

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

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9  
10 **DATE:** JULY 5, 2006

11 **BEFORE:** Hon. Patrick L. Willis  
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ & THOMAS J. FALLON  
15 Special Prosecutors  
16 On behalf of the State of Wisconsin.

17 DEAN ARTHUR STRANG & JEROME F. BUTING  
18 Attorneys at Law  
19 On behalf of the Defendant.

20 STEVEN A. AVERY  
21 Defendant  
22 Appeared in person.

23 \* \* \* \* \*

24 **TRANSCRIPT OF PROCEEDINGS**

25 Reported by Diane Tesheneck, RPR

Official Court Reporter

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I N D E X

<u>WITNESSES</u>	<u>PAGE</u>
<b><u>SHERIFF KENNETH PETERSEN</u></b>	
Direct Examination by ATTORNEY STRANG	5
Cross-Examination by ATTORNEY FALLON	36
Redirect Examination by ATTORNEY STRANG	37
<b><u>SHERIFF GERALD A. PAGEL</u></b>	
Direct Examination by ATTORNEY KRATZ	45
Cross-Examination by ATTORNEY STRANG	59
Redirect Examination by ATTORNEY KRATZ	101

1 THE COURT: At this time the Court calls  
2 State of Wisconsin vs. Steven Avery. It's Case No.  
3 05 CF 381. This case is scheduled for a hearing on  
4 a number of pretrial motions this morning. Will the  
5 parties state their appearances for the record,  
6 please.

7 ATTORNEY KRATZ: The State of Wisconsin  
8 appears by Calumet County District Attorney Ken  
9 Kratz appearing as Special Prosecutor. Also  
10 appearing this morning is Tom Fallon from the  
11 Department of Justice, also appointed by this Court  
12 as Special Prosecutor.

13 ATTORNEY STRANG: Good morning, Steven  
14 Avery appears in person, he's second to my right.  
15 Jerome Buting of Buting and Williams is immediately  
16 next to me, representing Mr. Avery. And I'm Dean  
17 Strang, I also represent Mr. Avery.

18 THE COURT: All right. I will indicate for  
19 the record that before we began today, I met with  
20 counsel to discuss the logistics of the hearing  
21 today. I believe both parties agree that there is  
22 some overlap with some of the motions today and some  
23 of those will be heard together. With respect to  
24 the order of the motions, the parties have  
25 requested, and the Court agrees, that we'll proceed

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first on the Defendant's Motion to Dismiss.

And I understand, Mr. Strang, that the defense has some evidence to offer in relation to that motion, as well as the Motion For Change of Venue and Motion to Exclude the Sheriff's Department and It's Employees From Testifying and Overseeing Jurors; is that correct?

ATTORNEY STRANG: That is, your Honor.

THE COURT: All right. You may call your witness at this time.

ATTORNEY STRANG: Defense calls Sheriff Kenneth Petersen.

ATTORNEY KRATZ: I should note, Judge, that the examination of Sheriff Petersen and the argument on this particular motion will be done by Mr. Fallon.

THE COURT: Very well.

**SHERIFF KENNETH J. PETERSEN**, called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. Please state your name and spell your last name for the record.

THE WITNESS: Kenneth J. Petersen,  
P-e-t-e-r-s-e-n.

**DIRECT EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Good morning. Let's start with a little bit of  
3 background if we may, Sheriff Petersen. You have  
4 been with the Manitowoc County Sheriff's  
5 Department for about 31 years at this point?

6 A. Correct.

7 Q. Started as a patrol deputy?

8 A. That's correct.

9 Q. You have served as sheriff for the last six  
10 years, roughly?

11 A. Correct.

12 Q. Six and a half years, pretty close to that right  
13 about now?

14 A. It will be six years in January.

15 Q. January, that's right, you were sworn in in  
16 January, 2001, as the sheriff?

17 A. Correct.

18 Q. As the Manitowoc County Sheriff, it would be fair  
19 to describe you as the chief county law  
20 enforcement officer for the County of Manitowoc?

21 A. Yes.

22 Q. During your experience with the Manitowoc County  
23 Sheriff's Department, sir, when was the first  
24 time in which you participated, personally, in a  
25 prosecution of Steven Avery on a charge related

1 to murder?

2 A. You mean murder of a person?

3 Q. Or attempted murder, yes, of a human being?

4 A. I think 1984.

5 Q. And that involved an event that since has become  
6 widely-known, involved a violent assault on a  
7 beach here in Manitowoc County?

8 A. Correct.

9 Q. You, personally -- I'm going to at least suggest  
10 to you that I think it was 1985; does that  
11 sound--

12 A. Somewhere in the mid '80's, yes.

13 Q. We're talking about a violent assault on a beach?

14 A. Yes.

15 Q. You, personally, were requested by the, then,  
16 sheriff in Manitowoc County, Tom Kocourek, to  
17 arrest Mr. Avery on a charge of attempted murder?

18 A. Yes.

19 Q. You did that?

20 A. Yes.

21 Q. Prior to that arrest, you already knew where  
22 Steven Avery lived in 1985?

23 A. Yes.

24 Q. And that prosecution went forward following  
25 Mr. Avery's arrest?

1 A. Yes, it did.

2 Q. On a charge of attempted first-degree intentional  
3 homicide?

4 A. I'm not sure what the actual charge was at the  
5 time of trial.

6 Q. But attempted murder charge and a sexual assault  
7 charge of some kind, perhaps others, correct?

8 A. Yes.

9 Q. That resulted in a conviction?

10 A. Yes, it did.

11 Q. Resulted in a 32 year sentence being imposed?

12 A. Yes.

13 Q. You participated after the arrest of Mr. Avery,  
14 personally, in that prosecution, as a witness in  
15 that trial?

16 A. Yes.

17 Q. Later, in 2003 to be specific, the claim that  
18 Mr. Avery had made in 1985, that he was innocent  
19 of those crimes, proved to be true?

20 A. Possibly.

21 Q. That is, the State made a motion to release him  
22 from prison?

23 A. Yes.

24 Q. After some DNA testing was done?

25 A. Yes.

1 Q. That motion was made by the State, by the  
2 District Attorney of Manitowoc County, after  
3 consulting with you?

4 A. Yes.

5 Q. And Mr. Avery was released the day, or the day  
6 following the State's motion to release him?

7 A. Yes.

8 Q. Now, when you say possibly, is there any question  
9 in your mind that Gregory Allen was identified by  
10 DNA evidence as the sole attacker of the woman at  
11 issue on the beach in 1985?

12 A. Yes, I would have doubts.

13 Q. I'm sorry?

14 A. I would have doubt.

15 Q. You have doubts about that?

16 A. Yes, I believe the DNA created reasonable doubt  
17 and enough to release Steve, but I don't think  
18 that single hair was enough to convict Gregory  
19 Allen.

20 Q. Okay. Do you have doubts whether, in fact,  
21 Gregory Allen was the person who's hair was  
22 tested?

23 A. No, I believe it was.

24 Q. You base your doubts on the reliability of DNA  
25 evidence?



1 A. No.

2 Q. That is, you accept the DNA evidence and that the  
3 pubic hair at issue, in fact, was Gregory  
4 Allen's?

5 A. Yes.

6 Q. You have no reason to question or doubt the  
7 claims of the victim, the testimony of the victim  
8 in that case that one man, and one man only,  
9 attacked her in 1985 on the beach?

10 A. Yes.

11 Q. You do doubt that?

12 A. Oh, no. No.

13 Q. Okay. Mr. Avery, in any event, spent, give or  
14 take, 18 years in prison following his conviction  
15 for that crime?

16 A. I believe he had six years, also, on another  
17 charge.

18 Q. Running concurrently?

19 A. Right.

20 Q. Okay. So the total time in prison was about 18  
21 years?

22 A. Yes.

23 Q. Or in custody, I should say more accurately. You  
24 arrested him in July of 1985?

25 A. Yes.

1 Q. He was released on September 11, 2003?

2 A. Yes.

3 Q. 18 years and two months, give or take, in  
4 custody?

5 A. Yes.

6 Q. As you point out, six years of that also being on  
7 a separate and unrelated conviction?

8 A. Correct.

9 Q. But running at the same time, or concurrently?

10 A. Yes.

11 Q. You know, in your life, have you -- have you ever  
12 spent a day, or a night, in jail, for a crime you  
13 didn't commit?

14 A. No.

15 Q. Certainly not 18 years?

16 A. No.

17 Q. Or 12 years, or anything close to that?

18 A. No.

19 Q. If you were sitting here, if you were in Steven  
20 Avery's chair and you were in his shoes, so to  
21 speak, would you trust the Manitowoc County  
22 Sheriff's Department in the investigation and  
23 prosecution of yourself, a second time?

24 MR. FALLON: Objection, speculation.

25 Q. (By Attorney Strang)~ I'm not asking you to

1 speculate at all. I'm saying, if you were Steven  
2 Avery, with your present sense, on whether you  
3 would trust your department?

4 MR. FALLON: Relevance, then.

5 THE COURT: I'm going to sustain the  
6 objection.

7 Q. (By Attorney Strang)~ You have told us that you  
8 are the chief county law enforcement officer?

9 A. Yes.

10 Q. Meaning, you run the Manitowoc County Sheriff's  
11 Department?

12 A. Correct.

13 Q. The Sheriff's Department here in Manitowoc  
14 County, as in most counties, is organized with  
15 people in rank, correct?

16 A. Yes.

17 Q. That's a clumsy way to put it, but you hold the  
18 rank of sheriff?

19 A. Yes.

20 Q. Obviously. The Wisconsin Statutes require you to  
21 have something called and under sheriff?

22 A. No.

23 Q. You do have an under sheriff?

24 A. I do.

25 Q. Okay. And the under sheriff is the number two

1 person in the department?

2 A. Yes.

3 Q. Is that person, whose name I think is

4 Mr. Hermann, if I have it right?

5 A. That's correct.

6 Q. Does he have another rank or title in addition to

7 under sheriff?

8 A. Inspector.

9 Q. All right. And he's the one inspector for the

10 Manitowoc County Sheriff's Department?

11 A. Yes.

12 Q. Now, he reports directly to you?

13 A. Yes.

14 Q. Others in the department then report up through

15 him?

16 A. That's correct.

17 Q. Below him, who's the next ranking officer?

18 A. Deputy Inspector of Operations.

19 Q. And that's who?

20 A. Greg Schetter.

21 Q. I'm sorry, maybe you could spell that for the --

22 A. S-c-h-e-t-t-e-r.

23 Q. Thank you. He's the deputy inspector?

24 A. Yes.

25 Q. Below that who do we have?

1 A. Deputy Inspector of Support, that's Larry  
2 Ledvina, L-e-d-v-i-n-a.

3 Q. That's not a parallel position; the one deputy  
4 inspector is below the other?

5 A. Yes.

6 Q. All right. How far down -- I'm not going to go  
7 through everybody at the department, but how far  
8 down do we get before we get to the chief  
9 investigator, or the lieutenant in charge of the  
10 Detective's Bureau?

11 A. He would be under the Deputy Inspector of  
12 Operation.

13 Q. As well as Mr. Ledvina?

14 A. No, it's two separate divisions.

15 Q. I understand that but, in other words, under  
16 Mr. Schetter, you said --

17 A. Yes.

18 Q. -- would be the lieutenant in charge of the  
19 Detective's Bureau?

20 A. Yes.

21 Q. And the other deputy inspector?

22 A. No, the Deputy Inspector of Support would take  
23 care of the court services, secretarial  
24 functions, records releases, that type of thing.

25 Q. It's my clumsiness. I understand they have

1 separate areas, but the person who's the  
2 lieutenant in charge of the Detective's Bureau is  
3 James Lenk?

4 A. Yes.

5 Q. L-e-n-k?

6 A. Yes.

7 Q. All right. Mr. Lenk and Mr. Vetter (sic) both  
8 report to Mr. Schetter; is that right -- or  
9 Mr. Ledvina?

10 A. Ledvina.

11 Q. Both report to Mr. Schetter?

12 A. Ledvina wouldn't directly report to him, but Lenk  
13 would.

14 Q. All right. And then below Lenk, there are  
15 investigators or detectives, whichever you call  
16 them, and -- correct?

17 A. Correct.

18 Q. I'm sorry, I should have paused there. Where do  
19 sergeants fall in the hierarchy?

20 A. Sergeants are in patrol, normally. I have  
21 sergeants in the jail and on the road.

22 Q. They are in charge of deputies?

23 A. Correct. But there's lieutenants in patrol also,  
24 which would supervise the sergeants in the  
25 patrol.

1 Q. Got it. So if we work our way up, we have got  
2 deputies in the various divisions of the  
3 department?  
4 A. Yes.  
5 Q. They report directly to sergeants?  
6 A. Yes.  
7 Q. Sergeant's report directly to lieutenants?  
8 A. Yes.  
9 Q. You haven't described any captain's, is that --  
10 A. Deputy inspector would be equivalent to a  
11 captain.  
12 Q. All right. And you have told us about them. So  
13 the lieutenants report to deputy inspectors?  
14 A. Correct.  
15 Q. Who deputy inspectors report to the inspector and  
16 under sheriff?  
17 A. Yes.  
18 Q. And then, ultimately, the top of the chart, or  
19 the pyramid, is you?  
20 A. Correct.  
21 Q. Now, you are familiar with a man named Andrew  
22 Colborn?  
23 A. Yes.  
24 Q. All right. He's a sergeant in your department?  
25 A. Yes.

1 Q. What -- Just to identify him, what's his area of  
2 responsibility?

3 A. He's a patrol sergeant.

4 Q. Patrol meaning, covering the county's roads?

5 A. Right. He would be referred to as a shift  
6 commander, so he would assign the beats, the  
7 vehicles, and brief the patrolmen before they go  
8 out into the road.

9 Q. In the patrol division?

10 A. Yes.

11 Q. Another person who will come up is, I believe, a  
12 Lieutenant named Remiker. I could be wrong. He  
13 may be a detective.

14 A. Remiker is a detective.

15 Q. All right. So he's in the Detective Bureau,  
16 obviously?

17 A. Correct.

18 Q. He would report directly to Mr. Lenk?

19 A. Yes.

20 Q. And, in a sense -- I don't mean this to sound  
21 like a loaded question, if it does, but in a  
22 sense, the Manitowoc County Sheriff's Department  
23 has a paramilitary structure in that we have  
24 these ranks that we have now established, and the  
25 chain of command is clear and well established?



1 A. Yes.

2 Q. You, as the sheriff, set the overall tone for the  
3 department?

4 A. I believe so.

5 Q. You try to express your values?

6 A. Yes.

7 Q. Your policy directives?

8 A. Yes.

9 Q. And, ordinarily, you would do that -- or I  
10 shouldn't even say ordinarily -- but you may do  
11 that by written directive?

12 A. Yes.

13 Q. That written directive may go directly to one of  
14 your subordinates?

15 A. It could.

16 Q. Or it could go to a number of people, including  
17 those several steps down the ladder, correct?

18 A. Correct.

19 Q. You may send a written directive to all staff,  
20 for example?

21 A. Correct.

22 Q. But in any event, you are the person who sets the  
23 tone and the policies of your department?

24 A. Yes.

25 Q. You have the power to hire?

1 A. Yes.

2 Q. You have the power to fire, probably with some  
3 oversight from the County Board or some committee  
4 of the County Board?

5 A. Generally, we have to inform personnel and, of  
6 course, we have to follow the State Statutes.

7 Q. Yes, of course. But in -- It would be fair to  
8 say that, in a rough sense, the buck stops on  
9 your desk?

10 A. Yes.

11 Q. Do you find, in general, that the Manitowoc  
12 County Sheriff's Department operates as a well  
13 disciplined organization?

14 A. I believe so.

15 Q. That is, your directives are communicated,  
16 faithfully, to those below you?

17 A. Yes.

18 Q. And they are followed?

19 A. Yes.

20 Q. On Saturday, November 5, 2005, and just to orient  
21 you, that Teresa Halbach, we now know, was last  
22 seen on October 31, 2005. I don't expect that  
23 you necessarily know this, but I'm led to believe  
24 that she was reported missing on Thursday,  
25 November 3. All right.

1                   So I'm talking about two days later, on  
2                   Saturday, November 5, 2005, at about 11:30 or  
3                   11:45 in the morning, a decision was made to  
4                   transfer control of the investigation into her  
5                   disappearance, and circumstances surrounding it,  
6                   to the Calumet County Sheriff's Department and to  
7                   DCI, or the Division of Criminal Investigation;  
8                   is that true?

9           A.    Yes.

10          Q.    That decision to transfer control was made by  
11                you?

12          A.    Indirectly, yes.

13          Q.    You say indirectly, the primary focus of the  
14                investigation was in Manitowoc County, within the  
15                metes and bounds of Manitowoc County, correct?

16          A.    Correct.

17          Q.    To fall within your jurisdiction?

18          A.    Correct.

19          Q.    Your department had been involved in early steps  
20                in the investigation of Ms Hallbach's  
21                disappearance?

22          A.    Correct.

23          Q.    Maybe you would explain, then, for me, what you  
24                mean when you say, indirectly, the decision that  
25                Saturday morning was made by you?

1 A. I had been out of town the previous week. I was  
2 out in Seattle, Washington. And I arrived home  
3 probably 10:30, quarter to 11, Saturday morning.  
4 And that decision to transfer had already been  
5 made, I assume, by the inspector. I never  
6 inquired. I agreed with the way it was going, so  
7 I didn't interfere.

8 Q. Okay. I need to explore that just a little bit  
9 further to nail down timing. When you say you  
10 arrived home, do you mean physically at your  
11 home?

12 A. Yes.

13 Q. All right. You didn't go in to work immediately  
14 that Saturday morning?

15 A. No.

16 Q. Had you been in contact with the office during  
17 the course of that week in Seattle?

18 A. No.

19 Q. So you really were --

20 A. The first I heard --

21 Q. -- out of loop so to speak?

22 A. Yeah. The first I heard about the Halbach case  
23 was when a reporter called me Saturday after 11.

24 Q. Do you recall about when, after 11?

25 A. About 11:15, somewhere in that general area.

1 Q. Okay. And this was entirely news to you at that  
2 point?

3 A. Yes.

4 Q. You got in contact with Mr. Hermann?

5 A. Yes.

6 Q. Inspector Hermann?

7 A. Right.

8 Q. Do you remember about when you did that?

9 A. It had been shortly after the reporter called.

10 Q. I will bet. By telephone?

11 A. Yes.

12 Q. All right. And at that point, he told you that  
13 he had already decided to shift the primary  
14 responsibility for the investigation to the two  
15 other law enforcement agencies I described?

16 A. Yes.

17 Q. Did he tell you when he had made that decision?

18 A. No. He had talked about conferring with Corp  
19 Counsel and that was what he advised. Normally  
20 we follow his advice.

21 Q. You agreed with that advice?

22 A. Yes.

23 Q. You had a discussion with him on his reasoning?

24 A. Yes.

25 Q. And in a nutshell -- and you are free to disagree

1 or explain this -- but in a nutshell, the reason  
2 he described to you, after consulting with  
3 Corporation Counsel, was to avoid the appearance  
4 or the reality of a conflict of interest?

5 A. Correct.

6 Q. Because at least a person of interest at that  
7 point was Steven Avery?

8 A. Yes.

9 Q. You were told that?

10 A. No, they didn't give me any specific suspects or  
11 people of interest. They merely stated that the  
12 vehicle had been found on the Avery Salvage Yard  
13 property.

14 Q. Correct. And what further information did you  
15 need, or ask for, or inquire about, to decide  
16 whether, in fact, there was a conflict of  
17 interest or the appearance of one?

18 A. I didn't need anything more than that at that  
19 point.

20 Q. Avery Auto Salvage Yard, car found, that was  
21 enough?

22 A. Sure.

23 Q. The reason you perceived, or you agreed with  
24 Inspector Hermann's assessment, that there was a  
25 potential conflict of interest, is that at that

1 time a civil lawsuit by Steven Avery was pending  
2 against Manitowoc County and some former  
3 officials?

4 A. Correct.

5 Q. That was a civil lawsuit for 36 million dollars  
6 in damages?

7 A. Correct.

8 Q. It related to the 1985 conviction that you and I  
9 have discussed this morning?

10 A. Correct.

11 Q. Did you see that as a real and present conflict  
12 of interest on November 5?

13 A. I don't see it so much as a conflict of interest,  
14 I would say a prudent decision just to keep  
15 accusation free.

16 Q. All right. And what did you -- what did you  
17 understand the decision to be, in terms of the  
18 shifting of responsibility?

19 A. That the Calumet County Sheriff would run the  
20 investigation and I would pay for it.

21 Q. Okay. In addition to paying for the  
22 investigation, what role was the Manitowoc County  
23 Sheriff's Department to play, if any?

24 A. Support.

25 Q. What does support mean?

1 A. Logistics, equipment, whatever they needed,  
2 manpower.

3 Q. So the Calumet County Sheriff, Mr. Pagel, was to  
4 communicate with you, or your department?

5 A. As far as?

6 Q. Logistics, support, manpower, whatever he needed?

7 A. Yes.

8 Q. All right. So he would request it of you, or  
9 someone in your department?

10 A. Yes.

11 Q. And then you would provide it?

12 A. Yes.

13 Q. The Manitowoc County Sheriff's Department, in  
14 that way, continued to play an active role in the  
15 investigation into Ms Halbach's disappearance?

16 A. Yes, I believe so.

17 Q. You monitored the progress of that investigation?

18 A. No, I have never seen a report on the actual  
19 investigation.

20 Q. All right.

21 A. I have gotten copies of bills, we have had  
22 conferences on security, that type of thing.

23 Q. The guy in charge usually gets the bills.

24 A. Yeah.

25 Q. But in your department, reports generated by



1           deputies, or detectives, or sergeants, or  
2           lieutenants, don't necessarily all come up to  
3           your desk?

4    A.    Most of them do.

5    Q.    And this one may have or haven't?

6    A.    Have not.

7    Q.    Why?

8    A.    I divorced myself from the early investigation.

9    Q.    You personally?

10   A.    Correct.

11   Q.    All right.  When did that happen, Sheriff  
12           Petersen?

13   A.    On that Saturday.

14   Q.    Immediately?

15   A.    Right.

16   Q.    Okay.  Who did you leave as the liaison, or the  
17           contact person, or the reviewing person within  
18           your department, for your department's role in  
19           the investigation?

20   A.    Deputy Inspector Schetter.

21   Q.    With a formal directive to him of some kind?

22   A.    No.

23   Q.    With a conversation?

24   A.    No, I didn't talk to him.  He may have talked to  
25           the inspector, he didn't talk to me.

1 Q. Oh. Okay. Do you know whether someone directed  
2 Deputy Inspector Schetter to play a reviewing  
3 role?

4 A. No.

5 Q. How do you know he is?

6 A. Because he was out at the scene with the sheriff  
7 and his people.

8 Q. All right. And who is getting the reports  
9 generated by the Manitowoc County Sheriff's  
10 Department on the Halbach investigation and,  
11 ultimately, the arrest and prosecution of  
12 Mr. Avery?

13 A. I would believe Calumet County Sheriff's  
14 Department would.

15 Q. Not Deputy Inspector Schetter?

16 A. Well, they would still be in our files, there  
17 would be copies there -- or originals there. The  
18 copies would be -- would be shipped.

19 Q. All right. I will see if I can do this  
20 efficiently, and the problem is, you may not know  
21 some of the facts I'm going to suggest to you.

22 A. Okay.

23 Q. Because it sounds like I have seen Manitowoc  
24 Sheriff's Department reports that you probably  
25 have not. All right?

1 A. Sure.

2 Q. But let me suggest these things and we'll see  
3 what you know and what you don't know, or what  
4 you dispute. All right. The first law  
5 enforcement officer to speak with -- speak  
6 personally with Steven Avery about Teresa  
7 Halbach, which was on November 3, was Sergeant  
8 Andrew Colborn of your department; is that right?

9 A. Don't know.

10 Q. One way or the other?

11 A. Yeah, don't know.

12 Q. You don't dispute that?

13 A. Yeah, I don't know.

14 Q. All right. The first law enforcement officers to  
15 search Mr. Avery's trailer, this time with  
16 consent, on Friday, November 4, were two members  
17 of the Manitowoc County Sheriff's Department,  
18 Lieutenant Lenk and Detective Remiker?

19 A. I believe they were with a Calumet County  
20 officer.

21 Q. You think they may have been with a Calumet  
22 County officer?

23 A. I believe so.

24 Q. But you know that Lenk and Remiker --

25 A. Had been at the trailer.

1 Q. -- did a consent search of the trailer on Friday,  
2 November 4th?

3 A. Yes, I believe so.

4 Q. On Saturday, November 5, the first law  
5 enforcement officer, as opposed to citizen,  
6 unsworn citizen, to see Teresa Halbach's Toyota  
7 Rav 4, was a member of your department, Detective  
8 Remiker?

9 A. I don't know that.

10 Q. You don't dispute it, you just don't know one way  
11 or the other?

12 A. I don't know.

13 Q. All right. The first search of Mr. Avery's  
14 trailer, with a search warrant, occurred later on  
15 Saturday, November 5. And that involved, again,  
16 Detective Remiker of your department and Calumet  
17 County Investigator Gary Steier, or is that  
18 something you know?

19 A. That, I believe, is what I was referring to.

20 Q. All right. The first law enforcement officers  
21 that day to collect any suspected blood in  
22 Mr. Avery's trailer, or on it, was, again,  
23 Detective Remiker of your department, correct?

24 A. It's possible, yes.

25 Q. He gave that to Sergeant Colborn of your

1 department?

2 A. That I don't know.

3 Q. Don't dispute, but just don't know?

4 A. Yeah.

5 Q. The detached garage between Mr. Avery's trailer  
6 and Barb Yanda's trailer, I believe first was  
7 searched pursuant to warrant on Sunday, November  
8 6. Were you aware that Detective Remiker and  
9 Lieutenant Lenk and Sergeant Colborn, along with  
10 a Calumet County deputy, were the first law  
11 enforcement officers to search the detached  
12 garage?

13 MR. FALLON: Excuse me, your Honor, I'm  
14 going to impose an objection on this particular line  
15 of questioning as -- and the reason is, the previous  
16 testimony of Sheriff Petersen indicating that as of  
17 earlier that day, 11:30, 11:45, control of the  
18 investigation was passed. And given that fact, the  
19 fact that there may have been some logistical or  
20 support personnel provided by the Manitowoc County  
21 Sheriff's Department to assist in these searches or  
22 contacts, was all under the control and direction of  
23 Sheriff Pagel at Calumet County. Thus, this  
24 particular line of questioning, I would suggest to  
25 the Court, is irrelevant.

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THE COURT: Mr. Strang.

ATTORNEY STRANG: Let me ask some clarifying questions, because I'm not necessarily in disagreement with the factual portion of Mr. Fallon's statement, and I will clarify that.

Q. (By Attorney Strang)~ Any actions that members of your department took after, let's say 11:30, on Saturday, November 5, you believe would have been taken with the knowledge, or under the direction, at the request, however you want to put it, of either the Calumet County Sheriff's Department or the DCI?

A. Correct.

Q. That is, neither you, nor Inspector Hermann, nor anybody above the level of the people in your department involved, were directing, or controlling, or supervising the steps of those people?

A. Correct.

Q. My -- And I think you and I are in agreement, I'm not trying to suggest otherwise, my questions really are just inquiring into who the boots on the ground were, who the people were, not who's directing them, or telling them what to do and not to do; do you understand me that way?

1 A. Correct.

2 Q. Okay. So with that limitation, Lenk, Remiker and  
3 Colborn, along with a Calumet deputy -- Calumet  
4 County deputy, were the first to search the  
5 detached garage on Sunday, November 6th?

6 MR. FALLON: I'm going to renew the  
7 objection. I understand counsel's point, but I  
8 still fail to see the relevance as it pertains to  
9 the motion to dismiss and/or the motion to  
10 exclude.

11 ATTORNEY STRANG: It bears more on the  
12 motion to exclude. I have moved to exclude not just  
13 Sheriff Petersen from further involvement in this  
14 case, supervising the jury, or in a logistical or  
15 support role to the Court, but have moved to exclude  
16 the entire department from providing that logistical  
17 or support role. So, I think this has a bearing,  
18 the involvement of others in the department clearly  
19 has a bearing on that motion, your Honor.

20 THE COURT: I believe it relates to the  
21 motion to exclude, so I'm going to allow it.

22 ATTORNEY STRANG: Do you recall my last  
23 question?

24 THE WITNESS: No.

25 Q. (By Attorney Strang)~ Sunday, November 6,

1 detached garage, first law enforcement officers  
2 to search, Lenk, Remiker, Colborn, and a deputy  
3 from Calumet whose has a name, and that's Dan  
4 Kucharski?

5 A. I wouldn't know who searched it.

6 Q. Don't know one way or the other?

7 A. No, I don't know who was in the garage.

8 Q. Don't dispute that the three Manitowoc people  
9 were among the first law enforcement people to  
10 enter the garage?

11 A. It's possible.

12 Q. All right. This one you may know. On November  
13 8, which is Tuesday, it was widely reported that  
14 a law enforcement officer found a Toyota key that  
15 fit the Toyota Rav 4, in the bedroom of Steven  
16 Avery, in the trailer; do you recall that?

17 A. That would be Detective Lenk.

18 Q. That was Detective Lenk -- or Lieutenant Lenk of  
19 your department?

20 A. Yes.

21 Q. Law enforcement officers first came across bone  
22 fragments in a burn pit out -- south, south and  
23 east of the Avery -- the Steven Avery trailer on  
24 November 8 as well. Do you recall Deputy Jost,  
25 or Sergeant Jost, of your department, as being



1           the first officer who claimed to see a bone  
2           fragment?

3       A.    I don't know who saw the bone fragments.

4       Q.    One way or the other?

5       A.    Correct.

6       Q.    Am I pronouncing Jost's name right?  J-o-s-t?

7       A.    Yes.

8       Q.    Now, of the names that have come up here we  
9            have -- I have mentioned Lieutenant Lenk and  
10           Detective Remiker and Sergeant Colborn, more than  
11           once each, this morning.  I want to be clear, one  
12           of the reasons you disengaged personally,  
13           completely, from this investigation, on November  
14           5, is that you, personally, had sat for a  
15           deposition in Steven Avery's civil claim against  
16           Manitowoc County?

17      A.    No, I don't think I had anything to do with that  
18            decision, no.

19      Q.    Let's break this down.  First of all, you did  
20            have your deposition taken in that lawsuit?

21      A.    Yes.

22      Q.    You had your deposition taken on October 13,  
23            2005; does that sound right?

24      A.    It's possible.

25      Q.    About two and a half, three weeks, before Ms

1 Halbach disappeared?

2 A. Somewhere in that time period.

3 Q. And the other two members of your department who  
4 had their depositions taken about the same time  
5 were Lieutenant Lenk and Sergeant Andrew Colborn,  
6 correct?

7 A. I don't know. I don't know who gave depositions.

8 Q. You don't one way or the other?

9 A. I saw one person, actually, two people, but I  
10 don't know who they all deposed now.

11 Q. I think one of them had his deposition taken the  
12 same day you did. Did you ever talk to  
13 Lieutenant Lenk about having his deposition taken  
14 in that lawsuit?

15 A. No.

16 Q. Or Sergeant Colborn?

17 A. No.

18 Q. You don't disagree that they both sat for  
19 depositions in that lawsuit in mid-October, 2005,  
20 you just don't know?

21 A. As I recall, that had something to do with some  
22 information that came somewhere in the late 90's.

23 Q. Mid 1990's, that's right.

24 A. Yeah, but I don't know when they were deposed. I  
25 wouldn't have a clue.

1 Q. You understand they were, you just don't know  
2 when?

3 A. Correct.

4 Q. And one of the things, that initially, I think,  
5 probably brought you here, was an interview, or a  
6 special two part series that FOX 11 TV in Green  
7 Bay did in May; do you remember that?

8 A. Yes.

9 Q. I'm not going to go into the substance of that.  
10 I just want to nail down a couple of questions.  
11 First of all, that was you who appeared as  
12 Sheriff Petersen in that two part segment?

13 A. Yes.

14 Q. All right. Do you remember now about when you  
15 actually sat for the interview, or interviews,  
16 that were aired on May 10 and 11?

17 A. I believe it was somewhere in the second half of  
18 April.

19 Q. Okay. So two weeks or more before this segment  
20 aired?

21 A. At least two weeks before.

22 Q. Sometime after April 15, roughly?

23 A. Roughly.

24 Q. I mean that's your best recollection as you sit  
25 here?

1 A. Yes.

2 Q. Do you remember whether there was one interview  
3 or more than one interview?

4 A. One interview, lasted about a half hour.

5 ATTORNEY STRANG: And that's all I have.  
6 Thank you.

7 THE COURT: Mr. Fallon, any questions?

8 MR. FALLON: One moment, Judge. I just  
9 have probably two or three questions, Sheriff.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. As far as you know, all decisions, instructions,  
13 and supervision of the Manitowoc County Sheriff's  
14 personnel participating in the investigation of  
15 this case came at either the direction or request  
16 of Sheriff Pagel from Calumet County, or members  
17 of the Department of Justice's Division of  
18 Criminal Investigation; is that true?

19 A. That's correct.

20 Q. In your capacity as sheriff, of the county in  
21 which these proceedings are being held, have you  
22 instructed anyone, or told anyone, what to do or  
23 what to say relative to any of the court support  
24 personnel that are present here today?

25 A. No, I have not.

1 Q. Have you directed them to engage in any comments  
2 with the media or anyone connected with this  
3 case?

4 A. No.

5 Q. As far as you know, have you issued any orders or  
6 directives at all relative to the handling of  
7 these court proceedings, to your personnel, or  
8 has that been left to others, or is it simply  
9 something that they routinely do what they do?

10 A. You mean like court security?

11 Q. Right.

12 A. That would be what they normally do.

13 Q. All right. And you have given no other  
14 instructions or directions?

15 A. No.

16 ATTORNEY FALLON: That's all I have.

17 THE COURT: Any redirect?

18 ATTORNEY STRANG: I do.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. Just so I'm clear, I mean, do you have a division  
22 that provides court support? Is that a separate  
23 division within the Manitowoc County Sheriff's  
24 Department?

25 A. That comes under the Support Division, Deputy

1 Inspector Ledvina.

2 Q. So everybody in this courtroom who is wearing a  
3 Manitowoc County Sheriff's deputy uniform,  
4 ultimately, calls you boss?

5 A. Yes.

6 Q. All right. On the scene of the investigation, I  
7 think you testified, in response to Mr. Fallon's  
8 question, that Manitowoc County Sheriff's  
9 Department personnel would have been following  
10 the directions of either the Calumet County  
11 Sheriff's Department or DCI; did I understand you  
12 correctly?

13 A. Correct.

14 Q. And within the ranks of those there in the  
15 Manitowoc County Sheriff's Department, you would  
16 expect the ordinary hierarchies continue to  
17 apply, correct?

18 A. Yes.

19 Q. When -- You testified as well that you haven't  
20 directed anyone in your department to speak to  
21 the media about this investigation or  
22 prosecution?

23 A. Correct.

24 Q. All right. And, in fact, I'm going to take that  
25 a little bit further. On or about September 12,

1           2003, if we go back not quite three years now,  
2           you had a conversation with Manitowoc County  
3           Corporation Counsel in which he suggested that  
4           you and members of your department make no public  
5           statements at all about Steven Avery?

6           A.    I don't recall.

7           Q.    Do you recall issuing a directive, a written,  
8           very short directive, to your department, that  
9           people were to make no public statements about  
10          Steven Avery?

11          A.    It's possible.

12          Q.    Back in December, 2003?

13          A.    It's possible.

14          Q.    Do you recall that?

15          A.    No.

16          Q.    That was, I think, marked as Exhibit 140 of your  
17          deposition; would it help to look at the  
18          deposition?

19          A.    Could be, yeah.

20          Q.    Okay. I am approaching you with a transcript of  
21          your deposition. You are welcome to look at all  
22          of it, but I would invite your attention  
23          particularly to page 45, right after Exhibit 140  
24          is identified. You can look at that yourself and  
25          see if that helps restore your recollection.

1 A. I don't see what you want me to see here.

2 Q. I'm sorry, do you see where it refers to Exhibit  
3 140?

4 A. Yes.

5 Q. Okay. Here we go, the lawyer who is asking you  
6 questions is asking you about the circumstances  
7 of making that two sentence memo that he's marked  
8 as Exhibit No. 140?

9 A. Okay.

10 Q. All right. What it was, I mean, if you now  
11 recall, you had done a very short memo, about two  
12 sentences, telling your entire department, don't  
13 talk about Steven Avery?

14 A. Okay.

15 Q. On the advice of the Corporation Counsel.

16 A. Correct.

17 Q. Do you remember doing that?

18 A. I believe so.

19 Q. Okay. When did you -- When, if ever, did you  
20 lift that order?

21 A. Didn't.

22 Q. Did it apply to you in mid-April, 2006, when you  
23 sat down with FOX 11?

24 A. No, I don't believe so. I believe if anyone  
25 would have talked, would have been able to come



1 from myself or the inspector.

2 Q. Okay. So the two of you, the lead inspector  
3 being Mr. Hermann?

4 A. Correct.

5 Q. The two of you were excepted -- outside the scope  
6 of that and could make public comments about  
7 Steven Avery?

8 A. I believe.

9 Q. You believe?

10 A. Yeah, I believe we could.

11 Q. You are the guy who wrote the memo, I mean, is it  
12 yes or no?

13 A. Yes.

14 Q. Thank you. That's it. Oh, another question, you  
15 won't need the deposition, but give me -- I don't  
16 know if you have an exact number, but about how  
17 many detectives do you have in the detective  
18 bureau of the Manitowoc County Sheriff's  
19 Department?

20 A. I believe five, including the lieutenant.

21 Q. Including Lieutenant Lenk?

22 A. Yes.

23 Q. All right. And do they cover all three shifts or  
24 is that primarily a day shift bureau?

25 A. Primarily a day shift, with an on call basis.

1 Q. And then are there acting detectives as well, or  
2 people who perform investigative duties outside  
3 the Detective Bureau?

4 A. We have evidence techs and things like that, yes.  
5 People that know how to take pictures, people  
6 that know how to lift fingerprints, that type of  
7 thing.

8 Q. To what division are they assigned?

9 A. Operations.

10 Q. To operations?

11 A. Yes.

12 Q. They are not assigned to the patrol division?

13 A. They come out of the patrol division, yes.

14 Patrol operations are synonomous.

15 Q. I see. All right.

16 ATTORNEY STRANG: Thank you. I will just  
17 take that back. And that's all I have, your Honor.

18 ATTORNEY FALLON: Nothing further.

19 THE COURT: Any further questions?

20 ATTORNEY FALLON: No.

21 THE COURT: All right. The witness is  
22 excused. Mr. Strang, any other evidence relating to  
23 these motions?

24 ATTORNEY STRANG: Yes. No other testimony.  
25 If, and when, we get to talking directly about a

1 change of venue, I'm -- and this was at the Court's  
2 urging -- I'm going to offer two full boxes of  
3 material. I have provided the same to the State,  
4 identical sets.

5 And these boxes include 24 DVD's and  
6 then thousands of 8 1/2 by 11 pages of paper,  
7 which consist of transcripts of television and a  
8 few radio broadcasts, newspaper articles that we  
9 copied to reduce the bulk. I had four boxes and  
10 I reduced this to 2 by photocopying, judiciously.  
11 Photo copies from websites, some of newspapers,  
12 some other than newspapers, for example,  
13 television stations.

14 And then there are lists provided to me  
15 by something called Wisconsin Media Services that  
16 provides a few lines of text from television  
17 broadcasts relating to Ms Halbach or Mr. Avery.  
18 I used those lists to select which TV reports I  
19 wanted copied to DVD.

20 And I'm going to guess that of all the  
21 stories that Wisconsin Media Services covered for  
22 me, I don't know, it took a quarter to a half,  
23 somewhere in there, maybe more than half of some  
24 of them. And I -- The DVD's all come from either  
25 the Milwaukee media market or the Green Bay Media

1 Market.

2 So, in other words, the Milwaukee and  
3 the Green Bay television stations, but not  
4 Wausau, not Madison. I did not make any effort  
5 to capture publicity in those media markets. So  
6 that's what's in the two boxes behind me. That  
7 may be something that's bulky enough that I  
8 should discuss with the Deputy Clerk during a  
9 break here this morning.

10 But if we get to the change of venue  
11 after we have argued dismissal and an  
12 adjournment, I'm prepared to offer that. Beyond  
13 that, I have got no other evidence to tender on  
14 the three motions that we're undertaking  
15 initially.

16 THE COURT: Does the State have any  
17 evidence to offer with respect to those three  
18 motions of the defense?

19 ATTORNEY KRATZ: As to the Motion to  
20 Dismiss, Judge, we did intend to call Sheriff Pagel  
21 to testify.

22 THE COURT: All right. You may call him at  
23 this time.

24 **SHERIFF GERALD A. PAGEL**, called as a  
25 witness herein, having been first duly sworn, was

1 examined and testified as follows:

2 THE CLERK: Please be seated. Please state  
3 your name, spell your last name for the record.

4 THE WITNESS: Gerald A. Pagel, P-a-g-e-l.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Mr. Pagel, how are you employed?

8 A. I am the Sheriff for Calumet County.

9 Q. And as we have heard in this last series of  
10 examinations, your department, and you  
11 personally, were requested to assume  
12 investigative responsibility in the disappearance  
13 of Teresa Halbach and the subsequent  
14 investigation into how that occurred; is that  
15 correct?

16 A. That is correct.

17 Q. Sheriff Pagel, do you recall on Saturday,  
18 November 5, 2005, being at the Avery Salvage Yard  
19 and accepting responsibility for this  
20 investigation?

21 A. Yes, I do.

22 Q. After that period of time, is it a correct  
23 statement, as we have heard from Sheriff  
24 Petersen, that your department, in concert with  
25 the Division of Criminal Investigation, made all

1           investigative decisions, that is, you directed  
2           the investigation; is that correct?

3                    ATTORNEY STRANG: Now that we're beyond  
4           preliminary questions, I'm going to object to  
5           leading, at least I assume Sheriff Pagel is not  
6           hostile to Mr. Kratz.

7                    THE COURT: The objection is sustained.

8    Q.    (By Attorney Strang)~ Who then, Sheriff Pagel,  
9           was involved in directing this investigation?

10   A.    It was members of the Calumet County Sheriff's  
11           Department, in conjunction with the Department of  
12           Criminal Investigation, as far as a joint  
13           investigation, team work.

14   Q.    Mr. Strang's motions as to pretrial publicity and  
15           related motions deal with pretrial publicity.  
16           Let me first ask you whether you have any  
17           experience or training in media relations,  
18           specifically, as it relates to high profile  
19           cases?

20   A.    Yes, I do. I have gone to two separate training  
21           sessions in media relations with law enforcement.

22   Q.    Are you an elected official?

23   A.    Yes, I am.

24   Q.    And similar to Sheriff Petersen, do you consider  
25           yourself the head of your law enforcement agency?

1 A. Yes, I do.

2 Q. Sheriff Pagel, prior to the discovery of Teresa  
3 Halbach's vehicle on November 5th, was your  
4 agency involved in what's been referred to as a  
5 missing persons investigation?

6 A. Yes, we were.

7 Q. Could you describe, just briefly, the scope of  
8 that investigation for us?

9 A. On, I believe it was November 3rd, our department  
10 received a call of a missing person, that being  
11 Teresa Halbach. Our agency became immediately  
12 involved in speaking with the relatives and  
13 friends of Teresa. And, ultimately, that  
14 Thursday evening, I received a call at home from  
15 Investigator Mark Wiegert, informing me of the  
16 fact that Teresa Halbach was missing and that  
17 last contact with her had been on October 31st.

18 Q. Have you been engaged in missing person  
19 investigations before?

20 A. Yes, I have.

21 Q. As part of those investigations, Sheriff, and I  
22 will just ask you directly, as part of this  
23 investigation as well, did you invite  
24 participation of the media or the general public  
25 in assisting in locating Ms Halbach?

1 A. Yes, I did.

2 Q. How was that done?

3 A. That was done Thursday evening, shortly after I  
4 received the call from Investigator Wiegert. I  
5 responded to the Sheriff's Department. And it's  
6 been my theory, and also information that has  
7 been provided to me through investigative  
8 matters, that the quicker you get information to  
9 the media the better.

10 We need public's assistance in trying to  
11 locate missing individuals, and this was my  
12 thought that evening, was to get the information  
13 about Teresa, about her disappearance, to the  
14 media, so that we could have the public's  
15 assistance in attempting to locate her.

16 Q. After Ms Halbach's vehicle was found on the 5th  
17 of November, were there discussions as to what,  
18 if anything, would be disseminated, or told, to  
19 the general public?

20 A. Yes, it was felt that we needed to control the  
21 information that was disseminated to the general  
22 public. It was done for investigative purposes  
23 and also to control the information that the  
24 media received, that we needed to have  
25 disseminated to them. We still had a missing



1 person and we needed, again, the public's  
2 assistance in trying to locate Teresa.

3 We found her vehicle, that was true, but  
4 we still had not found Teresa. So we still felt  
5 that we needed the public's assistance in  
6 locating her.

7 Q. Was it decided, Sheriff Pagel, who would be  
8 involved in disseminating information about --  
9 both about the investigation and the request for  
10 assistance from the public?

11 A. Yes, a decision was made that we were going to,  
12 again, control who the media went to as far as  
13 gathering or obtaining information. And it was  
14 felt that myself and yourself would be the  
15 individuals who would disseminate the  
16 information.

17 Again, we could control the information  
18 that the media would obtain and, also, that it  
19 would not impair the investigation. Often in  
20 these type of cases, the media wishes to contact  
21 investigators, contact individuals who are  
22 involved in the investigation. And we felt it  
23 would be better if we just had two individuals  
24 who they could contact and who would be the  
25 individuals that they would go to in attempting

1 to obtain information.

2 Q. While this case remained a missing persons  
3 investigation, was it decided how many times per  
4 day the media would receive information?

5 A. Yes, we felt that we would provide information  
6 daily to the media to keep them informed, and  
7 also to, again, provide information to the  
8 general public as to the outcome, the scope,  
9 where the investigation was going.

10 Q. Sheriff Pagel, on those early occasions, that is  
11 the press conference on the 5th and perhaps the  
12 6th of November, could you characterize the  
13 interest from the public, that is, from both the  
14 media and general public, be able to gauge how  
15 interested they were in this investigation?

16 A. We were able to determine that there was a huge  
17 interest in this investigation. And we knew  
18 then, and we knew beginning, going into this  
19 investigation, that there would be a huge, or a  
20 large interest in the media for this  
21 investigation, and by the public as to this  
22 investigation.

23 Q. Were there any discussions held as to limiting  
24 what was said and the reasons to not provide  
25 information of a specific nature?

1 A. Yes, we had daily meetings to discuss what  
2 information was going to be provided to the  
3 media. Again, this was done for several reasons.  
4 One was to -- for investigative purposes, to  
5 ensure that information was not disseminated that  
6 we did not wish to have disseminated.

7 We also wanted to do what is being  
8 alleged here, in that not having prejudicial  
9 information, inflammatory information, provided  
10 to the public. And we also had a sensitivity  
11 issue. We felt that we had -- we owed it to the  
12 Halbach family, to the relatives, that  
13 information provided to the media, to the public,  
14 would be sensitive in nature and that we kept  
15 them informed. They were involved in the loop.

16 In fact, before any information was  
17 provided to the media, the Halbach's were  
18 contacted and they were informed of what  
19 information was going to be provided that evening  
20 or that day.

21 Q. Was there more information that the Sheriff's  
22 Department had in it's possession that was held  
23 back, or not provided, to the media during this  
24 investigation?

25 A. Most definitely.

1 Q. Sheriff Pagel, at any point, at least prior to  
2 the 9th of November, was a specific suspect  
3 identified?

4 A. No, there was not. In fact, we -- it was a wide  
5 open investigation.

6 Q. On the 9th of November, Steven Avery was arrested  
7 on a charge of felon in possession of a firearm;  
8 do you remember holding a press conference  
9 announcing that fact on the 9th?

10 A. Yes, I do.

11 Q. Do you recall any discussions on the 9th  
12 regarding limiting your comments to the facts  
13 that were contained within that public document,  
14 that is the Criminal Complaint?

15 A. Yes, that information was going to be public  
16 knowledge in the Criminal Complaint and it  
17 pertained to the felon in possession. We still  
18 had a missing person investigation.

19 Q. Sheriff Pagel, later in that week, between the  
20 9th and the 11th of November, do you recall  
21 receiving specific questions, and even at the  
22 press conferences, obtaining inquiries, regarding  
23 allegations made by Mr. Avery and his family,  
24 regarding being set up or framed?

25 A. Yes, I do. In fact, I would be receiving phone

1 calls from the media, who indicated that they had  
2 received information from either Mr. Avery or  
3 members of his family. And they were making  
4 inquiries about these -- this information that  
5 they were receiving. And, again, I would not  
6 elaborate on those type of things at that  
7 particular time, via phone contacts.

8 Any members of the media would be  
9 informed that any information that was going to  
10 be released would be released at a news  
11 conference to be determined or announced later.

12 Q. All right. That brings me, then, to questions  
13 regarding a press conference held on the 11th of  
14 November, Friday, the 11th; do you recall that  
15 press conference?

16 A. Yes, I do.

17 Q. Do you recall specific information being  
18 released, as it related to public questions, or  
19 direct questions, from the Avery's, as to being  
20 set up or framed?

21 A. Yes. Again, we felt that we owed it to the  
22 public, to insure them that there was no  
23 information, no evidence gathered through the  
24 investigation, tending to indicate that there was  
25 any type of conspiracy theory in effect here.

1 Q. Now, this may be a little awkward since I'm not a  
2 witness in this case, but I'm going to ask you  
3 about conversations that you and I had. Do you  
4 recall specific conversations with me regarding  
5 limiting, or being very careful about what was  
6 disseminated, to insure a fair trial for  
7 Mr. Avery?

8 A. Yes, I do. Again, we would have conferences  
9 daily to discuss what was going to be  
10 disseminated. You also indicated that it's your  
11 policy, once charges are filed, that the  
12 information disseminated to the media would  
13 cease, and that it would be the joint thought  
14 here that anything after that point would not be  
15 disseminated, there would be no more conferences.

16 Q. You are aware that at some point, in fact, on the  
17 5th of November, Judge Fox, from Manitowoc  
18 County, appointed me as Special Prosecutor in  
19 this case; is that correct?

20 A. That is correct.

21 Q. Have you worked on other criminal cases with me  
22 as the Calumet County Sheriff?

23 A. Yes, I have.

24 Q. Are you familiar with my general policy of not  
25 commenting on pending criminal matters, other

1 than in the courtroom?

2 A. Yes, that is your policy.

3 Q. Sheriff Pagel, while present with me at not only  
4 press conferences, but other times that we may  
5 have been approached, do you recall me, and other  
6 members of my office, reiterating, or explaining  
7 that policy, that no comment policy, if you will,  
8 to members of the media?

9 A. Yes, you did.

10 Q. Have you, individually, Sheriff Pagel, received  
11 offers from local, or regional, or even national  
12 news sources to comment on this case?

13 A. Yes, I have received numerous requests from the  
14 news media, not only in Green Bay, but in  
15 Milwaukee. And I have also received numerous  
16 calls from national news outlets requesting  
17 interviews, requesting comments.

18 And everything nationally has been  
19 refused. I indicated in the beginning that I  
20 would not go on any national news show to discuss  
21 this matter.

22 Q. Several months after Mr. Avery's Criminal  
23 Complaint was filed, I think it was the 14th of  
24 November when it was filed, but in early March,  
25 March 1st and 2nd, did you become aware of a

1 second suspect having been arrested regarding the  
2 homicide and related charges with Ms Halbach?

3 A. Yes, I did.

4 Q. And who was that person?

5 A. Brendan Dassey.

6 Q. On March 1st, do you recall holding a joint news  
7 conference informing the public?

8 ATTORNEY STRANG: Leading?

9 ATTORNEY KRATZ: I'm sorry, what was that?

10 ATTORNEY STRANG: Leading.

11 ATTORNEY KRATZ: Oh.

12 Q. (By Attorney Kratz)~ I could ask, what day did  
13 you hold the news conference that you informed  
14 the public of Mr. Dassey's involvement?

15 A. I believe it was March 1st.

16 Q. All right. Then, do you recall a Criminal  
17 Complaint being drafted and filed against  
18 Mr. Dassey?

19 A. Yes, I do.

20 Q. Then on -- Do you recall another, in fact, the  
21 last press conference jointly held in this case?

22 A. Yes, I do.

23 Q. Do you remember when that was?

24 A. That would have been the following day. I  
25 believe it was March 2nd.



1 Q. Sheriff Pagel, prior to that news conference,  
2 were you aware of the details; that is, were you  
3 aware of the information that would be included  
4 in that public document, in that Criminal  
5 Complaint, against Mr. Dassey?

6 A. Yes, I was.

7 Q. Do you recall having conversations with me about  
8 what information should be released and how to  
9 release that information?

10 A. Yes, you had indicated that the information that  
11 was going to be released was information that was  
12 in the document. And we had -- a decision had to  
13 be made how it was going to be released, or what  
14 was going to be released. And it was felt that  
15 we would, again, try to control the information  
16 that was going to be released, rather than having  
17 the news media take the report and then go  
18 wherever they were going to go with it.

19 It was a decision that was difficult to  
20 do, but was ultimately decided that we needed to  
21 provide the information to the public and, again,  
22 control what information was disseminated.

23 Q. Without limiting the information in that news  
24 conference, what did you believe would happen if  
25 that document was simply released to the public?

1 A. Personally, I felt it was going to be helter  
2 skelter. That the news media was going to take  
3 it and go in all directions with it. And, again,  
4 we would probably lose control over what was --  
5 what was gathered by the news media if we just  
6 gave them the article and gave them the Criminal  
7 Complaint, I mean, and let them go from there.  
8 And, again, we felt that we needed to control the  
9 information.

10 Q. You had mentioned sensitivity to the Halbach  
11 family, to the victims, especially regarding that  
12 disturbing information. Were meetings held,  
13 before the 2nd of March, to disclose to the  
14 family what would be included in that document?

15 A. Yes. We had met the night before, with them, and  
16 provided them with the information that the  
17 investigators had gathered. And that provided  
18 them with the information that was going to be in  
19 the Criminal Complaint.

20 Q. At any time, Sheriff Pagel, were there  
21 attempts -- and I can only ask you  
22 individually -- but were there attempts by you to  
23 influence any potential jurors, or to in any way  
24 prejudice Mr. Avery through this criminal  
25 process?

1 A. None. In fact, this is, again, why we tried to  
2 control the information that was released, so  
3 that we could control any prejudicial  
4 information, any inflammatory information, so as  
5 to prevent, as much as possible, any pretrial  
6 prejudicial publicity.

7 Q. And, again, that's consistent with other cases  
8 that you and I have worked on; is that correct?

9 A. That is correct.

10 ATTORNEY KRATZ: That's all the questions I  
11 have of Sheriff Pagel. Thank you, Judge.

12 THE COURT: Mr. Strang.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY STRANG:

15 Q. Is it typical, in a missing person Complaint,  
16 that you, as the sheriff, would be notified at  
17 home, after hours, on the day that someone is  
18 reported missing?

19 A. It's not typical, nor is it non-typical. The  
20 investigators, the staff, do keep me informed of  
21 their investigations and do keep me informed if  
22 they want something done. And in this particular  
23 case, they wanted the information disseminated to  
24 the media and they felt it would be best if I  
25 came in and did that for them.

1 Q. All right. You say the investigators, how many  
2 investigators, or detectives, are employed in the  
3 Calumet County Sheriff's Department?

4 A. We have four investigators.

5 Q. Does that include the lead investigator or chief  
6 investigator?

7 A. They are all investigators. There's no lead  
8 investigator. Whoever gets the case, initially,  
9 is the -- basically, the lead investigator,  
10 pertaining to that particular investigation.

11 Q. And to whom do the four investigators report  
12 directly?

13 A. They report to either the lieutenant or to  
14 myself.

15 Q. And I will keep this short, and I hope simple for  
16 you, but to the extent that you know, does the  
17 Calumet County Sheriff's Department have fewer  
18 sworn personnel than the Manitowoc County  
19 Sheriff's Department?

20 A. Yes.

21 Q. Do you know, roughly, the numbers --

22 A. No, I don't.

23 Q. -- at least to your own department?

24 A. I don't know what the difference would be.

25 Q. How about your department; how many sworn

1 officers of any rank?

2 A. Okay. We have 24 sworn officers and, I believe,  
3 27 non-sworn.

4 Q. Non-sworn being support people, secretarial,  
5 clerical, bookkeeping, business management?

6 A. Dispatch and correctional officers.

7 Q. Very good. Were you acquainted with the Halbach  
8 family personally, before November 3, 2005?

9 A. I know members of the Halbach family, yes, I do.

10 Q. Personally?

11 A. Yes.

12 Q. Had you known Teresa Halbach personally?

13 A. No, I did not.

14 Q. But you knew some members of her family?

15 A. Yes.

16 Q. Was that in part why Detective Wiegert said he  
17 was calling you that evening?

18 A. No, it was not. He had no knowledge that I would  
19 have known the Halbachs.

20 Q. But what he did say was, hey, we need to get the  
21 public's help, or words to that effect?

22 A. Yes, he felt that it was important that the  
23 information be disseminated to the media so that  
24 they could disseminate it to the public for their  
25 assistance.

1 Q. The media being a tool to reach the public?

2 A. That is correct.

3 Q. All right. You agreed?

4 A. Yes. Yes, I did.

5 Q. As early as the evening of November 3?

6 A. Yes.

7 Q. That evening is the point at which -- and I think

8 your words were -- you knew going into the

9 investigation that there would be a huge amount,

10 or huge interest on the part of the public and

11 the media?

12 A. Yes. Well, I guess, not that particular evening,

13 we didn't know the enormity. November 5th is

14 when we realized that we were probably going to

15 have a large media interest.

16 Q. You testified on direct, in response to

17 Mr. Kratz's question, you knew going into the

18 investigation. And so my question is, you know,

19 is it November 5, or some time prior to or after

20 that, that you knew going into the investigation

21 it would be huge media and public interest?

22 A. What I was referring to was November 5th, the day

23 that her vehicle was found on the Avery property.

24 Q. What was it that was so hugely interesting about

25 her car being found?

1 A. The fact that Steven Avery had garnered a large  
2 amount of media interest concerning his release  
3 from prison, for charges that he had been alleged  
4 to have committed, and the vehicle being found on  
5 Avery property. You didn't have to be a rocket  
6 scientist to know that the media was, again,  
7 going to be interested in this.

8 Q. Steven Avery was a man you knew from the media  
9 before November 5?

10 A. That is correct.

11 Q. You were familiar, at least with the general  
12 outlines of his wrongful conviction and eventual  
13 exoneration?

14 A. Yes.

15 Q. Release from prison?

16 A. Yes.

17 Q. Were you aware that he had filed a big lawsuit  
18 against Manitowoc County over that series of  
19 events?

20 A. Prior to what?

21 Q. November 5.

22 A. No, I was not aware of any lawsuit prior to that.

23 Q. But you were aware of Avery and you thought, gee,  
24 this will attract the media?

25 A. Yes.

1 Q. All right. Now, that's two days after Ms Halbach  
2 is reported missing. And I guess it's as early  
3 as that evening, November 3, in which you  
4 realized, look, we need some public assistance  
5 here, and the way to accomplish that is by using  
6 the media?

7 A. Yes, we felt that the information should be  
8 disseminated concerning Teresa Halbach, and her  
9 disappearance, and the fact that we were looking  
10 for her and the vehicle.

11 Q. Giving information directly to the media was not  
12 the only strategy you employed to get the word  
13 out to the public?

14 A. I guess I don't know.

15 Q. For example, you had a telephone number, that you  
16 encouraged members of the public to call and  
17 encouraged investigators to share with the  
18 public?

19 A. Our local Sheriff's Department number, yes, or  
20 tip number.

21 Q. Right, sort of a dedicated line, not for this  
22 case, but for tips, or for information from the  
23 public?

24 A. That is correct.

25 Q. You got that out to the public?



1 A. Yes.

2 Q. You had members of your department going to  
3 friends and family members of Teresa Halbach's in  
4 the early days of this search?

5 A. Yes, most definitely.

6 Q. In part, to ask them when they had last seen her,  
7 and what information they might have, but also,  
8 in part, to encourage them to talk to others?

9 A. Yes, to try to garner any information we could  
10 from them, again, when was the last time you had  
11 seen her, and garner any information we could  
12 about Teresa.

13 Q. Sure. And to get the network going so to speak,  
14 might ask a friend who else do you know she may  
15 have talked to, or called, or been e-mailing, or  
16 appointments she may have had, things like that.

17 A. Yeah, would be a typical missing person  
18 investigation.

19 Q. You also took some other steps that would be  
20 publicly visible but controlled. I mean, for  
21 example, did you -- did you rent an airplane or  
22 make arrangements for an airplane at some point?

23 A. Yes, that was done on November 4th.

24 Q. Went to an aviation service and took a plane up  
25 in the air?

1 A. Yes.

2 Q. And that involved circling a good deal, I assume,  
3 over parts of Manitowoc County?

4 A. Manitowoc, Brown, Calumet. I don't think we got  
5 down into Sheboygan, but basically a three county  
6 area.

7 Q. Sure. And at fairly low altitude?

8 A. Yes.

9 Q. That, you knew, at least would attract some  
10 public attention and raise the profile that  
11 people should be on the lookout for a missing and  
12 possibly endangered person?

13 A. The fact that we used the airplane?

14 Q. Yeah.

15 A. No. That was basically a search to try and to  
16 locate her vehicle. We knew that her vehicle was  
17 missing. And we were trying to locate her  
18 vehicle, or anything which could be of assistance  
19 in the missing person investigation.

20 Q. Okay. So, is that why you only used the plane on  
21 Friday, November 4?

22 A. Yes.

23 Q. There was -- Once you found the car, the Toyota,  
24 there was no need for further flyovers or that  
25 kind of visible activity?

1 A. There were other flyovers done after, yes. There  
2 were the use of other planes and helicopters  
3 throughout the search for Teresa.

4 Q. The search continued until -- well, I mean it  
5 continued beyond this, but on November 8, some  
6 bone fragments were found; does that sound right?

7 A. That could be the date, yes.

8 Q. All right. Which would have been a Tuesday?

9 A. That would be about right, yes.

10 Q. Were you, personally, out at the Avery Auto  
11 Salvage property on the days following this phone  
12 call, at home, on November 3?

13 A. Yes, I was.

14 Q. Each day?

15 A. Yes, I was there every day.

16 Q. Starting Friday, November 4.

17 A. No, the 5th.

18 Q. So, November 5th?

19 A. Yes.

20 Q. Saturday, November 5. And then how many days in  
21 a row did you remain, personally, out at the  
22 Avery Auto Salvage property?

23 A. I would go out there during the daylight hours  
24 and generally would leave anywhere between 7, 8,  
25 9 at night.

1 Q. How long did that continue, Sheriff Pagel?

2 A. I was there the entire week that we were out

3 there.

4 Q. And until the road was reopened and the searching

5 was done?

6 A. That's correct.

7 Q. All right. Now, during that time that you were

8 out there, during these long daylight hours,

9 essentially, did you, personally, direct the

10 activities of Lieutenant Lenk?

11 A. Did I, personally? How did you phrase it?

12 Q. Direct the activities of Lieutenant Lenk of the

13 Manitowoc County Sheriff's Department?

14 A. Not personally, no. It was -- Could have been

15 done either through the command post. Again,

16 they were there as a support group. So we would

17 utilize our investigators, our officers, our

18 personnel, along with agents from the Department

19 of Criminal Investigation and individuals would

20 then be assigned to those particular individuals

21 who would be the lead people doing particular --

22 particular programs or parts of the investigation

23 out there.

24 Q. Activities. All right. So you set up a command

25 post?

1 A. Yes.

2 Q. You set that up in conjunction with the DCI?

3 A. Yes.

4 Q. There were other law enforcement agencies, also,  
5 at the command post?

6 A. Yes, there were other agencies involved in the  
7 investigation who were there for support and  
8 assistance.

9 Q. In the command post?

10 A. Not necessarily inside the command post. We  
11 tried to limit individuals who would be in the  
12 command post. We had a number of individuals who  
13 were out there on any particular day and we  
14 couldn't have all those individuals in the  
15 command post, but we would have the individuals  
16 who were going to be responsible for doing a  
17 particular activity, given their assignments.

18 Q. Okay. Physically, what was the command post?

19 A. Physically, what was it?

20 Q. Yeah.

21 A. It's our command trailer that we have at the  
22 Sheriff's Department?

23 Q. Like a Winnebago type?

24 A. It's a good size.

25 Q. Okay. But not everybody can crowd into those

1 things?

2 A. Right.

3 Q. Okay. So people, law enforcement officers, would  
4 come in as necessary to participate in  
5 discussions?

6 A. Yes. Whoever we needed to discuss matters with  
7 would be invited into the command post and we  
8 would then discuss our information with them.

9 Q. The -- You ran this investigation in conjunction  
10 with DCI, you said?

11 A. Yes.

12 Q. And then, jointly, with a number of other  
13 agencies?

14 A. Yes.

15 Q. The FBI was involved?

16 A. Yes, the FBI.

17 Q. They were in the command post from time to time?

18 A. They were -- They were only out there for a short  
19 period of time. They arrived and indicated that  
20 if we needed their assistance for anything we  
21 should feel free to contact them. I think they  
22 might have been there personally, only a couple  
23 of hours.

24 Q. Okay. But they said, call if you need help?

25 A. Yes.

1 Q. The Wisconsin State Patrol was out there for a  
2 longer period of time?

3 A. They were there several days, yes.

4 Q. They had command officers in and out of the  
5 command post?

6 A. Yes, they would have had individuals in and out.

7 Q. The Two Rivers Police Department?

8 A. Yes.

9 Q. They had senior staff in and out of the command  
10 post?

11 A. I don't know if they would have had individuals  
12 in or out, specifically, or if they were just  
13 part of the support group.

14 Q. All right. But what you tried to do was run this  
15 as a collaborative, or a joint effort?

16 A. Yes.

17 Q. You consulted with Manitowoc County Sheriff's  
18 personnel?

19 A. Yes.

20 Q. They were in and out of the command post?

21 A. Yes.

22 Q. At least the ranking members were?

23 A. Yes.

24 Q. So you weren't necessarily, personally, directing  
25 things, but you were part of a group that was

1 making conjunctive, or joint, or collaborative,  
2 investigative decisions, so that all the tasks  
3 got done?

4 A. Attempting to, yes.

5 Q. Right. Were you aware, on November 5, let's say,  
6 that Lieutenant Lenk and Sergeant Colborn of the  
7 Manitowoc County Sheriff's Department recently  
8 had given depositions in Steven Avery's civil  
9 lawsuit?

10 A. No, I was not aware of that.

11 Q. When did you first learn that?

12 A. Today, in court.

13 Q. Mr. Avery, then, was arrested on November 9, if I  
14 understood your testimony correctly?

15 A. I believe that would be correct, yes.

16 Q. Charged, initially, with being a felon in  
17 possession of a firearm?

18 A. That's correct.

19 Q. Now, you have had enough time in the criminal  
20 justice system to know that, typically, at least  
21 when somebody is charged in a Circuit Court of  
22 the State of Wisconsin, there's a Criminal  
23 Complaint filed?

24 A. Yes.

25 Q. With the court?



1 A. Yes, will eventually be filed.

2 Q. With the court, correct?

3 A. Yes.

4 Q. And, typically, as far as I know, always, that's

5 a publicly available document?

6 A. Yes.

7 Q. That is, anyone from the public, including a

8 reporter, could go to the Clerk of Court's Office

9 and say, May I see the Criminal Complaint against

10 Joe Blow, or Steven Avery, or anyone else?

11 A. That is correct.

12 Q. Make a copy of it?

13 A. Yes.

14 Q. And leave with it?

15 A. Yes.

16 Q. All right. So in terms of making something --

17 making information available to the public, one

18 way to do that is to file, at least, an unsealed

19 public document in court?

