<br><b>entire</b> [1] 60/23<br><b>entirely</b> [1] 53/18<br><b>Eric</b> [4] 1/7 2/4 60/25 72/12<br><b>error</b> [1] 19/8<br><b>Esq</b> [3] 1/17 1/17 1/18<br><b>established</b> [1] 67/12<br><b>establishes</b> [1] 35/25<br><b>eternally</b> [1] 60/6<br><b>even</b> [11] 12/12 16/15 23/3 23/16 31/5 42/11 48/13 54/22 54/23 56/21 67/24<br><b>ever</b> [7] 44/13 49/5 51/22 51/23 51/24 60/9 66/18<br><b>every</b> [6] 8/10 25/6 44/10 44/10 52/15 53/23<br><b>everybody</b> [7] 50/2 50/3 54/21 54/21 54/22 67/2 67/5<br><b>everyone</b> [2] 15/25 59/4<br><b>everything</b> [1] 57/4<br><b>evidence</b> [19] 5/12 6/22 7/2 9/1 12/9 18/8 18/14 18/21 18/25 21/4 21/5 26/1 26/5 26/8 26/20 27/11 32/2 32/25 34/16<br><b>exactly</b> [7] 30/3 30/19 46/5 46/23 46/24 47/13 49/3<br><b>example</b> [2] 22/17 30/20<br><b>exception</b> [1] 35/22<br><b>exceptions</b> [2] 69/23 70/3<br><b>excess</b> [1] 62/2<br><b>excuse</b> [1] 50/10<br><b>excused</b> [1] 64/4<br><b>expense</b> [2] 42/12 42/21<br><b>experience</b> [1] 47/19<br><b>explain</b> [4] 10/14 20/24 38/11 50/4<br><b>explained</b> [1] 5/20<br><b>explains</b> [1] 50/11<br><b>explicit</b> [1] 14/9<br><b>expressed</b> [2] 41/16 54/15<br><b>extending</b> [1] 59/9<br><b>extensive</b> [17] 3/24 4/7 4/15 10/19 11/5 18/14 23/5 23/8 23/13 23/20 23/24 24/7 24/8 30/14 31/4 31/7 39/14<br><b>extremely</b> [4] 13/11 39/10 40/19 41/15<br><b>eyeballs</b> [1] 43/18 |
| <b>E</b>                                                                                                                                                                                                          | <b>F</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>each</b> [6] 5/20 36/8 37/5 59/20 59/23 62/12<br><b>earlier</b> [5] 17/2 30/22 41/14 44/20 57/12<br><b>earned</b> [1] 67/20<br><b>earns</b> [1] 61/20<br><b>east</b> [2] 60/3 60/3<br><b>Eastern</b> [1] 14/15 | <b>face</b> [1] 41/9<br><b>facilitate</b> [1] 35/1<br><b>facility</b> [1] 70/21<br><b>fact</b> [13] 3/11 27/23 33/7 38/8 40/4 44/11 44/16 50/4 50/8 51/3 56/15 65/5 65/13<br><b>factors</b> [7] 20/11 37/14 39/10 41/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| <p><b>F</b></p> <p><b>factors...</b> [3] 43/5 56/14 64/6</p> <p><b>factory</b> [1] 24/1</p> <p><b>facts</b> [5] 19/10 19/12 20/24 45/12 52/16</p> <p><b>failed</b> [4] 35/11 58/13 58/14 58/15</p> <p><b>failure</b> [2] 52/23 63/11</p> <p><b>fair</b> [11] 20/2 20/22 30/2 37/13 39/8 44/15 47/3 47/13 64/7 67/16 67/17</p> <p><b>fake</b> [6] 9/6 12/10 14/2 14/5 22/6 22/19</p> <p><b>false</b> [2] 7/5 13/1</p> <p><b>falsely</b> [1] 38/13</p> <p><b>familiar</b> [1] 19/9</p> <p><b>family</b> [10] 47/23 48/7 48/9 50/24 51/19 54/14 54/16 56/7 64/25 66/21</p> <p><b>family's</b> [1] 58/22</p> <p><b>fancy</b> [1] 54/8</p> <p><b>far</b> [4] 26/18 29/25 43/2 48/24</p> <p><b>father</b> [3] 50/8 50/20 60/5</p> <p><b>Fayne</b> [56] 9/19 11/17 12/16 14/3 14/10 14/12 14/20 14/20 14/23 15/2 15/25 16/5 16/7 16/8 16/8 16/8 16/15 17/18 21/3 21/5 21/25 29/4 29/20 30/17 30/19 31/9 32/16 36/14 37/20 38/2 38/3 38/3 38/8 38/10 38/10 40/2 40/6 40/17 41/18 43/10 44/14 45/7 45/8 45/15 45/20 56/17 61/12 61/15 64/15 64/23 67/18 67/23 68/13 68/16 68/20 68/21</p> <p><b>Fayne's</b> [7] 7/13 13/2 13/9 13/25 14/6 15/3 29/16</p> <p><b>FBI</b> [2] 2/13 13/7</p> <p><b>FCI</b> [1] 70/18</p> <p><b>fear</b> [1] 58/25</p> <p><b>federal</b> [3] 3/1 21/9 62/22</p> <p><b>federally</b> [1] 39/19</p> <p><b>fees</b> [1] 70/6</p> <p><b>feet</b> [1] 40/16</p> <p><b>fell</b> [1] 29/5</p> <p><b>fellow</b> [2] 39/21 59/10</p> <p><b>felony</b> [1] 50/7</p> <p><b>few</b> [3] 10/2 69/23 70/3</p> <p><b>fictitious</b> [1] 19/6</p> <p><b>field</b> [1] 54/5</p> <p><b>fifth</b> [1] 44/14</p> <p><b>figure</b> [1] 15/19</p> <p><b>figured</b> [1] 54/24</p> <p><b>figures</b> [1] 54/22</p> <p><b>file</b> [2] 34/18 70/8</p> <p><b>filed</b> [8] 5/19 5/24 6/7 14/3 14/5 27/2 37/16 70/4</p> <p><b>fill</b> [1] 38/12</p> <p><b>filled</b> [1] 40/5</p> <p><b>final</b> [2] 21/24 69/2</p> <p><b>finally</b> [4] 23/3 42/17 58/19 65/6</p> <p><b>finances</b> [1] 63/15</p> <p><b>financial</b> [1] 63/16</p> <p><b>financially</b> [1] 40/10</p> <p><b>find</b> [7] 21/11 23/2 23/3 23/4 23/16 31/8 32/1</p> <p><b>findings</b> [4] 3/10 33/6 68/8 68/24</p> <p><b>finds</b> [2] 10/25 62/7</p> <p><b>fine</b> [6] 36/2 36/7 36/12 51/2 62/8 62/9</p> <p><b>finish</b> [3] 21/19 22/3 69/12</p> <p><b>Finlayson</b> [15] 1/18 2/16 2/18 3/6 25/1 30/8 42/19 43/1 48/17 57/6 57/9 58/5 69/5 70/11 70/16</p> <p><b>first</b> [16] 4/5 5/23 7/20 11/14 26/22 33/10 38/6 43/11 44/12 44/12 44/13 44/14 47/14 48/19 49/5 64/9</p> <p><b>five</b> [26] 3/24 4/6 4/14 10/16 10/24 10/25 11/5 15/7 15/9 16/15 16/18 17/13 17/23 21/4 22/23 23/4 25/14 25/23 28/5 28/5 29/2 31/2 31/7 37/5 56/24 62/11</p> <p><b>flat</b> [1] 45/2</p> <p><b>flat-out</b> [1] 45/2</p> <p><b>flawed</b> [1] 24/19</p> <p><b>fled</b> [4] 47/11 47/13 49/16 50/3</p> <p><b>fleeing</b> [1] 48/15</p> <p><b>focusing</b> [4] 5/1 10/21 15/12 15/23</p> | <p><b>folks</b> [5] 16/17 28/18 32/22 48/20 66/12</p> <p><b>follow</b> [1] 63/23</p> <p><b>following</b> [2] 2/19 63/5</p> <p><b>follows</b> [2] 33/9 36/5</p> <p><b>foot</b> [1] 50/24</p> <p><b>football</b> [1] 54/5</p> <p><b>force</b> [1] 64/22</p> <p><b>foregoing</b> [2] 35/14 72/18</p> <p><b>foreseeability</b> [3] 28/14 28/24 29/19</p> <p><b>foreseeable</b> [1] 30/1</p> <p><b>forfeited</b> [1] 57/15</p> <p><b>forfeiture</b> [7] 36/24 45/22 57/11 57/13 57/23 62/4 71/5</p> <p><b>forged</b> [1] 9/23</p> <p><b>forgeries</b> [1] 24/2</p> <p><b>forging</b> [1] 10/7</p> <p><b>form</b> [1] 72/16</p> <p><b>forms</b> [1] 10/8</p> <p><b>forth</b> [7] 33/16 34/5 34/11 34/20 35/3 36/1 67/13</p> <p><b>forward</b> [5] 45/24 45/25 51/20 51/20 65/6</p> <p><b>found</b> [6] 11/19 11/22 33/18 55/24 59/8 60/4</p> <p><b>four</b> [8] 6/24 9/24 12/3 21/3 32/11 47/6 47/7 47/10</p> <p><b>four-level</b> [5] 6/24 9/24 21/3 47/6 47/7</p> <p><b>fraud</b> [44] 2/22 2/24 7/7 9/8 9/9 9/15 9/17 9/21 9/21 10/8 12/23 13/19 19/4 19/4 19/7 22/16 24/13 26/21 27/14 27/16 28/20 30/16 32/8 32/8 32/18 32/19 32/20 33/23 38/7 39/19 41/5 43/14 43/15 43/16 43/17 45/2 45/13 47/9 51/10 52/5 61/15 64/12 64/15 67/17</p> <p><b>fraudster</b> [1] 51/3</p> <p><b>fraudulent</b> [9] 7/13 9/12 9/20 14/6 14/15 24/1 35/1 38/9 38/13</p> <p><b>Friday</b> [3] 1/6 54/6 72/11</p> <p><b>friend</b> [2] 55/11 55/18</p> <p><b>friends</b> [5] 48/9 55/9 55/24 66/14 66/22</p> <p><b>front</b> [1] 32/22</p> <p><b>fugitive</b> [1] 59/1</p> <p><b>full</b> [3] 59/20 61/19 61/24</p> <p><b>fundamental</b> [2] 69/8 69/15</p> <p><b>further</b> [9] 30/7 31/19 57/7 60/17 60/19 61/7 70/10 71/2 71/7</p> <p><b>furthering</b> [1] 12/10</p> <p><b>Furthermore</b> [1] 26/2</p> <p><b>future</b> [2] 41/2 41/3</p> <p><b>G</b></p> <p><b>G-A-N-E-L-L</b> [1] 13/24</p> <p><b>gain</b> [1] 36/7</p> <p><b>game</b> [1] 54/7</p> <p><b>gand.uscourts.gov</b> [1] 1/24</p> <p><b>Ganell</b> [2] 13/24 29/15</p> <p><b>gave</b> [1] 12/21</p> <p><b>gears</b> [2] 16/2 16/3</p> <p><b>general</b> [2] 55/14 67/9</p> <p><b>generally</b> [1] 69/25</p> <p><b>generation</b> [1] 54/17</p> <p><b>gentleman</b> [2] 60/7 66/14</p> <p><b>genuine</b> [1] 55/22</p> <p><b>GEORGIA</b> [4] 1/1 1/6 1/23 72/7</p> <p><b>get</b> [38] 4/11 11/4 13/9 15/16 16/14 16/18 17/11 17/22 18/17 20/4 21/18 22/15 25/14 25/23 26/3 26/21 27/9 28/5 28/19 28/21 29/2 29/2 29/23 30/17 38/3 40/3 40/4 40/16 40/16 45/16 47/7 47/17 48/21 49/2 49/12 51/22 55/21 60/8</p> <p><b>gets</b> [8] 16/15 25/8 29/20 43/14 50/9 54/21 54/25 56/4</p> <p><b>getting</b> [12] 8/19 10/11 10/12 17/25 18/4 26/17 42/13 42/21 49/12 53/12 54/1 58/20</p> <p><b>give</b> [9] 6/5 6/9 6/17 25/23 40/13 47/8 47/10 56/23 59/7</p> <p><b>given</b> [8] 30/3 32/3 46/12 47/3 53/8 56/16 57/4 59/16</p> | <p><b>gives</b> [1] 11/9</p> <p><b>glad</b> [1] 58/11</p> <p><b>glorify</b> [1] 59/17</p> <p><b>go</b> [16] 3/25 6/20 8/12 16/23 42/14 43/9 45/15 45/20 45/25 47/18 52/2 52/22 53/15 58/8 65/9 65/14</p> <p><b>God</b> [5] 58/14 59/14 60/11 60/14 60/14</p> <p><b>God's</b> [1] 58/15</p> <p><b>goes</b> [6] 18/12 18/13 20/6 26/17 28/4 29/25</p> <p><b>going</b> [59] 5/15 8/19 13/14 13/15 14/13 20/4 25/22 27/21 31/6 31/21 38/11 40/13 40/15 41/1 41/1 41/9 41/9 44/23 44/24 44/25 45/5 45/21 45/23 45/23 46/21 47/12 48/4 48/25 49/12 51/3 51/14 51/20 51/20 51/24 51/24 52/23 54/17 54/18 54/18 54/19 55/18 56/9 56/10 56/24 57/12 61/10 62/16 63/5 63/22 66/1 66/3 66/5 66/6 66/9 66/10 66/11 66/15 66/16 66/20</p> <p><b>golden</b> [1] 58/17</p> <p><b>gone</b> [4] 38/18 42/16 49/14 60/1</p> <p><b>good</b> [10] 2/7 2/18 42/18 50/16 55/22 55/24 58/22 65/20 65/20 70/12</p> <p><b>got</b> [64] 5/5 8/3 9/19 9/24 9/25 10/1 18/2 20/2 20/15 21/3 21/4 22/10 22/14 22/18 22/23 24/13 24/16 24/19 25/9 26/12 27/11 27/17 27/18 27/22 28/1 28/20 29/5 30/3 30/4 39/19 40/5 43/12 43/25 44/19 45/7 45/10 45/15 