

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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REPORTER'S RECORD
VOLUME 4 OF 35 VOLUMES
TRIAL COURT CAUSE NO. 1008763-A

EX PARTE) IN THE DISTRICT COURT OF
DAVID MARK TEMPLE,)
Applicant)
)
) HARRIS COUNTY, TEXAS
)
) 178TH JUDICIAL DISTRICT

POST-CONVICTION WRIT HEARING

On the 17th day of December, 2014, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Larry Gist, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

APPEARANCES

1
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CHRONOLOGICAL INDEX

VOLUME 4

POST-CONVICTION WRIT HEARING

December 17, 2014

PAGE VOL.

Proceedings6 4

Defense witnesses

Paul Looney	Direct	Cross	V.Dire
By Ms. Gotro	9 v4		
By Mr. Smith		36 v4	
By Ms. Gotro	62 v4		
By Mr. Smith		69 v4	
By Ms. Gotro	73 v4		
By Mr. Smith		74 v4	

Murray Newman	Direct	Cross	V.Dire
By Ms. Gotro	75 v4		
By Mr. Chin		126 v4	
By Ms. Gotro	192 v4		
By Mr. Chin		212 v4	
By Ms. Gotro	216 v4		

John Denholm	Direct	Cross	V.Dire
By Mr. Schneider	217 v4		
By Mr. Chin		281 v4	

Reporter's Certificate333 4

ALPHABETICAL INDEX OF WITNESSES

	Direct	Cross	V.Dire
John Denholm	217 v4	281 v4	
Paul Looney	9 v4	36 v4	
	62 v4	69 v4	
	73 v4	74 v4	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALPHABETICAL INDEX OF WITNESSES (CONT'D)

	Direct	Cross	V.Dire
Murray Newman	75 v4 192 v4 216 v4	126 v4 212 v4	

INDEX OF STATE'S EXHIBITS

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
12	Audio Interview of D.Glasscock	8	v4 8
15	Facsimile Letter from P.Looney to T.Wilson	46	v4 46
16	Facsimile Letter from Ms. Goode	47	v4 47

INDEX OF DEFENSE'S EXHIBITS

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
19	P.Looney's Trial File		
20	Blog Post	84	v4 84
21	Blog Post	84	v4 84
22	Blog Post	84	v4 84
23	Newman/Siegler Phone Records	119	v4 119
24	Email Between Alan Curry/S.Clappart	193	v4 194
25	HCSO Supplement Report	220	v4 221
26	Outline of Leithner's Cross	226	v4 226
27	Outline of Holtke's Cross	226	v4 226

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF DEFENSE'S EXHIBITS (CONT'D)

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
28	Outline of Schmidt's Cross	226	v4 226
29	Holtke's Offense Report	246	v4 247
30	Video Statement of D.Glasscock	245	v4 245
31	Leithner's Offense Report	247	v4 247
32	Shipley's Offense Report	247	v4 248
33	Schmidt's Offense Report	247	v4 247
34	Email from K.Siegler	270	v4 271

1 THE COURT: Have a seat, please.

2 Who's next?

3 MS. GOTRO: The defense calls Murray
4 Newman.

5 THE COURT: Call Mr. Newman.

6 **MURRAY NEWMAN,**

7 having been previously duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 Q (BY MS. GOTRO) Good morning, Mr. Newman.

10 A Good morning, Ms. Gotro. How are you?

11 Q I'm good. Could you state your full name for
12 us?

13 A Louis Murat Newman, the IV, and I go by
14 Murray. Stanley looks stunned at that information.

15 Q Murray, are you currently a practicing defense
16 attorney?

17 A I am.

18 Q And are you in private practice?

19 A Yes.

20 Q How long have you been practicing criminal
21 defense?

22 A Since December 24th of 2008.

23 Q And prior to that, you worked as an assistant
24 district attorney here in Harris County?

25 A Yes, ma'am.

1 Q And for how long did you do that?

2 A I'm bad with math. I started on August 16th
3 of 1999, so I think it was just shy of nine years or
4 just over nine years.

5 Q And so am I correct in saying that one of the
6 reasons you left the District Attorney's Office is
7 because of the in-coming administration?

8 A That would be an understatement, but, yes.

9 Q Fair enough. While working at the District
10 Attorney's Office, did you get a chance to work with
11 Kelly Siegler?

12 A I did.

13 Q And you described her as she's your mentor?

14 A Yeah.

15 Q Did she ever supervise you directly when you
16 were here at the DA's office?

17 A Only during the course of the Susan Wright
18 trial that we tried together.

19 Q And when was that case tried?

20 A I think 2004, but I'm not entirely sure. I
21 want to say it was like in February, January of 2004,
22 but I'm not sure.

23 Q And were you her cocounsel on that case?

24 A Second chair. Not the guy on the bed, but...

25 Q Who was the guy on the bed?

1 A Paul Doyle.

2 Q And just for the record, we're referring to
3 the Susan Wright case where Kelly brought a bed into the
4 courtroom and simulated a stabbing?

5 A Yes.

6 Q And when we say the guy on the bed, we're
7 referring to Paul Doyle, an assistant district attorney
8 who volunteered to be tied up and straddled by Ms.
9 Siegler?

10 A Correct.

11 Q Did you help Ms. Siegler prepare that case for
12 trial?

13 A Wright?

14 Q Yes.

15 A Yes.

16 Q So you are familiar with how thorough her
17 investigations are leading up to a trial?

18 A Yes.

19 Q Is it fair to say she doesn't leave a stone
20 unturned?

21 A She is extremely thorough.

22 Q Are you and Ms. Siegler still friends?

23 A Absolutely.

24 Q We know she has a television program. Cold
25 Justice, is that it?

1 A Yes.

2 Q I'm a huge fan. Are you?

3 A I saw you "Liked" it on Facebook.

4 Q I'm a huge fan.

5 A I'm an employee of it.

6 Q Okay. That's what I want to talk to you
7 about. I understood that you may be doing some
8 consulting for -- are you employed by Kelly or by
9 someone else?

10 A I'm employed by a company called Magical
11 Elves, which is the production company that produces the
12 show.

13 Q And how long have you been, I guess,
14 consulting on Kelly's program?

15 A The actual filming began in early 2013. There
16 was a lot of talk and negotiations and stuff during 2012
17 that led up to that, but the first -- the first episode
18 that we actually filmed was either in February or March
19 of 2013.

20 Q I understood that the premier was actually
21 September the 3rd, like the pilot episode was September
22 the 3rd of 2012. Was I mistaken, Mr. Newman?

23 A When it aired or when it was filmed?

24 Q When it aired. The premier airing of Cold
25 Justice was September 3rd, 2012.

1 A I'm trying to remember. I think you are
2 wrong, because --

3 Q That's possible.

4 A Because I think -- I try to base it -- I lose
5 track of time sometimes, but 2013 was a terrible year.
6 It was like I started -- no, we did all the filming on
7 that. Now, they did shoot a pilot. The pilot episode
8 that they sold to TNT, they shot that like a
9 year-and-a-half or a year before it actually aired. So
10 the very first episode, which was set in Cuero --

11 Q Right.

12 A -- that was filmed, because that's what they
13 pitched to TNT, and so once it got approved, then we
14 started filming all the back-to-back episodes in 2013.

15 Q Okay. Do you work on every single episode of
16 that show?

17 A I didn't work on the pilot, but I did work on
18 all of the ones on season one, but then I got sick and
19 was not able to work on them hardly at all on season
20 two. I think it came back, like I did the last one.

21 Q Okay. Let me stop you for just a second.
22 That premier that was filmed down in Cuero, was it Candy
23 Bowen? Was she, I guess, one of the survivors?

24 A I think Carl Bowen was a detective. I don't
25 remember the names of the other parties in that one

1 because I didn't work on it.

2 Q Fair enough. In addition to Kelly, Johnny
3 Bonds is also on this program, right?

4 A He has been in the past.

5 Q And Johnny Bonds used to work here as an
6 investigator in the Harris County District Attorney's
7 Office?

8 A That's correct.

9 Q And he worked very closely with Kelly Siegler,
10 did he not?

11 A You know, anytime you're at the DA's office,
12 everything kind of works in shifts. I know at some
13 point he was in Special Crimes with her. For Susan
14 Wright, for instance, I don't recall Johnny having a lot
15 to do with Susan Wright. Now, he may have later. But
16 Johnny, as I recall correctly, was assigned to Special
17 Crimes, not just assigned to Kelly.

18 Q To your knowledge, is Johnny retired from the
19 DA's office?

20 A Yes.

21 Q Did he used to work in the Sheriff's
22 Department?

23 A No. He was HPD before that.

24 Q HPD?

25 A Uh-huh.

1 Q Are you aware of any other, I guess, former
2 employers of the DA's office that are consulting on
3 Kelly's program since 2012 until now?