20 A. It would be a public document, yes.

21 Q. That was done here with the felon in possession

22 of a firearm Complaint, as to Mr. Avery, correct?

23 A. I believe so, yes.

24 Q. It was done with the criminal charge against

25 Brendan Dassey on or about March 2, 2006?

1 A. That's correct.

2 Q. You know, of your personal knowledge, that  
3 Mr. Dassey, although 16 years old, was charged as  
4 an adult from the outset?

5 A. Yes.

6 Q. So you knew that that was a public proceeding  
7 from the outset, not a juvenile and closed  
8 proceeding?

9 A. Yes.

10 Q. You knew that the Criminal Complaint against  
11 Brendan Dassey, therefore, was a public document?

12 A. That is correct.

13 Q. You and Mr. Kratz began to talk about public  
14 dissemination of information in this  
15 investigation, when?

16 A. The dissemination of information to the media and  
17 to the public?

18 Q. Yeah.

19 A. That was done on the first day, that Saturday  
20 that we were at the Avery property.

21 Q. Mr. Kratz was out there as well?

22 A. Yes.

23 Q. You learned on November 5, or shortly after, that  
24 a number of people lived on what we are calling  
25 the Avery property, correct?

1 A. That is correct.

2 Q. Family members, including extended family  
3 members, correct?

4 A. Yes.

5 Q. Husbands, wives, boyfriends, girlfriends, a whole  
6 collection of people?

7 A. That is correct.

8 Q. This is a large -- relatively large parcel of 40  
9 acres, plus?

10 A. Yes.

11 Q. Steven Avery being one of the people who lived  
12 somewhere on what you are calling the Avery  
13 property?

14 A. That is correct.

15 Q. On November 5, when you and Mr. Kratz were on the  
16 Avery property, you began to discuss, I guess,  
17 gee, how are we going to disseminate information  
18 to the media?

19 A. And what information was going to be  
20 disseminated.

21 Q. And what. Were you and Mr. Kratz the only two  
22 decision makers on those discussions?

23 A. No. The investigative staff, agents from DCI,  
24 investigators from my office, would meet, and  
25 discuss, and come up with what investigative

1 material. What information was going to be, and  
2 should be, and needed to be, released to the  
3 media and to the public.

4 Q. So, again, I guess, a little bit, as you were  
5 describing the investigation itself, your  
6 personal style, or your approach to dissemination  
7 of information to the media, was more collegial  
8 or collaborative and inclusive?

9 A. That would be correct.

10 Q. And that's just a matter of personal style for  
11 you?

12 A. No, it's done for a number of reasons: One, to  
13 ensure that information that investigators have,  
14 information that they do not wish to be divulged,  
15 is not divulged. And, again, it's better to do  
16 it jointly, together, so that you don't say or  
17 disseminate information that should not be, and  
18 disseminate information that should be.

19 Again, we had a missing person. We were  
20 still looking for Teresa Halbach. And throughout  
21 this case we were looking for Teresa Halbach.

22 And we felt that it was important that the media,  
23 the public, be provided with this information.

24 Q. In a criminal investigation -- Well, first of  
25 all, a criminal investigation would be different

1 in your world, in the jargon of law enforcement,  
2 than a missing persons investigation, correct?

3 A. Yes, there would be different aspects.

4 Q. You separate those two things, or distinguish  
5 between them?

6 A. You can, occasionally, but sometimes they run  
7 hand in hand. If you still do not have a  
8 missing-- if you still have not located the  
9 missing person, you still have an individual you  
10 are trying to locate, so they can run jointly.

11 Q. Of course, but at the outset, in law enforcement,  
12 at least in Calumet County, you distinguish  
13 between those two, a missing person investigation  
14 and the criminal investigation?

15 A. Yes.

16 Q. Many missing person investigations turn out to be  
17 a teenager who was upset with mom and ran away  
18 for a few hours?

19 A. That can be true, yes.

20 Q. And I think even here, I don't remember which  
21 news conference, but I think at some point you or  
22 Mr. Kratz made a comment that, we now have a  
23 criminal investigation, not just a missing  
24 persons investigation. This isn't verbatim, I  
25 don't remember the exact words.

1 A. Yeah, but words to the effect that the  
2 investigation was tending to lead towards a  
3 criminal investigative nature.

4 Q. Right. And that would have been -- Regardless of  
5 when and who said it, you began to think of this  
6 as a criminal investigation, or at least leading  
7 that way, when?

8 A. Probably after information was obtained from the  
9 Crime Lab, which was providing us with details as  
10 to information being found in Teresa's vehicle.

11 Q. So the vehicle was found November 5?

12 A. Yes.

13 Q. What looks like blood is found that same day,  
14 November 5?

15 A. Yes, I believe so.

16 Q. Some swabs for collection of the blood is  
17 undertaken?

18 A. Yes. The entire vehicle is removed from the  
19 Avery property and taken to Madison, to the Crime  
20 Lab.

21 Q. What day was it removed?

22 A. It was removed Saturday evening, late Saturday  
23 evening.

24 Q. Taken directly to the Crime Lab?

25 A. Yes.

1 Q. And further collection of evidence is done, then,  
2 from the vehicle?

3 A. Yeah, the evidence -- the vehicle is then  
4 analyzed for evidence.

5 Q. When -- When, then, did you get your first  
6 information back from the Crime Lab that caused  
7 you to think of this as looking like a criminal  
8 investigation?

9 A. Again, it was probably Monday or Tuesday. I  
10 can't recall, specifically, what day it was.

11 Q. Okay. Maybe this will help, you remember  
12 somebody first saying, gee, I think we have got  
13 bone fragments?

14 A. That would have probably been on Tuesday, I think  
15 you said, was the 8th.

16 Q. Right.

17 A. Then, yeah, we discovered some bone fragments on  
18 the property. And, again, they had to be  
19 analyzed to determine whether they were human in  
20 nature.

21 Q. But had you heard back from the Crime Lab before  
22 somebody said we have got bone fragments, or  
23 after?

24 A. I believe it was before, that we had some  
25 information back, some preliminary information

1 back from the Crime Lab.

2 Q. So probably Monday, November 7th?

3 A. Could be, correct.

4 Q. Okay. Now, in a criminal investigation, one of  
5 the things that law enforcement people do in  
6 disseminating information publicly is attempt not  
7 to disclose information that should be known only  
8 to the culprit, or the perpetrator, correct?

9 A. We try to do that, yes.

10 Q. So that if you find someone, and in talking with  
11 that person they have that information, you know  
12 that they haven't gotten it by watching  
13 television?

14 A. That would be correct.

15 Q. Or reading the newspaper or something. What sort  
16 of information, prior to a criminal  
17 investigation, do you not want disclosed in a  
18 missing persons investigation?

19 A. Well, in a missing persons investigation, you  
20 want to get information out to the public as to  
21 the person who was missing, what the person might  
22 have been wearing, a general description of the  
23 person, and in this particular case, her vehicle.

24 Q. Okay. And by elimination, then, certain personal  
25 information you would not want disclosed, I



1           assume?

2    A.    Personal information?

3    Q.    About the missing person, private information?

4    A.    You possibly could want to withhold that, yes.

5           And it's a -- a decision is made, is it

6           pertinent --

7    Q.    Right.

8    A.    -- to this particular missing person.

9    Q.    If it's not particularly pertinent, then privacy

10           concerns would prevail?

11   A.    Sure.

12   Q.    All right.  Now, the purpose, then, of these

13           collaborative or collegial meetings, was to find

14           out, gee, guys, what information do you think we

15           should and should not disclose?

16   A.    Yes.

17   Q.    Reach some agreement on that, as a group?

18   A.    Yes.

19   Q.    And then, you know, as people say, make sure

20           we're all on the same page?

21   A.    Correct.

22   Q.    Then, you and Mr. Kratz would be the public

23           spokespeople?

24   A.    That was a decision that was made, yes.

25   Q.    Who were the decision makers on that, in the end?

1 A. As far as what information is released?

2 Q. Right. And by whom?

3 A. Again, it is a collaborative effort among  
4 everybody who's involved in the investigation.  
5 There were several incidences where the  
6 investigators said, no, we can't release this, or  
7 maybe we should release this, and a discussion  
8 was held.

9 Q. And maybe an agreement was reached each of those  
10 occasions, but to the extent that there was no  
11 agreement, or somebody had to make the call, make  
12 the decision, so to speak, who was doing that?

13 A. Well, I guess that information, the ultimate  
14 information that was released, would have been  
15 Mr. Kratz and myself, because we were the  
16 individuals who released the information.

17 Q. Jointly, not one over the other?

18 A. Yeah, I would believe probably, right, he would  
19 release information, I would release information,  
20 but we knew what information was going to be  
21 released.

22 Q. And you decided that jointly?

23 A. Yes.

24 Q. The press conferences on March 1 and March 2, of  
25 course, were well after Mr. Avery had been

1 charged with murder?

2 A. Yes.

3 Q. The March 1 press conference was before Brendan  
4 Dassey had been charged with murder and other  
5 crimes?

6 A. He was in custody.

7 Q. Right.

8 A. But he had not --

9 Q. Before a Criminal --

10 A. Yes.

11 Q. -- Complaint had been filed?

12 A. Yes, before he had been taken to court.

13 Q. The March 2 press conference was after he had  
14 been charged formally, a Criminal Complaint had  
15 been filed against Mr. Dassey?

16 A. Yes.

17 Q. The Criminal Complaint was distributed to  
18 interested members of the media at the March 2  
19 press conference, or after?

20 A. I can't recall if it was before or after.

21 Q. But one or the other?

22 A. Yes.

23 Q. You made copies available?

24 A. Yes. Yes.

25 Q. To save them the trouble of going to the Clerk of

1 Court?

2 A. Right.

3 Q. So the press conference wasn't going to replace  
4 disclosure of the Criminal Complaint?

5 A. Again, it was felt, a decision was made, that  
6 maybe we needed a press conference so that we  
7 could discuss this information with the news  
8 media and kind of inform them of what they were  
9 going to be reading and seeing in the Criminal  
10 Complaint.

11 It was felt that it was important. And  
12 it was a tough decision to make, should we just  
13 give it to them, or not. We felt that it was  
14 better to be able to control and to answer  
15 questions, I guess, that the media might have.

16 Q. Well, what control did you have after you handed  
17 them a copy of the Complaint?

18 A. Well, you still are able to answer questions and  
19 you are still able to provide them with some  
20 information that is of help, I guess,  
21 sensitivity, again, to the family in this matter.

22 Q. Okay. You had no -- you had no serious question  
23 about the ability of the assembled reporters to  
24 read English?

25 A. No, we knew that they were going to be doing

1           that, yes.

2       Q.    They would read the Complaint for themselves?

3       A.    Yes.

4       Q.    All right.  So I guess, necessarily, the purpose  
5           of answering questions, or providing further  
6           information, was to tell them details, or  
7           explanations, beyond those contained in the words  
8           of the Criminal Complaint?

9       A.    Yes.  And, again, the concern was that they were  
10          going to take this and go in all directions.  And  
11          we wanted to be able to control, again, the  
12          information.  You have to look at it as a whole  
13          picture here, not just -- excuse me -- not just  
14          little pieces, but a whole picture.

15      Q.    And I guess my question was, how in the world  
16          were you going to control the media after they  
17          left that room?  And we have something called the  
18          First Amendment in this country, right?

19      A.    Mm-hmm.

20      Q.    Did you ask them not to print certain things, not  
21          to broadcast certain things?

22      A.    No, but I think by being able to answer questions  
23          and providing them with information, it's going  
24          to enhance our ability to be able to provide them  
25          and not let them run in all directions with this

1 Complaint, talking to individuals, trying to  
2 gather more information than what was in the  
3 Criminal Complaint.

4 And that's always a concern that  
5 everybody has in major investigations, is that  
6 the media, or anybody else, is going to take  
7 information that they have obtained and go  
8 further and try to enhance what they are reading,  
9 and what they are seeing, or what's in the  
10 Criminal Complaint.

11 Q. Okay. Now, you have used the word control here  
12 at least -- at least a half dozen times or  
13 something, I haven't counted, but. By control,  
14 you certainly could control what you and  
15 Mr. Kratz were saying, correct?

16 A. Yes.

17 Q. You could put out the information under your  
18 control, that you chose to disseminate. You had  
19 control in that sense, correct?

20 A. Yes.

21 Q. You could decline to put out information, that  
22 was a way to exercise control?

23 A. Yes, that's true.

24 Q. You could phrase information in a certain way,  
25 that was another form of control you had?

1 A. Yes.

2 Q. You -- These news conferences didn't just happen,  
3 invitations were sent, or notices were sent to  
4 media outlets?

5 A. They were provided with a date and time so that  
6 we could have everybody together at one time,  
7 rather than having individuals from the media  
8 calling and getting information at this time, and  
9 this time, and that time.

10 Q. Sure. Sure. So either your office or  
11 Mr. Kratz's office, somebody was either mailing  
12 or faxing, you know, here's the date, here's the  
13 time, here's the place, kind of information to  
14 media outlets?

15 A. Yes. And, again, this goes back to some training  
16 that I have received as to providing one news  
17 conference where everybody gets the same  
18 information.

19 Q. Fair enough. And you made a facility available  
20 at which cameras could be set up?

21 A. Yes.

22 Q. Microphones could be set up?

23 A. Yes.

24 Q. And that was another form of control, in the  
25 sense that, if your words are recorded on tape

1 or, you know, orally, as opposed to visually.  
2 Now, you know, somebody plays the tape, you know  
3 exactly what the viewer will see and hear?  
4 A. Yes.  
5 Q. But what the media did after they left your news  
6 conference, after they shut off the lights, and  
7 turned off the cameras, and took the microphones,  
8 that you couldn't control?  
9 A. That is correct.  
10 Q. What Steven Avery might choose to say, you could  
11 not control?  
12 A. That is correct.  
13 Q. What his family members might say, you could not  
14 control?  
15 A. That is correct.  
16 Q. Other than the week or thereabouts that you had  
17 control of the Avery property, you couldn't  
18 prevent the media from going and talking to the  
19 Avery family members?  
20 A. Yes, and that happened.  
21 Q. How many times in your -- Well, how long have you  
22 been a law enforcement officer?  
23 A. 33 years.  
24 Q. Part of a long line of Pagels, I think, with the  
25 Sheriff's Department in Calumet County, right?



1 A. Yes.

2 Q. And during your 33 years in law enforcement, on  
3 how many occasions have you held a televised news  
4 conference, as you did on November 11, to respond  
5 to something that somebody, charged with being a  
6 felon in possession of a firearm, may have said  
7 publicly?

8 A. How many times have we had similar type --

9 Q. Yes.

10 A. -- news conferences? I would have to go back and  
11 check through my notes and records but --

12 Q. I bet you remember.

13 A. There have been a couple.

14 Q. There have been a couple?

15 A. Yes, we have had a number of major investigations  
16 that we have conducted, that we have had these  
17 type of news conferences.

18 Q. But my question was really more narrow. I mean,  
19 how often have you had a news conference to  
20 respond to something that an arrested defendant  
21 has said publicly?

22 A. Myself, probably none.

23 Q. This was the only time?

24 A. Yes, I believe so.

25 Q. This case?

1 A. Myself, as sheriff, investigating or being  
2 involved?

3 Q. Yes.

4 A. Yes. I know there's been other cases, but not  
5 myself, no.

6 Q. Ever -- Ever in your experience with him, ever  
7 hear Mr. Kratz give a news conference to respond  
8 to some claim that a defendant has made publicly?

9 A. I don't know. I guess that would be something  
10 you would have to ask Mr. Kratz if he can --

11 Q. But you don't remember seeing --

12 A. I don't know.

13 Q. -- or hearing such a thing?

14 A. I would have to look back. I don't know. I  
15 can't answer that.

16 Q. As you sit here today, you don't recall?

17 A. I don't recall, sitting here today.

18 Q. Okay. If I understood your testimony on direct,  
19 you were getting phone calls from Avery family  
20 members, or members of the general public, saying  
21 something like, are you framing Steven Avery?

22 A. No, the news media was calling my cellphone and  
23 indicating that they were getting calls from Mr.  
24 Avery, or from family members, and that certain  
25 information was being released to the news media

1 via them.

2 And they were trying to confirm whether  
3 this was factual or not. And they would be  
4 informed that any information that was going to  
5 be divulged would be divulged at the news  
6 conference, or at the press conference.

7 Q. Referring to the November 11 news conference?

8 A. This was numerous times throughout this. And, in  
9 fact, even the day of March 1st, I was receiving  
10 phone calls from the news media inquiring about  
11 the fact that, we understand that Brendan Dassey  
12 has been interviewed, the Avery's have called us  
13 and told us this.

14 And, again, they were disseminating the  
15 information themselves. And we had -- we felt we  
16 had an opportunity, or we should be dispelling  
17 some of the information that the Avery's were  
18 providing.

19 Q. Well, let me be clear. I mean, it was members of  
20 the news media who were telling you that the  
21 Avery's had called them?

22 A. Yes.

23 Q. You probably saw some Avery family members back  
24 before Steven was in custody so, that is, before  
25 November 9, probably saw some film footage, if

1           you watched the TV's at all, of him and other  
2           family members?

3           A.    That is correct.

4           Q.    But you also know that you were getting calls  
5           from media people in which they claim that they  
6           had gotten information from the Avery's that had  
7           not been made public by those media sources?

8           A.    Yes.

9           Q.    And so you and Mr. Kratz made a decision to  
10          respond publicly to these phone calls on your  
11          cellphone, that you were getting from the media  
12          people, saying the Averys are calling us and  
13          telling us X, Y, or Z?

14          A.    The news media was told that any information that  
15          was going to be released would be done at the  
16          press conference and that we weren't going to be  
17          speaking to them, or giving them information  
18          without having a joint conference.

19          Q.    Okay.  Although, you did do that, you sat down  
20          for an interview on air, in your office, at one  
21          point, didn't you?

22          A.    Yes, I have had interviews in my office.

23          Q.    About this case?

24          A.    Yes.

25          Q.    Including about claims that evidence was not

1 handled appropriately?

2 A. Yes, there was one, yes.

3 Q. Prior to November 11, which I think was the news  
4 conference that responded to suggestions of  
5 mishandling of evidence, or improper motives,  
6 prior to that date, what investigation had you,  
7 or those under your direction, done to assure  
8 yourself that there had not been mishandling of  
9 evidence?

10 A. Interviews were done, and the information that we  
11 were obtaining from the State Crime Lab was  
12 tending to indicate, or inform us, that this was  
13 impossible.

14 Q. When you say interviews were done, who did you  
15 interview about the possible mishandling of  
16 evidence?

17 A. We would be conversing with individuals out at  
18 the scene. And we knew that there was no  
19 possibility, because there was always an  
20 investigator, either from the Sheriff's  
21 Department of Calumet County, or from DCI, with  
22 these individuals. So we knew that wasn't a  
23 possibility.

24 Q. So when you say these individuals, you were  
25 referring to Manitowoc County Sheriff's

1 Department personnel?

2 A. That's who I thought you were referring to.

3 Q. I'm just asking who you were referring to?

4 A. Yes.

5 Q. Okay. So the safeguard, so to speak, was, well,  
6 we will make sure we always have a Calumet County  
7 person with the Manitowoc people?

8 A. Calumet, DCI, yes.

9 Q. Somebody from outside the Manitowoc County  
10 Sheriff's Department?

11 A. That was -- That was done, yes.

12 Q. Was that actually a policy that was put in place  
13 for this investigation?

14 A. Yes.

15 Q. When was that policy put in place?

16 A. Shortly after the investigation was turned over  
17 to Calumet County and DCI.

18 Q. And who put that policy in place?

19 A. It was a joint decision made through our agency,  
20 the Calumet County District Attorney's Office,  
21 and the Manitowoc County D.A.'s Office, and Corp  
22 Counsel, and Sheriff's Department.

23 Q. Okay. So, the three Manitowoc County agencies,  
24 D.A., Sheriff's Department, and Corp Counsel,  
25 correct?

1 A. Yes.

2 Q. Two Calumet County agencies, Sheriff's Department  
3 and District Attorney's Office?

4 A. Yes.

5 Q. And I think I missed someone. DCI?

6 A. DCI.

7 Q. DCI. So among these six groups, this decision  
8 was made, we will always have somebody from  
9 another department there with any Manitowoc  
10 County Sheriff's Department person involved in  
11 this investigation?

12 A. Yes, because of the fact that we were the lead  
13 agency and we found out about the pending  
14 litigation against Manitowoc County by Mr. Avery.

15 Q. That's done on November 5, right?

16 A. Yes.

17 Q. Why would that be done on November 5, if Steven  
18 Avery was not a suspect, or a person of interest,  
19 until November 9?

20 A. Again, the evidence -- the vehicle was found on  
21 the Avery property. There's a lawsuit filed by  
22 Steven. So -- So, as to not look like there was  
23 any type of tampering, we felt it was important  
24 that we do the investigation properly from the  
25 beginning. And this is the reason it was done.

1 Q. Again, I don't think that that addresses my  
2 question. Why, if Steven Avery was not a  
3 specific person of interest, or a suspect, until  
4 November 9, why the great concern to be  
5 shadowing, or accompanying, and watching over the  
6 shoulder of the Manitowoc County Sheriff's  
7 Department?

8 A. Because --

9 ATTORNEY KRATZ: Judge, I'm sorry. Judge,  
10 I'm going to interpose an objection if Mr. Strang is  
11 meaning to quote a previous answer or question. The  
12 question was why was he not identified as a suspect.  
13 Mr. Strang has now said, if he was not a suspect.  
14 It is a mischaracterization of the previous question  
15 that was placed.

16 ATTORNEY STRANG: I will have the court  
17 reporter read back my original question.

18 (Question read back.)

19 Q. (By Attorney Strang)~ Maybe you could answer that  
20 question?

21 A. Okay. We have a vehicle that's found on the  
22 property. We have a missing person  
23 investigation. We have Steven Avery being one of  
24 the individuals who is living on this property as  
25 were other members of his family.



1                   Because of the litigation, it was felt  
2                   that, let's insure that there's no thing in the  
3                   future that's going to be construed as being a  
4                   cover up, or anything like that. Let's ensure  
5                   that if we are going to do this investigation, we  
6                   are going to do it properly, and let's do it from  
7                   the beginning. And that's why it was done that  
8                   way.

9    Q.   All right. Now, do I understand, then, that as  
10           to what investigation you had done into the  
11           possible mishandling of evidence as of the  
12           November 11 news conference, the answer is none,  
13           but that you had put this policy in place on  
14           November 5?

15   A.   The policy, meaning the policy as far as?

16   Q.   If someone from another law enforcement agency is  
17           looking over the shoulder of any Manitowoc County  
18           Sheriff's Department person involved in this  
19           investigation.

20   A.   Again, that's the reason that Manitowoc asked us  
21           to do the investigation in the first place --

22   Q.   I understand.

23   A.   -- because of this litigation. And so, because  
24           of that litigation, we felt it was very  
25           important, that if you wanted us to be the lead

1 agency, that we do it properly from the beginning  
2 and start, and so that there can't be any  
3 inference in the future that it wasn't done  
4 properly.

5 Q. Understood. And the question was, as of November  
6 11, then, putting this policy in place was the  
7 only step you had taken to assure yourself that  
8 there was not mishandling of evidence, or other  
9 misconduct by law enforcement officers?

10 ATTORNEY KRATZ: Judge, I am also going to  
11 interpose an objection. I think we're well beyond  
12 the change of venue or pretrial publicity portion of  
13 these motions. These might be relevant to other  
14 motions, but I don't know as to pretrial publicity,  
15 the motion to dismiss, or the change of venue that's  
16 before the Court.

17 ATTORNEY STRANG: I will leave it with his  
18 answer, if he's permitted to ask that question --  
19 answer that question, I should say.

20 THE COURT: All right. Are you withdrawing  
21 your objection if this is the last question?

22 ATTORNEY KRATZ: Yeah, if we can move on.

23 THE WITNESS: I guess I'm still confused as  
24 to what you are asking.

25 ATTORNEY STRANG: Do you want to read it

1 back.

2 (Last question read back.)

3 ATTORNEY STRANG: Judge, I don't think we  
4 have got that exactly right.

5 Q. (By Attorney Strang)~ What I meant to ask was, as  
6 of November 11, other than putting in place the  
7 policy that you have described, of watching over  
8 Manitowoc County people --

9 A. Okay.

10 Q. -- you had taken no step to assure yourself that  
11 there had not been mishandling of evidence or law  
12 enforcement misconduct?

13 A. I guess that was the reason.

14 Q. That was the step.

15 A. The step we took that day to ensure --

16 Q. Right. And the question is --

17 A. -- that could not be a question in the future,  
18 yes.

19 Q. Is that the only step, as of November 11?

20 A. I believe so, yes.

21 Q. Last area I have -- and I'm shifting gears off  
22 that, or shifting off that. You told Mr. Kratz  
23 that you had --

24 THE COURT: Mr. Strang before you start,  
25 about how long do you think you have got to go yet?

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ATTORNEY STRANG: Three minutes.

THE COURT: Three minutes, go ahead.

Q. (By Attorney Strang)~ You told Mr. Kratz, on direct examination, that you have gotten many phone calls, or approaches from national media, as well as local and regional media?

A. Yes.

Q. You have turned down all the national media requests for comment?

A. Yes.

Q. Have you, personally, been approached by anyone for a book deal, or a movie deal, or something of that kind?

A. Approached, no. I don't know what you mean. No.

Q. Well, now, I don't know what you mean. I mean, by approached, I mean a letter written, a call made, an e-mail received, has anybody suggested to you that you ought to become involved in a book, or a television movie, or a commercial movie, or something like that, about the Avery or the Halbach case?

A. No.

ATTORNEY KRATZ: Thank you. That's all I have then.

THE COURT: Counsel, if you have got some

1 redirect, I'm going to have you do it after lunch.

2 ATTORNEY KRATZ: I think I only have two  
3 questions, Judge. I promise it will be very brief.

4 THE COURT: All right. Go ahead.

5 ATTORNEY KRATZ: If I may.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Sheriff Pagel, just a couple of questions. The  
9 press conference on the 2nd of March, do you  
10 recall, before that press conference, or before I  
11 made any comments, an admonition, or a reminder  
12 to the public that all accused individuals are  
13 presumed innocent until proven guilty?

14 A. Yes, you did.

15 Q. And that wouldn't be something, if the Complaint  
16 was just released, that would be included,  
17 typically, in the Complaint; is that correct?

18 A. That is correct, yes.

19 Q. Finally, the sensitivity to the Halbach family  
20 and to crime victims, was that discussed in how  
21 details would be released? I'm specifically  
22 talking about the March 2nd Complaint and the  
23 details within there, how things would be  
24 phrased, what should be left out regarding a  
25 sensitivity to the Halbach's.

1 A. Oh, yes, most definitely. That was done on  
2 March 2nd, and it was done throughout the  
3 investigation.

4 ATTORNEY KRATZ: That's all the questions  
5 as to the venue and the publicity issue, Judge.

6 THE COURT: All right. You are excused.  
7 Counsel, then as I understand it, we're going to  
8 have one more evidentiary witness after lunch and  
9 then I will hear argument on the motions; is that  
10 both parties understanding?

11 ATTORNEY STRANG: Not necessarily  
12 immediately after lunch -- I shouldn't speak for  
13 Mr. Fallon.

14 ATTORNEY FALLON: The remaining testimony  
15 anticipated for today has nothing to do with any  
16 motion that will be decided today, that's relative  
17 to a motion set for the 19th. So I think it would  
18 be better to hear the arguments, or get through as  
19 many of the arguments as we can before we take the  
20 testimony of that other witness.

21 THE COURT: Very well. I think in most  
22 cases, these motions, each of the parties have  
23 submitted written arguments already, so they will be  
24 somewhat supplemental. I assume they won't be too  
25 lengthy.

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ATTORNEY FALLON: Correct.

THE COURT: All right. We'll see you at 1:00.

(Noon recess taken.)

THE COURT: At this time we're back on the record, all counsel are present. And I believe that, with the exception of some testimony we're going to hear on one of the July 19 motions later this afternoon, we have completed the evidence portion of the hearing today; is that correct, Counsel?

ATTORNEY KRATZ: Judge, there may be some brief testimony as to the bond modification motion of Mr. Strang that we intend to come much later this afternoon, once that motion is addressed.

THE COURT: All right. Moving on to the motions themselves, and before dealing with a particular motion, I know there were a number of motions and supporting documents filed under seal. And it's my understanding from our status conference leading up to today's hearing, that the parties were going to request that a number of the documents that had been filed be unsealed. Is that correct, counsel?

ATTORNEY STRANG: I don't know that it's a

1 great number. The principal issue, at least as I  
2 recall it, your Honor, was the -- the defense motion  
3 to exclude the Manitowoc County Sheriff's  
4 Department, which I filed under seal in deference to  
5 Mr. Kratz's expressed view that it ought to be. So  
6 I thought it only fair to honor that, in the first  
7 instance, and then to let the Court decide rather  
8 than, in effect, deciding it myself by filing it  
9 other than under seal.

10 I don't think it's properly sealed.  
11 That is, I couldn't defend a media request to  
12 unseal it. It concerns information that already  
13 has been broadcast publicly. And in general  
14 here, Steve Avery is aware that the public nature  
15 of trials in this country has been an aid to the  
16 defense. It's been a protection for the citizen  
17 accused. And I would err here on the side of  
18 making court documents publicly available where  
19 they possibly can be, and certainly there still  
20 will be some that cannot, consistent with a fair  
21 trial and the Court's obligation.

22 But I think this one reveals nothing  
23 that hasn't already been broadcast publicly by  
24 FOX 11 TV. So I suggest to the Court that the  
25 Motion to Exclude the Manitowoc County Sheriff's



1 Department, and any response from the State,  
2 rightly ought to be unsealed.

3 THE COURT: All right. Mr. Kratz and  
4 Mr. Fallon.

5 ATTORNEY KRATZ: Judge, I do agree with  
6 Mr. Strang's position on that particular motion.  
7 Our concern was providing an additional forum for  
8 additional pretrial publicity on such a volatile  
9 issue, or at least as framed by Mr. Strang. But at  
10 this time, as the matter has been brought before the  
11 Court, and as the Court is about to receive at least  
12 brief oral argument on it, I have no objection to  
13 that course.

14 THE COURT: All right. The Court will  
15 order then that that motion, and any papers filed in  
16 support of or in opposition to it, can be unsealed.

17 The next item I have got is the State's  
18 motion concerning third party liability evidence,  
19 or a *Denny* motion. Is there any reason that that  
20 pleading, and the briefs submitted in support and  
21 opposition to it, cannot be unsealed?

22 ATTORNEY KRATZ: It's fine from the State's  
23 perspective, Judge.

24 THE COURT: Mr. Strang?

25 ATTORNEY BUTING: Judge, I'm handling that

1 motion. I don't know that it was, actually,  
2 originally sealed, but I don't see there is any need  
3 to have it sealed, or any of the responses.

4 THE COURT: Okay. Court will order that  
5 motion, and the briefs relating to it, unsealed.

6 The next item is -- well, actually, the  
7 State I think groups together a number of  
8 preliminary motions in limine. The one that I'm  
9 looking at to be dealt with next is the motion  
10 concerning the admissibility of evidence  
11 regarding the defendant's wrongful conviction.  
12 This would be designated as item one in the  
13 pleading entitled Motion in Limine Series One  
14 from the State.

15 Now, there's other related motions made  
16 in the same document. I will start out I guess,  
17 Mr. Kratz, with you, since you filed it. Is  
18 there anything in there that the State feels  
19 requires sealing at this point?

20 ATTORNEY KRATZ: Not in paragraph -- I'm  
21 sorry, Judge, not in Paragraph 1, no.

22 THE COURT: Well, let's take the entire  
23 document. I don't think I can unseal a paragraph.  
24 I think there is, later in the document, some  
25 evidentiary matters that are set forth in some

1 detail, the admissibility of which is yet to be  
2 determined.

3 ATTORNEY KRATZ: Paragraph 5 and 6, Judge,  
4 may still be appropriate to be sealed as it  
5 requires, at least in part, a balancing test of the  
6 Court and seeks a pretrial ruling of the Court. As  
7 I told the Court, in chambers, and Mr. Strang,  
8 Paragraph No. 7, dealing with out of the court  
9 statements of Teresa Halbach, this Court understands  
10 the recently decided case of *Davis vs. Washington*  
11 decided by the US Supreme Court, June 19th, was very  
12 relevant to the analysis the Court must undertake in  
13 this regard.

14 The Court had asked for a supplementary  
15 memorandum of law to be prepared. I have done  
16 that. I have provided that to defense counsel.  
17 I at least want to provide the Court the original  
18 of that; although, it's not going to be argued  
19 until the 19th, that's been completed, Judge.

20 THE COURT: All right. What's the State's  
21 position on the sealing or unsealing of the State's  
22 Series One Motions in Limine.

23 ATTORNEY STRANG: Defense's position?

24 THE COURT: Defense's position, I'm sorry.

25 ATTORNEY STRANG: This is an appropriate

1 case to use redacting of a public copy rather than  
2 sealing. And I think that Paragraph 1 may be made  
3 available publicly, that is, not redacted.

4 Paragraph 2 may be made available  
5 publicly, not redacted.

6 Paragraph 3, I think is appropriate for  
7 public disclosure, not redacted.

8 Paragraph 4, need not be redacted.

9 Paragraph 5, in my view, need not be  
10 redacted.

11 All of Paragraph 6 should be redacted at  
12 this point.

13 Paragraph 7, need not be redacted. The  
14 argument that follows need not be.

15 And, then, Paragraph 8 need not be  
16 redacted.

17 THE COURT: So the defense is asking for  
18 the document to be unsealed with the exception of  
19 Paragraph 6 being redacted, correct?

20 ATTORNEY STRANG: I'm sorry?

21 THE COURT: Paragraph 6 is the only one  
22 that you are asking to be redacted.

23 ATTORNEY STRANG: Yes, your Honor.

24 THE COURT: Any objection from the State?

25 ATTORNEY KRATZ: No, Judge, other than

1           there was discussion previously about Paragraph 5,  
2           and this Court asking for additional argument as to  
3           that may or may not include information that will be  
4           made public.  Actually, the suggestion, or offer, in  
5           Paragraph 5, is probably not something that is all  
6           that noteworthy and so I would have no objection to  
7           the Court, other than Paragraph 6, allowing this  
8           document to be made public.

9           THE COURT:  All right.  Let's move on then  
10          to --

11          ATTORNEY STRANG:  May I make a suggestion--

12          THE COURT:  Yes.

13          ATTORNEY STRANG:  -- about the mechanics of  
14          this, which then could apply to any future issue  
15          where the document itself would be public, but parts  
16          of it may be redacted.  My suggestion would be that  
17          the author of the document, in this case the State,  
18          go back to the word processing system, create a  
19          copied over document of this and then just remove  
20          Paragraph 6 and put Paragraph 6 redacted, rather  
21          than black ink and that kind of thing, which people,  
22          then, invariably are holding up to the light and  
23          trying to guess about.

24                 I think it's just a more effective way  
25          to redact.  And then the document, as refiled,

1 would clearly say redacted at the appropriate  
2 paragraph. And I, of course, would have no --  
3 there's every reason why a redacted copy should  
4 be treated as filed on the original date of  
5 filing, nunc pro tunc.

6 THE COURT: Any objection Mr. Kratz?

7 ATTORNEY KRATZ: My secretary might, Judge,  
8 but I don't. We'll try to accomplish that.

9 THE COURT: All right. Let's move on then  
10 to the next item to be addressed today. That was  
11 actually, let's see, I think an additional part of  
12 the same document, which would be Paragraph 3. So  
13 that's dealt with there.

14 ATTORNEY BUTING: Judge, the only filings  
15 on that motion so far is the State's Motion in  
16 Limine Series One that we just discussed, Paragraph  
17 3, and then my letter response. I don't think that  
18 needs to be sealed.

19 THE COURT: Okay. All right. So -- Well,  
20 that's a good point. The written arguments, in  
21 support of or in opposition to the request for each  
22 of these items, with the exception of Paragraph 6 at  
23 this time, I would think could be unsealed or  
24 submitted open, if you will, without prior request  
25 to and permission of the Court. Fair enough?

1                   ATTORNEY STRANG: Right. And in that vein,  
2 I filed a memorandum that relates only to  
3 Paragraph 6 and the State's argument there. So my  
4 memorandum probably just could be sealed.

5                   THE COURT: That would remain sealed. Very  
6 well. The Court was also going to take up  
7 Paragraph 2 of the State's motions in limine today  
8 and that's covered by the part that has already been  
9 decided to be unsealed.

10                   ATTORNEY STRANG: And that's a matter on  
11 which I have no doubt we'll reach a substantive  
12 stipulation at some point.

13                   THE COURT: The State's Motion to Dismiss,  
14 I believe is already open. I don't think there's  
15 anything left to unseal there; is that correct,  
16 Counsel?

17                   ATTORNEY KRATZ: The defense motion, I  
18 don't think I filed one, Judge.

19                   THE COURT: Right.

20                   ATTORNEY STRANG: Right, I think that's  
21 unsealed.

22                   THE COURT: And then there was also a  
23 defense motion concerning interference with right to  
24 counsel that I was led to believe might be resolved  
25 by today, relating to the other person.

1                   ATTORNEY STRANG:   The cell mate?

2                   THE COURT:    Yes.

3                   ATTORNEY STRANG:   It's not even a motion,  
4                   it's a notice.

5                   THE COURT:    True.

6                   ATTORNEY STRANG:   What I'm awaiting from  
7                   the State, and I'm sure I will get when Mr. Kratz  
8                   has five minutes, is an explanation of why this  
9                   gentleman was in the jail at all.  CCAP doesn't  
10                  disclose a reason.  I know that Mr. Kratz knows and  
11                  he's commented about where the gentleman is now.  So  
12                  he has that information.

13                  At this point I wanted the State and the  
14                  Court to be on notice that we have a concern  
15                  about cell mates and inquiry that may be made of  
16                  Mr. Avery by cell mates.  But as the notice  
17                  itself says, I think at this point there hasn't  
18                  been a "messiah problem" that arose as to that  
19                  gentleman.

20                  THE COURT:    Mr. Kratz, do you have  
21                  materials with you today that are hopefully going to  
22                  resolve that?

23                  ATTORNEY KRATZ:   I have information.  
24                  Actually, if the Court anticipates a mid-afternoon  
25                  break, Mr. Wiegert from the Sheriff's Department can



1 provide that relevant information and I'm sure it  
2 will be to Mr. Strang's -- or that it will conclude  
3 the matter without further discussion with the  
4 Court.

5 THE COURT: All right. The last item up  
6 for consideration today is the defendant's motion to  
7 reduce bail which was also, I believe, submitted  
8 under seal. What's the position of the parties on  
9 that particular motion? Mr. Strang?

10 ATTORNEY STRANG: This is Mr. Buting's  
11 department.

12 THE COURT: Okay. Sorry, Mr. Buting.

13 ATTORNEY KRATZ: We're just talking on the  
14 sealing issue?

15 THE COURT: The sealing issue of the bail  
16 motion, correct.

17 ATTORNEY BUTING: Judge, I have no reason  
18 that this could not be unsealed.

19 THE COURT: What is the State's position?

20 ATTORNEY KRATZ: Well, Judge, this was what  
21 we had alerted the Court that would require some  
22 brief testimony. It deals with statements made by a  
23 co-defendant, which may or may not be admissible at  
24 trial. Quite frankly, Judge, the State doesn't --  
25 doesn't mind if it is unsealed and discussed. We

1 can certainly do that in open court.

2 As an officer of the court, however, I  
3 need to alert the Court, and I'm sure defense  
4 counsel understands, that portions of those  
5 statements may or may not be admissible. So I  
6 want to at least tell the Court that.

7 If we are getting into those statements,  
8 we can certainly do that in open court. That  
9 seemed an area, however, that was a little less  
10 clear about whether the Court wanted to air that  
11 in open court. But we are prepared to do so  
12 today, if the Court wishes.

13 THE COURT: Mr. Buting.

14 ATTORNEY BUTING: Again, I'm fine with  
15 unsealing it. I don't think there is any reason  
16 that it can't be.

17 THE COURT: Very well. The Court will  
18 allow that motion to be unsealed. And I will  
19 prepare an order regarding the documents to be  
20 unsealed, which I will submit for -- to the parties  
21 before I sign it, just so everyone is in agreement.

22 ATTORNEY STRANG: There's one more document  
23 that's under seal, your Honor.

24 THE COURT: Okay.

25 ATTORNEY STRANG: The -- I filed a motion

1 to suppress Mr. Avery's November 5 statement to a  
2 Marinette County detective and any products or  
3 fruits of that statement. The motion itself was not  
4 under seal, but I filed a supporting affidavit from  
5 Steve Glynn that has some pages from the discovery  
6 attached to it and, therefore, I sealed -- I filed  
7 under seal Mr. Glynn's affidavit, because it was my  
8 understanding if we were attaching discovery  
9 documents, it should be filed under seal.

10 All that said, I don't think there's --  
11 you know, there's nothing all that terribly  
12 prejudicial in the document -- in the discovery  
13 documents that were attached to Mr. Glynn's  
14 affidavit. So I -- I don't feel strongly about  
15 keeping it sealed.

16 THE COURT: Mr. Strang -- Mr. Kratz, I'm  
17 sorry.

18 ATTORNEY KRATZ: I have no objection to  
19 that as well, Judge. There was -- and I didn't know  
20 if the Court wanted to deal with the July 19th  
21 motions as well. This Marinette issue is to be  
22 dealt with, at least contemplated, partly today and  
23 partly on the 19th. And I noted the Court did not  
24 address other motions, including the other acts  
25 motions, which I'm sure should remain under seal.

1 But that having been said, I don't have any  
2 objection to the Marinette detective's reports, or  
3 at least portions of them included in Mr. Glynn's  
4 affidavit, to be made public.

5 THE COURT: Very well. I will include that  
6 as part of the order then.

7 ATTORNEY STRANG: Mr. Buting points out  
8 that there is one more document that remains under  
9 seal, which is the Defendant's Memorandum on  
10 Evidence of Wrongful Conviction and Accusations of  
11 Prisoners.

12 THE COURT: That sounds like it would fall  
13 under Paragraph 6 of the --

14 ATTORNEY STRANG: Some of it does and some  
15 of it concerns Paragraph 1. You know, we could -- I  
16 don't have a -- I was pretty circumspect in what I  
17 have said about the Paragraph 6 material in this  
18 memorandum; although, I did file this under seal. I  
19 don't have an objection to unsealing it.

20 And, indeed, maybe a good balance to  
21 strike here is there's probably about four lines  
22 of it that could be redacted with the rest of the  
23 document being unsealed. And obviously I, as the  
24 author, would handle the word processing task  
25 that I described earlier.

1                   If the State would prefer that it not be  
2 redacted, then I don't have an objection to  
3 unsealing it in the entirety.

4                   THE COURT: Mr. Kratz.

5                   ATTORNEY KRATZ: I don't have a position,  
6 Judge. I think Mr. Strang is correct, there isn't  
7 anything in there that is so prejudicial that it  
8 needs to remain sealed.

9                   THE COURT: All right. I will include that  
10 as part of the Court's proposed order. Do the  
11 parties have a preference as to which motion they  
12 wish to present argument on first?

13                   ATTORNEY KRATZ: Is the Court contemplating  
14 receiving argument on the Change of Venue, Exclusion  
15 of the Sheriff's Department and Motion to Dismiss --

16                   THE COURT: Yes.

17                   ATTORNEY KRATZ: -- altogether, or did the  
18 Court want to receive separate argument on those?  
19 We certainly can since we -- we meaning defense  
20 counsel and the State -- have in one form or another  
21 presented the lion's share of the argument to the  
22 Court. I expect this Court wishes a very brief  
23 summary of the arguments as to those. I have no  
24 objection, Judge, to providing them en masse, that  
25 is, all three together, since they are interrelated.

1 THE COURT: Mr. Strang, are you going to be  
2 arguing these for the defense?

3 ATTORNEY STRANG: I am.

4 THE COURT: Any objection to combining your  
5 argument?

6 ATTORNEY STRANG: I don't.

7 THE COURT: All right. You may proceed.

8 ATTORNEY STRANG: I will start with  
9 Mr. Avery's Motion to Dismiss the five counts  
10 relating to Teresa Halbach. I was clear on the  
11 motion, but I will reiterate here that we have not  
12 moved to dismiss the felon in possession count,  
13 because I don't think the problems of which we  
14 complain relate anywhere near as strongly to that  
15 Count of the Amended Information.

16 The facts here, largely, are undisputed,  
17 your Honor. In terms of what -- what has  
18 happened. But I will simply review them as I  
19 understand them.

20 There have been eight news conferences  
21 of which I'm aware in this case. All eight of  
22 them have been set up by the State, presented by  
23 the State, as part of a decision, as Sheriff  
24 Pagel testified this morning, to disseminate  
25 information to the media and, thereby, to the

1 public, and to do so with control of the Calumet  
2 County Sheriff and the Calumet County District  
3 Attorney who serves here as Special Prosecutor,  
4 of course.

5 Each of those eight news conferences was  
6 broadcast, in full, by one or more, I think  
7 probably all, of the Green Bay television  
8 stations. Some of them were covered in full, or  
9 in large excerpt, by Milwaukee stations.

10 The defense appeared at none of those  
11 and there have been no news conferences called by  
12 counsel for the defense at any juncture, either  
13 current counsel or, to my knowledge, predecessor  
14 counsel, for Mr. Avery.

15 Of the State's eight televised news  
16 conferences, four of those came after formal  
17 charges, or a formal charge, was filed against  
18 Mr. Avery. The Court will have available to it,  
19 DVD's of all eight in full, but I will represent  
20 to the Court, as an officer, that Steven Avery,  
21 by name, and then the Avery family more  
22 generally, are discussed in all eight of the news  
23 conferences, some of that incidentally, some of  
24 it in response to questions from media people,  
25 some of it just in the statements of Mr. Kratz or

1 Sheriff Pagel.

2 And, you know, to be clear, obviously,  
3 it's conceded by the defense that the locus of  
4 much of the investigated activity here was the  
5 Avery Auto Salvage property. So I don't cast  
6 dispersions or lay motives, in and of itself, to  
7 talking about the Averys, or the Avery family, or  
8 the Avery property that was the locus of many of  
9 the investigative steps here.

10 But it is clear that the Avery name, and  
11 Steven Avery's name in particular, was attached  
12 immediately in the news conferences, and then  
13 consistently in the news conferences, to the  
14 information that the State was making public.  
15 That included, at the March 1 and March 2 news  
16 conferences, the impetus of which we are told was  
17 the arrest, and then the plans to charge, and  
18 eventually the charging of Brendan Dassey.  
19 Impetus that may have been for the March 1 and  
20 March 2 press conference but, again, much of the  
21 content of both of those concerned Steven Avery.

22 There have been claims of superior  
23 knowledge made -- salted throughout these various  
24 news conferences by either Mr. Kratz or  
25 Mr. Pagel. And I don't remember right now anyone



1 else speaking at them, although, I can't be  
2 certain.

3 Well, I take that back, I think  
4 Manitowoc County District Attorney Mark Rohrer  
5 spoke very briefly at one of them. And I know  
6 that others appeared on camera, but I don't  
7 recall them speaking, all of them law enforcement  
8 officers or representatives of the State. So not  
9 at every one of these conferences, but salted  
10 throughout, there are references to what the  
11 State now knows, or what is now clear.

12 And assurances to the public that law  
13 enforcement and the prosecuting authorities were  
14 in possession of information beyond that  
15 disclosed to the public and that they found, or  
16 viewed, the information known only to them as  
17 reliable and as informing their conduct and their  
18 decisions in the case.

19 One of the press conferences, March 2,  
20 2006, was sufficiently graphic, or lurid, or  
21 colorful in its details, that Mr. Kratz did  
22 something I had not ever seen before, which is at  
23 the beginning, urge children under age 15, and  
24 friends or family members of Ms Halbach, not to  
25 watch. Essentially the State made an effort to

1 impose and R rating on its final televised news  
2 conference here on something that it knew was to  
3 be broadcast in the media market covering this  
4 county and, therefore, the jury pool, during  
5 daytime hours.

6 There have been at least two other  
7 appearances by law enforcement figures on TV:  
8 One, a televised interview of Sheriff Pagel, as I  
9 recall. And that was a topic of some brief  
10 testimony by him earlier this morning.

11 And then, probably something that's  
12 drawn much more focus, a two part series run by  
13 WLUK TV, which is FOX 11 out of Green Bay, that  
14 featured prominently, although not exclusively by  
15 any means, Sheriff Kenneth Petersen from  
16 Manitowoc County who, it is undisputed,  
17 personally has next to no role in the actual  
18 investigation of this case, but who spoke as the  
19 chief law enforcement officer at the county level  
20 for Manitowoc County. That was aired two nights  
21 in a row, May 10 and 11. And I think the Court  
22 has already a DVD carrying the 17 plus minutes of  
23 those two segments.

24 I note, as well, that one of the early  
25 steps that I took, after undertaking

1 representation of Steve Avery, was to move for a,  
2 what we call locally, a gag order. The motion  
3 had a little bit more elegant title than gag  
4 order motion. But the gist of it was, that I was  
5 moving to limit public comment.

6 From my recollection, and I'm sure the  
7 Court's notes or recollection are to be relied  
8 on, at least as much, if not more than mine, and  
9 the public record here. But my recollection is  
10 that the State did not join in that motion. And  
11 the Court, after some prompting to the parties to  
12 try to work things out in a reasonable way,  
13 eventually denied the motion.

14 The defense also, here, has sought an  
15 adjournment of the trial date, initially set for  
16 September 5; an October 16 date was proposed.  
17 The defense position, in a nutshell, was  
18 October 16 was better than September 5, but not  
19 sufficient. And that we thought an adjournment  
20 date into 2007 was necessary for adequate defense  
21 preparation and to permit a diminution in the  
22 publicity, and particularly the more inflammatory  
23 publicity that has attended this case from the  
24 outset, as Sheriff Pagel correctly anticipated  
25 back on November 5.

1           The State, as I recall it, agreed that  
2           on balance it was appropriate for the Court to  
3           adjourn the September 5 trial date, but the State  
4           preferred an October 16 trial date. And as we  
5           stand here today, it's the October 16 date that  
6           the Court has scheduled for trial on this.

7           So, I don't think there is any question  
8           that the publicity has been intense here, that at  
9           least to the extent of the eight news conferences  
10          and a couple of other televised appearances that  
11          I have described, that the State has participated  
12          actively in that; indeed, made a conscious choice  
13          to engage in the dissemination of information  
14          that way, publicly, as Sheriff Pagel testified  
15          this morning.

16          And that a foreseeable result of that  
17          would be to impair or threaten, put at serious  
18          risk, Mr. Avery's right to a fair trial at all,  
19          because some of this publicity has been statewide  
20          or even national, as the testimony acknowledged  
21          this morning. More specifically, has imperiled,  
22          put at risk, Mr. Avery's right to a trial at  
23          which citizens of Manitowoc County would serve as  
24          jurors.

25                 Both of these are constitutional rights

1           that he has, the fair trial in general being both  
2           federal and state constitutions as providing the  
3           basis for those constitutional claims. And as to  
4           a trial in this vicinage, or a trial venued in  
5           Manitowoc County, the Wisconsin Constitution  
6           guarantees Mr. Avery that right.

7                         Now, I don't disagree with the State's  
8           observation in the abstract, that sometimes  
9           constitutional rights come into tension with one  
10          another. Sometimes, one, a defendant, an  
11          accused, is put to a choice in, do I, for  
12          example, exercise my constitutional right to be  
13          heard at trial, as a matter of due process, by  
14          trying -- by testifying at trial, or do I  
15          exercise my 5th and 14th amendment and, for that  
16          matter, state constitutional privilege against  
17          self-incrimination by declining to testify,  
18          knowing that the State, then, can't comment on my  
19          decision not to testify and meet the charges.

20                         That would be the classic dilemma or  
21          potential conflict of constitutional rights. The  
22          defendant who chooses to testify necessarily  
23          gives up the privilege in self-incrimination.  
24          The defendant who stands on that privilege,  
25          necessarily, then, can't testify in his defense

1 at trial and exercise that aspect of his due  
2 process right to be heard.

3 But that's not the kind of conflict of  
4 constitutional rights that the Court confronts  
5 this afternoon; that is, the constitutional  
6 rights we raise here. The right to a fair trial,  
7 the right to a trial in the venue in which the  
8 crime is alleged to have occurred, are not  
9 unavoidably in conflict as are self-incrimination  
10 and the right to be heard. And this isn't a  
11 situation where mere fate has caused these two  
12 constitutional rights to collide, where forces  
13 outside anyone's control, or as I say, fate, for  
14 shorthand, have put Steven Avery to an unhappy  
15 choice.

16 This is not fate, this is the State that  
17 has done this. The State has fostered the  
18 publicity. The State has contributed to the  
19 publicity. The State is not to blame for all the  
20 publicity, and I don't suggest for a moment that  
21 the State is.

22 Today we're being televised, I assume,  
23 or there will be newspaper reports about the  
24 proceedings today, and that's not attributable to  
25 the State. It doesn't lay at their feet. I

1 haven't attributed any fault, any wrong doing, to  
2 the Halbach family. They have entirely separate  
3 interests. Those interests are important, they  
4 are legitimate. They are not under the State's  
5 control.

6 And nobody is complaining here about  
7 statements that the Halbach family have made, or  
8 when they have been intruded upon by cameras, the  
9 way they have handled that. Although, there have  
10 been -- there has been other publicity.

11 So the State, you know, the State is  
12 responsible only for some of the publicity in  
13 this case. But that responsibility is  
14 significant.

15 When I looked around at cases, primarily  
16 on change of venue, I find references to, you  
17 know, one short informational news conference,  
18 for example, Briggs (phonetic), the defendant not  
19 mentioned by name, purely an informational short  
20 news conference. Now, I can't say that there's  
21 no reported case in which there's been more than  
22 one news conference. I haven't seen one, but  
23 there may well be one.

24 Even in the State Courts of Wisconsin,  
25 I'm sure if I cast a wider net, nationally or in

1 the federal decisions, I'm sure I would find  
2 situations where there have been more than one  
3 news conference held by the prosecution, the  
4 State, the government, but eight is a great  
5 number. They were televised and these were not  
6 purely informational.

7 These included a great amount of detail,  
8 a fair amount of opinion, assertions of  
9 knowledge, as if that epistemologically were  
10 absolute, and based on information not to be  
11 disclosed to the public. In the case of March 2,  
12 the presentation was so graphic and I think  
13 effective, to give Mr. Kratz his due, that he  
14 himself warned some viewers not to watch.

15 And gave what I thought was a pretty  
16 effective opening statement or closing argument,  
17 running through a Criminal Complaint that was  
18 graphic and highly detailed; a Criminal Complaint  
19 that went well beyond what was necessary to  
20 establish fair probable cause against Mr. Dassey,  
21 in the information that it detailed, and then  
22 that Mr. Kratz repeated on television.

23 The participation of Sheriff Petersen  
24 hardly needs much further comment. I will go out  
25 on a limb and say that we will not find, in



1 reported decisions, another case in which the  
2 sheriff of the county in which the alleged crimes  
3 occurred opines not just that the defendant is  
4 guilty of the charged offense, but opines that if  
5 he's acquitted, somehow he will murder someone  
6 else in the future, on what possible basis, I  
7 have no idea, that assertion would be made.

8 I will venture further that the Court  
9 will not find a close analog to the chief county  
10 law enforcement officer in the affected county,  
11 describing with, or agreeing with a description  
12 of an accused person as a psychopath. And then  
13 suggesting further, in his own words, in a case  
14 having nothing to do with fraud, deception, that  
15 sort of wrong doing, that the defendant may be a  
16 con man.

17 This was really remarkable. Before we  
18 even get to the bizarre discussion of how it  
19 might have been easier to kill Steven Avery than  
20 to frame him. Off the charts.

21 And the direct participation of the  
22 sheriff of this county, his words, his image on  
23 TV, two nights in a row, in an interview that he  
24 said took about half an hour, that occurred in  
25 the second half of April, about five months into

1 the prosecution of this case and at that point  
2 almost four full months before the September 5  
3 trial date that this Court anticipated. I will  
4 add also, the interview being given at a time  
5 when the defense already had made clear that we  
6 prefer, we want, a jury from Manitowoc County to  
7 hear this case.

8 So the conflict here in constitutional  
9 rights, the fair trial right, bumping up against  
10 the right to a trial in the proper venue, isn't  
11 one of fate entirely. There has been significant  
12 State action in creating that conflict. It's a  
13 choice to which the defendant ought not be put.

14 Because when the State takes action to  
15 interfere with any constitutional right, yet  
16 alone to bring two constitutional rights into  
17 direct contact so one cannot enjoy the one if he  
18 claims the other, the State is interfering with  
19 the defendant's constitutional rights, his bundle  
20 of trial rights assured by a Federal, in part,  
21 and the State, in full, Constitution.

22 And that's a denial of due process, it  
23 seems to me. I don't know what could be more  
24 fundamental to due process and to fair play than  
25 the State not interfering with, or impeding, or

1 imperiling the defendant's constitutional rights,  
2 particularly when they go directly to where the  
3 trial will be held and how fair that trial will  
4 be.

5 It is a fundamental denial of due  
6 process, in addition to an interference with the  
7 specific constitutional right at issue. That's,  
8 I think, what we have here. Dismissal is an  
9 extreme remedy. Dismissal is an extreme remedy.  
10 But we have also seen extreme conduct.

11 And if I thought there was some remedy  
12 short of dismissal, I understand -- I understand  
13 just how unpalatable that is to the public, how  
14 horribly unpalatable that is to the Halbach  
15 family, if they believe Mr. Avery guilty.

16 I understand how unpalatable that is to  
17 the Court, which sits as a neutral in this, but  
18 in all events sits to see that justice is done,  
19 which ordinarily means that causes are tried.  
20 Allegations are presented to a fact finder and  
21 they stand proven or unproven, but they are  
22 tried. So I understand this is unpalatable  
23 stuff.

24 Maybe I'm not smart enough to think of  
25 the lesser remedy that would remove the conflict

1           between the right to a fair trial and the right  
2           to a trial in this venue. The only alternative I  
3           have come up with, and I stand on, is to adjourn  
4           this trial for a number of months, into February,  
5           2007, and to couple that adjournment with an  
6           order limiting the public disclosure by lawyers  
7           in this case and by law enforcement agencies  
8           involved in the prosecution of this case.

9                        I think the Court has the power to do  
10           that. It's unusual to ask for an order limiting  
11           disclosure by law enforcement officers, but the  
12           Court in general has the right to control what  
13           witnesses say. And the Court has the right to  
14           preserve the integrity of the proceedings before  
15           it and to assure the rights to a fair trial that  
16           he enjoys as a matter of the constitution and  
17           that the public enjoys as a matter of common  
18           sense, as a matter of tradition in this country.

19                       And although it's not a constitutional  
20           right for the public or the State, it's certainly  
21           a tradition, and a hope, and aspiration in this  
22           country, that the public too would have a fair  
23           trial. So maybe -- maybe an adjournment coupled  
24           with an order limiting disclosure, but I don't  
25           have more to offer, short of dismissal of the

1 affected charges. And, again, I tried to tailor  
2 that as best as I can to the problem.

3 So the first course, the one I prefer,  
4 is that the five counts relating to Ms Halbach be  
5 dismissed, without prejudice; without prejudice  
6 on the hope that at some point, if the State  
7 wishes to proceed, again, that that could be done  
8 without irreparable harm to the constitutional  
9 rights of the accused.

10 As a matter of second preference to  
11 adjournment, coupled with a pretty strong order  
12 eliminating public disclosure, that order would  
13 exclude the Halbach family, they would not be  
14 covered by it. And that order would exclude the  
15 defendant himself, because I don't think a Court  
16 can, or should, mute the accused himself, who has  
17 everything at stake in terms of his liberty,  
18 anything more than I think the Court should mute  
19 or gag the family of someone who's been killed,  
20 who's been lost. Because that family has a great  
21 deal at stake emotionally and in seeking justice.

22 But I will say this, that I think  
23 Mr. Avery has been less voluble since Mr. Buting  
24 and I have arrived on the scene. Specifically,  
25 none of the Avery family members agreed to

1 comment for the FOX 11 report, for example, as  
2 the reporter, Lauren Cook notes at the end of  
3 both of those segments. I know that I have tried  
4 to keep my tongue in check with the media, not  
5 with 100 percent success, but I haven't had any  
6 news conferences.

7 And while it wouldn't be proper for the  
8 Court to order Mr. Avery to say nothing in  
9 asserting his innocence, I will say, if he says  
10 anything, he's got his lawyers to explain that  
11 to. And he understands we won't be very happy.  
12 So those are the alternatives.

13 The third, and to us, least palatable  
14 alternative, is to change venue entirely in this  
15 case. Our motion is for relief under Section  
16 971.22 of the Wisconsin Statutes. It is not an  
17 invitation to, or an invocation of, the use of  
18 Section 971.225.

19 We think that if venue has to be  
20 changed, as a least palatable alternative here,  
21 that the entire trial ought be moved to a less  
22 tainted county, in the hope that the jury there  
23 would not have to be sequestered and that we  
24 wouldn't visit that sort of imposition on 12, or  
25 14, or 15, or 16, citizens, depending on the

1 number of alternates the Court might pick for a  
2 trial that well could go five weeks or  
3 conceivably longer.

4 So, I prefer the dismissal. Failing  
5 that, an adjournment coupled with the restriction  
6 of public comment by law enforcement officers, as  
7 well as lawyers. And only last would I address  
8 change of venue.

9 Now, I have more to say about the change  
10 of venue, but I want to end in -- for the moment,  
11 in talking about an adjournment. And this is  
12 new, I have something new to say on that. I have  
13 not put this in writing and I have struggled with  
14 how to say it, when to say it, and whether to say  
15 it, but I'm going to say it.

16 The Wisconsin legislature, acting rather  
17 rapidly on the last day of a special session, saw  
18 fit to decree that on this November's ballot for  
19 statewide and federal offices, the citizens of  
20 Wisconsin will be asked to give their advice, if  
21 you will, to vote, that is, on an advisory  
22 referendum on the death penalty.

23 Wisconsin has gone 153 years now without  
24 the death penalty. No state in the nation has an  
25 unbroken period of that length in administering

1 justice without killing people. That referendum  
2 will happen just about the time the State is  
3 resting its case, give or take a few days, or a  
4 week, in this trial, if this trial remains set  
5 for October 16th.

6 And in a state where, for example, in  
7 1917 a bomb blew up and killed nine members of  
8 the Milwaukee Police Department; in a state that  
9 produced Ed Gein in the 1950's; in a State that  
10 produced David Spanbauer, in this neck of the  
11 woods, in the 1980's; in a state that produced  
12 Jesse Anderson, who was cynical enough to blame  
13 his own murder of his wife on a young black man  
14 figuring that would be the easiest guy to frame;  
15 in the state that in the 1990's featured Jeffrey  
16 Dahmer; in a state in which this horrible,  
17 alleged crime probably isn't even the worst  
18 Halloween crime in this part of the state, I  
19 guess that honor probably would go, dubious  
20 though it is, to Gerald Turner, in the late  
21 1970's.

22 In a state with this history, Steven  
23 Avery now has become the poster child, the poster  
24 boy, for some politicians in pushing the death  
25 penalty referendum. Whether they like it or not,



1 to some degree, Teresa Halbach's life and death  
2 have been politicized with the death penalty.

3 And I tell you, I don't like it that  
4 Steven Avery, for whom I feel responsible for  
5 here, has become politicized with the death  
6 penalty. But that's how it's playing out.  
7 That's what's happening in our state capitol, and  
8 that's the reality in terms of the referendum the  
9 citizens face this November. And they ought not  
10 be going to the polls in the super heated  
11 atmosphere that this trial will produce, at least  
12 in the Manitowoc County and northeastern  
13 Wisconsin area.

14 His own jurors shouldn't be taking a day  
15 off to go vote on the death penalty referendum at  
16 about the time they have heard the best the State  
17 has to offer in this case and probably before the  
18 defense has been heard, or heard in full.

19 It's an unfortunate confluence. No one  
20 in this room is to blame for any of it. But --  
21 And, you know, I hesitated to address it.

22 The one, I feel very strongly about the  
23 death penalty in general. And, two, it's just  
24 one of these events out there in Wisconsin. But  
25 the fact is, and you see this if you go through

1 the media reports that I have assembled for the  
2 change of venue motion, the fact is, that  
3 politicians, and the media themselves, have  
4 linked the death penalty referendum to the  
5 prosecution of Steven Avery.

6 Senator Lasse from Depere, the principal  
7 sponsor of the death penalty referendum, said in  
8 televised interviews that he revised the wording  
9 that he had intended. He adjusted course on his  
10 referendum proposal because of the Steven Avery  
11 case, or the Teresa Halbach case. I don't  
12 remember whether he used her name or his, and  
13 they are, unfortunately, linked by this case.

14 But it was this set of events, that  
15 brings to the courtroom, that caused the  
16 principal author, he said on television, to  
17 revise his proposal. And this case simply is a  
18 link to it. It is not good democracy, in terms  
19 of this referendum, and it's certainly not good  
20 justice, in this particular case, to have these  
21 two things going on at the same time. So, in  
22 speaking on behalf of an adjournment, as the  
23 second of the three possible alternatives I have  
24 proposed here, I will close with that.

25 If we get to the change of venue issue,

1 the Court wanted me to be more specific about  
2 what was prejudicial about the publicity, and  
3 also to make a full record by submitting what I  
4 have gathered on the publicity, and I will do  
5 that. But I'm going to yield the floor to  
6 counsel for the State on the initial matters I  
7 have addressed.

8 THE COURT: All right. Mr. Kratz, will you  
9 or Mr. Fallon be addressing?

10 ATTORNEY KRATZ: I will, Judge. Your  
11 Honor, I have filed with the Court written argument  
12 as to the request by Mr. Strang to dismiss these  
13 charges as the appropriate remedy for what he  
14 describes as improper pretrial publicity. What  
15 Mr. Strang also identifies as the only logical  
16 remedy, I'm using his words, Mr. Strang recognizes  
17 in citing the 1968 case, the *Schulter* case, that  
18 dismissal due to pretrial publicity is not deemed an  
19 acceptable remedy, at least in this state, and has  
20 not been deemed an acceptable remedy when others are  
21 available.

22 The defense has available to it, not  
23 only increased care in the voir dire and jury  
24 selection process, but also that of change of  
25 venue. Both *Schulter* and *Mendoza*, certainly,

1 when read together, suggest just what Mr. Strang,  
2 I believe, already knows; that is, when change of  
3 venue is, and would be, an appropriate remedy.

4 Even should this Court find the pretrial  
5 publicity to be improper, dismissal just is not  
6 an appropriate remedy.

7 I do not, Judge, intend to go through  
8 the purposes of the press conferences. I think  
9 Sheriff Pagel did a good job in doing that. This  
10 Court, however, needs to understand that the  
11 first half of those press conferences related to  
12 a missing persons investigation. Great care was  
13 taken never to identify Steven Avery as a  
14 suspect.

15 And, in fact, the purpose of those  
16 disclosures were to limit information. That  
17 sounds a little bit unusual that you would hold a  
18 press conference to limit release of information.  
19 But that's exactly what was done, was exactly the  
20 plan by the State, to disseminate very little  
21 information, only that necessary to request  
22 assistance of the public and to release  
23 information already made public, both which are  
24 allowed and prescribed under Rule 3.6 that I  
25 cited in my brief as well.

1                   Let me also mention that -- things that  
2                   Mr. Strang did not concede; that is, the  
3                   admonition by the State when reporting the filing  
4                   of the Complaints, that accused persons are  
5                   presumed innocent. Not noting that, I believe,  
6                   fails to recognize the very serious nature of  
7                   these press conferences and the serious manner in  
8                   which the State, particularly in which I, took  
9                   them.