45/17 45/19 46/2 46/6 46/7 46/23 48/1 48/11 48/16 48/22 49/2 49/5 49/9 49/10 49/10 50/4 50/8 52/15 56/6 56/17 65/1 65/15 66/1 67/1 67/18 67/22 67/23</p> <p><b>gotten</b> [1] 49/24</p> <p><b>government</b> [44] 3/5 3/14 3/17 3/22 4/24 5/12 6/21 6/24 7/24 8/1 8/4 8/9 8/13 8/15 8/20 10/5 13/15 15/12 15/23 17/23 19/7 19/8 23/23 24/5 25/24 26/10 26/23 27/8 27/17 31/14 31/22 32/1 32/10 33/3 37/8 40/9 42/16 42/21 52/1 58/23 59/4 60/17 68/7 71/3</p> <p><b>government's</b> [9] 5/3 5/11 6/15 15/6 16/13 16/16 20/10 29/20 32/22</p> <p><b>governs</b> [1] 28/10</p> <p><b>grand</b> [1] 11/22</p> <p><b>grandeur</b> [1] 51/3</p> <p><b>grateful</b> [2] 60/6 60/10</p> <p><b>great</b> [5] 48/7 48/23 48/23 58/13 71/6</p> <p><b>greater</b> [6] 27/23 34/7 52/13 61/21 64/7 68/5</p> <p><b>grew</b> [2] 50/21 54/4</p> <p><b>gross</b> [1] 62/2</p> <p><b>grounds</b> [1] 63/11</p> <p><b>group</b> [1] 33/13</p> <p><b>grouped</b> [1] 33/12</p> <p><b>grouping</b> [1] 33/15</p> <p><b>grown</b> [1] 53/16</p> <p><b>guard</b> [1] 8/6</p> <p><b>guess</b> [1] 45/14</p> <p><b>guidance</b> [1] 23/7</p> <p><b>guided</b> [1] 59/12</p> <p><b>guideline</b> [23] 20/6 33/9 33/17 33/20 33/21 33/24 33/25 34/10 36/3 36/11 36/12 37/7 38/21 38/24 43/23 52/4 52/7 52/18 56/12 67/13 67/14 68/8 68/24</p> <p><b>guidelines</b> [25] 3/20 4/19 11/12 13/23 15/14 16/24 17/10 19/15 23/6 23/7 31/24 33/11 35/21 43/25 44/2 44/5 48/18 48/21 49/3 52/5 52/16 52/17 53/15 65/4 65/17</p> <p><b>guilty</b> [8] 2/20 7/6 14/14 37/22 59/2 69/7 69/9 69/16</p> <p><b>gun</b> [1] 64/22</p> <p><b>gut</b> [2] 42/5 48/3</p> <p><b>gut-wrenching</b> [2] 42/5 48/3</p> <p><b>guy</b> [2] 14/25 50/21</p> |
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| <b>H</b> | 43/10 43/11 43/13 43/22 44/3 44/5<br>44/8 44/12 46/12 47/4 50/6 51/10<br>65/6 65/8 65/9<br><b>hoe</b> [1] 48/22<br><b>holding</b> [1] 7/19<br><b>honest</b> [2] 24/17 55/22<br><b>honestly</b> [1] 53/21<br><b>honor</b> [57] 2/7 2/9 2/16 3/8 3/12<br>3/16 4/2 4/19 5/10 5/18 6/1 6/7 6/11<br>6/14 6/18 6/21 8/22 10/14 11/9 12/11<br>15/11 16/23 17/21 18/18 18/25 19/9<br>20/16 21/19 22/12 24/21 25/5 25/7<br>28/4 31/20 33/5 36/25 37/9 37/11<br>37/18 37/19 55/1 56/6 57/1 57/9<br>58/13 58/14 59/3 59/12 60/5 60/7<br>60/18 60/21 68/10 69/1 69/10 70/18<br>71/8<br><b>honorable</b> [2] 1/13 59/7<br><b>hook</b> [1] 40/18<br><b>hope</b> [3] 41/4 56/4 67/5<br><b>hopefully</b> [2] 66/10 66/25<br><b>hoping</b> [1] 60/8<br><b>horrendous</b> [1] 64/21<br><b>horrible</b> [3] 41/23 51/7 51/17<br><b>horse</b> [1] 52/6<br><b>hour</b> [1] 59/10<br><b>hours</b> [1] 62/13<br><b>house</b> [2] 50/22 54/5<br><b>how</b> [11] 8/1 12/22 18/12 25/8 25/8<br>25/14 27/13 28/10 40/4 45/17 54/17<br><b>However</b> [1] 69/21<br><b>huge</b> [1] 45/24<br><b>human</b> [2] 47/15 48/3<br><b>hundred</b> [1] 45/10<br><b>hurt</b> [1] 65/2<br><b>hurting</b> [1] 39/23                                                                                                                                                                                                                                                                                                                                                                            | 7/24 8/3 8/11 9/24 10/5 10/11 10/12<br>11/2 11/3 16/11 18/4 18/15 18/17<br>19/22 21/4 21/17 31/15 31/23 32/3<br>32/9 32/10 33/1<br><b>increased</b> [1] 56/22<br><b>increases</b> [2] 10/1 32/21<br><b>increasing</b> [1] 56/21<br><b>incur</b> [1] 63/17<br><b>indicated</b> [1] 63/20<br><b>indict</b> [3] 27/23 27/25 28/1<br><b>indicted</b> [4] 11/22 12/4 29/6 29/7<br><b>indictment</b> [4] 2/4 2/21 2/24 25/17<br><b>individual</b> [1] 39/12<br><b>individuals</b> [8] 9/1 9/20 24/6 32/19<br>32/20 35/1 39/18 58/20<br><b>industry</b> [2] 14/5 50/20<br><b>inflammatory</b> [1] 13/12<br><b>inflation</b> [2] 52/5 52/18<br><b>influenced</b> [1] 59/19<br><b>information</b> [2] 7/2 37/23<br><b>informed</b> [1] 59/6<br><b>initials</b> [1] 12/19<br><b>insights</b> [1] 53/19<br><b>installments</b> [1] 61/20<br><b>instead</b> [3] 56/23 56/24 59/2<br><b>instruction</b> [1] 59/8<br><b>instructions</b> [1] 15/3<br><b>instructs</b> [1] 33/19<br><b>insured</b> [1] 39/19<br><b>intended</b> [2] 33/21 39/22<br><b>intent</b> [2] 27/13 59/12<br><b>interesting</b> [1] 43/7<br><b>intern</b> [1] 2/10<br><b>introduced</b> [1] 12/16<br><b>invest</b> [1] 59/19<br><b>invested</b> [3] 59/18 59/19 60/2<br><b>investigation</b> [2] 3/3 35/7<br><b>investment</b> [1] 13/2<br><b>investor</b> [2] 22/20 59/24<br><b>investors</b> [3] 14/9 45/4 58/16<br><b>involuntary</b> [1] 69/7<br><b>involve</b> [2] 23/25 23/25<br><b>involved</b> [28] 3/24 4/6 7/7 9/8 9/20<br>12/17 14/6 14/8 14/21 17/12 17/13<br>17/15 23/15 24/15 30/19 30/23 34/14<br>34/17 38/6 38/7 39/19 40/23 43/17<br>43/18 48/11 58/20 59/4 66/18<br><b>involving</b> [2] 19/4 33/12<br><b>irregularity</b> [1] 58/19<br><b>is</b> [248]<br><b>isn't</b> [1] 48/19<br><b>issue</b> [9] 4/5 4/13 5/14 15/12 18/12<br>18/13 21/23 27/21 30/10<br><b>issued</b> [1] 61/11<br><b>issues</b> [1] 10/21<br><b>it</b> [144]<br><b>it's</b> [55] 4/20 4/20 6/3 6/23 8/5<br>8/18 8/20 8/23 8/23 17/8 17/9 17/18<br>20/9 22/16 26/1 27/10 28/10 29/10<br>29/11 29/25 30/1 30/1 32/11 36/17<br>41/10 41/12 41/12 41/25 43/4 44/9<br>44/9 46/16 47/6 47/25 48/16 49/8<br>49/25 51/5 53/4 53/15 54/1 54/12<br>54/19 54/20 54/22 54/24 56/24 61/12<br>64/12 64/21 64/21 67/22 67/24 70/22<br>70/23<br><b>its</b> [1] 31/14<br><b>itself</b> [2] 7/16 69/24 |
| <b>I</b> | <b>I'll</b> [7] 21/21 55/1 55/1 62/5 69/12<br>70/24 71/4<br><b>I'm</b> [63] 4/18 5/8 5/9 6/14 10/4 10/9<br>10/9 10/22 10/23 13/3 15/19 15/21<br>15/22 15/24 19/9 19/12 19/17 19/25<br>20/21 20/21 20/22 21/14 24/9 24/11<br>31/5 31/21 32/6 32/7 33/2 34/24<br>38/16 39/2 42/14 44/23 46/14 46/14<br>46/16 47/2 47/12 48/15 48/23 48/25<br>49/8 49/13 49/25 50/1 50/15 51/14<br>52/20 52/20 53/6 54/15 54/18 54/18<br>54/19 58/11 60/10 62/16 63/5 63/22<br>65/25 66/8 66/20<br><b>I've</b> [2] 56/1 63/2<br><b>idea</b> [1] 38/8<br><b>identify</b> [1] 2/5<br><b>image</b> [1] 59/14<br><b>immediately</b> [2] 61/6 61/18<br><b>impact</b> [1] 65/11<br><b>impede</b> [1] 35/6<br><b>impeded</b> [1] 35/5<br><b>implement</b> [1] 58/13<br><b>implore</b> [1] 58/15<br><b>important</b> [8] 23/16 40/10 41/15 54/2<br>54/10 54/13 54/14 54/20<br><b>impose</b> [7] 3/18 31/23 32/25 37/1<br>42/24 62/20 63/5<br><b>imposed</b> [5] 7/25 32/21 38/17 59/15<br>67/7<br><b>imposing</b> [4] 8/6 33/1 52/19 68/11<br><b>imposition</b> [1] 35/21<br><b>impossible</b> [1] 51/21<br><b>imprisoned</b> [1] 61/2<br><b>imprisonment</b> [5] 34/3 36/6 61/24<br>62/10 63/1<br><b>incapacitation</b> [1] 68/4<br><b>incarcerated</b> [1] 59/8<br><b>incarceration</b> [3] 61/21 62/8 62/9<br><b>included</b> [2] 27/3 62/21<br><b>including</b> [2] 5/19 12/3<br><b>income</b> [1] 62/2<br><b>inconsistency</b> [1] 32/5<br><b>inconsistent</b> [4] 20/18 21/1 21/15<br>23/17<br><b>incorporate</b> [2] 57/25 62/6<br><b>increase</b> [26] 3/14 3/18 4/3 6/24 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>J</b> | <b>jaded</b> [1] 53/24<br><b>jail</b> [3] 13/14 66/6 66/21<br><b>jailhouse</b> [1] 53/25<br><b>Jay</b> [64] 1/7 2/4 2/17 5/2 5/3 5/16<br>5/24 10/10 12/16 16/2 16/11 18/22<br>20/4 22/1 22/4 22/9 22/10 22/13<br>22/18 26/20 28/18 28/21 29/3 29/16<br>30/17 30/20 31/9 38/1 38/5 38/7<br>38/11 38/12 40/17 42/10 42/15 43/6<br>43/20 43/21 44/2 44/11 44/18 45/15<br>45/17 45/21 46/11 49/14 50/6 50/12<br>51/8 53/17 53/17 55/7 57/5 58/2 60/4<br>60/16 60/25 64/15 64/18 64/22 69/6<br>70/13 70/20 72/12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <b>J</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 32/13 34/4 34/17 34/17 63/1<br>leave [1] 70/6<br>led [1] 8/25<br>left [1] 42/8<br>legal [1] 59/2<br>Leigh [1] 2/16<br>length [1] 23/14<br>lengthy [1] 41/10<br>less [2] 34/8 41/20<br>let [7] 7/21 21/19 22/3 32/4 37/12<br>64/6 69/12<br>let's [2] 15/8 41/4<br>letter [1] 66/15<br>letters [2] 56/6 66/12<br>level [58] 3/18 3/19 4/3 4/10 4/11<br>6/23 6/24 6/24 7/17 7/24 8/3 8/11<br>9/22 9/24 9/25 10/5 10/6 10/11 10/12<br>11/2 11/3 17/11 19/7 19/22 21/3<br>21/17 21/18 23/2 24/15 29/23 31/15<br>31/23 31/23 32/3 32/9 32/10 32/17<br>32/21 33/1 33/13 33/20 34/4 34/7<br>34/13 34/22 35/4 35/14 35/17 35/19<br>36/10 43/3 44/4 46/16 47/6 47/7<br>52/11 52/13 60/7<br>levels [9] 8/13 8/20 11/4 24/6 30/4<br>34/6 34/12 34/21 35/4<br>license [1] 14/6<br>lie [1] 65/18<br>life [12] 42/5 45/23 47/24 51/16<br>53/20 54/18 54/21 55/14 64/24 66/10<br>66/11 66/20<br>lifetime [1] 51/10<br>lights [2] 54/5 54/6<br>like [20] 2/9 9/18 17/10 21/7 24/2<br>26/1 32/16 40/17 44/2 45/4 45/11<br>47/20 50/23 51/6 51/12 54/6 54/19<br>55/19 66/14 66/19<br>line [4] 29/21 29/22 48/13 51/2<br>lineman [1] 50/20<br>lines [1] 63/18<br>lion's [3] 38/3 46/3 60/11<br>list [1] 29/1<br>lit [1] 54/6<br>litigation [1] 53/11<br>little [8] 8/5 10/9 20/6 45/11 46/18<br>50/12 50/18 52/4<br>lived [2] 12/15 49/16<br>lives [1] 48/8<br>loan [13] 4/17 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 45/19 45/20<br>61/15 64/20<br>local [1] 62/22<br>location [1] 70/17<br>long [4] 28/17 42/8 52/6 53/25<br>look [12] 20/4 22/7 23/14 26/19<br>30/13 31/6 43/10 45/9 46/10 50/5<br>50/7 50/15<br>looked [2] 6/4 23/9<br>looking [3] 5/7 43/7 50/5<br>looks [1] 54/19<br>Lord [1] 60/14<br>lose [1] 47/20<br>loss [8] 10/10 33/14 34/7 34/9 36/8<br>39/16 46/7 52/10<br>lost [5] 48/8 49/6 50/3 60/4 64/17<br>lot [20] 13/14 15/23 16/7 19/2 21/22<br>25/2 32/4 42/13 42/13 45/7 47/23<br>48/9 49/18 50/13 52/9 65/1 65/10<br>65/22 66/3 66/8<br>lots [2] 41/5 41/5<br>love [5] 12/25 46/3 46/5 55/10 59/13<br>low [8] 39/1 46/15 46/15 47/7 65/3<br>65/7 65/17 67/14<br>low-guideline [1] 67/14<br>lowball [3] 46/18 46/20 46/22<br>luck [1] 22/11<br>lump [1] 18/9<br>lumped [1] 31/1 | major [1] 9/16<br>make [18] 14/21 20/12 25/6 26/10<br>27/17 30/18 51/6 51/12 51/21 54/12<br>58/3 58/6 58/9 61/7 63/2 63/15 65/18<br>66/9<br>makes [3] 17/3 28/12 54/21<br>making [1] 15/24<br>Malloy [2] 1/17 2/8<br>man [11] 12/14 12/15 14/1 14/7 14/19<br>47/8 50/6 53/22 54/9 66/7 66/7<br>managed [2] 18/16 22/22<br>manager [6] 3/21 3/23 4/12 5/4 17/8<br>31/25<br>managerial [1] 4/8<br>managers [1] 32/18<br>mandatory [2] 36/9 62/21<br>manhood [1] 60/9<br>manner [2] 68/9 68/25<br>manual [2] 33/10 33/18<br>manufacture [2] 9/6 9/11<br>manufactured [1] 22/6<br>manufacturing [1] 12/9<br>many [9] 8/1 18/12 44/7 46/9 47/18<br>48/11 48/14 48/20 56/2<br>March [1] 39/15<br>MARK [3] 1/13 13/12 26/7<br>material [2] 37/16 54/9<br>math [1] 12/4<br>matter [3] 17/13 17/17 72/12<br>matters [1] 40/21<br>Maurice [13] 11/17 13/25 15/25 17/18<br>21/25 29/3 30/17 36/14 37/20 40/2<br>41/18 45/15 68/15<br>maximum [2] 34/3 37/25<br>may [13] 8/17 15/21 20/15 27/16<br>27/16 39/16 43/22 44/6 55/3 59/17<br>68/13 68/14 69/21<br>maybe [7] 25/20 28/7 29/10 45/14<br>46/4 53/24 53/24<br>me [50] 5/2 5/9 6/6 6/9 6/17 7/21<br>8/9 8/15 8/19 8/21 10/5 15/17 15/18<br>15/21 15/22 16/8 16/20 17/14 17/17<br>19/3 19/7 19/17 21/19 22/3 23/23<br>24/12 24/16 24/24 32/4 32/23 37/12<br>37/19 38/11 38/11 47/7 55/19 55/20<br>57/10 58/18 59/7 59/14 59/14 59/15<br>59/16 59/19 59/24 60/12 64/6 69/12<br>72/16<br>mean [5] 8/25 12/1 19/19 20/14 24/7<br>meaning [3] 11/12 13/22 22/10<br>meaningful [1] 51/25<br>means [4] 16/25 23/8 44/9 50/13<br>meant [1] 68/14<br>measuring [1] 52/14<br>meddle [1] 43/24<br>meet [9] 10/17 12/11 13/4 29/11<br>31/13 40/12 43/3 43/4 55/9<br>meeting [1] 13/8<br>meets [3] 15/13 31/8 68/3<br>member [1] 19/3<br>members [1] 48/10<br>memo [9] 5/21 5/24 8/18 9/10 11/7<br>22/7 27/25 41/23 52/4<br>memorandum [4] 5/20 6/15 37/15 50/16<br>memos [1] 56/20<br>mentioned [1] 28/18<br>message [8] 13/12 22/8 40/20 40/25<br>41/6 41/13 49/11 56/18<br>messages [2] 38/10 42/7<br>met [3] 29/17 31/14 55/10<br>metamorphosis [1] 60/1<br>MHC [2] 1/4 72/13<br>mic [1] 58/9<br>Michael [6] 4/23 55/6 61/15 61/16<br>68/13 68/16<br>mid [1] 32/17<br>mid-level [1] 32/17<br>middle [4] 10/6 24/15 38/24 41/21<br>middle-level [2] 10/6 24/15<br>middleman [1] 14/22<br>middlemen [1] 9/25<br>might [2] 24/8 53/2<br>Mike [34] 5/13 6/22 7/2 11/20 12/18<br>12/22 13/4 13/6 13/21 18/8 21/14 |
| <b>K</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                             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                                                                                                                          |
| Kawanza [2] 15/5 21/24<br>keep [4] 39/25 39/25 44/23 45/8<br>keeping [1] 14/13<br>kept [1] 40/15<br>kind [8] 18/10 26/3 44/20 45/17 56/7<br>56/8 56/9 56/25<br>kinds [2] 67/11 67/12<br>knew [3] 13/17 46/5 58/11<br>know [27] 2/13 4/9 16/14 19/18 21/21<br>23/21 23/24 27/16 28/22 28/23 29/17<br>38/9 38/19 41/15 42/9 42/12 45/12<br>45/18 45/18 45/23 46/6 50/13 51/4<br>55/23 64/23 65/11 66/4<br>knowing [7] 11/9 14/11 17/2 27/4<br>27/11 27/20 28/2<br>knowledge [2] 20/19 27/14<br>known [4] 13/25 55/7 55/8 56/1<br>knows [1] 11/18                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                             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| <b>L</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                             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                                                                                                                          |
| label [2] 27/10 27/19<br>lack [1] 14/1<br>lady [5] 12/18 13/4 13/5 13/24 42/1<br>language [1] 22/12<br>large [4] 23/25 24/7 56/17 64/16<br>largely [1] 33/14<br>Las [1] 55/10<br>last [7] 7/22 22/8 42/15 47/20 47/24<br>52/23 55/1<br>lasted [1] 39/15<br>late [2] 54/22 54/24<br>later [2] 53/4 55/20<br>law [9] 2/10 3/11 16/22 20/24 28/8<br>28/10 28/11 33/7 69/20<br>lawyer [2] 48/23 67/20<br>lawyering [1] 42/18<br>leader [16] 3/20 5/4 9/18 9/18 9/24<br>15/7 16/17 17/6 17/8 26/2 28/4 28/6<br>31/25 32/16 34/22 64/23<br>leaf [1] 53/16<br>learned [1] 53/4<br>least [22] 4/10 6/25 7/8 10/16 10/20<br>11/8 12/5 18/1 18/7 18/16 18/21<br>18/23 21/6 21/11 22/17 22/24 31/12 |                                                                                                                                                                                                                                                                                                                                             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| <b>M</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                             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                                                                                                                          |
| machine [1] 72/10<br>made [10] 19/22 29/4 30/20 30/20<br>30/21 33/8 40/8 45/3 49/15 51/17<br>Madoff [1] 45/4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                             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| <div>M</div> <div>Mike... [23] 22/9 22/12 26/2 26/5 26/11 29/4 30/4 30/21 37/22 37/25 38/5 38/15 38/18 41/19 43/12 43/13 43/17 44/13 44/16 46/10 46/11 46/12 56/5</div> <div>million [8] 34/8 34/8 36/7 39/17 40/8 45/22 46/8 48/8</div> <div>minimum [2] 36/9 61/21</div> <div>minute [1] 42/15</div> <div>misheard [1] 68/13</div> <div>miss [1] 54/19</div> <div>misstated [1] 68/14</div> <div>mistake [2] 29/5 54/19</div> <div>mitigates [1] 50/11</div> <div>moment [1] 6/17</div> <div>money [28] 7/5 13/1 13/9 13/20 15/2 28/21 29/21 30/18 30/23 38/3 39/22 39/23 39/23 40/13 40/18 42/13 45/7 45/15 45/16 45/17 45/19 46/2 47/9 52/12 57/11 57/17 62/3 64/18</div> <div>Monika [1] 2/12</div> <div>month [4] 37/24 41/17 46/16 62/2</div> <div>monthly [4] 40/7 61/19 62/1 63/20</div> <div>months [32] 36/12 37/21 37/25 38/17 38/21 38/24 39/5 39/7 39/7 40/24 42/16 42/24 43/12 45/5 45/5 45/5 46/11 46/16 46/23 49/13 49/18 49/23 52/3 52/20 52/21 56/15 57/2 57/3 57/4 61/2 61/3 69/3</div> <div>moral [1] 58/21</div> <div>more [46] 3/24 4/6 4/14 5/1 5/3 5/7 9/16 10/24 10/25 11/5 17/13 17/23 18/22 19/5 21/4 22/23 30/5 31/2 31/7 34/14 34/14 38/5 38/6 38/15 39/15 39/16 40/6 40/8 41/12 41/18 43/2 43/4 43/5 43/8 43/9 43/9 43/16 45/2 45/12 49/12 49/12 49/24 51/11 52/12 53/4 60/9</div> <div>Morgan [1] 69/11</div> <div>Morgantown [1] 70/18</div> <div>morning [5] 2/7 2/15 2/16 2/18 6/5</div> <div>mortgage [2] 9/21 19/4</div> <div>most [8] 37/20 38/5 45/19 48/2 55/22 64/12 67/18 69/23</div> <div>moving [3] 12/21 12/21 42/4</div> <div>Mr [9] 2/17 5/5 16/1 17/16 48/17 56/16 64/22 66/14 67/22</div> <div>Mr. [77]</div> <div>Mr. Fayne [15] 9/19 16/5 21/3 32/16 43/10 44/14 45/7 45/8 45/20 56/17 61/12 64/15 64/23 67/18 67/23</div> <div>Mr. Fayne's [1] 29/16</div> <div>Mr. Finlayson [13] 2/18 3/6 25/1 30/8 42/19 43/1 48/17 57/6 57/9 58/5 69/5 70/11 70/16</div> <div>Mr. Jay [25] 5/2 5/3 10/10 16/2 20/4 26/20 30/20 42/10 42/15 43/6 43/20 43/21 44/2 44/11 44/18 46/11 49/14 51/8 58/2 60/16 64/15 64/18 69/6 70/13 70/20</div> <div>Mr. Jay's [2] 47/3 64/10</div> <div>Mr. Mike [1] 43/12</div> <div>Mr. Phillips [18] 3/25 8/9 15/16 19/19 24/18 25/7 26/4 26/15 26/24 27/24 30/7 32/15 36/15 37/17 42/25 44/19 45/16 57/7</div> <div>Mr. Sargent [2] 4/23 36/15</div> <div>Ms. [2] 25/9 25/25</div> <div>Ms. Schuessler [2] 25/9 25/25</div> <div>much [12] 5/3 23/7 32/14 40/3 40/4 44/18 45/1 45/12 45/17 49/24 51/21 52/12</div> <div>multiple [1] 32/13</div> <div>multiples [1] 67/19</div> <div>must [4] 21/11 61/19 63/15 70/3</div> <div>mutual [1] 55/10</div> <div>my [54] 5/21 8/22 9/1 12/4 13/17 14/10 14/17 14/23 15/15 15/16 15/16 15/17 16/13 16/21 20/8 20/14 20/23 21/7 22/7 23/17 32/4 33/9 38/24 39/4 41/23 42/12 47/1 48/19 52/4 53/7 54/18 58/14 58/15 58/15 58/21 58/21</div> | <div>58/22 58/23 