4 A Former employees?

5 Q Yeah.

6 A Oh, I thought you said employers. Yes. Eric
7 Devlin subbed in for me when I got sick, doing what I do
8 for the show, and then actually he -- like at the last
9 episode Brian Roberts came in. Alicia O'Neill is
10 also -- Devoy O'Neill has also done work for the show.

11 Q Luci Davidson maybe?

12 A Oh, yeah, Luci did some screening. Luci
13 assisted in doing some of the screening. She never did
14 anything being there. Before the show is filmed,
15 there's a very lengthy screening process on the cases,
16 and for a while, not for very long, but for a little bit
17 Luci was a screener for cases.

18 Q Now, if memory serves me, she has a detective
19 that she uses occasionally from Harris County, a former
20 Harris County Sheriff's Department detective?

21 A That Kelly does?

22 Q Yeah, on the program.

23 A I know she's got Johnny and sometimes Alan
24 Brown, who is HPD.

25 Q HPD?

1 A And Abby Abbandando has done a couple
2 episodes.

3 Q Could you say that last name again for me?

4 A Abby Abbandando. Everybody calls him Abby
5 because his last name is so hard to pronounce. But he's
6 done a couple of episodes.

7 Q And was he with HPD as well?

8 A Uh-huh. Yes, ma'am. Sorry.

9 Q How much do you get paid to do that?

10 A I just got a raise. Negotiating with
11 Hollywood is not fun. I started off doing \$3,000 a week
12 and now it's \$5,000 a week.

13 Q Well, congratulations.

14 A I was very happy, as was my wife.

15 Q I guess does that mean that Kelly and Johnny
16 renegotiated their contracts, too?

17 A I don't know. That part I don't know. They
18 are very much masked in confidentiality, the Magical
19 Elves.

20 Q I want to back up for just a second, Mr.
21 Newman. When you left the District Attorney's Office in
22 December of 2008, you started writing a blog; is that
23 right?

24 A I started before then.

25 Q Okay. When did you start?

1 A In the early part of 2008 is the -- all of
2 this began when Chuck Rosenthal -- the Chuck Rosenthal
3 story hit the media, which was right after Christmas of
4 2007. I started the blog either in January, February,
5 somewhere around there, of 2008.

6 Q Okay. And is it fair to say that that blog --
7 in that blog you refer to the Lykos administration?

8 A Yes.

9 MS. GOTRO: May I approach the witness,
10 Judge?

11 THE COURT: Yes.

12 Q (BY MS. GOTRO) Mr. Newman, I'm going to give
13 you copies of documents that have been marked for
14 identification purposes as Defendant's Exhibits 20, 21
15 and 22 and ask if you recognize them.

16 A I do.

17 Q And how do you recognize them?

18 A These are basically printouts of blog posts
19 that I wrote in 2012 regarding the David Temple case as
20 well as the corresponding comments that came at the end
21 of each blog.

22 Q And I asked you to read through your blog
23 posts prior to coming here today; is that right?

24 A You did ask me to.

25 Q Okay. And does this look like them?

1 A I don't dispute the authenticity of them.

2 MS. GOTRO: At this time, Your Honor, I
3 would like to have these admitted into evidence and
4 tender to the State for inspection.

5 MR. CHIN: If I may have a moment, Judge.

6 THE COURT: Yes, sir.

7 MR. CHIN: Thank you, sir.

8 Your Honor, I have no objection to
9 Defense 20, 21 and 22.

10 THE COURT: Thank you, sir. 20, 21 and
11 22 are admitted.

12 MS. GOTRO: Thank you, Mr. Baldwin.

13 MR. CHIN: Yes, ma'am.

14 Q (BY MS. GOTRO) I'm going to pass you
15 Defendant's Exhibit No. 20. Can you give me the date
16 that that particular blog post was made, Mr. Newman?

17 A Monday, July 30th of 2012.

18 Q And to the best of your recollection, is that
19 the first blog post that you made with respect to the
20 2012 Temple investigation?

21 A I can't say that for certain because -- I
22 mean, I may have made reference to it. It's the first
23 one that I would remember doing something of this detail
24 on.

25 Q Well, with respect to some new evidence that

1 may have come to light?

2 A Correct.

3 Q Have you had a chance to read A Soft Landing
4 for Leitner, Mr. Newman?

5 A I wrote it.

6 Q Well, reread it.

7 A No, I reread it the other day.

8 Q If I could direct your attention to page two
9 of nine in that second paragraph, you state that,
10 According to reliable sources, soon after Lykos took
11 office, Mr. DeGuerin started lobbying the Lykos
12 administration to reopen this case.

13 A Yes.

14 Q Can you tell us who those reliable sources
15 were that told you that?

16 A I don't recall anybody in particular. I mean,
17 most likely it was Kelly who told me that.

18 Q When you say Kelly --

19 A Siegler, I'm sorry.

20 Q Were you having regular contact with her right
21 around this time, which would have been July 30th of
22 2012?

23 A Oh, yeah. I mean, Kelly and I are like we're
24 family friends. I talk to her almost every day.

25 Q And in 2012, are you saying that you talked to

1 her almost every day?

2 A I don't -- I can't say that yes, I did on
3 every day, but, I mean, it was not an unusual occurrence
4 for Kelly and I to talk, and we did talk about this
5 because of what was going on. She was aware of it and
6 she was telling me about it.

7 Q Mr. Newman, is your phone number
8 (713)817-1821?

9 A Yes, ma'am.

10 Q Do you use any other phone numbers besides
11 that one?

12 A I have an office phone now. I don't think I
13 had it then. I have my office phone is (713)864-2080,
14 but everything gets forwarded to my cell. So, I mean,
15 for all intents and purposes, yeah, that was the only
16 one.

17 Q So if you would have been speaking to Kelly
18 Siegler daily, you would have been doing it on this
19 (713)817-1821 number?

20 A Yeah. If I was talking to her on the phone,
21 yes.

22 Q Well, how else would you be speaking to her?

23 A Email or in person.

24 Q Did she email you information about the Temple
25 investigation?

1 A I don't -- honestly, I don't recall. I mean,
2 she may have. I mean, I'm not saying she didn't.

3 Q But you could go and check your email? Would
4 that refresh your memory, Mr. Newman?

5 A I don't -- I doubt that it's still there. I
6 highly doubt that it's still there, if there's anything,
7 because I've changed computers. I had to get a new one
8 yesterday because I poured water on my old one. So I've
9 been through a few.

10 Q Okay. If I could get your attention back to
11 page two.

12 A Sure.

13 Q Back to that second paragraph, you state that
14 Kelly's trial file on David Temple had been on Jim
15 Leitner's desk since, what day was that?

16 A Very early in 2009.

17 Q Now, if you're a Harris County resident, we
18 all know that Kelly was in a very heated primary with
19 Ms. Lykos, right?

20 A Correct.

21 Q And so with this statement, Mr. Newman, are
22 you implying that -- are you just coming out and saying
23 that Mr. Leitner's interest in the Temple case is about
24 some sort of political attack on Kelly?

25 A Well, I think you're giving me -- there's more

1 explanation to that question. I think that Jim Leitner
2 was very susceptible to wanting to do what --

3 Q I'm going to stop you right there, because my
4 specific question has to do with the Temple file sitting
5 on Jim Leitner's desk since the 1st of January, '09 --
6 since the first of 2009, that statement.

7 A Yes, I hear you.

8 Q And so he came into office and immediately
9 pulled the Temple file to somehow besmirch Kelly's
10 character?

11 A I think he pulled the Temple file at
12 DeGuerin's request.

13 Q In January 2009?

14 A Yes, that's what I would surmise. I'm not
15 stating that I think that Jim Leitner woke up one
16 morning and said "Now let's see what we can do to get
17 Kelly Siegler."

18 Q Well, Mr. Newman, I refer you back to the
19 article where you say "My reports indicate" that the
20 file has been on Leitner's desk since January.

21 A Okay.

22 Q And so these reports, are you referring to the
23 ones you're getting from Kelly?

24 A Okay. Well, reports can also be someone
25 saying something verbally.

1 Q Okay. And I'm asking you, who said it
2 verbally?

3 A I don't recall exactly. There were a lot of
4 different -- a lot of DAs, a lot of ADAs would talk
5 about what was going on and they would go in and out
6 of --

7 Q And when you say ADAs, are you referring to
8 then employees, assistant district attorneys at the
9 Harris County DA's Office?

10 A Yeah. Sure.

11 Q If I could direct your attention to the middle
12 of the page, you say, According to multiple sources,
13 First Assistant Jim Leitner has picked up the file
14 again. And this would be, I guess, July of 2012?