10                   Care was taken not to prejudice  
11                   Mr. Avery, not to unnecessarily identify him, and  
12                   to move forward in the criminal prosecution of  
13                   Mr. Avery with all deference and with all  
14                   recognition of his constitutional protections.  
15                   Objective, factual, non-editorial reporting is  
16                   not prejudicial. That is something I will,  
17                   however, also save for the change of venue  
18                   discussion.

19                   This Court can't, however, forget the  
20                   facts of this case. This Court cannot forget the  
21                   allegations of what happened to Teresa Halbach.  
22                   And it is those facts, it is the way in which Ms  
23                   Halbach was abducted, and killed, and mutilated,  
24                   that has raised the intense media attention.

25                   Mr. Strang may blame the State for that,

1           may say it was the State who was bringing the  
2           attention upon Mr. Avery, but this gentleman  
3           seated furthest to my right, who enjoyed a degree  
4           of celebrity, when you talk about a poster child,  
5           he enjoyed being the Innocence Project poster  
6           child, didn't shy away from media attention.

7                         In fact he, together with his supporters  
8           and family members, continued to make allegations  
9           of being framed, of being set up. And their  
10          responsibility exists for members of law  
11          enforcement, including prosecutors, under  
12          Rule 3.6, to address just such comments made on  
13          the other side, to avoid improper publicity and  
14          improper inferences being raised.

15                        So, Judge, not reiterating, but asking  
16          this Court to accept those arguments set forth in  
17          our motion, recognizing that the current state of  
18          Wisconsin law is to discount the possibility, or  
19          remedy, of dismissal of the charges, I'm asking  
20          the Court to reject that motion by the defense.

21                        Secondly, the continuance of the trial  
22          is not an appropriate remedy. Mr. Strang's tying  
23          this case to the death penalty referendum is  
24          something that is improper. I can see why he was  
25          reluctant to mention it, because it has no place

1 in this courtroom. It has no place in this  
2 Judge's decision, whether or not to grant a  
3 continuance.

4 The final remedy, the change of venue,  
5 again, is something that the State is prepared to  
6 argue, is something that **Schulter** and **Mendoza**  
7 both provide for a Court, as a logical remedy,  
8 should the Court find that the publicity prevents  
9 a trial within this county for at least from  
10 jurors from within this county, and would ask the  
11 Court to deny this motion and move on, then, to  
12 the change of venue motion. Thank you, Judge.

13 THE COURT: All right. I'm not going to  
14 issue a decision from the bench today on the motion  
15 to dismiss.

16 With respect to the venue motion I do  
17 have a couple of questions. First of all, I know  
18 in the original motion, Mr. Strang indicated that  
19 if the State opposed the motion, he requested an  
20 evidentiary hearing. I'm not sure that we have  
21 heard, on the record, yet, the position of the  
22 State on the motion, on the defense's motion to  
23 change venue, if it came to that. What is the  
24 State's position on the defense motion to change  
25 venue?

1                   ATTORNEY KRATZ: Judge, first, Mr. Strang  
2 framed this issue as not inviting the Court to  
3 accomplish a change of venue in one manner or the  
4 other. That concerned me in addressing my position.

5                   In other words, as I read **Fonte**, and the  
6 other change of venue cases, if this Court  
7 believes that pretrial publicity endangers the  
8 defendant's right to a fair trial, and this Court  
9 decides that a change of venue is appropriate,  
10 it's the Court's decision to decide how to  
11 accomplish that, whether to bring a jury from  
12 another county, or whether the entire trial  
13 moves.

14                   By Mr. Strang imposing upon the Court  
15 what appears almost to be an ultimatum, that this  
16 Court is not invited to use one method or the  
17 other, again, is of concern. That's the  
18 preference, Judge -- or preface, excuse me, to my  
19 position. Should this Court agree with the  
20 State, that if pretrial publicity is believed to  
21 endanger the defendant's right to a fair trial,  
22 and if this Court believes it is the Court's  
23 responsibility on how best to accomplish that,  
24 the State does not intend to argue or to  
25 challenge the motion.



1                   If this Court agrees, however, with  
2                   Mr. Strang, that it is the defense's prerogative  
3                   to preclude the Court from accomplishing change  
4                   of venue, in one manner or another, the State  
5                   very well may put the defense to its burden  
6                   regarding the publicity and whether or not the  
7                   change of venue is appropriate.

8                   THE COURT: I'm not sure I understand what  
9                   the State's position is yet. To be sure, it's the  
10                  Court's decision to determine whether or not there  
11                  is going to be a change of venue. I'm not sure that  
12                  prevents the State from taking a position, either in  
13                  support of or in opposition to the defense's  
14                  request.

15                  The defense is making a conditional  
16                  request, as I understand it, for change of venue.  
17                  Its hope is, number one, that the Court will  
18                  grant the defense's motion to dismiss, or in the  
19                  alternative, number two, the Court will grant the  
20                  defense's motion for a continuance of a trial  
21                  date. But if the Court denies those two motions,  
22                  I understand the defense to be asking for a  
23                  change of venue. Is that a correct  
24                  interpretation, Mr. Strang?

25                  ATTORNEY STRANG: That's right.

1 THE COURT: What I'm asking you, Mr. Kratz,  
2 if it came to that, and because I'm taking these  
3 motions globally and together, today, if it comes to  
4 that, what is the State's position on the defense  
5 motion?

6 ATTORNEY KRATZ: But Mr. Strang also said,  
7 we're only asking for a change of venue if you move  
8 the whole trial to a different county. I don't  
9 think the defense can do that. And I read the  
10 statute as, they either ask for a change of venue or  
11 they don't. And it's the judge, then, who decides  
12 how best to accomplish that. If that's a correct  
13 reading of the law, I have no objection to the  
14 change of venue motion.

15 ATTORNEY STRANG: That's fair. I mean  
16 there is a legal issue lurking here. I am  
17 suggesting that 971.22 does not automatically give  
18 the Court the power, over defense objection, to  
19 proceed under 971.225. Now, I'm not aware of any  
20 case law on the question on -- one way or the other.

21 But Mr. Kratz is right, to this limited  
22 extent, we are specifically making a motion, in  
23 the alternative, as the Court correctly  
24 described, to move the entire trial; that is, to  
25 pick a jury from another county, and in that

1 county to conduct the trial.

2 I'm not trying to impose anything on the  
3 Court. But I am arguing to the Court, or  
4 submitting to the Court, that here, where we have  
5 questions about the involvement of the Manitowoc  
6 County Sheriff's Department and, indeed, the  
7 Sheriff's Department of this county electively,  
8 on November 5, recusing itself from lead  
9 responsibility in this investigation, I'm asking,  
10 in effect, for the Court to hold the department  
11 to that, or to continue and keep in place that  
12 recusal, that stepping back, by not having the  
13 Sheriff's Department participate in contact with  
14 jurors here, unsupervised, any more than it  
15 participate in the collection of evidence,  
16 unsupervised, by other law enforcement agencies.

17 So, if we moved the trial to another  
18 county altogether, we would solve that problem.  
19 We would be using another county's sheriff's  
20 department to provide support to the Court in  
21 terms of witnesses, and courtroom security, and  
22 superintending the jury, and all the things that  
23 the sheriff's department, in the capacity as  
24 bailiffs, do.

25 So, yeah, I mean Mr. Kratz is right, I'm

1 not trying to impose anything on the Court. But  
2 he views -- he reads the statutes as leaving,  
3 entirely to the Court, the decision whether to  
4 proceed under 971.22 or 971.225 once the defense  
5 has asked, generally, for change of venue.

6 And I'm saying that on these facts here,  
7 the willingness of the defense to relinquish its  
8 constitutional right to a trial in this venue,  
9 hinges on the denial of the first two remedies we  
10 seek; and, finally, then, hinges on moving the  
11 trial altogether, if in fact we have to use  
12 jurors from a county other than Manitowoc. I  
13 don't know if that helps clarify or not.

14 THE COURT: So, setting aside for the  
15 moment the question of whether the Court alone has  
16 the power to utilize 971.225 as an alternative, you  
17 are saying, if the defense -- the defense position  
18 is, that if the Court does not dismiss the case and  
19 does not adjourn the trial, the defendant is  
20 requesting a change of venue, but only if the Court  
21 actually moves the trial to another county. And  
22 that if the Court -- if the Court's position was  
23 that it would consider a change of venue, if it only  
24 meant bringing jurors from another county here, then  
25 the defense would withdraw it's request for a change

1 of venue?

2 ATTORNEY STRANG: Right.

3 THE COURT: Assuming you have the power to  
4 do that?

5 ATTORNEY STRANG: Right. That's right.  
6 Mr. Avery would not relinquish his right to a trial  
7 in this venue under the circumstances the Court just  
8 outlined. I mean the Court has described our  
9 position exactly correctly.

10 THE COURT: All right. And Mr. Kratz, it  
11 appears I unfairly jumped on you. I didn't perceive  
12 what the issue was deciding the parties -- or  
13 dividing the parties. So the State's position,  
14 then, is what?

15 ATTORNEY KRATZ: The State's position is,  
16 should the defense request this Court for a change  
17 of venue, I have no objection to that change of  
18 venue. I'm confident in reading 971.225 that it  
19 then becomes the Court's obligation how best to  
20 accomplish that. Now that I have 971.225 in front  
21 of me, I don't believe -- I'm quite confident the  
22 defense doesn't get to place that condition upon its  
23 request. They either ask for it, or they don't.

24 THE COURT: All right. Because of the  
25 criteria that apply, to evaluate a request for

1 change of venue, I'm not going to hear additional  
2 oral argument on that today. I think it depends,  
3 not exclusively, but in significant part, on not  
4 only the publicity the case has received but the  
5 nature of that publicity.

6 And I think the most effective way for  
7 me to evaluate your arguments on that issue is to  
8 get citations perhaps to specific news media  
9 accounts that relate most closely to your  
10 arguments and then have a DVD that I can look at  
11 to evaluate those arguments.

12 So I'm going to ask, I know the defense  
13 does, I'm not sure what the State's position is  
14 going to be but, Mr. Strang, to supplement your  
15 argument on the venue motion, which I understand  
16 to be a contingent or conditional argument,  
17 please address it in writing and direct me to  
18 those news media accounts which you wish to cite  
19 either as examples of a general theme or specific  
20 accounts. I don't think I'm going to look at  
21 every DVD that's in the box.

22 ATTORNEY STRANG: Right.

23 THE COURT: I think I have a general idea  
24 what the publicity has been.

25 ATTORNEY STRANG: Right. And I very easily

1 can do that, your Honor, in fact, since I pulled out  
2 several pages of examples and put them down in  
3 writing already, I can just change that to a format  
4 appropriate for the Court.

5 And the Court is right, the way I  
6 approached this was to -- I will give the Court  
7 everything I have, and then in writing I can  
8 provide examples, some with specific dates, some  
9 just more general things to look for, and maybe  
10 with exemplars of the general problem. And in  
11 writing is just fine. That's no problem at all.  
12 Now, I have the boxes of the raw material, which  
13 if we have to have a fight over change of venue,  
14 I will want, as a matter of making a record.

15 THE COURT: All right.

16 ATTORNEY STRANG: But rather than making  
17 the Court search for needles in a haystack, I can  
18 give some examples.

19 THE COURT: And with respect to the prior  
20 argument on the Motion to Dismiss, I know that the  
21 news conferences play a more significant role in  
22 that motion, they may also relate to the venue  
23 motion as well. As I understand it, at this point  
24 there isn't a DVD that has those on, but the parties  
25 think they can get one.

1                   ATTORNEY STRANG: That's right. And I  
2                   should take, obviously should take responsibility  
3                   for that. They used to be online on wfrv.com and  
4                   between the time I looked at them and watched them,  
5                   and when Mr. Buting tried to do the same thing, they  
6                   got taken down. I assume to save band width or  
7                   something so what I'm going to do is, by subpoena or  
8                   request to WFRV, or to one of the channels, try to  
9                   get one or more, probably more than one DVD that has  
10                  all of that footage, to the Court.

11                  THE COURT: All right. Anything further on  
12                  those three motions?

13                  ATTORNEY KRATZ: So I'm clear, and I don't  
14                  mean to belabor this issue, Judge, is the Court then  
15                  unwilling to rule on whether or not the defense is  
16                  legally able to make a conditional change of venue  
17                  request? And here is why, I don't know how to  
18                  respond.

19                  There are 30 family members sitting  
20                  behind me, there are 75 cops that are going to  
21                  testify. I have a room full of evidence that I  
22                  prefer not to trek over to La Crosse. And that  
23                  is a very, very candid and very practical  
24                  approach to how I mean to respond.

25                  If the Court believes that the defense



1 has that ability, the Court believes that the  
2 defense can say, Judge, you are precluded under  
3 971.225, despite saying the Court shall, you are  
4 precluded from making that decision. Then the  
5 State very well may put the defense to it's  
6 burden. Very well may argue that it was not  
7 inflammatory.

8 THE COURT: All right. Since the Court  
9 hasn't been focused on this particular issue until a  
10 few minutes ago, I can tell you for sure, I'm not  
11 prepared to rule on it today. I welcome you to  
12 submit written argument if you wish. And maybe the  
13 question is easy to address and maybe it isn't. I  
14 don't know, since I haven't looked at it until now.  
15 But you should submit your argument in writing.

16 ATTORNEY KRATZ: Would the Court permit,  
17 and Mr. Strang permit, me to argue in the  
18 alternative; would that be acceptable?

19 THE COURT: Yes.

20 ATTORNEY KRATZ: All right. Thank you.

21 ATTORNEY STRANG: In terms of getting the  
22 written highlights or examples for change of venue  
23 purposes, does the Court have a date that I should  
24 meet?

25 THE COURT: How long do the parties believe

1 it will take them to submit their arguments to me?

2 ATTORNEY KRATZ: I will need to see the  
3 DVD's from Mr. Strang and then we're able to  
4 respond. I doubt we can have this ready for  
5 decision by the 19th.

6 ATTORNEY STRANG: Okay. Now, what DVD's?  
7 I'm sorry, the news conferences or the 24 DVD's  
8 about pretrial publicity?

9 ATTORNEY KRATZ: I understood that we were  
10 waiting for something from Mr. Strang by way of the  
11 news conferences but, also, there was going to be  
12 some opportunity that the Court provided the defense  
13 to supplement its argument as to change of venue.  
14 After I receive that, Judge, I can respond.

15 THE COURT: I think it's fair that the --  
16 since the State is at least reserving the right to  
17 oppose the change of venue request, that they have a  
18 right to see what the basis is for the change. So I  
19 think the defense is going to have to go first and  
20 the State is going to have to get a chance to reply.

21 ATTORNEY STRANG: I agree.

22 THE COURT: So with that in mind,  
23 Mr. Strang, I guess I ask you first, how long do you  
24 think it will take?

25 ATTORNEY STRANG: I really think that if I

1 had to, by the end of the week I could submit the  
2 written highlights of the publicity. I don't know  
3 how long it will take me to get the eight news  
4 conferences on to DVD, but I would think, certainly,  
5 by the 14th that could be done. That's a reasonable  
6 target.

7 THE COURT: All right. So the defense by  
8 July 14th, and then, Mr. Kratz, what do you need for  
9 response time?

10 ATTORNEY KRATZ: A week is fine, Judge. I  
11 can have it by the 21st.

12 THE COURT: State by the 21st. Fair  
13 enough. Anything else on those three motions?

14 ATTORNEY KRATZ: No, Judge.

15 THE COURT: If not, we're going to take our  
16 afternoon break now and then resume. I think some  
17 of the other motions are a bit less time consuming  
18 than these were.

19 ATTORNEY KRATZ: I'm sure they are, Judge.  
20 Thank you.

21 (Afternoon recess taken.)

22 THE COURT: At this time we'll go back on  
23 the record and move on to the next motion, which is  
24 the State's motion concerning Third Party Liability,  
25 or a *Denny* motion. And it's really in two parts.

1 The first is requesting that if the defense is going  
2 to -- or intends to introduce any evidence  
3 suggesting that someone else is guilty of the crime,  
4 other than Brendan Dassey, that they comply with the  
5 requirements of **Denny**, before the Court allows such  
6 evidence.

7 And, secondly, that the same standard be  
8 applied to any allegedly planted evidence;  
9 though, I'm not sure if -- in light of  
10 Mr. Fallon's response, if the State is still  
11 making that argument or not, that is, that the  
12 **Denny** standards be applied to any allegedly  
13 planted evidence.

14 First of all, with respect to the motion  
15 as it relates to **Denny** type evidence itself, I'm  
16 not sure that there's a disagreement between the  
17 parties. Counsel?

18 ATTORNEY STRANG: I don't think there is,  
19 although, that's Mr. Buting's motion to respond to.  
20 But I just want to make sure I have got the batting  
21 order, are we skipping over excluding the Manitowoc  
22 County Sheriff's Department, for now?

23 THE COURT: Well, let's see. Actually, I  
24 thought that the other arguments were including that  
25 one. I thought we were dealing with items 1, 2, and

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ATTORNEY STRANG: No.

THE COURT: Well, let's do *Denny* and then we'll go back, as long as we're here.

ATTORNEY BUTING: Judge, as to the first question you had, we recognize that *Denny* is the binding authority on third party evidence and that we would be required to comply with that as to any identified third parties, other than the co-defendant, obviously, Mr. Dassey. So I don't think there's any dispute on that particular point.

The dispute between the parties came on whether *Denny* should apply to any so-called frame-up or planting kind of argument. And I think Mr. Fallon conceded that *Richardson, State vs. Richardson*, now makes it clear that *Denny* does not apply under those circumstances. And then the question becomes: What, if any, rules do apply to that, and whether there needs to be a pretrial motion and any sort of foundation laid. So that would be the area that would still be in dispute.

THE COURT: All right. In reading the arguments of both of the parties and looking at the issue, it struck me that even the planted evidence

1 matter could actually have two sub-issues. I could  
2 see how the defense could make such an argument,  
3 just as an inference from the evidence as it came  
4 in, without any independent evidence, or as in some  
5 of the cases -- and I forget which case it was --  
6 where they wanted to show evidence that the officer  
7 had committed similar offenses, if you will, against  
8 other arrested defendants, that there actually would  
9 be other independent evidence of planted evidence.

10 Let me deal with the first issue first.

11 If the -- Does the State feel that the defense  
12 has to do anything special to argue from  
13 evidence, as it comes in from the State, that  
14 evidence may have been planted, just as a logical  
15 inference from the evidence that the State  
16 introduces?

17 ATTORNEY FALLON: Thank you, your Honor.

18 Yes, we do. I think the best way to characterize  
19 this issue is in this light. I would submit to  
20 Court, and Counsel, that it is an entirely different  
21 argument, a far different argument, to say that the  
22 constable has blundered and negligently collected  
23 the evidence, negligently transported the evidence,  
24 negligently cared for the evidence.

25 That's one argument. And I would

1 suggest they are free to make that argument and  
2 ask the jury to draw whatever reasoned inference,  
3 from that, they choose to draw, during the course  
4 of the deliberations.

5 However, the argument that the constable  
6 is crooked, is an entirely different argument to  
7 be offered, with respect to the presentation of  
8 evidence, the collection of evidence, the storage  
9 of evidence, the transportation of the evidence  
10 and, hence, the actual -- the integrity of the  
11 evidence itself.

12 The point of the State's argument is  
13 simply this, if that is the argument, if that is  
14 the inference the defense chooses to have the  
15 jury draw from the presentation of evidence, then  
16 we ought to know what that evidence is.

17 It is clearly -- As I argue in the  
18 brief, it clearly contemplates consideration of a  
19 variety of potential issues: The integrity of  
20 the officers, or the citizens, or whomever may be  
21 involved in the evidence which is at issue. The  
22 Court cannot make a determination of relevance  
23 and, hence, balance the competing interest to  
24 determine the admissibility of evidence, if we  
25 don't know what the evidence is, if we don't know

1           what the issue is.

2                   As I suggest in my -- in the written  
3           argument, waiting until the trial to deal with  
4           objections as to the admissibility of evidence,  
5           or the appropriateness of certain arguments  
6           relative to inferences drawn from the evidence,  
7           waiting to the point of trial is not practical,  
8           nor logical. By analogy, any other trial in  
9           which evidence of this type, or similar type, is  
10          always handled pretrial, there's always a  
11          question as to its admissibility.

12                   And while, for instance, the State may  
13          very well be prepared to concede relevance,  
14          depending on what the evidence is and what the  
15          argument is and what the theory is, conceding  
16          relevance does not in any way mean that the  
17          evidence would be admissible. And we're simply  
18          asking for the notice, and the opportunity to be  
19          heard, relative to that particular type of  
20          evidence.

21                   So, again, it comes down to, there's a  
22          big difference regarding negligent handling of  
23          evidence and deliberately contaminating or  
24          tampering with the evidence, which goes to the  
25          very essence of the trial's goal, which is to



1 search for the truth. So anything that in that  
2 way suggests impropriety, challenges the fairness  
3 of the trial itself, ought to be handled  
4 pretrial.

5 We normally do that in a whole host of  
6 whether it's other acts motions, which we will be  
7 doing in a couple weeks, whether it's a rape  
8 shield issue. There are certain types of  
9 evidentiary issues which must be handled  
10 pretrial. And the obvious -- or the policy  
11 reason is that we have more time to think about  
12 the impact of that evidence and those arguments,  
13 and weigh the competing inferences and do the  
14 balancing test that Section 904.03 suggests.

15 And that's the point of our motion. If  
16 you look at **Richardson** and you don't look at the  
17 Supreme Court case, **Holmes vs. South Carolina**,  
18 even in that case, they dealt with the issue  
19 pretrial. And in **Denny** it's a pretrial issue,  
20 and in **Scheidell**, which dealt with unknown third  
21 party evidence, it's handled pretrial.

22 And when you look at that interplay  
23 between the statutes at issue, 901.04, 904.02,  
24 904.03, the Court talked at length as to the  
25 interplay of that. And the whole idea is to

1           avoid surprise, waste of time, confusion. And I  
2           think there's a very distinct possibility of a  
3           possible mistrial, if we don't handle that  
4           evidence correctly.

5                       And it just seems to me that we should  
6           deal with that upfront and not in the middle of  
7           the trial, and not have an argument and have to  
8           delay the trial for a day or two, which is often  
9           the remedy, if there's a problem in that regard.

10                      So that's the point of our motion, we  
11           would just like a little notice. We may very  
12           well concede the relevance, and it's possible, we  
13           might even concede the admissibility. Possible,  
14           but not likely, but that's a possibility.

15                      So the question then becomes, what is  
16           the evidence, how can we -- how can the Court  
17           fulfill its function of applying the rules of  
18           evidence to engage in the balancing test, and to  
19           provide the parties sufficient notice to prepare  
20           the case and present it as smoothly as possible.  
21           That's what the whole point of the pretrial  
22           motion practice is.

23                      THE COURT: All right. Mr. Buting, are you  
24           going to handle this?

25                      ATTORNEY BUTING: Yes, I am, Judge.

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THE COURT: Fine.

ATTORNEY BUTING: I think the Court, really, in its introductory remarks, distinguishes what is going on here; and that is, that I think the State has sort of muddled the issues together, the question of whether or not the defense can argue reasonable inferences from the evidence that they present, or that the defense themselves presents, versus whether the defense can introduce extrinsic evidence of other -- perhaps other cases where officers committed misconduct.

That was the case, I believe Missouri -- ***State vs. Missouri***, a recent Court of Appeals case, where the defense was that the officer was biased against Missouri, the defendant, as evidenced by his bias and racial bias in numerous other cases. And the Court of Appeals said, that comes in.

Not only can they challenge his bias towards this individual defendant, but that they could use extrinsic evidence from his past cases to support the bias on this case. That's very different than what the State seems to be arguing though.

What they seem to ask for is something

1 much more radical than **Richardson**. **Richardson**  
2 dealt with extrinsic evidence. First of all, the  
3 State filed a motion in limine, as I understood  
4 the procedural history, to exclude two collateral  
5 pieces of extrinsic evidence. Not to prevent any  
6 argument that the defendant may make that he was  
7 being framed by his ex-wife, but to prevent  
8 testimony from the ex-wife, or the divorce  
9 attorney that she had called and made some kind  
10 of accusation. And the other item was that the  
11 defendant had successfully obtained a child abuse  
12 injunction against the ex-wife.

13 Well, the Court said that **Denny**, first  
14 of all, did not apply to those kinds of requests  
15 for evidence, and then the Court went through  
16 this 901.04 or .03, I think, type of analysis  
17 and -- because it was extrinsic evidence. And in  
18 that case, they said it was very much collateral  
19 because there was -- And, actually, there's one  
20 paragraph in that decision that troubles me that  
21 may, frankly, be overruled by **Holmes vs. South**  
22 **Carolina**. And that's Paragraph 27 of **Richardson**,  
23 where they sort of do a weighing of the State's  
24 evidence when they are trying to determine what  
25 is the probative value of the defense proffered

1 evidence.

2 They go through the whole State's case,  
3 including the fact that this young girl had  
4 physical evidence of a sexual assault, that there  
5 was semen, that there was three or four other  
6 things that certainly made it look like his claim  
7 was -- was of little probative value, his claim  
8 that the ex-wife was framing him who, by the way,  
9 was not even the mother of the child who was  
10 accusing him. So he had a rather tenuous  
11 argument there.

12 I think under *Holmes vs. South Carolina*,  
13 that whole analysis is, frankly, very  
14 questionable. Because they say you can't do  
15 that, you can't analyze, just look at the one  
16 side to determine if there is strong forensic  
17 evidence, or if there's strong whatever kind of  
18 evidence, that somehow that affects the  
19 admissibility of the defense.

20 But, again, *Richardson* was very, very  
21 different, because it really was not talking  
22 about whether or not the defense needs to provide  
23 notice to the State if they are going to  
24 challenge the State's evidence. I have said it  
25 as clearly as I can say it in our response and

1 we're giving them notice now. Mr. Avery is  
2 challenging the State's evidence, including the  
3 forensic evidence. And we're going to put them  
4 to their proof.

5 And as a party to a litigation, we have  
6 a right to challenge the authenticity of  
7 evidence, first, to see if it could even come in;  
8 chain of custody, whether its been properly  
9 maintained; and then even if it does come in and  
10 is relevant, we have a right to challenge its  
11 reliability, its integrity, the credibility of  
12 the officers who seized it.

13 All of that is fair game. That is  
14 direct physical evidence in this case. It's not  
15 extrinsic. It's not some other case, or some  
16 tangential argument. So, what they are asking  
17 is -- is an absurdly high burden.

18 They want us, the defendant, in his own  
19 case, to be able to apparently show who -- if  
20 there is any evidence of a frame-up, or any  
21 argument, or innuendo, or inference to be made,  
22 that first the defense has to be able to show who  
23 did it, how they did it, how many people are  
24 involved, who else knows about it.

25 Now, how could a defendant possibly do

1           that, in any case, if the allegation is that the  
2           misconduct is on the part of the police. That  
3           may or may not be the allegation that's raised  
4           here.

5                       The integrity of the evidence that  
6           appears to indicate Mr. Avery's involvement is  
7           very much going to be in play, whether it's  
8           something the police did or something someone  
9           else did. But we are free to argue any  
10          reasonable inference that comes from the evidence  
11          presented, as to how that evidence was found,  
12          seized, and secured, from that point forward, and  
13          tested, if it's forensic evidence.

14                      Indeed, nowhere, I was able to find no  
15          case anywhere in this country that has ever --  
16          and the State has certainly cited none -- that  
17          has ever held what they are asking, to somehow  
18          prevent an entire defense argument, from  
19          reasonable inferences of physical evidence in the  
20          defendant's own case, to somehow go through this  
21          whole relevance and balancing test.

22                      The Court doesn't have to go through  
23          that whole balancing test if we're talking about  
24          arguments from the evidence or inferences from  
25          the evidence. There are no cases that talk about

1           that, because that's not required.

2                       That would be required if we were  
3 seeking to introduce extrinsic evidence, such as,  
4 for instance, that one of the officers in this  
5 case had committed some misconduct in the past  
6 that was related to this. Then we would be  
7 filing a motion, and we would go through that  
8 sort of analysis, and the Court would have to  
9 weigh and go through the balancing test.

10                      But they are, as I understand the  
11 State's motion, at least it's written motion,  
12 going way, way, way beyond that. And I think the  
13 Court accurately distinguished those two issues  
14 in its initial comment. So if we intend to  
15 introduce extrinsic evidence of some misconduct  
16 in other cases, then I anticipate we would be  
17 filing a motion.

18                      But we do not need to file any motion,  
19 or give any further notice than we have today, to  
20 the State, that we intend to challenge all of  
21 their evidence they marshal against Mr. Avery.

22                      THE COURT: All right. Mr. Fallon, let me  
23 ask you a question. Because I -- There might be one  
24 argument being made one way, or a different answer  
25 being given the other way. To go back to the prelim



1 in this case, I just recall it vaguely, but the car  
2 key was found on the carpet, and I think the  
3 testimony was that there had been a couple police  
4 run-throughs through the room where the key was  
5 found. And on the third time they found it.

6 And I think -- Let's say the defense  
7 wants to argue that, well, since the key wasn't  
8 found the first couple times, that one logical  
9 reading is that somebody from the police  
10 department planted the key and that's how they  
11 found it the third time.

12 If that's what happened, if the State's  
13 evidence would come in as it did at the prelim,  
14 and the defense didn't introduce any other  
15 evidence on the issue, but simply made that  
16 argument, are you saying that they have to meet  
17 some burden, or produce something, or notify the  
18 parties and the Court ahead of time, that they  
19 are going to make that argument? Or is it just  
20 if they -- if they want to argue, as Mr. Buting  
21 said, that they had some evidence that some  
22 member of the police department had been guilty  
23 of planting evidence in the past, say, and put  
24 that in?

25 I think they are admitting that if they

1 want to introduce any extrinsic evidence they  
2 would have to provide advance notice, but I think  
3 the question comes down to, aren't there times  
4 when they just want to argue, based on the  
5 evidence as it's come in, that some evidence was  
6 planted. What do they have to give a notice of?

7 ATTORNEY FALLON: If you are going to make  
8 the argument -- If you are going to make the  
9 argument that somebody put that key there, then it  
10 seems to me the State should have the opportunity to  
11 examine and question. It's a lot easier to make an  
12 allegation of police misconduct than there is to  
13 prove it.

14 And what we're trying to avoid, is this  
15 trial becoming a whole series of allegations of  
16 police misconduct which are not supported by  
17 fact. I suppose you could make the argument that  
18 that's a "reasoned" inference; although --  
19 reasoned is in quotes -- from those particular  
20 facts. But I have already obtained -- We have  
21 already obtained one concession right now,  
22 because the defense is clearly saying that any  
23 extrinsic evidence that would require a motion.  
24 That's fine, then we're half way home. That's  
25 exactly what we're looking for. If they are

1           acknowledging the fact that they are going to  
2           bring in any type of extrinsic evidence, that's  
3           fine.

4                        But, okay, the key is planted there.  
5           Well, who was there? Well, we know the officers  
6           who were involved in the search and we know the  
7           officer who uncovered the key. So, is there then  
8           -- Are we led to believe there's a conspiracy?  
9           Seems to me the conspiracy, for instance, is a  
10          reasonable inference. And if we're going to have  
11          inferences alleging conspiracy, conspiracy is one  
12          of those things that always requires a pretrial  
13          motion. Obviously, it's usually the State which  
14          is seeking to introduce evidence of conspiracy,  
15          but not always. It's sometimes offered by the  
16          defense as a theory.

17                       And in *Richardson*, that involved  
18          somewhat of an extrinsic evidence, but it clearly  
19          set forth the analysis, that if you're going to  
20          reach to make an argument, or an inference, then  
21          you have to have a reason to make that reach,  
22          that argument, that inference. And, again, I  
23          come down to, it's a far different argument that  
24          the constable is crooked than the constable  
25          blundered.

1                   They can make whatever argument. I  
2                   don't challenge their ability to question every  
3                   bit of evidence we produce, the manner in which  
4                   it was collected, preserved, maintained,  
5                   transported. They are free to do that.

6                   But I take issue with the fact that we  
7                   can willy nilly walk in an accuse police officers  
8                   of misconduct. To me, before that evidence is  
9                   submitted to the jury and argued to the jury,  
10                  there ought to be a reason for that, for not  
11                  every argument and not every inference, although  
12                  relevant, should be heard.

13                  THE COURT: All right. Well, in the  
14                  example I gave, I mean, are you arguing that they --  
15                  What you are really arguing, I think, and I don't  
16                  want to put words in your mouth, so I will give you  
17                  a chance to respond. But are you really arguing  
18                  that the defense should have to provide notice of  
19                  the argument it is going to make -- or that the  
20                  defense is going to make, from the facts as they  
21                  come in? Because there could easily be a scenario  
22                  where the defense has no more facts than the State  
23                  introduces, they just argue that there's a different  
24                  inference from those facts.

25                  In the example I gave, I think as I

1 recall the testimony, was that the key fell out  
2 or something. I don't want to get into the facts  
3 because, number one, my memory isn't that good.  
4 But if the defense wishes to make an argument of  
5 evidence being planted, simply based on the way  
6 the evidence is introduced on examination and  
7 cross-examination of the State's witnesses, what  
8 do they have to provide notice of?

9 ATTORNEY FALLON: I guess I'm envisioning  
10 you are taking one bit of evidence and looking at it  
11 in isolation, to draw an argument or an inference,  
12 and is that appropriate. And it seems to me that  
13 whether you are defending or prosecuting a case,  
14 that there are lines of evidence, there are theories  
15 of evidence, there are themes, there are  
16 admissibility strains, as it were.

17 And it's hard to analyze and accept the  
18 Court's proposition of looking at, for instance,  
19 the key, in isolation. I mean, there's a lot of  
20 other physical evidence that is subject to  
21 dispute. And just as an example, there is a fair  
22 amount of blood evidence obtained from the  
23 vehicle of the victim here. Well, how did that  
24 blood evidence get there?

25 And there's a fair amount of other

1 physical evidence collected elsewhere, from the  
2 garage of Mr. Avery, for instance, so how does  
3 that get there? So, are we just saying that, and  
4 can the defense just, willy nilly, say, well, we  
5 think that piece was planted and this is not.

6 How do you make the argument? That's my  
7 concern. How do you make that argument in  
8 isolation? How do you tie it all together? Or  
9 is it just, rudimentally, they can make the  
10 argument because it is the defense and,  
11 therefore, it's admissible? That's a reasoned  
12 inference?

13 Because you have to -- I guess the point  
14 I'm trying to make, and I'm not being very  
15 artful, is that you have to look at the evidence  
16 as a total, as it is anticipated to come in.  
17 Admittedly, that's difficult. But generally we  
18 have a pretty good idea of what the evidence will  
19 be in this particular case; although, some of it  
20 is still the subject of motion and debate.

21 But I don't think you can make a  
22 determination as to whether or not a particular  
23 inference is reasoned, under the circumstances,  
24 until you consider everything. And if somebody  
25 wants to make the argument that there's a

1 planting of evidence, or that Mr. Avery is being  
2 framed, it seems to me that there ought to be  
3 proof of that.

4 It may be in extrinsic form or, to  
5 borrow a phrase, it may be intrinsic. It may be  
6 directly related to the case. But if you are  
7 going to make that argument, or you are going to  
8 introduce evidence of that, then we ought to know  
9 what it is. I'm more concerned about the  
10 evidence than the argument.

11 THE COURT: But that's a big "or" there,  
12 because I think as I hear the defense, they are  
13 saying, if they do intend to introduce evidence,  
14 that they will provide notice. I don't know,  
15 Mr. Buting, maybe now is the time to ask whether I'm  
16 reading too much into what you are saying.

17 But that's the way I understood you to  
18 say, that if the defense was going to offer any  
19 extrinsic evidence relating to the issue of  
20 planted evidence, that the defense would provide  
21 notice, but that you didn't feel that you had to  
22 make any pretrial offer if you were simply going  
23 to argue, from the evidence as it came in, that  
24 some evidence could have been planted.

25 ATTORNEY BUTING: Yes. Well, if we sought

1 any extrinsic evidence that's not related to the  
2 evidence directly in this case, then, yes, we would  
3 have to go through that, file a motion, I think --  
4 or we would. And then the Court could go through  
5 that balancing test. If it relates to the evidence  
6 in this case, it's fair game for us to challenge it  
7 in any way we can, whether it's by calling our own  
8 witness or cross-examining their witnesses.

9 This whole notion, that somehow the  
10 Court decides ahead of time what's a reasonable  
11 inference that we can argue, is absurd. That's  
12 for the fact finder. A party can argue any  
13 reasonable inference from the evidence.

14 Now, if our inferences are just totally  
15 absurd, then the State will get up there on its  
16 rebuttable argument and make that very argument  
17 to the jury. And the jury, collectively, will  
18 decide whether or not the inferences that the  
19 defense is advancing are reasonable or not.

20 And that's -- As I understand it, he  
21 seems to be trying to take that away from the  
22 defense and put -- making the Court rule in  
23 advance what -- whether or not any reasonable --  
24 or whether or not any inferences we want to argue  
25 from their evidence should even go to the jury.



1           And that's a complete denial of the defense's  
2           right to present a defense, a constitutional  
3           right to present a defense.  And, again, there's  
4           no case law anywhere that says that.  Because  
5           it's clear that the jury is the one that decides  
6           whether or not something is reasonable.

7                     You know, I don't see anything that  
8           unusual about a defendant getting up and  
9           challenging the police for misconduct or  
10          otherwise.  Think about -- Think about drug  
11          cases, hand-to-hand deliveries, dropsy type  
12          cases.  Defendants do that all the time, where  
13          the defendant testifies one way, the police  
14          officer testifies another.

15                    You know, that's not negligence that's  
16          being alleged by the defendant in those cases.  
17          The defendant is saying, I'm telling the truth  
18          and the officer is not.  You don't have to file a  
19          motion ahead of time to do that, that's  
20          fundamental.

21                    And so, if somehow the notion that in  
22          this case it's different, and that we cannot go  
23          off willy nilly accusing the police of something,  
24          you know, if the State or its witnesses put  
25          themselves in the position in this case where

1           they are subject to that kind of attack, and the  
2           jury finds that it's a reasonable inference to be  
3           drawn, then we can do that, plain and simple.

4                   THE COURT:   Mr. Fallon.

5                   ATTORNEY FALLON:   Again, I'm less worried  
6           about whatever argument they choose to make.  I'm  
7           more concerned about what evidence they choose to  
8           introduce in support of that argument, or that  
9           inference.

10                   The key is one thing, but when you  
11           consider the amount of physical evidence, for  
12           instance, taken from the vehicle, the vehicle  
13           wasn't processed by anyone from Manitowoc County.  
14           It wasn't processed even at the scene.  It was  
15           processed at the Crime Lab in Madison.  So if  
16           you're going to challenge the evidence, it  
17           necessarily involves introduction of extrinsic  
18           evidence, almost.

19                   What about the other physical evidence  
20           that was obtained, in this particular case.  
21           Counsel is correct to a degree, he can make  
22           whatever argument he wishes to make.  And if the  
23           jury rejects it out of hand, then they are stuck  
24           with that.

25                   Again, our concern is, and the motion

1 is, frame-up evidence, not frame-up argument.  
2 So, just to be clear on that, and perhaps we got  
3 sidetracked on inference and argument as opposed  
4 to evidence, the motion is focussed on what  
5 evidence is there of a frame-up that's going to  
6 be introduced.

7 And that's the question, admittedly.  
8 And they have conceded, if they are going to  
9 introduce extrinsic evidence, then it would  
10 require a motion. That's fine. We're  
11 comfortable with that. But it just seems to me,  
12 that if that's going to be the tact, we ought to  
13 be able to talk about that and determine how that  
14 evidence is going to be used. That's the point  
15 of the motion, not so much the argument or the  
16 inference. So I should be clearer.

17 THE COURT: On the issues that relate to  
18 this motion, there was one other one. I think in  
19 Mr. Kratz's original argument, he indicated that he  
20 felt the *Holmes* case modified *Denny*, but it seems to  
21 me that if the result had been different, it might  
22 have modified *Denny*, but that the *Holmes* -- that the  
23 South Carolina Supreme Court result was reversed.

24 ATTORNEY FALLON: Right.

25 THE COURT: Was it not?

1                   ATTORNEY BUTING: But I'm not so sure that  
2                   **Holmes** does anything for us, other than suggest that  
3                   this should be discussed pretrial. Because **Holmes**  
4                   did deal with third party liability. It did deal  
5                   with an identified, informed third party that was  
6                   suspected of committing the crime.

7                   And the actual focus is whether or not  
8                   the South Carolina rule of evidence went above  
9                   and beyond what other courts have held; in other  
10                  words, above and beyond, say, our **Denny** rule.  
11                  And I think it clearly did in that case and  
12                  that's why the United States Supreme Court  
13                  reversed that conviction and sent it back.

14                  So, it didn't deal with frame-up  
15                  evidence per se, but it is instructive for the  
16                  proposition, I think, that it's the type of issue  
17                  that's appropriately discussed pretrial. But I  
18                  think **Richardson** is the closest we have.

19                  THE COURT: All right. I will allow either  
20                  side to correct me, but I don't really detect that  
21                  there's a big disagreement between the parties here.  
22                  I think, number one, both parties agree that **Denny**  
23                  is still good law, **Denny** applies, and that if the  
24                  defense wishes to suggest that some third party,  
25                  other than Mr. Dassey, is involved in the crime, the

1 defense will have to comply with the requirements of  
2 *Denny*.

3 Number two, that if the defense wishes  
4 to introduce any extrinsic evidence to suggest  
5 that evidence was planted, or the defendant was  
6 framed, the defense will have to seek the  
7 admissibility of that -- of such evidence before  
8 the trial and have the matter addressed at that  
9 time.

10 But, third, if the defense wishes to  
11 argue, that the evidence as it comes in and is  
12 offered by the State, subject to  
13 cross-examination by the defense, without any  
14 extrinsic evidence being offered, that the  
15 defense is not prohibited from making such an  
16 argument, and the defense can argue that  
17 different inferences than those suggested by the  
18 State can be accepted by the jury.

19 That's what I'm hearing here. And I'm  
20 not -- I'm not detecting that the parties differ  
21 on this motion.

22 ATTORNEY FALLON: I accept your explanation  
23 and summary of those arguments.

24 THE COURT: Mr. Buting?

25 ATTORNEY BUTING: I think we're clear, if

1 we have the same understanding of extrinsic  
2 evidence, I guess. That would be evidence that's  
3 not related to this case. If there's evidence that  
4 we could present, I can't really think of any  
5 analogy right now, but -- so it's probably foolish  
6 to speculate at this point.

7 But I -- Again, if it relates to the  
8 actual physical evidence in this case, and it  
9 somehow relates to authenticity, or chain of  
10 custody, I do not accept, by the way, the State's  
11 claim that somehow there was no opportunity for  
12 this to have been tainted by anyone, that the  
13 vehicle could not have been tainted. I don't  
14 accept that. And I don't think the evidence will  
15 show that.

16 But, certainly, anything that would go  
17 to chain of custody, or authenticity, or  
18 credibility, or reliability of the State's -- or  
19 bias -- of any of the State's evidence, or  
20 witnesses presenting the evidence, is fair game,  
21 and is not extrinsic. In fact, it is very clear,  
22 bias is not extrinsic to a case, authenticity is  
23 not. All of those fundamental building blocks is  
24 what I'm talking about.

25 THE COURT: Mr. Fallon.

1                   ATTORNEY FALLON: To the extent of the  
2                   comments on bias, and those other things, that's  
3                   fair game. But I do foresee a possible argument on  
4                   the scope of extrinsic. But as counsel has stated,  
5                   those comments there, we can live with that.

6                   THE COURT: All right. The Court will  
7                   prepare its own ruling, written decision, on this  
8                   motion.

9                   All right. Then moving back to the  
10                  defense motion to exclude members of the  
11                  sheriff's department from testifying and  
12                  overseeing jurors. Mr. Strang, are you handling  
13                  this one?

14                  ATTORNEY STRANG: I am. Or trying to.  
15                  There's conceptually two parts to this motion: One,  
16                  supervision of jurors, or contact with jurors. And,  
17                  two, exclusion as a witness from the State's  
18                  case-in-chief. Let me address supervision of jurors  
19                  first.

20                  We learned today, that on November 5,  
21                  the Manitowoc County Sheriff's Department decided  
22                  to turn over responsibility for the investigation  
23                  to other departments and to play a background  
24                  role. And then we learned that the Calumet  
25                  County Sheriff, according to the policy of having

1 someone from another department look over the  
2 shoulder, so to speak, of any Manitowoc County  
3 Sheriff's Department employee who's involved in  
4 the investigation.

5 Really, what we're asking for here is a  
6 continuation of that decision by the Manitowoc  
7 County Sheriff's Department and, in a sense, that  
8 policy that the Calumet County Sheriff  
9 implemented. There is, you know, a department  
10 that was concerned enough about a conflict of  
11 interest, or the appearance of a conflict, to  
12 take itself out of investigative responsibility  
13 and turn it over to two other departments that  
14 then were concerned enough about potential  
15 conflict of interest, or the appearance of a  
16 conflict, that, you know, they provided a  
17 chaperone, or an accompanying officer, from  
18 another department, any time a Manitowoc County  
19 Sheriff's Department employee was involved at the  
20 scene.

21 Certainly, I think ought to be -- I'm  
22 not sure why you would oppose, then, implementing  
23 that same thinking when you are not talking about  
24 an investigation, and a scene, and collection of  
25 evidence, but rather talking directly about



1 contact with the fact finders in the case.

2 And if -- if we simply extend this  
3 recusal, or sort of turning over of  
4 responsibility from the scene, to the jury, and  
5 the fact finding process in this case, we would  
6 have law enforcement officers, other than the  
7 Manitowoc County Sheriff's Department, serve as  
8 bailiffs, move the jury to and fro, move the  
9 defendant to and fro, if he were to remain in  
10 custody.

11 It's -- I think it's really not much  
12 different. Indeed, the argument for it is more  
13 compelling when you are talking about dealing  
14 directly with jurors, because they are the fact  
15 finders rather than just talking about the  
16 assembly of evidence, or the processing of  
17 potential evidence at a scene.

18 The fact is, that in any trial, the  
19 Court is left to rely on court officers,  
20 bailiffs, you know, usually Sheriff's Department  
21 personnel in this State, but I will call them  
22 court officers here. You have to rely on them  
23 heavily. They are the point of contact with the  
24 jury, at the beginning of the day, at the end of  
25 the day, lunch, if a jury is sequestered.

1                   These people are housed in the hotel  
2 with the jurors. They are transporting the  
3 jurors. They are supervising what jurors can see  
4 and who they can talk to. And there isn't  
5 anybody looking over their shoulder. There is no  
6 one from an independent law enforcement agency to  
7 look over their shoulder.

8                   Now, I don't have any question about the  
9 ability of the Manitowoc County Sheriff's  
10 Department to do that, in the ordinary case, just  
11 as they would investigate the ordinary crime in  
12 Manitowoc County, rather than recusing themselves  
13 because of concerns about a conflict, or the  
14 appearance of one.

15                   But in that sense, this case was tabbed  
16 on November 5, by the Manitowoc County Sheriff,  
17 well, or more accurately, by his under sheriff,  
18 as not the ordinary case, as requiring a  
19 different response. And that -- that really  
20 ought to extend to contact here with the jury,  
21 particularly if we -- if we have got a  
22 sequestered jury.

23                   The trial, obviously, should be fair and  
24 it also should appear to be fair to the public,  
25 and to the defendant, and everybody else who is

1 interested in it. I think it's an unusual case.  
2 It's an unusual request. But it's pretty well  
3 matched to the situation which we find ourselves,  
4 where the department itself decided that it ought  
5 not be the front line in the investigation and  
6 the collection of evidence.

7 So, as to that first part, I guess to  
8 some degree I'm adopting the reasoning that we  
9 have already seen Sheriff Petersen describe to  
10 his under sheriff, and seen Sheriff Pagel  
11 implement at the scene.

12 As to the second part, excluding  
13 Manitowoc County Sheriff's Department witnesses  
14 from the case-in-chief, Mr. Fallon, who is a very  
15 good lawyer, and a neat colleague and, you know,  
16 I enjoy his company and his work, but he's very  
17 deftly turned this and redefined this as a  
18 defense request for suppression.

19 It's not. Not looking to suppress any  
20 physical evidence. Not looking to suppress any  
21 testimony, actually. What I'm looking for, what  
22 I'm asking the Court to do, is to exclude  
23 particular witnesses as a limited sanction, only  
24 from the State's case-in-chief, so the defense  
25 could call them, or the defense could open doors

1 on cross-examination during the State's  
2 case-in-chief.

3 It would permit, then, the State to call  
4 in members of the Manitowoc County Sheriff's  
5 Department in rebuttal. And if, indeed -- if,  
6 indeed, Sheriff Pagel is right, and at least as  
7 of November 5 this policy of always having an  
8 independent law enforcement agency person  
9 accompanying any Manitowoc County law enforcement  
10 officer, if that indeed was complied with, was  
11 made practice, not just policy, then I don't know  
12 how the State even would be impeded in presenting  
13 it's case-in-chief, by the relief that I'm  
14 requesting.

15 Because there always would be somebody  
16 from DCI, or somebody from the Calumet County  
17 Sheriff's Department, or someone from the State  
18 Patrol, or some other agency, to testify to what  
19 was happening when a Manitowoc County Sheriff's  
20 Department employee was present. It's a little  
21 hard to know why -- why the State even would  
22 object to the exclusion, but they are, the State  
23 is.

24 And this is really, I think, not akin to  
25 suppression, but something much closer to the

1 kind of sanction a Court might impose on a party  
2 in a civil case, when that party fails timely to  
3 disclose witnesses, fails timely to respond to  
4 interrogatories, or requests for production of  
5 documents.

6 It's the sort of sanction that is used  
7 for a failure of timely disclosure, or timely  
8 action in civil cases, regularly. Used  
9 occasionally, at least, in criminal cases for the  
10 same sort of disciplinary reason on lawyers who  
11 may be dilatory, or not following the rules.

12 And here the -- you know, the remedy is  
13 even more closely matched to the problem, in the  
14 sense that the Manitowoc County Sheriff, I think,  
15 conducted himself very poorly, to put it mildly,  
16 on FOX 11. Made highly inappropriate and  
17 inflammatory comments directed, by name, at  
18 Steven Avery. I went through some of them  
19 before.

20 I didn't touch on, you know, the sheriff  
21 dredging up and discussing on television, prior  
22 criminal acts and convictions dating back more  
23 than 20 years. It's the kind of stuff, he's been  
24 around long enough to know, juries aren't suppose  
25 to hear and, ordinarily, don't hear. It's at

1 least potentially inadmissible and highly  
2 prejudicial information.

3 So, you know, there -- this wasn't one  
4 stray comment at issue here. And he is the man  
5 who leads the department. He is the man who sets  
6 the tone. He is the man who makes the  
7 directions. He's the principal, if you will, and  
8 the others under him in that department are  
9 agents. And so this, I think, is a remedy that's  
10 pretty well tailored to the problem, as to  
11 exclusion of witnesses, on the basis that I have  
12 sought.

13 THE COURT: Mr. Fallon. By the way, I have  
14 read your written arguments and I will read them  
15 again. So you don't have to be repetitive.

16 ATTORNEY STRANG: That's a very kind way of  
17 saying that I'm long winded.

18 ATTORNEY FALLON: Thank you, Judge. I just  
19 want to make a couple of points. First and  
20 foremost, remedies should be connected to the wrong.  
21 And in this particular case, the defense seeks to  
22 exclude from participation in the administration of  
23 the jury selection process, and court security, the  
24 Manitowoc County Sheriff's Department without, in  
25 any way, shape, or form, connecting the comments of

1 Sheriff Petersen to concerns that somehow members of  
2 his staff can't follow your instructions, can't  
3 follow the common sense, and what is, in effect, a  
4 policy that, from even Sheriff Petersen's comments  
5 this morning, run itself.

6 He's given no orders, no instructions,  
7 no information to his staff, per him, other than  
8 do what you guys usually do, make it safe,  
9 etcetera; in other words, follow the policies  
10 that we have. There is no connection between the  
11 comments and a concern that somehow members of  
12 his staff are going to contaminate the jury pool.

13 That's outrageous. There is not a single shred  
14 of information that connects those two.

15 If the defendant has concerns about  
16 security for himself, or courtroom security, and  
17 wants the Calumet County Sheriff's Department to  
18 continue, as it were, and take over all facets of  
19 this particular case, then we might as well have  
20 the trial in Calumet County.

21 Are we going to bring the entire Calumet  
22 County Sheriff's Department here and let them set  
23 up camp across the courtyard here, and tell the  
24 Manitowoc folks how to run the jail, how to walk  
25 the prisoner over, and don't talk to the jurors,

1 don't say anything about the case, don't even  
2 talk about the weather. Do we need Sheriff Pagel  
3 to do that?

4 Again, let's have the trial in Calumet  
5 County, if we're going to rely on everything else  
6 Calumet County has to resolve. And in that  
7 regard, depending on what this Court chooses to  
8 do relative to the motion to dismiss  
9 (sic)/adjourn/change of venue, depending on how  
10 you resolve that issue, the change of venue may  
11 very well moot this issue out.

12 With respect to exclusion and  
13 suppression, rather than trade compliments with  
14 counsel on deftability to craft an argument, I  
15 will simply make this observation. If you say  
16 that a witness can't testify, then it may very  
17 well make it difficult for information collected  
18 by that witness, to present it in court. So if  
19 the witness can't testify, then perhaps some  
20 further pretrial motion practice and perhaps some  
21 testimony, not perhaps, definitely, some  
22 testimony at the trial will be affected.

23 Perfectly example, Detective Remiker was  
24 the one -- was the first law enforcement officer,  
25 I believe, on the scene, to verify the location



1 of Teresa Halbach's car, on Mr. Avery's property.  
2 Now, that's obvious, because he's here in  
3 Manitowoc County, where as the folks in Calumet  
4 County have to get in their car and drive here.  
5 So, it only stands to reason that the first  
6 person here is going to be someone from Manitowoc  
7 County.

8 So, if we're saying, for instance -- and  
9 this is a for instance -- Detective Remiker can't  
10 testify, then that certainly creates some issues  
11 regarding the circumstances, regarding the  
12 preservation of the evidence and the scene, until  
13 the official takeover takes place. So, in terms  
14 of deftness or clever, you can certainly make the  
15 argument that, well, we're not asking for the  
16 suppression of evidence, we're just asking for an  
17 exclusion of a witness. Well, that may very well  
18 impact the nature and the presentation of the  
19 evidence.

20 And, finally, to say that it's not  
21 suppression is a rather interesting issue. For  
22 instance, if the statement of an accused in a  
23 case is suppressed, for reasons of a Miranda  
24 violation, that testimony may still be heard,  
25 perhaps in rebuttal, or in an impeachment form,

1           should that given witness take the stand.

2                       But it's still referred to as  
3           suppression. It's not necessarily referred to as  
4           exclusion. So whether or not you characterize it  
5           as exclusion or suppression, I think it doesn't  
6           matter. The real connection is, is that the  
7           appropriate remedy.

8                       In *Hudson vs. Michigan* and *State vs.*  
9           *Ward*, clearly tell us it's not. And the reason  
10          it's not is because the harm, i.e., the comments  
11          of Sheriff Petersen are entirely unrelated to,  
12          not connected to, the evidence which is sought to  
13          be excluded.

14                      And if, for instance, we are not to be  
15          impeded, and this is not that big a deal, I can't  
16          imagine why the State is troubled, your Honor,  
17          then my question is, if it's not meant to impede  
18          us, then why bring it. It makes no sense. The  
19          remedy must be connected to the wrong. And in  
20          this case, it's not.

21                      THE COURT: Mr, Strang, anything else?

22                      ATTORNEY STRANG: Yeah. As he did on  
23          brief, Mr. Fallon expresses a good deal of concern  
24          and distress with me that I have not connected  
25          Sheriff Petersen to the people under him in the

1 department. And, indeed, I'm not trying to impugn  
2 the gentleman sitting here, or anybody else in the  
3 department. I'm simply following Petersen's lead,  
4 and Pagel's.

5 I mean, the Court wouldn't know this,  
6 but in his deposition, Sheriff Petersen testified  
7 that he's the last remaining member of the  
8 Manitowoc County Sheriff's Department who was  
9 involved in the 1985 case against Steven Avery.  
10 Last one, who was around in 1985. Most of the  
11 deputies, I imagine, in this department, were in  
12 Junior High School in 1985.

13 None of the current Manitowoc County  
14 Sheriff's Department personnel were named as  
15 parties in the civil lawsuit that occasioned this  
16 concern about a conflict of interest. As far as  
17 I know, nobody had any specific concerns about,  
18 you know, Detective Remiker, or Sergeant Jost or  
19 anybody else on the Sheriff's Department, and yet  
20 all of them, by the department, were taken out of  
21 lead responsibility, for an investigation of  
22 crimes that occurred in Manitowoc County and  
23 ordinarily would be within their jurisdiction.

24 So, I'm just simply picking up on the  
25 same connection, as a matter of agency law, that

1 the under sheriff and Sheriff Pagel themselves  
2 drew here. As I say, I don't know if there was  
3 any specific concern on their part about the  
4 reliability of, or integrity of, this or that  
5 specific deputy, or sergeant, or detective.

6 But the concern about a conflict of  
7 interest, by its nature, pervades the  
8 organization. And that concern is at least as  
9 great when we're talking about direct contact  
10 with the people who will decide the facts, as  
11 opposed to simply direct contact with the items  
12 of evidence that ultimately may be introduced to  
13 assist a jury in finding the facts.

14 So that's -- I can be flayed for the  
15 want of a connection, but Sheriff Petersen and  
16 Sheriff Pagel would fall under the same switch.

17 THE COURT: All right. Also on the agenda  
18 today is the State's preliminary motion in limine  
19 regarding the jury hearing evidence concerning the  
20 defendant's 1985 wrongful conviction. I will hear  
21 argument on that motion at this time. It's the  
22 State's motion, who's going to argue that?

23 ATTORNEY KRATZ: Thank you, Judge. Judge,  
24 this is a straight relevance argument. Both 904.01,  
25 .02, and .03 if a balancing test is to be performed,

1 relevancy, of course, being defined as having any  
2 tendency to make the existence of a fact of  
3 consequence more or less probable. The State argues  
4 that the defendant's wrongful conviction, or the  
5 fact that the defendant was convicted and spent some  
6 time in prison, has absolutely no relevance in this  
7 case, does not implicate any fact at consequence.

8 In other words, it would not be offered  
9 to prove, or disprove, or assist the jury on any  
10 element of the offense or other matter of  
11 consequence, but simply would be, in the State's  
12 opinion, offered for an impermissible purpose.  
13 Sympathy is not something for a jury to consider.  
14 Feeling sorry for Mr. Avery that he spent time,  
15 for a crime that he was later exonerated for, is  
16 the exact kind of evidence that should not be  
17 allowed.

18 I appreciate the response by the defense  
19 suggesting bias on the part of investigating  
20 officers, but the State argues, still, that when  
21 compared with, or when balanced against, the risk  
22 of impermissible reasons, the whole discussion of  
23 the defendant being previously wrongfully  
24 convicted, has no place in this trial.

25 Importantly, Judge, I believe it's

1           instructive to consider the other side of the  
2           coin, to consider why evidence of prior  
3           convictions are precluded. It's impermissible  
4           for the State to inflame a jury, to indicate that  
5           a defendant has previously been convicted of a  
6           crime, again, absent some permitted purpose under  
7           904.04.

8                         But the fact that the defendant was  
9           previously convicted of a felony, we know is  
10          inadmissible. It conjures bias and it conjures  
11          prejudice -- prejudice, excuse me, and the State,  
12          therefore, argues that a prior exoneration would  
13          equally be impermissible.

14                        Lastly, Judge, when we talk about  
15          904.04, we talk about other acts. We're talking  
16          about behaviors. We're not talking about prior  
17          convictions, or prior exonerations, or prior not  
18          guilty findings. We're talking about behaviors.  
19          And when relevant for intent, or identification,  
20          motive, or those other permissible reasons, we  
21          are talking about behaviors.

22                        Prior exoneration does not mean that the  
23          defendant is more likely to be exonerated in this  
24          case, or more likely to be not guilty of this  
25          particular offense, which is exactly what the

1 defense would be offering this kind of evidence  
2 for. So the risk -- the very high risk of unfair  
3 prejudice to one of the parties, which is the  
4 State, which this equally applies to, that is,  
5 the relevance standard equally applies to  
6 evidence offered on behalf of the State as well  
7 as the defense and should be applied in this  
8 case. We're asking that the Court exclude that  
9 evidence. Thank you, Judge.

10 THE COURT: All right. Mr. Strang.

11 ATTORNEY STRANG: Evidence of Mr. Avery's  
12 prior wrongful conviction, and the ensuing lawsuit  
13 against Manitowoc County, is what the State seeks to  
14 exclude, absolutely, as I understand the motion.  
15 Now, like any other evidence, if this is proper at  
16 all, as I have argued on brief that it is, there is,  
17 concededly, a role for the Court under Section  
18 904.03.

19 How much do we get into the 1985  
20 conviction? How much do you get into the 1983  
21 lawsuit -- Section 1983 lawsuit, from whom, what  
22 kind of details. All of this raises 904.03  
23 questions. And the Court had a good idea in  
24 chambers, that I will act on, which is to file a  
25 motion in limine here, ourselves, as to what

1 specific evidence do we wish to offer of the  
2 wrongful conviction and the prior lawsuit.

3 But the absolute position just can't  
4 prevail here, in the end. I have argued on  
5 brief, and I won't repeat here, the bias and the  
6 credibility value of this evidence, explaining  
7 why the Manitowoc County Sheriff's Department,  
8 and other officers, may have acted as they did;  
9 explaining, if he becomes a witness, why  
10 Mr. Avery may have acted as he did, or helping  
11 the jury to understand and evaluate his  
12 credibility if he testifies at trial. I will  
13 stand on my brief on all of that.

14 I do want to add here, briefly, without  
15 repeating the arguments in the brief, that it's  
16 awfully hard for the State, fairly, to say we  
17 need to introduce evidence of what Mr. Avery said  
18 to three men in prison, and the pictures he drew  
19 for them in prison; and we want to introduce  
20 evidence, if we have Mr. Dassey testify, that,  
21 gee, Steve Avery wanted to go back to prison  
22 because life on the outside was tough; and then  
23 not allow the defense at least some room to  
24 explain that he shouldn't have been in prison in  
25 the first place, and spent 18 years trying to get



1           himself out, saying he was innocent. At a bare  
2           minimum, that kind of context is necessary, if  
3           the State is to offer the evidence that it has  
4           sought to offer, and pursues.

5                        I agree with Mr. Kratz wholly, that if  
6           the issue were sympathy for Mr. Avery, that's not  
7           a proper purpose for this. It happens to be not  
8           why we're offering it, but it's not a proper  
9           purpose, simply to make a pitch for sympathy.  
10          The same, of course, would be true for Teresa  
11          Halbach's life history, which the State proposes  
12          to offer.

13                       Had that no purpose other than  
14          generating sympathy for her, or her family, it  
15          would be improper and, indeed, that's why there's  
16          a pattern jury instruction in this state, in  
17          which this Court, I'm confident, will instruct  
18          the jury that it is not to decide this case on  
19          the basis of bias, or prejudice, or sympathy, for  
20          one party, or for anyone, for that matter.

21                       So that can be handled very well with a  
22          jury instruction. And just as Ms Halbach's life  
23          history evidence invariably will present a 904.03  
24          question for this Court, how much is right, how  
25          much is too much, how much distracts, or

1 confuses, or misleads, or wastes its time; I  
2 think the same is true of the wrongful conviction  
3 and the lawsuit.

4 It's clearly a Section 904.03 issue. It  
5 should be addressed before trial, an absolute  
6 position by the State on this, particularly if  
7 it's offering other evidence informing the jury  
8 that Mr. Avery was in prison. It just goes too  
9 far. Just as I think an absolute position by the  
10 defense, that nothing about the life or history  
11 of Teresa Halbach can come in, also would be  
12 mistaken and would go too far.

13 So we're going to be into, it seems to  
14 me, a balancing area. And I will try to assist  
15 the Court by filing a motion in limine here by  
16 July 14, talking about just exactly what we hope  
17 to get into, with whom, and how.

18 THE COURT: Question for Mr. Strang, with  
19 respect to the bias basis for getting the evidence  
20 in, what -- what witness, or witnesses, of the  
21 State, is the defense seeking to argue that the  
22 wrongful conviction and the attendant lawsuit would  
23 show bias on the witness's part?

24 ATTORNEY STRANG: Anyone from the Manitowoc  
25 County Sheriff's Department. Now, in practice in

1           this trial, that's likely to turn out to be, I can't  
2           rank order these, but it's likely to turn out to be  
3           Detective Remiker, it's likely to be Lieutenant  
4           Lenk, Sergeant Colborn, you know, anybody. Those  
5           are likely to be the main players.

6                         But, you know, when you work for a  
7           department, or a firm, or a company, and you are  
8           getting sued for \$36 million, your department  
9           is -- and it's been an embarrassment, it's been  
10          public, you know, somebody who shouldn't have  
11          been in prison was -- I think that's likely to  
12          effect the morale, the bias. May be  
13          sub-conscious, but it really is likely to have a  
14          human effect on the people in the department.  
15          There can't have been warm feelings about Steven  
16          Avery, or even neutral feelings, about Steven  
17          Avery, at the time this was going on.

18                         THE COURT: Mr. Kratz, if the State  
19          allowed -- or if the Court allowed into evidence,  
20          any of the statements that would, by their nature,  
21          suggest that Mr. Avery was in prison at the time,  
22          wouldn't it be fair to let the jury know that he was  
23          not there serving a sentence for a crime that he is  
24          still convicted of?

25                         ATTORNEY KRATZ: I'm not sure that we

1 would -- excuse me -- I'm not sure that we would  
2 have to include where the statements were made or  
3 under what context. And I appreciate Mr. Strang's  
4 concern in that regard, and I may need to fashion a  
5 explanation as to how, or in what context those  
6 statements may have been made, but I'm sure it could  
7 be done. I don't think that we have to include that  
8 these were statements that were made by Mr. Avery in  
9 prison. Let's not forget, that the first six years,  
10 Mr. Avery was not there for some un -- or  
11 impermissible reason.

12 THE COURT: I understand that, but I think  
13 it is significant that, at the time the statements  
14 were made, he wasn't supposed to be there.

15 What about the -- What's the State's  
16 response to the bias argument? As I understand,  
17 and I don't have, obviously, first hand  
18 familiarity with the lawsuit, but the argument is  
19 that the -- not only was the defendant cleared of  
20 the crime, but that the -- another police agency  
21 had provided the Sheriff's Department with  
22 information about the person who was really  
23 responsible.

24 And the sheriff, on the stand here  
25 today, indicates he still doesn't really accept

1 the fact that the defendant wasn't guilty of that  
2 offense, does not show bias on the part of at  
3 least the sheriff himself, if not other members  
4 of the department?

5 ATTORNEY KRATZ: Here's where I agree with  
6 the defense, that the balancing test under 904.03  
7 has to come into play, but then this Court has to  
8 decide whether or not it's relevant. This Court has  
9 to decide whether it's reasonable that police  
10 officers would try to set up Mr. Avery, because of a  
11 civil lawsuit, whether they would pick some  
12 unsuspecting woman and kill her, if in fact that's  
13 going to be the argument, that bias went to that  
14 extent, and dispose of her body, because of this  
15 lawsuit.

16 So, it's in those kinds of suggestions  
17 of bias, and how far they extended, whether or  
18 not this is for a permissible bias reason, or  
19 whether or not it goes beyond that into something  
20 that we're talking more about sympathy, or an  
21 impermissible reason, rather than appropriate  
22 bias.

23 ATTORNEY STRANG: I can -- I can say a  
24 couple things. First of all, the Court -- and the  
25 Court doesn't sit to decide the reasonableness of

1 the inference of bias, the jury does. That said, I  
2 can't imagine that anybody at this table is going to  
3 argue that someone in law enforcement murdered  
4 Teresa Halbach. I just don't expect that to be an  
5 argument.

6 Will there be questions about the  
7 fairness and integrity of the investigation, and  
8 how they came to focus on Steven Avery? You bet.  
9 Will there be questions about the reliability of  
10 physical evidence? Yes. Will there be questions  
11 about the reliability of testimony? Yes.