58/23 58/25 59/4 59/9 59/9 59/12 59/18 59/18 59/20 60/5 60/9 60/10 60/10 60/13 60/13 66/20</div> <div>myself [3] 58/14 58/19 66/7</div> <div>N</div> <div>name [2] 14/7 58/22</div> <div>named [5] 12/14 13/24 14/7 14/19 15/1</div> <div>names [2] 27/7 29/1</div> <div>narrower [1] 10/21</div> <div>nature [1] 64/9</div> <div>necessarily [6] 24/11 24/19 44/22 48/11 50/10 52/8</div> <div>necessary [9] 4/3 31/15 41/12 43/3 43/4 43/5 56/11 64/8 68/5</div> <div>neck [2] 45/24 51/23</div> <div>need [6] 52/2 57/19 66/23 67/7 67/15 68/1</div> <div>needed [1] 60/13</div> <div>needs [4] 4/5 56/4 56/13 57/20</div> <div>neighbor [2] 58/14 58/16</div> <div>neighbors [1] 59/18</div> <div>never [4] 24/5 29/17 56/1 60/12</div> <div>new [5] 43/23 43/25 44/1 53/16 63/17</div> <div>news [1] 16/20</div> <div>next [3] 13/24 15/5 54/17</div> <div>NFL [1] 14/25</div> <div>nice [1] 27/10</div> <div>night [1] 54/6</div> <div>no [34] 1/4 3/10 5/12 6/21 10/1 20/12 26/1 28/7 29/4 29/9 29/13 31/20 33/3 33/7 34/19 35/24 36/9 36/25 37/4 37/9 37/11 50/6 53/6 56/21 56/23 60/14 60/18 60/21 64/21 65/11 68/10 71/4 71/8 72/12</div> <div>No. [1] 2/4</div> <div>No. 20-cr-228 [1] 2/4</div> <div>nobody [5] 65/23 65/24 65/24 66/1 66/21</div> <div>none [1] 21/4</div> <div>normally [1] 45/13</div> <div>NORTHERN [2] 1/1 72/7</div> <div>not [124]</div> <div>nothing [2] 47/20 47/21</div> <div>notice [2] 70/3 70/8</div> <div>noticed [2] 55/15 56/2</div> <div>notwithstanding [1] 67/20</div> <div>November [2] 22/9 43/22</div> <div>now [16] 8/18 16/9 49/2 50/24 51/17 51/18 53/17 53/23 54/11 54/11 54/14 54/25 56/11 60/9 70/10 70/16</div> <div>number [19] 5/18 6/2 11/17 18/2 18/9 18/22 23/15 23/25 24/14 32/18 34/25 39/9 45/17 46/3 46/4 46/22 47/2 47/2 64/14</div> <div>O</div> <div>object [2] 52/16 69/1</div> <div>objection [8] 3/14 27/2 31/22 33/2 37/7 37/10 68/7 68/23</div> <div>objections [3] 3/10 33/3 33/8</div> <div>objectives [1] 68/5</div> <div>objects [1] 54/9</div> <div>obligation [3] 36/4 36/13 63/21</div> <div>observed [1] 65/21</div> <div>obstruct [1] 35/6</div> <div>obstructed [1] 35/5</div> <div>obstruction [1] 49/6</div> <div>obstructive [1] 35/8</div> <div>obtain [2] 7/13 35/2</div> <div>Obviously [1] 39/10</div> <div>occasion [1] 22/18</div> <div>occurred [1] 32/14</div> <div>ocean [1] 51/5</div> <div>off [5] 47/18 51/3 51/13 52/20 54/1</div> <div>offense [33] 2/21 2/24 3/15 3/19 4/9 25/10 31/23 33/13 33/19 33/20 33/21 33/23 34/2 34/4 34/7 34/13 34/13 34/16 34/21 35/4 35/8 35/9 35/10 35/14 35/18 35/23 36/10 61/10 64/9 64/12 65/2 67/8 67/13</div> <div>offenses [1] 64/12</div> | <div>offer [1] 23/7</div> <div>office [13] 2/10 2/14 3/2 8/24 9/17 19/3 23/17 24/12 32/6 42/12 62/15 63/8 64/5</div> <div>officer [5] 27/3 30/3 63/4 63/17 63/19</div> <div>offices [1] 72/7</div> <div>Official [3] 1/22 72/6 72/25</div> <div>often [1] 55/11</div> <div>oh [6] 25/12 27/8 27/19 51/11 53/25 60/14</div> <div>Okay [13] 6/20 9/4 9/4 16/20 18/19 19/13 19/21 24/22 31/21 36/21 57/17 57/22 69/5</div> <div>old [1] 54/15</div> <div>older [3] 50/22 50/23 66/8</div> <div>once [3] 10/9 24/5 50/19</div> <div>one [45] 6/25 8/6 9/16 10/18 12/5 12/15 13/20 15/8 15/9 16/10 17/7 17/9 17/18 18/1 18/4 18/7 18/16 18/23 18/23 19/5 20/2 20/11 21/6 21/11 21/18 22/17 22/24 25/2 25/18 28/5 34/14 34/17 36/11 41/20 42/2 44/21 46/4 51/11 51/11 52/23 55/22 60/12 60/13 64/12 64/21</div> <div>ones [1] 9/22</div> <div>online [2] 5/15 7/4</div> <div>only [20] 4/5 4/13 9/1 9/8 9/14 10/23 11/4 12/4 17/9 17/22 18/23 21/17 22/5 29/6 31/5 40/20 41/19 48/4 67/16 70/22</div> <div>onward [1] 59/12</div> <div>open [3] 40/1 63/18 72/11</div> <div>opinion [1] 53/7</div> <div>opportunity [1] 3/7</div> <div>option [1] 37/4</div> <div>options [1] 36/5</div> <div>oral [1] 57/20</div> <div>order [11] 2/1 4/11 6/23 10/8 17/22 19/6 57/24 62/5 62/6 63/22 71/5</div> <div>ordered [3] 45/21 61/7 62/3</div> <div>orders [1] 61/4</div> <div>organizer [3] 3/20 31/25 34/22</div> <div>originally [1] 29/4</div> <div>other [38] 5/13 6/22 6/25 8/15 8/17 9/19 9/21 10/8 12/5 15/18 15/20 17/10 18/3 20/10 20/19 21/1 21/11 23/17 23/22 24/20 25/21 28/3 28/12 28/12 28/17 29/22 30/23 33/3 42/8 43/25 49/11 53/10 64/19 66/14 67/17 69/8 69/15 70/24</div> <div>others [5] 7/16 9/20 9/23 24/6 39/13</div> <div>otherwise [13] 3/24 4/7 4/15 10/19 11/5 18/14 23/5 23/8 23/13 23/19 30/14 31/3 31/7</div> <div>our [4] 2/10 40/12 55/10 55/16</div> <div>ours [1] 48/9</div> <div>out [26] 7/3 9/12 15/3 15/19 20/5 21/7 23/10 27/10 38/12 39/7 40/6 41/5 44/15 45/2 46/2 47/17 48/13 51/9 51/16 51/22 53/12 54/22 54/24 56/18 65/25 66/6</div> <div>outline [1] 14/23</div> <div>outlined [3] 11/7 11/13 14/10</div> <div>outside [1] 50/18</div> <div>overarching [1] 28/3</div> <div>overrule [1] 31/21</div> <div>overruling [1] 33/2</div> <div>owe [1] 66/15</div> <div>own [10] 14/15 26/6 28/20 39/4 48/5 54/14 54/19 54/20 59/9 60/13</div> <div>Oxy [1] 53/5</div> <div>P</div> <div>page [9] 5/21 7/18 13/17 14/10 14/17 14/23 21/7 22/7 23/11</div> <div>paid [5] 61/14 61/19 61/19 61/23 61/25</div> <div>pain [1] 55/19</div> <div>painkiller [1] 53/5</div> <div>pandemic [6] 39/23 40/1 40/10 41/4 48/8 50/3</div> <div>paper [1] 42/8</div> <div>papers [1] 63/10</div> |
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                                                                                                                      |
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---------------------------------------------------------------------------------------------------------------------------|
| <b>P</b> | 69/9 69/17 69/22 69/22<br>paperwork [2] 38/13 40/5<br>paragraph [14] 3/18 7/10 12/7 22/8<br>26/25 31/22 33/10 33/16 34/5 34/11<br>34/20 35/3 35/16 35/24<br>paragraphs [1] 36/1<br>parent [2] 47/20 48/2<br>parents [3] 47/16 47/17 65/10<br>part [17] 11/10 12/23 17/3 17/18<br>22/13 24/7 27/18 32/20 36/18 36/21<br>40/18 44/21 48/4 54/18 55/8 64/11<br>69/21<br>partial [1] 36/17<br>partially [1] 36/14<br>participant [18] 10/18 11/11 11/23<br>12/2 12/12 13/10 13/22 14/18 15/4<br>15/14 16/25 17/4 17/4 21/12 22/2<br>23/18 26/22 27/4<br>participants [28] 4/7 4/14 7/9 9/3<br>10/20 11/6 16/6 17/24 18/2 18/5 18/9<br>18/12 18/21 21/5 22/23 22/25 23/4<br>26/24 27/9 27/12 27/20 27/20 28/2<br>28/9 28/11 31/3 31/11 31/13<br>participate [3] 7/16 32/19 63/22<br>participated [3] 22/21 30/14 41/19<br>participating [2] 39/11 41/7<br>particularly [1] 69/19<br>parties [4] 2/5 34/9 35/21 37/12<br>party [1] 11/9<br>pass [1] 4/24<br>passes [1] 50/9<br>past [3] 8/21 59/25 60/12<br>patience [1] 59/22<br>patiently [1] 59/2<br>Patrick [1] 14/24<br>Pause [1] 6/19<br>pay [12] 36/2 45/19 45/21 61/4 62/3<br>62/8 64/3 64/4 65/2 65/15 67/1 70/5<br>payback [1] 49/10<br>payment [6] 30/20 30/21 30/21 61/19<br>68/12 70/6<br>payments [5] 14/21 30/18 45/3 45/9<br>63/20<br>payoffs [1] 45/5<br>payroll [1] 40/7<br>peaceful [1] 58/23<br>penalty [2] 36/6 49/10<br>Pennsylvania [3] 50/18 55/8 60/5<br>people [93]<br>per [2] 61/22 62/2<br>percent [2] 61/22 62/2<br>perhaps [1] 28/17<br>period [1] 61/21<br>periodic [1] 63/1<br>permit [1] 63/13<br>perpetrate [2] 10/8 19/6<br>perpetrated [1] 64/15<br>perseverance [1] 59/22<br>person [18] 7/1 12/6 13/13 15/8<br>15/13 17/7 19/5 21/6 21/24 21/25<br>27/17 37/20 49/5 53/19 55/9 55/13<br>62/14 63/10<br>personal [1] 57/11<br>personally [1] 59/23<br>persons [2] 3/24 23/15<br>pertain [1] 10/22<br>Phillips [20] 1/17 2/8 3/25 8/9<br>15/16 19/19 24/18 25/7 26/4 26/15<br>26/24 27/24 30/7 32/15 36/15 37/17<br>42/25 44/19 45/16 57/7<br>phone [1] 56/3<br>phony [2] 7/12 40/5<br>Photoshop [1] 14/2<br>phrase [1] 23/5<br>piece [1] 28/19<br>pills [2] 55/19 55/21<br>Pittsburgh [1] 50/18<br>place [3] 54/6 56/8 56/9<br>placed [2] 62/11 62/17<br>Plaintiff [2] 1/5 1/17<br>play [2] 43/23 44/1<br>played [3] 4/8 4/12 5/21<br>plea [9] 2/20 35/20 53/2 53/6 69/7                                 | 69/9 69/17 69/22 69/22<br>plead [1] 52/25<br>pleaded [3] 7/6 14/14 37/22<br>please [4] 2/2 2/5 6/10 30/15<br>pled [1] 65/6<br>plus [4] 15/9 33/20 39/18 62/1<br>point [14] 15/24 15/24 16/13 21/7<br>25/3 25/6 25/23 27/6 45/15 46/4 49/6<br>49/8 52/15 53/7<br>points [11] 35/25 43/22 44/3 44/5<br>44/8 44/12 47/8 47/10 49/2 49/6<br>52/11<br>Ponzi [39] 4/16 4/25 5/8 5/16 7/6<br>9/7 11/24 12/23 14/8 14/12 14/22<br>15/4 17/15 17/20 22/12 22/13 26/1<br>26/19 29/7 29/13 30/16 30/19 31/6<br>31/11 36/18 39/11 41/5 41/24 43/18<br>44/22 44/23 44/25 45/3 45/13 61/15<br>61/17 64/11 68/17 68/22<br>poor [1] 47/9<br>poorly [1] 53/13<br>Porter [1] 14/7<br>portion [2] 61/23 66/11<br>position [7] 5/11 15/6 16/9 16/14<br>16/16 16/22 60/10<br>positions [3] 32/5 49/20 49/21<br>possess [3] 62/23 64/1 64/2<br>PPP [26] 4/17 5/1 5/8 7/13 14/15<br>14/20 26/21 28/20 29/3 29/7 29/8<br>30/16 30/18 35/2 36/21 38/7 38/9<br>39/19 43/17 44/17 44/21 44/23 45/11<br>45/18 61/15 64/20<br>PPP loan [10] 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 61/15 64/20<br>preparation [1] 24/3<br>prepare [1] 70/8<br>prepared [2] 3/3 47/21<br>prepares [1] 38/13<br>preparing [2] 19/6 42/12<br>preponderance [1] 32/2<br>prescription [1] 64/2<br>present [4] 2/9 55/11 57/23 70/1<br>presented [1] 62/5<br>presentence [3] 3/3 3/4 3/7<br>pretended [1] 12/25<br>pretenses [2] 7/5 13/1<br>pretrial [1] 35/12<br>previously [1] 43/14<br>price [1] 65/3<br>principles [1] 59/13<br>prior [2] 43/13 50/6<br>prison [6] 20/5 41/10 43/14 52/12<br>61/20 66/1<br>Prisons [5] 61/1 62/14 62/18 70/21<br>70/23<br>probable [1] 11/22<br>probably [3] 43/25 45/1 48/4<br>probation [11] 2/14 3/2 27/3 30/3<br>37/4 62/15 63/4 63/8 63/17 63/19<br>64/5<br>problem [3] 10/4 19/24 19/25<br>Procedure [1] 3/2<br>proceed [1] 65/14<br>proceeding [2] 65/22 66/13<br>proceedings [6] 69/8 69/16 71/12<br>72/11 72/15 72/19<br>proceeds [1] 14/20<br>profession [1] 58/21<br>program [5] 62/17 63/23 63/24 64/3<br>70/25<br>prohibited [1] 63/25<br>promoter [1] 51/13<br>pronounced [2] 68/9 68/25<br>pronouncement [1] 57/21<br>proof [2] 27/19 28/2<br>proper [1] 3/14<br>properly [1] 40/11<br>property [1] 63/10<br>prosecuted [1] 28/20<br>prosecution [1] 35/7<br>protect [1] 67/10<br>protecting [1] 60/11<br>prove [12] 6/25 10/22 10/23 12/4<br>15/13 16/24 26/23 27/13 27/13 27/14 | 27/17 67/2<br>proven [1] 32/2<br>proverbial [1] 60/11<br>provide [2] 68/1 70/11<br>provided [3] 3/4 3/15 17/2<br>proving [1] 31/14<br>PSR [14] 5/23 7/10 12/7 12/20 31/22<br>33/7 33/11 33/16 34/5 34/11 34/20<br>35/3 35/16 57/12<br>public [1] 67/10<br>punish [2] 40/22 41/1<br>punishment [1] 68/3<br>puppeteer [1] 32/16<br>purpose [1] 13/8<br>purposes [8] 9/7 9/12 12/10 13/1<br>27/4 27/12 28/13 31/2<br>pursuant [4] 34/11 34/20 35/3 62/5<br>put [7] 16/11 41/23 42/11 45/16<br>51/17 51/23 64/21<br>putting [1] 42/20 |
| <b>Q</b> | 69/9 69/17 69/22 69/22<br>plead [1] 52/25<br>pleaded [3] 7/6 14/14 37/22<br>please [4] 2/2 2/5 6/10 30/15<br>pled [1] 65/6<br>plus [4] 15/9 33/20 39/18 62/1<br>point [14] 15/24 15/24 16/13 21/7<br>25/3 25/6 25/23 27/6 45/15 46/4 49/6<br>49/8 52/15 53/7<br>points [11] 35/25 43/22 44/3 44/5<br>44/8 44/12 47/8 47/10 49/2 49/6<br>52/11<br>Ponzi [39] 4/16 4/25 5/8 5/16 7/6<br>9/7 11/24 12/23 14/8 14/12 14/22<br>15/4 17/15 17/20 22/12 22/13 26/1<br>26/19 29/7 29/13 30/16 30/19 31/6<br>31/11 36/18 39/11 41/5 41/24 43/18<br>44/22 44/23 44/25 45/3 45/13 61/15<br>61/17 64/11 68/17 68/22<br>poor [1] 47/9<br>poorly [1] 53/13<br>Porter [1] 14/7<br>portion [2] 61/23 66/11<br>position [7] 5/11 15/6 16/9 16/14<br>16/16 16/22 60/10<br>positions [3] 32/5 49/20 49/21<br>possess [3] 62/23 64/1 64/2<br>PPP [26] 4/17 5/1 5/8 7/13 14/15<br>14/20 26/21 28/20 29/3 29/7 29/8<br>30/16 30/18 35/2 36/21 38/7 38/9<br>39/19 43/17 44/17 44/21 44/23 45/11<br>45/18 61/15 64/20<br>PPP loan [10] 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 61/15 64/20<br>preparation [1] 24/3<br>prepare [1] 70/8<br>prepared [2] 3/3 47/21<br>prepares [1] 38/13<br>preparing [2] 19/6 42/12<br>preponderance [1] 32/2<br>prescription [1] 64/2<br>present [4] 2/9 55/11 57/23 70/1<br>presented [1] 62/5<br>presentence [3] 3/3 3/4 3/7<br>pretended [1] 12/25<br>pretenses [2] 7/5 13/1<br>pretrial [1] 35/12<br>previously [1] 43/14<br>price [1] 65/3<br>principles [1] 59/13<br>prior [2] 43/13 50/6<br>prison [6] 20/5 41/10 43/14 52/12<br>61/20 66/1<br>Prisons [5] 61/1 62/14 62/18 70/21<br>70/23<br>probable [1] 11/22<br>probably [3] 43/25 45/1 48/4<br>probation [11] 2/14 3/2 27/3 30/3<br>37/4 62/15 63/4 63/8 63/17 63/19<br>64/5<br>problem [3] 10/4 19/24 19/25<br>Procedure [1] 3/2<br>proceed [1] 65/14<br>proceeding [2] 65/22 66/13<br>proceedings [6] 69/8 69/16 71/12<br>72/11 72/15 72/19<br>proceeds [1] 14/20<br>profession [1] 58/21<br>program [5] 62/17 63/23 63/24 64/3<br>70/25<br>prohibited [1] 63/25<br>promoter [1] 51/13<br>pronounced [2] 68/9 68/25<br>pronouncement [1] 57/21<br>proof [2] 27/19 28/2<br>proper [1] 3/14<br>properly [1] 40/11<br>property [1] 63/10<br>prosecuted [1] 28/20<br>prosecution [1] 35/7<br>protect [1] 67/10<br>protecting [1] 60/11<br>prove [12] 6/25 10/22 10/23 12/4<br>15/13 16/24 26/23 27/13 27/13 27/14 | 27/17 67/2<br>proven [1] 32/2<br>proverbial [1] 60/11<br>provide [2] 68/1 70/11<br>provided [3] 3/4 3/15 17/2<br>proving [1] 31/14<br>PSR [14] 5/23 7/10 12/7 12/20 31/22<br>33/7 33/11 33/16 34/5 34/11 34/20<br>35/3 35/16 57/12<br>public [1] 67/10<br>punish [2] 40/22 41/1<br>punishment [1] 68/3<br>puppeteer [1] 32/16<br>purpose [1] 13/8<br>purposes [8] 9/7 9/12 12/10 13/1<br>27/4 27/12 28/13 31/2<br>pursuant [4] 34/11 34/20 35/3 62/5<br>put [7] 16/11 41/23 42/11 45/16<br>51/17 51/23 64/21<br>putting [1] 42/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>R</b> | 69/9 69/17 69/22 69/22<br>plead [1] 52/25<br>pleaded [3] 7/6 14/14 37/22<br>please [4] 2/2 2/5 6/10 30/15<br>pled [1] 65/6<br>plus [4] 15/9 33/20 39/18 62/1<br>point [14] 15/24 15/24 16/13 21/7<br>25/3 25/6 25/23 27/6 45/15 46/4 49/6<br>49/8 52/15 53/7<br>points [11] 35/25 43/22 44/3 44/5<br>44/8 44/12 47/8 47/10 49/2 49/6<br>52/11<br>Ponzi [39] 4/16 4/25 5/8 5/16 7/6<br>9/7 11/24 12/23 14/8 14/12 14/22<br>15/4 17/15 17/20 22/12 22/13 26/1<br>26/19 29/7 29/13 30/16 30/19 31/6<br>31/11 36/18 39/11 41/5 41/24 43/18<br>44/22 44/23 44/25 45/3 45/13 61/15<br>61/17 64/11 68/17 68/22<br>poor [1] 47/9<br>poorly [1] 53/13<br>Porter [1] 14/7<br>portion [2] 61/23 66/11<br>position [7] 5/11 15/6 16/9 16/14<br>16/16 16/22 60/10<br>positions [3] 32/5 49/20 49/21<br>possess [3] 62/23 64/1 64/2<br>PPP [26] 4/17 5/1 5/8 7/13 14/15<br>14/20 26/21 28/20 29/3 29/7 29/8<br>30/16 30/18 35/2 36/21 38/7 38/9<br>39/19 43/17 44/17 44/21 44/23 45/11<br>45/18 61/15 64/20<br>PPP loan [10] 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 61/15 64/20<br>preparation [1] 24/3<br>prepare [1] 70/8<br>prepared [2] 3/3 47/21<br>prepares [1] 38/13<br>preparing [2] 19/6 42/12<br>preponderance [1] 32/2<br>prescription [1] 64/2<br>present [4] 2/9 55/11 57/23 70/1<br>presented [1] 62/5<br>presentence [3] 3/3 3/4 3/7<br>pretended [1] 12/25<br>pretenses [2] 7/5 13/1<br>pretrial [1] 35/12<br>previously [1] 43/14<br>price [1] 65/3<br>principles [1] 59/13<br>prior [2] 43/13 50/6<br>prison [6] 20/5 41/10 43/14 52/12<br>61/20 66/1<br>Prisons [5] 61/1 62/14 62/18 70/21<br>70/23<br>probable [1] 11/22<br>probably [3] 43/25 45/1 48/4<br>probation [11] 2/14 3/2 27/3 30/3<br>37/4 62/15 63/4 63/8 63/17 63/19<br>64/5<br>problem [3] 10/4 19/24 19/25<br>Procedure [1] 3/2<br>proceed [1] 65/14<br>proceeding [2] 65/22 66/13<br>proceedings [6] 69/8 69/16 71/12<br>72/11 72/15 72/19<br>proceeds [1] 14/20<br>profession [1] 58/21<br>program [5] 62/17 63/23 63/24 64/3<br>70/25<br>prohibited [1] 63/25<br>promoter [1] 51/13<br>pronounced [2] 68/9 68/25<br>pronouncement [1] 57/21<br>proof [2] 27/19 28/2<br>proper [1] 3/14<br>properly [1] 40/11<br>property [1] 63/10<br>prosecuted [1] 28/20<br>prosecution [1] 35/7<br>protect [1] 67/10<br>protecting [1] 60/11<br>prove [12] 6/25 10/22 10/23 12/4<br>15/13 16/24 26/23 27/13 27/13 27/14 | 27/17 67/2<br>proven [1] 32/2<br>proverbial [1] 60/11<br>provide [2] 68/1 70/11<br>provided [3] 3/4 3/15 17/2<br>proving [1] 31/14<br>PSR [14] 5/23 7/10 12/7 12/20 31/22<br>33/7 33/11 33/16 34/5 34/11 34/20<br>35/3 35/16 57/12<br>public [1] 67/10<br>punish [2] 40/22 41/1<br>punishment [1] 68/3<br>puppeteer [1] 32/16<br>purpose [1] 13/8<br>purposes [8] 9/7 9/12 12/10 13/1<br>27/4 27/12 28/13 31/2<br>pursuant [4] 34/11 34/20 35/3 62/5<br>put [7] 16/11 41/23 42/11 45/16<br>51/17 51/23 64/21<br>putting [1] 42/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                   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| <b>Q</b> | 69/9 69/17 69/22 69/22<br>plead [1] 52/25<br>pleaded [3] 7/6 14/14 37/22<br>please [4] 2/2 2/5 6/10 30/15<br>pled [1] 65/6<br>plus [4] 15/9 33/20 39/18 62/1<br>point [14] 15/24 15/24 16/13 21/7<br>25/3 25/6 25/23 27/6 45/15 46/4 49/6<br>49/8 52/15 53/7<br>points [11] 35/25 43/22 44/3 44/5<br>44/8 44/12 47/8 47/10 49/2 49/6<br>52/11<br>Ponzi [39] 4/16 4/25 5/8 5/16 7/6<br>9/7 11/24 12/23 14/8 14/12 14/22<br>15/4 17/15 17/20 22/12 22/13 26/1<br>26/19 29/7 29/13 30/16 30/19 31/6<br>31/11 36/18 39/11 41/5 41/24 43/18<br>44/22 44/23 44/25 45/3 45/13 61/15<br>61/17 64/11 68/17 68/22<br>poor [1] 47/9<br>poorly [1] 53/13<br>Porter [1] 14/7<br>portion [2] 61/23 66/11<br>position [7] 5/11 15/6 16/9 16/14<br>16/16 16/22 60/10<br>positions [3] 32/5 49/20 49/21<br>possess [3] 62/23 64/1 64/2<br>PPP [26] 4/17 5/1 5/8 7/13 14/15<br>14/20 26/21 28/20 29/3 29/7 29/8<br>30/16 30/18 35/2 36/21 38/7 38/9<br>39/19 43/17 44/17 44/21 44/23 45/11<br>45/18 61/15 64/20<br>PPP loan [10] 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 61/15 64/20<br>preparation [1] 24/3<br>prepare [1] 70/8<br>prepared [2] 3/3 47/21<br>prepares [1] 38/13<br>preparing [2] 19/6 42/12<br>preponderance [1] 32/2<br>prescription [1] 64/2<br>present [4] 2/9 55/11 57/23 70/1<br>presented [1] 62/5<br>presentence [3] 3/3 3/4 3/7<br>pretended [1] 12/25<br>pretenses [2] 7/5 13/1<br>pretrial [1] 35/12<br>previously [1] 43/14<br>price [1] 65/3<br>principles [1] 59/13<br>prior [2] 43/13 50/6<br>prison [6] 20/5 41/10 43/14 52/12<br>61/20 66/1<br>Prisons [5] 61/1 62/14 62/18 70/21<br>70/23<br>probable [1] 11/22<br>probably [3] 43/25 45/1 48/4<br>probation [11] 2/14 3/2 27/3 30/3<br>37/4 62/15 63/4 63/8 63/17 63/19<br>64/5<br>problem [3] 10/4 19/24 19/25<br>Procedure [1] 3/2<br>proceed [1] 65/14<br>proceeding [2] 65/22 66/13<br>proceedings [6] 69/8 69/16 71/12<br>72/11 72/15 72/19<br>proceeds [1] 14/20<br>profession [1] 58/21<br>program [5] 62/17 63/23 63/24 64/3<br>70/25<br>prohibited [1] 63/25<br>promoter [1] 51/13<br>pronounced [2] 68/9 68/25<br>pronouncement [1] 57/21<br>proof [2] 27/19 28/2<br>proper [1] 3/14<br>properly [1] 40/11<br>property [1] 63/10<br>prosecuted [1] 28/20<br>prosecution [1] 35/7<br>protect [1] 67/10<br>protecting [1] 60/11<br>prove [12] 6/25 10/22 10/23 12/4<br>15/13 16/24 26/23 27/13 27/13 27/14 | 27/17 67/2<br>proven [1] 32/2<br>proverbial [1] 60/11<br>provide [2] 68/1 70/11<br>provided [3] 3/4 3/15 17/2<br>proving [1] 31/14<br>PSR [14] 5/23 7/10 12/7 12/20 31/22<br>33/7 33/11 33/16 34/5 34/11 34/20<br>35/3 35/16 57/12<br>public [1] 67/10<br>punish [2] 40/22 41/1<br>punishment [1] 68/3<br>puppeteer [1] 32/16<br>purpose [1] 13/8<br>purposes [8] 9/7 9/12 12/10 13/1<br>27/4 27/12 28/13 31/2<br>pursuant [4] 34/11 34/20 35/3 62/5<br>put [7] 16/11 41/23 42/11 45/16<br>51/17 51/23 64/21<br>putting [1] 42/20                                                                                                                                                                         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| <b>R</b> | 69/9 69/17 69/22 69/22<br>plead [1] 52/25<br>pleaded [3] 7/6 14/14 37/22<br>please [4] 2/2 2/5 6/10 30/15<br>pled [1] 65/6<br>plus [4] 15/9 33/20 39/18 62/1<br>point [14] 15/24 15/24 16/13 21/7<br>25/3 25/6 25/23 27/6 45/15 46/4 49/6<br>49/8 52/15 53/7<br>points [11] 35/25 43/22 44/3 44/5<br>44/8 44/12 47/8 47/10 49/2 49/6<br>52/11<br>Ponzi [39] 4/16 4/25 5/8 5/16 7/6<br>9/7 11/24 12/23 14/8 14/12 14/22<br>15/4 17/15 17/20 22/12 22/13 26/1<br>26/19 29/7 29/13 30/16 30/19 31/6<br>31/11 36/18 39/11 41/5 41/24 43/18<br>44/22 44/23 44/25 45/3 45/13 61/15<br>61/17 64/11 68/17 68/22<br>poor [1] 47/9<br>poorly [1] 53/13<br>Porter [1] 14/7<br>portion [2] 61/23 66/11<br>position [7] 5/11 15/6 16/9 16/14<br>16/16 16/22 60/10<br>positions [3] 32/5 49/20 49/21<br>possess [3] 62/23 64/1 64/2<br>PPP [26] 4/17 5/1 5/8 7/13 14/15<br>14/20 26/21 28/20 29/3 29/7 29/8<br>30/16 30/18 35/2 36/21 38/7 38/9<br>39/19 43/17 44/17 44/21 44/23 45/11<br>45/18 61/15 64/20<br>PPP loan [10] 5/1 5/8 7/13 14/15<br>14/20 30/18 35/2 38/9 61/15 64/20<br>preparation [1] 24/3<br>prepare [1] 70/8<br>prepared [2] 3/3 47/21<br>prepares [1] 38/13<br>preparing [2] 19/6 42/12<br>preponderance [1] 32/2<br>prescription [1] 64/2<br>present [4] 2/9 55/11 57/23 70/1<br>presented [1] 62/5<br>presentence [3] 3/3 3/4 3/7<br>pretended [1] 12/25<br>pretenses [2] 7/5 13/1<br>pretrial [1] 35/12<br>previously [1] 43/14<br>price [1] 65/3<br>principles [1] 59/13<br>prior [2] 43/13 50/6<br>prison [6] 20/5 41/10 43/14 52/12<br>61/20 66/1<br>Prisons [5] 61/1 62/14 62/18 70/21<br>70/23<br>probable [1] 11/22<br>probably [3] 43/25 45/1 48/4<br>probation [11] 2/14 3/2 27/3 30/3<br>37/4 62/15 63/4 63/8 63/17 63/19<br>64/5<br>problem [3] 10/4 19/24 19/25<br>Procedure [1] 3/2<br>proceed [1] 65/14<br>proceeding [2] 65/22 66/13<br>proceedings [6] 69/8 69/16 71/12<br>72/11 72/15 72/19<br>proceeds [1] 14/20<br>profession [1] 58/21<br>program [5] 62/17 63/23 63/24 64/3<br>70/25<br>prohibited [1] 63/25<br>promoter [1] 51/13<br>pronounced [2] 68/9 68/25<br>pronouncement [1] 57/21<br>proof [2] 27/19 28/2<br>proper [1] 3/14<br>properly [1] 40/11<br>property [1] 63/10<br>prosecuted [1] 28/20<br>prosecution [1] 35/7<br>protect [1] 67/10<br>protecting [1] 60/11<br>prove [12] 6/25 10/22 10/23 12/4<br>15/13 16/24 26/23 27/13 27/13 27/14 | 27/17 67/2<br>proven [1] 32/2<br>proverbial [1] 60/11<br>provide [2] 68/1 70/11<br>provided [3] 3/4 3/15 17/2<br>proving [1] 31/14<br>PSR [14] 5/23 7/10 12/7 12/20 31/22<br>33/7 33/11 33/16 34/5 34/11 34/20<br>35/3 35/16 57/12<br>public [1] 67/10<br>punish [2] 40/22 41/1<br>punishment [1] 68/3<br>puppeteer [1] 32/16<br>purpose [1] 13/8<br>purposes [8] 9/7 9/12 12/10 13/1<br>27/4 27/12 28/13 31/2<br>pursuant [4] 34/11 34/20 35/3 62/5<br>put [7] 16/11 41/23 42/11 45/16<br>51/17 51/23 64/21<br>putting [1] 42/20                                                                                                                                                                         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| <b>R</b> | 49/5 50/2 50/24 51/16 51/18 52/14<br>54/5 54/13 57/16 58/1 58/2 58/3<br>60/16 60/22 68/23 69/18 70/20 71/9<br><b>right-hand</b> [1] 14/1<br><b>rights</b> [3] 69/21 69/24 70/11<br><b>risks</b> [1] 51/6<br><b>Riveras</b> [1] 21/8<br><b>road</b> [2] 48/22 56/11<br><b>Robert</b> [1] 53/20<br><b>Robert A</b> [1] 53/20<br><b>rock</b> [2] 45/24 51/23<br><b>rodeo</b> [6] 43/11 44/13 44/14 44/14<br>47/15 48/19<br><b>rodeos</b> [1] 48/20<br><b>role</b> [30] 3/15 4/8 4/10 4/11 4/12<br>4/25 5/6 6/24 7/17 8/3 10/1 10/22<br>11/2 11/3 16/11 17/22 17/25 18/4<br>18/15 18/17 19/7 21/3 21/10 21/10<br>21/17 23/2 25/21 26/3 26/11 35/22<br><b>roles</b> [2] 5/20 24/4<br><b>romance</b> [1] 12/23<br><b>room</b> [2] 47/18 49/21<br><b>rot</b> [1] 13/14<br><b>route</b> [1] 4/1<br><b>RPR</b> [1] 72/24<br><b>rule</b> [2] 3/1 58/17<br><b>Rule 32</b> [1] 3/1<br><b>rules</b> [2] 3/1 63/23<br><b>ruling</b> [1] 32/4<br><b>run</b> [3] 44/23 49/16 62/12<br><b>running</b> [3] 14/11 22/14 42/22<br><b>rural</b> [1] 60/4<br><b>Russell</b> [2] 1/17 2/7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Sections</b> [1] 2/23<br><b>see</b> [7] 6/5 20/14 44/10 53/23 54/11<br>65/21 65/22<br><b>seek</b> [1] 59/6<br><b>seemed</b> [2] 45/8 55/16<br><b>seems</b> [1] 29/20<br><b>seen</b> [1] 64/13<br><b>semantics</b> [1] 45/1<br><b>send</b> [4] 14/24 38/11 40/20 41/6<br><b>sends</b> [3] 29/22 40/25 41/13<br><b>sent</b> [2] 22/9 40/9<br><b>sentence</b> [52] 20/5 28/13 36/9 37/13<br>38/16 38/20 38/23 38/25 39/9 40/20<br>40/24 41/3 41/10 41/17 41/18 41/20<br>41/25 42/24 44/16 46/16 46/24 52/19<br>56/12 56/14 56/15 56/16 56/17 56/22<br>57/5 57/21 60/8 61/3 64/7 67/7 67/12<br>67/14 67/16 67/16 67/17 67/18 67/19<br>67/21 67/24 68/3 68/9 68/25 69/2<br>69/4 69/19 69/20 69/24 70/22<br><b>sentenced</b> [8] 14/16 37/21 37/25 38/1<br>46/7 65/3 65/4 65/7<br><b>sentences</b> [1] 67/11<br><b>sentencing</b> [21] 1/12 2/19 5/20 5/21<br>5/24 6/15 9/10 11/7 12/18 22/7 23/6<br>23/23 35/7 36/5 37/15 41/23 44/6<br>56/20 60/24 64/10 67/12<br><b>separate</b> [4] 4/20 5/14 45/22 57/18<br><b>separates</b> [1] 11/2<br><b>serious</b> [7] 39/10 40/19 40/19 40/25<br>64/12 65/2 65/3<br><b>seriously</b> [3] 40/21 40/22 41/6<br><b>seriousness</b> [1] 67/8<br><b>serve</b> [2] 66/5 70/23<br><b>served</b> [1] 61/3<br><b>service</b> [1] 70/22<br><b>set</b> [9] 33/16 34/5 34/11 34/20 35/3<br>36/1 51/9 51/16 67/13<br><b>seven</b> [2] 39/15 39/18<br><b>several</b> [9] 4/3 27/7 27/7 36/14<br>61/16 68/12 68/13 68/15 68/16<br><b>severally</b> [1] 61/14<br><b>severe</b> [2] 20/4 67/18<br><b>shaking</b> [3] 19/16 53/3 53/5<br><b>shall</b> [8] 33/12 61/5 62/10 62/14<br>62/20 63/11 63/17 64/3<br><b>shaping</b> [1] 60/11<br><b>share</b> [3] 38/3 46/3 58/21<br><b>shark</b> [2] 45/19 45/20<br><b>she</b> [25] 12/20 12/21 12/22 13/24<br>13/25 13/25 14/1 14/2 14/5 14/5 14/8<br>14/9 14/10 14/12 14/14 14/16 14/18<br>21/24 22/1 29/15 29/15 38/13 38/14<br>38/14 42/1<br><b>Shipp</b> [1] 2/10<br><b>shocked</b> [1] 40/4<br><b>shocking</b> [1] 13/12<br><b>shoot</b> [1] 46/20<br><b>short</b> [1] 56/15<br><b>should</b> [24] 3/15 3/25 8/14 10/12<br>11/1 11/16 15/19 21/16 21/18 23/1<br>23/4 23/14 25/16 29/23 30/13 31/8<br>32/2 38/1 38/10 41/8 46/17 46/18<br>46/18 49/14<br><b>show</b> [9] 17/23 17/24 18/3 18/23<br>42/15 48/20 49/4 49/11 52/13<br><b>showing</b> [3] 27/18 27/23 48/15<br><b>shows</b> [4] 17/7 34/16 41/18 41/19<br><b>sic</b> [1] 47/10<br><b>side</b> [2] 29/3 29/14<br><b>significant</b> [4] 48/21 55/16 64/18<br>66/5<br><b>significantly</b> [1] 43/19<br><b>similar</b> [7] 8/8 24/20 32/6 32/7 41/3<br>55/8 60/1<br><b>simply</b> [1] 10/15<br><b>since</b> [4] 32/12 54/25 55/7 64/13<br><b>single</b> [2] 8/10 33/13<br><b>singular</b> [1] 25/9<br><b>sir</b> [1] 71/1<br><b>sister</b> [1] 50/23<br><b>sites</b> [1] 7/4<br><b>sitting</b> [2] 65/14 65/23<br><b>situation</b> [3] 24/1 32/14 50/4 |