15 A Right.

16 Q Do you recall a specific source of where you
17 got this information?

18 A That's probably coming at least from Kelly.

19 Q Very good. You state that DeGuerin has hired
20 former sheriff's lieutenant John Denholm.

21 A Yes.

22 Q Does that come from Kelly, too?

23 A I believe so.

24 Q You mention that a specific investigator
25 within the Harris County District Attorney's Office has

1 been given permission to log as many hours of overtime
2 as he could possibly need with no questions asked, all
3 at taxpayers' expense. Yes?

4 A Yes.

5 Q You're referring to Steve Clappart, correct?

6 A Yeah. I was trying to -- Clappart and I were
7 friends. I didn't want to name him at that point.

8 Q Mr. Newman, who told you that Steve Clappart
9 had been authorized to work overtime on anything?

10 A I believe it was Kelly.

11 Q Are you friendly with Lance Long?

12 A Very.

13 Q Could that information maybe come from Lance?

14 A No. And I can elaborate on why, if you would
15 like, but it absolutely did not come from Lance Long.

16 Q Were you speaking with Lance during this
17 period of time?

18 A Infrequently. Very, very infrequently. Not
19 like -- I mean, we may have on occasion, but not -- not
20 regularly.

21 Q Were you aware that he was speaking with Kelly
22 during this period of time?

23 A I'm not surprised. I mean, was I specifically
24 aware? I don't think so, but, I mean, I wouldn't be
25 surprised. Kelly talks to everybody.

1 Q Yeah, I think we've gotten that. Give me one
2 second.

3 You go on to state towards the bottom of
4 the page, Mr. Newman, that it would appear one of
5 Leitner's project -- Jim Leitner's projects is getting
6 the murder conviction of David Temple overturned, and
7 you state, although some of the details are not
8 confirmed, apparently a jailhouse snitch heard somebody
9 other than David Temple confess to the murder and
10 supposedly this confessor is in Mexico.

11 A Yeah, I see where I wrote that.

12 Q Where did you get that information?

13 A Again, I would presume it was from Kelly.

14 Q Have you had a chance to read through the
15 comments that were attached, Mr. Newman?

16 A I mean, I did at the time. I mean, I can
17 follow along with the best of them if you want to direct
18 me towards one of them.

19 Q Well, no. When I texted with you this
20 morning, I told you that there would be certain comments
21 that I would ask you about.

22 A Well, you texted me at 4:45 a.m. I was
23 asleep, and when I wrote back, I was trying to get an
24 infant out the door. So I haven't had a lot of time
25 since then.

1 Q Can we agree, Mr. Newman, that you have woken
2 up since having read that message?

3 A Oh, yeah. Did you tell me to look at a
4 specific one?

5 Q I asked you to look over the comments and
6 refresh your memory as to who made certain comments.

7 A Okay.

8 Q Have you -- did you do that before you came to
9 court?

10 A No, but, I mean, I remember -- I mean, they're
11 almost all anonymous or me or somebody. These all are
12 just me. They are anonymous, one or the other.

13 Q Mr. Newman, when an anonymous poster leaves an
14 anonymous post, they also leave an IP address, do they
15 not?

16 A Well, you have to use an outside software. I
17 use an outside software called StatCounter to look at
18 it. It's not on the -- at least I don't know how to
19 look at it on the blog website itself.

20 Q So my question was, that when an anonymous
21 poster goes to your specific blog site, they leave an
22 IP address after blogging that anonymous comment,
23 correct?

24 A My understanding is, you can find it
25 through -- if you have linked it to a third-party

1 software, which is, in my case, StatCounter, but there's
2 some severe limitations on that. May I explain?

3 Q Well, I haven't really gotten --

4 A Okay.

5 Q Just yes or no. With all of the software and
6 platforms that you currently employ, are you able to
7 access the IP address for certain folks who post
8 comments in response to your blogs?

9 A And that answer requires just a little bit of
10 clarification, if you don't mind. Trust me on this one.
11 It only does like the last 500. StatCounter offers to
12 do it for free, but it only keeps like the last 500.
13 It's like a surveillance store -- surveillance video at
14 a Stop N Go. It rotates. Like I could get on right now
15 and show you the last 500 people that logged on, but
16 could I show you somebody from February of last year?
17 No.

18 Q I think I understand, Mr. Newman. If I could
19 direct your attention to the last paragraph of page two.
20 You state "If Mr. Temple walks out the front door of
21 TDCJ, we should all keep a careful eye on what door
22 Mr. Leitner walks in through."

23 A Yes.

24 Q Correct me if I'm wrong, but what you're
25 implying is that if any evidence is discovered that

1 might benefit David Temple, then surely there must be a
2 deal between Jim Leitner and Dick DeGuerin?

3 A I think what I was trying to insinuate there
4 was that Mr. Leitner was not acting properly in his
5 duties and I thought that he was doing something
6 underhanded.

7 Q Pray tell, how was he acting improperly, Mr.
8 Newman, based on what you knew as of July 30th? We'll
9 get to the September posts.

10 A Well, based on my -- I mean, not to argue with
11 you, Ms. Gotro, but what it seemed like to me was at the
12 time that that case was going up before the Court of
13 Criminal Appeals, if I recall correctly, and at the same
14 time, Mr. Leitner, from what I was hearing, seemed very
15 willing to basically do whatever he could that
16 Mr. DeGuerin was asking him to, and that was not a
17 consideration that was being provided to any other
18 defendant in the courthouse.

19 Q How did you know that fact, Mr. Newman?

20 A Well, I had clients as well. I mean, there
21 wasn't anything that was as publicized as what they were
22 doing, and I think that --

23 Q Let me stop you for just a second. I want to
24 back up. You said that Mr. Temple was getting this
25 special treatment that no other defendant in the

1 criminal courthouse in Harris County was getting?

2 A Yes.

3 Q And you acknowledge that because you have
4 clients here?

5 A Well, I, mean, let me put it to you this way.
6 I don't get any task force assigned to my cases when I
7 tell them I think my guy is innocent.

8 Q So that's what you were told by Kelly is
9 that --

10 A No. I --

11 Q -- let me finish, please -- is that someone is
12 reporting that David Temple is innocent, is that what
13 she's telling you?

14 A DeGuerin was.

15 Q My question is, is that what Kelly Siegler was
16 telling you?

17 A I mean, she didn't have to spell it out. That
18 was kind of the implication. But, yeah.

19 Q So specifically what did she say to you?

20 A I have no idea what she said specifically. I
21 mean, that's over two years ago.

22 Q If I could direct your attention to the next
23 exhibit, Mr. Newman.

24 A Sure.

25 Q September the 11th of 2012, David Temple and

1 the Dereliction of Duty. Do you remember writing this
2 article?

3 A I do.

4 Q In your second paragraph you reference some
5 previous postings about Jim Leitner?

6 A Right.

7 Q You mention again the unlimited overtime of
8 Harris County DA investigator Steve Clappart.

9 A Okay.

10 Q And that Clappart was assisting defense
11 attorney John Denholm.

12 A Correct.

13 Q Where did you get that information?

14 A Kelly.

15 Q You say that -- you go on to say that the
16 Harris County DA's Office is quickly talking out of both
17 sides of its mouth, because we've got the Appellate
18 Division of this Office arguing that Temple's conviction
19 should stand while the First Assistant -- what's he
20 arguing?

21 A I'm sorry, could you point out which
22 paragraph?

23 Q Yeah. While the First Assistant was covertly
24 authorizing an investigation to try and undermine the
25 factual basis of the very same conviction.

1 A Right. Gotcha.

2 Q So did you get that information from Kelly?

3 A No. I drew that conclusion just based on what
4 I knew. I mean, that's an opinion statement.

5 Q Well, let me back up a second. You make a
6 statement about what the Appellate Division's opinion
7 was. Do you see that in there?

8 A Well, yeah, but --

9 Q We're going to take this a piece at a time.

10 A Okay.

11 Q The Appellate Division of the Office was
12 arguing that Temple's conviction should stand.

13 A They didn't concede and decide not to pursue
14 it is my point.

15 Q With respect to the investigation that you're
16 discussing in this blog, Kelly told you the Appellate
17 Division's position was that the conviction should
18 stand?

19 A No, she didn't have to say that. The fact
20 that they were having to answer -- I don't do appellate
21 writ or the appeal or whatever the terminology is. I
22 mean, the fact that they were actually doing a State's
23 response in the Court of Criminal Appeals is what I'm
24 referencing. I mean, they're not just saying "You know
25 what, hey, you all are right. Let it go." I mean, they

1 are actually responding and trying to maintain that
2 conviction at the Court of Criminal Appeals level.
3 That's all I was saying.