12 THE COURT: All right. The next motion I  
13 have was the motion relating to the State's motion  
14 to offer -- let's see -- evidence concerning the  
15 victim's life history. I know I got a letter from  
16 Mr. Buting, I think yesterday or the day -- I guess  
17 it was, technically, the 3rd, indicating that it was  
18 premature to address this motion until the  
19 information proposed was offered with a little more  
20 specificity. And I got as far as getting your  
21 pleading on my bench here, Mr. Kratz. I'm not sure  
22 what --

23 ATTORNEY KRATZ: Judge, that pleading has  
24 to do with statements of Ms Halbach.

25 THE COURT: Oh.

1                   ATTORNEY KRATZ: That's number seven.

2                   THE COURT: All right.

3                   ATTORNEY KRATZ: That's to be addressed on  
4 the 19th.

5                   THE COURT: I'm not sure that I can address  
6 your request in the abstract without knowing exactly  
7 what it is. I mean, I'm certain that, to put  
8 anything into context, some background information  
9 is always appropriate. But I think, as Mr. Buting  
10 points out, there could be a lot more evidence that  
11 would be appropriate at the time of sentencing, that  
12 wouldn't necessarily get in at the trial. So, I'm  
13 not sure that the Court can issue any meaningful  
14 decision on the request, as it's currently framed.

15                  ATTORNEY KRATZ: If I may, Judge, I don't  
16 know that Mr. Buting and I are very far apart. We  
17 understand that, in a homicide case, when taking of  
18 a human life is at issue, some aspects of the  
19 victim's life becomes relevant, her contacts with  
20 Avery, her employment, her family relationships,  
21 those things that intersect, if you will, her life  
22 with that of Mr. Avery.

23                  That being done through at least some  
24 photographs of the victims, or some evidence of  
25 those characteristics, or part of Teresa's life

1           that, again, puts her in contact with Mr. Avery,  
2           will be relevant. State has no intent to  
3           overstep its authority or to offer any of this  
4           evidence for sympathy or other reasons, just  
5           those that are relevant.

6                        It's my, perhaps, clumsy attempt to  
7           obtain pretrial rulings when I can so that we  
8           don't have to stop the trial, or have those  
9           discussions in the middle. I intend, Judge, and  
10          I think perhaps this is best addressed by sharing  
11          it with the defense, if there are going to be  
12          photographs, if there are going to be kinds of  
13          evidence that, again, are relevant as to Ms  
14          Halbach, and especially as they intersect with  
15          Mr. Avery, and as I previously mentioned, I don't  
16          think that Mr. Buting and I, when I read his  
17          response, are very far apart at all.

18                       THE COURT: All right, Mr. Buting.

19                       ATTORNEY BUTING: I guess I would just  
20          suggest that perhaps they do the same thing that  
21          we're doing on -- or that the Court's asked us to  
22          do, which is to file a motion in limine on how we  
23          would use the wrongful conviction. If the State  
24          wants to identify, certainly, any way that Teresa's  
25          life intersected with Mr. Avery, I think is going to



1 be fair game, just to set the context.

2 I'm not sure about relationships with  
3 her family and all those kinds of things. But I  
4 think if the State wants to do that, they can  
5 file a motion and, then, before trial, share his  
6 concern about all these things coming up in the  
7 middle of the trial. But I think a motion in  
8 limine before trial, where he can lay out the  
9 limits and the parameters of this kind of  
10 evidence, is the way to go.

11 THE COURT: All right. I'm going to trust  
12 Mr. Kratz to do that. I don't know that it's  
13 necessary, in every case, that the State provide the  
14 defense with a summary of background victim  
15 information, but given the length that the parties  
16 are anticipating for this trial, and the fact that  
17 wherever we have a jury, they are going to be  
18 around, take a sizeable chunk of time out of their  
19 lives, I think to the extent that we can resolve  
20 matters ahead of time we should do so.

21 There's another motion filed by the  
22 State regarding prior criminal convictions of the  
23 defendant. And it's my understanding the parties  
24 were going to work together to resolve that.

25 ATTORNEY KRATZ: We will, Judge. We will

1 reach a stipulation on that, and we'll attempt to  
2 reach stipulations on any witness, whether called by  
3 the State or the defense, prior to trial.

4 If we have issues that the Court needs  
5 to resolve, whether it's issues of remoteness or  
6 relevance, we will bring those to the Court. But  
7 I'm quite confident, with the number of years of  
8 experience between all of us, we should come  
9 pretty close to coming up with correct numbers.

10 ATTORNEY STRANG: Right. This will  
11 probably get worked out. We can raise our hands if  
12 it doesn't.

13 THE COURT: Okay. I think that takes us to  
14 the motion for bail reduction. I believe everything  
15 else has been addressed, unless I have missed  
16 something.

17 ATTORNEY KRATZ: There was the issue of the  
18 Marinette detective, and we do recognize, Judge,  
19 with the Court's previous ruling on the change of  
20 venue, that it's quite clear that a third hearing is  
21 to be set in this case. There was, as the Court  
22 knows, an audiotape recording of Mr. Avery's  
23 interviews with the Marinette detective.

24 We felt it fair to at least suggest to  
25 the Court that that be provided before they have

1 an opportunity to cross-examine the detective.  
2 And so we plan to do that. And anticipating, we  
3 will set a date before we leave here today. We  
4 suggest, at least the State suggests, that that  
5 entire motion, then, be dealt with on that third  
6 motion date that we are contemplating.

7 THE COURT: Any objection?

8 ATTORNEY BUTING: No, Judge.

9 THE COURT: So I will hear the bail motion  
10 today and we'll set another hearing date then for  
11 the other motion.

12 ATTORNEY STRANG: I'm sorry, do we have his  
13 schedule?

14 ATTORNEY FALLON: He's still here. Would  
15 it be possible?

16 THE COURT: We can set the date now. How  
17 about Thursday, August 3rd; what does that look like  
18 for the parties.

19 ATTORNEY BUTING: Judge, that's the week  
20 I'm going to be out of town and out of state.  
21 Mr. Strang, I think, is gone the week before, but  
22 the week after that perhaps.

23 THE COURT: Wednesday, August 9th.

24 ATTORNEY FALLON: That's fine with us.

25 ATTORNEY BUTING: That's good.

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ATTORNEY STRANG: That's good.

THE COURT: All right. 9:00 on the 9th.

ATTORNEY KRATZ: And so that we're clear, Judge, that is, at least, the change of venue motion, and the statement of the Marinette detective and, perhaps, whatever we don't accomplish on the 19th; does that sound fair?

THE COURT: Everybody agree with that?

ATTORNEY BUTING: Change of venue in the sense of argument and decision or?

THE COURT: Well, let's see, I'm going to have -- I'm anticipating it would be a decision at that time because I'm going to get some written submissions from the parties, correct?

ATTORNEY KRATZ: That's fine.

THE COURT: Between the written submissions and the media reports I'm going to have to review, I think that's fair. I don't believe any further argument or evidence is necessary, is it?

ATTORNEY BUTING: Right.

THE COURT: Very well.

ATTORNEY STRANG: On the change of venue, here's the -- here are the two boxes.

THE COURT: Okay.

ATTORNEY BUTING: Should we mark them?

1 THE COURT: The Clerk will happily take  
2 them to the Clerk's Office when we're done today,  
3 I'm sure.

4 ATTORNEY STRANG: I'll be happy to help.

5 THE COURT: Maybe you can help her out.

6 ATTORNEY STRANG: I can carry them,  
7 physically. What I'm -- For the record, what I'm  
8 tendering her, two bank boxes, to include thousands  
9 of pages of the copies -- photo copies I described  
10 earlier, and 24 DVD's of television clips concerning  
11 this investigation and the prosecution.

12 THE COURT: Very well. All right. At this  
13 time, then, I will hear argument on the bail motion.  
14 Mr. Strang, will that be you or Mr. Buting?

15 ATTORNEY BUTING: It's going to be me,  
16 Judge. Judge, we filed a motion for reconsideration  
17 of the bail -- our motion to reduce bail, I believe  
18 on June 2nd. June 1st is the date here that we  
19 signed it. I think it was filed in this court on  
20 June 2nd. This is our first chance to argue it.

21 There have been some changes since that  
22 date, in what we would have put in the motion, or  
23 presented to the Court. But when we last  
24 discussed bail it was on March 17th, and it was  
25 in conjunction with the State's motion to amend

1 the Criminal Complaint, adding additional counts  
2 against Mr. Avery, based upon the statements,  
3 alleged reliable, credible statements of  
4 Mr. Dassey, the 16 year old nephew.

5 And we argued at that time, and provided  
6 whatever case law we could, that Mr. Dassey's  
7 statements were simply not reliable and shouldn't  
8 be admissible, or considered, to establish  
9 probable cause in the Criminal Complaint. And  
10 the Court disagreed and found that they were  
11 reliable for that purpose.

12 The State then objected to our motion to  
13 reduce bail. And, in fact, filed their own  
14 motion to increase the bail, based, again, upon,  
15 solely, the statements of 16 year old Brendan  
16 Dassey, which were set forth in lurid detail in  
17 the Criminal Complaint. And on that basis, the  
18 Court found that, because of those statements,  
19 and only those statements, Mr. Avery's bail  
20 should be increased from 500,000 to 750,000.

21 Now, since that time, substantial  
22 evidence has disproved -- certainly called into  
23 question -- the reliability of that young man's  
24 statements that are in this Complaint. As a  
25 matter of fact, the majority of the story, of how

1           Teresa Halbach supposedly lost her life at the  
2           hands of these two individuals, has been proven  
3           to be incorrect, either lies or guesswork made up  
4           by Mr. Dassey at the urging, coaching, of his  
5           interrogators, some of which we placed in our  
6           written motion.

7                         He claimed, for instance, that she was  
8           handcuffed to the bed when he saw her for the  
9           first occasion. The Crime Lab tested those  
10          handcuffs. Her DNA was not found on the  
11          handcuffs. But, suggesting that they were not  
12          wiped off or wiped clean, Mr. Avery's was found  
13          on the handcuffs, as well as another individual,  
14          not Mr. Dassey, again, suggesting that these  
15          handcuffs were not used, that she was not  
16          retrained by handcuffs as Dassey claimed.  
17          Because if she was, one would certainly expect  
18          the poor woman, struggling, would have left at  
19          least as much DNA as somebody else, like  
20          Mr. Avery or the other unknown individual would  
21          have, just handling them.

22                         So, that immediately called into  
23          question the credibility and reliability of  
24          Brendan Dassey's version of what happened. But  
25          then there were some other things that developed.

1 His statement also claimed that they cut off  
2 3-inches of her hair, I believe it was. And the  
3 Crime Lab ripped up all of the carpet from  
4 Mr. Dassey's -- I'm sorry, Mr. Avery's trailer.  
5 And they took all of the wood paneling off of the  
6 walls as well. They found no hair.

7 He also claimed that she was brutally  
8 stabbed, her throat cut in a horrific  
9 description, pure fantasy, of how that woman  
10 supposedly died at Mr. Avery's hands, in a manner  
11 that would have obviously left blood on the  
12 mattress, soaked through the bedding. Even if  
13 the bedding had been disposed of, the mattress  
14 would have had evidence.

15 Everybody was talking about it, even on  
16 the street, well, where's the evidence of this,  
17 wouldn't there be blood on the mattress. Well,  
18 sure enough, they took the mattress, and it's the  
19 same mattress, and there was not a speck of blood  
20 on it.

21 And he also claimed that Mr. Avery,  
22 then, after she had been brutally stabbed and  
23 bleeding all over the mattress, then carries her  
24 over his shoulder, out into the garage, obviously  
25 would have been dripping blood all the way,



1 again, not a speck of blood anywhere on the  
2 carpet, or on the steps, or anywhere leading out.

3 And as a matter of fact, with all the  
4 tests that they have done, of all the stuff in  
5 his trailer, not one speck of Teresa Halbach's  
6 blood or DNA has been found in Mr. Avery's  
7 trailer, directly contrary to what they claim in  
8 this Complaint to be reliable, credible evidence,  
9 sufficient to have this Court increase his bail.

10 Now, recognizing that, the interrogators  
11 went back to Mr. Dassey, on May 13th, I believe,  
12 and did another interview of him, once again,  
13 coaching, leading, trying to change his story to  
14 fit their theory of what happened in this case.  
15 And thank God for *State vs. Jerrell*, because it's  
16 recorded, for you to see, or anyone else to see,  
17 eventually, in this case, or in his case.

18 And the manner that they questioned him  
19 is -- it would be laughable, if it wasn't a real  
20 case with real people's lives at stake. He is  
21 fed information to change his story. Now, it  
22 turns out, according to this young man, that the  
23 whole story about him getting off the bus,  
24 finding a letter of Mr. Avery's, and going down  
25 and hearing this poor woman screaming, was

1           totally made up.

2                       He hears no screaming outside the  
3 trailer. He claims that he goes in the trailer  
4 and, yes, she's there. But, again, the entire  
5 time he's there she's never screaming, which is,  
6 frankly, rather preposterous. He now, because he  
7 knows, with his lawyer, and what's been made  
8 public, that there's no DNA on the handcuffs.

9                       It's like, oh, I was wrong about that.  
10 It was rope, her arms were bound by rope, to the  
11 headboard. So they test the headboard and  
12 there's no rope fibers on it. They swab it  
13 specifically for that purpose. No evidence, once  
14 again.

15                      And his interrogators press him about  
16 that and they say, well, was that a lie? And he  
17 says, yes. Did you cut off her hair? No, that  
18 was a lie. Why did you tell us these things?  
19 Where did you come up with these things? Just  
20 guessing, is his response.

21                      Recognizing that there's no blood or DNA  
22 in his trailer, it is now obvious this young  
23 woman was not killed in his trailer. So the  
24 interrogators get him to try and move the  
25 location. Again, not accepting the possibility

1           that Brendan Dassey's entire story is wrong.  
2           They just want to change it and somehow make it  
3           fit the physical evidence.

4                       And so, now, she is supposedly killed in  
5           the garage. And there's one piece of evidence  
6           that they have found, that in some way might  
7           support part of his story. Allegedly, there is a  
8           very small amount of her DNA that was found on a  
9           bullet somewhere in the garage; although, it  
10          wasn't found until after March some time, when  
11          they re-searched the garage.

12                      But, as we put in our written motion,  
13          it's a garage that is fairly accessible to many  
14          people, not just Mr. Avery. And, of course, it  
15          wasn't found until five months after Mr. Avery  
16          has been in custody. So, many people had access  
17          to it during that period of time.

18                      But other than that, again, and -- and  
19          they -- and they challenge him, frankly, it's  
20          pretty obvious. And, frankly, I have a copy of  
21          it. I can offer it to the Court, introduce it if  
22          you would like to look at -- listen to this. But  
23          you can tell that the interrogators don't even  
24          believe most of what he's saying, until they get  
25          him to say what it was -- what they want to hear,

1           that they think might somehow fit the evidence.  
2           But they say, well, where's the blood?  Where's  
3           the knife?  They never found any knife.  There  
4           was no evidence that there was ever any stabbing  
5           of this woman.  He's got no explanation for it.

6                         And they say, well, one would think that  
7           there would be blood because, again, now the  
8           killing is supposedly in the garage.  And it's  
9           not just a gunshot.  In fact, originally it was  
10          10 times that he shot her, now he's changed it to  
11          five.  But there's still the stabbing that's  
12          going on, with her now in the garage.  There's no  
13          blood to support it.

14                        And they are relying, now, on, oh, well,  
15          they cleaned it up with bleach and gasoline, and  
16          all that stuff.  Well, in truth, there was blood  
17          stains found -- or there were blood stains found  
18          on the floor of the garage, Mr. Avery's.  The man  
19          works on cars in there for -- every day.  He cuts  
20          himself repeatedly.  His blood is found in  
21          numerous places, but not hers.  If it's all  
22          cleaned up with bleach, why is his blood found  
23          anywhere.  Again, it doesn't fit.

24                        In essence, he has now retracted almost  
25          everything.  This dramatic press conference

1 statement that people -- the children should not  
2 listen to this, it's so terrible to hear, was  
3 pure fantasy, unsupported by any other physical  
4 evidence, and now retracted by the guy who  
5 supposedly told it.

6 I feel sorry for the Halbachs, that they  
7 think all these horrible things happened to their  
8 daughter and sibling. Now, we know that's not  
9 even true, but that's, unfortunately, the  
10 reality. I can go on and on. Did he punch her,  
11 or did she -- did Avery punch her in the mouth?  
12 Now, he's like, no, he never hit her at all.

13 Not only that, he now retracts any --  
14 any knowledge that he has that Mr. Avery ever had  
15 any sexual assault. He's still on his newest  
16 statement, newest I'm aware of, admits that he  
17 had sex with her; although, the way he admits it  
18 is certainly suspect. But he says, no, I didn't  
19 see Avery have sex with her. No, he didn't tell  
20 me he had sex with her.

21 So the whole sexual assault charge  
22 against Mr. Avery that's in this Criminal  
23 Complaint, and for which his bail went up, is now  
24 going to be out the window.

25 In Mr. Dassey's own bond hearing, the

1 prosecution revealed -- and by the way, I think  
2 the description of Sheriff Pagel's, the purpose  
3 of these press conferences was to control the  
4 information that went out, is a very good  
5 description of what's been going on in this case,  
6 in the public's eye all along; which is, the  
7 prosecution has controlled the evidence that the  
8 public hears, and construed it in a way that  
9 makes it look like this guy should be the poster  
10 boy for the death penalty, when, in fact,  
11 everything that they construed is one sided. It  
12 leaves out all kinds of other things.

13 Looking at that press conference, you  
14 would have expected that that young boy, who was  
15 holding this in for months and just had to  
16 unburden himself with this terrible story that he  
17 had -- experience that he had, was emotionally  
18 upset and came out with this whole, long story  
19 when, in fact, there is not an iota of emotion  
20 expressed by the guy.

21 He never cries, he's not upset at all,  
22 he's not coming out with any narrative. It's one  
23 sentence or one word responses to their  
24 questions, the entire way, all the way through  
25 that first statement. And the second statement

1 is more of the same. There is no emotion. If  
2 this kid had any involvement with it, he  
3 certainly hasn't described what happened, or what  
4 his involvement really was, because there's no  
5 emotional connection or affect there.

6 But back to the bond hearing, the  
7 prosecutor announced, oh, well, now we have new  
8 information that this was a planned murder and  
9 that they selected Teresa Halbach several days  
10 earlier. And, again, I suggest to the Court,  
11 look at that statement. Brendan Dassey says  
12 nothing about any planning until they suggest it,  
13 as the only explanation they can come up with for  
14 why there isn't more evidence.

15 And after he's -- he's badgered with  
16 this, he finally starts, well, yeah, I suppose;  
17 again, guessing, answering their questions. But  
18 when they press him about, okay, what was the  
19 plan; there is no plan. There's no discussion  
20 about who is going to do what, how it's going to  
21 be carried out. No plan to have sex. No plan on  
22 why Teresa Halbach.

23 When they start pressing him on -- on  
24 the obvious questions, he can't answer any of  
25 them, because it's, again, it's just fantasy.

1 It's not the truth. And, then, when they ask  
2 him, well, why -- why would Steven Avery have  
3 planned this, why would he have done this, again,  
4 there's long pauses in all these answers. And he  
5 comes up with, well, he wanted to go back to  
6 prison, because he missed it.

7 And even their own interrogator throws  
8 up his hands and says, He didn't say that, did  
9 he? Come on, start telling us the truth. And  
10 then there's a long sequence where they start  
11 badgering him about how he has got to help  
12 himself, and he is not being honest with them.  
13 On and on and on. So they don't even buy that  
14 story, yet they offer it, in Mr. Dassey's own  
15 bond hearing, and probably would do so here too.

16 So, in short, the Criminal Complaint is  
17 no longer credible and that all of the evidence  
18 that they have done, all the testing that they  
19 have done so far, has disproved Mr. Dassey's  
20 credibility, and his involvement, and, therefore,  
21 the involvement of Steven Avery in the murder,  
22 and any other offenses that go along with that,  
23 of Teresa Halbach.

24 What we're asking is the Court to,  
25 therefore, reconsider the bond, to once again



1 consider, first, reducing the bond back down to  
2 the 500,000 that was originally set, before this  
3 Brendan Dassey fantasy was filed. And, then, to  
4 once again, consider a property bond posted by  
5 Mr. Avery's family.

6 He's shown no evidence of a risk of  
7 flight. He's fought for 18 years to get himself  
8 out of prison. He intends to -- He's conducted  
9 himself in jail, and in this courtroom, with  
10 perfect decorum, and showing no evidence of being  
11 a disruptive individual who's a risk of flight.

12 Yes, he's facing serious charges, with a  
13 great deal of prison time, but that's the purpose  
14 of monetary bail, or property bond bail, to  
15 ensure that he will return. Five hundred  
16 thousand dollars is a lot. It's his parent's  
17 entire property, his brother's and sister's  
18 entire property. He's not going to risk  
19 forfeiture of that by failing to reappear in  
20 court.

21 So for those reasons I would ask the  
22 Court to reconsider and reduce the bail to what  
23 was originally asked on March 17th. Thank you.

24 THE COURT: All right. Mr. Kratz, or  
25 Mr. Fallon, which one will be addressing?

1                   ATTORNEY KRATZ: I will, Judge. And I'm --  
2                   I must say, I'm surprised that somebody, you know,  
3                   we have given a lot of compliments around here,  
4                   somebody with Mr. Buting's reputation, would come  
5                   into this court, and express to this Court that he  
6                   knows for certain, or that he has some personal  
7                   opinion that this statement by Brendan Dassey is  
8                   fantasy, or that it's made up, or that there are  
9                   such inconsistencies in this statement that it  
10                  should be disregarded.

11                  Mr. Buting doesn't know that.  
12                  Mr. Buting can discuss inconsistencies of  
13                  Brendan's statements, but what Mr. Buting hasn't  
14                  expressed to the Court, at least what the State  
15                  would argue, in a factual or proper manner, are  
16                  the consistencies that Brendan did provide in his  
17                  second statement.

18                  Brendan Dassey, in his second statement,  
19                  which, by the way, was at the invitation of a  
20                  defense attorney, after his statement was not  
21                  rejected by Judge Fox, does include  
22                  consistencies. The consistencies that it was he  
23                  and Steven Avery who killed Teresa Halbach. That  
24                  it was Steven Avery who stabbed Teresa Halbach.  
25                  That it was Steven Avery that shot Teresa

1 Halbach. That it was the shooting that occurred  
2 in the garage. That it was he and Steven Avery  
3 who mutilated the body of Teresa Halbach, hid her  
4 car and, thereafter, tried to clean up or destroy  
5 evidence. All of that information was included  
6 in Brendan's second statement.

7 What Mr. Buting did indicate in kind of  
8 an, oh, by the way, manner, was that there was a  
9 bullet now found in that man, Steven Avery's,  
10 garage, that had the victim, Teresa Halbach's,  
11 DNA on it. That is not insignificant, Judge.  
12 That is additional evidence that this Court did  
13 not have, since the March 1st statement that was  
14 given, and should not be given such a short  
15 shrift.

16 What Mr. Buting, perhaps, forgot to tell  
17 the Court was that Mr. Avery's DNA was also found  
18 on the hood latch of the SUV of the victim, since  
19 the first statement by Brendan Dassey. And  
20 because of Brendan Dassey's first statement, that  
21 Steven was fooling around with and opened up the  
22 hood of the victim's vehicle, the hood latch was  
23 swabbed and a full DNA profile match of Mr. Avery  
24 was, in fact, developed. That's been provided to  
25 the defense and, again, maybe Mr. Buting forgot

1 to tell the Court that.

2 Mr. Buting and Mr. Strang also know that  
3 additional admissions have been made by this  
4 young man, admissions to family members, that not  
5 only was he involved in the murder of Teresa  
6 Halbach, but very clearly that Steven Avery was  
7 responsible for her death. The defense, now,  
8 also knows that the victim's PDA Palm Pilot was  
9 found with the cell phone and camera, on the  
10 Avery property.

11 So, together with the inconsistencies,  
12 there have been additional, not only consistent  
13 statements made, but additional physical  
14 evidence, which has been developed. I also wish  
15 to alert the Court, or direct the Court, to my  
16 previous bond arguments. All of the previous  
17 evidence about the degree of violence; the prior  
18 record of this man; the ties, or lack of ties, to  
19 the community; flight risk; the penalties that he  
20 faces; and the gravity of the offense, apply  
21 today, equally, as they did previously. I'm  
22 asking this Court deny the motion for the  
23 reduction of bond. That's all I have, Judge.  
24 Thank you.

25 THE COURT: Mr. Buting, anything in

1 rebuttal?

2 ATTORNEY BUTING: No, your Honor.

3 THE COURT: All right. The Court, in  
4 addition to the oral argument today, I, before  
5 today, read the written argument in support of the  
6 motion. And I gather that, from what I know, there  
7 appear to be at least some inconsistencies in  
8 Mr. Dassey's version of events that was originally  
9 given to the police, versus what he said recently.

10 The significance of those  
11 inconsistencies is in dispute here today. We're  
12 only at the bail stage. The Court is not in a  
13 position to weigh credibility of the parties, or  
14 make determinations as to who's telling the truth  
15 and who isn't. That's the province of the jury.

16 When the Court last reviewed bail on  
17 March 17, I did consider the fact, at that time,  
18 that the State's case appeared to have been  
19 strengthened from what it had been earlier, to  
20 the extent that it was no longer based on purely  
21 circumstantial evidence, but that another person  
22 claiming to be an eye witness and, in fact, a  
23 co-defendant, had been identified, and made  
24 statements incriminating himself, along with  
25 Mr. Avery.

1                   While different statements that he's  
2                   given since then may have some affect on the  
3                   credibility of the version of events he gave,  
4                   that's still the case; that is, there's still  
5                   another person who's made incriminating  
6                   statements identifying himself and Mr. Avery.  
7                   The nature of those statements seems to be such  
8                   that -- they are at least not obviously, on their  
9                   facts, or on their face, designed to shift blame  
10                  to someone else, because they are heavily  
11                  incriminatory of himself, namely Mr. Dassey.

12                  I would also point out that it's not  
13                  true that the Court, at the last hearing, only  
14                  based its decision on the statements of  
15                  Mr. Dassey. Of at least equal significance was  
16                  the fact that the defendant's financial situation  
17                  had changed considerably; specifically, it  
18                  settled a lawsuit for \$400,000.

19                  The facts, as they existed back on March  
20                  17, are largely still present today, even if the  
21                  defense may have some additional argument to  
22                  discredit Mr. Dassey's version of the events.

23                  For purposes of this bail hearing, I do  
24                  not find that there's been any measurable change  
25                  in circumstances. And so for the reasons that I

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gave on March 17, and as I have reiterated them today, the Court is not going to modify bail. I will leave it at \$750,000 cash. The motion to modify bail is denied.

Counsel, is there anything further to address before our next hearing on the 19th?

ATTORNEY BUTING: Not from our standpoint, Judge.

ATTORNEY KRATZ: I don't think so, Judge. We'll see you on the 19th. Thank you.

THE COURT: Very well. We'll see you on the 19th. We're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN )  
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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 18th day of July, 2006.

\_\_\_\_\_  
Diane Tesheneck, RPR  
Official Court Reporter



<b>\$</b>	<b>2001 [1]</b> 5/16 <b>2003 [4]</b> 7/17 10/1 39/1 39/12 <b>2005 [7]</b> 18/20 18/22 19/2 33/23 34/19 45/18 61/8 <b>2006 [5]</b> 1/10 40/22 73/25 121/20 232/15 <b>2007 [2]</b> 123/20 132/5 <b>21st [2]</b> 155/11 155/12 <b>24 [4]</b> 43/5 61/2 154/7 213/10 <b>27 [2]</b> 61/3 164/22 <b>2nd [8]</b> 55/25 56/25 58/13 101/9 101/22 102/2 213/18 213/20	<b>9/20 15/12 19/1 19/2 20/22 20/24</b> 20/25 21/8 21/18 22/15 27/6 33/25 34/4 34/13 35/14 36/4 38/21 38/25 39/5 39/9 40/6 40/11 40/13 41/6 41/16 42/25 48/13 48/13 49/8 49/9 53/4 54/3 54/5 57/7 60/25 62/24 65/12 67/9 73/25 74/13 81/3 84/23 91/10 92/23 92/25 93/15 95/13 99/25 100/20 101/22 105/11 109/1 109/13 109/23 112/11 112/15 114/10 115/14 116/17 116/21 120/7 126/23 127/6 129/24 129/25 135/9 135/11 136/2 137/16 137/22 139/1 139/2 142/4 147/5 154/8 161/11 165/22 166/24 167/23 167/25 175/9 177/8 177/10 177/10 178/6 178/7 178/19 179/13 182/24 184/10 184/14 184/23 184/25 185/13 185/15 186/8 186/13 191/15 192/1 192/2 195/16 195/17 196/3 196/6 196/9 198/14 198/15 198/16 198/16 198/18 198/21 202/10 202/16 203/15 203/16 204/15 204/22 205/20 206/6 206/9 206/11 209/2 209/6 211/17 216/15 217/23 218/9 218/15 223/12 223/18 223/20 224/11 228/17 <b>above [3]</b> 30/15 180/8 180/10 <b>absent [1]</b> 198/6 <b>absolute [4]</b> 128/10 200/3 202/5 202/9 <b>absolutely [2]</b> 197/6 199/14 <b>abstract [2]</b> 125/8 207/6 <b>absurd [2]</b> 176/11 176/15 <b>absurdly [1]</b> 166/17 <b>abuse [1]</b> 164/11 <b>accept [7]</b> 9/2 142/16 173/17 181/22 182/10 182/14 204/25 <b>acceptable [3]</b> 139/19 139/20 153/18 <b>accepted [1]</b> 181/18 <b>accepting [2]</b> 45/19 218/25 <b>access [1]</b> 219/16 <b>accessible [1]</b> 219/13 <b>accompanying [3]</b> 96/5 184/17 188/9 <b>accomplish [8]</b> 64/5 110/8 144/3 144/11 144/23 146/12 149/20 212/6 <b>accomplishing [1]</b> 145/3 <b>according [2]</b> 183/25 217/22 <b>accounts [3]</b> 150/9 150/18 150/20 <b>accurately [3]</b> 9/23 168/13 186/17 <b>accusation [2]</b> 23/15 164/10 <b>Accusations [1]</b> 116/10 <b>accuse [1]</b> 172/7 <b>accused [8]</b> 101/12 104/17 125/11 129/12 133/9 133/16 141/4 193/22 <b>accusing [2]</b> 165/10 177/23 <b>acknowledged [1]</b> 124/20 <b>acknowledging [1]</b> 171/1 <b>acquainted [1]</b> 61/7 <b>acquitted [1]</b> 129/5 <b>acres [1]</b> 75/9 <b>across [2]</b> 32/21 191/23 <b>act [1]</b> 199/24 <b>acted [2]</b> 200/8 200/10 <b>acting [2]</b> 42/1 135/16 <b>action [3]</b> 130/12 130/14 189/8 <b>actions [1]</b> 30/6 <b>active [1]</b> 24/14 <b>actively [1]</b> 124/12
<b>\$36 [1]</b> 203/8 <b>\$36 million [1]</b> 203/8 <b>\$400,000 [1]</b> 230/18 <b>\$750,000 [1]</b> 231/3	<b>3</b> <b>3-inches [1]</b> 216/2 <b>3.6 [2]</b> 140/24 142/12 <b>30 [1]</b> 152/19 <b>31 [2]</b> 5/5 18/22 <b>31st [1]</b> 47/17 <b>32 [1]</b> 7/11 <b>33 [2]</b> 88/23 89/2 <b>36 [2]</b> 2/5 23/5 <b>37 [1]</b> 2/6 <b>381 [2]</b> 1/5 3/3 <b>3rd [3]</b> 47/9 206/17 211/17	
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'80's [1] 6/12	<b>5</b> <b>500,000 [2]</b> 214/20 225/2 <b>59 [1]</b> 2/10 <b>5th [9]</b> 47/3 48/16 50/11 54/17 62/13 62/22 67/17 67/18 125/15	
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/adjourn/change [1] 192/9	<b>9</b> <b>90's [1]</b> 34/22 <b>901.04 [2]</b> 161/23 164/16 <b>904.01 [1]</b> 196/24 <b>904.02 [1]</b> 161/23 <b>904.03 [7]</b> 161/14 161/24 199/18 199/22 201/23 202/4 205/6 <b>904.04 [2]</b> 198/7 198/15 <b>971.22 [3]</b> 134/16 146/17 148/4 <b>971.225 [7]</b> 134/18 146/19 148/4 148/16 149/18 149/20 153/3 <b>9:00 [1]</b> 212/2 <b>9th [7]</b> 52/2 52/6 52/9 52/11 52/20 211/23 212/2	
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<b>activities</b> [3] 68/10 68/12 68/24	49/17 50/7 51/3 53/5 53/21 54/8	199/16 199/22 200/13 205/24
<b>activity</b> [3] 66/25 69/17 120/4	57/15 57/21 58/3 58/8 59/1 59/7	206/12 207/2 208/17 208/18 209/3
<b>acts</b> [4] 115/24 161/6 189/22	63/6 65/10 68/15 76/4 76/15	209/6 209/11 210/8 212/2 213/12
198/15	76/19 79/9 79/18 82/3 84/5 84/21	216/3 216/5 216/23 216/25 217/3
<b>actual</b> [6] 7/4 24/18 122/17 159/10	85/9 85/11 87/15 91/14 95/20	217/4 220/16 220/21 221/7 221/12
180/7 182/8	96/1 97/20 114/14 120/20 133/1	222/6 222/12 222/21 222/24 224/4
<b>actually</b> [14] 34/9 35/15 94/12	133/7 143/5 144/17 160/21 165/20	224/17 224/18 225/24 227/5
106/1 106/6 109/4 110/11 112/24	171/22 177/3 178/5 178/25 182/7	228/16 228/23 229/3
148/21 156/23 158/1 158/8 164/19	190/15 192/4 198/6 208/1 208/13	<b>allegation</b> [3] 167/1 167/3 170/12
187/21	214/14 215/14 217/1 217/12 218/4	<b>allegations</b> [5] 52/23 131/20
<b>add</b> [2] 130/4 200/14	218/14 218/25 219/18 220/7	141/21 142/8 170/15
<b>adding</b> [1] 214/1	220/23 223/10 223/17 223/25	<b>alleged</b> [7] 51/8 63/3 126/8 129/2
<b>addition</b> [4] 12/6 23/21 131/6	224/3 224/25 225/4 227/25	136/17 177/16 214/3
229/4	<b>against</b> [23] 23/2 33/15 56/17 57/5	<b>allegedly</b> [3] 156/8 156/12 219/7
<b>additional</b> [11] 105/7 105/8 109/2	63/18 73/9 73/24 74/10 83/15	<b>alleging</b> [1] 171/11
110/11 150/1 214/1 227/12 228/3	95/14 119/17 125/16 128/20 130/9	<b>Allen</b> [3] 8/9 8/19 8/21
228/12 228/13 230/21	158/7 163/15 164/12 168/21 195/9	<b>Allen's</b> [1] 9/4
<b>address</b> [10] 115/24 135/7 137/21	197/21 199/13 214/2 221/22	<b>allow</b> [4] 31/21 114/18 180/19
142/12 150/17 153/13 183/18	<b>age</b> [1] 121/23	200/23
206/18 207/5 231/6	<b>agencies</b> [8] 21/15 69/4 69/6 70/13	<b>allowed</b> [4] 140/24 197/17 203/19
<b>addressed</b> [8] 103/15 110/10 139/7	94/23 95/2 132/7 147/16	203/19
181/8 202/5 207/3 208/10 210/15	<b>agency</b> [12] 46/25 47/4 47/11	<b>allowing</b> [1] 109/7
<b>addresses</b> [1] 96/1	94/19 95/13 97/16 98/1 186/6	<b>allows</b> [1] 156/5
<b>addressing</b> [3] 139/9 144/4 225/25	188/8 188/18 195/25 204/20	<b>almost</b> [4] 130/2 144/15 178/18
<b>adequate</b> [1] 123/20	<b>agenda</b> [1] 196/17	220/24
<b>adjourn</b> [4] 124/3 132/3 148/19	<b>agents</b> [3] 68/18 75/23 190/9	<b>alone</b> [2] 130/16 148/15
192/9	<b>ago</b> [1] 153/10	<b>along</b> [6] 229/9 31/3 68/18 222/6
<b>adjourned</b> [1] 231/12	<b>agree</b> [8] 3/21 105/5 144/19	224/22 229/24
<b>adjournment</b> [9] 44/12 123/15	154/21 180/22 201/5 205/5 212/8	<b>already</b> [16] 6/21 20/4 21/13
123/19 132/5 132/23 133/11 135/5	<b>agreed</b> [6] 20/6 21/21 22/23 62/3	102/23 104/12 104/23 111/8
135/11 138/22	124/1 133/25	111/14 122/22 130/5 140/2 140/23
<b>adjusted</b> [1] 138/9	<b>agreeing</b> [1] 129/11	151/3 170/20 170/21 187/9
<b>administering</b> [1] 135/25	<b>agreement</b> [5] 30/20 81/17 82/9	<b>also</b> [44] 3/9 3/11 3/17 9/16 10/6
<b>administration</b> [1] 190/22	82/11 114/21	14/23 48/6 48/23 49/18 50/7 51/7
<b>admiss</b> [1] 192/8	<b>agrees</b> [2] 3/25 145/1	51/10 54/10 55/15 65/7 65/19
<b>admissibility</b> [9] 106/10 107/1	<b>ahead</b> [6] 100/2 101/4 169/18	69/4 92/4 98/10 111/6 111/22
159/24 160/4 160/11 162/13	176/10 177/19 209/20	113/7 123/14 130/4 131/10 139/3
165/19 173/16 181/7	<b>aid</b> [1] 104/15	139/15 139/24 141/1 141/17 146/6
<b>admissible</b> [5] 113/23 114/5	<b>air</b> [3] 65/25 92/20 114/10	151/22 154/11 186/24 196/17
160/17 174/11 214/8	<b>aired</b> [3] 35/16 35/20 122/20	202/11 216/1 216/7 216/21 227/17
<b>admissions</b> [2] 228/3 228/4	<b>airplane</b> [3] 65/21 65/22 66/13	228/2 228/8 228/14 230/12
<b>admits</b> [2] 221/16 221/17	<b>akin</b> [1] 188/24	<b>alternates</b> [1] 135/1
<b>admittedly</b> [2] 174/17 179/7	<b>alert</b> [2] 114/3 228/15	<b>alternative</b> [7] 132/2 134/14
<b>admitting</b> [1] 169/25	<b>alerted</b> [1] 113/21	134/20 145/19 146/23 148/16
<b>admonition</b> [2] 101/11 141/3	<b>all</b> [177] 3/18 4/9 11/1 12/9 13/6	153/18
<b>adopting</b> [1] 187/8	14/7 14/14 15/12 15/24 16/15	<b>alternatives</b> [2] 134/12 138/23
<b>adult</b> [1] 74/4	17/19 18/25 20/13 21/12 23/16	<b>although</b> [14] 74/3 92/19 107/18
<b>advance</b> [2] 170/2 176/23	24/8 24/20 25/2 25/11 26/8 26/19	116/18 121/1 122/14 127/9 132/19
<b>advancing</b> [1] 176/19	26/25 27/4 27/14 28/13 28/20	156/19 170/18 172/11 174/19
<b>advice</b> [4] 21/20 21/21 40/15	29/22 32/12 33/19 34/10 35/11	219/9 221/17
135/20	35/14 36/5 36/12 37/6 37/13	<b>altitude</b> [1] 66/7
<b>advised</b> [1] 21/19	37/16 38/6 38/24 39/5 39/21	<b>altogether</b> [3] 117/17 147/18
<b>advisory</b> [1] 135/21	40/10 41/23 41/23 42/15 42/17	148/11
<b>affect</b> [2] 223/5 230/2	42/21 43/20 43/24 44/22 45/25	<b>always</b> [12] 73/4 86/4 93/19 94/6
<b>affected</b> [3] 129/10 133/1 192/22	53/12 56/16 58/3 59/10 60/1 60/7	95/8 160/10 160/10 171/12 171/15
<b>affects</b> [1] 165/18	62/3 64/1 67/8 68/7 68/24 69/14	188/7 188/15 207/9
<b>affidavit</b> [4] 115/4 115/7 115/14	71/14 72/2 73/16 76/25 81/12	<b>am</b> [10] 33/6 39/20 45/8 46/23
116/4	81/20 85/4 85/10 85/25 92/1 97/9	98/10 118/3 146/16 147/3 162/25
<b>after</b> [45] 7/13 7/24 8/2 20/23	98/20 100/8 100/23 101/4 101/12	183/14
20/24 21/9 22/2 30/7 35/22 39/23	102/4 102/6 103/2 103/6 103/16	<b>amend</b> [1] 213/25
44/11 45/22 48/3 48/16 54/14	105/3 105/14 107/20 108/11 109/5	<b>Amended</b> [1] 118/15
55/22 59/17 62/19 64/1 67/1	109/9 110/9 110/19 112/9 113/5	<b>amendment</b> [2] 85/18 125/15
74/23 78/8 79/23 82/25 83/13	115/10 115/11 117/9 117/25 118/7	<b>among</b> [3] 32/9 82/3 95/7
83/19 83/20 84/16 85/16 88/5	118/21 119/7 119/19 119/22 121/7	<b>amount</b> [8] 62/9 63/2 128/7 128/8
88/6 94/16 101/1 102/8 102/12	124/18 126/19 131/18 139/8	173/22 173/25 178/11 219/8
119/16 122/25 123/11 154/14	141/13 141/13 143/13 143/17	<b>analog</b> [1] 129/9
211/22 216/22 219/10 219/15	147/22 149/10 149/24 151/11	<b>analogy</b> [2] 160/8 182/5
223/15 226/20	151/15 152/10 152/11 153/8	<b>analysis</b> [5] 107/12 164/16 165/13
<b>afternoon</b> [6] 103/9 103/15 112/24	153/20 155/7 156/14 157/23	168/8 171/19
126/5 155/16 155/21	162/23 164/2 164/14 166/13	<b>analyze</b> [2] 165/15 173/17
<b>again</b> [69] 28/15 28/22 49/1 49/12	168/20 168/22 172/13 174/8	<b>analyzed</b> [2] 79/4 79/19
	177/12 180/19 182/23 183/6 183/9	<b>and/or</b> [1] 31/9
	191/18 195/20 196/17 199/10	<b>Anderson</b> [1] 136/12

A		
<p><b>Andrew</b> [3] 15/21 27/8 34/5  <b>announced</b> [2] 53/11 223/7  <b>announcing</b> [1] 52/9  <b>another</b> [29] 9/16 12/6 16/11 41/14 56/20 86/25 87/24 95/9 97/16 117/20 125/10 129/1 144/12 145/4 146/25 147/17 147/19 148/21 148/24 177/14 184/1 184/18 204/20 209/21 211/10 215/13 217/12 229/21 230/5  <b>answer</b> [11] 84/14 84/18 85/22 90/15 96/11 96/19 97/12 98/18 98/19 168/24 223/24  <b>answering</b> [2] 85/5 223/17  <b>answers</b> [1] 224/4  <b>anticipate</b> [1] 168/16  <b>anticipated</b> [4] 102/15 123/24 130/3 174/16  <b>anticipates</b> [1] 112/24  <b>anticipating</b> [3] 209/16 211/2 212/12  <b>any</b> [133] 8/8 9/13 15/9 17/22 22/10 23/23 28/21 30/6 36/7 36/23 37/1 37/5 37/17 42/19 42/22 44/4 44/16 46/16 50/23 51/16 52/1 52/11 53/8 53/9 53/25 55/20 58/20 58/23 58/23 59/3 59/4 59/5 61/1 63/22 65/9 65/11 69/13 91/4 92/14 95/9 95/23 97/17 98/2 101/11 102/15 105/1 105/15 105/19 106/2 106/3 108/24 109/14 110/6 114/15 115/2 116/1 118/4 119/12 122/15 124/7 127/1 127/1 130/15 134/5 137/20 146/19 147/14 156/2 156/8 156/12 157/8 157/11 157/13 157/18 157/20 158/4 160/8 160/16 164/5 166/20 166/20 167/1 167/9 168/18 168/19 169/14 170/1 170/22 171/2 175/18 175/22 176/1 176/7 176/12 176/23 176/24 181/4 181/13 182/4 182/19 184/2 184/18 185/18 186/8 187/19 187/20 188/9 190/25 195/17 196/3 197/1 197/7 197/9 199/15 203/20 207/13 208/3 208/24 210/2 211/7 212/18 220/3 220/4 221/3 221/13 221/14 221/15 222/22 223/2 223/12 223/24 224/22 230/24  <b>anybody</b> [8] 30/15 86/6 100/17 186/5 195/2 195/19 203/4 206/2  <b>anyone</b> [14] 36/22 36/22 37/2 38/20 40/24 73/7 73/10 100/11 120/25 178/13 182/12 201/20 202/24 217/16  <b>anyone's</b> [1] 126/13  <b>anything</b> [27] 10/17 22/18 33/17 48/18 54/14 66/18 70/20 97/4 106/18 111/15 117/7 133/18 134/10 147/2 148/1 152/11 155/13 158/12 161/1 177/7 180/2 182/16 192/1 194/21 207/8 228/25 231/5  <b>anywhere</b> [7] 67/24 118/14 167/15 177/4 217/1 217/2 220/23  <b>apart</b> [2] 207/16 208/17  <b>apparently</b> [1] 166/19  <b>Appeals</b> [2] 163/13 163/17  <b>appear</b> [2] 186/24 229/7  <b>appearance</b> [5] 22/3 22/17 184/11 184/15 186/14  <b>appearances</b> [4] 1/12 3/5 122/7 124/10</p>	<p><b>appeared</b> [5] 1/18 35/11 119/10 121/6 229/18  <b>appearing</b> [2] 3/9 3/10  <b>appears</b> [5] 3/8 3/14 144/15 149/11 167/6  <b>applied</b> [3] 156/8 156/12 199/7  <b>applies</b> [3] 180/23 199/4 199/5  <b>apply</b> [9] 38/17 40/22 109/14 149/25 157/13 157/17 157/19 164/14 228/20  <b>applying</b> [1] 162/17  <b>appointed</b> [2] 3/11 54/18  <b>appointments</b> [1] 65/16  <b>appreciate</b> [2] 197/18 204/3  <b>approach</b> [2] 76/6 152/24  <b>approached</b> [5] 55/5 100/11 100/14 100/16 151/6  <b>approaches</b> [1] 100/5  <b>approaching</b> [1] 39/20  <b>appropriate</b> [17] 107/4 107/25 108/6 110/1 124/2 139/13 140/3 140/6 142/22 144/9 145/7 151/4 173/12 194/7 205/21 207/9 207/11  <b>appropriately</b> [2] 93/1 180/17  <b>appropriateness</b> [1] 160/5  <b>April</b> [4] 35/18 35/22 40/22 129/25  <b>April 15</b> [1] 35/22  <b>are</b> [158] 11/8 14/14 14/20 14/22 15/21 17/22 18/15 18/18 21/25 30/20 30/22 36/21 36/24 39/21 41/11 42/1 42/8 42/12 42/14 43/14 45/7 46/22 49/21 54/11 54/16 54/24 60/2 60/7 74/24 75/12 75/17 77/10 84/18 84/19 86/8 86/9 87/25 90/21 92/12 97/5 97/6 98/20 98/24 101/12 102/6 103/6 106/25 108/22 109/22 112/21 114/7 114/11 117/25 118/1 118/16 119/22 120/16 121/10 123/7 124/25 126/8 126/9 127/3 127/4 127/4 131/19 131/20 131/21 134/12 138/13 139/20 140/23 141/4 146/22 148/17 152/19 152/20 152/20 153/2 153/3 155/17 155/19 156/21 159/1 161/8 162/23 164/24 165/23 166/16 166/23 167/9 167/17 167/25 168/10 169/16 169/19 169/25 170/7 170/8 170/16 170/25 171/1 171/8 172/5 172/14 172/15 172/17 173/10 173/13 173/14 173/14 173/15 173/15 174/3 175/6 175/7 175/12 175/16 176/14 176/19 178/1 178/23 179/8 183/12 184/23 185/13 185/14 185/23 186/1 186/2 186/3 188/22 190/8 191/12 191/21 194/11 194/14 198/3 198/21 203/5 203/7 207/16 208/5 208/11 208/12 208/13 208/17 209/16 209/17 211/6 212/23 214/24 220/14 226/8 226/15 230/8 230/10 230/20  <b>area</b> [8] 16/1 20/25 66/6 99/21 114/9 137/13 157/21 202/14  <b>areas</b> [1] 14/1  <b>aren't</b> [2] 170/3 189/24  <b>argue</b> [23] 143/6 144/24 153/6 153/17 158/12 159/17 163/6 167/9 169/7 169/20 170/4 172/23 175/23 176/11 176/12 176/24 181/11 181/16 196/22 202/21 206/3 213/20 226/15  <b>argued</b> [6] 44/11 107/18 172/9 199/16 200/4 214/5</p>	<p><b>argues</b> [3] 197/3 197/20 198/12  <b>arguing</b> [6] 118/2 147/3 163/23 172/14 172/15 172/17  <b>argument</b> [85] 4/14 102/9 105/12 108/14 109/2 111/3 117/12 117/14 117/18 117/21 118/5 128/16 139/11 150/2 150/15 150/16 151/20 153/12 153/15 154/13 156/11 157/14 158/2 158/21 158/21 158/25 159/1 159/5 159/6 159/12 159/13 160/3 160/15 162/7 164/6 165/11 166/16 166/21 167/18 168/24 169/16 169/19 170/8 170/9 170/17 171/20 171/22 171/23 172/1 172/11 172/19 173/4 173/11 174/6 174/7 174/10 174/25 175/7 175/10 176/16 176/16 178/6 178/8 178/22 179/1 179/3 179/15 179/19 181/16 183/3 185/12 192/14 193/15 196/21 196/24 204/16 204/18 205/13 206/5 212/10 212/19 213/13 229/4 229/5 230/21  <b>arguments</b> [19] 102/18 102/19 102/23 110/20 117/23 142/16 150/7 150/10 150/11 154/1 156/24 157/24 160/5 161/12 167/24 181/23 190/14 200/15 228/16  <b>arms</b> [1] 218/10  <b>arose</b> [1] 112/18  <b>around</b> [6] 127/15 189/24 195/10 209/18 226/3 227/21  <b>arrangements</b> [1] 65/22  <b>arrest</b> [6] 6/17 6/21 6/25 7/13 26/11 120/17  <b>arrested</b> [6] 9/24 52/6 56/1 72/13 89/20 158/8  <b>arrived</b> [4] 20/2 20/10 70/19 133/24  <b>artful</b> [1] 174/15  <b>ARTHUR</b> [1] 1/15  <b>article</b> [1] 58/6  <b>articles</b> [1] 43/8  <b>as</b> [296]  <b>aside</b> [1] 148/14  <b>ask</b> [25] 22/15 30/2 46/16 47/22 54/2 56/12 58/21 65/6 65/14 85/20 90/10 98/18 99/5 132/10 143/10 146/10 149/23 150/12 154/23 159/2 163/25 168/23 175/15 224/1 225/21  <b>asked</b> [6] 97/20 107/14 135/20 148/5 208/21 225/23  <b>asking</b> [24] 10/25 40/5 40/6 94/3 98/24 108/17 108/22 109/2 142/15 142/19 145/22 146/1 146/7 147/9 160/18 166/16 167/17 184/5 187/22 193/15 193/16 199/8 224/24 228/22  <b>aspect</b> [1] 126/1  <b>aspects</b> [2] 77/3 207/18  <b>aspiration</b> [1] 132/21  <b>assault</b> [6] 6/6 6/13 7/6 165/4 221/15 221/21  <b>assembled</b> [2] 84/23 138/1  <b>assembly</b> [1] 185/16  <b>asserting</b> [1] 134/9  <b>assertion</b> [1] 129/7  <b>assertions</b> [1] 128/8  <b>assessment</b> [1] 22/24  <b>assign</b> [1] 16/6  <b>assigned</b> [3] 42/8 42/12 68/20  <b>assignments</b> [1] 69/17</p>

<p><b>A</b></p> <p><b>assist</b> [4] 29/21 196/13 197/9 202/14</p> <p><b>assistance</b> [11] 48/10 48/15 49/2 49/5 49/10 61/25 64/4 66/18 69/8 70/20 140/22</p> <p><b>assisted</b> [1] 232/10</p> <p><b>assisting</b> [1] 47/25</p> <p><b>assume</b> [8] 20/5 45/11 46/5 66/2 81/1 102/24 126/22 152/6</p> <p><b>Assuming</b> [1] 149/3</p> <p><b>assurances</b> [1] 121/12</p> <p><b>assure</b> [4] 93/7 98/7 99/10 132/15</p> <p><b>assured</b> [1] 130/20</p> <p><b>at</b> [208] 1/16 3/1 4/10 5/5 6/9 7/4 8/10 9/3 10/9 11/1 13/7 19/2 20/10 21/1 21/12 22/6 22/6 22/18 22/25 26/6 27/25 29/23 30/10 35/21 36/15 37/6 39/5 39/17 39/21 39/24 43/1 44/22 45/18 46/5 47/14 52/1 52/1 52/21 53/6 53/10 54/16 55/3 58/20 59/16 60/23 62/7 63/11 65/22 66/7 66/9 67/10 67/12 67/21 67/25 69/5 69/21 71/22 72/20 73/18 74/20 77/11 77/12 77/21 78/6 83/18 85/12 86/12 86/12 87/6 87/8 87/20 91/5 91/6 92/1 92/15 92/20 93/17 103/2 103/5 104/1 105/9 105/9 105/11 106/9 106/19 107/5 107/17 108/11 110/1 110/22 111/12 112/9 112/13 112/17 113/23 114/6 115/22 116/3 119/10 119/12 120/15 121/1 121/5 121/9 121/22 122/6 122/19 123/8 124/8 124/17 124/18 124/22 124/22 125/13 125/14 126/1 126/25 127/15 130/1 130/4 131/7 133/6 133/17 133/21 134/2 137/11 137/15 138/21 139/19 143/9 150/10 150/20 151/11 151/23 152/4 153/14 154/16 155/22 157/24 159/21 161/16 161/16 161/22 161/23 161/24 165/15 168/11 169/13 173/10 173/18 174/15 178/14 178/15 181/8 182/6 184/19 185/17 185/24 185/24 187/11 188/6 189/9 189/17 189/25 190/4 192/22 196/8 196/21 197/7 199/15 200/12 200/23 201/1 203/17 203/21 204/13 205/2 206/2 207/11 207/12 207/18 207/23 208/17 210/24 211/4 212/4 212/12 213/12 214/5 215/1 215/4 215/18 216/10 217/20 219/22 221/12 222/13 222/21 223/11 226/14 226/19 229/7 229/12 229/17 230/8 230/13 230/15 231/3</p> <p><b>atmosphere</b> [1] 137/11</p> <p><b>attached</b> [3] 115/6 115/13 120/11</p> <p><b>attaching</b> [1] 115/8</p> <p><b>attack</b> [1] 178/1</p> <p><b>attacked</b> [1] 9/9</p> <p><b>attacker</b> [1] 8/10</p> <p><b>attempt</b> [3] 80/6 208/6 210/1</p> <p><b>attempted</b> [4] 6/3 6/17 7/2 7/6</p> <p><b>attempting</b> [3] 48/15 49/25 72/4</p> <p><b>attempts</b> [2] 58/21 58/22</p> <p><b>attendant</b> [1] 202/22</p> <p><b>attended</b> [1] 123/23</p> <p><b>attention</b> [5] 39/22 66/10 141/24 142/2 142/6</p>	<p><b>attorney</b> [12] 2/4 2/5 2/6 2/9 2/10 2/11 3/8 8/2 119/3 121/4 164/9 226/20</p> <p><b>Attorney's</b> [2] 94/20 95/3</p> <p><b>Attorneys</b> [1] 1/16</p> <p><b>attract</b> [2] 63/24 66/9</p> <p><b>attributable</b> [1] 126/24</p> <p><b>attributed</b> [1] 127/1</p> <p><b>audiotape</b> [1] 210/22</p> <p><b>August</b> [2] 211/17 211/23</p> <p><b>August 3rd</b> [1] 211/17</p> <p><b>August 9th</b> [1] 211/23</p> <p><b>authenticity</b> [4] 166/6 182/9 182/17 182/22</p> <p><b>author</b> [3] 109/17 116/24 138/16</p> <p><b>authorities</b> [1] 121/13</p> <p><b>authority</b> [2] 157/7 208/3</p> <p><b>Auto</b> [4] 22/20 67/10 67/22 120/5</p> <p><b>automatically</b> [1] 146/17</p> <p><b>available</b> [10] 73/5 73/17 83/23 87/19 104/18 108/3 108/4 119/18 139/21 139/22</p> <p><b>AVERY</b> [136] 1/6 1/17 3/2 3/14 3/16 3/17 5/25 6/17 6/22 7/13 7/18 8/5 9/13 11/2 22/7 22/12 22/20 23/1 26/12 27/6 32/16 32/23 32/23 39/5 39/10 40/13 41/7 43/17 45/18 52/6 52/23 53/2 54/7 58/24 62/23 63/1 63/5 63/8 63/23 67/10 67/22 72/13 73/10 73/22 74/20 74/25 75/11 75/12 75/16 78/19 82/25 88/10 88/17 88/19 90/19 90/21 90/24 91/23 95/14 95/18 95/21 96/2 96/23 100/20 104/14 112/16 119/14 119/18 119/20 119/21 120/5 120/7 120/8 120/10 120/21 123/1 125/6 126/14 129/19 131/15 133/23 133/25 134/8 136/23 137/4 138/5 138/10 140/13 141/11 141/13 142/2 149/6 166/1 168/21 174/2 175/1 189/18 195/9 197/14 200/10 200/17 200/21 201/6 202/8 203/16 203/17 203/21 204/8 204/10 205/10 206/8 207/20 207/22 208/1 208/15 208/25 214/2 215/20 216/21 219/14 219/15 221/11 221/14 221/19 221/22 224/2 224/21 226/23 226/24 226/25 227/2 227/23 228/6 228/10 229/25 230/6</p> <p><b>Avery's</b> [33] 6/25 10/20 27/15 28/13 28/22 29/5 33/15 53/19 55/22 72/8 91/12 91/17 91/21 92/6 115/1 118/9 120/11 124/18 124/22 167/6 193/1 199/11 210/22 214/19 215/12 216/4 216/10 217/6 217/24 220/18 225/5 227/9 227/17</p> <p><b>Averys</b> [2] 92/12 120/7</p> <p><b>aviation</b> [1] 65/24</p> <p><b>avoid</b> [4] 22/3 142/13 162/1 170/14</p> <p><b>awaiting</b> [1] 112/6</p> <p><b>aware</b> [14] 29/8 54/16 55/25 57/2 57/3 63/17 63/22 63/23 72/5 72/10 104/14 118/21 146/19 221/16</p> <p><b>away</b> [3] 77/17 142/6 176/21</p> <p><b>awfully</b> [1] 200/16</p> <p><b>awkward</b> [1] 54/1</p>	<p>79/6 79/21 79/25 80/1 87/15 89/10 90/14 91/23 96/17 96/18 99/1 99/2 103/5 109/18 121/3 123/25 147/12 155/22 157/4 168/25 180/13 183/9 189/22 200/21 217/11 223/6 224/5 225/1 230/19</p> <p><b>background</b> [4] 5/3 183/23 207/8 209/14</p> <p><b>badgered</b> [1] 223/15</p> <p><b>badgering</b> [1] 224/11</p> <p><b>bail</b> [21] 113/7 113/15 210/14 211/9 213/13 213/17 213/17 213/24 214/13 214/14 214/19 217/9 221/23 225/14 225/14 225/22 229/12 229/16 230/23 231/2 231/4</p> <p><b>bailiffs</b> [3] 147/24 185/8 185/20</p> <p><b>balance</b> [3] 116/20 124/2 159/23</p> <p><b>balanced</b> [1] 197/21</p> <p><b>balancing</b> [10] 107/5 161/14 162/18 167/21 167/23 168/9 176/5 196/25 202/14 205/6</p> <p><b>ballot</b> [1] 135/18</p> <p><b>band</b> [1] 152/6</p> <p><b>bank</b> [1] 213/8</p> <p><b>Barb</b> [1] 29/6</p> <p><b>bare</b> [1] 201/1</p> <p><b>base</b> [1] 8/24</p> <p><b>based</b> [7] 128/10 170/4 173/5 214/2 214/14 229/20 230/14</p> <p><b>basically</b> [3] 60/9 66/5 66/15</p> <p><b>basis</b> [8] 41/25 125/3 129/6 154/18 190/11 201/19 202/19 214/17</p> <p><b>batting</b> [1] 156/20</p> <p><b>Bay</b> [6] 35/7 43/25 44/3 55/14 119/7 122/13</p> <p><b>be</b> [355]</p> <p><b>beach</b> [4] 6/7 6/13 8/11 9/9</p> <p><b>bearing</b> [2] 31/17 31/19</p> <p><b>bears</b> [1] 31/11</p> <p><b>beats</b> [1] 16/6</p> <p><b>became</b> [1] 47/11</p> <p><b>because</b> [54] 22/6 26/6 26/23 30/3 82/15 93/19 95/12 96/8 97/1 97/23 97/23 115/7 118/13 124/19 130/14 133/15 133/20 138/10 142/25 146/2 149/24 164/17 164/19 165/14 165/21 168/1 168/23 170/22 172/21 173/3 174/10 174/13 175/12 177/4 180/3 185/14 186/13 188/15 193/2 194/10 200/22 205/10 205/14 212/13 214/18 215/17 217/15 218/6 220/7 223/4 223/25 224/6 227/20 230/10</p> <p><b>become</b> [5] 6/5 55/25 100/18 136/23 137/5</p> <p><b>becomes</b> [5] 149/19 157/18 162/15 200/9 207/19</p> <p><b>becoming</b> [1] 170/15</p> <p><b>bed</b> [1] 215/8</p> <p><b>bedding</b> [2] 216/12 216/13</p> <p><b>bedroom</b> [1] 32/15</p> <p><b>been</b> [117] 4/19 5/4 19/19 20/1 20/4 20/16 21/9 22/12 27/21 27/25 29/19 30/8 37/8 38/9 40/25 44/25 47/4 47/17 47/18 48/6 48/7 55/5 55/18 56/1 56/24 63/3 65/15 67/8 68/14 70/22 78/4 79/14 80/22 82/14 82/25 83/4 83/11 83/12 83/14 83/15 88/22 89/13 89/14 90/4 91/12 92/7 93/8 99/11</p>
	<p><b>B</b></p> <p><b>back</b> [33] 39/1 39/12 42/17 51/23</p>	