| <b>S</b> | <b>S.W</b> [1] 1/23<br><b>sad</b> [1] 54/12<br><b>said</b> [31] 7/7 7/15 11/9 13/5 13/8<br>13/13 16/1 17/2 17/15 19/17 21/9<br>22/10 22/14 23/12 26/4 26/24 27/3<br>28/6 32/24 38/4 38/21 40/6 40/9<br>41/14 44/22 46/25 64/10 67/8 70/14<br>70/24 72/15<br><b>same</b> [16] 2/23 13/13 17/12 17/19<br>17/20 26/10 29/17 33/12 33/15 44/21<br>49/18 55/18 56/16 61/10 61/12 61/12<br><b>Sargent</b> [50] 4/23 4/23 4/23 5/5 5/13<br>6/22 7/2 11/20 12/16 12/22 13/4<br>13/12 16/2 17/11 17/16 18/8 21/4<br>21/14 22/9 22/12 26/2 26/5 26/11<br>29/4 30/4 30/21 31/9 36/15 37/22<br>37/25 38/6 38/7 38/15 38/18 41/19<br>43/12 43/13 43/17 44/13 44/16 46/10<br>46/12 46/23 56/16 61/16 64/16 67/22<br>68/17 68/20 68/21<br><b>Sargent's</b> [5] 12/18 13/6 13/21 16/1<br>46/12<br><b>Sargents</b> [1] 29/6<br><b>satisfaction</b> [1] 12/5<br><b>say</b> [23] 10/10 11/16 11/25 15/8<br>16/24 17/12 24/19 25/12 25/20 25/22<br>26/16 28/7 28/16 29/9 29/10 32/4<br>44/18 48/15 56/20 57/9 66/7 68/11<br>68/15<br><b>saying</b> [8] 8/25 16/14 24/9 24/11<br>24/18 27/8 27/19 66/20<br><b>says</b> [8] 22/18 31/5 38/11 40/25 41/1<br>46/2 53/6 55/7<br><b>scheduled</b> [1] 35/12<br><b>scheme</b> [73]<br><b>schemes</b> [5] 4/20 23/22 24/13 38/6<br>41/5<br><b>School</b> [1] 2/11<br><b>Schuessler</b> [3] 2/13 25/9 25/25<br><b>scope</b> [7] 23/14 24/14 28/14 28/15<br>28/24 29/18 29/25<br><b>screen</b> [2] 65/21 65/23<br><b>search</b> [4] 60/4 63/9 63/11 63/14<br><b>seated</b> [1] 2/2<br><b>second</b> [3] 2/20 9/22 25/21<br><b>section</b> [19] 2/25 3/19 31/24 32/3<br>33/11 33/18 33/18 33/19 33/23 33/24<br>33/24 34/1 34/2 34/6 34/12 34/21<br>35/4 37/23 68/6 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <b>S</b> | <b>submarine</b> [1] 51/5<br><b>submit</b> [13] 44/17 46/23 49/23 52/2 56/12 56/23 59/2 62/25 63/11 63/16 63/24 69/3 71/4<br><b>substance</b> [5] 62/23 62/24 63/23 63/24 63/25<br><b>substances</b> [1] 64/1<br><b>substantial</b> [3] 34/13 36/3 40/17<br><b>substantially</b> [1] 33/12<br><b>substantive</b> [2] 33/20 33/23<br><b>substantively</b> [1] 69/2<br><b>success</b> [1] 54/8<br><b>successful</b> [1] 59/20<br><b>such</b> [6] 33/21 47/5 51/23 63/11 63/14 69/25<br><b>sued</b> [1] 19/1<br><b>sufficient</b> [3] 3/22 7/17 68/4<br><b>superseding</b> [1] 2/21<br><b>supervise</b> [3] 5/16 18/6 18/7<br><b>supervised</b> [21] 5/18 6/25 9/14 10/7 17/25 18/4 18/16 18/22 18/23 21/25 22/4 22/22 26/5 26/6 26/7 26/20 37/5 62/11 62/19 62/20 63/6<br><b>supervised/managed</b> [1] 22/22<br><b>supervising</b> [11] 5/13 6/22 9/22 19/5 21/6 22/18 22/24 24/6 25/18 25/18 25/19<br><b>supervision</b> [6] 18/8 24/15 35/13 37/2 61/25 63/9<br><b>supervisor</b> [7] 3/21 3/23 4/12 5/5 17/8 26/2 31/25<br><b>supervisory</b> [2] 4/8 25/21<br><b>support</b> [4] 7/12 39/24 66/2 66/4<br><b>supported</b> [1] 32/25<br><b>supporting</b> [1] 66/13<br><b>supportive</b> [2] 37/15 67/2<br><b>supports</b> [1] 33/1<br><b>supposed</b> [2] 49/4 52/25<br><b>sure</b> [12] 20/12 21/20 24/25 28/16 38/16 42/14 43/18 50/10 50/11 55/4 56/21 58/9<br><b>suspicion</b> [1] 63/7<br><b>swear</b> [2] 6/4 40/12<br><b>sweating</b> [2] 53/3 53/5<br><b>sympathy</b> [1] 48/7<br><b>system</b> [1] 52/8 | <b>testimony</b> [1] 42/3<br><b>testing</b> [1] 63/24<br><b>tests</b> [2] 31/8 63/1<br><b>Texas</b> [4] 12/15 14/6 39/12 43/15<br><b>text</b> [4] 13/12 22/8 38/9 42/7<br><b>than</b> [32] 5/5 5/8 9/16 10/22 18/23 19/5 30/5 34/8 34/8 38/5 38/15 39/15 39/17 40/6 40/8 41/12 43/3 43/4 43/5 43/19 45/2 45/2 45/13 46/11 49/24 50/23 53/23 60/9 64/8 66/8 67/21 68/5<br><b>Thank</b> [16] 24/23 24/24 31/17 31/18 37/18 42/25 56/5 57/6 58/1 60/16 60/22 68/18 68/19 69/5 71/1 71/6<br><b>thanks</b> [1] 42/18<br><b>that</b> [403]<br><b>that's</b> [68] 4/19 5/11 5/13 6/4 7/6 7/13 8/3 8/22 9/1 10/18 11/2 13/17 15/14 16/10 16/20 16/20 17/21 18/1 18/18 19/19 19/24 19/25 19/25 20/14 21/1 21/15 22/21 23/5 23/6 24/16 25/14 25/15 25/15 25/24 27/21 28/25 30/19 31/12 32/11 33/2 33/5 36/22 38/25 39/7 39/8 40/13 42/9 43/19 44/17 44/17 45/24 46/7 47/1 47/1 47/2 47/14 49/22 52/21 54/1 54/18 57/16 57/18 58/21 61/23 62/4 65/2 66/3 71/6<br><b>theft</b> [2] 45/2 45/12<br><b>their</b> [9] 32/20 40/3 40/16 42/7 47/16 48/8 54/5 59/10 67/3<br><b>them</b> [38] 7/5 7/5 7/12 9/5 9/6 9/14 9/15 9/15 10/7 13/16 14/3 17/3 17/14 17/17 17/18 18/6 18/7 18/10 23/10 23/24 25/12 27/18 27/21 27/25 28/1 28/23 28/24 29/8 40/22 43/24 44/6 44/7 44/16 48/14 58/17 59/19 66/2 66/16<br><b>themselves</b> [2] 2/6 48/15<br><b>then</b> [20] 10/1 10/7 11/20 14/19 15/2 18/2 26/21 32/17 38/12 42/15 42/18 42/22 43/14 43/15 46/20 47/17 47/17 57/23 64/20 68/16<br><b>theory</b> [1] 70/2<br><b>there</b> [79]<br><b>there's</b> [5] 36/9 36/13 39/5 41/5 69/8<br><b>thereafter</b> [1] 63/1<br><b>these</b> [26] 5/21 7/4 14/22 17/14 25/12 25/13 27/24 28/15 28/17 28/22 31/1 39/10 40/11 40/21 42/23 44/20 45/5 47/9 49/18 52/9 52/10 59/15 59/20 61/10 64/17 66/12<br><b>they</b> [67] 10/2 10/7 10/11 10/17 11/11 11/16 11/22 12/1 12/10 12/11 13/16 14/11 16/4 16/5 17/2 22/5 22/14 23/24 23/25 26/8 26/8 26/11 26/12 26/23 26/25 27/8 27/9 27/13 27/13 27/14 27/16 27/19 27/23 28/1 28/2 28/19 28/24 29/6 29/6 29/7 29/8 30/12 31/13 40/2 40/3 40/4 40/4 40/5 40/5 40/8 40/14 41/24 42/7 42/8 43/24 44/7 44/8 47/17 47/23 49/14 52/8 56/20 58/18 63/9 66/1 70/8 70/21<br><b>they're</b> [1] 16/25<br><b>thing</b> [8] 10/18 46/2 48/3 52/23 55/1 58/12 65/20 65/20<br><b>things</b> [14] 8/6 17/10 27/1 29/21 31/1 43/25 44/7 46/9 49/13 49/18 54/8 54/10 54/13 54/14<br><b>think</b> [50] 3/25 5/13 8/17 15/11 15/25 16/1 25/25 26/17 29/11 29/25 33/1 36/17 37/19 38/1 38/20 38/25 39/8 40/24 41/10 41/13 41/16 41/25 44/19 45/3 45/13 46/3 46/9 46/10 47/18 49/1 49/20 49/23 50/17 52/2 52/3 52/21 53/8 53/21 54/1 54/1 56/6 56/7 57/1 57/2 57/3 57/4 65/16 67/16 67/24 69/20<br><b>thinking</b> [5] 29/5 41/7 46/21 53/3 53/13<br><b>third</b> [1] 25/19<br><b>this</b> [138] |
|          | <b>T</b><br><b>table</b> [1] 52/10<br><b>take</b> [6] 25/12 25/13 40/21 41/6 47/15 51/6<br><b>taken</b> [2] 26/15 32/5<br><b>takes</b> [2] 40/22 54/12<br><b>taking</b> [8] 7/4 7/5 13/20 16/9 39/21 43/5 47/25 50/8<br><b>talk</b> [10] 5/22 14/16 15/14 17/10 20/17 22/8 24/24 30/11 47/12 64/6<br><b>talked</b> [10] 12/20 13/15 28/16 30/9 30/21 35/22 46/4 49/19 52/4 54/3<br><b>talking</b> [17] 4/13 4/16 4/18 13/3 13/13 16/15 20/5 21/22 22/13 26/21 30/12 32/7 32/7 32/15 49/3 57/13 68/11<br><b>talks</b> [2] 14/11 51/15<br><b>tall</b> [1] 50/24<br><b>tapped</b> [1] 50/19<br><b>tarnishing</b> [1] 58/22<br><b>tax</b> [1] 10/7<br><b>taxpayers</b> [2] 39/24 40/18<br><b>Ted</b> [1] 1/23<br><b>tell</b> [6] 5/9 7/21 8/1 19/17 32/12 66/18<br><b>telling</b> [4] 5/2 15/21 16/8 48/24<br><b>tells</b> [2] 14/23 38/10<br><b>temperance</b> [1] 58/20<br><b>ten</b> [7] 7/8 10/20 11/8 18/21 34/14 56/24 56/24<br><b>Tennessee</b> [1] 28/21<br><b>term</b> [7] 14/2 23/8 34/3 36/6 37/4 61/2 62/11<br><b>terms</b> [10] 5/6 19/19 24/14 25/10 44/25 45/11 52/10 56/10 56/14 67/16 52/6<br><b>terribly</b> [1] 52/6<br><b>test</b> [4] 28/12 28/25 29/11 62/25                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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19/22<br>21/17 31/23 32/21 33/1 35/17 44/4<br><b>type</b> [2] 41/7 55/17<br><b>typewritten</b> [1] 72/16<br><b>Tyriece</b> [3] 14/19 29/18 30/22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>virtue</b> [1] 58/17<br><b>vision</b> [1] 54/8<br><b>visions</b> [1] 51/1<br><b>voluntarily</b> [1] 64/25<br><b>vow</b> [1] 59/22<br><b>vs</b> [2] 1/6 2/3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>those</b> [42] 7/20 9/1 9/2 9/11 10/4<br>10/6 10/10 12/3 12/9 16/3 16/4 18/1<br>18/4 18/16 18/22 19/11 22/15 22/24<br>23/1 23/11 24/6 26/9 28/19 29/23<br>31/8 32/19 32/22 38/2 39/17 41/22<br>42/2 46/9 47/16 48/11 48/13 52/16<br>54/10 56/13 57/8 64/17 69/21 70/7<br><b>though</b> [2] 54/22 54/23<br><b>thought</b> [7] 32/25 46/17 50/16 51/11<br>53/1 54/10 68/10<br><b>threaten</b> [2] 64/24 64/24<br><b>three</b> [30] 4/3 6/8 6/24 7/17 8/11<br>8/19 9/19 9/22 10/12 11/2 16/12<br>17/11 22/21 23/2 24/5 25/17 25/23<br>26/4 26/17 29/23 31/15 32/3 32/9<br>32/10 32/17 47/8 49/2 49/8 58/13<br>60/12<br><b>three-count</b> [1] 25/17<br><b>three-level</b> [12] 4/3 6/24 7/17 8/11<br>10/12 11/2 17/11 23/2 31/15 32/3<br>32/9 32/10<br><b>three-point</b> [2] 25/23 49/8<br><b>thriving</b> [1] 50/19<br><b>through</b> [20] 7/4 39/16 41/2 45/2<br>47/19 47/23 48/4 48/7 50/3 50/8 55/9<br>55/10 55/18 55/21 55/23 57/12 59/25<br>60/1 60/12 65/10<br><b>throughout</b> [2] 53/10 67/3<br><b>throw</b> [2] 27/10 56/19<br><b>time</b> [19] 8/10 8/19 21/22 25/2 40/11<br>42/13 48/2 49/12 49/12 52/12 53/1<br>53/4 55/12 57/13 59/22 61/24 66/5<br>66/9 67/3<br><b>times</b> [4] 8/1 15/23 26/4 65/22<br><b>tiny</b> [1] 50/22<br><b>today</b> [4] 25/8 26/4 27/8 35/23<br><b>today's</b> [1] 70/14<br><b>together</b> [6] 18/10 