4 Q Mr. Newman, did you understand that some new
5 evidence had come forward?

6 A I understood that some new allegations that
7 there was evidence that had come forward.

8 Q Okay. You understood there was new
9 allegations of evidence that had come forward?

10 A Yes.

11 Q Can you tell us what you think the District
12 Attorney's responsibility is when new allegations of
13 evidence comes forward after a conviction like this?

14 A I think that they should turn it back over to
15 the investigating agency and ask them to report back to
16 them.

17 Q What if there are questions about that
18 investigating agency's ability to do its job?

19 A The Sheriff's Office? Then I would say
20 something that was a little less -- that had a little
21 less of an appearance of impropriety as to what they
22 were doing. AG's office, somebody else, Texas Rangers.

23 Q But you're not suggesting that the evidence
24 shouldn't be investigated, are you?

25 A No.

1 Q You state that Clappart's investigation was
2 something that Leitner wished to keep under the radar?

3 A Correct.

4 Q What's the basis -- what basis of information,
5 knowledge, did you have to make that statement?

6 A Because I heard he totally flipped out after I
7 wrote the July 30th --

8 Q From whom did you hear that, Mr. Newman?

9 A A lot of people. I mean, just different
10 people. Kelly, for one.

11 Q That Leitner was to keep Clappart's
12 investigation under the radar?

13 A That he was upset that I had written the
14 July 30th, 2012. He did not want the general public to
15 know that.

16 Q But, Mr. Newman, I'm referring to the words
17 that you wrote. You say under the radar, like it's
18 secret.

19 A I would qualify that as under the radar.

20 Q What?

21 A I would base -- I am inferring that from what
22 I heard about his reaction to the July 30th one, that
23 how upset he was about that being written, that he had
24 preferred that that investigation had been kept under
25 the radar. I mean, we may be arguing semantics here,

1 but that's what I'm trying to illustrate.

2 Q Mr. Newman, how long, to your knowledge, did
3 Steve Clappart work in law enforcement?

4 A A long time. I knew he was HPD, I think,
5 before -- before coming to the DA's office. I mean,
6 I've known Steve for years.

7 Q So if I told you 40 years in law enforcement,
8 you wouldn't have any reason to disagree, would you?

9 A No, absolutely not.

10 Q Maybe the reason that Steve Clappart was upset
11 about your first blog post is because you accused him of
12 being in bed with some dirty defense lawyers.

13 A You mean, Leitner?

14 Q No, I mean DeGuerin.

15 A No, you said the reason Clappart would be
16 upset.

17 Q Yeah, and Denholm.

18 A Okay. Well, I never knew Clappart to be
19 upset. He's still nice to me to this day. Leitner was
20 upset.

21 Q You state that Belinda Temple's family wasn't
22 informed of what Leitner and Clappart were up to.

23 A Correct.

24 Q Where did you get that information?

25 A Kelly.

1 Q Can you wait until I finish my sentence before
2 you talk, because she yells at me when that happens.

3 A I thought I had.

4 Q You got that information from Kelly?

5 A Yes.

6 Q So to your knowledge, was -- and this is
7 September the 11th of 2012?

8 A Yes.

9 Q So according to what Kelly is telling you, the
10 Lucas family had no idea what was going on with this
11 investigation?

12 A That's correct.

13 MS. GOTRO: If I could have just one
14 second, Judge.

15 THE COURT: Yes, ma'am.

16 Q (BY MS. GOTRO) Did you know who Brian Lucas
17 was?

18 A I didn't. I mean, I presume he was part of
19 Belinda's family, blood family.

20 Q So if I told you that Kelly had been in touch
21 with the Lucas family as early as August of 2012, would
22 that surprise you, Mr. Newman?

23 A No. And let me clarify what I'm saying. I
24 don't believe that they knew what was going on from the
25 DA's office. I'm not saying that Kelly wasn't telling

1 them what she was hearing. I would actually presume
2 that Kelly would have let the Lucas family know what was
3 happening, and I believe at one point doesn't one of
4 them, like one of the Lucas family comments on the blog,
5 don't they? I thought they did.

6 Q Did you read it?

7 A No. I'm remembering. I, like, have a vague
8 recollection of it. I thought. I just don't --

9 Q I'm going to direct your attention to the next
10 sentence.

11 A What page, two?

12 Q No, we're still on page one. September 11th
13 of 2012. "As of this writing, the Lucas family still
14 hasn't been informed of what is going on."

15 A That's poor writing on my part. I should have
16 said by the Harris County District Attorney's Office.

17 Q You go on to state that the objective of the
18 Clappart/Denholm investigation was to shift attention
19 away from David Temple as the prime suspect and focus on
20 a trio of teenagers believed to be committing burglaries
21 in the neighborhood. Yes?

22 A Yes.

23 Q So did Kelly tell you that Clappart and
24 Denholm were investigating this new evidence together?

25 A Yes, I believe that's correct.

1 Q "A startling new piece of evidence came from a
2 new witness who had allegedly heard one of those
3 teenagers make a statement of 'guilt.'"

4 A Quote-unquote guilt. But, yes.

5 Q A new witness. Is Kelly the one that gave you
6 this information?

7 A Yes.

8 Q To your knowledge, was she talking at all
9 with -- well, to your knowledge, was anyone other than
10 Clappart and Denholm investigating this information?

11 A I don't know. I'm sure -- I don't know. I'm
12 sure somebody was, but I know that they were -- I don't
13 know actually.

14 Q You don't know if anybody other than these two
15 guys were investigating this new evidence?

16 A I mean, other than like DeGuerin's people?

17 Q No, I mean in law enforcement.

18 A If it was, I don't know specifically who. I
19 mean, I know whose case it had been when the murder
20 happened, but I don't know what involvement they were
21 having with this stuff.

22 Q So we're still on the September 11th article.
23 You say that "In an effort to attempt some semblance of
24 an appearance of neutrality in the
25 DeGuerin/Denholm/Clappart investigation, the Office

1 appointed a 'Special prosecutor.'

2 A Where are we?

3 Q We're still on the first page, last paragraph.

4 A We are? My last paragraph starts with "The
5 objective of the Clappart/Denholm 'investigation.'"

6 Q Oh. Next paragraph.

7 A So that's on page two for me. The one that
8 says "When I wrote the post"?

9 Q Yes. It's the last sentence of that
10 paragraph, some semblance of neutrality, that Brad Beers
11 has been appointed as a special prosecutor.

12 A Yes, gotcha. That's on page two for me.

13 Q Was Kelly the one that told you about Brad's
14 appointment?

15 A Probably, but I don't remember.

16 Q Did she tell you why this special prosecutor
17 was being appointed?

18 A I think she assumed that was done because of
19 in response to this July 30th blog post, that they
20 wanted to wash their hands of it. That upper admin of
21 the Harris County DA's Office wanted to wash their hands
22 of it and pass it on to a quote-unquote special
23 prosecutor.

24 Q Because there was now this question about some
25 sort of collusion between Jim Leitner and Dick DeGuerin?

1 A Correct.

2 Q The very thing you wrote about in that
3 article?

4 A Correct.

5 Q You accuse Brad Beers of having a conflict of
6 interest?

7 A Absolutely.

8 Q Did you communicate that to the DA's office at
9 all, that you thought Mr. Beers had a conflict of
10 interest?

11 A They weren't -- you don't understand the
12 relationship between me and the DA's office at the time.
13 They weren't real receptive to what I thought.

14 Q Just a yes or no.

15 A No, I did not.

16 Q Did Kelly?

17 A I have no idea.

18 Q Did she share that opinion with you, that he
19 had a conflict of interest?

20 A Absolutely.

21 Q She believed that?

22 A Yes.

23 Q What did she think or what did she tell you
24 his conflict of interest was?

25 A That there had been previous legal

1 representations that Brad Beers had done for the people
2 that were involved in this investigation.

3 Q Like who?

4 A Like Steve Clappart. And I knew for a fact
5 because Brad Beers had contacted me on another
6 high-level investigator with the DA's office named Leon
7 Wilson at the time and informed me that he was
8 representing him.

9 Q And Kelly shared that opinion with you, that
10 that may be a conflict of interest?

11 A I don't think she had to say those words. She
12 had to just basically say "You know Brad Beers
13 represented Steve Clappart before" and I said "I know,
14 and I know he represents this Leon Wilson guy, too,
15 because he called me on that." He didn't seem very
16 detached to me.

17 Q If I could direct your attention to the very
18 next paragraph.

19 A Okay.

20 Q "Clappart and Denholm are currently trying to
21 get warrants signed for the arrest of at least one of
22 the teenagers (at the time)" of Belinda Temple's murder.