<b>B</b>		
<p><b>been...</b> [69] 100/11 103/23 104/13 104/15 104/16 104/23 105/10 107/19 111/8 112/18 116/1 118/20 118/22 119/11 120/19 120/22 122/6 124/8 124/19 127/8 127/10 127/10 127/21 128/2 129/19 130/11 133/19 133/20 133/23 137/2 137/18 139/20 150/24 153/9 158/14 166/8 169/3 169/22 175/24 179/21 182/12 182/13 189/23 198/5 200/24 203/9 203/9 203/11 203/15 204/6 210/15 213/21 215/2 216/13 216/22 216/25 217/6 218/7 219/16 222/5 227/24 228/3 228/12 228/14 229/18 229/19 229/23 230/24 232/8</p> <p><b>before</b> [47] 1/11 3/19 13/8 16/7 33/25 35/19 35/21 47/19 51/16 58/13 58/15 61/8 63/9 79/21 79/24 83/3 83/9 83/12 83/20 91/24 91/24 98/16 99/24 101/10 101/10 102/19 103/17 105/10 114/21 121/22 129/17 130/2 132/14 137/17 156/5 172/8 181/7 189/19 202/5 209/5 209/8 210/25 211/3 211/21 225/2 229/4 231/6</p> <p><b>began</b> [4] 3/19 74/13 75/16 78/5</p> <p><b>beginning</b> [7] 50/18 55/19 95/25 97/7 98/1 121/23 185/24</p> <p><b>behalf</b> [4] 1/14 1/16 138/22 199/6</p> <p><b>behaviors</b> [3] 198/16 198/18 198/21</p> <p><b>behind</b> [2] 44/6 152/20</p> <p><b>being</b> [49] 6/3 7/11 10/6 32/25 36/21 41/3 45/18 47/10 51/7 52/24 53/17 53/19 54/5 56/17 61/4 62/1 62/25 63/4 72/16 75/11 78/10 85/22 89/5 90/1 90/25 96/23 97/3 108/19 116/23 125/1 126/22 130/4 142/5 142/9 142/9 142/14 164/7 168/24 168/25 173/5 174/14 175/1 177/16 181/14 197/1 197/23 207/23 224/12 225/10</p> <p><b>belabor</b> [1] 152/14</p> <p><b>believe</b> [56] 3/21 8/16 8/23 9/16 16/11 17/4 18/14 18/23 24/16 26/13 27/19 27/23 28/3 28/19 29/6 30/8 31/20 35/17 40/18 40/24 40/24 41/8 41/9 41/10 41/20 47/9 56/15 56/25 57/24 61/2 72/15 73/23 78/15 79/24 82/18 89/24 99/20 103/6 111/14 111/24 113/7 131/15 140/2 141/5 149/21 153/25 163/12 171/8 192/25 197/25 210/14 212/18 213/17 216/2 217/11 219/24</p> <p><b>believed</b> [1] 144/20</p> <p><b>believes</b> [4] 144/7 144/22 152/25 153/1</p> <p><b>below</b> [5] 12/17 12/25 13/4 14/14 18/16</p> <p><b>bench</b> [2] 143/14 206/21</p> <p><b>best</b> [10] 35/24 59/24 133/2 137/16 144/23 146/12 149/19 158/18 208/10 232/13</p> <p><b>bet</b> [3] 21/10 89/12 206/8</p> <p><b>better</b> [6] 48/9 49/23 76/15 84/14 102/18 123/18</p> <p><b>between</b> [14] 29/5 52/19 67/24 77/5 77/13 132/1 152/4 156/16 157/12 161/23 180/21 191/10</p>	<p>210/8 212/16</p> <p><b>beyond</b> [11] 44/12 46/3 67/5 85/7 98/11 121/14 128/19 168/12 180/9 180/10 205/19</p> <p><b>bias</b> [21] 163/16 163/16 163/19 163/22 182/19 182/22 183/2 197/19 198/10 200/5 201/19 202/19 202/23 203/12 204/16 205/2 205/13 205/17 205/18 205/22 206/1</p> <p><b>biased</b> [1] 163/15</p> <p><b>big</b> [5] 63/17 160/22 175/11 180/21 194/15</p> <p><b>bills</b> [2] 24/21 24/23</p> <p><b>binding</b> [1] 157/7</p> <p><b>bit</b> [9] 5/2 20/8 38/25 76/4 123/3 140/17 155/17 172/3 173/10</p> <p><b>bizarre</b> [1] 129/18</p> <p><b>black</b> [2] 109/21 136/13</p> <p><b>blame</b> [5] 126/19 136/12 137/20 141/25 230/9</p> <p><b>bleach</b> [2] 220/15 220/22</p> <p><b>bleeding</b> [1] 216/23</p> <p><b>blew</b> [1] 136/7</p> <p><b>blocks</b> [1] 182/23</p> <p><b>blood</b> [19] 28/21 78/13 78/16 173/22 173/24 216/11 216/17 216/19 216/25 217/1 217/6 218/21 220/2 220/7 220/13 220/16 220/17 220/20 220/22</p> <p><b>Blow</b> [1] 73/10</p> <p><b>blundered</b> [2] 158/22 171/25</p> <p><b>Board</b> [2] 18/3 18/4</p> <p><b>body</b> [2] 205/14 227/3</p> <p><b>bomb</b> [1] 136/7</p> <p><b>bond</b> [10] 103/13 221/25 223/6 224/15 224/25 225/1 225/4 225/14 228/16 228/23</p> <p><b>bone</b> [7] 32/21 33/1 33/3 67/6 79/13 79/17 79/22</p> <p><b>book</b> [2] 100/12 100/19</p> <p><b>bookkeeping</b> [1] 61/5</p> <p><b>boots</b> [1] 30/22</p> <p><b>borrow</b> [1] 175/5</p> <p><b>boss</b> [1] 38/4</p> <p><b>both</b> [17] 3/21 14/7 14/11 34/18 49/9 50/13 102/10 120/21 124/25 125/1 134/3 139/25 140/23 143/7 157/24 180/22 196/24</p> <p><b>bound</b> [1] 218/10</p> <p><b>bounds</b> [1] 19/15</p> <p><b>box</b> [1] 150/21</p> <p><b>boxes</b> [7] 43/2 43/5 43/9 44/6 151/12 212/23 213/8</p> <p><b>boy</b> [3] 136/24 222/10 222/14</p> <p><b>boyfriends</b> [1] 75/5</p> <p><b>BRANCH</b> [2] 1/1 232/5</p> <p><b>break</b> [4] 33/19 44/9 112/25 155/16</p> <p><b>Brendan</b> [17] 56/5 73/25 74/11 83/3 91/11 120/18 156/4 214/15 215/24 219/1 223/11 225/3 226/7 226/16 226/18 227/19 227/20</p> <p><b>Brendan's</b> [2] 226/13 227/6</p> <p><b>brief</b> [14] 16/7 101/3 103/13 105/12 113/22 117/22 122/9 140/25 159/18 194/23 199/16 200/5 200/13 200/15</p> <p><b>briefly</b> [3] 47/7 121/5 200/14</p> <p><b>briefs</b> [2] 105/20 106/5</p> <p><b>Briggs</b> [1] 127/18</p> <p><b>bring</b> [6] 130/16 144/11 171/2 191/21 194/18 210/6</p>	<p><b>bringing</b> [2] 142/1 148/24</p> <p><b>brings</b> [2] 53/12 138/15</p> <p><b>broadcast</b> [5] 85/21 104/13 104/23 119/6 122/3</p> <p><b>broadcasts</b> [2] 43/8 43/17</p> <p><b>brother's</b> [1] 225/17</p> <p><b>brought</b> [2] 35/5 105/10</p> <p><b>Brown</b> [1] 66/4</p> <p><b>brutally</b> [2] 216/7 216/22</p> <p><b>buck</b> [1] 18/8</p> <p><b>building</b> [1] 182/23</p> <p><b>bulk</b> [1] 43/9</p> <p><b>bulky</b> [1] 44/7</p> <p><b>bullet</b> [2] 219/9 227/9</p> <p><b>bumping</b> [1] 130/9</p> <p><b>bundle</b> [1] 130/19</p> <p><b>burden</b> [4] 145/5 153/6 166/17 169/17</p> <p><b>bureau</b> [7] 13/10 13/19 14/2 16/15 41/18 41/24 42/3</p> <p><b>burn</b> [1] 32/22</p> <p><b>bus</b> [1] 217/23</p> <p><b>business</b> [1] 61/5</p> <p><b>but</b> [215] 7/6 8/17 10/9 11/17 13/7 13/15 14/1 14/12 14/23 16/21 17/10 17/22 18/7 18/23 22/1 24/25 27/2 27/24 29/3 31/7 31/15 34/9 34/24 39/22 41/15 41/16 44/3 44/10 49/3 54/2 55/4 55/14 55/24 57/20 58/22 60/16 61/14 61/20 63/23 64/22 65/7 65/20 66/5 67/5 69/15 69/25 70/24 71/14 71/25 77/6 77/11 77/21 78/1 79/21 82/10 82/20 83/8 83/21 85/14 85/22 86/13 88/5 89/11 89/18 90/4 90/11 92/4 97/13 98/14 104/22 105/9 106/2 109/15 110/8 112/16 114/11 115/4 116/1 118/11 118/18 119/19 120/10 120/20 121/6 121/9 122/18 123/4 123/9 123/18 124/3 126/3 127/13 127/22 128/4 129/4 131/10 131/17 131/21 132/11 132/24 133/22 134/5 135/10 135/15 137/6 137/20 137/24 138/14 139/5 139/24 140/19 142/2 142/15 145/21 146/6 146/21 147/3 148/1 148/20 150/3 150/4 150/14 151/16 151/24 153/15 154/11 155/4 156/20 162/14 162/14 163/20 164/7 165/20 167/9 168/10 168/18 169/1 169/15 170/2 170/20 171/4 171/15 171/18 172/6 172/17 173/4 174/17 174/21 175/6 175/11 175/17 175/21 178/10 179/11 179/20 179/22 180/1 180/15 180/17 180/20 181/10 182/5 182/7 182/16 183/3 183/4 184/25 185/21 186/15 187/2 187/16 188/22 188/25 194/2 195/6 196/6 196/15 197/11 197/20 198/8 200/3 201/8 203/2 203/6 203/13 204/6 204/12 204/18 204/20 205/7 207/9 209/3 209/7 209/15 210/6 211/21 213/23 215/11 215/24 218/4 219/12 219/18 219/22 220/2 220/11 220/21 221/9 221/18 223/6 223/17 225/13 226/13 228/6 228/13 229/21</p> <p><b>BUTING</b> [26] 1/15 3/15 3/15 113/12 114/13 116/7 133/23 152/5 162/23 169/20 175/15 181/24 206/16 207/9 207/16 208/16</p>

<b>B</b>	<b>Carolina [5]</b> 161/17 164/22 165/12 179/23 180/8	141/17 143/4 143/12 143/23 143/24 144/3 144/6 144/9 145/3 145/7 145/11 145/16 145/23 146/7 146/10 146/14 148/5 148/20 148/23 148/25 149/16 149/17 150/1 151/3 151/13 152/16 153/22 154/13 154/17 154/18 192/9 192/10 210/19 212/4 212/9 212/22 217/13 217/21 219/2 230/24
<b>BUTING...</b> [10] 208/18 213/14 226/11 226/12 226/13 227/7 227/16 227/25 228/2 228/25	<b>carpet [3]</b> 169/2 216/3 217/2	<b>changed [3]</b> 134/20 220/10 230/17
<b>Buting's [3]</b> 113/10 156/19 226/4	<b>carried [1]</b> 223/21	<b>changes [1]</b> 213/21
<b>buy [1]</b> 224/13	<b>carries [1]</b> 216/23	<b>channels [1]</b> 152/8
<b>C</b>	<b>carry [1]</b> 213/6	<b>chaperone [1]</b> 184/17
	<b>carrying [1]</b> 122/22	<b>characteristics [1]</b> 207/25
	<b>cars [1]</b> 220/19	<b>characterize [3]</b> 50/12 158/18 194/4
	<b>case [116]</b> 1/5 3/2 3/3 9/8 20/22 31/14 36/15 37/3 50/2 54/2 54/19 55/12 56/21 59/23 60/8 64/22 76/21 80/23 89/25 92/23 100/21 107/10 108/1 109/17 118/21 121/18 122/18 123/23 127/13 127/21 128/11 129/1 129/13 130/1 130/7 132/7 132/8 134/15 136/3 137/17 138/11 138/11 138/13 138/17 138/20 139/17 139/17 141/20 142/23 146/20 148/18 150/4 158/5 161/17 161/18 162/20 163/12 163/14 163/22 164/18 165/2 166/14 166/15 166/19 167/1 167/15 167/20 168/5 169/1 173/13 174/19 175/6 176/2 176/6 177/4 177/22 177/25 178/20 179/20 180/11 182/3 182/8 182/22 183/18 185/1 185/5 186/10 186/15 186/18 187/1 187/14 187/24 188/2 188/13 189/2 190/21 191/19 192/1 193/23 194/20 195/9 197/7 198/24 199/8 201/18 207/17 209/13 210/21 214/6 217/14 217/17 217/17 217/20 222/5 229/18 230/4	<b>charge [17]</b> 5/25 6/17 7/2 7/4 7/6 7/7 9/17 13/9 13/18 14/2 14/22 24/23 52/7 73/24 119/17 120/17 221/21
	<b>case-in-chief [5]</b> 183/18 187/14 187/24 188/2 188/13	<b>charged [8]</b> 72/16 72/21 74/3 83/1 83/4 83/14 89/5 129/4
	<b>cases [19]</b> 46/19 49/20 54/21 59/7 90/4 102/22 127/15 144/6 158/5 163/10 163/17 163/21 167/25 168/16 177/11 177/12 177/16 189/8 189/9	<b>charges [9]</b> 54/11 56/2 63/3 119/17 125/19 133/1 139/13 142/19 225/12
	<b>cash [1]</b> 231/3	<b>charging [1]</b> 120/18
	<b>cast [2]</b> 120/5 127/25	<b>chart [1]</b> 15/18
	<b>cause [2]</b> 128/20 214/9	<b>charts [1]</b> 129/20
	<b>caused [3]</b> 79/6 126/11 138/15	<b>check [2]</b> 89/11 134/4
	<b>causes [1]</b> 131/19	<b>chief [11]</b> 5/19 11/8 13/8 60/5 122/19 129/9 183/18 187/14 187/24 188/2 188/13
	<b>CCAP [1]</b> 112/9	<b>child [5]</b> 136/23 142/4 142/6 164/11 165/9
	<b>cease [1]</b> 54/13	<b>children [2]</b> 121/23 221/1
	<b>celebrity [1]</b> 142/4	<b>choice [4]</b> 124/12 125/11 126/15 130/13
	<b>cell [4]</b> 112/1 112/15 112/16 228/9	<b>choose [4]</b> 88/10 159/3 178/6 178/7
	<b>cellphone [2]</b> 90/22 92/11	<b>chooses [3]</b> 125/22 159/14 192/7
	<b>certain [10]</b> 80/24 85/20 85/21 86/24 90/24 121/2 160/5 161/8 207/7 226/6	<b>chose [1]</b> 86/18
	<b>certainly [21]</b> 10/15 86/14 104/19 114/1 114/8 117/19 132/20 138/19 139/25 155/4 165/6 167/16 182/16 184/21 193/10 193/14 208/24 214/22 215/17 221/18 223/3	<b>chunk [1]</b> 209/18
	<b>certify [1]</b> 232/6	<b>circling [1]</b> 66/2
	<b>CF [2]</b> 1/5 3/3	<b>CIRCUIT [4]</b> 1/1 1/11 72/21 232/5
	<b>chain [4]</b> 16/25 166/8 182/9 182/17	<b>circumspect [1]</b> 116/16
	<b>chair [1]</b> 10/20	<b>circumstances [7]</b> 19/5 40/6 149/7 157/17 174/23 193/11 230/25
	<b>challenge [10]</b> 144/25 163/19 165/24 166/6 166/10 168/20 172/2 176/6 178/16 219/19	<b>circumstantial [1]</b> 229/21
	<b>challenges [1]</b> 161/2	<b>citations [1]</b> 150/8
	<b>challenging [2]</b> 166/2 177/9	<b>cite [1]</b> 150/18
	<b>chambers [2]</b> 107/7 199/24	<b>cited [2]</b> 140/25 167/16
	<b>chance [3]</b> 154/20 172/17 213/20	<b>citing [1]</b> 139/17
	<b>change [54]</b> 4/4 43/1 44/10 98/12 98/15 117/14 127/16 134/14 135/8 135/9 138/2 138/25 139/24 140/2	<b>citizen [3]</b> 28/5 28/6 104/16
		<b>citizens [5]</b> 124/23 134/25 135/19 137/9 159/20
		<b>civil [8]</b> 23/1 23/5 33/15 72/8 189/2 189/8 195/15 205/11
		<b>claim [8]</b> 7/17 33/15 90/8 92/5 165/6 165/7 182/11 217/7
		<b>claimed [6]</b> 33/1 215/7 215/16 216/1 216/7 216/21
		<b>claiming [1]</b> 229/22
		<b>claims [6]</b> 9/7 92/25 120/22 125/3 130/18 218/3
		<b>clarify [2]</b> 30/5 148/13
		<b>clarifying [1]</b> 30/3
		<b>classic [1]</b> 125/20
		<b>clean [2]</b> 215/12 227/4
		<b>cleaned [2]</b> 220/15 220/22
		<b>clear [18]</b> 16/25 33/11 37/21 91/19 114/10 118/10 120/2 120/10 121/11 130/5 152/13 157/16 177/5 179/2 181/25 182/21 210/20 212/3

<b>C</b>	<p> <b>committed</b> [1] 18/3  <b>committing</b> [1] 180/6  <b>common</b> [2] 132/17 191/3  <b>communicate</b> [1] 24/4  <b>communicated</b> [1] 18/15  <b>community</b> [1] 228/19  <b>company</b> [2] 187/16 203/7  <b>compared</b> [1] 197/21  <b>compelling</b> [1] 185/13  <b>competing</b> [2] 159/23 161/13  <b>complain</b> [1] 118/14  <b>complaining</b> [1] 127/6  <b>Complaint</b> [35] 52/14 52/16 55/23 56/17 57/5 58/7 58/19 59/15 72/23 73/9 73/22 74/10 83/11 83/14 83/17 84/4 84/10 84/17 85/2 85/8 86/1 86/3 86/10 101/15 101/17 101/22 128/17 128/18 214/1 214/9 214/17 214/24 217/8 221/23 224/16  <b>Complaints</b> [1] 141/4  <b>complete</b> [1] 177/1  <b>completed</b> [2] 103/9 107/19  <b>completely</b> [1] 33/13  <b>complied</b> [1] 188/10  <b>compliments</b> [2] 192/13 226/3  <b>comply</b> [3] 156/4 157/8 181/1  <b>computer</b> [1] 232/10  <b>computer-assisted</b> [1] 232/10  <b>computerized</b> [1] 232/9  <b>con</b> [1] 129/16  <b>concede</b> [4] 141/2 160/13 162/12 162/13  <b>conceded</b> [3] 120/3 157/15 179/8  <b>concededly</b> [1] 199/17  <b>conceding</b> [1] 160/15  <b>conceivably</b> [1] 135/3  <b>conceptually</b> [1] 183/15  <b>concern</b> [16] 85/9 86/4 96/4 105/7 112/14 144/17 174/7 178/25 191/11 194/23 195/16 196/3 196/6 196/8 204/4 209/6  <b>concerned</b> [6] 120/21 144/4 175/9 178/7 184/10 184/14  <b>concerning</b> [9] 63/2 64/8 105/18 106/10 111/23 155/24 196/19 206/14 213/10  <b>concerns</b> [7] 81/10 104/12 116/15 186/13 191/1 191/15 195/17  <b>concert</b> [1] 45/24  <b>concession</b> [1] 170/21  <b>conclude</b> [1] 113/2  <b>concluded</b> [1] 231/13  <b>concurrently</b> [2] 9/18 10/9  <b>condition</b> [1] 149/22  <b>conditional</b> [3] 145/15 150/16 152/16  <b>conduct</b> [3] 121/17 131/10 147/1  <b>conducted</b> [3] 89/16 189/15 225/8  <b>conference</b> [40] 50/11 52/8 53/11 53/13 53/15 56/7 56/13 56/21 57/1 57/24 77/21 83/3 83/13 83/19 84/3 84/6 87/17 88/6 89/4 89/19 90/7 91/6 91/6 91/7 92/16 92/18 93/4 97/12 101/9 101/10 103/20 120/20 122/2 127/17 127/20 127/22 128/3 140/18 220/25 222/13  <b>conferences</b> [30] 24/22 52/22 54/8 54/15 55/4 82/24 87/2 89/10 89/17 118/20 119/5 119/11 119/16 119/23 120/12 120/13 120/16 120/24 121/9 121/19 124/9 134/6 </p>	<p> 140/8 140/11 141/7 151/21 154/7 154/11 155/4 222/3  <b>conferring</b> [1] 21/18  <b>confident</b> [4] 149/18 149/21 201/17 210/7  <b>confirm</b> [1] 91/2  <b>conflict</b> [18] 22/4 22/16 22/25 23/11 23/13 125/21 126/3 126/9 130/8 130/12 131/25 184/10 184/11 184/15 184/16 186/13 195/16 196/6  <b>confluence</b> [1] 137/19  <b>confronts</b> [1] 126/4  <b>confused</b> [1] 98/23  <b>confuses</b> [1] 202/1  <b>confusion</b> [1] 162/1  <b>conjunction</b> [4] 46/11 69/2 70/9 213/25  <b>conjunctive</b> [1] 72/1  <b>conjures</b> [2] 198/10 198/10  <b>connected</b> [5] 37/2 190/20 194/12 194/19 194/24  <b>connecting</b> [1] 190/25  <b>connection</b> [5] 191/10 194/6 195/25 196/15 223/5  <b>connects</b> [1] 191/14  <b>conscious</b> [2] 124/12 203/13  <b>consent</b> [2] 27/16 28/1  <b>consequence</b> [3] 197/3 197/7 197/11  <b>consider</b> [10] 46/24 148/23 174/24 178/11 197/13 198/1 198/2 225/1 225/4 229/17  <b>considerably</b> [1] 230/17  <b>consideration</b> [2] 113/6 159/18  <b>considered</b> [1] 214/8  <b>consist</b> [1] 43/7  <b>consistencies</b> [3] 226/16 226/22 226/22  <b>consistent</b> [3] 59/7 104/20 228/12  <b>consistently</b> [1] 120/13  <b>conspiracy</b> [6] 53/25 171/8 171/9 171/11 171/11 171/14  <b>constable</b> [4] 158/22 159/5 171/24 171/24  <b>constitution</b> [3] 125/5 130/21 132/16  <b>constitutional</b> [20] 124/25 125/3 125/9 125/12 125/16 125/21 126/4 126/5 126/12 130/8 130/15 130/16 130/19 131/1 131/7 132/19 133/8 141/14 148/8 177/2  <b>constitutions</b> [1] 125/2  <b>construed</b> [3] 97/3 222/8 222/11  <b>consulted</b> [1] 71/17  <b>consulting</b> [2] 8/3 22/2  <b>consuming</b> [1] 155/17  <b>contact</b> [17] 20/16 21/4 25/17 47/17 49/20 49/21 49/24 70/21 130/17 147/13 183/16 185/1 185/23 186/20 196/9 196/11 208/1  <b>contacted</b> [1] 51/18  <b>contacts</b> [3] 29/22 53/7 207/19  <b>contained</b> [2] 52/13 85/7  <b>contaminate</b> [1] 191/12  <b>contaminating</b> [1] 160/23  <b>contemplated</b> [1] 115/22  <b>contemplates</b> [1] 159/18  <b>contemplating</b> [2] 117/13 211/6  <b>content</b> [1] 120/21  <b>context</b> [5] 201/2 204/3 204/5 207/8 209/1  <b>contingent</b> [1] 150/16 </p>
----------	--	--

<b>C</b>	155/1 155/5 158/1 158/1 158/2 163/21 166/7 166/25 170/17 172/21 175/24 176/4 182/4 182/13 187/25 187/25 204/6 207/10 214/6 <b>couldn't [4]</b> 69/14 88/8 88/17 104/11 <b>counsel [27]</b> 3/20 21/19 22/3 39/3 40/15 94/22 94/24 100/25 102/7 103/6 103/11 103/24 107/16 111/16 111/24 114/4 117/20 119/12 119/13 119/14 139/6 156/17 158/20 178/21 183/4 192/14 231/5 <b>counsel's [1]</b> 31/7 <b>count [2]</b> 118/12 118/15 <b>counted [1]</b> 86/13 <b>counties [1]</b> 11/14 <b>country [5]</b> 85/18 104/15 132/18 132/22 167/15 <b>counts [3]</b> 118/9 133/4 214/1 <b>county [143]</b> 1/1 3/8 5/4 5/18 5/19 5/20 5/22 6/7 6/16 8/2 10/21 11/8 11/10 11/14 12/10 16/22 18/3 18/4 18/12 19/6 19/14 19/15 23/2 23/19 23/22 24/3 24/13 26/9 26/13 27/17 27/19 27/22 28/17 29/10 29/20 29/23 30/11 31/4 33/16 36/13 36/16 36/20 37/23 38/3 38/8 38/10 38/15 39/2 41/18 45/8 46/10 54/18 54/22 60/3 60/17 60/18 63/18 66/3 66/5 68/13 71/17 72/7 77/12 88/25 93/21 93/25 94/6 94/9 94/17 94/20 94/21 94/23 95/2 95/10 95/14 96/6 97/17 99/8 104/3 104/25 115/2 119/2 119/2 121/4 122/4 122/16 122/19 122/20 124/23 125/5 129/2 129/9 129/10 129/22 130/6 134/22 137/12 143/9 143/10 144/12 146/8 146/25 147/1 147/6 147/7 147/18 148/12 148/21 148/24 156/22 178/13 183/21 183/25 184/2 184/7 184/8 184/18 185/7 186/9 186/12 186/16 187/13 188/4 188/9 188/16 188/19 189/14 190/24 191/17 191/20 191/22 192/5 192/6 193/3 193/4 193/7 195/8 195/13 195/22 199/13 200/7 202/25 232/2 <b>county's [2]</b> 16/4 147/19 <b>couple [13]</b> 35/10 70/22 89/13 89/14 101/8 124/10 132/5 143/17 161/7 169/3 169/8 190/19 205/24 <b>coupled [3]</b> 132/23 133/11 135/5 <b>course [14]</b> 18/6 18/7 20/17 77/11 82/25 105/13 110/2 119/4 133/3 138/9 159/3 197/1 201/10 219/14 <b>court [203]</b> 1/1 1/11 1/23 3/1 3/11 3/25 13/23 29/25 31/15 36/23 37/7 37/10 37/22 72/12 72/21 72/25 73/2 73/19 83/12 84/1 96/16 98/16 104/7 104/18 104/24 105/11 105/11 105/14 106/4 107/6 107/6 107/7 107/8 107/9 107/11 107/12 107/14 107/17 109/2 109/7 110/25 111/6 112/14 112/24 113/4 113/21 114/1 114/2 114/3 114/6 114/8 114/10 114/11 114/12 114/17 115/20 115/23 117/13 117/18 117/22 117/22 119/18 119/20 122/21 123/11 124/2 124/6 126/4 129/8 130/3 131/17 132/9 132/12 132/13 133/15 133/18	134/8 135/1 139/1 139/11 140/4 140/10 141/19 141/20 142/16 142/20 143/7 143/8 143/11 144/2 144/6 144/8 144/14 144/16 144/19 144/22 145/1 145/3 145/17 145/19 145/21 146/18 146/23 147/3 147/3 147/4 147/10 147/20 148/1 148/3 148/15 148/18 148/20 148/22 149/7 149/8 149/16 151/4 151/5 151/6 151/17 152/10 152/14 152/25 153/1 153/3 153/8 153/16 153/23 154/12 156/5 158/20 159/22 161/17 161/24 162/16 163/2 163/13 163/17 164/13 164/15 167/22 168/8 168/13 169/18 176/4 176/10 176/22 179/23 180/12 183/6 185/19 185/19 185/22 187/22 189/1 190/23 192/7 192/18 195/5 199/8 199/17 199/23 201/17 201/24 202/15 203/19 205/7 205/8 205/24 205/25 207/13 210/4 210/6 210/21 210/25 213/19 213/23 214/10 214/18 217/9 219/21 223/10 224/24 225/20 225/22 226/5 226/5 226/14 227/12 227/17 228/1 228/15 228/15 228/22 229/3 229/12 229/16 230/13 231/2 232/4 232/5 232/19 <b>Court's [13]</b> 43/1 73/8 104/21 117/10 123/7 144/10 144/22 145/10 148/22 149/19 173/18 208/21 210/19 <b>courtroom [7]</b> 38/2 55/1 138/15 143/1 147/21 191/16 225/9 <b>courts [2]</b> 127/24 180/9 <b>courtyard [1]</b> 191/23 <b>cover [2]</b> 41/23 97/4 <b>covered [4]</b> 43/21 111/8 119/8 133/14 <b>covering [2]</b> 16/4 122/3 <b>craft [1]</b> 192/14 <b>create [1]</b> 109/18 <b>created [1]</b> 8/16 <b>creates [1]</b> 193/10 <b>creating [1]</b> 130/12 <b>credibility [8]</b> 166/11 182/18 200/6 200/12 215/23 224/20 229/13 230/3 <b>credible [3]</b> 214/3 217/8 224/17 <b>cries [1]</b> 222/21 <b>crime [24]</b> 9/15 10/12 78/9 78/19 78/24 79/6 79/21 80/1 93/11 101/20 126/8 136/17 136/18 156/3 178/15 180/6 180/25 186/11 197/15 198/6 203/23 204/20 215/9 216/3 <b>crimes [4]</b> 7/19 83/5 129/2 195/22 <b>criminal [48]</b> 19/7 36/18 45/25 46/12 52/14 52/16 54/21 54/25 55/22 56/16 57/4 58/6 58/19 58/24 68/19 72/19 72/22 73/9 73/24 74/10 76/24 76/25 77/14 77/23 78/3 78/6 79/7 80/4 80/16 83/9 83/14 83/17 84/4 84/9 85/8 86/3 86/10 128/17 128/18 141/12 189/9 189/22 209/22 214/1 214/9 214/17 221/22 224/16 <b>criteria [1]</b> 149/25 <b>crooked [2]</b> 159/6 171/24 <b>cross [9]</b> 2/5 2/10 36/10 59/13 173/7 176/8 181/13 188/1 211/1 <b>cross-examination [7]</b> 2/5 2/10
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<b>C</b>	<b>debate [1]</b> 174/20 <b>December [1]</b> 39/12 <b>deception [1]</b> 129/14 <b>decide [9]</b> 22/15 104/7 144/10 176/18 196/10 201/18 205/8 205/9 205/25 <b>decided [11]</b> 21/13 49/7 50/3 57/20 82/22 102/16 107/10 107/11 111/9 183/21 187/4 <b>decides [4]</b> 144/9 146/11 176/10 177/5 <b>deciding [2]</b> 104/8 149/12 <b>decision [37]</b> 19/3 19/10 19/24 20/4 21/17 23/14 23/17 33/18 49/11 57/12 57/19 75/22 81/5 81/24 81/25 82/12 84/5 84/12 92/9 94/19 95/7 118/23 125/19 143/2 143/14 144/10 145/10 148/3 153/4 154/5 164/20 183/7 184/6 207/14 212/10 212/12 230/14 <b>decisions [6]</b> 36/12 46/1 72/2 121/18 128/1 129/1 <b>decline [1]</b> 86/21 <b>declining [1]</b> 125/17 <b>decorum [1]</b> 225/10 <b>decree [1]</b> 135/18 <b>dedicated [1]</b> 64/21 <b>deemed [2]</b> 139/18 139/20 <b>defend [1]</b> 104/11 <b>defendant [39]</b> 1/7 1/16 1/18 89/20 90/8 113/23 125/10 125/22 125/24 127/18 129/3 129/15 130/13 133/15 148/19 157/10 163/15 163/20 164/6 164/11 166/18 166/25 177/8 177/13 177/16 177/17 181/5 185/9 186/25 191/15 197/5 197/23 198/5 198/8 198/23 204/19 205/1 209/23 229/23 <b>defendant's [12]</b> 4/1 106/11 113/6 116/9 130/19 131/1 144/8 144/21 167/20 196/20 197/4 230/16 <b>defendants [2]</b> 158/8 177/12 <b>defending [1]</b> 173/13 <b>defense [102]</b> 4/3 4/11 44/18 104/2 104/16 107/16 108/17 111/17 111/23 114/3 117/19 118/2 119/10 119/12 120/3 123/14 123/17 123/20 125/25 130/5 137/18 139/22 142/20 143/24 145/5 145/15 145/22 146/4 146/9 146/18 148/4 148/7 148/17 148/17 148/25 149/16 149/22 150/12 152/15 152/25 153/2 153/5 154/12 154/19 155/7 156/1 158/2 158/11 159/14 163/6 163/8 163/9 163/14 164/25 165/19 165/22 166/22 167/18 169/6 169/14 170/22 171/16 172/18 172/20 172/22 173/4 174/4 174/10 175/12 175/18 175/20 176/19 176/22 177/2 177/3 180/24 181/1 181/3 181/6 181/10 181/13 181/15 181/16 183/10 187/18 187/24 187/25 190/21 197/18 199/1 199/7 200/23 202/10 202/21 205/6 208/11 209/14 210/3 226/20 227/25 228/7 230/21 <b>defense's [8]</b> 107/23 107/24 143/22 145/2 145/13 145/18 145/20 177/1 <b>deference [2]</b> 104/4 141/13 <b>defined [1]</b> 197/1 <b>definitely [4]</b> 51/25 65/5 102/1	192/21 <b>deftability [1]</b> 192/14 <b>deftly [1]</b> 187/17 <b>deftness [1]</b> 193/14 <b>degree [6]</b> 7/2 137/1 142/3 178/21 187/8 228/17 <b>delay [1]</b> 162/8 <b>deliberately [1]</b> 160/23 <b>deliberations [1]</b> 159/4 <b>deliveries [1]</b> 177/11 <b>democracy [1]</b> 138/18 <b>denial [4]</b> 130/22 131/5 148/9 177/1 <b>denied [2]</b> 123/13 231/4 <b>denies [1]</b> 145/21 <b>Denny [17]</b> 105/19 155/25 156/5 156/12 156/15 157/3 157/6 157/13 157/16 161/19 164/13 179/20 179/22 180/10 180/22 180/23 181/2 <b>deny [2]</b> 143/11 228/22 <b>department [134]</b> 3/11 4/6 5/5 5/23 10/22 11/3 11/11 11/13 12/1 12/10 12/14 13/7 15/3 15/24 16/22 17/3 17/23 18/12 19/6 19/19 23/23 24/4 24/9 24/13 24/25 25/18 26/10 26/14 26/24 27/8 27/17 28/7 28/16 28/23 29/1 29/21 30/7 30/11 30/16 31/16 31/18 32/19 32/25 34/3 36/17 37/24 38/9 38/11 38/15 38/20 39/4 39/8 40/12 41/19 45/10 45/24 46/11 46/11 47/9 48/5 51/22 60/3 60/17 60/19 60/23 60/25 64/19 65/2 68/13 68/18 69/22 71/7 72/7 88/25 93/21 94/1 94/10 94/22 94/24 95/2 95/9 95/10 96/7 97/18 104/4 105/1 112/25 113/11 117/15 136/8 147/6 147/7 147/10 147/13 147/20 147/23 156/22 169/10 169/22 183/11 183/21 184/1 184/3 184/7 184/9 184/18 184/19 185/7 185/20 186/10 187/4 187/13 188/5 188/17 188/20 190/5 190/8 190/24 191/17 191/22 195/1 195/3 195/8 195/11 195/14 195/19 195/20 200/7 202/25 203/7 203/8 203/14 204/21 205/4 <b>department's [1]</b> 25/18 <b>departments [2]</b> 183/23 184/13 <b>depending [4]</b> 134/25 160/14 192/7 192/9 <b>depends [1]</b> 150/2 <b>Depere [1]</b> 138/6 <b>deposed [2]</b> 34/10 34/24 <b>deposition [10]</b> 33/15 33/20 33/22 34/11 34/13 39/17 39/18 39/21 41/15 195/6 <b>depositions [4]</b> 34/4 34/7 34/19 72/8 <b>deputies [4]</b> 14/22 15/2 25/1 195/11 <b>deputy [23]</b> 5/7 12/18 12/23 13/1 13/3 13/11 13/21 13/22 15/10 15/13 15/15 25/20 26/2 26/15 29/10 31/3 31/4 32/2 32/24 37/25 38/3 44/8 196/5 <b>describe [3]</b> 5/19 47/7 187/9 <b>described [10]</b> 15/9 21/15 22/2 99/7 116/25 124/11 146/24 149/8 213/9 223/3 <b>describes [1]</b> 139/14
<b>D</b>	<b>D.A [1]</b> 94/24 <b>D.A.'s [1]</b> 94/21 <b>Dahmer [1]</b> 136/16 <b>daily [3]</b> 50/6 51/1 54/9 <b>damages [1]</b> 23/6 <b>Dan [1]</b> 32/3 <b>Dassey [28]</b> 56/5 56/18 57/5 73/25 74/3 74/11 83/4 83/15 91/11 120/18 128/20 156/4 157/10 180/25 200/20 214/4 214/16 215/4 215/14 215/16 217/11 223/11 225/3 226/7 226/18 227/19 230/11 230/15 <b>Dassey's [11]</b> 56/14 214/6 215/24 216/4 219/1 221/25 224/14 224/19 227/20 229/8 230/22 <b>date [21]</b> 1/10 67/7 87/5 87/12 93/6 110/4 123/15 123/16 123/20 124/3 124/4 124/5 130/3 145/21 153/23 211/3 211/6 211/10 211/16 213/18 213/22 <b>Dated [1]</b> 232/15 <b>dates [1]</b> 151/8 <b>dating [1]</b> 189/22 <b>daughter [1]</b> 221/8 <b>David [1]</b> 136/10 <b>Davis [1]</b> 107/10 <b>day [31]</b> 8/5 8/5 10/12 28/21 29/17 34/12 41/24 41/25 50/4 51/20 56/12 56/24 59/17 62/22 67/14 67/15 69/13 74/19 78/13 78/21 79/10 91/9 99/15 135/17 137/14 162/8 185/24 185/25 206/16 220/19 232/15 <b>daylight [2]</b> 67/23 68/8 <b>days [8]</b> 19/1 64/1 65/4 67/11 67/20 71/3 136/3 223/9 <b>daytime [1]</b> 122/5 <b>DCI [13]</b> 19/7 30/12 38/11 69/2 70/10 75/23 93/21 94/8 94/17 95/5 95/6 95/7 188/16 <b>deal [15]</b> 46/15 66/2 100/12 100/12 115/20 133/21 158/10 160/3 162/6 180/4 180/4 180/14 194/15 194/23 225/13 <b>dealing [4]</b> 103/17 107/8 156/25 185/13 <b>deals [1]</b> 113/22 <b>dealt [7]</b> 106/9 110/13 115/22 161/18 161/20 164/2 211/5 <b>DEAN [2]</b> 1/15 3/16 <b>death [13]</b> 135/22 135/24 136/24 137/1 137/2 137/5 137/15 137/23 138/4 138/7 142/23 222/10 228/7	

<b>D</b>	196/9 196/11 228/15	48/25 51/5 51/6 54/6 54/10 54/12 54/15 57/22 59/23 61/23 64/8 75/20
<b>describing [2]</b> 76/5 129/11	<b>directed [5]</b> 26/1 37/1 38/20 46/1 189/17	<b>disseminating [3]</b> 49/8 80/6 91/14
<b>description [5]</b> 80/22 129/11 216/9 222/2 222/5	<b>directing [4]</b> 30/16 30/24 46/9 71/24	<b>dissemination [4]</b> 74/14 74/16 76/6 124/13
<b>designated [1]</b> 106/12	<b>direction [4]</b> 29/22 30/9 36/15 93/7	<b>distinct [1]</b> 162/2
<b>designed [1]</b> 230/9	<b>directions [6]</b> 37/14 38/10 58/3 85/10 85/25 190/7	<b>distinguish [2]</b> 77/4 77/12
<b>desk [2]</b> 18/9 25/3	<b>directive [6]</b> 17/11 17/13 17/19 25/21 39/7 39/8	<b>distinguished [1]</b> 168/13
<b>despite [1]</b> 153/3	<b>directives [3]</b> 17/7 18/15 37/6	<b>distinguishes [1]</b> 163/3
<b>destroy [1]</b> 227/4	<b>directly [17]</b> 12/12 14/12 15/5 15/7 16/18 17/13 42/25 47/22 60/12 64/11 78/24 131/2 175/6 176/2 184/25 185/14 217/7	<b>distractions [1]</b> 201/25
<b>detached [4]</b> 29/5 29/11 31/5 32/1	<b>disagree [3]</b> 21/25 34/18 125/7	<b>distress [1]</b> 194/24
<b>detail [3]</b> 107/1 128/7 214/16	<b>disagreed [1]</b> 214/10	<b>distributed [1]</b> 83/17
<b>detailed [2]</b> 128/18 128/21	<b>disagreement [3]</b> 30/4 156/16 180/21	<b>District [6]</b> 3/8 8/2 94/20 95/3 119/2 121/4
<b>details [7]</b> 57/2 78/9 85/6 101/21 101/23 121/21 199/22	<b>disappearance [6]</b> 19/5 19/21 24/15 45/12 48/13 64/9	<b>disturbing [1]</b> 58/12
<b>detect [1]</b> 180/20	<b>disappeared [1]</b> 34/1	<b>dividing [1]</b> 149/13
<b>detecting [1]</b> 181/20	<b>disciplinary [1]</b> 189/10	<b>division [10]</b> 16/9 19/7 36/17 37/21 37/23 37/25 42/8 42/12 42/13 45/25
<b>detective [24]</b> 16/13 16/14 16/15 27/18 28/7 28/16 28/23 29/8 32/17 32/18 33/10 41/17 42/3 61/16 115/2 192/23 193/9 195/18 196/5 203/3 210/18 210/23 211/1 212/5	<b>disciplined [1]</b> 18/13	<b>divisions [2]</b> 13/14 15/2
<b>detective's [4]</b> 13/10 13/19 14/2 116/2	<b>disclose [5]</b> 58/13 80/7 81/15 112/10 189/3	<b>divorce [1]</b> 164/8
<b>detectives [5]</b> 14/15 25/1 41/17 42/1 60/2	<b>disclosed [4]</b> 80/17 80/25 121/15 128/11	<b>divorced [1]</b> 25/8
<b>determination [2]</b> 159/22 174/22	<b>disclosure [7]</b> 84/4 108/7 132/6 132/11 132/24 133/12 189/7	<b>divulged [4]</b> 76/14 76/15 91/5 91/5
<b>determinations [1]</b> 229/14	<b>disclosures [1]</b> 140/16	<b>DNA [14]</b> 7/24 8/10 8/16 8/24 9/2 215/10 215/19 217/6 218/8 218/21 219/8 227/11 227/17 227/23
<b>determine [7]</b> 50/16 79/19 145/10 159/24 164/24 165/16 179/13	<b>discount [1]</b> 142/18	<b>do [162]</b> 8/20 9/11 11/23 11/24 12/25 13/8 14/18 17/9 17/10 18/11 20/10 20/24 21/8 25/4 26/1 26/5 26/19 30/24 30/25 30/25 31/22 32/16 32/24 33/17 34/21 35/7 35/14 36/2 36/22 37/9 37/9 37/12 37/18 37/21 39/7 39/14 40/2 40/17 41/17 41/23 45/17 45/21 46/20 46/24 47/1 51/7 52/8 52/10 52/11 52/20 52/25 53/14 53/16 53/17 54/3 54/8 55/5 56/6 56/16 56/19 56/20 56/22 56/23 57/7 57/20 59/20 59/21 60/11 60/21 61/9 65/14 71/14 73/18 76/14 76/15 77/7 80/5 80/9 80/17 81/14 92/19 95/24 97/5 97/6 97/6 97/9 97/21 98/1 98/25 99/25 101/1 101/9 102/15 105/5 112/20 114/1 114/8 114/11 117/10 119/1 125/11 125/14 129/14 132/9 139/4 140/7 143/16 146/9 147/24 149/4 151/1 152/5 152/7 153/25 154/23 155/8 157/3 157/19 158/12 158/18 161/5 161/13 164/23 165/14 166/25 168/18 170/6 172/5 173/8 174/6 174/7 174/8 175/13 177/12 177/19 178/3 182/10 183/3 186/10 187/22 191/8 191/8 192/2 192/3 192/8 199/19 199/20 200/1 200/14 206/24 208/20 208/22 209/4 209/12 209/20 210/18 211/2 211/12 223/20 224/15 230/23 232/6
<b>determined [2]</b> 53/11 107/2	<b>discovered [1]</b> 79/17	<b>document [23]</b> 52/13 57/4 57/12 57/25 58/14 73/5 73/19 73/20 74/11 106/16 106/23 106/24 108/18 109/8 109/15 109/17 109/19 109/25 110/12 114/22 115/12 116/8 116/23
<b>developed [3]</b> 215/25 227/24 228/14	<b>discovery [4]</b> 47/2 115/5 115/8 115/12	<b>documents [7]</b> 103/19 103/22 104/18 114/19 115/9 115/13 189/5
<b>Diane [3]</b> 1/22 232/4 232/19	<b>discredit [1]</b> 230/22	<b>does [29]</b> 6/10 12/6 16/21 23/25 33/23 44/16 60/5 60/16 67/6 116/14 144/24 146/17 148/18 148/19 150/13 153/23 157/17 158/11 160/16 166/9 174/2 180/2
<b>did [83]</b> 6/19 7/1 7/10 21/8 21/17 22/14 23/11 23/16 23/16 25/11 25/16 28/1 33/19 34/12 34/12 35/7 38/11 40/19 40/19 40/22 44/4 44/20 47/23 48/1 51/6 55/9 55/25 56/3 56/12 57/24 59/25 61/13 61/20 62/4 65/21 65/21 67/21 68/1 68/9 68/11 68/11 72/11 79/5 84/16 85/20 88/5 89/4 92/19 93/14 101/14 115/23 116/18 117/17 121/21 123/10 140/9 141/2 164/14 166/23 166/23 167/8 167/9 169/13 173/23 180/4 180/4 180/11 194/22 200/8 200/10 217/12 218/17 218/18 218/19 221/10 221/11 221/11 224/8 226/16 227/7 227/12 228/21 229/17	<b>discussed [8]</b> 23/9 101/20 110/16 113/25 119/22 180/3 180/17 213/24	
<b>didn't [22]</b> 10/13 20/7 20/13 22/10 22/18 25/24 25/25 40/21 62/13 63/5 87/2 92/21 115/19 142/6 149/11 169/14 175/21 180/14 189/20 221/18 221/19 224/8	<b>discussing [1]</b> 189/21	
<b>died [1]</b> 216/10	<b>discussion [8]</b> 21/23 82/7 109/1 113/3 129/18 141/18 197/22 223/19	
<b>differ [1]</b> 181/20	<b>discussions [6]</b> 48/17 50/23 52/11 70/5 75/22 208/9	
<b>difference [2]</b> 60/24 160/22	<b>disengaged [1]</b> 33/12	
<b>different [17]</b> 76/25 77/3 146/8 158/20 158/21 159/6 163/23 165/21 168/24 171/23 172/23 177/22 179/21 181/17 185/12 186/19 230/1	<b>dismiss [13]</b> 4/1 31/9 44/20 98/15 111/13 117/15 118/9 118/12 139/12 143/15 145/18 148/18 151/20	
<b>difficult [3]</b> 57/19 174/17 192/17	<b>dismissal [9]</b> 44/11 131/8 131/9 131/12 132/25 135/4 139/18 140/5 142/19	
<b>dilatory [1]</b> 189/11	<b>dismissed [1]</b> 133/5	
<b>dilemma [1]</b> 125/20	<b>Dispatch [1]</b> 61/6	
<b>diminution [1]</b> 123/21	<b>dispelling [1]</b> 91/16	
<b>dire [1]</b> 139/23	<b>dispersions [1]</b> 120/6	
<b>direct [17]</b> 2/4 2/9 4/25 45/5 53/19 62/16 68/9 68/12 90/18 100/4 129/21 130/17 150/17 166/14	<b>dispose [1]</b> 205/14	
	<b>disposed [1]</b> 216/13	
	<b>disprove [1]</b> 197/9	
	<b>disproved [2]</b> 214/22 224/19	
	<b>dispute [10]</b> 27/4 27/12 28/10 29/3 32/8 157/11 157/12 157/22 173/21 229/11	
	<b>disregarded [1]</b> 226/10	
	<b>disruptive [1]</b> 225/11	
	<b>disseminate [8]</b> 49/15 61/24 75/17 76/17 76/18 86/18 118/24 140/20	
	<b>disseminated [14]</b> 48/18 48/21	

<b>D</b>	67/23 68/7 68/8 89/2 122/4 159/3 188/1 219/17 <b>duties</b> [1] 42/2 <b>DVD</b> [7] 43/19 122/22 150/10 150/21 151/24 152/9 155/4 <b>DVD's</b> [7] 43/5 43/24 119/19 154/3 154/6 154/7 213/10	186/6 188/8 188/9 192/24 206/3 <b>engage</b> [3] 37/1 124/13 162/18 <b>engaged</b> [1] 47/18 <b>English</b> [1] 84/24 <b>enhance</b> [2] 85/24 86/8 <b>enjoy</b> [2] 130/17 187/16 <b>enjoyed</b> [2] 142/3 142/5 <b>enjoys</b> [2] 132/16 132/17 <b>enormity</b> [1] 62/13 <b>enough</b> [14] 8/17 8/18 22/21 44/7 72/19 87/19 110/25 131/24 136/12 155/13 184/10 184/14 189/24 216/18 <b>ensuing</b> [1] 199/12 <b>ensure</b> [5] 51/5 76/13 97/4 99/15 225/15 <b>enter</b> [1] 32/10 <b>entire</b> [16] 31/16 40/12 68/2 78/18 106/22 134/21 144/12 146/24 167/18 191/21 211/5 218/4 219/1 222/24 225/17 225/18 <b>entirely</b> [8] 21/1 127/2 130/11 134/14 148/3 158/20 159/6 194/11 <b>entirety</b> [1] 117/3 <b>entitled</b> [1] 106/13 <b>envisioning</b> [1] 173/9 <b>epistemologically</b> [1] 128/9 <b>equal</b> [1] 230/15 <b>equally</b> [4] 198/13 199/4 199/5 228/21 <b>equipment</b> [1] 24/1 <b>equivalent</b> [1] 15/10 <b>err</b> [1] 104/17 <b>especially</b> [2] 58/11 208/14 <b>essence</b> [2] 160/25 220/24 <b>essentially</b> [2] 68/9 121/25 <b>establish</b> [2] 128/20 214/8 <b>established</b> [2] 16/24 16/25 <b>etcetera</b> [1] 191/9 <b>evaluate</b> [4] 149/25 150/7 150/11 200/11 <b>even</b> [32] 17/10 52/21 55/11 77/20 91/9 112/3 124/20 127/24 129/18 136/17 140/4 157/25 161/18 162/13 165/9 166/7 166/9 176/25 178/14 188/12 188/21 189/13 191/4 192/1 203/16 216/12 216/15 219/23 221/9 224/7 224/13 230/20 <b>evening</b> [11] 47/14 48/3 48/12 51/19 61/17 62/5 62/7 62/12 64/3 78/22 78/23 <b>event</b> [3] 6/5 9/13 17/22 <b>events</b> [7] 63/19 131/18 137/24 138/14 229/8 230/3 230/22 <b>eventual</b> [1] 63/12 <b>eventually</b> [4] 73/1 120/18 123/13 217/17 <b>ever</b> [11] 10/11 34/12 40/19 90/6 90/6 90/6 121/22 167/15 167/17 220/4 221/14 <b>every</b> [9] 67/15 110/3 121/9 150/21 172/2 172/11 172/11 209/13 220/19 <b>everybody</b> [10] 13/7 38/2 69/25 82/4 86/5 87/6 87/17 186/25 212/8 216/15 <b>everyone</b> [1] 114/21 <b>everything</b> [8] 55/18 133/17 151/7 174/24 192/5 210/14 220/25 222/11 <b>evidence</b> [211] 4/3 8/10 8/25 9/2 42/4 42/22 44/13 44/17 53/23 79/1 79/3 79/4 92/25 93/5 93/9
<b>does...</b> [7] 197/7 198/22 205/2 206/1 211/17 212/7 226/21 <b>doesn't</b> [12] 112/9 113/24 113/25 126/25 149/22 167/22 194/5 204/25 205/25 210/12 220/23 226/11 <b>doing</b> [10] 40/17 68/21 69/16 82/12 84/25 127/1 129/15 140/9 161/7 208/21 <b>dollars</b> [2] 23/5 225/16 <b>don't</b> [131] 8/17 16/20 18/22 23/13 25/2 27/3 27/9 27/11 27/12 27/13 28/9 28/10 28/10 28/12 29/2 29/3 29/3 32/6 32/7 32/8 33/3 33/17 34/7 34/7 34/8 34/10 34/18 34/20 34/24 35/1 39/6 40/1 40/12 40/24 41/15 43/22 60/22 60/24 64/14 66/4 71/11 76/16 77/20 77/25 90/9 90/11 90/12 90/14 90/16 90/17 96/1 98/14 99/3 100/14 100/15 103/25 104/10 106/1 106/2 106/23 110/8 110/17 111/14 111/18 114/15 115/10 115/14 116/1 116/16 116/19 117/2 117/5 118/6 118/13 120/5 120/25 121/6 124/7 125/7 126/20 130/23 132/24 133/15 137/3 138/11 146/8 146/11 148/13 149/21 149/23 150/20 152/13 152/17 153/14 155/2 156/18 157/10 159/25 159/25 161/16 162/3 172/2 172/15 173/2 174/21 175/14 177/7 177/18 180/20 182/13 182/14 186/8 188/11 189/25 190/15 191/25 192/1 192/1 196/2 204/7 204/17 206/4 207/15 208/8 208/15 209/12 212/6 212/18 219/23 224/13 231/9 <b>done</b> [44] 4/15 7/24 40/11 48/2 48/3 48/22 51/3 59/22 65/23 67/1 68/5 68/15 72/3 73/21 73/24 74/19 76/12 79/1 92/15 93/7 93/10 93/14 94/11 95/15 95/17 95/25 97/7 97/10 98/3 102/1 102/2 107/15 126/17 131/18 133/7 140/19 155/5 204/7 207/23 213/2 217/4 224/3 224/18 224/19 <b>doors</b> [1] 187/25 <b>doubt</b> [6] 8/14 8/16 9/6 9/11 111/11 154/4 <b>doubts</b> [4] 8/12 8/15 8/20 8/24 <b>down</b> [17] 13/6 13/8 17/17 20/9 33/19 35/10 40/23 66/5 92/19 100/8 151/2 152/6 160/21 170/3 171/23 217/24 225/1 <b>dozen</b> [1] 86/12 <b>drafted</b> [1] 56/17 <b>dramatic</b> [1] 220/25 <b>draw</b> [4] 159/2 159/3 159/15 173/11 <b>drawn</b> [3] 122/12 160/6 178/3 <b>dredging</b> [1] 189/21 <b>drew</b> [2] 196/2 200/18 <b>dripping</b> [1] 216/25 <b>drive</b> [1] 193/4 <b>dropsy</b> [1] 177/11 <b>drug</b> [1] 177/10 <b>dubious</b> [1] 136/19 <b>due</b> [7] 125/13 126/1 128/13 130/22 130/24 131/5 139/18 <b>duly</b> [2] 4/19 44/25 <b>during</b> [12] 5/22 20/16 44/8 51/23		
<b>E</b>	<b>e-mail</b> [1] 100/17 <b>e-mailing</b> [1] 65/15 <b>each</b> [6] 33/11 67/14 82/9 102/22 110/21 119/5 <b>earlier</b> [6] 29/17 116/25 122/10 213/10 223/10 229/19 <b>early</b> [8] 19/19 25/8 50/10 55/24 62/5 64/2 65/4 122/24 <b>easier</b> [2] 129/19 170/11 <b>easiest</b> [1] 136/14 <b>easily</b> [2] 150/25 172/21 <b>east</b> [1] 32/23 <b>easy</b> [1] 153/13 <b>Ed</b> [1] 136/9 <b>editorial</b> [1] 141/15 <b>effect</b> [8] 53/25 61/21 78/1 104/8 147/10 191/3 203/12 203/14 <b>effective</b> [4] 109/24 128/13 128/16 150/6 <b>efficiently</b> [1] 26/20 <b>effort</b> [4] 44/4 71/15 82/3 121/25 <b>eight</b> [9] 118/20 118/21 119/5 119/15 119/19 119/22 124/9 128/4 155/3 <b>either</b> [18] 30/11 36/15 38/10 43/24 53/2 60/13 68/15 87/10 87/11 93/20 119/12 120/24 145/12 146/10 149/23 150/19 180/19 215/3 <b>elaborate</b> [1] 53/6 <b>electd</b> [1] 46/22 <b>electively</b> [1] 147/7 <b>elegant</b> [1] 123/3 <b>element</b> [1] 197/10 <b>eliminating</b> [1] 133/12 <b>elimination</b> [1] 80/24 <b>else</b> [18] 65/14 73/10 86/6 121/1 129/6 155/13 156/3 166/24 167/9 186/25 192/5 194/21 195/2 195/19 210/15 215/19 217/16 230/10 <b>elsewhere</b> [1] 174/1 <b>embarrassment</b> [1] 203/9 <b>emotion</b> [2] 222/19 223/1 <b>emotional</b> [1] 223/5 <b>emotionally</b> [2] 133/21 222/17 <b>employed</b> [3] 45/7 60/2 64/12 <b>employee</b> [3] 184/3 184/19 188/20 <b>Employees</b> [1] 4/6 <b>employment</b> [1] 207/20 <b>en</b> [1] 117/24 <b>encourage</b> [1] 65/8 <b>encouraged</b> [2] 64/16 64/17 <b>end</b> [6] 81/25 134/2 135/10 155/1 185/24 200/4 <b>endanger</b> [1] 144/21 <b>endangered</b> [1] 66/12 <b>endangers</b> [1] 144/7 <b>enforcement</b> [40] 5/20 11/8 21/15 27/5 27/14 28/5 28/20 29/11 32/1 32/9 32/14 32/21 46/21 46/25 69/4 70/3 77/1 77/11 80/5 88/22 89/2 97/16 98/9 99/12 121/7 121/13 122/7 122/19 129/10 132/7 132/11 135/6 142/11 147/16 185/6	

<p><b>E</b></p> <p><b>evidence...</b> [196] 93/16 95/20 97/11 98/8 99/11 103/9 105/18 106/10 116/10 147/15 152/21 156/2 156/6 156/8 156/13 156/15 157/7 157/25 158/3 158/4 158/6 158/9 158/9 158/13 158/14 158/15 158/23 158/23 158/24 159/8 159/8 159/9 159/9 159/11 159/15 159/16 159/21 159/24 159/25 160/4 160/6 160/9 160/14 160/17 160/20 160/23 160/24 161/12 161/21 162/4 162/16 162/18 163/7 163/10 163/21 164/2 164/5 164/15 164/17 164/24 165/1 165/4 165/17 165/18 165/24 166/2 166/3 166/7 166/14 166/20 167/5 167/10 167/11 167/13 167/19 167/24 167/25 168/3 168/15 168/21 169/13 169/15 169/21 169/23 170/1 170/5 170/5 170/23 171/2 171/14 171/18 172/3 172/8 173/5 173/6 173/10 173/14 173/15 173/20 173/22 173/24 174/1 174/15 174/18 175/1 175/8 175/10 175/13 175/19 175/20 175/23 175/24 176/1 176/2 176/5 176/13 176/25 178/7 178/11 178/16 178/18 178/19 179/1 179/4 179/5 179/9 179/14 180/8 180/15 181/4 181/5 181/7 181/11 181/14 182/2 182/2 182/3 182/8 182/14 182/19 182/20 184/25 185/16 185/17 187/6 187/20 193/12 193/16 193/19 194/12 196/12 196/19 197/16 198/2 199/1 199/6 199/9 199/11 199/15 200/1 200/6 200/17 200/20 201/3 201/23 202/7 202/19 203/19 206/10 206/14 207/10 207/24 208/4 208/13 209/10 212/19 214/22 216/14 216/16 217/8 218/13 219/3 219/5 220/1 220/4 221/4 222/7 223/14 224/17 225/6 225/10 227/5 227/12 228/14 228/17 229/21</p> <p><b>evidenced</b> [1] 163/16</p> <p><b>evidentiary</b> [4] 102/8 106/25 143/20 161/9</p> <p><b>ex</b> [4] 164/7 164/8 164/12 165/8</p> <p><b>ex-wife</b> [4] 164/7 164/8 164/12 165/8</p> <p><b>exact</b> [3] 41/16 77/25 197/16</p> <p><b>exactly</b> [9] 88/3 99/4 140/19 140/19 149/9 170/25 198/25 202/16 207/6</p> <p><b>examination</b> [18] 2/4 2/5 2/6 2/9 2/10 2/11 4/14 4/25 36/10 37/19 45/5 59/13 100/4 101/6 173/6 173/7 181/13 188/1</p> <p><b>examinations</b> [1] 45/10</p> <p><b>examine</b> [2] 170/11 211/1</p> <p><b>examined</b> [2] 4/20 45/1</p> <p><b>examining</b> [1] 176/8</p> <p><b>example</b> [12] 17/20 43/12 64/15 65/21 125/12 127/18 134/1 136/6 172/14 172/25 173/21 192/23</p> <p><b>examples</b> [5] 150/19 151/2 151/8 151/18 153/22</p> <p><b>excepted</b> [1] 41/5</p> <p><b>exception</b> [3] 103/7 108/18 110/22</p> <p><b>excerpt</b> [1] 119/9</p> <p><b>exclude</b> [16] 4/5 31/10 31/12 31/12 31/15 31/21 104/3 104/25</p>	<p>133/13 133/14 164/4 183/10 187/22 190/22 199/8 199/14</p> <p><b>excluded</b> [1] 194/13</p> <p><b>excluding</b> [2] 156/21 187/12</p> <p><b>exclusion</b> [8] 117/14 183/17 188/22 190/11 192/12 193/17 194/4 194/5</p> <p><b>exclusively</b> [2] 122/14 150/3</p> <p><b>excuse</b> [5] 29/13 85/13 144/18 198/11 204/1</p> <p><b>excused</b> [2] 42/22 102/6</p> <p><b>exemplars</b> [1] 151/10</p> <p><b>exercise</b> [4] 86/22 125/12 125/15 126/1</p> <p><b>Exhibit</b> [4] 39/16 39/23 40/2 40/8</p> <p><b>Exhibit 140</b> [2] 39/16 39/23</p> <p><b>existed</b> [1] 230/19</p> <p><b>existence</b> [1] 197/2</p> <p><b>exists</b> [1] 142/10</p> <p><b>exonerated</b> [2] 197/15 198/23</p> <p><b>exoneration</b> [3] 63/13 198/12 198/22</p> <p><b>exonerations</b> [1] 198/17</p> <p><b>expect</b> [5] 18/22 38/16 117/22 206/4 215/17</p> <p><b>expected</b> [1] 222/14</p> <p><b>experience</b> [5] 5/22 46/17 90/6 210/8 222/17</p> <p><b>explain</b> [4] 19/23 22/1 134/10 200/24</p> <p><b>explaining</b> [3] 55/6 200/6 200/9</p> <p><b>explanation</b> [5] 112/8 181/22 204/5 220/5 223/13</p> <p><b>explanations</b> [1] 85/7</p> <p><b>explore</b> [1] 20/8</p> <p><b>express</b> [2] 17/5 226/5</p> <p><b>expressed</b> [3] 104/5 222/20 226/14</p> <p><b>expresses</b> [1] 194/23</p> <p><b>extend</b> [2] 185/2 186/20</p> <p><b>extended</b> [2] 75/2 205/17</p> <p><b>extent</b> [8] 60/16 82/10 124/9 146/22 183/1 205/14 209/19 229/20</p> <p><b>extreme</b> [3] 131/9 131/9 131/10</p> <p><b>extrinsic</b> [23] 163/9 163/21 164/2 164/5 164/17 166/15 168/3 168/15 170/1 170/23 171/2 171/18 175/4 175/19 176/1 178/17 179/9 181/4 181/14 182/1 182/21 182/22 183/4</p> <p><b>eye</b> [2] 222/6 229/22</p>	<p>226/15</p> <p><b>fail</b> [1] 31/8</p> <p><b>failing</b> [2] 135/4 225/19</p> <p><b>fails</b> [3] 141/6 189/2 189/3</p> <p><b>failure</b> [1] 189/7</p> <p><b>fair</b> [36] 5/18 18/7 54/6 87/19 104/6 104/20 110/25 124/18 125/1 126/6 128/8 128/20 130/9 130/24 131/3 132/1 132/15 132/22 144/8 144/21 146/15 154/15 155/12 166/13 173/21 173/25 176/6 182/20 183/3 186/23 186/24 203/22 209/1 210/24 212/7 212/18</p> <p><b>fairly</b> [3] 66/7 200/16 219/13</p> <p><b>fairness</b> [2] 161/2 206/7</p> <p><b>faithfully</b> [1] 18/16</p> <p><b>fall</b> [4] 14/19 19/17 116/12 196/16</p> <p><b>FALLON</b> [17] 1/13 2/5 3/10 4/16 31/6 36/7 102/13 105/4 139/9 157/15 168/22 178/4 182/25 187/14 190/13 194/23 225/25</p> <p><b>Fallon's</b> [3] 30/5 38/7 156/10</p> <p><b>familiar</b> [3] 15/21 54/24 63/11</p> <p><b>familiarity</b> [1] 204/18</p> <p><b>family</b> [37] 51/12 52/23 53/3 58/11 58/14 61/8 61/9 61/14 65/3 75/2 75/2 84/21 88/13 88/19 90/19 90/24 91/23 92/2 96/25 101/19 119/21 120/7 121/24 127/2 127/7 131/15 133/13 133/19 133/20 133/25 142/8 152/19 201/14 207/20 209/3 225/5 228/4</p> <p><b>fantasy</b> [5] 216/9 221/3 223/25 225/3 226/8</p> <p><b>far</b> [21] 13/6 13/7 24/5 36/12 37/5 46/12 49/12 73/4 82/1 97/15 110/15 158/21 171/23 195/16 202/9 202/12 205/17 206/20 207/16 208/17 224/19</p> <p><b>fashion</b> [1] 204/4</p> <p><b>fate</b> [4] 126/11 126/13 126/16 130/11</p> <p><b>fault</b> [1] 127/1</p> <p><b>faxing</b> [1] 87/12</p> <p><b>FBI</b> [2] 70/15 70/16</p> <p><b>featured</b> [2] 122/14 136/15</p> <p><b>February</b> [1] 132/4</p> <p><b>fed</b> [1] 217/21</p> <p><b>federal</b> [4] 125/2 128/1 130/20 135/19</p> <p><b>feel</b> [7] 70/21 115/14 137/4 137/22 158/11 175/21 221/6</p> <p><b>Feeling</b> [1] 197/14</p> <p><b>feelings</b> [2] 203/15 203/16</p> <p><b>feels</b> [1] 106/18</p> <p><b>feet</b> [1] 126/25</p> <p><b>fell</b> [1] 173/1</p> <p><b>felon</b> [6] 52/7 52/17 72/16 73/21 89/6 118/12</p> <p><b>felony</b> [1] 198/9</p> <p><b>felt</b> [23] 48/20 49/4 49/14 49/22 50/5 51/11 53/21 57/14 58/1 58/8 59/24 61/22 64/7 76/22 84/5 84/11 84/13 91/15 95/23 97/1 97/24 179/20 210/24</p> <p><b>few</b> [5] 43/8 43/16 77/18 136/3 153/10</p> <p><b>fewer</b> [1] 60/17</p> <p><b>fibers</b> [1] 218/12</p> <p><b>fight</b> [1] 151/13</p> <p><b>figures</b> [1] 122/7</p> <p><b>figuring</b> [1] 136/14</p> <p><b>file</b> [8] 73/18 116/18 168/18 176/3</p>
	<p><b>F</b></p> <p><b>face</b> [2] 137/9 230/9</p> <p><b>faces</b> [1] 228/20</p> <p><b>facets</b> [1] 191/18</p> <p><b>facility</b> [1] 87/19</p> <p><b>facing</b> [1] 225/12</p> <p><b>fact</b> [54] 8/20 9/3 22/16 29/18 29/19 38/24 47/16 51/16 52/4 52/9 52/25 54/16 56/20 59/1 63/1 64/9 66/13 91/9 91/11 95/12 131/20 137/25 138/2 140/15 142/7 148/11 151/1 165/3 170/17 171/1 172/6 176/12 182/21 185/1 185/5 185/14 185/18 197/2 197/5 197/7 198/8 205/1 205/12 209/16 214/13 214/25 217/3 220/9 222/10 222/19 227/24 229/17 229/22 230/16</p> <p><b>facts</b> [15] 26/21 52/12 118/16 141/20 141/22 148/6 170/20 172/20 172/22 172/24 173/2 196/10 196/13 230/9 230/19</p> <p><b>factual</b> [4] 30/4 91/3 141/15</p>	

<b>F</b>	<b>foregoing</b> [2] 232/7 232/7 <b>foremost</b> [1] 190/20 <b>forensic</b> [3] 165/16 166/3 167/13 <b>foresee</b> [1] 183/3 <b>foreseeable</b> [1] 124/16 <b>forfeiture</b> [1] 225/19 <b>forget</b> [4] 141/19 141/20 158/5 204/9 <b>forgot</b> [2] 227/16 227/25 <b>form</b> [6] 86/25 87/24 117/20 175/4 190/25 193/25 <b>formal</b> [3] 25/21 119/16 119/17 <b>formally</b> [1] 83/14 <b>format</b> [1] 151/3 <b>former</b> [1] 23/2 <b>forth</b> [4] 106/25 142/16 171/19 214/16 <b>forum</b> [1] 105/7 <b>forward</b> [3] 6/24 141/12 167/12 <b>fostered</b> [1] 126/17 <b>fought</b> [1] 225/7 <b>found</b> [42] 22/12 22/20 32/14 48/16 49/3 49/4 62/23 62/25 63/4 66/23 67/6 78/10 78/11 78/13 95/13 95/20 96/21 121/15 167/11 169/2 169/5 169/5 169/8 169/11 214/10 214/18 215/10 215/12 216/6 217/6 219/6 219/8 219/10 219/15 220/3 220/17 220/17 220/20 220/22 227/9 227/17 228/9 <b>foundation</b> [1] 157/20 <b>four</b> [7] 43/9 60/4 60/11 116/21 119/16 130/2 165/5 <b>FOX</b> [8] 35/6 40/23 54/17 104/24 122/13 134/1 189/16 226/21 <b>fragment</b> [1] 33/2 <b>fragments</b> [6] 32/22 33/3 67/6 79/13 79/17 79/22 <b>frame</b> [8] 129/20 136/14 157/14 166/20 179/1 179/1 179/5 180/14 <b>frame-up</b> [6] 157/14 166/20 179/1 179/1 179/5 180/14 <b>framed</b> [9] 52/24 53/20 105/9 142/9 144/2 164/7 175/2 181/6 207/14 <b>framing</b> [2] 90/21 165/8 <b>frankly</b> [6] 113/24 164/21 165/13 218/6 219/19 219/20 <b>fraud</b> [1] 129/14 <b>free</b> [6] 21/25 23/15 70/21 159/1 167/9 172/5 <b>Friday</b> [5] 27/16 28/1 53/14 66/21 67/16 <b>friend</b> [1] 65/14 <b>friends</b> [3] 47/13 65/3 121/24 <b>fro</b> [2] 185/8 185/9 <b>front</b> [2] 149/20 187/5 <b>fruits</b> [1] 115/3 <b>fulfill</b> [1] 162/17 <b>full</b> [10] 43/2 119/6 119/8 119/19 130/2 130/21 137/18 139/3 152/21 227/23 <b>function</b> [1] 162/17 <b>functions</b> [1] 13/24 <b>fundamental</b> [4] 130/24 131/5 177/20 182/23 <b>further</b> [19] 20/9 22/14 31/13 38/25 42/18 42/19 66/24 79/1 85/5 86/8 113/3 128/24 129/8 129/13 152/11 168/19 192/20 212/18 231/5 <b>furthest</b> [1] 142/3 <b>future</b> [5] 97/3 98/3 99/17 109/14	<b>129/6</b> <b>G</b> <b>gag</b> [3] 123/2 123/3 133/19 <b>game</b> [5] 166/13 176/6 182/20 183/3 209/1 <b>garage</b> [17] 29/5 29/12 31/5 32/1 32/7 32/10 174/2 216/24 219/5 219/9 219/11 219/13 220/8 220/12 220/18 227/2 227/10 <b>garner</b> [2] 65/9 65/11 <b>garnered</b> [1] 63/1 <b>Gary</b> [1] 28/17 <b>gasoline</b> [1] 220/15 <b>gather</b> [2] 86/2 229/6 <b>gathered</b> [4] 53/23 58/5 58/17 139/4 <b>gathering</b> [1] 49/13 <b>gauge</b> [1] 50/14 <b>gave</b> [9] 28/25 34/7 58/6 58/6 128/15 172/14 172/25 230/3 231/1 <b>gears</b> [1] 99/21 <b>gee</b> [5] 63/23 75/17 79/12 81/14 200/21 <b>Gein</b> [1] 136/9 <b>general</b> [19] 18/11 20/25 47/24 48/19 48/21 50/8 50/14 54/24 63/11 80/22 90/20 104/13 125/1 132/12 137/23 150/19 150/23 151/9 151/10 <b>generally</b> [5] 18/5 67/24 119/22 148/5 174/17 <b>generated</b> [2] 24/25 26/9 <b>generating</b> [1] 201/14 <b>gentleman</b> [5] 112/9 112/11 112/19 142/2 195/2 <b>GERALD</b> [4] 2/8 44/24 45/4 136/20 <b>get</b> [36] 13/8 13/8 42/25 44/10 48/8 48/12 61/20 64/12 65/13 79/5 80/20 102/18 112/7 129/18 138/25 149/22 150/8 151/25 152/9 154/20 155/3 173/2 173/24 174/3 176/15 193/4 199/19 199/20 200/25 202/17 207/12 210/11 212/13 218/24 219/24 225/7 <b>gets</b> [3] 24/23 60/8 87/17 <b>getting</b> [13] 26/8 87/8 90/19 90/23 92/4 92/11 114/7 153/21 177/8 202/19 203/8 206/20 217/23 <b>girl</b> [1] 165/3 <b>girlfriends</b> [1] 75/5 <b>gist</b> [1] 123/4 <b>give</b> [15] 9/13 10/3 22/10 41/15 84/13 90/7 128/13 135/20 136/3 146/17 151/6 151/18 168/19 170/6 172/16 <b>given</b> [14] 29/18 37/13 69/17 72/8 130/4 168/25 191/6 194/1 209/15 226/3 227/14 227/14 229/9 230/2 <b>gives</b> [1] 125/23 <b>giving</b> [3] 64/11 92/17 166/1 <b>globally</b> [1] 146/3 <b>Glynn</b> [1] 115/5 <b>Glynn's</b> [3] 115/7 115/13 116/3 <b>go</b> [50] 13/6 16/7 17/13 17/16 20/13 35/9 39/1 40/5 49/25 55/20 57/17 57/18 58/3 58/7 67/23 73/8 85/10 86/7 89/10 99/25 100/2 101/4 109/18 128/24 131/2 135/2 136/19 137/15 137/25 140/7 154/19 155/22 157/4 165/2 167/20 167/22 168/7 168/9 168/25 176/3 176/4 176/25 177/22 182/16
----------	---	---