25/12 25/23 31/1<br>33/13 49/15<br><b>told</b> [5] 13/7 17/14 17/17 30/17 58/5<br><b>too</b> [8] 15/24 26/17 29/25 42/14<br>47/24 48/24 51/21 65/15<br><b>took</b> [4] 12/25 13/4 13/5 48/14<br><b>top</b> [2] 16/18 64/20<br><b>total</b> [5] 33/14 35/18 36/10 39/16<br>61/3<br><b>totally</b> [1] 41/14<br><b>tough</b> [2] 8/19 48/22<br><b>town</b> [4] 50/18 50/18 50/20 60/5<br><b>trail</b> [1] 42/8<br><b>transcript</b> [2] 1/12 72/18<br><b>travel</b> [1] 59/12<br><b>traveled</b> [1] 60/3<br><b>treated</b> [2] 33/15 55/24<br><b>treatment</b> [2] 63/23 64/3<br><b>tremendous</b> [1] 42/21<br><b>trial</b> [7] 35/12 42/12 42/13 42/22<br>48/21 53/2 65/14<br><b>trials</b> [1] 48/14<br><b>tried</b> [1] 26/16<br><b>trips</b> [1] 55/23<br><b>trouble</b> [2] 42/11 42/21<br><b>trucking</b> [4] 13/2 13/9 14/5 40/7<br><b>true</b> [4] 17/21 55/22 58/23 72/18<br><b>truly</b> [1] 56/4<br><b>trust</b> [1] 61/22<br><b>trusted</b> [1] 59/23<br><b>truth</b> [3] 40/13 56/19 59/13<br><b>truthfully</b> [1] 53/10<br><b>try</b> [2] 20/17 39/24<br><b>trying</b> [7] 15/19 20/22 25/12 25/24<br>40/9 43/8 45/24<br><b>Tubbs</b> [2] 13/24 29/15<br><b>tune</b> [1] 53/15<br><b>turn</b> [2] 66/16 66/23<br><b>turned</b> [3] 42/5 53/16 67/4<br><b>Turner</b> [1] 1/23<br><b>twice</b> [2] 36/7 36/8<br><b>twist</b> [1] 26/16<br><b>two</b> [51] 3/18 4/10 4/11 6/23 7/20<br>7/23 7/24 8/3 8/12 8/13 9/1 9/2 9/19<br>9/22 9/25 10/5 10/11 11/3 11/4 11/17 | <b>U</b><br><b>U.S.C</b> [1] 37/24<br><b>ultimate</b> [1] 32/16<br><b>unable</b> [1] 70/5<br><b>under</b> [16] 6/2 7/5 13/1 21/10 27/5<br>32/3 33/11 33/19 33/23 34/2 37/23<br>39/9 51/22 54/4 69/19 70/7<br><b>understand</b> [5] 20/7 20/16 20/23 29/9<br>49/9<br><b>understanding</b> [1] 14/11<br><b>understood</b> [1] 57/14<br><b>undertakings</b> [1] 58/15<br><b>undisputed</b> [1] 9/18<br><b>unenforceable</b> [1] 70/1<br><b>UNITED</b> [20] 1/1 1/13 1/22 2/3 2/8<br>2/22 2/25 3/2 9/17 24/12 32/5 33/17<br>33/25 37/6 39/20 39/24 40/21 61/4<br>61/8 72/6<br><b>unlawful</b> [1] 69/7<br><b>unlawfully</b> [2] 62/23 62/24<br><b>unless</b> [1] 64/4<br><b>unreasonable</b> [1] 69/2<br><b>unremitting</b> [1] 59/16<br><b>until</b> [4] 40/15 42/16 55/9 55/11<br><b>unto</b> [2] 58/17 58/18<br><b>up</b> [27] 6/14 19/25 20/6 20/17 21/21<br>24/16 28/21 36/6 36/7 40/8 42/15<br>43/18 44/20 48/15 48/20 49/4 49/11<br>50/21 51/5 52/6 52/10 54/4 54/6 55/2<br>55/11 66/9 70/23<br><b>upon</b> [8] 48/14 58/16 59/15 59/20<br>60/10 60/10 62/10 64/14<br><b>upside</b> [1] 42/5<br><b>urged</b> [2] 10/5 19/7<br><b>us</b> [3] 26/16 42/11 47/18<br><b>USA</b> [2] 1/4 72/12<br><b>use</b> [5] 30/18 52/10 64/1 64/2 65/11<br><b>used</b> [6] 13/14 23/6 25/9 35/1 45/19<br>63/25<br><b>uses</b> [1] 22/15<br><b>using</b> [4] 22/11 22/19 33/9 62/24<br><b>usually</b> [1] 32/11<br><b>utmost</b> [1] 55/25 | <b>W</b><br><b>wages</b> [1] 61/20<br><b>waive</b> [2] 62/9 69/21<br><b>waived</b> [2] 69/16 69/23<br><b>waiver</b> [1] 70/1<br><b>waivers</b> [1] 69/25<br><b>walk</b> [1] 53/2<br><b>want</b> [6] 14/24 18/15 30/9 30/15 41/6<br>52/5<br><b>wanted</b> [9] 26/10 50/24 51/1 51/2<br>51/4 54/3 54/4 54/9 57/9<br><b>wanting</b> [1] 54/3<br><b>wants</b> [4] 41/16 52/1 66/21 67/5<br><b>warned</b> [1] 41/8<br><b>was</b> [136]<br><b>Washington</b> [1] 39/13<br><b>wasn't</b> [5] 28/22 43/17 44/17 45/4<br>57/17<br><b>watching</b> [1] 66/13<br><b>way</b> [9] 4/19 17/1 17/7 17/9 17/9<br>25/16 32/11 52/6 52/14<br><b>ways</b> [1] 26/14<br><b>we</b> [116]<br><b>we're</b> [13] 4/13 13/13 13/14 20/5<br>25/22 27/20 39/7 40/13 41/1 42/23<br>53/24 53/24 56/20<br><b>we've</b> [1] 53/25<br><b>weeks</b> [2] 6/8 7/22<br><b>weigh</b> [1] 43/8<br><b>weighed</b> [1] 69/9<br><b>weighing</b> [1] 44/15<br><b>well</b> [31] 4/22 5/4 6/4 7/21 8/23<br>11/21 12/17 15/11 16/9 16/20 19/21<br>20/11 23/15 23/22 25/20 25/22 26/22<br>26/24 28/4 29/5 37/15 39/9 44/20<br>46/17 46/21 47/12 53/9 54/23 54/24<br>59/6 68/2<br><b>well-informed</b> [1] 59/6<br><b>went</b> [5] 13/3 47/23 48/7 50/2 51/13<br><b>were</b> [67] 4/13 7/23 9/22 10/2 10/7<br>10/11 10/11 10/16 10/17 10/20 10/24<br>10/24 10/25 11/1 11/5 11/8 12/4<br>14/21 16/2 16/4 16/5 17/5 17/15<br>17/23 18/13 21/1 22/14 23/3 24/3<br>24/6 25/16 26/23 27/11 27/20 28/2<br>28/19 29/6 29/6 29/7 30/23 31/2 31/7<br>31/10 31/12 32/17 32/18 38/23 39/5<br>39/22 40/4 40/4 40/23 42/6 42/14<br>45/3 45/10 45/12 48/13 53/1 54/10<br>57/13 65/13 65/14 65/14 65/16 71/12<br>72/16<br><b>weren't</b> [1] 19/21<br><b>west</b> [3] 60/3 60/3 70/19<br><b>whack</b> [2] 51/25 52/1<br><b>what</b> [72] 6/2 7/6 8/3 8/14 8/15 8/20<br>10/10 10/22 11/2 12/9 13/7 13/15<br>15/14 15/17 15/21 16/4 16/5 16/6<br>16/7 16/18 16/23 17/14 18/10 19/17<br>19/18 20/2 23/8 23/18 24/12 24/18<br>24/20 25/24 25/25 28/12 28/12 28/19<br>30/4 30/13 30/19 32/20 37/13 38/16<br>39/7 40/14 41/14 41/24 44/19 45/13<br>45/17 45/23 45/25 46/7 46/23 47/5<br>48/7 49/1 49/3 49/22 49/24 50/7<br>51/20 54/2 54/11 54/11 54/20 56/11<br>57/16 58/4 66/5 67/1 67/20 67/22<br><b>what's</b> [10] 12/22 17/16 24/16 28/11<br>38/11 42/9 44/15 56/10 58/2 66/1<br><b>when</b> [32] 8/7 8/20 19/7 19/22 20/14<br>24/13 25/25 26/19 26/20 28/9 30/12<br>32/6 33/13 43/5 43/7 43/9 44/15 45/9<br>46/10 47/15 47/20 49/4 50/5 50/5<br>52/18 53/11 56/2 57/12 60/5 64/20<br>65/25 68/11<br><b>where</b> [27] 5/9 7/22 8/2 9/10 9/18<br>9/19 9/21 11/15 13/13 14/10 15/20<br>19/3 19/4 21/9 25/17 32/14 39/11 |

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| <p><b>W</b></p> <p><b>where...</b> [10] 45/4 48/20 49/2 50/12 51/16 51/17 56/20 58/8 65/23 70/23</p> <p><b>whether</b> [16] 4/6 4/13 4/14 6/23 15/13 17/13 18/13 20/5 21/18 23/13 23/24 30/13 31/2 31/3 31/6 38/18</p> <p><b>which</b> [28] 3/4 3/18 7/25 27/2 32/23 32/24 33/7 33/19 33/24 35/20 35/25 36/14 37/24 38/14 38/21 43/24 45/23 46/23 58/3 60/4 61/5 62/15 62/21 64/15 65/2 66/10 68/9 68/25</p> <p><b>while</b> [2] 59/8 62/17</p> <p><b>who</b> [61] 2/10 4/24 5/5 5/16 7/1 7/23 7/23 9/24 9/25 10/1 10/16 10/20 10/24 10/25 11/8 11/9 11/14 11/21 12/3 12/6 12/15 12/15 12/19 14/21 14/22 14/25 17/25 18/3 21/1 21/25 24/6 26/22 30/14 30/23 31/10 31/12 32/16 32/18 32/24 39/22 40/23 41/7 41/19 42/1 42/6 43/8 43/8 43/9 43/9 43/12 49/5 50/12 51/18 51/19 55/17 58/21 59/7 59/18 59/24 66/14 67/2</p> <p><b>whole</b> [1] 54/6</p> <p><b>whom</b> [1] 18/15</p> <p><b>whose</b> [1] 12/18</p> <p><b>why</b> [18] 3/25 6/5 8/14 10/10 10/12 15/19 17/11 19/25 30/17 33/2 47/5 47/5 47/8 47/10 47/14 53/14 56/1 64/6</p> <p><b>widow's</b> [1] 60/15</p> <p><b>Wilkins</b> [2] 15/5 21/24</p> <p><b>will</b> [19] 2/5 12/18 13/11 25/11 32/12 32/17 33/6 42/1 43/23 43/25 44/1 44/4 56/12 57/23 61/24 62/4 62/8 66/23 70/20</p> <p><b>willfully</b> [1] 35/5</p> <p><b>willing</b> [1] 59/7</p> <p><b>wire</b> [3] 2/22 32/7 33/23</p> <p><b>wires</b> [1] 15/2</p> <p><b>wish</b> [2] 58/6 58/18</p> <p><b>within</b> [13] 7/22 11/11 13/22 28/24 29/18 29/19 29/25 34/10 36/2 38/20 62/13 62/25 70/4</p> <p><b>without</b> [4] 16/15 63/18 64/1 70/6</p> <p><b>wolff</b> [4] 1/21 1/24 72/5 72/24</p> <p><b>woman</b> [2] 9/25 14/25</p> <p><b>women</b> [1] 7/4</p> <p><b>words</b> [2] 13/15 22/15</p> <p><b>work</b> [4] 14/2 14/13 40/16 55/23</p> <p><b>worked</b> [1] 40/15</p> <p><b>working</b> [1] 28/22</p> <p><b>world</b> [2] 45/25 47/21</p> <p><b>worried</b> [1] 65/25</p> <p><b>worry</b> [1] 23/19</p> <p><b>worse</b> [4] 43/9 43/19 44/18 46/11</p> <p><b>worth</b> [3] 52/12 57/2 67/3</p> <p><b>would</b> [50] 2/9 3/18 5/1 5/10 8/11 20/17 21/7 22/7 29/9 29/10 37/13 37/19 38/16 38/18 38/22 38/24 40/3 41/17 41/20 46/3 46/5 47/3 47/5 47/6 47/7 47/8 47/10 48/4 48/5 49/16 49/17 49/20 49/21 49/21 49/22 49/24 52/3 54/7 54/23 57/4 57/24 57/24 58/12 58/18 60/13 68/12 69/1 69/3 69/10 70/8</p> <p><b>wrap</b> [1] 21/21</p> <p><b>wrenching</b> [2] 42/5 48/3</p> <p><b>writes</b> [1] 27/25</p> <p><b>writing</b> [2] 9/15 39/4</p> <p><b>written</b> [1] 66/12</p> <p><b>wrong</b> [6] 5/8 5/9 15/22 15/22 19/17 25/8</p> <p><b>wrote</b> [4] 26/1 50/12 58/11 66/14</p> | <p><b>you</b> [207]</p> <p><b>you're</b> [16] 5/1 5/7 8/19 15/15 15/17 16/7 16/9 16/14 24/18 41/9 47/14 48/23 49/5 49/12 66/10 66/16</p> <p><b>young</b> [2] 66/6 66/7</p> <p><b>youngest</b> [1] 50/22</p> <p><b>your</b> [106]</p> <p><b>yours</b> [1] 20/14</p> |  |
| <p><b>Y</b></p> <p><b>yeah</b> [2] 6/4 53/25</p> <p><b>year</b> [2] 47/24 49/17</p> <p><b>years</b> [17] 34/4 36/7 37/5 39/15 45/6 50/21 50/23 53/18 53/23 54/15 56/23 56/24 59/25 60/12 62/11 66/24 66/25</p> <p><b>yes</b> [16] 3/16 6/1 6/11 6/18 16/19 24/21 28/6 29/3 29/4 29/12 36/16 36/19 69/1 69/14 69/14 70/18</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b>Z</b></p> <p><b>zero</b> [7] 26/12 30/4 43/21 44/2 44/5 44/8 44/11</p> <p><b>zilch</b> [1] 5/6</p>                                                                                                                                                           |  |