23 A Okay.

24 Q Mr. Newman, can you tell me what a pocket
25 warrant is?

1 A I can try. I was never in Special Crimes. I
2 know the Special Crimes Division of the Harris County
3 District Attorney's Office, at least when I was there,
4 they were the only ones that had the authority within
5 the office to issue what was called a pocket warrant.

6 My understanding, and it's limited, was
7 that it was a warrant that would be signed off on, but
8 it still gave the police officer the discretion over
9 whether or not they wanted to actually pick the person
10 up on it. That they could go and like interview someone
11 that they considered to be a suspect, and if they
12 thought that after that interview or something else
13 turned up, that they had enough probable cause to pull
14 him in, that they could do so based on that pocket
15 warrant. It's also my understanding that it was not --

16 Q I'm going to slow you down just a little bit,
17 though.

18 A You asked.

19 Q So if I understand you correctly, a pocket
20 warrant is something that law enforcement uses when it
21 goes to interview a potential witness or suspect, yes?

22 A Yes.

23 Q And during the course of that interview, if
24 law enforcement hears something that makes them think
25 this suspect is good for this crime, they get to execute

1 that pocket warrant?

2 A Well, not that simply. They could go in there
3 and the person could refuse to talk and they could still
4 arrest him on a pocket warrant.

5 Q Okay. But let's assume that they have the
6 element of surprise and the suspect just sits down and
7 talks to them, and during the course of that
8 conversation the suspect says something that leads that
9 law enforcement officer to believe "Hey, he's good for
10 it. I'm going to execute this warrant." Is that about
11 how it works?

12 A That's one way of several in which it could
13 work, yes.

14 Q Can you and I agree that if the suspect knows
15 the pocket warrant is coming, probably not going to be
16 willing to sit down and talk with law enforcement, is
17 he?

18 A Yeah, if he's -- I mean, well, I don't know.
19 Maybe. Sometimes.

20 Q Mr. Newman, are you seriously questioning
21 that? If a suspect who is being -- who is under
22 suspicion for capital murder finds out that the cops are
23 coming to have a conversation with him and they've got a
24 pocket warrant?

25 A If he's not guilty, he probably would have no

1 problem speaking with them.

2 Q Right, because not guilty people are
3 comfortable talking to law enforcement?

4 A Ms. Gotro, you and I both know that our
5 clients talk long past the point we wish they would.

6 Q If not guilty people do that, then can we
7 assume that the guilty ones get lawyers? Is that what
8 you're saying?

9 A You know we can't make that assumption either.
10 Every case is different.

11 Q Did Kelly tell you about that pocket warrant?

12 A I believe so.

13 Q And this was on July -- no, excuse me.

14 A This is September 11th.

15 Q September the 11th. Did you know that that
16 weekend that some folks had tried to execute a pocket
17 warrant?

18 A I don't know if I knew. I don't know --

19 MR. CHIN: Your Honor, I object at this
20 point. That is a mischaracterization. There has not
21 been a pocket warrant that's ever been granted in this
22 case, at least in relation to this investigation.

23 THE COURT: Your objection is overruled.
24 I know what the evidence is.

25 Go ahead.

1 A Do you mind repeating the question? I'm
2 sorry.

3 MR. CHIN: I object, Judge, to a comment
4 from someone back here that said "Sit down." I don't
5 appreciate comments from the gallery.

6 THE COURT: There will be no comments
7 made by anybody in the courtroom or they'll be removed.

8 Go on with your questions.

9 MR. CHIN: Thank you, Judge.

10 A Now I really forgot the question.

11 Q (BY MS. GOTRO) A warrant, a pocket warrant.
12 Did Kelly say anything to you about a pocket warrant
13 being executed that weekend?

14 A I don't think I was being kept up to date on
15 this in realtime. I think it was more along the lines
16 of "And then they did this." It was something further
17 down the line. I don't know how close in time it was to
18 me receiving that information from when I wrote it. I
19 mean, it might have been. I'm not saying it didn't, but
20 I don't recall.

21 Q Just a yes or no, if I can get this from you,
22 Mr. Newman. Did you have any specific information from
23 Kelly Siegler about a warrant for Cody Ellis or Riley
24 Joe Sanders or any individual related to this Temple
25 investigation?

1 A There's no easy way to answer that because
2 it's kind of a -- I guess the short answer would be no,
3 but with a big explanation.

4 Q That's okay. So, again, the paragraph we were
5 just on, you say that Clappart and Denholm are currently
6 trying to get warrants signed for the arrest of at least
7 one of the teenagers mentioned above, right?

8 A Yes.

9 Q And you don't remember -- wait. You did get
10 that information from Kelly?

11 A I believe that's correct, yes.

12 Q Do you remember having specific conversations
13 with Kelly about your blog posts?

14 A I mean, do I remember having those
15 conversations, yes.

16 Q About your blog posts?

17 A Yes.

18 Q Did Ms. Siegler ever comment on any of your --
19 and when I say "comment," I mean the digital writing
20 comment on your blog posts?

21 A I don't know if she did on any of these. She
22 rarely, rarely, rarely, if ever, did that. So, I mean,
23 I can't tell you for sure on the answer to that one.

24 Q At the end of the page, Mr. Newman, you say
25 "Now, let's get back to the events of this week and that

1 Pocket Warrant."

2 A Okay.

3 Q And, again, this is the pocket warrant that
4 you don't specifically remember Kelly telling you about?

5 A Well, no. You didn't let me elaborate on how
6 I was saying that question. You boxed me into an
7 answer.

8 Q Well, if you give me an answer up front, I
9 will let you elaborate on it, Mr. Newman. Did Kelly
10 Siegler give you that information?

11 A She told me that there was a pocket warrant
12 that they were trying to get. Not that there was one
13 that they had successfully got -- gotten.

14 Q You say that Clappart was shopping around a
15 warrant for the arrest.

16 A I had heard that he had gone to more than one
17 judge with it.

18 Q More than one judge?

19 A Or something along those lines. He had tried
20 to talk to more than one person, trying to get them to
21 sign it.

22 Q You go on to cite exact verbiage from the
23 warrant, Mr. Newman. Quote, 5 or 6 months ago, quote,
24 as coming from the words of this new witness. Do you
25 see that?

1 A Yes.

2 Q Did someone show you a hard copy of that
3 warrant or a digital copy of that warrant?

4 A No one showed it to me. I want to say
5 somebody mailed something to me, because sometimes I
6 would get things in the mail.

7 Q Did it have a return address on it?

8 A No. That would have defeated the purpose, I
9 think, of why they were sending it to me.

10 Q Probably. "Furthermore, that 'Smoking Gun'
11 evidence that this new witness has involves him
12 overhearing one of three (then) teens admitting to
13 shooting a dog during a burglary and throwing it in the
14 closet." Where did you get that detail from,
15 Mr. Newman?

16 A Well, now, that's not a direct quote. That
17 was the gist of what I believe Kelly had told me.

18 Q So you got that information from Kelly?

19 A I believe that's correct.

20 Q You state "How on earth could Schneider and
21 DeGuerin have known what a D.A. investigator was up to"
22 when you're referencing the motion for new trial that
23 Stan Schneider and DeGuerin were arguing. Were you
24 aware of whether or not the Sheriff's Department had
25 participated in the investigation of this new evidence?

1 A I don't want to misstate this. If I recall,
2 they initially were and then something happened to where
3 they were not or something along the lines -- something
4 along those lines, that basically their access was
5 diminished or they weren't taking the lead on it for
6 some reason or another was my understanding.

7 Q Okay. You talk about -- you go on to talk
8 about the identity of this new witness being sealed in
9 that very next paragraph. Is Kelly responsible for
10 sharing that information with you, too?

11 A That I don't know. I don't recall. And where
12 are you? I'm sorry, I've lost you. Are you on page
13 three?

14 Q Yes, sir.

15 A Which paragraph?

16 Q It's number one, two, three, four on mine.

17 A What's the first line?

18 Q "As an aside, in their Motion/Writ, DeGuerin
19 and Schneider make mention of the statement of the 'New
20 Witness' being sealed for his protection."

21 A Yeah, the motion said that.

22 Q Right.

23 A Yeah.

24 Q Do you know why?

25 A No.

1 Q Kelly didn't tell you why?

2 A Not that is -- not that I am remembering right
3 now. I speculate there, but I don't -- but I don't
4 recall anybody spelling that one out for me.

5 Q So the last three paragraphs of the article,
6 you state, That brings us to today, as Schneider and
7 DeGuerin are trying to get Judge Mendoza of the 178th to
8 make a ruling on their motion. The District Attorney's
9 Office via their Appellate Division Head, Alan Curry,
10 have made the argument that since Temple's case is still
11 pending before the CCA -- were you in court that day?