**G**  
**go...** [6] 200/21 202/12 209/10  
 221/10 224/5 224/22  
**goal** [1] 160/25  
**God** [1] 217/15  
**goes** [5] 87/15 160/24 202/8  
 205/19 218/3  
**going** [135] 6/9 11/5 13/6 20/6  
 26/21 29/14 31/6 31/21 35/9  
 38/24 43/2 43/20 46/4 49/11 50/9  
 50/18 51/2 51/19 52/15 53/9 54/2  
 54/9 57/11 57/13 57/14 57/16  
 57/18 58/1 58/2 58/18 62/8 62/14  
 62/17 62/20 63/7 65/2 65/13  
 69/16 75/17 75/19 76/1 82/20  
 83/25 84/3 84/9 84/25 85/10  
 85/16 85/23 86/6 88/18 91/4  
 92/15 92/16 96/10 97/3 97/5 97/6  
 98/10 101/1 102/7 103/8 103/22  
 107/18 111/6 112/21 118/1 135/15  
 137/10 138/21 139/5 143/13  
 145/11 150/1 150/12 150/14  
 150/20 152/7 152/20 154/11  
 154/19 154/20 155/15 156/1  
 162/24 163/4 165/23 166/3 167/7  
 168/12 169/19 170/7 170/8 171/1  
 171/10 171/19 172/19 172/20  
 175/7 175/7 175/18 175/22 178/16  
 179/5 179/8 179/12 179/14 191/12  
 191/21 192/5 193/6 196/22 202/13  
 203/17 205/13 206/2 208/11  
 208/12 208/25 209/11 209/17  
 209/24 211/20 212/11 212/13  
 212/17 213/15 217/24 220/12  
 221/24 222/5 223/20 223/20  
 225/18 231/2  
**gone** [3] 46/20 135/23 211/21  
**good** [19] 3/13 5/2 61/7 66/2  
 69/24 110/20 116/20 138/18  
 138/19 140/9 173/3 174/18 180/23  
 187/15 194/23 199/23 211/25  
 212/1 222/4  
**got** [22] 15/1 15/1 21/4 44/13  
 64/25 66/4 72/3 79/12 79/22 99/4  
 99/25 100/25 105/17 134/10 152/6  
 156/20 179/2 186/21 206/15  
 206/20 220/5 224/11  
**gotten** [4] 24/21 80/12 92/6 100/4  
**government** [1] 128/4  
**grant** [3] 143/2 145/18 145/19  
**graphic** [3] 121/20 128/12 128/18  
**gravity** [1] 228/20  
**great** [8] 96/4 104/1 128/4 128/7  
 133/20 140/12 196/9 225/13  
**Green** [6] 35/6 43/25 44/3 55/14  
 119/7 122/13  
**Greg** [1] 12/20  
**Gregory** [4] 8/9 8/18 8/21 9/3  
**ground** [1] 30/23  
**group** [4] 68/16 71/13 71/25 81/17  
**groups** [2] 95/7 106/7  
**guarantees** [1] 125/6  
**guess** [24] 43/20 62/12 64/2 64/14  
 75/16 76/4 82/13 84/15 84/20  
 85/4 85/15 90/9 98/23 99/13  
 106/16 109/23 136/19 154/23  
 173/9 174/13 182/2 187/7 206/16  
 208/19  
**guessing** [2] 218/20 223/17  
**guesswork** [1] 215/3  
**guilty** [8] 101/13 129/4 131/15  
 156/3 169/22 198/18 198/24 205/1

**gunshot** [1] 220/9  
**guy** [6] 24/23 41/11 136/14 221/4  
 222/9 222/20  
**guys** [2] 81/14 191/8  
**H**  
**had** [133] 7/18 9/16 19/19 20/1  
 20/4 20/16 21/9 21/13 21/17  
 21/18 21/23 22/12 24/21 27/25  
 33/14 33/17 33/22 34/4 34/11  
 34/21 39/2 40/11 43/9 47/17  
 48/25 49/4 49/23 51/1 51/10  
 51/11 51/22 52/18 53/1 54/3  
 57/10 57/12 57/12 58/10 58/15  
 58/17 61/12 61/18 63/1 63/3  
 63/17 64/15 65/2 65/6 65/10  
 65/16 69/12 71/4 71/6 71/9 71/11  
 72/8 72/19 76/19 79/18 79/21  
 79/24 82/11 82/25 83/4 83/8  
 83/11 83/12 83/13 83/14 84/22  
 84/22 86/18 86/25 88/16 89/8  
 89/15 89/16 89/19 91/15 91/16  
 91/21 92/6 92/6 92/22 93/6 93/8  
 97/10 97/13 98/7 99/10 99/11  
 99/23 103/23 107/14 113/21  
 121/22 123/3 130/5 134/5 138/9  
 155/1 157/6 158/7 164/9 164/11  
 165/3 165/10 168/5 169/3 169/21  
 169/22 175/21 179/21 195/17  
 199/23 201/13 204/21 216/13  
 216/14 216/22 219/16 221/14  
 221/17 221/20 222/15 222/17  
 222/17 223/2 227/10 229/19  
 229/23 230/17 232/13  
**hair** [6] 8/18 8/21 9/3 216/2 216/6  
 218/17  
**Halbach** [46] 18/21 20/22 26/10  
 27/7 34/1 43/17 45/13 47/11  
 47/16 47/25 51/12 56/2 58/10  
 61/7 61/9 61/12 64/1 64/8 76/20  
 76/21 100/21 101/19 107/9 118/10  
 121/24 127/2 127/7 131/14 133/4  
 133/13 138/11 141/21 141/23  
 202/11 206/4 206/24 208/14 215/1  
 223/9 223/22 224/23 226/23  
 226/24 227/1 227/3 228/6  
**Halbach's** [13] 24/15 28/6 47/3  
 48/16 51/17 65/3 101/25 137/1  
 193/1 201/11 201/22 217/5 227/10  
**Halbachs** [2] 61/19 221/6  
**half** [11] 5/12 33/25 35/17 36/4  
 43/22 43/23 86/12 129/24 129/25  
 140/11 170/24  
**Hallbach's** [1] 19/20  
**Halloween** [1] 136/18  
**hand** [6] 77/7 77/7 177/11 177/11  
 178/23 204/17  
**hand-to-hand** [1] 177/11  
**handcuffed** [1] 215/8  
**handcuffs** [6] 215/10 215/11  
 215/13 215/15 215/16 218/8  
**handed** [1] 84/16  
**handle** [3] 116/24 162/3 162/24  
**handled** [7] 93/1 127/9 160/10  
 161/3 161/9 161/21 201/21  
**handling** [5] 37/6 105/25 160/22  
 183/12 215/21  
**hands** [4] 210/11 215/2 216/10  
 224/8  
**happen** [4] 25/11 57/24 87/2 136/2  
**happened** [8] 88/20 118/18 141/21  
 169/12 215/24 217/14 221/7 223/3  
**happening** [2] 137/7 188/19

**happens** [1] 201/7  
**happily** [1] 213/1  
**happy** [2] 134/11 213/4  
**hard** [3] 173/17 188/21 200/16  
**hardly** [1] 128/24  
**harm** [2] 133/8 194/10  
**has** [99] 4/3 6/5 16/23 31/17 31/19  
 32/3 37/8 48/6 55/18 86/5 89/21  
 90/8 91/12 96/13 100/17 102/15  
 104/13 104/15 105/10 111/8 112/8  
 112/12 115/5 118/17 122/17  
 122/22 123/14 123/23 124/6 124/8  
 124/11 124/19 124/21 125/1  
 126/11 126/17 126/17 126/18  
 127/10 130/11 132/9 132/12  
 132/13 133/16 133/20 133/23  
 134/19 135/23 135/24 136/23  
 137/5 137/17 137/18 139/19  
 139/22 141/24 142/25 143/1 148/5  
 148/15 149/8 150/4 150/24 151/24  
 152/9 153/1 158/12 158/22 163/5  
 166/22 167/15 167/16 167/17  
 172/22 183/4 191/15 192/6 197/6  
 197/24 198/5 201/3 205/7 205/7  
 205/8 206/23 208/2 210/15 214/22  
 215/2 217/6 219/16 220/24 221/14  
 222/7 224/11 224/19 226/6 228/14  
 232/8  
**hasn't** [5] 104/23 112/17 153/9  
 223/3 226/13  
**have** [346]  
**haven't** [9] 15/9 25/5 38/19 80/12  
 86/13 127/1 127/22 134/5 153/14  
**having** [15] 4/19 34/13 44/25 51/8  
 56/1 57/7 57/16 87/7 92/18 116/1  
 129/14 147/12 183/25 188/7 197/1  
**haystack** [1] 151/17  
**he** [132] 7/18 9/16 10/1 12/6  
 12/12 13/11 16/5 16/6 16/12  
 16/18 21/12 21/13 21/17 21/17  
 21/18 21/19 22/2 24/6 24/8 25/24  
 25/25 26/5 26/6 28/25 39/3 61/16  
 61/18 61/20 61/22 63/3 63/17  
 82/18 83/6 83/8 83/12 83/13  
 90/10 96/12 96/13 112/12 125/1  
 128/13 129/5 129/23 130/17  
 132/16 134/9 134/11 138/8 138/9  
 138/9 138/12 138/16 139/13 142/5  
 142/7 142/24 143/19 148/2 148/2  
 164/6 165/10 176/20 178/21  
 178/22 179/19 179/19 185/9 190/4  
 190/5 190/6 194/22 197/14 197/15  
 200/9 200/10 200/12 200/18  
 200/24 201/1 203/22 203/23  
 204/14 204/25 209/8 215/7 215/8  
 216/7 216/21 217/20 218/2 218/3  
 218/3 218/6 218/6 218/16 220/10  
 220/19 220/24 221/10 221/12  
 221/13 221/14 221/16 221/17  
 221/18 221/19 221/20 222/16  
 222/17 222/21 223/2 223/16  
 223/24 224/3 224/4 224/5 224/6  
 224/8 224/9 224/11 224/12 225/8  
 225/15 226/5 226/6 226/22 227/2  
 228/5 228/19 229/9 230/3  
**he's** [34] 3/14 12/9 12/23 15/24  
 16/3 16/15 40/7 98/18 112/11  
 129/5 134/10 187/16 189/23 190/7  
 191/6 193/2 195/7 211/14 218/5  
 219/24 220/5 220/10 221/12  
 221/15 222/21 222/22 223/15  
 223/15 225/6 225/7 225/8 225/12  
 225/18 230/1

<b>H</b>	199/2	89/19 99/25 101/20 101/23 129/18
<b>head</b> [1] 46/25	<b>highlights</b> [2] 153/22 155/2	131/3 131/13 131/13 131/16
<b>headboard</b> [2] 218/11 218/11	<b>highly</b> [3] 128/18 189/16 190/1	135/14 137/6 144/10 144/23
<b>hear</b> [15] 88/3 90/7 102/9 102/18	<b>him</b> [32] 7/21 8/6 9/24 12/15	146/12 149/19 152/17 152/24
103/8 130/7 150/1 175/12 189/25	12/17 14/12 16/1 21/23 25/21	153/25 154/23 155/3 158/2 162/16
189/25 196/20 211/9 213/13	25/24 44/22 90/6 92/1 22/10	162/16 166/23 166/23 166/25
219/25 221/2	129/20 141/11 165/8 165/10 190/8	167/11 169/10 173/23 174/2 174/6
<b>heard</b> [16] 3/23 20/20 20/22 45/9	191/7 194/25 217/12 217/18	174/7 174/8 179/13 188/12 191/24
45/23 79/21 125/13 126/2 126/10	217/23 218/15 218/24 219/19	191/24 192/9 199/19 199/20
137/16 137/18 137/18 143/21	219/25 223/18 223/23 224/2	201/24 201/24 201/25 202/17
160/19 172/12 193/24	224/11	204/5 205/17 206/8 208/22 211/16
<b>hearing</b> [17] 3/3 3/20 90/13	<b>himself</b> [15] 128/14 133/15 133/16	214/25 216/9 223/20 224/11
103/10 103/21 143/20 181/19	189/15 191/16 201/1 205/3 220/20	<b>however</b> [8] 30/10 114/2 114/9
196/19 210/20 211/10 217/25	222/16 224/12 225/7 225/9 229/24	140/10 141/17 141/19 145/1 159/5
221/25 223/6 224/15 230/13	230/6 230/11	<b>Hudson</b> [1] 194/8
230/23 231/6	<b>hinges</b> [2] 148/9 148/10	<b>huge</b> [5] 50/16 50/19 62/9 62/10
<b>HEARINGS</b> [1] 1/4	<b>hire</b> [1] 17/25	62/21
<b>hears</b> [2] 218/2 222/8	<b>his</b> [80] 9/14 10/20 16/1 21/20	<b>hugely</b> [1] 62/24
<b>heated</b> [1] 137/10	21/23 26/7 34/11 34/13 52/23	<b>human</b> [4] 6/3 79/19 203/14
<b>heavily</b> [2] 185/23 230/10	53/3 63/2 63/12 88/13 96/25	207/18
<b>held</b> [12] 36/21 50/23 51/22 53/13	98/17 125/25 126/1 128/13 129/13	<b>hundred</b> [1] 225/15
56/21 58/12 82/8 89/3 128/3	129/22 129/22 130/19 133/17	<b>Husbands</b> [1] 75/5
131/3 167/17 180/9	134/9 134/10 136/13 136/13	
<b>helicopters</b> [1] 67/2	137/14 138/9 138/12 138/17	<b>I</b>
<b>help</b> [8] 39/17 61/21 70/24 79/11	139/16 141/14 142/7 149/6 163/16	<b>I'll</b> [1] 213/4
84/20 213/4 213/5 224/11	163/19 163/21 164/7 165/6 165/7	<b>I'm</b> [129] 3/16 6/9 7/4 8/13 10/25
<b>helping</b> [1] 200/10	166/18 186/17 187/10 187/16	11/1 11/5 12/21 13/6 14/18 18/23
<b>helps</b> [2] 39/25 148/13	187/16 191/2 191/7 191/12 195/6	19/1 26/21 29/13 30/3 30/20 31/6
<b>helter</b> [1] 58/1	200/11 208/16 209/5 211/12 215/4	31/21 35/9 37/21 38/24 40/2 43/1
<b>hence</b> [2] 159/10 159/23	216/1 216/24 217/5 217/9 217/13	43/2 43/20 44/12 46/4 54/1 54/2
<b>her</b> [50] 9/9 19/4 47/17 48/13	217/17 217/21 218/7 218/15	56/9 94/3 96/9 96/10 98/23 99/21
48/15 49/3 49/6 61/14 62/23	218/20 218/22 218/23 219/7	101/1 101/21 105/25 106/8 106/20
62/25 64/8 64/10 65/6 65/11	220/20 220/22 221/15 221/23	107/24 108/20 112/6 112/7 113/1
66/16 66/16 66/17 80/23 138/12	223/4 224/8 224/20 225/16 225/17	114/3 114/14 115/16 115/25
201/14 201/14 205/12 205/14	226/16 226/18 226/20	118/21 123/6 127/25 128/1 131/24
207/19 207/20 207/20 207/21	<b>history</b> [6] 136/22 164/4 201/11	135/15 139/5 139/16 142/19
208/1 209/3 213/5 213/8 215/1	201/23 202/10 206/15	143/13 143/20 145/8 145/11 146/1
215/8 215/10 216/2 216/8 216/23	<b>hit</b> [1] 221/12	146/2 146/19 147/2 147/9 147/25
218/10 218/17 219/8 220/10	<b>hmm</b> [1] 85/19	148/6 149/18 149/21 150/1 150/12
220/12 221/10 221/11 221/12	<b>hold</b> [4] 11/17 56/13 140/17	150/13 150/20 152/7 152/13
221/17 221/19 221/20 227/3 228/7	147/10	153/10 154/7 155/19 156/9 156/15
<b>here</b> [78] 6/7 10/19 11/13 33/8	<b>holding</b> [4] 52/8 56/6 109/22	173/9 174/14 174/14 175/9 175/15
35/5 35/25 36/24 40/1 40/5 44/9	222/15	177/17 178/5 178/6 180/1 181/19
51/8 53/25 54/14 64/5 73/21	<b>Holmes</b> [7] 161/17 164/21 165/12	181/19 181/20 182/24 184/21
77/20 85/13 86/11 90/16 90/17	179/20 179/22 180/2 180/3	187/8 187/21 187/22 188/13
104/14 104/17 116/21 118/11	<b>home</b> [7] 20/2 20/10 20/11 47/14	190/17 195/1 195/3 195/24 201/17
118/16 119/3 120/4 120/9 122/2	59/17 67/12 170/24	203/25 204/1 204/6 206/21 207/5
123/9 123/14 124/5 124/8 126/6	<b>homicide</b> [3] 7/3 56/2 207/17	207/7 207/12 209/2 209/11 210/7
127/6 130/8 131/8 134/20 137/5	<b>Hon</b> [1] 1/11	211/12 211/20 212/11 212/12
138/24 146/16 147/4 147/14 148/6	<b>honest</b> [1] 224/12	212/13 212/17 213/3 213/7 213/7
148/24 152/17 157/4 163/4 167/4	<b>honor</b> [15] 4/8 29/13 31/19 42/17	216/4 221/16 226/1 226/2 228/21
173/23 180/21 181/19 184/5	104/2 104/6 108/23 114/23 118/17	<b>i.e</b> [1] 194/10
185/22 186/20 189/12 190/4	136/19 139/11 151/1 158/17	<b>idea</b> [5] 129/7 150/23 161/25
191/22 191/23 193/2 193/4 193/6	194/16 229/2	174/18 199/23
195/2 196/2 199/25 200/4 200/5	<b>hood</b> [3] 227/18 227/22 227/22	<b>identical</b> [1] 43/4
200/14 202/15 204/24 206/21	<b>hope</b> [6] 60/15 132/21 133/6	<b>identification</b> [1] 198/19
211/3 211/14 212/23 213/18	134/22 145/17 202/16	<b>identified</b> [7] 8/9 39/24 52/3 96/12
224/15 226/3 229/11	<b>hopefully</b> [1] 112/21	157/9 180/5 229/23
<b>here's</b> [5] 87/12 87/12 87/13 205/5	<b>horrible</b> [2] 136/16 221/7	<b>identifies</b> [1] 139/15
212/23	<b>horribly</b> [1] 131/14	<b>identify</b> [4] 16/1 140/13 141/11
<b>hereby</b> [1] 232/6	<b>horrific</b> [1] 216/8	208/24
<b>herein</b> [2] 4/19 44/25	<b>host</b> [1] 161/5	<b>identifying</b> [1] 230/6
<b>Hermann</b> [5] 12/4 21/4 21/6 30/14	<b>hostile</b> [1] 46/6	<b>if</b> [200] 5/3 10/19 10/19 11/1 12/4
41/3	<b>hotel</b> [1] 186/1	15/1 16/21 23/23 26/19 39/1
<b>Hermann's</b> [1] 22/24	<b>hour</b> [2] 36/4 129/24	39/25 40/10 40/19 40/24 41/16
<b>hers</b> [1] 220/21	<b>hours</b> [6] 59/17 67/23 68/8 70/23	42/25 44/10 48/18 49/23 55/7
<b>hesitated</b> [1] 137/21	77/18 122/5	57/24 58/5 59/21 59/24 70/20
<b>hey</b> [1] 61/20	<b>housed</b> [1] 186/1	70/24 71/11 71/12 72/13 77/7
<b>hid</b> [1] 227/3	<b>how</b> [78] 13/6 13/7 26/5 41/16	77/8 80/10 81/9 83/20 87/25
<b>hierarchies</b> [1] 38/16	42/5 42/6 45/7 45/14 48/2 50/3	90/10 90/18 91/25 95/17 96/2
<b>hierarchy</b> [1] 14/19	50/14 57/8 57/13 60/1 60/25	96/10 96/13 97/5 97/16 97/25
<b>high</b> [4] 46/18 166/17 195/12	60/25 67/20 68/1 68/11 75/17	98/18 98/21 98/22 100/25 101/5
	85/15 88/21 88/21 89/3 89/8	101/15 110/24 112/24 113/25

<b>I</b>		
<b>if...</b> [146] 114/7 114/12 115/8 115/20 117/1 123/8 127/25 128/9 129/4 130/17 131/11 131/15 133/6 134/9 134/19 135/20 136/4 137/25 138/25 143/19 143/23 144/6 144/20 144/22 145/1 145/21 146/2 146/3 146/7 146/12 147/17 148/11 148/13 148/17 148/18 148/20 148/22 148/22 148/23 151/13 152/25 153/12 154/25 155/15 156/1 156/9 156/10 157/18 158/7 158/11 159/13 159/13 159/24 159/25 161/15 162/3 162/9 165/16 165/17 165/23 166/7 166/9 166/19 167/1 167/13 167/23 168/2 168/14 169/12 169/12 169/20 169/20 169/25 170/7 170/8 170/25 171/10 171/19 173/4 174/24 175/6 175/13 175/18 175/22 175/25 176/5 176/14 177/21 177/24 178/15 178/22 179/8 179/12 179/21 180/23 181/3 181/10 181/25 182/3 182/7 185/2 185/2 185/9 185/25 186/21 186/21 188/5 188/5 188/10 190/7 191/15 192/5 192/15 192/18 193/8 193/22 194/14 194/17 196/2 196/25 199/15 200/9 200/12 200/20 201/2 201/5 202/6 203/18 203/19 205/3 205/12 207/15 207/21 208/11 208/12 208/23 209/4 210/4 210/11 215/17 216/12 217/19 219/21 220/21 223/1 230/20	<b>include</b> [9] 43/5 60/5 109/3 116/5 117/9 204/2 204/7 213/8 226/21 <b>included</b> [7] 57/3 58/14 101/16 116/3 120/15 128/7 227/5 <b>including</b> [11] 17/16 41/20 41/21 73/7 75/2 92/25 115/24 142/11 156/24 165/3 166/2 <b>inclusive</b> [1] 76/8 <b>inconsistencies</b> [5] 226/9 226/12 228/11 229/7 229/11 <b>incorrect</b> [1] 215/3 <b>increase</b> [2] 214/14 217/9 <b>increased</b> [2] 139/23 214/20 <b>incriminating</b> [2] 229/24 230/5 <b>incrimination</b> [3] 125/17 125/23 126/9 <b>incriminatory</b> [1] 230/11 <b>indeed</b> [10] 116/20 124/12 147/6 167/14 185/12 188/5 188/6 188/10 195/1 201/15 <b>independent</b> [4] 158/4 158/9 186/6 188/8 <b>indicate</b> [6] 3/18 53/24 93/12 167/6 198/4 227/7 <b>indicated</b> [7] 53/1 54/10 55/19 57/10 70/19 143/18 179/19 <b>indicates</b> [1] 204/25 <b>indicating</b> [3] 29/16 90/23 206/17 <b>indirectly</b> [3] 19/12 19/13 19/24 <b>individual</b> [5] 77/9 163/20 215/13 215/20 225/11 <b>individually</b> [2] 55/10 58/22 <b>individuals</b> [22] 48/11 49/15 49/21 49/23 49/25 68/19 68/20 69/11 69/12 69/14 69/15 71/6 71/11 82/16 86/1 87/7 93/17 93/22 93/24 96/24 101/12 215/2 <b>inference</b> [23] 98/3 158/3 158/15 159/2 159/14 166/21 167/10 170/18 171/10 171/20 171/22 172/11 172/24 173/11 174/12 174/23 176/11 176/13 178/2 178/9 179/3 179/16 206/1 <b>inferences</b> [11] 142/14 160/6 161/13 163/7 167/19 167/24 171/11 176/14 176/18 176/24 181/17 <b>inflame</b> [1] 198/4 <b>inflammatory</b> [5] 51/9 59/4 123/22 153/7 189/17 <b>influence</b> [1] 58/23 <b>inform</b> [3] 18/5 84/8 93/12 <b>information</b> [139] 22/14 34/22 48/6 48/8 48/12 48/21 48/23 49/8 49/13 49/16 49/17 50/1 50/4 50/5 50/7 50/25 51/2 51/5 51/9 51/9 51/13 51/16 51/19 51/21 52/15 53/2 53/4 53/9 53/17 53/23 54/12 57/3 57/8 57/9 57/10 57/11 57/15 57/21 57/22 57/23 58/9 58/12 58/16 58/18 59/2 59/4 59/4 59/23 61/23 64/7 64/11 64/22 65/7 65/9 65/11 70/8 73/17 74/14 74/16 75/17 75/19 76/1 76/7 76/13 76/14 76/17 76/18 76/23 78/8 78/10 79/6 79/25 79/25 80/6 80/7 80/11 80/16 80/20 80/25 81/2 81/3 81/14 82/1 82/13 82/14 82/16 82/19 82/19 82/20 84/7 84/20 85/6 85/12 85/23 86/2 86/7 86/17 86/21 86/24 87/8 87/13 87/18 90/25 91/4 91/15 91/17 92/6 92/14 92/17 93/10 104/12	109/3 112/12 112/23 113/1 118/15 118/25 120/14 121/14 121/16 124/13 128/10 128/21 140/16 140/18 140/21 140/23 190/2 191/7 191/14 192/17 204/22 206/19 207/8 209/15 217/21 222/4 223/8 227/5 <b>informational</b> [3] 127/17 127/19 128/6 <b>informed</b> [9] 50/6 51/15 51/18 53/9 56/13 59/20 59/21 91/4 180/5 <b>informing</b> [4] 47/15 56/7 121/17 202/7 <b>initial</b> [2] 139/6 168/14 <b>initially</b> [5] 35/4 44/15 60/8 72/16 123/15 <b>injunction</b> [1] 164/12 <b>ink</b> [1] 109/21 <b>innocence</b> [2] 134/9 142/5 <b>innocent</b> [4] 7/18 101/13 141/5 201/1 <b>innuendo</b> [1] 166/21 <b>inquire</b> [1] 22/15 <b>inquired</b> [1] 20/6 <b>inquiries</b> [2] 52/22 53/4 <b>inquiring</b> [2] 30/22 91/10 <b>inquiry</b> [1] 112/15 <b>inside</b> [1] 69/10 <b>insignificant</b> [1] 227/11 <b>inspector</b> [22] 12/8 12/9 12/18 12/23 13/1 13/4 13/11 13/21 13/22 15/10 15/15 20/5 21/6 22/24 25/20 25/25 26/2 26/15 30/14 38/1 41/1 41/2 <b>inspectors</b> [2] 15/13 15/15 <b>instance</b> [12] 104/7 160/12 168/4 171/9 173/18 174/2 178/12 193/8 193/9 193/22 194/14 215/7 <b>instruct</b> [1] 201/17 <b>instructed</b> [1] 36/22 <b>instruction</b> [2] 201/16 201/22 <b>instructions</b> [4] 36/12 37/14 191/2 191/6 <b>instructive</b> [2] 180/15 198/1 <b>insure</b> [3] 53/22 54/6 97/2 <b>integrity</b> [7] 132/14 159/10 159/19 166/11 167/5 196/4 206/7 <b>intend</b> [8] 44/20 103/14 140/7 144/24 168/14 168/20 175/13 208/9 <b>intended</b> [1] 138/9 <b>intends</b> [2] 156/2 225/8 <b>intense</b> [2] 124/8 141/24 <b>intent</b> [2] 198/19 208/2 <b>intentional</b> [1] 7/2 <b>interest</b> [21] 22/4 22/6 22/11 22/17 22/25 23/12 23/13 50/13 50/17 50/20 62/10 62/15 62/21 63/2 95/18 96/3 159/23 184/11 184/15 195/16 196/7 <b>interested</b> [4] 50/15 63/7 83/18 187/1 <b>interesting</b> [2] 62/24 193/21 <b>interests</b> [2] 127/3 127/3 <b>interfere</b> [2] 20/7 130/15 <b>interference</b> [2] 111/23 131/6 <b>interfering</b> [2] 130/18 130/25 <b>interplay</b> [2] 161/22 161/25 <b>interpose</b> [2] 96/10 98/11 <b>interpretation</b> [1] 145/24 <b>interrelated</b> [1] 117/25 <b>interrogator</b> [1] 224/7



<b>I</b>	95/10 97/18 100/18 132/8 159/21 166/24 171/6 171/17 180/25 184/3 184/19 195/9 228/5 <b>involvement</b> [9] 31/13 31/18 56/14 147/5 167/6 223/2 223/4 224/20 224/21 <b>involves</b> [1] 178/17 <b>iota</b> [1] 222/19 <b>irrelevant</b> [1] 29/25 <b>irreparable</b> [1] 133/8 <b>is</b> [467] <b>isn't</b> [11] 77/24 117/6 126/10 130/10 136/17 151/24 153/13 173/3 186/4 223/14 229/15 <b>isolation</b> [3] 173/11 173/19 174/8 <b>issue</b> [41] 8/11 9/3 51/11 102/5 104/1 105/9 109/14 113/14 113/15 115/21 131/7 138/25 143/14 144/2 146/16 149/12 150/7 152/14 153/9 157/25 158/10 158/19 159/21 160/1 161/8 161/18 161/19 161/23 169/15 172/6 175/19 180/16 190/4 192/10 192/11 193/21 201/6 202/4 207/13 207/18 210/17 <b>issued</b> [1] 37/5 <b>issues</b> [9] 158/1 159/19 161/9 163/5 168/13 179/17 193/10 210/4 210/5 <b>issuing</b> [1] 39/7 <b>it</b> [382] <b>it's</b> [126] 3/2 4/6 13/14 13/25 28/24 32/11 33/24 39/11 39/13 48/5 51/22 54/10 59/19 64/2 69/21 69/24 76/12 76/15 81/5 81/9 85/23 103/20 103/25 104/10 104/16 105/22 107/18 109/24 112/3 112/4 120/3 124/5 130/12 132/10 132/19 132/20 137/6 137/19 137/23 138/19 144/10 145/9 146/11 148/25 153/5 154/15 155/25 161/6 161/7 161/19 161/21 162/12 166/14 166/15 167/7 167/13 168/11 170/5 170/11 171/13 171/15 171/23 173/17 174/11 176/6 176/7 177/5 177/22 178/2 180/16 182/5 185/11 185/11 187/1 187/2 187/2 187/19 188/13 188/20 189/6 189/23 189/25 193/20 194/2 194/3 194/9 194/10 194/17 194/20 196/21 197/25 198/3 200/15 201/8 202/4 202/7 203/2 203/3 203/9 203/9 205/8 205/9 205/16 207/14 208/6 209/12 209/23 210/5 210/20 213/15 216/18 217/15 218/9 219/13 219/19 220/8 220/21 221/2 222/22 223/20 223/25 223/25 224/1 225/16 226/8 230/12 <b>item</b> [6] 105/17 106/6 106/12 110/10 113/5 164/10 <b>items</b> [3] 110/22 156/25 196/11 <b>its</b> [22] 121/21 122/1 136/3 145/5 145/17 148/7 149/22 154/13 160/11 162/17 163/3 166/8 166/10 166/11 168/14 176/15 177/24 183/7 196/7 202/1 208/3 230/14 <b>itself</b> [12] 76/5 109/15 112/17 115/3 120/6 147/8 156/15 159/11 161/3 184/12 187/4 191/5	225/9 <b>James</b> [1] 14/3 <b>January</b> [3] 5/14 5/15 5/16 <b>jargon</b> [1] 77/1 <b>Jeffrey</b> [1] 136/15 <b>JEROME</b> [2] 1/15 3/15 <b>Jerrell</b> [1] 217/15 <b>Jesse</b> [1] 136/12 <b>job</b> [1] 140/9 <b>Joe</b> [1] 73/10 <b>join</b> [1] 123/10 <b>joint</b> [7] 46/12 54/13 56/6 71/15 72/1 92/18 94/19 <b>jointly</b> [6] 56/21 70/12 76/16 77/10 82/17 82/22 <b>Jost</b> [3] 32/24 32/25 195/18 <b>Jost's</b> [1] 33/6 <b>judge</b> [66] 1/11 4/13 36/8 44/20 54/17 59/11 96/9 96/9 98/10 99/3 101/3 102/5 103/12 105/5 105/23 105/25 106/21 107/3 107/19 108/25 110/7 110/14 111/18 113/17 113/20 113/24 115/19 117/6 117/24 139/10 140/7 142/15 143/12 144/1 144/18 146/11 152/14 153/2 154/14 155/10 155/14 155/19 157/5 162/25 190/18 196/23 196/23 197/25 198/14 199/9 206/23 207/15 208/9 209/25 210/18 211/8 211/19 212/4 213/16 213/16 226/1 226/21 227/11 228/23 231/8 231/9 <b>Judge's</b> [1] 143/2 <b>judiciously</b> [1] 43/10 <b>JULY</b> [7] 1/10 9/24 103/8 115/20 155/8 202/16 232/15 <b>July 14</b> [1] 202/16 <b>July 14th</b> [1] 155/8 <b>July 19</b> [1] 103/8 <b>July 19th</b> [1] 115/20 <b>jumped</b> [1] 149/11 <b>junction</b> [1] 119/12 <b>June</b> [4] 107/11 213/18 213/18 213/20 <b>June 19th</b> [1] 107/11 <b>June 1st</b> [1] 213/18 <b>June 2nd</b> [1] 213/18 <b>Junior</b> [1] 195/12 <b>juries</b> [1] 189/24 <b>jurisdiction</b> [2] 19/17 195/23 <b>jurors</b> [17] 4/7 58/23 124/24 137/14 143/10 147/14 148/12 148/24 183/12 183/16 183/16 183/18 185/14 186/2 186/3 186/3 191/25 <b>jury</b> [41] 31/14 122/4 130/6 134/22 139/23 144/11 146/25 147/22 159/2 159/15 172/9 172/9 176/17 176/17 176/25 177/5 178/2 178/23 181/18 185/4 185/8 185/24 185/25 186/20 186/22 190/23 191/12 196/13 196/19 197/9 197/13 198/4 200/11 201/16 201/18 201/22 202/7 203/22 206/1 209/17 229/15 <b>just</b> [85] 16/1 18/20 20/8 23/14 28/10 29/3 30/22 31/12 34/20 35/1 35/10 36/8 37/21 42/16 47/7 47/22 49/23 58/5 71/12 76/10 77/23 84/12 85/13 85/13 87/2 94/3 101/8 101/16 109/19 109/24 110/16 111/4 113/13 114/21 119/25 129/3 131/13 136/2 137/23
<b>J</b>	<b>J-o-s-t</b> [1] 33/6 <b>jail</b> [5] 10/12 14/21 112/9 191/24	

**J**  
**just...** [46] 140/1 140/5 142/12  
149/7 151/3 151/9 151/11 156/20  
158/3 158/14 162/5 162/11 165/15  
169/1 169/19 170/4 172/23 173/21  
174/3 174/4 174/9 176/14 179/2  
179/11 185/15 186/10 188/11  
190/18 193/16 195/24 200/3  
201/22 202/8 202/9 202/16 206/4  
208/4 208/19 209/1 215/21 218/19  
219/2 219/14 220/9 222/15 223/25  
**justice** [6] 3/11 72/20 131/18  
133/21 136/1 138/20  
**Justice's** [1] 36/17  
**juvenile** [1] 74/7

**K**  
**keep** [7] 23/14 50/6 59/20 59/21  
60/15 134/4 147/11  
**keeping** [1] 115/15  
**Ken** [1] 3/8  
**KENNETH** [6] 1/13 2/3 4/12 4/18  
4/23 122/15  
**kept** [1] 51/14  
**key** [11] 32/14 169/2 169/4 169/7  
169/10 170/9 171/4 171/7 173/1  
173/19 178/10  
**kid** [1] 223/2  
**kill** [2] 129/19 205/12  
**killed** [6] 133/19 136/7 141/23  
218/23 219/4 226/23  
**killing** [2] 136/1 220/8  
**kind** [21] 7/7 25/21 66/25 84/8  
87/13 100/13 109/21 126/3 157/14  
164/9 165/17 178/1 189/1 189/23  
190/16 197/16 199/1 199/22 201/2  
209/9 227/7  
**kinds** [5] 164/14 205/16 208/12  
209/3 222/12  
**knew** [16] 50/17 50/18 61/14 62/8  
62/17 62/20 63/8 66/9 66/16 74/6  
74/10 82/20 84/25 93/18 93/22  
122/2  
**knife** [2] 220/3 220/3  
**know** [120] 10/11 18/21 18/23  
26/1 26/5 26/20 27/3 27/3 27/9  
27/11 27/13 27/24 28/9 28/10  
28/12 28/18 29/2 29/3 32/5 32/6  
32/7 32/12 33/3 34/7 34/7 34/10  
34/20 34/24 35/1 36/12 37/5  
41/16 42/5 42/6 43/22 60/16  
60/21 60/24 61/9 62/13 62/18  
63/6 64/14 65/14 71/11 72/20  
73/4 74/2 80/11 81/19 87/12 88/1  
88/2 88/2 90/4 90/9 90/12 90/14  
92/4 98/14 100/14 100/15 103/18  
103/25 106/1 112/10 115/11  
115/19 116/15 120/2 121/5 127/11  
127/17 130/23 134/3 137/21  
143/17 148/13 150/12 151/20  
152/17 153/14 155/2 159/16  
159/25 159/25 171/5 171/6 175/8  
175/14 177/7 177/15 177/24 184/9  
184/16 185/20 187/15 188/11  
188/21 189/12 189/20 189/24  
190/3 195/5 195/17 195/18 196/2  
198/9 203/4 203/6 203/10 203/22  
206/15 207/16 209/12 221/8 226/2  
226/11 228/2 229/6  
**knowing** [2] 125/18 207/6  
**knowledge** [9] 30/9 52/16 61/18  
74/2 119/13 120/23 128/9 221/14

232/14  
**known** [5] 6/6 61/12 61/19 80/7  
121/16  
**knows** [8] 112/10 121/11 140/2  
166/24 210/22 218/7 226/6 228/8  
**Kocourek** [1] 6/16  
**KRATZ** [42] 1/13 2/9 2/11 3/9 46/6  
74/13 74/21 75/15 75/21 77/22  
81/22 82/15 86/15 90/7 90/10  
92/9 99/22 100/3 105/3 106/17  
110/6 112/7 112/10 112/20 115/16  
117/4 119/25 120/24 121/21  
128/13 128/22 139/8 146/1 146/21  
147/25 149/10 155/8 201/5 203/18  
206/21 209/12 225/24  
**Kratz's** [4] 62/17 87/11 104/5  
179/19  
**Kucharski** [1] 32/4

**L**  
**L-e-d-v-i-n-a** [1] 13/2  
**L-e-n-k** [1] 14/5  
**La** [1] 152/22  
**Lab** [10] 78/9 78/20 78/24 79/6  
79/21 80/1 93/11 178/15 215/9  
216/3  
**lack** [1] 228/18  
**ladder** [1] 17/17  
**laid** [1] 157/20  
**large** [6] 50/20 62/15 63/1 75/8  
75/8 119/9  
**largely** [2] 118/16 230/20  
**Larry** [1] 13/1  
**Lasse** [1] 138/6  
**last** [21] 4/22 5/9 18/21 31/22 45/3  
45/9 47/17 56/21 65/6 65/10  
98/21 99/2 99/21 113/5 135/7  
135/17 195/7 195/10 213/23  
229/16 230/13  
**lasted** [1] 36/4  
**Lastly** [1] 198/14  
**latch** [2] 227/18 227/22  
**late** [3] 34/22 78/22 136/20  
**later** [9] 7/17 19/1 28/14 52/19  
53/11 103/8 103/14 106/24 197/15  
217/19  
**Lauren** [1] 134/2  
**law** [49] 1/16 5/19 11/8 21/15 27/4  
27/14 28/4 28/20 29/10 32/1 32/9  
32/14 32/21 46/21 46/25 69/4  
70/3 77/1 77/11 80/5 88/22 89/2  
97/16 98/9 99/11 107/15 121/7  
121/12 122/7 122/19 129/10 132/7  
132/11 135/6 142/10 142/18  
146/13 146/20 147/16 177/4  
180/23 185/6 186/6 188/8 188/9  
192/24 195/25 206/3 214/6  
**lawsuit** [20] 23/1 23/5 33/20 34/14  
34/19 63/17 63/22 72/9 95/21  
195/15 199/12 199/21 199/21  
200/2 202/3 202/22 204/18 205/11  
205/15 230/18  
**lawyer** [3] 40/5 187/15 218/7  
**lawyers** [4] 132/6 134/10 135/7  
189/10  
**lay** [3] 120/6 126/25 209/8  
**lead** [11] 41/2 60/5 60/7 60/9  
68/21 78/2 95/12 97/25 147/8  
195/3 195/21  
**leading** [7] 46/5 56/8 56/10 78/6  
103/21 217/2 217/13  
**leads** [1] 190/5  
**learn** [1] 72/11

**learned** [3] 74/23 183/20 183/24  
**least** [48] 6/9 22/6 35/21 46/5 52/1  
60/23 63/11 66/9 71/22 72/20  
73/18 77/12 78/6 86/12 86/12  
104/1 105/9 105/11 107/5 107/17  
114/6 115/22 116/3 122/6 123/8  
124/9 134/13 134/20 137/11  
139/19 143/9 154/16 168/11 188/6  
189/9 190/1 196/8 200/23 205/3  
207/23 210/24 211/4 212/4 215/19  
226/14 229/7 230/8 230/15  
**leave** [6] 25/16 67/24 73/14 98/17  
211/3 231/3  
**leaves** [1] 222/12  
**leaving** [1] 148/2  
**led** [3] 18/23 111/24 171/8  
**Ledvina** [6] 13/2 13/13 14/9 14/10  
14/12 38/1  
**left** [8] 37/8 85/17 88/5 101/24  
111/15 185/19 215/18 216/11  
**legal** [1] 146/16  
**legally** [1] 152/16  
**legislature** [1] 135/16  
**legitimate** [1] 127/4  
**length** [3] 135/25 161/24 209/15  
**lengthy** [1] 102/25  
**Lenk** [21] 14/3 14/7 14/12 14/14  
16/18 27/18 27/24 29/9 31/2 32/2  
32/17 32/18 32/18 33/9 34/5  
34/13 41/21 68/10 68/12 72/6  
203/4  
**less** [6] 114/9 133/23 134/21  
155/17 178/5 197/3  
**lesser** [1] 131/25  
**let** [13] 27/2 30/2 46/16 58/7  
85/25 91/19 104/7 141/1 158/10  
168/22 183/18 191/22 203/22  
**let's** [18] 5/2 30/7 33/19 72/5 97/2  
97/4 97/6 106/22 109/9 110/9  
110/11 156/23 157/3 169/6 192/4  
204/9 206/14 212/11  
**letter** [4] 100/16 110/17 206/15  
217/24  
**level** [2] 30/15 122/19  
**liability** [3] 105/18 155/24 180/4  
**liaison** [1] 25/16  
**liberty** [1] 133/17  
**lie** [2] 218/16 218/18  
**lies** [1] 215/3  
**lieutenant** [17] 13/9 13/18 14/2  
16/12 27/18 29/9 32/18 33/9 34/5  
34/13 41/20 41/21 60/13 68/10  
68/12 72/6 203/3  
**lieutenants** [4] 14/23 15/7 15/13  
25/2  
**life** [13] 10/11 137/1 200/22  
201/11 201/22 202/10 206/15  
207/18 207/19 207/21 207/25  
208/25 215/1  
**lift** [2] 40/20 42/6  
**light** [3] 109/22 156/9 158/19  
**lights** [1] 88/6  
**like** [24] 16/21 26/23 37/10 42/4  
65/16 69/23 78/13 79/7 90/21  
95/22 97/4 100/20 116/12 136/25  
137/3 162/11 165/6 199/15 211/17  
215/19 218/9 219/22 221/12 222/9  
**likely** [9] 162/14 198/23 198/24  
203/1 203/2 203/3 203/5 203/11  
203/13  
**limb** [1] 128/25  
**limine** [11] 106/8 106/13 107/22  
110/16 111/7 164/3 196/18 199/25

<p><b>L</b></p> <p><b>limine...</b> [3] 202/15 208/22 209/8  <b>limit</b> [4] 69/11 123/5 140/16 140/18  <b>limitation</b> [1] 31/2  <b>limited</b> [2] 146/21 187/23  <b>limiting</b> [7] 50/23 52/12 54/5 57/23 132/6 132/10 132/24  <b>limits</b> [1] 209/9  <b>line</b> [5] 29/14 29/24 64/21 88/24 187/5  <b>lines</b> [3] 43/16 116/21 173/14  <b>link</b> [1] 138/18  <b>linked</b> [2] 138/4 138/13  <b>lion's</b> [1] 117/21  <b>listen</b> [2] 219/22 221/2  <b>lists</b> [2] 43/14 43/18  <b>litigation</b> [5] 95/14 97/1 97/23 97/24 166/5  <b>little</b> [14] 5/2 20/8 38/25 54/1 76/4 85/14 114/9 123/3 140/17 140/20 162/11 165/7 188/20 206/19  <b>live</b> [1] 183/5  <b>lived</b> [3] 6/22 74/24 75/11  <b>lives</b> [2] 209/19 217/20  <b>living</b> [1] 96/24  <b>loaded</b> [1] 16/21  <b>local</b> [3] 55/11 64/19 100/6  <b>locally</b> [1] 123/2  <b>locate</b> [6] 48/11 48/15 49/2 66/16 66/17 77/10  <b>located</b> [1] 77/8  <b>locating</b> [2] 47/25 49/6  <b>location</b> [2] 192/25 218/25  <b>locus</b> [2] 120/3 120/8  <b>logical</b> [5] 139/15 143/7 158/14 160/8 169/8  <b>logistical</b> [3] 29/19 31/14 31/16  <b>logistics</b> [3] 3/20 24/1 24/6  <b>long</b> [14] 68/1 68/8 88/21 88/24 99/25 153/25 154/23 155/3 157/4 189/24 190/17 222/18 224/4 224/10  <b>longer</b> [4] 71/2 135/3 224/17 229/20  <b>look</b> [22] 39/17 39/21 39/24 64/4 85/12 90/14 95/22 150/10 150/20 151/9 161/16 161/16 161/22 165/6 165/15 174/15 184/1 186/7 211/17 219/22 222/9 223/11  <b>looked</b> [3] 127/15 152/4 153/14  <b>looking</b> [15] 64/9 76/20 76/21 79/7 97/17 106/9 157/24 170/25 173/10 173/18 186/5 187/19 187/20 187/21 222/13  <b>lookout</b> [1] 66/11  <b>looks</b> [1] 78/13  <b>loop</b> [2] 20/21 51/15  <b>lose</b> [1] 58/4  <b>lost</b> [2] 133/20 215/1  <b>lot</b> [5] 170/11 173/19 207/10 225/16 226/3  <b>low</b> [1] 66/7  <b>lunch</b> [4] 101/1 102/8 102/12 185/25  <b>lurid</b> [2] 121/20 214/16  <b>lurking</b> [1] 146/16</p>	<p>49/11 52/23 57/13 77/22 81/5 81/24 83/23 84/5 87/19 90/8 92/7 92/9 94/19 95/8 100/17 101/11 106/15 108/2 108/4 109/4 109/8 112/15 113/22 116/4 120/23 121/25 124/12 127/7 129/7 130/5 140/23 142/12 164/9 165/6 166/21 168/24 169/15 188/11 189/16 204/2 204/6 204/8 204/14 215/3 218/1 218/7 226/8 228/3 228/13 229/23 230/5  <b>Madison</b> [3] 44/4 78/19 178/15  <b>mail</b> [1] 100/17  <b>mailing</b> [2] 65/15 87/11  <b>main</b> [1] 203/5  <b>maintained</b> [2] 166/9 172/4  <b>major</b> [2] 86/5 89/15  <b>majority</b> [1] 214/25  <b>make</b> [52] 39/4 39/9 41/6 44/4 65/22 73/12 81/19 82/11 82/11 84/12 94/6 109/11 139/3 142/8 152/16 156/20 158/2 159/1 159/22 164/6 169/19 170/7 170/8 170/11 170/17 171/20 171/21 172/1 172/19 172/20 173/4 174/6 174/7 174/9 174/14 174/21 174/25 175/7 175/22 176/16 178/6 178/21 178/22 190/19 191/8 192/15 192/17 193/14 197/2 201/9 219/2 229/14  <b>makers</b> [2] 75/22 81/25  <b>makes</b> [4] 157/16 190/6 194/18 222/9  <b>making</b> [15] 40/7 53/3 72/1 73/16 73/17 104/18 120/14 145/15 146/22 151/14 151/16 153/4 156/11 176/22 181/15  <b>man</b> [14] 9/8 9/8 15/21 63/8 129/16 136/13 190/4 190/5 190/6 217/22 220/18 227/9 228/4 228/18  <b>man's</b> [1] 214/23  <b>management</b> [1] 61/5  <b>MANITOWOC</b> [88] 1/1 5/4 5/18 5/20 5/22 6/7 6/16 8/2 10/21 11/10 11/13 12/10 16/22 18/11 19/14 19/15 23/2 23/22 24/13 26/9 26/23 27/17 29/20 32/8 33/16 36/13 37/23 38/3 38/8 38/15 39/2 41/18 54/17 60/18 63/18 66/3 66/4 68/13 71/17 72/7 93/25 94/7 94/9 94/21 94/23 95/9 95/14 96/6 97/17 97/20 99/8 104/3 104/25 121/4 122/16 122/20 124/23 125/5 130/6 137/12 147/5 148/12 156/21 178/13 183/21 184/2 184/6 184/18 185/7 186/9 186/12 186/16 187/13 188/4 188/9 188/19 189/14 190/24 191/24 193/3 193/6 195/8 195/13 195/22 199/13 200/7 202/24 232/2  <b>manner</b> [8] 141/7 144/3 145/4 172/3 216/10 217/18 226/15 227/8  <b>manpower</b> [2] 24/2 24/6  <b>many</b> [15] 41/17 50/3 60/1 60/25 67/20 77/16 88/21 89/3 89/8 100/4 102/19 120/8 166/23 219/13 219/16  <b>March</b> [29] 55/24 55/25 56/6 56/15 56/25 58/13 73/25 82/24 82/24 83/3 83/13 83/18 91/9 101/9 101/22 102/2 120/15 120/15 120/19 120/20 121/19 128/11 213/24 219/10 225/23 227/13</p>	<p>229/17 230/19 231/1  <b>March 1</b> [3] 82/24 120/15 120/19  <b>March 17</b> [2] 229/17 231/1  <b>March 17th</b> [2] 213/24 225/23  <b>March 1st</b> [4] 56/6 56/15 91/9 227/13  <b>March 2</b> [6] 73/25 82/24 120/15 120/20 121/19 128/11  <b>March 2nd</b> [3] 56/25 101/22 102/2  <b>Marinette</b> [6] 115/2 115/21 116/2 210/18 210/23 212/5  <b>mark</b> [3] 47/15 121/4 212/25  <b>marked</b> [2] 39/16 40/7  <b>market</b> [3] 43/25 44/1 122/3  <b>markets</b> [1] 44/5  <b>marshal</b> [1] 168/21  <b>masse</b> [1] 117/24  <b>match</b> [1] 227/23  <b>matched</b> [2] 187/3 189/13  <b>mate</b> [1] 112/1  <b>material</b> [4] 43/3 76/1 116/17 151/12  <b>materials</b> [1] 112/21  <b>mates</b> [2] 112/15 112/16  <b>matter</b> [23] 55/21 76/10 84/21 105/10 111/10 113/3 125/13 125/16 132/16 132/17 132/18 133/10 151/14 158/1 181/8 194/6 195/25 197/10 201/20 214/25 217/3 232/7 232/13  <b>matters</b> [6] 48/8 54/25 70/6 106/25 139/6 209/20  <b>mattress</b> [6] 216/12 216/13 216/17 216/18 216/19 216/23  <b>may</b> [73] 4/9 5/3 16/13 17/10 17/13 17/19 25/5 25/24 26/20 27/21 29/19 32/12 35/7 35/16 44/7 44/22 54/1 55/4 65/14 65/16 73/9 89/6 101/5 103/12 107/4 108/2 108/4 109/3 109/3 109/11 109/16 112/15 113/23 113/23 114/5 114/5 118/7 120/19 122/21 127/23 129/15 141/25 142/1 145/5 151/22 153/5 153/6 158/14 159/20 160/12 162/11 164/6 164/21 167/3 167/3 175/4 175/5 175/5 189/11 192/10 192/16 193/17 193/24 196/12 200/8 200/10 203/12 204/4 204/6 207/15 217/11 230/2 230/21  <b>May 10</b> [1] 122/21  <b>May 13th</b> [1] 217/11  <b>maybe</b> [18] 12/21 19/23 43/23 79/11 82/7 82/9 84/6 96/19 116/20 131/24 132/23 132/23 151/9 153/12 153/13 175/15 213/5 227/25  <b>me</b> [62] 3/16 19/23 20/23 22/10 25/25 27/2 29/13 30/2 30/25 40/1 41/15 43/14 43/22 44/6 46/16 47/15 48/7 53/12 54/4 54/18 54/21 55/3 55/5 57/7 59/20 59/21 85/13 91/19 130/23 139/1 141/1 144/4 144/18 149/21 150/7 150/17 152/20 153/17 154/1 155/3 157/25 158/10 162/5 164/20 168/22 170/10 171/9 172/8 173/12 175/2 179/11 179/21 180/20 183/18 194/24 198/11 202/14 204/1 213/15 221/20 232/8 232/9  <b>mean</b> [30] 6/2 16/20 19/24 20/10 23/25 35/24 37/10 37/21 40/10 41/11 58/7 65/20 67/4 89/18 91/19 100/14 100/15 100/15</p>
<p><b>M</b></p> <p><b>machine</b> [1] 232/10  <b>made</b> [60] 7/18 7/21 8/1 19/3 19/10 19/25 20/5 21/17 45/25</p>		

<b>M</b>	<b>mine [1]</b> 123/8	146/22 150/15 151/20 151/22
<b>mean...</b> [12] 100/16 146/15 147/25	<b>minimum [1]</b> 201/2	151/23 155/23 155/24 155/25
149/8 152/14 152/24 160/16	<b>minutes [5]</b> 100/1 100/2 112/8	156/14 156/19 157/20 161/15
172/14 173/19 195/5 198/22 207/7	122/22 153/10	162/10 162/22 164/3 168/7 168/11
<b>meaning [5]</b> 11/10 16/4 96/11	<b>Miranda [1]</b> 193/23	168/11 168/17 168/18 170/23
97/15 117/19	<b>mischaracterization [1]</b> 96/14	171/13 174/20 176/3 177/19
<b>meaningful [1]</b> 207/13	<b>misconduct [10]</b> 98/9 99/12	178/25 179/4 179/10 179/15
<b>means [2]</b> 122/15 131/19	163/11 167/2 168/5 168/15 170/12	179/18 181/21 183/8 183/10
<b>meant [3]</b> 99/5 148/24 194/17	170/16 172/8 177/9	183/15 192/8 192/20 196/18
<b>measurable [1]</b> 230/24	<b>mishandling [6]</b> 93/5 93/8 93/15	196/21 196/22 199/14 199/25
<b>mechanics [1]</b> 109/13	97/11 98/8 99/11	202/15 206/12 206/13 206/13
<b>media [82]</b> 37/2 38/21 43/15 43/21	<b>misleads [1]</b> 202/1	206/18 208/22 209/5 209/7 209/21
43/25 43/25 44/5 46/17 46/21	<b>missed [3]</b> 95/5 210/15 224/6	210/14 211/5 211/6 211/9 211/11
47/24 48/9 48/14 48/24 49/12	<b>missing [30]</b> 18/24 47/5 47/10	212/5 213/13 213/16 213/17
49/18 49/20 50/4 50/6 50/14	47/16 47/18 48/11 48/25 50/2	213/22 213/25 214/12 214/14
50/20 51/3 51/13 51/17 51/23	52/18 59/15 59/18 64/2 65/17	215/6 219/12 228/22 229/6 231/3
53/1 53/8 54/12 55/8 55/14 57/17	66/11 66/17 66/19 76/19 77/2	<b>motions [28]</b> 3/4 3/22 3/24 42/23
58/2 58/5 59/24 61/23 62/1 62/11	77/8 77/9 77/13 77/16 77/23	44/14 44/18 46/14 46/15 98/13
62/15 62/21 63/2 63/6 63/8 63/24	80/18 80/19 80/21 81/3 81/8	98/14 102/9 102/22 103/8 103/17
64/6 64/11 74/16 75/18 76/3 76/7	96/22 140/12	103/19 106/8 106/15 107/22 111/7
76/22 83/18 84/8 84/15 85/16	<b>Missouri [3]</b> 163/12 163/13 163/15	115/21 115/24 115/25 145/21
86/6 87/4 87/7 87/14 88/5 88/18	<b>mistaken [1]</b> 202/12	146/3 152/12 155/13 155/17 161/6
90/22 90/25 91/10 91/20 92/5	<b>mistrial [1]</b> 162/3	<b>motive [1]</b> 198/20
92/7 92/11 92/14 100/5 100/6	<b>Mm [1]</b> 85/19	<b>motives [2]</b> 93/5 120/6
100/8 104/11 118/25 119/24 122/3	<b>Mm-hmm [1]</b> 85/19	<b>mouth [2]</b> 172/16 221/11
134/4 138/1 138/3 141/24 142/6	<b>modification [1]</b> 103/13	<b>move [12]</b> 98/22 109/9 110/9
150/8 150/18 212/17	<b>modified [2]</b> 179/20 179/22	123/1 141/12 143/11 146/7 146/24
<b>meet [4]</b> 75/24 125/19 153/24	<b>modify [2]</b> 231/2 231/4	155/23 185/8 185/8 218/24
169/16	<b>mom [1]</b> 77/17	<b>moved [5]</b> 31/12 31/15 118/12
<b>meetings [3]</b> 51/1 58/12 81/13	<b>moment [4]</b> 36/8 126/20 135/10	134/21 147/17
<b>member [3]</b> 28/7 169/22 195/7	148/15	<b>moves [2]</b> 144/13 148/21
<b>members [40]</b> 27/16 30/6 34/3	<b>Monday [2]</b> 79/9 80/2	<b>movie [3]</b> 100/12 100/19 100/20
36/16 39/4 46/10 53/3 53/8 55/6	<b>monetary [1]</b> 225/14	<b>moving [4]</b> 103/16 123/5 148/10
55/8 61/9 61/14 64/16 65/2 65/3	<b>monitored [1]</b> 24/17	183/9
71/22 75/2 75/3 83/18 88/13	<b>months [7]</b> 10/3 55/22 129/25	<b>Mr [9]</b> 6/17 31/6 46/6 90/23
88/19 90/20 90/20 90/24 91/19	130/2 132/4 219/15 222/15	105/24 139/9 145/24 174/2 194/21
91/23 92/2 96/25 121/24 133/25	<b>moot [1]</b> 192/11	<b>Mr. [239]</b>
136/7 142/8 142/10 152/19 183/10	<b>morale [1]</b> 203/12	<b>Mr. Avery [53]</b> 3/16 3/17 7/13 7/18
188/4 191/1 191/11 205/3 228/4	<b>more [52]</b> 9/23 22/18 31/11 33/10	8/5 9/13 26/12 43/17 52/23 53/2
<b>memo [3]</b> 40/7 40/11 41/11	35/19 36/3 43/23 51/21 54/15	54/7 58/24 72/13 73/22 82/25
<b>memorandum [5]</b> 107/15 111/2	76/7 86/2 89/18 102/8 109/24	95/14 112/16 119/14 119/18 125/6
111/4 116/9 116/18	114/22 116/8 119/6 119/21 122/12	131/15 133/23 134/8 141/11
<b>memory [1]</b> 173/3	123/3 123/8 123/22 124/21 127/21	141/13 142/2 149/6 166/1 168/21
<b>men [1]</b> 200/18	128/2 130/23 132/25 133/18 135/9	175/1 197/14 200/10 200/17 201/6
<b>Mendoza [2]</b> 139/25 143/6	139/1 147/14 151/9 151/21 152/9	202/8 203/21 204/8 204/10 205/10
<b>mention [2]</b> 141/1 142/25	152/9 161/11 164/1 172/22 175/9	207/22 208/1 208/15 208/25 214/2
<b>mentioned [4]</b> 33/9 58/10 127/19	178/7 185/12 186/17 189/13	215/20 216/21 219/14 219/15
208/15	189/22 197/3 198/23 198/24	221/14 221/22 227/23 229/25
<b>mere [1]</b> 126/11	205/20 206/19 207/10 223/1	230/6
<b>merely [1]</b> 22/11	223/14	<b>Mr. Avery's [23]</b> 6/25 27/15 28/13
<b>messiah [1]</b> 112/18	<b>morning [16]</b> 3/4 3/10 3/13 5/2	28/22 29/5 55/22 115/1 118/9
<b>met [2]</b> 3/19 58/15	19/3 19/25 20/3 20/14 23/9 33/11	124/18 124/22 167/6 193/1 199/11
<b>metes [1]</b> 19/15	44/9 118/24 122/10 124/15 124/21	210/22 214/19 215/12 216/4
<b>method [1]</b> 144/16	191/5	216/10 217/6 217/24 220/18 225/5
<b>Michigan [1]</b> 194/8	<b>most [10]</b> 11/14 25/4 51/25 65/5	227/17
<b>microphones [2]</b> 87/22 88/7	102/1 102/21 150/6 150/9 195/10	<b>Mr. Buting [23]</b> 113/12 114/13
<b>mid [5]</b> 6/12 34/19 34/23 40/22	219/24	116/7 133/23 152/5 162/23 169/20
112/24	<b>mother [1]</b> 165/9	175/15 181/24 206/16 207/9
<b>mid-afternoon [1]</b> 112/24	<b>motion [137]</b> 1/4 4/1 4/4 4/4 4/5	207/16 208/16 208/18 213/14
<b>mid-April [1]</b> 40/22	4/15 7/21 8/1 8/6 31/9 31/9 31/12	226/11 226/12 226/13 227/7
<b>mid-October [1]</b> 34/19	31/19 31/21 44/19 98/15 102/16	227/16 227/25 228/2 228/25
<b>middle [3]</b> 162/6 208/9 209/7	102/17 103/13 103/15 103/18	<b>Mr. Buting's [3]</b> 113/10 156/19
<b>might [19]</b> 65/7 65/14 70/22 80/21	104/2 104/25 105/6 105/15 105/18	226/4
84/15 88/10 88/13 98/13 110/7	105/19 106/1 106/5 106/9 106/13	<b>Mr. Dassey [14]</b> 56/18 57/5 74/3
111/24 129/19 135/1 162/13	110/15 110/15 111/13 111/17	83/15 128/20 157/10 180/25
168/23 179/21 189/1 191/19 219/6	111/23 112/3 113/6 113/9 113/16	200/20 214/4 215/4 215/14 217/11
220/1	114/18 114/25 115/3 117/11	230/11 230/15
<b>mildly [1]</b> 189/15	117/15 118/9 118/11 123/2 123/4	<b>Mr. Dassey's [8]</b> 56/14 214/6 216/4
<b>million [2]</b> 23/5 203/8	123/10 123/13 134/15 138/2	221/25 224/14 224/19 229/8
<b>Milwaukee [5]</b> 43/25 44/2 55/15	142/17 142/20 143/11 143/12	230/22
119/9 136/8	143/14 143/16 143/18 143/19	<b>Mr. Fallon [12]</b> 4/16 36/7 102/13
<b>mind [3]</b> 8/9 113/25 154/22	143/22 143/22 143/24 144/25	105/4 157/15 168/22 178/4 182/25
	145/18 145/20 146/5 146/14	187/14 190/13 194/23 225/25

**M**

**Mr. Fallon's [3]** 30/5 38/7 156/10  
**Mr. Glynn's [3]** 115/7 115/13 116/3  
**Mr. Hermann [3]** 12/4 21/4 41/3  
**Mr. Kratz [37]** 74/13 74/21 75/15  
 75/21 77/22 81/22 82/15 86/15  
 90/7 90/10 92/9 99/22 100/3  
 105/3 106/17 110/6 112/7 112/10  
 112/20 115/16 117/4 119/25  
 120/24 121/21 128/13 128/22  
 139/8 146/1 146/21 147/25 149/10  
 155/8 201/5 203/18 206/21 209/12  
 225/24  
**Mr. Kratz's [4]** 62/17 87/11 104/5  
 179/19  
**Mr. Ledvina [2]** 13/13 14/9  
**Mr. Lenk [2]** 14/7 16/18  
**Mr. Pagel [3]** 24/3 45/7 120/25  
**Mr. Schetter [3]** 13/16 14/8 14/11  
**Mr. Strang [36]** 4/2 30/1 42/22  
 59/12 96/10 96/13 99/24 103/14  
 105/9 107/7 113/9 115/16 117/6  
 118/1 139/12 139/15 139/16 140/1  
 141/2 141/25 143/18 144/1 144/14  
 145/2 146/6 150/14 153/17 154/3  
 154/10 154/23 183/12 199/10  
 202/18 211/21 213/14 228/2  
**Mr. Strang's [5]** 46/14 105/6 113/2  
 142/22 204/3  
**Mr. Vetter [1]** 14/7  
**Mr. Wiegert [1]** 112/25  
**Ms [14]** 19/20 24/15 33/25 43/17  
 47/25 48/16 56/2 64/1 121/24  
 133/4 141/22 201/22 206/24  
 208/13  
**much [22]** 23/13 59/5 103/14  
 120/4 120/20 122/12 123/8 128/24  
 164/1 164/18 167/7 175/16 179/15  
 185/11 188/25 199/19 199/20  
 201/24 201/25 201/25 201/25  
 215/19  
**muddied [1]** 163/5  
**murder [12]** 6/1 6/2 6/3 6/17 7/6  
 83/1 83/4 129/5 136/13 223/8  
 224/21 228/5  
**murdered [1]** 206/3  
**must [4]** 107/12 161/9 194/19  
 226/2  
**mute [2]** 133/16 133/18  
**mutilated [2]** 141/23 227/3  
**my [47]** 3/14 13/25 30/20 30/21  
 31/22 48/6 48/11 54/24 55/6  
 62/18 75/24 85/15 89/11 89/18  
 90/22 92/22 96/1 96/17 103/20  
 108/9 109/16 110/7 110/17 111/3  
 115/7 119/13 123/6 123/9 125/12  
 125/15 125/18 134/4 140/25 142/3  
 144/4 144/18 160/2 173/3 174/6  
 194/17 200/13 206/21 208/6  
 209/23 228/15 232/9 232/13  
**myself [9]** 25/8 41/1 49/14 60/14  
 82/15 89/22 90/1 90/5 104/8