12 A I don't know. I don't know. I might have
13 been. I mean, I'm up here most days.

14 Q You state that DeGuerin and Schneider don't
15 like Mr. Curry's arguments and they would like to have
16 him recused from the hearing. And, again, I've got to
17 ask you, were you in the courtroom when that happened?

18 A No, that's probably me surmising.

19 Q That they didn't like his argument?

20 A That I thought that they did not -- they did
21 not want his arguments to be put forth.

22 Q Where did you find out that they were seeking
23 to recuse Mr. Curry?

24 A Well, I think that was part -- that part I
25 don't know, because they did that in addition to the

1 special prosecutor. You know, I don't -- I don't
2 remember. I may have been in court that day. I'm not
3 sure.

4 Q Mr. Newman, when you were at the District
5 Attorney's Office, did you ever work in Post-Conviction?

6 A No.

7 Q Did you ever do any type of appellate work?

8 A No, ma'am.

9 Q I think we've got one more blog in here, don't
10 we, Mr. Newman?

11 A That I have in front of me, yes, ma'am.

12 Q What's the date of that blog?

13 A September 30th, 2012.

14 Q And the title of that blog is Kelly Siegler
15 Responds.

16 A Correct.

17 Q Can you tell me what she was responding to?

18 A I believe -- let me look. I believe it was in
19 response -- I believe what she did was an affidavit in
20 response to the Out-Of-Time Motion for New Trial or
21 Alternative Application for Writ of Habeas Corpus Based
22 on Actual Innocence, Newly Discovered Evidence and
23 Willful Suppression of Exculpatory Evidence filed by
24 Mr. Schneider and Mr. DeGuerin.

25 Q And am I correct in saying you go on to

1 publish excerpts from Kelly's responsive affidavit?

2 A Correct.

3 Q Did she send that to you for you to publish
4 it?

5 A I believe that's correct. She either sent it
6 to me or gave it to me in person.

7 Q And you didn't have any problem doing that,
8 right? She's a good friend, fair?

9 A Yeah.

10 Q So if I understand the summary in toto of your
11 testimony, Mr. Newman, virtually all of this information
12 came from Kelly Siegler?

13 A I would say like the super vast majority, like
14 95 percent of it probably, yes.

15 Q And you don't recall anybody specific within
16 the DA's office giving you that information, do you?

17 A No. Let me qualify that. Like I might have
18 had someone say "Yeah, I saw that David Temple file.
19 It's been in Leitner's office forever along with his
20 weights," you know, something along those lines.

21 Q And the Sheriff's Department, you don't even
22 know if they were participating in this, do you? Is
23 that your testimony?

24 A No, I knew that Dean Holtke had initially been
25 involved and then had been taken off, and basically I

1 just ran into him at a drinking establishment one time,
2 and Kelly had told me something to the effect that he
3 had been taken off of that. And, I mean, I've known
4 Dean for years. I mean, he and I are friends as well.

5 Q You told us at the beginning of your testimony
6 that you talk with Kelly practically every day,
7 certainly during this time frame?

8 A We do now. I mean, we talk frequently. I
9 don't know if it was every day back then, but, I mean,
10 it's hard to say when we started to the point where we
11 talked every day.

12 MS. GOTRO: Your Honor, may I approach
13 the witness?

14 THE COURT: Yes.

15 MS. GOTRO: I'm going to tender what's
16 been marked as Defense Exhibit 23. It is a summary of
17 evidence that I have provided to the State for them to
18 compare with some records that were obtained by Brad
19 Beers.

20 Did you guys get a chance to do that?

21 MR. CHIN: Is that what you're talking
22 about?

23 MS. GOTRO: Yes.

24 MR. CHIN: Can I see it?

25 MS. GOTRO: Oh, yes.

1 MR. CHIN: I haven't done any comparison,
2 Judge. She hasn't offered it, but I have no objection
3 to its admission if she does.

4 THE COURT: What's the number?

5 MS. GOTRO: It's Defense Exhibit No. 23,
6 Judge.

7 THE COURT: 23 is admitted.

8 Q (BY MS. GOTRO) Mr. Newman, if I tell you that
9 Kelly Siegler's phone number was (713)304-9800...

10 A That sounds correct.

11 Q Okay. Are you aware that Brad Beers actually
12 subpoenaed some cell phone records upon his appointment
13 in this case?

14 A I am. Well, I became aware of it much later.
15 But, yes.

16 Q So I believe from May all the way through
17 September he's got records; Kelly's being amongst them.

18 A Okay.

19 Q If I were to tell you that from May the 1st to
20 July the 27th, that there was no contact and no cell
21 phone records between you and Ms. Siegler, do you
22 dispute that?

23 A I mean, are these all just specific to me, to
24 my number?

25 Q Well, we can go through it. On July 27th --

1 A I'm asking, because this begins on July 27th.

2 Q Right.

3 A Are you telling me that there's nothing before
4 then?

5 Q I'm representing that to you and I'm asking
6 you, do you have any reason to dispute that?

7 A It doesn't show that I talked to her on her
8 cell phone.

9 Q Well, this is just a summary of some evidence
10 that the District Attorney's Office has provided me, and
11 so this summary is what I'm showing you and I'm giving
12 you the chance, based on your memory, your recollection,
13 Mr. Newman, to say or to tell me whether or not there's
14 any reason to dispute these records as true.

15 A That I did not speak to her on her cell phone
16 is true, but I also have Kelly's home number and she
17 would call me from her home number also.

18 Q Okay.

19 A She was kind of semi-retired at the time.

20 Q So then, I guess, her land line would be on
21 your cell phone records?

22 A I'm not saying if it is or not, but I'm saying
23 it was not uncommon for me to speak with her on both her
24 cell or her home line. I mean, I can't honestly tell
25 you, remembering how often I spoke to her in any given

1 month.

2 Q Mr. Newman, when I first contacted you about
3 your testifying in this case, did I not specifically say
4 you're going to be asked the source of the information
5 that you published in your blog?

6 A Yes.

7 Q And I did that as a professional courtesy
8 because I've known you a long time?

9 A Yeah.

10 Q All right. So the date of your first blog
11 posting, that would have been July the 30th; is that
12 right?

13 A That's the date of this blog posting.

14 Q Yeah, just the three that I've shown you here
15 today.

16 A Yeah. I mean, I wrote a lot of other stuff.

17 Q Okay. Well, having been through your website
18 recently, these are the only three that I found about
19 the 2012 investigation into this new evidence. Are
20 there others?

21 A I don't know. I mean, maybe. I probably did
22 the same thing you did, I Googled David Temple on the
23 search term and these were the three that popped up.

24 Q No, I just Googled your blog.

25 A I mean, there's a search term within the blog

1 and that's how I pulled up these three stories. Those
2 were the ones that popped up.

3 Q If I could direct your attention to that
4 screen, Mr. Newman.

5 A Do you want me to look over there or can I
6 look over here?

7 Q Either one.

8 A Okay.

9 Q So on the 27th we have four phone calls. It
10 looks like you might have left a voice message. She
11 returns the phone call. But you and Kelly talk for
12 about a little under ten minutes that day?

13 A We're looking at the 27th?

14 Q Yeah.

15 A Okay. That's by minute, is the frame of
16 reference?

17 Q Yes. And then maybe on the 31st?

18 A Okay.

19 Q And that would have been the day after, I
20 guess, your July 30th -- what's the date of the July
21 posting?

22 A 30th.

23 Q And then August the 7th?

24 A Okay.

25 Q Do you remember what you were talking about on

1 that August 7th conversation?

2 A Lord, no.

3 Q No? What's the date of the next post,
4 Mr. Newman?

5 A September 11th.

6 Q September the 11th. Let me ask you,
7 Mr. Newman, do you recognize the phone number
8 (713)416-5726?

9 A Not by number, no.

10 Q If I told you that was Dean Holtke's phone
11 number, would you have any reason to disagree with that?

12 A No.

13 Q No? Did you ever at any time, at any point,
14 discuss this matter, this 2012 new investigation, with
15 Dean Holtke?

16 A Briefly.

17 Q Tell us, please, what you talked about.

18 A Just the fact that he had been removed off the
19 investigation and he felt insulted by it.

20 Q Did he tell you why he got removed off the
21 investigation?

22 A I think the word "politics" was thrown around
23 a lot and it was mostly generalized grumbling.

24 Q Oh, he was being the generalized grumbler?

25 A This time.

1 Q Sir?

2 A This time.

3 Q Was that the only thing that you two talked
4 about was his getting kicked off the case?

5 A Well, I mean, there were a couple other people
6 there and I ran into him at Canyon Creek and basically I
7 had just -- I had just heard, Kelly told me, and it was
8 a bizarre coincidence, but I did run into him and I was
9 like "Hey, man, I heard what happened" and he was
10 like -- he was pretty disgusted at the DA's office. His
11 belief was that the DA's office had had him pulled off
12 of the Temple investigation and he was rather upset
13 about that. As far as any specifics regarding the case,
14 I don't recall him stating -- I don't think we like did
15 a biopsy on the case, that I recall.

16 Q So he just felt like he was being treated
17 unfairly because he was pulled off the case?

18 A Well, I think that he felt like his integrity
19 was being questioned.

20 Q When was the last time you spoke with Dean
21 Holtke about this case, about the 2012 investigation, do
22 you remember?

23 A About the facts of the case?

24 Q Yes.

25 A I mean, when you're talking about the details

1 of the crime itself, I don't know. I saw him on Monday
2 when we were all sworn in and before we were put in
3 under the rule. It was just kind of like "What are you
4 doing here?" and "What are you doing here?" But, I
5 mean, technically that counts as discussing the case.
6 But I don't recall like saying, well, you know, this was
7 found here and so therefore the evidence tends to
8 believe that. I don't recall.

9 Q Fair enough. In all of your time at the
10 District Attorney's Office, Mr. Newman, did you have the
11 opportunity to interview a suspect before he or she had
12 requested counsel?

13 A Yes.

14 Q Yeah?

15 A Once.

16 Q Once?

17 A Yeah. A grand jury, one time.

18 Q Before they requested counsel?

19 A Uh-huh.

20 Q And the witness was in the grand jury room?

21 A Uh-huh.

22 Q So as prosecutor for the State of Texas, if
23 that witness had said -- had asked for a defense lawyer,
24 would you have gone out in the hall and gotten one?

25 A I probably would have just terminated

1 proceedings at that point.

2 Q Because it's not your job to get them a
3 lawyer, is it?

4 A No.

5 Q I think that's it. Thank you, Mr. Newman.

6 MS. GOTRO: I pass this witness.

7 **CROSS-EXAMINATION**

8 Q (BY MR. CHIN) Hi, Mr. Newman.

9 A Hello, Mr. Chin. How are you?

10 Q I'm well, thank you. How are you today?

11 A I'm fine.

12 Q How long have we known each other?

13 A Since I worked at the DA's office. Yeah, a
14 long time.

15 Q Did you start around 1999?

16 A Yes, sir.

17 Q But it's not like I met you the first day,
18 right?

19 A No, you were not part of the welcome wagon.

20 Q And by the time you showed up, was I just some
21 guy that was on the sixth floor doing post-conviction
22 stuff?

23 A That's true.

24 Q And you didn't really know who I was and
25 wasn't a friend of mine at that point?

1 A I met you through Sylvia, when Sylvia and I
2 started dating, Sylvia Escobedo, and that would have
3 been around 2002.

4 Q Sylvia Escobedo, being your ex-wife?

5 A One of them.

6 Q Okay. Now, you only gave us a glimpse of your
7 experience and who you are. Can you give me a little
8 bit of background on your education?

9 A I went to -- graduated from Bryan High School
10 in Bryan/College Station. Married in 1991. Went to
11 Texas A&M, graduated in December of '95. From there I
12 went to the University of Houston Law School, graduated
13 in '99 there, and almost immediately came to work for
14 Harris County District Attorney's Office.

15 Q Were you what is deemed to be a pre-commit?

16 A I was not.

17 Q Okay. Pre-commit being someone who gets a job
18 at the office before you actually get your license,
19 correct?

20 A Yes, sir.

21 Q So you actually had your license by the time
22 you got a job at the District Attorney's Office in
23 Harris County?

24 A Correct.

25 Q Just to get a quick glimpse from the time that

1 you started all the way to the time that you left, did
2 you stay your entire time in the trial bureau?

3 A With a brief diversion into juvenile, JP and
4 grand jury, yes.

5 Q Okay. Let me break that down real fast.
6 Trial bureau being essentially a place where you're
7 assigned to a particular court to handle cases where
8 cases get dropped into, correct?

9 A Correct.

10 Q And so whatever cases fall into your lap,
11 County Court 1 or the 178th District Court, if you're
12 one of those prosecutors, you may be assigned to handle
13 one of those cases, correct?

14 A Correct.

15 Q And when you talk about juvenile, you're
16 talking about our Juvenile Division, where we handle
17 cases where kids under or individuals under what, 16?

18 A Under 17.

19 Q Under 17, thank you. Are charged with
20 delinquent conduct or things of that nature, right?

21 A Right. And I don't think it fell under the
22 trial bureau the way the hierarchy was.

23 Q Okay. But you would prosecute cases there
24 similarly to when you were in the trial bureau, correct?

25 A Correct.

1 Q Now, you talked about JP. Is that the Justice
2 of the Peace Court?

3 A Yes, it is.

4 Q Is that the vacation courts?

5 A Depending on which Justice of the Peace you
6 were practicing in front of on any given day.

7 Q You basically handled things like traffic
8 cases or Class C misdemeanors, is that fair to say?

9 A The really sexy stuff, yes.

10 Q The really hot and fun stuff? And what was
11 the other non-trial bureau place you mentioned?

12 A Grand jury.

13 Q Grand jury. And tell me what you did there.

14 A Basically we called ourselves the reading
15 monkeys. We would just go in and present probable cause
16 on very simple cases, like crack pipe cases, to the
17 grand jury. Sometimes taking them in in batches, as big
18 as 40, 60 cases at a time, no witnesses, and presenting
19 them to the grand jury for indictment.

20 Q And usually you all are the ones that once the
21 preliminary, initial appearance in court occurs and the
22 case doesn't get pled out or dismissed, it gets sent to
23 the Grand Jury Division, where prosecutors like you,
24 when you were assigned there, would do the presentation
25 and the grand jurors do generally come out with a true

1 bill?

2 A Yes, sir.

3 Q And other than that, you spent the rest of
4 your time, remainder of your time, in the trial bureau
5 representing the State in cases where it would work out
6 and plea or go to trial or dismissal?

7 A Yes, sir.

8 Q Do you know a man named Alan Curry, C-u-r-r-y?

9 A Yes, I do.

10 Q And how do you know Alan Curry?

11 A I just knew him as a coworker at the office
12 who dealt in the Appellate Division. I didn't -- on a
13 professional level I did not cross paths with Alan
14 Curry.

15 Q Did he have a reputation that you were aware
16 of?

17 A Yes.

18 Q And what was that reputation?

19 A Really smart and quiet. Very quiet. Very
20 keeps to himself.

21 Q And is that smart in terms of like he can fix
22 cars? What was he smart in?

23 A The law.

24 Q So he knew a lot of law in what you knew about
25 him, is that fair to say?

1 A Yes. He was the go-to person if you had a
2 legal question.

3 Q At the time you started in 1999, did you know
4 if Alan Curry was in Appellate at the District
5 Attorney's Office of Harris County?

6 A As long as I can remember Alan Curry, I
7 remember him being in that division.

8 Q Okay. Do you know whether Alan Curry had any
9 role in the direct appeal of the Temple case?

10 A I don't know what role. I do believe that he
11 had some role or was at least aware of it.

12 Q All right. Are you aware that he represented
13 the State on the direct appeal at the Court of Appeals
14 level and later on at the Court of Criminal Appeals
15 level when in fact PDR was granted by the Court of
16 Criminal Appeals?

17 A It does not surprise me. I mean, I would
18 assume so.

19 Q Based upon his reputation, you were aware of
20 Alan Curry generally handling higher profile appeals; is
21 that fair to say?

22 A Absolutely. He was -- I mean, from my
23 understanding, although there are different divisions in
24 that division, no, he was the main guy, to my
25 understanding.

1 Q All right. During your time in trial bureau,
2 you mentioned Kelly Siegler and you being friends, I
3 guess you could say?

4 A Correct.

5 Q You at some point in time say that she was a
6 really good friend and at some point in time you say she
7 was kind of a good friend. Kind of tell me where you
8 actually met Kelly Siegler, not starting necessarily
9 with the office, but just when did you meet Kelly
10 Siegler for the very first time?

11 A The first time I met Kelly Siegler, I was
12 working as a law clerk for Hinton, Sussman, Bailey &
13 Davidson, and they were trying a death capital. I
14 believe it was State v. Brian Gonzalez against Kelly
15 Siegler and Vic Wisner.

16 Q Let me stop you, if I could. Hinton, Sussman,
17 Bailey & Davidson, is it fair to say they are a criminal
18 defense firm here in Harris County?