**N**

**nail [2]** 20/9 35/10  
**name [13]** 4/22 4/22 12/3 32/3  
 33/6 45/3 45/3 119/21 120/10  
 120/11 127/19 138/12 189/17  
**named [3]** 15/21 16/12 195/14  
**namely [1]** 230/11  
**names [1]** 33/8  
**narrative [1]** 222/22

**narrow [1]** 89/18  
**nation [1]** 135/24  
**national [6]** 55/11 55/16 55/20  
 100/5 100/8 124/20  
**nationally [2]** 55/18 127/25  
**nature [11]** 50/25 51/14 78/3  
 79/20 104/14 141/6 150/5 193/18  
 196/7 203/20 230/7  
**near [1]** 118/14  
**neat [1]** 187/15  
**necessarily [12]** 18/23 25/2 30/3  
 69/10 71/24 85/4 102/11 125/22  
 125/25 178/17 194/3 207/12  
**necessary [7]** 70/4 123/20 128/19  
 140/21 201/2 209/13 212/19  
**neck [1]** 136/10  
**need [22]** 20/8 22/15 22/18 41/15  
 48/10 61/20 64/4 66/24 70/24  
 106/2 108/8 108/9 108/13 108/14  
 108/15 114/3 154/2 155/8 168/18  
 192/2 200/17 204/4  
**needed [12]** 24/1 24/6 48/20 48/24  
 49/1 49/5 57/20 58/8 70/6 70/20  
 76/2 84/6  
**needles [1]** 151/17  
**needs [7]** 110/18 117/8 128/24  
 140/10 157/19 165/22 210/4  
**negligence [1]** 177/15  
**negligent [1]** 160/22  
**negligently [3]** 158/22 158/23  
 158/24  
**neither [1]** 30/14  
**nephew [1]** 214/4  
**net [1]** 127/25  
**network [1]** 65/13  
**neutral [2]** 131/17 203/16  
**never [7]** 20/5 24/18 140/13 218/5  
 220/3 221/12 222/21  
**new [4]** 6/21 135/12 135/12 223/7  
**newest [2]** 221/15 221/16  
**news [54]** 21/1 53/10 55/12 55/14  
 55/16 55/20 56/6 56/13 57/1  
 57/17 57/23 58/2 58/5 77/21 84/7  
 87/2 87/16 88/5 89/3 89/10 89/17  
 89/19 90/7 90/22 90/25 91/5 91/7  
 91/10 91/20 92/14 93/3 97/12  
 118/20 119/5 119/11 119/15  
 119/22 120/12 120/13 120/15  
 120/24 122/1 124/9 127/17 127/20  
 127/22 128/3 134/6 150/8 150/18  
 151/21 154/7 154/11 155/3  
**newspaper [3]** 43/8 80/15 126/23  
**newspapers [2]** 43/11 43/12  
**next [10]** 3/16 12/17 105/17 106/6  
 106/9 110/10 122/17 155/23  
 206/12 231/6  
**night [3]** 10/12 58/15 67/25  
**nights [2]** 122/20 129/23  
**nilly [3]** 172/7 174/4 177/23  
**nine [1]** 136/7  
**no [134]** 1/5 3/2 8/23 9/1 9/6 9/12  
 9/12 10/14 10/16 10/18 11/22  
 13/14 13/22 20/15 20/18 21/18  
 22/10 24/18 25/22 25/24 26/4  
 31/24 32/7 33/17 33/18 34/15  
 34/17 36/25 37/4 37/13 37/15  
 39/4 39/9 39/15 40/24 41/12  
 42/20 42/24 44/13 52/4 53/22  
 53/23 54/15 55/7 60/7 60/22  
 61/13 61/18 61/18 63/22 66/15  
 66/24 67/17 68/14 72/10 75/23  
 76/12 82/6 82/10 84/22 84/22  
 84/25 85/22 90/5 90/22 93/18

97/2 99/10 100/14 100/14 100/22  
 105/12 106/21 107/8 108/25 109/6  
 110/2 111/11 113/17 115/18  
 117/23 119/11 122/17 127/21  
 129/7 135/24 137/19 142/25 143/1  
 146/13 149/17 151/11 155/14  
 157/2 167/14 167/25 172/22 177/4  
 182/11 186/5 191/6 191/6 191/7  
 191/10 194/18 197/6 197/24  
 201/13 208/2 211/8 216/6 218/2  
 218/8 218/12 218/13 218/17  
 218/21 220/4 220/5 220/12 221/12  
 221/18 221/19 223/1 223/4 223/19  
 223/19 223/21 223/21 224/17  
 225/6 225/10 229/2 229/20  
**No. [1]** 40/8  
**No. 140 [1]** 40/8  
**nobody [2]** 127/6 195/17  
**non [4]** 59/19 61/3 61/4 141/15  
**non-editorial [1]** 141/15  
**non-sworn [2]** 61/3 61/4  
**non-typical [1]** 59/19  
**none [7]** 59/1 89/22 97/12 119/10  
 133/25 167/16 195/13  
**Noon [1]** 103/4  
**nor [4]** 30/14 30/14 59/19 160/8  
**normally [4]** 14/20 21/19 37/12  
 161/5  
**northeastern [1]** 137/12  
**not [318]**  
**note [2]** 4/13 122/24  
**noted [1]** 115/23  
**notes [4]** 89/11 123/7 134/2 232/9  
**noteworthy [1]** 109/6  
**nothing [8]** 42/18 102/15 104/22  
 115/11 129/14 134/8 202/10  
 223/12  
**notice [15]** 112/4 112/14 112/16  
 160/18 162/11 162/19 165/23  
 166/1 168/19 170/2 170/6 172/18  
 173/8 175/14 175/21  
**notices [1]** 87/3  
**notified [1]** 59/16  
**notify [1]** 169/17  
**noting [1]** 141/5  
**notion [2]** 176/9 177/21  
**November [69]** 18/20 18/25 19/2  
 23/12 27/7 27/16 28/2 28/4 28/15  
 29/7 30/8 31/5 31/25 32/12 32/24  
 33/13 45/18 47/3 47/9 48/17  
 50/12 52/2 52/6 52/20 53/14  
 54/17 55/24 61/8 62/5 62/13  
 62/19 62/22 63/9 63/21 64/3  
 65/23 66/21 67/5 67/12 67/16  
 67/18 67/20 72/5 72/13 74/23  
 75/15 78/11 78/14 80/2 89/4 91/7  
 91/25 93/3 95/15 95/17 95/19  
 96/4 97/12 97/14 98/5 99/6 99/19  
 115/1 123/25 137/9 147/8 183/20  
 186/16 188/7  
**November 11 [3]** 89/4 93/3 97/12  
**November 3 [5]** 18/25 61/8 62/5  
 64/3 67/12  
**November 3rd [1]** 47/9  
**November 4 [3]** 27/16 66/21 67/16  
**November 5 [20]** 18/20 23/12  
 28/15 30/8 45/18 62/19 63/9  
 63/21 72/5 74/23 75/15 78/11  
 78/14 95/15 115/1 123/25 147/8  
 183/20 186/16 188/7  
**November 5th [2]** 47/3 62/13  
**November 6 [1]** 31/25  
**November 8 [1]** 67/5

**N**

**November 9 [3]** 72/13 95/19 96/4  
**November's [1]** 135/18  
**now [72]** 5/13 8/8 12/12 15/21  
 16/24 18/21 33/8 34/10 35/14  
 39/1 40/10 46/3 54/1 64/1 68/7  
 72/19 77/22 80/4 81/12 86/11  
 88/2 96/13 97/9 100/15 106/15  
 112/11 120/25 121/11 121/11  
 125/7 127/20 135/9 135/23 136/23  
 146/19 149/20 151/12 153/14  
 154/6 155/16 156/22 157/16 166/1  
 166/25 170/21 175/15 176/14  
 182/5 186/8 193/2 199/15 202/25  
 211/16 214/21 217/10 217/21  
 218/6 218/22 219/4 220/7 220/10  
 220/12 220/14 220/24 221/4 221/8  
 221/12 221/13 221/23 223/7 227/9  
 228/7  
**nowhere [1]** 167/14  
**number [26]** 3/4 11/25 17/16  
 41/16 64/15 64/19 64/20 69/12  
 70/12 74/24 76/12 89/15 103/18  
 103/22 104/1 106/7 128/5 132/4  
 135/1 145/17 145/19 173/3 180/22  
 181/3 207/1 210/7  
**numbers [2]** 60/21 210/9  
**numerous [5]** 55/13 55/15 91/8  
 163/16 220/21  
**nunc [1]** 110/5  
**nutshell [3]** 21/25 22/1 123/17

**O**

**object [2]** 46/4 188/22  
**objected [1]** 214/12  
**objection [22]** 10/24 11/6 29/14  
 31/7 46/7 96/10 98/11 98/21  
 105/12 108/24 109/6 110/6 115/18  
 116/2 116/19 117/2 117/24 118/4  
 146/13 146/18 149/17 211/7  
**objections [1]** 160/4  
**Objective [1]** 141/15  
**obligation [2]** 104/21 149/19  
**observation [2]** 125/8 192/15  
**obtain [3]** 49/18 50/1 208/7  
**obtained [7]** 78/8 86/7 164/11  
 170/20 170/21 173/22 178/20  
**obtaining [3]** 49/13 52/22 93/11  
**obvious [5]** 161/10 193/2 218/22  
 219/20 223/24  
**obviously [12]** 11/20 16/16 116/23  
 120/2 152/2 157/10 171/13 186/23  
 204/17 216/11 216/24 230/8  
**occasion [1]** 215/9  
**occasionally [2]** 77/6 189/9  
**occasioned [1]** 195/15  
**occasions [3]** 50/10 82/10 89/3  
**occurred [7]** 28/14 45/14 126/8  
 129/3 129/24 195/22 227/1  
**October [9]** 18/22 33/22 34/19  
 47/17 123/16 123/18 124/4 124/5  
 136/5  
**October 16 [3]** 123/16 123/18  
 124/5  
**October 16th [1]** 136/5  
**October 31 [1]** 18/22  
**off [12]** 88/6 88/7 99/21 99/22  
 129/20 137/15 177/23 215/12  
 216/1 216/5 217/23 218/17  
**offense [5]** 129/4 197/10 198/25  
 205/2 228/20  
**offenses [2]** 158/7 224/22

**offer [17]** 4/3 43/2 44/12 44/17  
 109/4 132/25 137/17 175/18  
 175/22 200/1 201/3 201/4 201/12  
 206/14 208/3 219/21 224/14  
**offered [8]** 159/7 171/15 181/12  
 181/14 197/8 197/12 199/6 206/19  
**offering [3]** 199/1 201/8 202/7  
**offers [1]** 55/11  
**office [12]** 20/16 55/6 73/8 75/24  
 87/10 87/11 92/20 92/22 94/20  
 94/21 95/3 213/2  
**officer [22]** 5/20 11/8 12/17 27/5  
 27/20 27/22 28/5 32/14 33/1  
 88/22 114/2 119/20 122/19 129/10  
 158/6 163/14 171/7 177/14 177/18  
 184/17 188/10 192/24  
**officers [27]** 27/14 28/20 29/11  
 32/1 32/21 61/1 61/2 61/6 68/17  
 70/3 71/4 98/9 121/8 132/11  
 135/6 159/20 163/11 166/12 168/4  
 171/5 172/7 185/6 185/19 185/22  
 197/20 200/8 205/10  
**offices [1]** 135/19  
**official [5]** 1/23 46/22 193/13  
 232/4 232/19  
**officials [1]** 23/3  
**often [3]** 49/19 89/19 162/8  
**oh [10]** 9/12 26/1 41/14 56/11  
 102/1 206/25 218/9 220/14 223/7  
 227/8  
**okay [44]** 8/20 9/13 9/20 11/25  
 20/8 21/1 23/21 25/16 26/1 26/22  
 31/2 35/19 39/20 40/5 40/9 40/14  
 40/19 41/2 61/2 66/20 69/18  
 69/25 70/3 70/24 79/11 80/4  
 80/24 84/22 86/11 90/18 92/19  
 94/5 94/23 96/21 99/9 106/4  
 110/19 113/12 114/24 154/6 171/4  
 210/13 212/24 223/18  
**old [3]** 74/3 214/4 214/15  
**on [329]**  
**once [9]** 33/11 54/11 66/23 103/15  
 148/4 217/12 218/13 224/25 225/4  
**one [110]** 9/8 9/8 12/9 13/3 17/13  
 22/17 25/5 27/10 28/10 32/6  
 32/12 33/4 33/11 34/8 34/9 34/11  
 35/4 36/2 36/3 36/4 36/8 51/4  
 73/17 75/11 76/12 80/4 82/17  
 83/21 87/6 87/16 92/20 93/2  
 96/23 102/8 103/8 104/22 106/8  
 106/12 106/13 107/22 108/21  
 110/16 111/18 114/22 116/8  
 117/20 119/6 121/5 121/9 121/19  
 122/8 122/24 125/9 125/10 127/17  
 127/22 127/22 127/23 128/2  
 130/11 130/17 130/17 133/3  
 137/19 137/22 137/24 144/3  
 144/16 145/4 145/17 146/20  
 151/25 152/8 152/9 152/9 156/25  
 158/25 164/19 165/15 168/4  
 168/23 168/24 169/8 170/21  
 171/11 173/3 173/10 177/5 177/13  
 178/10 179/18 179/18 180/22  
 183/13 183/15 186/6 186/14 190/3  
 192/24 195/10 199/3 201/20  
 215/17 217/5 219/5 220/6 222/11  
 222/22 222/23 225/25  
**online [1]** 152/3  
**only [40]** 9/8 55/3 55/14 58/21  
 64/12 66/20 70/18 70/22 75/21  
 80/7 89/23 98/7 99/19 101/2  
 104/6 108/21 110/14 111/2 121/16  
 127/12 132/2 135/7 139/15 139/23

140/21 146/7 148/20 148/23 150/4  
 163/19 187/23 193/5 204/19  
 214/19 221/13 223/13 228/5  
 228/12 229/12 230/13  
**open [7]** 52/5 110/24 111/14 114/1  
 114/8 114/11 187/25  
**opened [1]** 227/21  
**opening [1]** 128/16  
**operates [1]** 18/12  
**Operation [1]** 13/12  
**operations [4]** 12/18 42/9 42/10  
 42/14  
**opines [2]** 129/3 129/4  
**opinion [3]** 128/8 197/12 226/7  
**opportunity [6]** 91/16 154/12  
 160/18 170/10 182/11 211/1  
**oppose [2]** 154/17 184/22  
**opposed [5]** 28/5 88/1 143/19  
 179/3 196/11  
**opposition [4]** 105/16 105/21  
 110/21 145/13  
**or [438]**  
**oral [3]** 105/12 150/2 229/4  
**orally [1]** 88/1  
**order [18]** 3/24 40/20 105/15  
 106/4 114/19 116/6 117/10 123/2  
 123/4 132/6 132/10 132/24 133/11  
 133/12 133/14 134/8 156/21 203/2  
**orders [2]** 37/5 191/6  
**ordinarily [5]** 17/9 17/10 131/19  
 189/25 195/23  
**ordinary [4]** 38/16 186/10 186/11  
 186/18  
**organization [2]** 18/13 196/8  
**organized [1]** 11/14  
**orient [1]** 18/20  
**original [5]** 96/17 107/17 110/4  
 143/18 179/19  
**originally [5]** 106/2 220/9 225/2  
 225/23 229/8  
**originals [1]** 26/17  
**other [107]** 13/4 13/15 13/21  
 21/15 27/10 28/11 32/6 33/4 34/3  
 34/8 37/13 42/22 42/24 43/12  
 44/2 44/13 54/21 54/25 55/4 55/5  
 59/7 65/19 67/1 67/2 69/4 69/6  
 70/12 82/17 83/4 83/21 88/16  
 90/4 92/1 96/25 98/8 98/13 99/6  
 102/20 104/9 106/15 108/25 109/7  
 111/25 115/24 115/24 122/6  
 124/10 127/10 130/18 142/13  
 144/4 144/5 144/6 144/17 146/20  
 147/16 148/12 155/17 156/4  
 156/24 157/9 158/8 158/9 160/8  
 161/6 163/10 163/10 163/17  
 164/10 165/5 166/15 168/16  
 168/25 169/14 173/20 173/25  
 178/19 179/18 180/2 180/9 180/9  
 180/25 183/2 183/23 184/13 185/6  
 188/18 191/7 191/9 197/8 197/10  
 198/1 198/15 198/20 199/15 200/8  
 201/13 202/7 205/3 208/4 211/11  
 215/20 215/25 219/18 221/3  
 222/12 224/22  
**others [8]** 7/7 12/14 31/18 37/8  
 65/8 121/6 139/20 190/8  
**otherwise [2]** 30/21 177/10  
**ought [15]** 100/18 104/5 105/2  
 130/13 134/21 137/9 159/16 161/3  
 172/10 175/2 175/8 179/12 184/21  
 186/20 187/4  
**our [34]** 15/1 26/16 47/9 47/11  
 64/19 68/17 68/17 68/17 69/21

**O**  
**our...** [25] 70/8 85/24 94/19 103/20 105/7 134/15 137/7 142/17 149/8 155/15 161/15 162/10 165/25 176/7 176/14 178/25 180/10 210/11 213/17 213/20 214/12 215/5 219/12 231/6 231/7  
**ourselves** [2] 187/3 199/25  
**out** [68] 10/6 16/8 20/1 20/2 20/21 26/6 32/22 42/13 64/13 64/25 67/10 67/21 67/23 68/2 68/8 68/23 69/13 70/18 71/1 71/4 71/6 71/9 71/12 71/20 74/21 77/16 80/20 81/14 86/17 86/21 93/17 95/13 101/24 106/16 107/8 116/7 122/13 123/12 128/24 137/6 137/24 151/1 173/1 178/23 184/12 192/11 195/20 201/1 203/1 203/2 207/10 209/8 209/18 210/11 211/20 211/20 213/5 216/24 217/2 217/22 221/24 222/4 222/12 222/18 222/22 223/21 225/8 230/12  
**outcome** [1] 50/8  
**outlets** [3] 55/16 87/4 87/14  
**outlined** [1] 149/8  
**outlines** [1] 63/12  
**outrageous** [1] 191/13  
**outset** [4] 74/4 74/7 77/11 123/24  
**outside** [6] 41/5 42/2 94/9 126/13 200/22 218/2  
**over** [23] 58/4 63/18 66/3 82/17 94/16 96/5 97/17 99/7 109/19 146/18 151/13 152/22 156/21 183/22 184/1 184/13 185/3 186/5 186/7 191/18 191/25 216/23 216/24  
**overall** [1] 17/2  
**overlap** [1] 3/22  
**overruled** [1] 164/21  
**overseeing** [2] 4/7 183/12  
**oversight** [1] 18/3  
**overstep** [1] 208/3  
**owed** [2] 51/11 53/21  
**own** [12] 60/23 129/13 136/13 137/14 166/18 167/20 176/7 183/7 214/13 221/25 224/7 224/14

**P**  
**P-a-g-e-l** [1] 45/4  
**P-e-t-e-r-s-e-n** [1] 4/24  
**page** [3] 2/2 39/23 81/20  
**PAGEL** [34] 2/8 24/3 29/23 36/16 44/20 45/4 45/7 45/17 46/5 46/8 47/2 49/7 50/10 52/1 52/19 55/3 55/10 57/1 58/20 59/11 68/1 101/8 118/24 120/1 120/25 122/8 123/24 124/14 140/9 187/10 188/6 192/2 196/1 196/16  
**Page's** [2] 195/4 222/2  
**Pagels** [1] 88/24  
**pages** [4] 43/6 115/5 151/2 213/9  
**palatable** [2] 134/13 134/20  
**Palm** [1] 228/8  
**paneling** [1] 216/5  
**paper** [1] 43/6  
**papers** [1] 105/15  
**paragraph** [31] 106/20 106/21 106/23 107/3 107/8 108/2 108/4 108/6 108/8 108/9 108/11 108/13 108/15 108/19 108/21 109/1 109/5 109/7 109/20 109/20 110/2 110/12

110/16 110/22 111/3 111/7 116/13 116/15 116/17 164/20 164/22  
**Paragraph 1** [3] 106/21 108/2 116/15  
**Paragraph 2** [2] 108/4 111/7  
**Paragraph 27** [1] 164/22  
**Paragraph 3** [2] 108/6 110/12  
**Paragraph 4** [1] 108/8  
**Paragraph 5** [4] 107/3 108/9 109/1 109/5  
**Paragraph 6** [10] 108/11 108/19 108/21 109/7 109/20 109/20 110/22 111/3 116/13 116/17  
**Paragraph 7** [1] 108/13  
**Paragraph 8** [1] 108/15  
**parallel** [1] 13/3  
**parameters** [1] 209/9  
**paramilitary** [1] 16/23  
**parcel** [1] 75/8  
**parent's** [1] 225/16  
**part** [30] 35/6 35/12 47/21 47/22 61/16 62/10 65/6 65/8 71/13 71/25 88/24 107/5 110/11 111/8 116/6 117/10 118/23 122/12 130/20 136/18 150/3 167/2 187/7 187/12 196/3 197/19 202/23 205/2 207/25 219/7  
**participate** [3] 70/4 147/13 147/15  
**participated** [3] 5/24 7/13 124/11  
**participating** [1] 36/14  
**participation** [4] 47/24 128/23 129/21 190/22  
**particular** [30] 4/15 29/14 29/24 53/7 59/22 60/10 62/12 68/20 68/21 68/22 69/13 69/17 80/23 81/8 103/18 105/6 113/9 120/11 138/20 153/9 157/11 160/19 170/19 174/19 174/22 178/20 187/23 190/21 191/19 198/25  
**particularly** [7] 39/23 81/9 123/22 131/2 141/8 186/21 202/6  
**parties** [30] 3/5 3/21 3/24 102/10 102/22 103/21 113/8 114/20 117/11 123/11 149/12 149/13 151/24 153/25 156/17 157/9 157/12 157/24 162/19 169/18 180/21 180/22 181/20 195/15 199/3 209/15 209/23 211/18 212/14 229/13  
**partly** [2] 115/22 115/23  
**parts** [5] 66/3 68/22 109/15 155/25 183/15  
**party** [12] 105/18 155/24 157/7 161/21 166/5 176/12 180/4 180/5 180/24 189/1 189/2 201/20  
**passed** [1] 29/18  
**past** [3] 163/21 168/5 169/23  
**Patrick** [1] 1/11  
**patrol** [12] 5/7 14/20 14/23 14/25 16/3 16/4 16/9 42/12 42/13 42/14 71/1 188/18  
**patrolmen** [1] 16/7  
**pattern** [1] 201/16  
**paused** [1] 14/18  
**pauses** [1] 224/4  
**pay** [1] 23/20  
**paying** [1] 23/21  
**PDA** [1] 228/8  
**penalties** [1] 228/19  
**penalty** [11] 135/22 135/24 136/25 137/2 137/6 137/15 137/23 138/4 138/7 142/23 222/10  
**pending** [3] 23/1 54/25 95/13

**people** [38] 11/15 17/16 22/11 26/7 30/15 30/18 30/23 32/8 32/9 34/9 39/9 42/2 42/5 42/5 61/4 66/11 68/21 70/3 74/24 75/6 75/11 80/5 81/19 92/5 92/12 94/7 99/8 109/21 119/24 136/1 166/23 186/1 194/25 196/10 203/14 219/14 219/16 221/1  
**people's** [1] 217/20  
**per** [3] 50/3 180/15 191/7  
**perceive** [1] 149/11  
**perceived** [1] 22/23  
**percent** [1] 134/5  
**perfect** [1] 225/10  
**Perfectly** [1] 192/23  
**perform** [1] 42/2  
**performed** [1] 196/25  
**perhaps** [15] 7/7 50/11 150/8 163/10 179/2 192/19 192/20 192/21 193/25 208/6 208/10 208/20 211/22 212/6 227/16  
**period** [6] 34/2 45/22 70/19 71/2 135/25 219/17  
**permissible** [2] 198/20 205/18  
**permission** [1] 110/25  
**permit** [4] 123/21 153/16 153/17 188/3  
**permitted** [2] 98/18 198/6  
**perpetrator** [1] 80/8  
**person** [45] 1/18 3/14 6/2 8/21 12/1 12/3 14/1 16/11 17/22 22/6 25/17 25/17 34/9 47/10 47/18 49/1 52/18 56/4 59/15 65/17 66/12 66/19 76/19 77/9 77/13 77/16 80/11 80/21 80/21 80/23 81/3 81/8 94/7 95/10 95/18 96/3 96/22 97/18 111/25 129/12 188/8 193/6 204/22 229/21 230/5  
**personal** [6] 74/2 76/6 76/10 80/24 81/2 226/6  
**personally** [22] 5/24 6/9 6/15 7/14 25/9 27/6 33/12 33/14 45/11 58/1 61/8 61/10 61/12 67/10 67/21 68/9 68/11 68/14 70/22 71/24 100/11 122/17  
**personnel** [12] 18/5 29/20 36/14 36/24 37/7 38/9 60/18 68/18 71/18 94/1 185/21 195/14  
**persons** [8] 47/5 50/2 77/2 77/24 80/18 80/19 140/12 141/4  
**perspective** [1] 105/23  
**pertained** [1] 52/17  
**pertaining** [1] 60/10  
**pertains** [1] 31/8  
**pertinent** [2] 81/6 81/9  
**pervades** [1] 196/7  
**PETERSEN** [20] 2/3 4/12 4/14 4/18 4/23 5/3 25/12 29/16 31/13 35/12 45/24 46/24 122/15 128/23 187/9 191/1 194/11 194/25 195/6 196/15  
**Petersen's** [2] 191/4 195/3  
**phone** [8] 52/25 53/7 67/11 90/19 91/10 92/10 100/5 228/9  
**phonetic** [1] 127/18  
**photo** [2] 43/11 213/9  
**photocopying** [1] 43/10  
**photographs** [2] 207/24 208/12  
**phrase** [3] 68/11 86/24 175/5  
**phrased** [1] 101/24  
**physical** [13] 165/4 166/14 167/19 173/20 174/1 178/11 178/19 182/8 187/20 206/10 219/3 221/3 228/13  
**physically** [4] 20/10 69/18 69/19

P		
<p>physically... [1] 213/7  pick [3] 135/1 146/25 205/11  picking [1] 195/24  picture [2] 85/13 85/14  pictures [2] 42/5 200/18  piece [2] 174/5 219/5  pieces [2] 85/14 164/5  Pilot [1] 228/8  pit [1] 32/22  pitch [1] 201/9  place [15] 87/13 94/12 94/15  94/18 97/13 97/21 98/6 99/6  142/25 143/1 147/11 149/22  193/13 197/24 200/25  placed [2] 96/15 215/5  places [1] 220/21  plain [1] 178/3  PLAINTIFF [1] 1/4  plan [6] 140/20 211/2 223/19  223/19 223/21 223/21  plane [2] 65/24 66/20  planes [1] 67/2  planned [2] 223/8 224/3  planning [1] 223/12  plans [1] 120/17  planted [13] 156/8 156/13 157/25  158/9 158/14 169/10 170/6 171/4  173/5 174/5 175/20 175/24 181/5  planting [3] 157/14 169/23 175/1  play [8] 23/23 24/14 26/2 130/24  151/21 167/7 183/23 205/7  players [1] 203/5  playing [1] 137/6  plays [1] 88/2  pleading [4] 105/20 106/13 206/21  206/23  please [6] 3/6 4/21 4/21 45/2 45/2  150/17  plus [2] 75/9 122/22  point [35] 5/5 10/6 21/2 21/12  22/7 22/19 31/7 52/1 54/14 54/16  62/7 65/22 77/21 92/21 106/19  108/12 110/20 111/12 112/13  112/17 130/1 133/6 151/23 157/11  159/12 160/7 161/15 162/10  162/21 167/12 174/13 179/14  182/6 185/23 230/12  points [3] 116/7 190/19 207/10  police [16] 71/7 136/8 167/2 167/8  169/3 169/9 169/22 170/12 170/16  172/7 177/9 177/13 177/23 204/20  205/9 229/9  policies [2] 17/23 191/9  policy [20] 17/7 54/11 54/24 55/2  55/7 55/7 94/12 94/15 94/18  97/13 97/15 97/15 98/6 99/7  161/10 183/25 184/8 188/7 188/11  191/4  politicians [2] 136/24 138/3  politicized [2] 137/2 137/5  polls [1] 137/10  pool [2] 122/4 191/12  poor [2] 215/18 217/25  poorly [1] 189/15  portion [3] 30/4 98/12 103/10  portions [2] 114/4 116/3  position [27] 13/3 105/6 107/21  107/23 107/24 113/8 113/19 117/5  123/17 143/21 143/24 144/4  144/19 145/9 145/12 146/4 148/17  148/22 149/9 149/13 149/15</p>	<p>150/13 177/25 200/3 202/6 202/9  229/13  possession [8] 51/22 52/7 52/17  72/17 73/21 89/6 118/12 121/14  possibility [6] 93/19 93/23 142/18  162/2 162/14 218/25  possible [16] 28/24 32/11 33/24  39/11 39/13 59/5 93/15 97/11  129/6 138/23 162/3 162/12 162/13  162/20 183/3 211/15  possibly [6] 7/20 8/8 66/12 81/4  104/19 166/25  post [13] 68/15 68/25 69/5 69/9  69/10 69/12 69/15 69/18 70/7  70/17 71/5 71/10 71/20  posted [1] 225/4  poster [5] 136/23 136/23 142/4  142/5 222/9  potential [6] 22/25 58/23 125/21  159/19 184/14 185/17  potentially [1] 190/1  power [6] 17/25 18/2 132/9 146/18  148/16 149/3  practical [2] 152/23 160/7  practice [4] 162/22 188/11 192/20  202/25  preclude [1] 145/3  precluded [3] 153/2 153/4 198/3  predecessor [1] 119/13  preface [1] 144/18  prefer [5] 117/1 130/6 133/3 135/4  152/22  preference [3] 117/11 133/10  144/18  preferred [1] 124/4  prejudice [7] 58/24 133/5 133/5  141/10 198/11 199/3 201/19  prejudicial [8] 51/8 59/3 59/6  115/12 117/7 139/2 141/16 190/2  prelim [2] 168/25 169/13  preliminary [4] 46/4 79/25 106/8  196/18  premature [1] 206/18  preparation [1] 123/21  prepare [3] 114/19 162/19 183/7  prepared [7] 44/12 107/15 114/11  143/5 153/11 160/13 232/8  preposterous [1] 218/6  prerogative [1] 145/2  prescribed [1] 140/24  present [15] 11/2 23/11 36/24  55/3 103/6 117/12 162/20 163/8  177/2 177/3 182/4 188/20 192/18  201/23 230/20  presentation [4] 128/12 159/7  159/15 193/18  presented [5] 117/21 118/22  131/20 167/11 213/23  presenting [2] 182/20 188/12  presents [1] 163/8  preservation [1] 193/12  preserve [1] 132/14  preserved [1] 172/4  president [1] 198/11  press [28] 50/11 52/8 52/22 53/13  53/15 55/4 56/21 82/24 83/3  83/13 83/19 84/3 84/6 91/6 92/16  101/9 101/10 120/20 121/19 140/8  140/11 140/18 141/7 218/15  220/25 222/3 222/13 223/18  pressing [1] 223/23  presumed [2] 101/13 141/5  pretrial [28] 3/4 46/14 46/15 59/5</p>	<p>98/12 98/14 105/8 107/6 139/14  139/18 140/4 144/7 144/20 154/8  157/20 160/10 161/4 161/10  161/19 161/19 161/21 162/21  171/12 175/22 180/3 180/17  192/20 208/7  pretty [9] 5/12 116/16 128/15  133/11 174/18 187/2 190/10 210/9  219/20  prevail [2] 81/10 200/4  prevent [5] 59/5 88/18 164/5  164/7 167/18  prevents [2] 143/8 145/12  previous [7] 20/1 29/15 96/11  96/14 210/19 228/16 228/16  previously [6] 109/1 197/23 198/5  198/9 208/15 228/21  primarily [3] 41/24 41/25 127/15  primary [2] 19/13 21/13  principal [4] 104/1 138/6 138/16  190/7  print [1] 85/20  prior [24] 6/21 47/2 52/1 57/1  62/19 63/20 63/22 80/16 93/3  93/6 110/24 151/19 189/21 198/2  198/12 198/16 198/17 198/17  198/22 199/12 200/2 209/22 210/3  228/17  prison [17] 7/22 9/14 9/20 63/3  63/15 197/6 200/18 200/19 200/21  200/24 202/8 203/11 203/21 204/9  224/6 225/8 225/13  prisoner [1] 191/25  Prisoners [1] 116/11  privacy [1] 81/9  private [1] 81/3  privilege [3] 125/16 125/23 125/24  pro [1] 110/5  probable [3] 128/20 197/3 214/9  probably [27] 18/2 20/3 26/24  35/5 36/9 58/4 62/14 78/8 79/9  79/14 80/2 82/18 89/22 91/23  91/25 109/5 111/4 116/21 119/7  122/11 136/17 136/19 137/17  152/9 182/5 210/11 224/15  probative [2] 164/25 165/7  problem [9] 26/20 112/18 133/2  147/18 151/10 151/11 162/9  189/13 190/10  problems [1] 118/13  procedural [1] 164/4  proceed [5] 3/25 118/7 133/7  146/19 148/4  proceeding [2] 74/6 74/8  proceedings [7] 1/21 36/21 37/7  126/24 132/14 231/13 232/13  process [9] 58/25 125/13 126/2  130/22 130/24 131/6 139/24 185/5  190/23  processed [3] 178/13 178/14  178/15  processing [3] 109/18 116/24  185/16  produce [3] 137/11 169/17 172/3  produced [3] 136/9 136/10 136/11  production [1] 189/4  products [1] 115/2  proffered [1] 164/25  profile [3] 46/18 66/10 227/23  programs [1] 68/22  progress [1] 24/17  prohibited [1] 181/15  Project [1] 142/5</p>



**P**  
**prominently** [1] 122/14  
**promise** [1] 101/3  
**prompting** [1] 123/11  
**pronouncing** [1] 33/6  
**proof** [2] 166/4 175/3  
**proper** [6] 130/10 134/7 199/15 201/7 201/8 226/15  
**properly** [6] 95/24 97/6 98/1 98/4 104/10 166/8  
**property** [23] 22/13 62/23 63/5 67/11 67/22 74/20 74/25 75/13 75/16 78/19 79/18 88/17 95/21 96/22 96/24 120/5 120/8 193/1 225/4 225/14 225/17 225/18 228/10  
**proposal** [2] 138/10 138/17  
**proposed** [4] 117/10 123/16 138/24 206/19  
**proposes** [1] 201/11  
**proposition** [2] 173/18 180/16  
**prosecuting** [2] 121/13 173/13  
**prosecution** [14] 5/25 6/24 7/14 10/23 26/11 38/22 128/3 130/1 132/8 138/5 141/12 213/11 222/1 222/7  
**prosecutor** [5] 3/9 3/12 54/18 119/3 223/7  
**prosecutors** [2] 1/14 142/11  
**protection** [1] 104/16  
**protections** [1] 141/14  
**prove** [2] 170/13 197/9  
**proved** [1] 7/19  
**proven** [3] 101/13 131/21 215/2  
**provide** [21] 24/11 50/5 50/7 50/24 57/21 84/19 85/24 107/17 113/1 143/7 147/20 151/8 162/19 165/22 170/2 172/18 173/8 175/14 175/20 209/13 226/16  
**provided** [21] 29/20 43/3 43/14 48/7 51/2 51/9 51/13 51/17 51/19 51/23 58/16 58/17 76/23 87/5 107/16 154/12 184/16 204/21 210/25 214/5 227/24  
**provides** [2] 37/22 43/16  
**providing** [9] 31/16 78/9 85/5 85/23 87/16 91/18 105/7 117/24 125/2  
**province** [1] 229/15  
**prudent** [1] 23/14  
**psychopath** [1] 129/12  
**public** [1] 9/3  
**public** [75] 39/4 39/9 41/6 47/24 48/19 48/22 49/10 50/8 50/13 50/14 50/21 51/10 51/13 52/13 52/15 53/18 53/22 56/7 56/14 57/4 57/21 57/25 61/24 62/1 62/10 62/21 64/4 64/13 64/16 64/18 64/23 64/25 66/10 73/7 73/17 73/19 73/20 74/6 74/11 74/13 74/17 76/3 76/23 80/20 81/22 90/20 92/7 101/12 104/14 108/1 108/7 109/4 109/8 109/15 116/4 119/1 120/14 121/12 121/15 123/5 123/9 128/11 131/13 132/6 132/17 132/20 132/22 133/12 135/6 140/22 140/23 186/24 203/10 218/8 222/8  
**public's** [6] 48/10 48/14 49/1 49/5 61/21 222/6  
**publicity** [32] 44/5 46/14 46/15 59/6 98/12 98/14 102/5 105/8

123/22 123/23 124/8 124/19 126/18 126/19 126/20 127/10 127/12 139/2 139/4 139/14 139/18 140/5 142/13 143/8 144/7 144/20 145/6 150/4 150/5 150/24 154/8 155/2  
**publicly** [13] 65/20 73/5 80/6 89/7 89/21 90/8 92/10 104/13 104/18 104/23 108/3 108/5 124/14  
**pulled** [1] 151/1  
**punch** [2] 221/10 221/11  
**pure** [2] 216/9 221/3  
**purely** [3] 127/19 128/6 229/20  
**purpose** [12] 81/12 85/4 140/15 197/12 198/6 201/7 201/9 201/13 214/11 218/13 222/2 225/13  
**purposes** [5] 48/22 51/4 140/8 153/23 230/23  
**pursuant** [1] 29/7  
**pursues** [1] 201/4  
**pushing** [1] 136/24  
**put** [28] 11/17 30/10 86/17 86/21 94/12 94/15 94/18 97/13 109/20 124/17 124/22 125/11 126/14 130/13 135/13 145/5 151/2 153/5 166/3 169/23 170/9 172/16 176/22 177/24 189/15 207/7 213/22 219/12  
**puts** [1] 208/1  
**putting** [2] 98/6 99/6  
**pyramid** [1] 15/19

**Q**  
**quarter** [2] 20/3 43/22  
**question** [45] 8/8 9/6 16/21 31/23 38/8 41/14 62/17 62/18 84/22 85/15 89/18 96/2 96/11 96/12 96/14 96/17 96/18 96/20 98/5 98/18 98/19 98/21 99/2 99/16 99/17 124/7 146/20 148/15 153/13 157/6 157/18 160/11 162/15 163/6 168/23 170/3 170/11 172/2 179/7 186/8 194/17 201/24 202/18 214/23 215/23  
**questionable** [1] 165/14  
**questioned** [1] 217/18  
**questioning** [2] 29/15 29/24  
**questions** [30] 30/3 30/21 35/10 36/7 36/9 40/6 42/19 46/4 52/21 53/12 53/18 53/19 59/10 84/15 84/18 85/5 85/22 101/3 101/8 102/4 119/24 143/17 147/5 199/23 206/6 206/9 206/10 222/24 223/17 223/24  
**quicker** [1] 48/8  
**quite** [5] 39/1 113/24 149/21 210/7 210/20  
**quote** [1] 96/11  
**quotes** [1] 170/19

**R**  
**racial** [1] 163/16  
**radical** [1] 164/1  
**radio** [1] 43/8  
**raise** [3] 66/10 126/6 210/11  
**raised** [3] 141/24 142/14 167/3  
**raises** [1] 199/22  
**ran** [2] 70/9 77/17  
**rank** [5] 11/15 11/18 12/6 61/1 203/2  
**ranking** [2] 12/17 71/22  
**ranks** [2] 16/24 38/14  
**rape** [1] 161/7

**rapidly** [1] 135/17  
**rather** [15] 57/16 87/7 104/7 108/1 109/20 135/16 151/16 165/10 184/25 185/15 186/12 192/13 193/21 205/21 218/6  
**rating** [1] 122/1  
**Rav** [2] 28/7 32/15  
**raw** [1] 151/12  
**re** [1] 219/11  
**re-searched** [1] 219/11  
**reach** [7] 62/1 81/17 111/11 171/20 171/21 210/1 210/2  
**reached** [1] 82/9  
**read** [13] 84/24 85/2 96/17 96/18 98/25 99/2 140/1 144/5 146/9 190/14 190/14 208/16 229/5  
**reading** [8] 80/15 84/9 86/8 146/13 149/18 157/23 169/9 175/16  
**reads** [1] 148/2  
**ready** [1] 154/4  
**real** [4] 23/11 194/6 217/19 217/20  
**reality** [3] 22/4 137/8 221/10  
**realized** [2] 62/14 64/4  
**really** [20] 20/19 30/22 89/18 129/17 154/25 155/25 163/3 165/21 172/15 172/17 180/20 182/4 184/5 185/11 186/19 188/24 203/13 204/22 204/25 223/4  
**reappear** [1] 225/19  
**reason** [21] 9/6 22/1 22/23 29/15 95/25 97/20 99/13 105/19 110/3 112/10 113/17 114/15 161/11 171/21 172/10 189/10 193/5 194/9 204/11 205/18 205/21  
**reasonable** [14] 8/16 123/12 155/5 163/7 167/10 167/19 171/10 176/10 176/13 176/19 176/23 177/6 178/2 205/9  
**reasonableness** [1] 205/25  
**reasoned** [5] 159/2 170/18 170/19 174/11 174/23  
**reasoning** [2] 21/23 187/8  
**reasons** [10] 33/12 50/24 51/3 76/12 193/23 197/22 198/20 208/4 225/21 230/25  
**rebuttable** [1] 176/16  
**rebuttal** [3] 188/5 193/25 229/1  
**recall** [31] 20/24 31/22 32/16 32/24 34/21 39/6 39/7 39/14 40/11 45/17 52/11 52/20 53/14 53/17 54/4 55/5 56/6 56/16 56/20 57/7 79/10 83/20 90/16 90/17 101/10 104/2 121/7 122/9 124/1 169/1 173/1  
**receive** [4] 50/4 105/11 117/18 154/14  
**received** [11] 47/10 47/14 48/4 48/24 53/2 55/10 55/13 55/15 87/16 100/17 150/4  
**receiving** [5] 52/21 52/25 53/5 91/9 117/14  
**recent** [1] 163/13  
**recently** [3] 72/7 107/10 229/9  
**recess** [2] 103/4 155/21  
**recognition** [1] 141/14  
**recognize** [3] 141/6 157/6 210/18  
**recognizes** [1] 139/16  
**recognizing** [3] 142/17 217/10 218/21  
**recollection** [5] 35/24 39/25 123/6 123/7 123/9  
**reconsider** [2] 224/25 225/22

<b>R</b>	82/16 82/21 90/25 92/15 101/16 101/21	139/12 140/21 145/14 145/16 148/25 149/16 149/23 149/25 152/8 152/17 154/17 187/2 187/18 207/6 207/14
<b>reconsideration [1]</b> 213/16	<b>releases [1]</b> 13/24	<b>requested [4]</b> 3/25 6/15 45/11 143/19
<b>record [12]</b> 3/5 3/19 4/22 45/3 103/6 123/9 139/3 143/21 151/14 155/23 213/7 228/18	<b>relevance [11]</b> 11/4 31/8 159/22 160/13 160/16 162/12 167/21 196/24 197/6 199/5 210/6	<b>requesting [5]</b> 55/16 55/17 148/20 156/1 188/14
<b>recorded [2]</b> 87/25 217/16	<b>relevancy [1]</b> 197/1	<b>requests [4]</b> 55/13 100/9 164/14 189/4
<b>recording [1]</b> 210/22	<b>relevant [11]</b> 98/13 107/12 113/1 166/10 172/12 198/19 205/8 207/19 208/2 208/5 208/13	<b>require [4]</b> 11/20 113/21 170/23 179/10
<b>records [2]</b> 13/24 89/11	<b>reliability [8]</b> 8/24 166/11 182/18 196/4 206/9 206/11 214/23 215/23	<b>required [3]</b> 157/8 168/1 168/2 <b>requirements [2]</b> 156/5 181/1
<b>recusal [2]</b> 147/12 185/3	<b>reliable [5]</b> 121/17 214/3 214/7 214/11 217/8	<b>requires [3]</b> 106/19 107/5 171/12
<b>recusing [2]</b> 147/8 186/12	<b>relied [1]</b> 123/7	<b>requiring [1]</b> 186/18
<b>redact [1]</b> 109/25	<b>relief [2]</b> 134/15 188/13	<b>reserving [1]</b> 154/16
<b>redacted [16]</b> 108/3 108/5 108/7 108/8 108/10 108/11 108/13 108/16 108/19 108/22 109/16 109/20 110/1 110/3 116/22 117/2	<b>relinquish [2]</b> 148/7 149/6	<b>resolve [6]</b> 112/22 192/6 192/10 209/19 209/24 210/5
<b>redacting [1]</b> 108/1	<b>reluctant [1]</b> 142/25	<b>resolved [1]</b> 111/24
<b>redefined [1]</b> 187/17	<b>rely [3]</b> 185/19 185/22 192/5	<b>respect [8]</b> 3/23 44/17 143/16 151/19 156/14 159/7 192/12 202/19
<b>redirect [6]</b> 2/6 2/11 37/17 37/19 101/1 101/6	<b>relying [1]</b> 220/14	<b>respond [11]</b> 89/4 89/20 90/7 92/10 152/18 152/24 154/4 154/14 156/19 172/17 189/3
<b>reduce [5]</b> 43/9 113/7 213/17 214/13 225/22	<b>remain [5]</b> 67/21 111/5 115/25 117/8 185/9	<b>responded [2]</b> 48/5 93/4
<b>reduced [1]</b> 43/10	<b>remained [1]</b> 50/2	<b>response [13]</b> 38/7 62/16 105/1 110/17 119/24 155/9 156/10 165/25 186/19 197/18 204/16 208/17 218/20
<b>reducing [1]</b> 225/1	<b>remaining [2]</b> 102/14 195/7	<b>responses [2]</b> 106/3 222/23
<b>reduction [2]</b> 210/14 228/23	<b>remains [2]</b> 116/8 136/4	<b>responsibility [14]</b> 16/2 21/14 23/18 45/12 45/19 127/13 142/10 144/23 147/9 152/2 183/22 184/12 185/4 195/21
<b>references [2]</b> 121/10 127/16	<b>remarkable [1]</b> 129/17	<b>responsible [5]</b> 69/16 127/12 137/4 204/23 228/7
<b>referendum [10]</b> 135/22 136/1 136/25 137/8 137/15 138/4 138/7 138/10 138/19 142/23	<b>remarks [1]</b> 163/3	<b>rest [1]</b> 116/22
<b>referred [4]</b> 16/5 47/4 194/2 194/3	<b>remedies [2]</b> 148/9 190/20	<b>resting [1]</b> 136/3
<b>referring [6]</b> 28/19 62/22 91/7 93/25 94/2 94/3	<b>remedy [19]</b> 131/9 131/9 131/11 131/25 139/13 139/16 139/19 139/20 140/3 140/6 142/19 142/22 143/4 143/7 162/9 189/12 190/9 194/7 194/19	<b>restore [1]</b> 39/25
<b>refers [1]</b> 40/2	<b>remember [14]</b> 21/8 35/7 35/14 36/2 40/17 52/8 56/23 77/20 77/25 79/11 89/12 90/11 120/25 138/12	<b>restriction [1]</b> 135/5
<b>refiled [1]</b> 109/25	<b>Remiker [15]</b> 16/12 16/14 27/18 27/24 28/8 28/16 28/23 29/8 31/2 32/2 33/10 192/23 193/9 195/18 203/3	<b>result [3]</b> 124/16 179/21 179/23
<b>refused [1]</b> 55/19	<b>reminder [1]</b> 101/11	<b>resulted [2]</b> 7/9 7/11
<b>regard [4]</b> 107/13 162/9 192/7 204/4	<b>remoteness [1]</b> 210/5	<b>resume [1]</b> 155/16
<b>regarding [16]</b> 52/12 52/22 52/24 53/13 54/4 56/1 58/11 101/24 106/11 114/19 145/6 160/22 193/11 193/11 196/19 209/22	<b>remove [2]</b> 109/19 131/25	<b>retracted [2]</b> 220/24 221/4
<b>Regardless [1]</b> 78/4	<b>removed [3]</b> 78/18 78/21 78/22	<b>retracts [1]</b> 221/13
<b>regional [2]</b> 55/11 100/6	<b>renew [1]</b> 31/6	<b>retrained [1]</b> 215/16
<b>regularly [1]</b> 189/8	<b>rent [1]</b> 65/21	<b>return [1]</b> 225/15
<b>reiterate [1]</b> 118/11	<b>reopened [1]</b> 68/4	<b>revealed [1]</b> 222/1
<b>reiterated [1]</b> 231/1	<b>repeat [1]</b> 200/5	<b>reveals [1]</b> 104/22
<b>reiterating [2]</b> 55/6 142/15	<b>repeated [1]</b> 128/22	<b>reversed [2]</b> 179/23 180/13
<b>reject [1]</b> 142/20	<b>repeatedly [1]</b> 220/20	<b>review [2]</b> 118/18 212/17
<b>rejected [1]</b> 226/21	<b>repeating [1]</b> 200/15	<b>reviewed [1]</b> 229/16
<b>rejects [1]</b> 178/23	<b>repetitive [1]</b> 190/15	<b>reviewing [2]</b> 25/17 26/2
<b>relate [4]</b> 118/14 150/9 151/22 179/17	<b>replace [1]</b> 84/3	<b>revise [1]</b> 138/17
<b>related [11]</b> 5/25 23/8 46/15 53/18 56/2 106/15 140/11 168/6 175/6 176/1 182/3	<b>reply [1]</b> 154/20	<b>revised [1]</b> 138/8
<b>relates [7]</b> 31/20 46/18 111/2 156/15 176/5 182/7 182/9	<b>report [14]</b> 12/14 14/8 14/11 14/12 15/5 15/7 15/13 15/15 16/18 24/18 57/17 60/11 60/13 134/1	<b>Richardson [9]</b> 157/15 157/16 161/16 164/1 164/1 164/22 165/20 171/17 180/18
<b>relating [8]</b> 42/22 43/17 106/5 111/25 118/10 133/4 175/19 206/13	<b>reported [8]</b> 1/22 18/24 32/13 59/18 64/2 127/21 129/1 232/6	<b>right [168]</b> 3/14 3/18 4/9 5/12 5/15 9/19 12/4 12/9 13/6 14/7 14/8 14/14 15/12 15/24 16/5 16/15 18/25 20/13 21/7 21/12 23/16 24/8 24/20 25/11 25/15 26/8 26/19 26/25 27/4 27/8 27/14 28/13 28/20 32/12 33/6 33/23 34/23 35/14 37/11 37/13 38/6 38/24 39/23 40/10 41/23 42/15 42/21 44/22 53/12 56/16 60/1 62/3 64/1 64/21 67/6 67/8 67/9 68/7 68/24 70/2 71/14 72/5 73/16 78/4 79/16 81/7 81/12 82/2 82/18
<b>relation [1]</b> 4/3	<b>reporter [8]</b> 1/23 20/23 21/9 73/8 96/17 134/2 232/5 232/19	
<b>relations [2]</b> 46/17 46/21	<b>reporters [1]</b> 84/23	
<b>relationships [2]</b> 207/20 209/2	<b>reporting [2]</b> 141/3 141/15	
<b>relative [6]</b> 36/23 37/6 102/16 160/6 160/19 192/8	<b>reports [9]</b> 12/12 24/25 26/8 26/24 43/18 116/2 126/23 138/1 212/17	
<b>relatively [1]</b> 75/8	<b>represent [2]</b> 3/17 119/19	
<b>relatives [2]</b> 47/12 51/12	<b>representation [1]</b> 123/1	
<b>release [12]</b> 7/21 8/6 8/17 57/9 63/2 63/15 82/6 82/7 82/19 82/19 140/18 140/22	<b>representatives [1]</b> 121/8	
<b>released [21]</b> 8/5 10/1 53/10 53/10 53/18 57/8 57/11 57/13 57/14 57/16 57/25 59/2 76/2 82/1 82/14	<b>representing [1]</b> 3/16	
	<b>reputation [1]</b> 226/4	
	<b>request [23]</b> 24/8 30/10 36/15 49/9 103/22 104/11 110/21 110/24	

**R**

**right...** [99] 83/7 84/2 85/4 85/18  
88/25 95/15 97/9 98/20 99/4  
99/16 101/4 102/6 103/2 103/16  
105/3 105/14 107/20 109/9 110/9  
110/19 111/1 111/19 111/20  
111/23 113/5 117/9 118/7 120/25  
124/18 124/22 125/6 125/12 126/2  
126/6 126/7 126/10 130/9 130/10  
130/15 131/7 132/1 132/1 132/12  
132/13 132/20 139/8 142/3 143/13  
144/8 144/21 145/25 146/21  
147/25 148/8 149/2 149/5 149/5  
149/6 149/10 149/24 150/22  
150/25 151/5 151/15 152/1 152/11  
153/8 153/20 154/16 154/18 155/7  
157/23 162/23 166/6 166/10  
168/22 170/21 172/13 177/2 177/3  
179/24 180/19 182/5 183/6 183/9  
188/6 196/17 199/10 201/24  
206/12 207/2 208/18 209/11  
210/10 212/2 212/20 213/12  
225/24 229/3  
**rightly** [1] 105/2  
**rights** [13] 124/25 125/9 125/21  
126/4 126/6 126/12 130/9 130/16  
130/19 130/20 131/1 132/15 133/9  
**ripped** [1] 216/3  
**risk** [9] 124/18 124/22 197/21  
199/2 199/2 225/6 225/11 225/18  
228/19  
**Rivers** [1] 71/7  
**road** [3] 14/21 16/8 68/4  
**roads** [1] 16/4  
**rocket** [1] 63/5  
**Rohrer** [1] 121/4  
**role** [10] 23/22 24/14 25/18 26/3  
31/15 31/17 122/17 151/21 183/24  
199/17  
**room** [5] 85/17 137/20 152/21  
169/4 200/23  
**rope** [3] 218/10 218/10 218/12  
**rough** [1] 18/8  
**roughly** [4] 5/10 35/22 35/23  
60/21  
**routinely** [1] 37/9  
**row** [3] 67/21 122/21 129/23  
**RPR** [2] 1/22 232/19  
**rudimentally** [1] 174/9  
**rule** [7] 140/24 142/12 152/15  
153/11 176/22 180/8 180/10  
**Rule 3.6** [2] 140/24 142/12  
**rules** [3] 157/18 162/17 189/11  
**ruling** [3] 107/6 183/7 210/19  
**rulings** [1] 208/7  
**run** [10] 11/10 23/19 71/14 77/6  
77/10 85/25 122/12 169/4 191/5  
191/24  
**run-throughs** [1] 169/4  
**running** [3] 9/18 10/9 128/17

**S**

**S-c-h-e-t-t-e-r** [1] 12/22  
**safe** [1] 191/8  
**safeguard** [1] 94/5  
**said** [28] 13/16 50/24 61/16 70/10  
70/24 78/5 79/15 79/22 82/6 89/6  
89/21 96/13 115/10 116/1 116/17  
129/24 138/7 138/16 146/6 163/17  
164/13 164/18 165/24 169/21  
200/17 206/1 229/9 232/13  
**salted** [2] 120/23 121/9

**Salvage** [6] 22/12 22/20 45/18  
67/11 67/22 120/5  
**same** [22] 10/9 34/4 34/12 43/3  
78/13 81/20 87/17 106/16 110/12  
138/21 152/5 156/7 182/1 184/23  
189/10 195/25 196/16 201/10  
202/2 208/20 216/19 223/1  
**sanction** [3] 187/23 189/1 189/6  
**sat** [5] 33/14 34/18 35/15 40/23  
92/19  
**Saturday** [15] 18/20 19/2 19/25  
20/3 20/14 20/23 25/13 28/4  
28/15 30/8 45/17 67/20 74/19  
78/22 78/22  
**save** [3] 83/25 141/17 152/6  
**saw** [6] 33/3 34/9 91/23 91/25  
135/17 215/8  
**say** [57] 8/8 9/23 17/10 18/8 19/13  
19/24 20/9 23/14 30/7 36/23 60/1  
61/20 72/5 73/9 76/16 81/19  
88/10 88/13 93/14 93/24 98/19  
110/1 126/13 127/20 128/25  
132/13 133/22 134/8 134/9 135/9  
135/12 135/14 135/14 135/14  
135/15 142/1 153/2 158/21 165/14  
165/25 169/6 169/23 174/4 175/18  
180/10 192/1 192/15 193/20 196/2  
200/16 205/23 218/16 219/25  
220/2 220/6 224/8 226/2  
**saying** [18] 11/1 79/12 86/15  
90/20 92/12 148/6 148/17 153/3  
169/16 170/22 174/3 175/13  
175/16 177/17 190/17 193/8 201/1  
219/24  
**says** [7] 112/17 134/9 177/4  
218/17 221/18 223/11 224/8  
**scenario** [1] 172/21  
**scene** [12] 26/6 38/6 93/18 133/24  
178/14 184/20 184/24 185/4  
185/17 187/11 192/25 193/12  
**schedule** [1] 211/13  
**scheduled** [2] 3/3 124/6  
**Scheidell** [1] 161/20  
**Schetter** [7] 12/20 13/16 14/8  
14/11 25/20 26/2 26/15  
**School** [1] 195/12  
**Schulter** [3] 139/17 139/25 143/6  
**scientist** [1] 63/6  
**scope** [4] 41/5 47/7 50/8 183/4  
**screaming** [3] 217/25 218/2 218/5  
**se** [1] 180/15  
**seal** [11] 103/19 104/4 104/9 113/8  
114/23 115/4 115/7 115/9 115/25  
116/9 116/18  
**sealed** [10] 104/10 106/2 106/3  
107/4 110/18 111/4 111/5 115/6  
115/15 117/8  
**sealing** [5] 106/19 107/21 108/2  
113/14 113/15  
**search** [14] 27/15 28/1 28/13  
28/14 29/11 31/4 32/2 65/4 66/15  
67/3 67/4 151/17 161/1 171/6  
**searched** [3] 29/7 32/5 219/11  
**searches** [1] 29/21  
**searching** [1] 68/4  
**seated** [3] 4/21 45/2 142/3  
**Seattle** [2] 20/2 20/17  
**second** [12] 3/14 10/23 35/17 56/1  
129/25 133/10 138/23 187/12  
222/25 226/17 226/18 227/6  
**secondly** [2] 142/21 156/7  
**secretarial** [2] 13/23 61/4  
**secretary** [1] 110/7

**Section** [6] 134/15 134/18 161/14  
199/17 199/21 202/4  
**secured** [1] 167/12  
**security** [6] 24/22 37/10 147/21  
190/23 191/16 191/16  
**see** [34] 23/11 23/13 26/19 27/2  
28/6 31/8 33/1 39/25 40/1 40/1  
40/2 42/15 73/9 88/3 103/2 106/2  
110/11 131/18 137/25 142/24  
154/2 154/18 156/23 158/2 166/7  
177/7 186/3 206/14 212/11 217/16  
217/16 221/19 231/10 231/11  
**seeing** [3] 84/9 86/9 90/11  
**seek** [2] 148/10 181/6  
**seeking** [4] 133/21 168/3 171/14  
202/21  
**seeks** [3] 107/6 190/21 199/13  
**seem** [1] 163/25  
**seemed** [1] 114/9  
**seems** [12] 130/23 162/5 163/23  
170/10 171/9 173/12 175/2 176/21  
179/11 179/20 202/13 230/7  
**seen** [10] 18/22 24/18 26/23 65/6  
65/11 121/22 127/22 131/10 187/9  
187/10  
**segment** [2] 35/12 35/19  
**segments** [2] 122/23 134/3  
**seized** [2] 166/12 167/12  
**select** [1] 43/18  
**selected** [1] 223/9  
**selection** [2] 139/24 190/23  
**self** [3] 125/17 125/23 126/9  
**self-incrimination** [3] 125/17  
125/23 126/9  
**semen** [1] 165/5  
**Senator** [1] 138/6  
**send** [1] 17/19  
**senior** [1] 71/9  
**sense** [13] 11/2 16/20 16/22 18/8  
86/19 87/25 132/18 184/7 186/15  
189/14 191/3 194/18 212/10  
**sensitive** [1] 51/14  
**sensitivity** [5] 51/10 58/10 84/21  
101/19 101/25  
**sent** [3] 87/3 87/3 180/13  
**sentence** [4] 7/11 40/7 203/23  
222/23  
**sentences** [1] 40/12  
**sentencing** [1] 207/11  
**separate** [8] 10/7 13/14 14/1 37/22  
46/20 77/4 117/18 127/2  
**September** [6] 10/1 38/25 123/16  
123/18 124/3 130/2  
**September 11** [1] 10/1  
**September 12** [1] 38/25  
**September 5** [4] 123/16 123/18  
124/3 130/2  
**sequence** [1] 224/10  
**sequestered** [3] 134/23 185/25  
186/22  
**sergeant** [13] 15/24 16/3 27/7  
28/25 29/9 32/25 33/10 34/5  
34/16 72/6 195/18 196/5 203/4  
**Sergeant's** [1] 15/7  
**sergeants** [6] 14/19 14/20 14/21  
14/24 15/5 25/1  
**series** [8] 35/6 45/9 63/18 106/13  
107/22 110/16 122/12 170/15  
**serious** [5] 84/22 124/17 141/6  
141/7 225/12  
**serve** [2] 124/23 185/7  
**served** [1] 5/9  
**serves** [1] 119/3

<b>S</b>	<b>shooting [1]</b> 227/1	24/16 27/23 28/3 31/2 31/17
<b>service [1]</b> 65/24	<b>short [10]</b> 39/8 40/11 60/15 70/18	31/21 35/19 37/21 38/2 40/18
<b>services [3]</b> 13/23 43/15 43/21	127/17 127/19 131/12 132/25	40/24 41/2 44/2 44/5 48/14 49/4
<b>servicing [1]</b> 203/23	224/16 227/14	59/2 59/4 61/23 62/18 62/24
<b>session [1]</b> 135/17	<b>shorthand [2]</b> 126/14 232/10	65/13 66/20 67/18 68/16 68/24
<b>sessions [1]</b> 46/21	<b>shortly [4]</b> 21/9 48/3 74/23 94/16	70/3 71/24 72/2 73/16 73/23 74/6
<b>set [25]</b> 17/2 52/24 53/20 68/24	<b>shot [2]</b> 220/10 226/25	76/4 76/16 77/10 78/11 78/15
69/2 87/20 87/22 102/17 106/25	<b>should [56]</b> 4/13 9/23 14/18 44/8	80/2 80/10 82/12 84/3 84/6 85/4
118/22 123/15 136/4 138/14 142/9	57/8 64/7 66/11 70/21 76/2 76/17	87/5 87/10 89/24 91/24 92/9
142/16 171/19 191/22 205/10	76/18 80/7 81/15 81/15 82/7	93/22 93/24 94/5 94/5 94/23 95/7
209/1 210/21 211/3 211/10 211/16	84/12 91/16 98/19 101/24 108/11	95/22 95/22 97/23 98/2 99/20
214/16 225/2	110/3 115/9 115/25 133/16 133/18	102/17 102/23 104/5 104/24
<b>sets [3]</b> 17/22 43/4 190/5	140/4 143/8 144/19 149/16 152/2	108/17 109/6 110/12 110/15
<b>setting [1]</b> 148/14	152/2 153/15 153/23 157/13 162/5	110/19 111/3 112/11 114/5 114/11
<b>settled [1]</b> 230/18	170/10 172/12 172/18 176/25	114/21 115/14 117/7 119/1 120/5
<b>seven [1]</b> 207/1	179/16 180/3 186/23 186/24	121/8 124/7 127/11 128/12 130/8
<b>several [7]</b> 17/17 51/3 55/22 71/3	190/20 194/1 197/16 199/7 202/5	130/17 131/22 132/23 133/3
82/5 151/2 223/9	209/20 210/8 212/25 214/20 221/1	134/12 135/4 138/21 142/15
<b>sex [4]</b> 221/17 221/19 221/20	222/9 226/10 227/14	147/17 147/25 148/14 149/13
223/21	<b>shoulder [6]</b> 96/6 97/17 184/2	150/12 152/7 152/13 154/18
<b>sexual [4]</b> 7/6 165/4 221/15 221/21	186/5 186/7 216/24	154/22 155/7 157/10 157/13
<b>shadowing [1]</b> 96/5	<b>shouldn't [6]</b> 17/10 102/12 137/14	157/21 160/21 161/1 162/10
<b>shall [1]</b> 153/3	200/24 203/10 214/7	162/15 165/10 166/16 168/14
<b>shape [1]</b> 190/25	<b>show [7]</b> 55/20 158/6 166/19	171/7 172/16 174/2 174/3 177/21
<b>share [3]</b> 64/17 117/21 209/5	166/22 182/15 202/23 205/2	178/15 179/2 179/15 179/16 180/1
<b>sharing [1]</b> 208/10	<b>showing [1]</b> 225/10	180/14 182/5 184/2 187/7 187/24
<b>she [11]</b> 18/24 65/14 65/16 164/9	<b>shown [1]</b> 225/6	190/3 190/9 190/15 192/18 193/5
215/7 215/15 215/17 216/7 216/22	<b>shred [1]</b> 191/13	193/8 193/13 194/4 195/24 196/14
219/4 221/11	<b>shrift [1]</b> 227/15	199/2 201/21 202/13 205/16
<b>she's [2]</b> 218/4 218/5	<b>shut [1]</b> 88/6	207/12 208/7 209/20 211/2 211/9
<b>Sheboygan [1]</b> 66/5	<b>shy [1]</b> 142/6	212/3 215/22 218/11 218/23 219/4
<b>sheriff [86]</b> 2/3 2/8 4/11 4/14 4/18	<b>sibling [1]</b> 221/8	219/16 221/2 221/21 224/13
5/3 5/9 5/16 5/18 6/16 11/18	<b>sic [2]</b> 14/7 192/9	224/15 224/16 224/19 225/21
11/21 11/23 11/25 12/7 15/16	<b>side [5]</b> 104/17 142/13 165/16	228/11 230/25 231/9
17/2 23/19 24/3 25/11 26/6 29/16	180/20 198/1	<b>so-called [1]</b> 157/13
29/23 31/13 35/12 36/9 36/16	<b>sided [1]</b> 222/11	<b>soaked [1]</b> 216/12
36/20 44/20 44/24 45/8 45/17	<b>sidetracked [1]</b> 179/3	<b>sole [1]</b> 8/10
45/23 46/5 46/8 46/24 47/2 47/21	<b>sign [1]</b> 114/21	<b>solely [1]</b> 214/15
49/7 50/10 52/1 52/19 54/22 55/3	<b>signed [1]</b> 213/19	<b>solve [1]</b> 147/18
55/10 57/1 58/20 59/11 59/16	<b>significance [2]</b> 229/10 230/15	<b>some [105]</b> 3/22 3/22 3/22 4/3 7/7
68/1 90/1 101/8 118/23 119/2	<b>significant [5]</b> 127/14 130/11	7/24 18/2 18/3 23/2 25/21 26/21
120/1 122/8 122/15 123/24 124/14	150/3 151/21 204/13	29/19 30/2 34/21 43/11 43/12
128/23 129/2 129/22 140/9 183/25	<b>similar [4]</b> 46/24 89/8 158/7 160/9	43/23 54/16 61/14 62/19 64/4
184/8 186/16 186/17 187/9 187/10	<b>simple [2]</b> 60/15 178/3	65/19 65/22 66/9 67/5 77/21
187/10 188/6 189/14 189/20 191/1	<b>simply [17]</b> 37/8 57/25 118/18	78/16 79/17 79/24 79/25 81/17
191/4 192/2 194/11 194/25 195/6	138/17 159/13 160/17 169/15	84/19 87/15 90/8 91/17 91/23
196/1 196/1 196/15 196/16 204/24	173/5 175/22 185/2 192/15 195/3	91/25 100/25 103/7 103/12 104/20
205/3 222/2	195/24 196/11 197/11 201/9 214/7	106/24 106/25 111/12 113/21
<b>sheriff's [77]</b> 4/5 5/4 5/23 10/22	<b>since [16]</b> 6/5 54/1 106/17 117/19	115/5 116/14 116/14 119/8 119/23
11/10 11/13 12/10 16/22 18/12	117/25 133/23 151/1 153/8 153/14	119/23 119/25 122/9 123/11
19/6 23/23 24/13 26/9 26/13	154/16 169/7 213/21 214/21	124/19 127/12 128/14 131/11
26/24 27/17 29/21 30/11 36/13	227/13 227/18 230/2	133/6 136/24 137/1 151/8 151/8
37/23 38/3 38/8 38/11 38/15	<b>single [2]</b> 8/18 191/13	151/18 154/12 155/16 158/4 164/9
41/18 46/10 48/5 51/21 60/3	<b>sir [1]</b> 5/23	166/15 166/15 168/5 168/15
60/17 60/19 64/19 68/13 69/22	<b>sister's [1]</b> 225/17	169/17 169/21 169/21 170/5
71/17 72/7 88/25 93/20 93/25	<b>sit [3]</b> 35/24 90/16 205/25	174/19 175/24 180/24 187/8
94/10 94/22 94/24 95/2 95/10	<b>sits [2]</b> 131/17 131/18	188/18 189/18 192/19 192/20
96/6 97/18 104/3 104/25 112/25	<b>sitting [4]</b> 10/19 90/17 152/19	192/21 193/10 197/5 198/6 200/23
117/15 147/6 147/7 147/13 147/19	195/2	204/10 205/11 207/8 207/18
147/23 156/22 183/11 183/21	<b>situation [3]</b> 126/11 187/3 230/16	207/23 207/24 212/13 213/21
184/3 184/7 184/19 185/7 185/20	<b>situations [1]</b> 128/2	215/5 215/25 219/6 219/10 226/6
186/9 187/13 188/4 188/17 188/19	<b>six [7]</b> 5/9 5/12 5/14 9/16 10/6	229/7 230/2 230/21
190/24 191/17 191/22 195/8	95/7 204/9	<b>somebody [18]</b> 72/21 79/12 79/22
195/14 195/19 200/7 202/25	<b>size [1]</b> 69/24	82/11 87/11 88/2 89/5 94/9 95/8
204/21	<b>sizeable [1]</b> 209/18	169/9 170/9 174/24 188/15 188/16
<b>shield [1]</b> 161/8	<b>skelter [1]</b> 58/2	203/10 215/19 226/2 226/4
<b>shift [5]</b> 16/5 21/13 41/24 41/25	<b>skipping [1]</b> 156/21	<b>somehow [12]</b> 129/5 165/18
230/9	<b>small [1]</b> 219/8	167/17 167/20 176/9 177/21 182/9
<b>shifting [3]</b> 23/18 99/21 99/22	<b>smart [1]</b> 131/24	182/11 191/1 191/11 219/2 220/1
<b>shifts [1]</b> 41/23	<b>smoothly [1]</b> 162/20	<b>someone [15]</b> 24/9 26/1 59/17
<b>shipped [1]</b> 26/18	<b>so [175]</b> 9/20 10/20 15/1 15/12	80/10 95/5 97/16 129/5 133/19
<b>shoes [1]</b> 10/20	16/6 16/15 17/4 18/14 19/1 20/6	156/3 167/8 184/1 188/17 193/6
	20/19 20/21 23/13 24/3 24/8	206/3 230/10

**S**  
something [40] 11/21 28/18 34/21  
37/9 43/15 44/7 59/22 73/16  
80/15 85/17 86/13 89/5 89/20  
90/9 90/21 100/12 100/20 101/15  
109/5 121/22 122/2 122/11 135/12  
141/16 142/24 143/5 143/6 152/7  
154/10 163/25 167/8 167/8 169/17  
173/2 177/6 177/23 188/25 197/13  
205/19 210/16  
Sometime [1] 35/22  
sometimes [4] 77/6 125/8 125/10  
171/15  
somewhat [2] 102/24 171/18  
somewhere [8] 6/12 20/25 34/2  
34/22 35/17 43/23 75/12 219/9  
sorry [16] 8/13 12/21 14/18 40/2  
56/9 96/9 106/21 107/24 108/20  
113/12 115/17 154/7 197/14  
211/12 216/4 221/6  
sort [11] 64/21 80/15 129/15  
134/24 157/20 163/5 164/23 168/8  
185/3 189/6 189/10  
sought [5] 123/14 175/25 190/12  
194/12 201/4  
sound [5] 6/11 16/20 33/23 67/6  
212/7  
sounds [3] 26/23 116/12 140/17  
sources [2] 55/12 92/7  
south [7] 32/22 32/22 161/17  
164/21 165/12 179/23 180/8  
Spanbauer [1] 136/10  
speak [10] 10/21 20/21 27/5 27/5  
38/20 65/13 82/12 94/5 102/12  
184/2  
speaking [5] 47/12 92/17 121/1  
121/7 138/22  
special [8] 1/14 3/9 3/12 35/6  
54/18 119/3 135/17 158/12  
specific [17] 7/17 22/10 50/25  
52/2 52/21 53/17 54/4 96/3 131/7  
139/1 150/8 150/19 151/8 195/17  
196/3 196/5 200/1  
specifically [9] 46/18 71/12 79/10  
101/21 124/21 133/24 146/22  
218/13 230/17  
specificity [1] 206/20  
speck [3] 216/19 217/1 217/5  
speculate [2] 11/1 182/6  
speculation [1] 10/24  
spell [3] 4/22 12/21 45/3  
spent [5] 9/13 10/12 197/5 197/14  
200/25  
spoke [2] 121/5 122/18  
spokespeople [1] 81/23  
sponsor [1] 138/7  
ss [1] 232/1  
stabbed [3] 216/8 216/22 226/24  
stabbing [2] 220/4 220/11  
staff [7] 17/19 59/20 71/9 75/23  
191/2 191/7 191/12  
stage [1] 229/12  
stains [2] 220/17 220/17  
stake [3] 133/17 133/21 217/20  
stand [6] 124/5 131/21 132/3  
194/1 200/13 204/24  
standard [2] 156/7 199/5  
standards [1] 156/12  
standpoint [1] 231/7  
stands [2] 125/24 193/5  
start [8] 5/2 98/2 99/24 106/16  
118/8 223/23 224/9 224/10

Started [1] 5/7  
Starting [1] 67/16  
starts [1] 223/16  
state [143] 1/1 1/3 1/14 3/2 3/5  
3/7 4/21 7/21 8/1 18/6 43/3 44/16  
45/2 71/1 72/22 93/11 105/1  
106/7 106/14 106/18 108/24  
109/17 112/7 112/13 113/24 117/1  
117/20 118/22 118/23 120/14  
121/8 121/11 121/25 123/10 124/1  
124/3 124/11 125/2 125/16 125/18  
126/16 126/17 126/18 126/19  
126/21 126/25 127/11 127/11  
127/24 128/4 130/12 130/14  
130/18 130/21 130/25 132/20  
133/6 135/24 136/2 136/6 136/8  
136/9 136/11 136/15 136/16  
136/18 136/22 137/7 137/16 139/6  
139/19 140/20 141/3 141/8 141/25  
142/1 142/17 143/5 143/19 143/22  
144/20 144/24 145/4 145/12 153/5  
154/16 154/20 155/12 156/10  
157/15 158/11 158/13 158/15  
160/12 163/5 163/13 163/23 164/3  
165/23 167/16 168/20 170/10  
171/13 172/22 176/15 177/24  
181/12 181/18 185/21 188/3  
188/12 188/17 188/21 188/22  
194/8 194/16 197/3 197/20 198/4  
198/11 199/4 199/6 199/13 200/16  
201/3 201/11 201/16 202/6 202/21  
203/18 208/2 208/23 209/4 209/13  
209/22 210/3 211/4 211/20 214/12  
217/15 226/14 232/1 232/5  
State's [41] 8/6 105/17 105/22  
107/20 107/21 110/15 111/3 111/7  
111/13 113/19 119/15 125/7 127/4  
143/24 145/9 146/4 149/13 149/15  
150/13 155/24 159/12 164/23  
165/2 165/24 166/2 168/11 169/12  
173/7 182/10 182/18 182/19  
183/17 187/24 188/1 196/18  
196/22 197/11 204/15 206/13  
213/25 229/18  
stated [2] 22/11 183/4  
statement [22] 30/5 45/23 115/1  
115/3 128/16 193/22 212/5 216/1  
221/1 221/16 222/25 222/25  
223/11 226/7 226/9 226/17 226/18  
226/20 227/6 227/13 227/19  
227/20  
statements [28] 39/5 39/9 107/9  
113/22 114/5 114/7 119/25 127/7  
203/20 204/2 204/6 204/8 204/13  
206/24 214/2 214/3 214/7 214/15  
214/18 214/19 214/24 226/13  
228/13 229/24 230/1 230/6 230/7  
230/14  
States [1] 180/12  
statewide [2] 124/19 135/19  
stations [4] 43/13 44/3 119/8  
119/9  
status [1] 103/20  
statute [1] 146/10  
statutes [5] 11/20 18/6 134/16  
148/2 161/23  
Steier [1] 28/17  
stenographic [1] 232/9  
step [5] 98/7 99/10 99/14 99/15  
99/19  
stepping [1] 147/12  
steps [7] 17/17 19/19 30/17 65/19  
120/9 122/25 217/2

Steve [5] 8/17 104/14 115/5 123/1  
200/21  
STEVEN [55] 1/6 1/17 3/2 3/13  
5/25 6/22 10/19 11/1 22/7 23/1  
27/6 32/15 32/23 33/15 39/5  
39/10 40/13 41/7 52/6 63/1 63/8  
72/8 73/10 75/11 88/10 90/21  
91/24 95/17 95/22 96/2 96/23  
119/20 120/11 120/21 126/14  
129/19 136/22 137/4 138/5 138/10  
140/13 189/18 195/9 203/15  
203/16 206/8 224/2 224/21 226/23  
226/24 226/25 227/2 227/9 227/21  
228/6  
still [30] 26/16 31/8 48/25 49/4  
49/4 52/17 76/20 77/7 77/8 77/9  
84/18 84/19 98/23 104/19 107/4  
156/10 157/21 174/20 180/23  
193/24 194/2 197/20 203/24  
204/25 211/14 220/11 221/15  
230/4 230/4 230/20  
stipulation [2] 111/12 210/1  
stipulations [1] 210/2  
stop [1] 208/8  
stops [1] 18/8  
storage [1] 159/8  
stories [1] 43/21  
story [9] 214/25 217/13 217/21  
217/23 219/1 219/7 222/16 222/18  
224/14  
straight [1] 196/24  
strains [1] 173/16  
STRANG [44] 1/15 2/4 2/6 2/10  
3/17 4/2 30/1 42/22 59/12 96/10  
96/13 99/24 103/14 105/9 105/24  
107/7 113/9 115/16 117/6 118/1  
139/12 139/15 139/16 140/1 141/2  
141/25 143/18 144/1 144/14 145/2  
145/24 146/6 150/14 153/17 154/3  
154/10 154/23 183/12 194/21  
199/10 202/18 211/21 213/14  
228/2  
Strang's [5] 46/14 105/6 113/2  
142/22 204/3  
strategy [1] 64/12  
stray [1] 190/4  
street [1] 216/16  
strengthened [1] 229/19  
strike [1] 116/21  
strong [3] 133/11 165/16 165/17  
strongly [3] 115/14 118/14 137/22  
struck [1] 157/25  
structure [1] 16/23  
struggled [1] 135/13  
struggling [1] 215/18  
stuck [1] 178/23  
stuff [4] 131/23 189/23 217/4  
220/16  
style [2] 76/6 76/10  
sub [2] 158/1 203/13  
sub-conscious [1] 203/13  
sub-issues [1] 158/1  
subject [4] 173/20 174/20 178/1  
181/12  
submissions [2] 212/14 212/16  
submit [6] 114/20 153/12 153/15  
154/1 155/1 158/19  
submitted [5] 102/23 105/20  
110/24 113/7 172/9  
submitting [2] 139/3 147/4  
subordinates [1] 17/14  
subpoena [1] 152/7  
subsequent [1] 45/13

<p><b>S</b></p> <p><b>substance</b> [1] 35/9</p> <p><b>substantial</b> [1] 214/21</p> <p><b>substantive</b> [1] 111/11</p> <p><b>success</b> [1] 134/5</p> <p><b>successfully</b> [1] 164/11</p> <p><b>such</b> [11] 90/13 105/8 142/12 156/5 158/2 168/3 181/7 181/15 226/9 227/14 230/7</p> <p><b>sued</b> [1] 203/8</p> <p><b>sufficient</b> [3] 123/19 162/19 217/9</p> <p><b>sufficiently</b> [1] 121/20</p> <p><b>suggest</b> [19] 6/9 26/21 27/2 29/24 30/21 104/24 126/20 140/1 159/1 160/2 180/2 180/24 181/4 203/21 208/20 210/24 211/4 223/10 223/12</p> <p><b>suggested</b> [3] 39/3 100/17 181/17</p> <p><b>suggesting</b> [6] 129/13 146/17 156/3 197/19 215/11 215/14</p> <p><b>suggestion</b> [3] 109/4 109/11 109/16</p> <p><b>suggestions</b> [2] 93/4 205/16</p> <p><b>suggests</b> [3] 161/2 161/14 211/4</p> <p><b>summary</b> [3] 117/23 181/23 209/14</p> <p><b>Sunday</b> [3] 29/7 31/5 31/25</p> <p><b>super</b> [1] 137/10</p> <p><b>superintending</b> [1] 147/22</p> <p><b>superior</b> [1] 120/22</p> <p><b>supervise</b> [1] 14/24</p> <p><b>supervising</b> [3] 30/17 31/14 186/3</p> <p><b>supervision</b> [3] 36/13 183/16 183/18</p> <p><b>supplement</b> [2] 150/14 154/13</p> <p><b>supplemental</b> [1] 102/24</p> <p><b>supplementary</b> [1] 107/14</p> <p><b>support</b> [25] 13/1 13/22 23/24 23/25 24/6 29/20 31/15 31/17 36/23 37/22 37/25 61/4 68/16 69/7 71/13 105/16 105/20 110/21 145/13 147/20 163/22 178/8 219/7 220/13 229/5</p> <p><b>supported</b> [1] 170/16</p> <p><b>supporters</b> [1] 142/7</p> <p><b>supporting</b> [2] 103/19 115/4</p> <p><b>suppose</b> [3] 170/17 189/24 223/16</p> <p><b>supposed</b> [1] 204/14</p> <p><b>supposedly</b> [5] 215/1 216/10 219/4 220/8 221/5</p> <p><b>suppress</b> [3] 115/1 187/19 187/20</p> <p><b>suppressed</b> [1] 193/23</p> <p><b>suppression</b> [7] 187/18 188/25 192/13 193/16 193/21 194/3 194/5</p> <p><b>Supreme</b> [4] 107/11 161/17 179/23 180/12</p> <p><b>sure</b> [38] 7/4 22/22 27/1 65/13 66/7 81/11 81/19 87/10 87/10 94/6 112/7 113/1 114/3 115/25 123/6 127/25 128/1 143/20 145/8 145/9 145/11 150/13 153/10 155/19 156/9 156/16 156/20 180/1 184/22 203/25 204/1 204/6 206/21 207/5 207/13 209/2 213/3 216/18</p> <p><b>surprise</b> [1] 162/1</p> <p><b>surprised</b> [1] 226/2</p> <p><b>surrounding</b> [1] 19/5</p> <p><b>suspect</b> [8] 52/2 56/1 95/18 96/3 96/12 96/13 140/14 221/18</p> <p><b>suspected</b> [2] 28/21 180/6</p> <p><b>suspects</b> [1] 22/10</p> <p><b>sustain</b> [1] 11/5</p>	<p><b>sustained</b> [1] 46/7</p> <p><b>SUV</b> [1] 227/18</p> <p><b>swab</b> [1] 218/12</p> <p><b>swabbed</b> [1] 227/23</p> <p><b>swabs</b> [1] 78/16</p> <p><b>switch</b> [1] 196/16</p> <p><b>sworn</b> [8] 4/19 5/15 44/25 60/18 60/25 61/2 61/3 61/4</p> <p><b>sympathy</b> [7] 197/13 201/6 201/9 201/14 201/19 205/20 208/4</p> <p><b>synonymous</b> [1] 42/14</p> <p><b>system</b> [2] 72/20 109/18</p> <p><b>T</b></p> <p><b>tabbed</b> [1] 186/15</p> <p><b>table</b> [1] 206/2</p> <p><b>tact</b> [1] 179/12</p> <p><b>tailor</b> [1] 133/1</p> <p><b>tailored</b> [1] 190/10</p> <p><b>tainted</b> [3] 134/22 182/12 182/13</p> <p><b>take</b> [28] 9/14 10/3 13/22 38/24 42/5 42/17 57/17 58/2 85/10 86/6 102/19 106/22 111/6 121/3 136/3 152/2 152/2 154/1 154/24 155/3 155/15 172/6 176/21 184/12 191/18 194/1 209/18 213/1</p> <p><b>taken</b> [19] 30/9 33/20 33/22 34/4 34/11 34/13 78/19 78/24 83/12 98/7 99/10 103/4 140/13 141/10 152/6 155/21 178/12 195/20 232/9</p> <p><b>takeover</b> [1] 193/13</p> <p><b>takes</b> [3] 130/14 193/13 210/13</p> <p><b>taking</b> [5] 137/14 145/12 146/2 173/10 207/17</p> <p><b>talk</b> [14] 25/24 25/25 34/12 40/13 65/8 74/13 142/4 167/25 179/13 186/4 191/25 192/2 198/14 198/15</p> <p><b>talked</b> [5] 21/18 25/24 40/25 65/15 161/24</p> <p><b>talking</b> [25] 6/13 19/1 42/25 80/10 86/1 88/18 101/22 113/13 120/7 135/11 165/21 167/23 182/24 184/23 184/25 185/13 185/15 196/9 198/15 198/16 198/18 198/21 202/16 205/20 216/15</p> <p><b>tampering</b> [2] 95/23 160/24</p> <p><b>tangential</b> [1] 166/16</p> <p><b>tape</b> [2] 87/25 88/2</p> <p><b>target</b> [1] 155/6</p> <p><b>task</b> [1] 116/24</p> <p><b>tasks</b> [1] 72/2</p> <p><b>team</b> [1] 46/13</p> <p><b>technically</b> [1] 206/17</p> <p><b>techs</b> [1] 42/4</p> <p><b>teenager</b> [1] 77/17</p> <p><b>telephone</b> [2] 21/10 64/15</p> <p><b>televised</b> [8] 89/3 119/15 122/1 122/8 124/10 126/22 128/5 138/8</p> <p><b>television</b> [11] 43/7 43/13 43/16 44/3 80/13 100/19 119/7 128/22 138/16 189/21 213/10</p> <p><b>tell</b> [12] 21/17 85/6 114/6 137/3 153/10 191/23 194/9 218/18 219/23 221/19 227/16 228/1</p> <p><b>telling</b> [7] 30/24 40/12 91/20 92/13 177/17 224/9 229/14</p> <p><b>tendency</b> [1] 197/2</p> <p><b>tender</b> [1] 44/13</p> <p><b>tendering</b> [1] 213/8</p> <p><b>tending</b> [3] 53/24 78/2 93/12</p> <p><b>tension</b> [1] 125/9</p> <p><b>tenuous</b> [1] 165/10</p> <p><b>Teresa</b> [38] 18/21 27/6 28/6 45/13</p>	<p>47/2 47/11 47/13 47/16 48/13 49/2 49/4 61/12 64/8 65/3 65/12 67/3 76/20 76/21 107/9 118/10 137/1 138/11 141/21 193/1 201/10 202/11 206/4 215/1 217/5 223/9 223/22 224/23 226/23 226/24 226/25 227/3 227/10 228/5</p> <p><b>Teresa's</b> [3] 78/10 207/25 208/24</p> <p><b>terms</b> [9] 23/17 73/16 118/17 133/17 137/8 138/18 147/21 153/21 193/13</p> <p><b>terrible</b> [2] 221/2 222/16</p> <p><b>terribly</b> [1] 115/11</p> <p><b>Tesheneck</b> [3] 1/22 232/4 232/19</p> <p><b>test</b> [10] 107/5 161/14 162/18 167/21 167/23 168/9 176/5 196/25 205/6 218/11</p> <p><b>tested</b> [3] 8/22 167/13 215/9</p> <p><b>testified</b> [8] 4/20 38/7 38/19 45/1 62/16 118/24 124/14 195/6</p> <p><b>testifies</b> [3] 177/13 177/14 200/12</p> <p><b>testify</b> [11] 44/21 125/17 125/19 125/22 125/25 152/21 188/18 192/16 192/19 193/10 200/20</p> <p><b>testifying</b> [3] 4/6 125/14 183/11</p> <p><b>testimony</b> [20] 9/7 29/16 42/24 72/14 90/18 102/14 102/20 103/7 103/13 113/22 122/10 124/20 164/8 169/3 173/1 187/21 192/21 192/22 193/24 206/11</p> <p><b>testing</b> [2] 7/24 224/18</p> <p><b>tests</b> [1] 217/4</p> <p><b>text</b> [1] 43/16</p> <p><b>than</b> [53] 22/18 33/10 36/3 43/12 43/23 55/1 57/16 60/18 77/2 86/2 87/7 88/16 99/6 104/8 104/9 108/1 108/25 109/7 109/21 123/3 123/8 123/18 127/21 128/2 129/19 130/24 133/18 147/14 148/12 151/16 152/9 155/18 156/4 157/9 163/23 164/1 168/19 170/12 171/24 172/22 175/10 180/2 180/25 181/17 185/6 185/15 186/12 189/23 191/7 192/13 201/13 205/21 219/18</p> <p><b>thank</b> [17] 12/23 36/6 41/14 42/16 59/11 100/23 143/12 153/20 155/20 158/17 190/18 196/23 199/9 217/15 225/23 228/24 231/10</p> <p><b>that</b> [1314]</p> <p><b>that's</b> [128] 5/8 5/15 11/17 12/5 12/16 12/19 13/1 13/3 32/3 34/23 35/24 36/5 36/19 37/16 41/14 42/17 44/6 44/7 59/7 59/10 64/1 68/6 72/18 73/4 74/1 76/10 86/4 86/23 94/2 95/15 96/21 97/3 97/7 97/20 98/15 100/23 102/4 102/16 107/19 110/13 110/20 111/8 111/10 111/20 114/23 122/11 126/3 126/24 130/22 131/7 137/6 137/7 137/8 140/19 144/17 145/25 146/12 146/15 149/5 150/21 151/11 152/1 155/5 156/19 158/25 161/15 162/10 162/14 162/21 163/22 164/22 167/3 168/1 169/10 169/12 170/18 170/24 170/24 171/2 174/6 174/11 174/17 175/11 175/17 176/1 176/11 176/20 177/1 177/15 177/15 177/19 179/5 179/7 179/10 179/12 179/14 180/12 180/17 181/19 182/2 183/2 190/9 190/16 191/13 193/2 196/14 201/6</p>
---	---	--

**T**

that's... [21] 201/15 203/1 203/11  
 205/12 207/1 207/3 211/19 211/24  
 211/25 212/1 212/15 212/18  
 220/11 221/8 221/9 221/22 225/13  
 227/24 228/23 229/15 230/4  
 their [33] 3/5 34/4 59/21 61/24  
 67/23 69/17 70/20 121/17 121/17  
 126/25 135/20 142/9 154/1 166/4  
 168/21 172/2 176/8 176/25 186/5  
 186/7 193/4 195/23 196/3 203/20  
 209/18 214/13 217/14 221/7  
 222/23 223/17 224/7 230/8 230/9  
 them [72] 14/16 15/12 25/4 30/24  
 30/24 34/11 37/1 43/24 48/25  
 50/6 51/15 53/22 58/6 58/6 58/7  
 58/15 58/16 58/18 59/25 65/6  
 65/8 65/10 70/8 70/21 77/5 83/25  
 84/8 84/13 84/17 84/19 85/6  
 85/20 85/23 85/24 85/25 91/1  
 91/21 92/17 92/17 116/3 117/24  
 118/18 118/19 118/22 119/8 121/1  
 121/5 121/7 121/7 121/16 141/9  
 151/2 152/4 152/4 154/1 166/1  
 166/3 185/21 185/22 187/25  
 189/18 190/14 191/22 195/20  
 200/19 212/25 213/2 213/6 215/21  
 223/25 224/12 231/1  
 theme [1] 150/19  
 themes [1] 173/15  
 themselves [8] 85/2 91/15 103/17  
 138/3 163/8 177/25 186/12 196/1  
 then [114] 6/15 11/4 12/14 14/14  
 15/18 19/23 24/11 42/1 43/6  
 43/14 46/8 50/18 53/12 56/16  
 56/20 57/17 67/20 68/20 70/8  
 70/12 72/13 79/1 79/3 79/5 79/17  
 80/24 81/9 81/12 81/19 81/22  
 97/9 98/6 100/24 102/7 102/9  
 104/7 105/15 108/15 109/9 109/14  
 109/19 109/22 109/25 110/9  
 110/17 111/22 116/6 117/2 119/21  
 120/12 120/17 122/11 125/18  
 125/25 128/21 129/12 143/11  
 146/11 148/10 148/24 149/14  
 149/19 150/10 151/7 152/14 153/4  
 154/3 155/8 155/16 157/3 157/18  
 159/15 162/15 164/15 166/9 168/6  
 168/16 170/9 170/24 171/7 171/20  
 175/8 176/2 176/4 176/15 178/3  
 178/23 179/9 183/9 183/24 184/14  
 184/22 188/3 188/11 191/19  
 192/16 192/19 193/10 194/17  
 194/18 200/22 205/7 209/5 211/5  
 211/10 213/13 214/12 215/25  
 216/22 216/23 224/1 224/10 225/3  
 230/2  
 theories [1] 173/14  
 theory [5] 48/6 53/25 160/15  
 171/16 217/14  
 there [181] 3/21 8/8 14/14 14/18  
 22/16 22/24 26/16 26/17 26/17  
 29/19 36/2 38/14 42/1 43/14  
 43/23 48/17 50/16 50/19 50/23  
 51/21 52/4 53/22 53/24 54/15  
 58/7 58/20 58/22 62/9 66/23  
 66/24 67/1 67/1 67/15 68/2 68/3  
 68/8 68/16 68/23 69/4 69/6 69/7  
 69/13 70/18 70/22 71/1 71/3  
 74/21 77/3 82/5 82/10 89/13  
 89/14 93/2 93/8 93/18 93/19 95/9  
 95/22 98/2 98/8 99/11 101/23

103/12 103/18 104/19 105/19  
 106/2 106/18 106/18 106/24 109/1  
 110/13 111/3 111/15 111/22  
 112/17 114/15 115/19 116/8 117/6  
 117/7 118/20 119/11 120/22  
 121/10 122/6 124/7 126/23 127/9  
 127/10 127/23 128/2 130/11  
 131/11 134/22 137/24 145/10  
 146/16 151/24 152/19 152/20  
 154/11 156/18 157/19 158/8 161/8  
 164/19 165/4 165/5 165/11 165/16  
 166/20 167/25 168/23 169/3 170/3  
 170/9 170/12 171/4 171/5 171/7  
 172/10 172/21 173/14 173/14  
 173/15 173/15 173/21 173/24  
 174/3 175/2 175/11 176/15 179/5  
 179/18 182/11 183/5 184/9 186/4  
 186/5 188/15 190/3 191/10 191/13  
 196/2 199/16 203/15 203/23  
 204/10 204/14 206/6 206/9 206/10  
 207/10 208/11 208/12 210/17  
 210/21 213/21 215/25 216/17  
 216/19 218/4 218/5 219/7 220/3  
 220/4 220/7 220/16 220/17 220/19  
 222/19 223/1 223/5 223/14 223/19  
 226/8 227/8 228/12 229/6 231/5  
 there's [46] 14/23 60/7 72/22 90/4  
 95/21 97/2 106/15 110/3 111/14  
 114/22 115/10 115/11 116/21  
 127/20 127/21 156/16 157/11  
 160/10 160/21 162/2 162/9 164/19  
 165/17 171/8 172/23 173/19  
 173/25 174/25 177/3 180/21 182/3  
 183/15 201/15 209/21 218/8  
 218/12 218/21 219/5 220/11  
 220/12 223/4 223/19 224/4 224/10  
 230/4 230/24  
 thereabouts [1] 88/16  
 thereafter [2] 227/4 232/11  
 thereby [1] 118/25  
 therefore [7] 74/11 115/6 122/4  
 174/11 198/12 224/20 224/25  
 these [46] 16/24 27/2 29/21 36/21  
 37/7 42/23 43/5 49/20 53/4 68/8  
 81/12 87/2 89/16 92/10 93/22  
 93/24 95/7 98/13 98/13 102/22  
 110/22 118/2 120/23 121/9 124/25  
 126/11 128/5 128/7 137/24 138/20  
 139/12 141/7 146/2 148/6 155/18  
 186/1 203/2 204/8 209/6 215/2  
 215/14 218/18 218/19 221/7 222/3  
 224/4  
 they [218] 13/25 14/22 15/5 16/7  
 18/18 22/10 22/11 24/1 26/16  
 27/19 27/21 34/10 34/18 34/24  
 35/1 37/9 37/9 37/12 41/23 42/8  
 42/12 42/13 49/24 49/25 50/15  
 51/15 51/18 53/1 53/3 53/5 57/18  
 59/22 59/23 59/24 60/7 60/13  
 61/24 65/6 65/7 68/16 70/17  
 70/18 70/18 70/19 70/21 70/24  
 71/3 71/4 71/6 71/9 71/11 71/12  
 71/20 76/14 77/6 77/10 79/18  
 79/19 80/11 80/12 84/8 84/25  
 85/2 85/9 85/16 86/7 86/8 86/9  
 87/5 88/5 88/6 90/23 91/2 91/3  
 91/14 92/5 92/5 102/23 102/24  
 104/19 117/11 117/25 121/15  
 127/2 127/3 127/4 127/8 127/9  
 128/5 131/2 131/15 131/21 131/21  
 133/13 136/25 137/9 137/16  
 138/13 146/10 146/11 149/23  
 149/23 151/22 151/25 152/3 152/5

154/17 155/19 156/4 158/6 159/1  
 159/3 161/18 163/7 163/19 163/20  
 163/25 164/18 164/23 164/24  
 165/2 165/14 165/23 166/16  
 166/18 166/23 167/17 168/10  
 168/21 169/5 169/10 169/16  
 169/18 169/20 169/20 169/21  
 169/25 169/25 170/1 170/4 170/6  
 170/25 171/1 172/1 172/5 172/14  
 172/20 172/23 173/8 174/9 175/12  
 175/13 175/14 178/1 178/6 178/7  
 178/23 179/8 179/8 184/16 185/14  
 185/23 186/2 186/3 186/4 186/11  
 188/22 200/8 205/11 205/17 206/8  
 208/14 208/20 209/4 209/17  
 210/25 214/10 215/11 216/1 216/5  
 216/6 216/18 217/4 217/7 217/18  
 218/11 218/12 218/16 219/2 219/6  
 219/11 219/19 219/19 219/24  
 219/25 220/1 220/2 220/3 220/6  
 220/14 220/15 221/6 222/11 223/9  
 223/12 223/13 223/18 223/23  
 224/1 224/10 224/13 224/14  
 224/18 224/18 228/21 230/8  
 230/10 230/19  
 thing [9] 13/24 24/22 42/7 90/13  
 97/2 109/21 152/5 178/10 208/20  
 things [29] 27/2 35/4 42/4 53/6  
 65/16 70/1 71/25 77/4 80/5 85/20  
 85/21 101/23 123/12 138/21 141/1  
 147/22 151/9 165/6 171/12 183/2  
 205/24 207/21 209/3 209/6 215/25  
 218/18 218/19 221/7 222/12  
 think [138] 6/4 6/10 8/17 12/3  
 27/21 30/20 31/17 33/17 34/11  
 35/4 38/7 39/16 55/23 62/7 66/4  
 70/21 77/20 77/21 78/5 79/7  
 79/12 79/14 81/14 85/22 88/24  
 93/3 95/5 96/1 98/11 99/3 99/25  
 101/2 102/17 102/21 104/10  
 104/22 106/7 106/23 106/24 108/2  
 108/6 109/24 110/11 110/17  
 110/23 111/14 111/18 111/20  
 112/17 114/15 115/10 117/6  
 118/13 119/6 121/3 122/21 124/7  
 128/12 131/8 131/24 132/9 133/15  
 133/18 133/22 134/19 140/8 146/9  
 150/2 150/6 150/20 150/23 151/25  
 154/15 154/19 154/24 154/25  
 155/4 155/16 156/18 157/11  
 157/15 158/18 161/11 162/2 163/2  
 163/4 164/16 165/12 168/12 169/2  
 169/6 169/25 170/2 172/15 172/25  
 174/5 174/21 175/12 176/3 177/10  
 177/10 179/18 180/11 180/16  
 180/18 180/22 181/25 182/4  
 182/14 184/21 185/11 187/1  
 188/24 189/14 190/9 194/5 202/2  
 202/9 203/11 204/7 204/12 206/16  
 207/9 208/10 208/16 208/25 209/4  
 209/7 209/19 210/13 211/21  
 212/18 213/19 220/1 220/6 221/7  
 222/1 231/9  
 thinking [1] 184/23  
 third [14] 105/18 134/13 155/24  
 157/7 157/9 161/20 169/5 169/11  
 180/4 180/5 180/24 181/10 210/20  
 211/5  
 this [345]  
 THOMAS [1] 1/13  
 those [75] 3/23 7/19 17/17 18/16  
 30/17 38/14 43/18 44/5 44/17  
 47/21 50/10 53/6 68/20 69/14

**T**  
**those...** [61] 69/25 75/22 77/4  
77/13 82/9 85/7 92/7 93/7 114/4  
114/7 117/18 117/23 119/5 119/10  
119/16 120/21 122/23 125/3 127/3  
134/3 134/12 140/11 140/15  
141/22 142/16 145/21 150/11  
150/18 151/24 152/12 155/13  
157/17 161/12 164/14 168/13  
170/19 171/12 172/24 177/16  
181/17 181/23 182/23 183/2 183/5  
191/14 198/20 203/4 204/5 205/16  
207/21 207/25 208/5 208/8 209/3  
210/6 214/18 214/19 215/9 225/21  
229/10 230/7  
**though** [3] 136/20 156/9 163/24  
**thought** [10] 48/12 54/13 63/23  
94/2 104/6 123/19 128/15 131/11  
156/24 156/25  
**thousand** [1] 225/16  
**thousands** [2] 43/6 213/8  
**threaten** [1] 124/17  
**three** [17] 32/8 33/25 36/9 39/1  
41/23 44/14 44/17 66/5 94/23  
100/1 100/2 117/25 138/23 152/12  
155/13 165/5 200/18  
**throat** [1] 216/8  
**through** [25] 12/14 13/7 48/7  
53/23 58/24 68/15 89/11 94/19  
102/18 128/17 137/25 140/7  
164/15 165/2 167/20 167/22 168/7  
168/9 169/4 176/3 176/4 189/18  
207/23 216/12 222/24  
**throughout** [6] 67/3 76/20 91/8  
102/2 120/23 121/10  
**throughs** [1] 169/4  
**throws** [1] 224/7  
**Thursday** [4] 18/24 47/14 48/3  
211/17  
**Thus** [1] 29/23  
**tie** [1] 174/8  
**ties** [2] 228/18 228/18  
**time** [71] 3/1 4/10 5/24 7/5 9/20  
10/9 10/23 23/1 27/15 34/2 34/4  
44/23 45/22 53/7 58/20 62/19  
65/10 68/7 70/17 70/17 70/19  
71/2 72/19 87/5 87/6 87/8 87/9  
87/9 87/13 89/23 103/5 105/10  
110/23 130/4 136/2 137/16 138/21  
152/4 155/9 155/17 155/22 161/11  
162/1 169/5 169/11 169/18 175/15  
176/10 177/12 177/19 181/9  
184/18 196/21 197/6 197/14 202/1  
203/17 203/21 204/13 207/11  
209/18 209/20 212/13 213/13  
214/5 214/21 218/5 219/10 219/17  
225/13 229/17  
**timely** [4] 189/2 189/3 189/7 189/7  
**times** [9] 50/3 55/4 86/12 88/21  
89/8 91/8 169/8 170/3 220/10  
**timing** [1] 20/9  
**tip** [1] 64/20  
**tips** [1] 64/22  
**title** [2] 12/6 123/3  
**today** [38] 3/19 3/21 3/22 36/24  
72/12 90/16 90/17 102/15 102/16  
103/10 110/10 111/7 111/25  
112/21 113/6 114/12 115/22 124/5  
126/22 126/24 143/14 146/3 150/2  
153/11 168/19 183/20 196/18  
204/25 211/3 211/10 213/2 228/21  
229/4 229/5 229/11 230/20 231/2

231/12  
**today's** [1] 103/21  
**together** [12] 3/23 76/16 87/6  
106/7 117/25 140/1 142/7 146/3  
163/5 174/8 209/24 228/11  
**told** [13] 11/7 15/12 21/12 22/9  
36/22 48/18 91/13 92/14 99/22  
100/3 107/7 120/16 221/5  
**Tom** [2] 3/10 6/16  
**tone** [3] 17/2 17/23 190/6  
**tongue** [1] 134/4  
**too** [7] 102/24 132/22 175/16  
201/25 202/8 202/12 224/15  
**took** [11] 30/7 43/22 65/19 65/24  
88/7 99/15 122/25 129/24 141/8  
216/5 216/18  
**tool** [1] 62/1  
**top** [1] 15/18  
**topic** [1] 122/9  
**total** [2] 9/20 174/16  
**totally** [2] 176/14 218/1  
**touch** [1] 189/20  
**tough** [2] 84/12 200/22  
**towards** [2] 78/2 163/20  
**town** [2] 20/1 211/20  
**Toyota** [4] 28/6 32/14 32/15 66/23  
**trade** [1] 192/13  
**tradition** [2] 132/18 132/21  
**trailer** [17] 27/15 27/25 28/1 28/14  
28/22 29/5 29/6 32/16 32/23  
69/21 216/4 217/5 217/7 218/3  
218/3 218/22 218/23  
**training** [3] 46/17 46/20 87/15  
**transcribed** [1] 232/11  
**transcript** [4] 1/21 39/20 232/8  
232/12  
**transcription** [1] 232/11  
**transcripts** [1] 43/7  
**transfer** [3] 19/4 19/10 20/4  
**transportation** [1] 159/9  
**transported** [2] 158/23 172/5  
**transporting** [1] 186/2  
**treated** [1] 110/4  
**trek** [1] 152/22  
**trial** [74] 7/5 7/15 54/6 104/21  
113/24 123/15 124/3 124/4 124/6  
124/18 124/22 125/1 125/4 125/4  
125/13 125/14 126/1 126/6 126/7  
130/3 130/9 130/10 130/20 131/3  
131/3 132/1 132/2 132/4 132/15  
132/23 134/21 135/2 136/4 136/4  
137/11 142/21 143/9 144/8 144/12  
144/21 145/20 146/8 146/24 147/1  
147/17 148/8 148/11 148/19  
148/21 149/6 160/3 160/7 160/8  
161/3 162/7 162/8 170/15 181/8  
185/18 186/23 191/20 192/4  
192/22 197/24 200/12 202/5 203/1  
207/12 208/8 209/5 209/7 209/8  
209/16 210/3  
**trial's** [1] 160/25  
**trials** [1] 104/15  
**tried** [9] 59/1 69/11 71/14 131/19  
131/22 133/1 134/3 152/5 227/4  
**trouble** [1] 83/25  
**troubled** [1] 194/16  
**troubles** [1] 164/20  
**true** [12] 7/19 19/8 36/18 49/3  
77/19 86/23 112/5 201/10 202/2  
221/9 230/13 232/12  
**trust** [3] 10/21 11/3 209/11  
**truth** [6] 161/1 177/17 220/16  
224/1 224/9 229/14

**try** [12] 17/5 57/15 65/9 66/15  
80/9 86/8 110/8 123/12 152/8  
202/14 205/10 218/24  
**trying** [19] 30/21 48/10 49/2 66/17  
77/10 86/1 91/2 109/23 125/14  
147/2 148/1 164/24 170/14 174/14  
176/21 183/14 195/1 200/25  
217/13  
**Tuesday** [4] 32/13 67/8 79/9 79/14  
**tunc** [1] 110/5  
**turn** [5] 77/16 183/22 184/13  
203/1 203/2  
**turned** [4] 88/7 94/16 100/8  
187/17  
**Turner** [1] 136/20  
**turning** [1] 185/3  
**turns** [1] 217/22  
**TV** [6] 35/6 43/18 104/24 122/7  
122/13 129/23  
**TV's** [1] 92/1  
**two** [54] 10/3 11/25 13/14 19/1  
21/14 27/16 33/25 34/3 34/9 35/6  
35/12 35/19 35/21 36/9 40/7  
40/11 41/2 41/5 43/2 44/6 46/20  
49/23 64/1 71/7 75/21 77/4 77/13  
95/2 101/2 122/6 122/12 122/20  
122/23 126/11 129/23 130/16  
137/23 138/21 145/19 145/21  
148/9 155/25 158/1 162/8 164/4  
168/13 181/3 183/15 183/17  
184/13 191/14 212/23 213/8 215/2  
**tying** [1] 142/22  
**type** [18] 13/24 24/22 42/6 49/20  
53/6 53/25 69/23 89/8 89/17  
95/23 156/15 160/9 160/9 160/19  
164/16 171/2 177/11 180/16  
**types** [1] 161/8  
**typical** [4] 59/15 59/19 59/19  
65/17  
**typically** [3] 72/20 73/4 101/17

**U**  
**ultimate** [1] 82/13  
**ultimately** [6] 15/18 26/11 38/4  
47/13 57/20 196/12  
**ultimatum** [1] 144/15  
**un** [1] 204/10  
**unavoidably** [1] 126/9  
**unbroken** [1] 135/25  
**unburden** [1] 222/16  
**uncovered** [1] 171/7  
**under** [46] 11/21 11/23 11/25 12/7  
13/11 13/15 15/16 29/22 30/9  
37/25 86/17 93/7 103/19 104/4  
104/9 113/8 114/23 115/4 115/7  
115/9 115/25 116/8 116/13 116/18  
121/23 127/4 134/15 140/24  
142/11 146/19 148/4 149/7 153/2  
157/17 165/12 174/23 186/17  
187/10 190/8 194/25 196/1 196/16  
198/6 199/17 204/3 205/6  
**understand** [30] 4/2 13/15 13/25  
23/17 30/25 31/7 35/1 38/11  
91/11 97/9 97/22 102/7 118/19  
131/12 131/12 131/16 131/22  
140/10 145/8 145/16 145/22  
150/15 151/23 168/10 176/20  
199/14 200/11 204/12 204/16  
207/17  
**understanding** [5] 102/10 103/20  
115/8 182/1 209/23  
**understands** [3] 107/9 114/4  
134/11



U	V	
<p><b>understood</b> [6] 72/14 90/18 98/5 154/9 164/3 175/17  <b>undertake</b> [1] 107/12  <b>undertaken</b> [1] 78/17  <b>undertaking</b> [2] 44/14 122/25  <b>undisputed</b> [2] 118/16 122/16  <b>unfair</b> [1] 199/2  <b>unfairly</b> [1] 149/11  <b>unfortunate</b> [1] 137/19  <b>unfortunately</b> [2] 138/13 221/9  <b>unhappy</b> [1] 126/14  <b>uniform</b> [1] 38/3  <b>United</b> [1] 180/12  <b>unknown</b> [2] 161/20 215/20  <b>unless</b> [1] 210/15  <b>unnecessarily</b> [1] 141/11  <b>unpalatable</b> [4] 131/13 131/14 131/16 131/22  <b>unproven</b> [1] 131/21  <b>unrelated</b> [2] 10/7 194/11  <b>unseal</b> [3] 104/12 106/23 111/15  <b>unsealed</b> [15] 73/18 103/23 105/2 105/16 105/21 106/5 108/18 110/23 111/9 111/21 113/18 113/25 114/18 114/20 116/23  <b>unsealing</b> [4] 107/21 114/15 116/19 117/3  <b>unsupervised</b> [2] 147/14 147/16  <b>unsupported</b> [1] 221/3  <b>unsuspecting</b> [1] 205/12  <b>unsworn</b> [1] 28/6  <b>until</b> [16] 67/4 68/4 95/19 96/3 101/13 107/19 153/9 153/14 160/3 174/24 193/12 206/18 219/10 219/15 219/24 223/12  <b>unusual</b> [5] 132/10 140/17 177/8 187/1 187/2  <b>unwilling</b> [1] 152/15  <b>up</b> [51] 12/14 15/1 16/11 25/2 33/8 52/24 53/20 65/24 68/24 69/2 75/25 87/20 87/22 97/4 103/21 109/22 111/6 113/5 118/22 125/23 130/9 132/3 136/7 142/9 157/14 166/20 176/15 177/8 179/1 179/1 179/5 180/14 189/21 191/23 195/24 205/10 209/6 210/9 215/3 216/3 218/1 218/19 220/15 220/22 221/23 223/13 224/5 224/8 226/8 227/4 227/21  <b>upfront</b> [1] 162/6  <b>upon</b> [6] 127/8 142/2 144/14 149/22 214/2 214/14  <b>upset</b> [3] 77/17 222/18 222/21  <b>urge</b> [1] 121/23  <b>urging</b> [2] 43/2 215/4  <b>us</b> [24] 11/7 15/12 47/8 78/9 91/12 91/13 92/12 92/13 93/12 97/20 97/25 107/11 134/13 166/18 176/6 180/2 194/9 194/18 208/21 210/8 210/13 211/24 218/18 224/9  <b>use</b> [7] 67/2 108/1 134/17 144/16 148/11 163/21 208/23  <b>used</b> [10] 43/18 66/13 66/20 86/11 138/12 152/3 179/14 189/6 189/8 215/15  <b>using</b> [3] 64/5 139/16 147/19  <b>usually</b> [4] 24/23 171/13 185/20 191/8  <b>utilize</b> [2] 68/17 148/16</p>	<p><b>vaguely</b> [1] 169/1  <b>value</b> [3] 164/25 165/7 200/6  <b>values</b> [1] 17/5  <b>variety</b> [1] 159/19  <b>various</b> [2] 15/2 120/23  <b>vehicle</b> [23] 22/12 47/3 48/16 49/3 62/23 63/4 64/10 66/16 66/16 66/18 78/10 78/11 78/18 79/2 79/3 80/23 95/20 96/21 173/23 178/12 178/12 182/13 227/22  <b>vehicles</b> [1] 16/7  <b>vein</b> [1] 111/1  <b>venture</b> [1] 129/8  <b>venue</b> [58] 4/5 43/1 44/10 98/12 98/15 102/5 117/14 126/7 127/16 130/10 132/2 134/14 134/19 135/8 135/10 138/2 138/25 139/25 140/3 141/17 143/4 143/12 143/16 143/23 143/25 144/3 144/6 144/9 145/4 145/7 145/11 145/16 145/23 146/7 146/10 146/14 148/5 148/8 148/20 148/23 149/1 149/7 149/17 149/18 150/1 150/15 151/13 151/22 152/16 153/22 154/13 154/17 192/9 192/10 210/20 212/4 212/9 212/22  <b>venued</b> [1] 125/4  <b>verbatim</b> [1] 77/24  <b>verify</b> [1] 192/25  <b>version</b> [4] 215/24 229/8 230/3 230/22  <b>versus</b> [2] 163/9 229/9  <b>very</b> [55] 4/17 39/8 40/11 54/5 61/7 97/24 101/3 102/21 107/11 111/5 114/17 116/5 117/22 121/5 134/11 137/22 140/20 141/6 145/5 150/25 152/23 152/23 152/23 153/5 153/6 160/13 160/25 162/2 162/11 163/22 164/18 165/13 165/20 165/20 167/7 174/14 176/16 182/21 187/14 187/16 189/15 190/16 192/11 192/16 193/17 199/2 201/21 207/16 208/17 212/21 213/12 219/8 222/4 228/6 231/11  <b>Vetter</b> [1] 14/7  <b>via</b> [2] 53/7 91/1  <b>vicinage</b> [1] 125/4  <b>victim</b> [6] 9/7 9/7 173/23 209/14 227/10 227/18  <b>victim's</b> [4] 206/15 207/19 227/22 228/8  <b>victims</b> [3] 58/11 101/20 207/24  <b>view</b> [2] 104/5 108/9  <b>viewed</b> [1] 121/16  <b>viewer</b> [1] 88/3  <b>viewers</b> [1] 128/14  <b>views</b> [1] 148/2  <b>violation</b> [1] 193/24  <b>violence</b> [1] 228/17  <b>violent</b> [2] 6/6 6/13  <b>visible</b> [2] 65/20 66/25  <b>visit</b> [1] 134/24  <b>visually</b> [1] 88/1  <b>voir</b> [1] 139/23  <b>volatile</b> [1] 105/8  <b>voluble</b> [1] 133/23  <b>vote</b> [2] 135/21 137/15</p>	<p><b>walk</b> [2] 172/7 191/24  <b>walls</b> [1] 216/6  <b>want</b> [30] 30/10 33/11 35/10 40/1 59/22 80/17 80/20 80/25 81/4 98/25 107/17 114/6 117/18 130/6 135/10 151/14 156/20 166/18 169/20 170/1 170/4 172/16 173/2 176/24 190/19 196/15 200/14 200/19 219/2 219/25  <b>wanted</b> [12] 43/19 51/7 59/23 85/11 97/25 112/13 114/10 115/20 139/1 158/6 200/21 224/5  <b>wants</b> [5] 169/7 174/25 191/17 208/24 209/4  <b>Ward</b> [1] 194/9  <b>warm</b> [1] 203/15  <b>warned</b> [1] 128/14  <b>warrant</b> [2] 28/14 29/7  <b>was</b> [443]  <b>Washington</b> [2] 20/2 107/10  <b>wasn't</b> [12] 84/3 93/22 98/3 169/7 178/13 178/14 190/3 204/14 205/1 217/19 219/10 219/15  <b>waste</b> [1] 162/1  <b>wastes</b> [1] 202/1  <b>watch</b> [2] 121/25 128/14  <b>watched</b> [2] 92/1 152/4  <b>watching</b> [3] 80/12 96/5 99/7  <b>Wausau</b> [1] 44/4  <b>way</b> [55] 11/17 15/1 20/6 24/14 27/10 28/10 30/25 32/6 33/4 34/8 58/23 64/5 73/18 78/7 86/22 86/24 97/8 109/24 123/12 124/14 127/9 141/22 146/20 150/6 151/5 154/10 158/18 160/16 161/2 165/8 168/12 168/12 168/12 168/24 168/25 170/24 173/5 175/17 176/7 177/13 182/10 190/13 190/16 190/25 208/24 209/10 216/25 219/6 221/17 222/1 222/8 222/24 222/24 226/19 227/8  <b>we</b> [309]  <b>we'll</b> [11] 3/25 27/2 103/2 110/8 111/11 155/22 157/4 210/1 211/10 231/10 231/11  <b>we're</b> [43] 6/13 44/14 46/3 81/20 98/11 102/7 103/5 103/7 113/13 126/22 146/7 154/3 155/15 157/4 160/17 166/1 166/3 167/23 170/14 170/24 170/25 171/10 179/10 181/25 184/5 192/5 193/8 193/15 193/16 196/9 198/15 198/16 198/18 199/8 201/8 202/13 205/20 208/21 212/3 213/2 224/24 229/11 231/12  <b>wearing</b> [2] 38/2 80/22  <b>weather</b> [1] 192/2  <b>websites</b> [1] 43/11  <b>Wednesday</b> [1] 211/23  <b>week</b> [11] 20/1 20/17 52/19 68/2 88/16 136/4 155/1 155/10 211/19 211/21 211/22  <b>weeks</b> [5] 33/25 35/19 35/21 135/2 161/7  <b>weigh</b> [3] 161/13 168/9 229/13  <b>weighing</b> [1] 164/23  <b>welcome</b> [2] 39/21 153/11  <b>well</b> [86] 4/4 4/17 13/13 16/25 18/12 26/16 32/24 38/19 42/1 47/23 62/12 67/4 74/21 76/24 80/19 82/13 82/25 84/16 84/18 88/21 91/19 94/5 98/11 100/6 100/15 102/21 106/6 106/22</p>
	<p><b>W</b>  <b>waiting</b> [3] 154/10 160/3 160/7</p>	

<b>W</b>	160/14 160/14 160/15 162/15 162/21 163/4 163/23 163/25 164/24 166/16 167/17 169/12 170/6 170/14 170/25 172/15 173/7 174/18 175/9 175/16 176/23 178/7 178/19 179/4 180/9 181/19 182/24 184/5 186/3 187/21 187/21 188/18 191/3 191/8 192/7 198/25 199/13 199/21 199/25 200/17 202/16 202/20 202/20 204/3 204/5 204/15 206/22 207/7 211/17 213/7 213/7 213/22 215/24 217/7 217/14 219/24 219/25 219/25 223/3 223/3 223/18 223/20 224/24 225/22 226/13 226/14 227/7 227/16 229/6 229/9 229/19 <b>what's</b> [11] 16/1 44/6 47/4 86/9 107/20 113/8 137/7 176/10 204/15 218/7 222/5 <b>whatever</b> [9] 24/1 24/6 159/2 165/17 172/1 178/6 178/22 212/6 214/6 <b>when</b> [73] 5/23 8/8 19/24 20/9 20/23 20/24 21/8 21/17 25/11 34/24 35/2 35/14 38/19 40/19 40/19 40/22 42/25 55/24 56/23 62/14 65/6 65/10 72/11 72/21 74/15 75/15 78/5 78/7 79/5 79/5 93/14 93/24 94/15 112/7 127/8 127/15 130/5 130/14 131/2 135/14 139/20 140/1 140/2 141/3 142/4 152/5 161/22 164/24 170/4 178/10 184/23 185/13 188/19 189/2 196/9 197/20 197/21 198/14 198/19 203/6 207/17 208/7 208/16 213/2 213/23 215/8 219/10 222/10 222/19 223/18 223/23 224/1 229/16 <b>where</b> [30] 6/21 14/18 40/2 50/9 82/5 87/17 104/18 109/15 112/11 126/11 126/12 128/2 131/2 136/6 147/4 158/6 163/10 163/14 164/23 169/4 172/22 177/12 177/25 187/4 193/3 204/2 205/5 209/8 218/19 224/10 <b>where's</b> [3] 216/16 220/2 220/2 <b>wherever</b> [2] 57/18 209/17 <b>whether</b> [46] 8/20 11/2 22/16 26/1 36/2 46/16 79/19 91/2 114/10 135/14 136/25 138/12 143/2 144/11 144/12 145/6 145/10 148/3 148/15 152/15 157/13 157/19 161/6 161/7 163/6 163/9 165/22 166/8 167/7 173/13 174/22 175/15 176/7 176/18 176/23 176/24 177/6 180/7 194/4 205/8 205/9 205/11 205/17 205/19 210/2 210/5 <b>which</b> [80] 5/24 14/24 27/7 32/13 36/21 39/3 43/7 43/18 62/7 64/3 66/18 67/8 77/20 78/9 87/20 92/5 93/3 104/4 107/1 109/14 109/21 110/12 111/11 113/7 113/23 114/20 115/25 116/9 117/11 118/13 118/21 120/16 121/22 122/13 124/23 126/7 127/21 129/1 129/2 130/13 131/17 131/19 136/16 140/23 141/8 141/8 141/22 150/15 150/18 151/12 155/23 158/5 159/21 160/9 160/24 160/25 161/6 161/9 161/20 162/8 170/16 171/13 172/3 187/3 194/12 198/25 199/3 199/4 199/24 201/11 201/17 208/22 214/16 215/5 218/5 221/23	222/6 225/25 226/19 228/14 <b>whichever</b> [1] 14/15 <b>while</b> [5] 50/2 55/3 134/7 160/12 230/1 <b>who</b> [87] 12/19 12/25 15/15 16/11 17/22 25/16 26/8 30/22 30/23 32/5 32/7 33/1 33/3 34/3 34/7 34/10 35/11 38/2 40/5 41/11 42/2 46/8 49/7 49/12 49/15 49/21 49/24 49/24 53/1 56/4 65/14 68/21 69/7 69/11 69/12 69/16 75/11 77/17 78/5 80/21 81/25 82/12 82/16 91/20 93/14 94/2 94/3 94/18 96/24 119/3 122/16 122/18 125/22 125/24 133/16 136/12 142/1 142/3 146/11 165/8 165/9 166/12 166/19 166/22 166/24 171/5 171/6 171/7 186/4 186/25 187/14 189/10 190/5 190/5 190/6 195/8 195/10 196/10 203/10 204/22 221/4 222/14 223/20 226/23 226/24 227/3 229/15 <b>who's</b> [12] 8/21 12/17 14/1 30/23 82/4 133/19 133/20 184/3 196/22 225/11 229/14 230/5 <b>Whoever</b> [2] 60/8 70/6 <b>whole</b> [17] 75/5 85/12 85/14 146/8 161/5 161/25 162/21 165/2 165/13 167/21 167/23 170/15 176/9 197/22 217/23 221/21 222/18 <b>wholly</b> [1] 201/5 <b>whom</b> [5] 60/11 82/2 137/4 199/21 202/17 <b>whomever</b> [1] 159/20 <b>whose</b> [2] 12/3 32/3 <b>why</b> [31] 25/7 59/1 61/16 66/20 95/17 96/2 96/4 96/12 97/7 110/3 112/8 142/24 152/17 180/12 184/22 188/21 188/21 194/16 194/18 198/2 200/7 200/9 201/8 201/15 218/18 220/22 223/14 223/22 224/2 224/2 224/3 <b>wide</b> [1] 52/4 <b>widely</b> [2] 6/6 32/13 <b>widely-known</b> [1] 6/6 <b>wider</b> [1] 127/25 <b>width</b> [1] 152/6 <b>Wiegert</b> [4] 47/15 48/4 61/16 112/25 <b>wife</b> [5] 136/13 164/7 164/8 164/12 165/8 <b>will</b> [114] 3/4 3/18 3/23 4/15 5/14 16/11 21/10 26/19 30/5 42/16 47/22 55/7 60/15 63/24 73/1 79/11 88/3 94/6 95/8 96/16 98/17 101/3 102/9 102/16 102/23 104/20 105/14 106/4 106/16 109/3 110/24 112/7 113/2 113/2 114/17 114/18 114/20 116/5 117/9 118/8 118/11 118/18 119/18 119/19 126/23 128/24 128/25 129/5 129/8 129/9 130/3 131/3 131/3 133/22 134/9 135/20 135/21 136/2 137/11 138/24 139/4 139/8 139/10 141/16 145/17 145/19 151/6 151/14 154/1 154/2 154/24 155/3 158/7 161/6 172/16 174/18 175/14 176/15 176/17 180/19 181/1 181/6 182/14 183/6 185/21 190/7 190/14 192/15 192/22 196/10 196/20 199/24 200/12 201/17 201/23 202/14 206/6 206/9 206/10 207/21 208/2 209/25 209/25 210/6 210/10 211/3
----------	---	--

**W**

will... [8] 211/9 213/1 213/13  
 213/14 225/15 225/25 226/1 231/3  
**Williams [1]** 3/15  
**willingness [1]** 148/7  
**Willis [1]** 1/11  
**willy [3]** 172/7 174/4 177/23  
**winded [1]** 190/17  
**window [1]** 221/24  
**Winnebago [1]** 69/23  
**wiped [2]** 215/12 215/12  
**WISCONSIN [21]** 1/1 1/3 1/14 3/2  
 3/7 11/20 43/15 43/21 71/1 72/22  
 125/5 127/24 134/16 135/16  
 135/20 135/23 137/13 137/24  
 142/18 232/1 232/6  
**wish [7]** 51/6 76/14 117/12 150/18  
 153/12 200/1 228/14  
**wishes [9]** 49/20 114/12 117/22  
 133/7 173/4 178/22 180/24 181/3  
 181/10  
**withdraw [1]** 148/25  
**withdrawing [1]** 98/20  
**withhold [1]** 81/4  
**within [10]** 19/14 19/17 25/17  
 37/23 38/14 52/13 101/23 143/9  
 143/10 195/23  
**without [14]** 57/23 92/18 110/24  
 113/3 133/5 133/5 133/8 135/23  
 136/1 158/4 181/13 190/24 200/14  
 207/6  
**witness [19]** 4/10 4/19 7/14 42/21  
 44/25 54/2 102/8 102/20 176/8  
 183/17 192/16 192/18 192/19  
 193/17 194/1 200/9 202/20 210/2  
 229/22  
**witness's [1]** 202/23  
**witnesses [12]** 2/2 132/13 147/21  
 173/7 176/8 177/24 182/20 187/13  
 187/23 189/3 190/11 202/20  
**wives [1]** 75/5  
**WLUK [1]** 122/13  
**woman [7]** 8/10 205/12 215/18  
 216/9 217/25 218/23 220/5  
**won't [4]** 41/15 102/24 134/11  
 200/5  
**wood [1]** 216/5  
**woods [1]** 136/11  
**word [5]** 64/12 86/11 109/18  
 116/24 222/23  
**wording [1]** 138/8  
**words [16]** 13/15 44/2 61/21 62/8  
 77/25 78/1 85/7 87/25 129/13  
 129/22 139/16 144/5 172/16  
 180/10 191/9 197/8  
**work [7]** 15/1 20/13 46/13 123/12  
 187/16 203/6 209/24  
**worked [3]** 54/21 59/8 210/11  
**works [1]** 220/19  
**world [2]** 77/1 85/15  
**worried [1]** 178/5  
**worst [1]** 136/17  
**would [228]** 5/18 8/12 8/14 10/21  
 11/3 13/11 13/18 13/22 14/13  
 14/24 15/10 16/5 16/6 16/18 17/9  
 18/7 19/23 23/14 23/19 23/20  
 24/8 24/11 26/13 26/14 26/16  
 26/17 26/18 26/18 29/24 30/8  
 32/17 37/12 38/9 38/15 39/17  
 39/22 40/25 40/25 48/18 49/7  
 49/14 49/15 49/18 49/19 49/23  
 49/24 49/25 50/4 50/5 50/19

51/14 52/25 53/5 53/8 53/10 54/8  
 54/12 54/13 54/14 54/15 55/20  
 56/24 57/3 57/15 57/24 58/4  
 58/14 59/16 59/24 60/24 61/18  
 62/9 62/21 65/17 65/19 66/9 67/8  
 67/9 67/23 67/24 68/16 68/19  
 68/21 69/11 69/15 70/3 70/7 70/8  
 71/6 71/11 72/15 73/20 75/24  
 76/9 76/25 77/3 78/4 79/14 80/14  
 80/25 81/10 81/22 82/14 82/18  
 82/18 82/19 85/2 89/10 90/9  
 90/10 90/14 91/3 91/5 92/15  
 93/17 95/17 101/16 101/21 101/23  
 102/17 104/17 106/12 109/6  
 109/15 109/16 110/1 110/2 110/12  
 110/23 111/5 113/21 116/12  
 116/24 117/1 124/17 124/23  
 125/20 128/1 129/7 131/25 132/22  
 133/12 133/13 133/14 134/23  
 135/7 136/14 136/19 140/3 140/17  
 143/10 147/18 147/19 148/23  
 148/25 149/6 153/16 153/18 155/4  
 157/8 157/21 157/21 158/8 158/19  
 158/25 160/17 162/11 168/2 168/6  
 168/7 168/8 168/16 169/13 170/2  
 170/23 175/20 176/2 176/4 179/9  
 182/2 182/16 184/22 185/5 186/11  
 188/3 188/12 188/15 188/21  
 195/23 196/16 197/8 197/11  
 198/12 199/1 201/10 201/15  
 202/11 202/12 202/22 203/20  
 204/1 204/1 205/10 205/11 207/11  
 208/19 208/23 211/14 212/12  
 213/22 215/17 215/18 215/20  
 216/11 216/14 216/25 217/19  
 219/22 220/6 220/7 222/14 224/2  
 224/3 224/15 225/21 226/4 226/15  
 230/12  
**wouldn't [10]** 14/12 32/5 34/25  
 101/15 134/7 134/24 195/5 203/22  
 207/12 216/17  
**writing [6]** 135/13 150/17 151/3  
 151/7 151/11 153/15  
**written [20]** 17/11 17/13 17/19  
 39/7 100/16 102/23 110/20 139/11  
 153/12 153/22 155/2 160/2 168/11  
 183/7 190/14 212/13 212/16 215/6  
 219/12 229/5  
**wrong [7]** 16/12 127/1 129/15  
 190/20 194/19 218/9 219/1  
**wrongful [10]** 63/12 106/11  
 116/10 196/20 197/4 199/12 200/2  
 202/2 202/22 208/23  
**wrongfully [1]** 197/23  
**wrote [1]** 41/11

**Y**

**Yanda's [1]** 29/6  
**Yard [3]** 22/12 22/20 45/18  
**yeah [20]** 20/22 24/24 27/11 27/13  
 29/4 34/24 39/19 41/10 65/17  
 66/14 69/20 74/18 78/1 79/3  
 79/17 82/18 98/22 147/25 194/22  
 223/16  
**year [3]** 7/11 214/4 214/15  
**years [21]** 5/5 5/10 5/12 5/14 9/14  
 9/16 9/21 10/3 10/6 10/15 10/17  
 39/1 74/3 88/23 89/2 135/23  
 189/23 200/25 204/9 210/7 225/7  
**yes [244]**  
**yesterday [1]** 206/16  
**yet [7]** 99/25 107/1 130/15 143/21  
 145/9 195/19 224/14

**yield [1]** 139/5  
**you [531]**  
**you're [2]** 171/19 178/16  
**young [7]** 136/13 165/3 214/23  
 217/22 218/22 222/14 228/4  
**your [104]** 4/8 4/9 4/22 4/22 5/22  
 8/9 8/24 10/11 11/2 11/3 15/24  
 17/5 17/7 17/14 17/23 18/9 18/15  
 19/17 19/19 20/10 24/4 24/9  
 24/25 25/3 25/18 25/18 27/8 28/7  
 28/16 28/23 28/25 29/13 30/7  
 30/15 31/19 32/19 32/25 33/20  
 33/22 34/3 35/24 36/20 37/7  
 38/20 39/4 39/8 39/16 39/21  
 39/22 39/25 40/12 42/17 45/3  
 45/3 45/10 45/24 46/25 47/3  
 52/12 54/10 55/2 60/23 60/25  
 62/8 65/2 72/14 74/2 76/5 76/6  
 77/1 79/5 86/17 87/10 87/25 88/5  
 88/21 89/2 90/6 90/18 92/10  
 92/20 93/7 98/21 104/2 108/23  
 114/23 118/4 118/17 139/10 150/7  
 150/9 150/14 151/1 153/15 158/17  
 172/16 181/22 190/14 191/2  
 194/16 203/8 206/20 207/6 229/2  
**yourself [7]** 10/23 39/24 46/25  
 49/14 93/8 98/7 99/10