19 A They were.

20 Q They kind of -- you know, one guy left, two
21 guys left, and now it's just Hinton?

22 A Bob Sussman passed away.

23 Q Right.

24 A And now I think it's Hinton & Bailey.

25 Q Okay. And so they tried a case against Kelly

1 Siegler and you said Vic Wisner?

2 A Correct.

3 Q And what kind of case was it again?

4 A Capital murder.

5 Q And you were helping which side?

6 A The defense.

7 Q Did you become friends with Kelly during that
8 trial?

9 A I would say I became acquaintances with Kelly.
10 I mean, it wasn't like we became big buddies. I
11 wouldn't say that we actually became like friends that
12 actually like would talk to each other on non-business
13 terms until I actually started at the DA's office.

14 Q Were you aware at the time that you were
15 working on that case whether the Hinton or the Sussman
16 or the Bailey or the Davidson were friends of Kelly
17 Siegler?

18 A Oh, they all were. And when we would do
19 socialization, there were some events that they would
20 host that I would go to and Kelly would be there, as
21 would a lot of the people who were felony district court
22 chiefs at the DA's office.

23 Q Would it be fair to say that of those four
24 names, Hinton, Sussman, Bailey and Davidson, one or more
25 of those four individuals had been former prosecutors?

1 A They all had.

2 Q At the Harris County District Attorney's
3 Office, yes or no?

4 A Yeah. One of them may have been federal. No,
5 I think they all were here at Harris County.

6 Q Okay. How about this. Hinton, he was
7 somebody at the Harris County DA's Office?

8 A Yeah. He was head of Special Crimes.

9 Q Davidson, he was at the Harris County District
10 Attorney's Office?

11 A Right.

12 Q And Bailey was, too?

13 A Correct.

14 Q The only issue may be Sussman, right?

15 A And I think Sussman was here. If not, like
16 U.S. Attorney's Office, but I know he had some
17 prosecutorial background.

18 Q Okay. But that's where you saw Hinton,
19 Sussman, Bailey and Davidson interact with Kelly
20 Siegler?

21 A Yes.

22 Q And you saw that she was a very dynamic
23 individual?

24 A Absolutely.

25 Q And very friend-attractive?

1 A Oh, yeah. She's definitely a magnetic
2 personality.

3 Q People gravitate toward her, yes?

4 A Yes.

5 Q Now, after that trial, what's your next
6 contact, if you remember?

7 A When I started, I did that trial between my
8 first and second year of law school. Between my second
9 and third year of law school, I tried to -- I did a, not
10 a pre-commitment, an academic internship at the DA's
11 office and I had applied to work in the 228th under
12 Kelly but ended up in the 209th District Court under
13 Judge -- well, actually under Judge McSpadden, and the
14 prosecutor is now Judge Alcalá.

15 Q Okay. Just let me break that down, because
16 the record -- either this Judge or the Court of Criminal
17 Appeals may not know who all the players are. Okay?

18 A Okay.

19 Q You try to get an internship at the District
20 Attorney's Office and you specifically applied to get
21 into the 228th District Court where Kelly Siegler was
22 district court chief there?

23 A Correct. She was at that time.

24 Q Okay. And the judge of that court was Ted
25 Poe; is that fair to say?

1 A Yes, sir.

2 Q Now, you said you did not get your internship
3 there like you wanted to, correct?

4 A Not in that particular court, no.

5 Q And I'm really bad about talking over you and
6 I think you are, so try to let me finish, if you don't
7 mind. Okay? But instead, you were assigned to the
8 209th District Court, correct?

9 A Yes.

10 Q Thank you. And that judge was Judge Michael
11 McSpadden, correct?

12 A Yes.

13 Q And the chief, the district court chief of
14 that court in the 209th was Elsa Alcala, who is
15 currently a Court of Criminal Appeals judge, correct?

16 A Correct.

17 Q While you were in that internship, did you
18 have any interaction with Kelly Siegler?

19 A Not professionally. I mean, the
20 Hinton-Sussman group is a pretty social group and there
21 may have been like happy hours that I was invited to and
22 she was as well, but I believe -- I'm trying to remember
23 if that was when her mother passed away, somewhere
24 around that time. But, I mean, we were not going to
25 lunch together or calling each other on the phone or

1 anything like that back then. I knew her almost
2 strictly through the Hinton-Sussman group.

3 Q Okay. So it's not like during that period
4 your relationship developed even greater, correct?

5 A No, that's correct.

6 Q Is your next interaction when you actually
7 came into the District Attorney's Office?

8 A That's correct.

9 Q Now, you said that she was your mentor. How
10 did she mentor you when you came into the District
11 Attorney's Office?

12 A She didn't at first. When I started at the
13 DA's office, I was a very social, social prosecutor and
14 I would regularly try to get people together to go grab
15 beers together on Wednesday for steak nights. There was
16 a Little Woodrow's that would cook steaks on Wednesday
17 and some cohorts of mine would try to get as many senior
18 prosecutors to come so that like the younger prosecutors
19 could socialize with the older prosecutors. And we were
20 always trying to get Kelly to come, and she would show
21 up once in a blue moon, but it got to be kind of a
22 running joke. We would tease her about how antisocial
23 she was and not going out, and that's kind of where I
24 would say that we started actually being friends, and
25 that's when I became friends with Luci Davidson and

1 Denise, now Denise Bradley, and Vanessa Velasquez, a lot
2 of these people. It was during that time period, and I
3 would say the mentoring came with Susan Wright.

4 Q And the other names you mentioned, Vanessa
5 Velasquez, Denise Bradley and Luci Davidson, they were
6 higher -- people who were higher up in the office than
7 you were at the time, correct?

8 A Correct.

9 Q So you actually begin becoming friends with
10 Kelly, like friend-friends with Kelly at that point in
11 time. Quickly give me the rundown of how your
12 relationship developed from there to actually being a
13 mentor.

14 A Well, we became friends and, you know, my
15 class of prosecutors had all started in '99. We all
16 wanted to -- we hung on the older prosecutors' every
17 word. We wanted to hear the war stories. We wanted to
18 be able to tell people, hey, you know, we know this
19 person that you're reading about in these high-publicity
20 cases. So we would make a point to try to hang out with
21 them whenever they could tolerate us, and so we would
22 invite them to lunch. And some of them -- like Luci
23 became the division chief of misdemeanor and she and
24 Kelly were friends, so we would go to lunch with Luci
25 and sometimes Kelly would come, sometimes she wouldn't,

1 but it was through that period of years that we just got
2 to know each other better. And then when Susan Wright
3 came along, I think Luci was initially supposed to sit
4 with Kelly on that trial and Luci had a conflict and so
5 Kelly said something along the lines of "Do you want to
6 try it with me?" And of course I did.

7 Q So that's the actual first case, State of
8 Texas v.. Susan Wright, in which she and you actively
9 worked together on a case?

10 A There was one -- she wanted to try and give
11 younger prosecutors some experience. There was one that
12 had been before that that we had started out to work on,
13 but then it pled, and so she said "Don't worry. I'll
14 get you on another case," and that was that.

15 Q Okay. And so the real case where you actually
16 went to trial with her was the Susan Wright case,
17 correct?

18 A That's correct.

19 Q And that was a high-publicity case?

20 A Very.

21 Q High-profile case?

22 A Yes.

23 Q All right. Can you tell me from the time that
24 this case started, you weren't actively involved from
25 the very beginning, were you?

1 A No, sir. Are we talking about Susan Wright?

2 Q Susan Wright, I apologize. You were not or
3 you were?

4 A I was not.

5 Q At what point in time during that phase of the
6 trial did you become involved in that case?

7 A A couple months before trial time.

8 Q It was before the case is set for trial or
9 after it was set for trial?

10 A It was probably already set. And I don't want
11 to give you a time period because I don't know if there
12 were ever a continuance -- if there were continuances
13 that might have occurred. I'm not entirely sure about
14 that, but I wasn't there from the ground floor
15 definitely.

16 Q Do you remember who your opponent was in the
17 Susan Wright case?

18 A Yes. It was -- it was Neal Davis and Todd --
19 I'm blanking.

20 Q Ward?

21 A Todd Ward.

22 Q Todd Ward, yes?

23 A Yes.

24 Q Okay. And would it be fair to say that Todd
25 Ward and Neal Davis were actually associates or some

1 other level of attorney in the Dick DeGuerin firm?

2 A Yes, sir.

3 Q So essentially it was you and Kelly trying the
4 case against Dick DeGuerin's firm, represented by Neal
5 Davis and Todd Ward?

6 A Correct.

7 Q Was that trial highly contentious?

8 A I would say it was mildly contentious. I
9 think -- I mean, both Neal and Todd conducted themselves
10 in an appropriate manner.

11 Q Ultimately in that case Susan Wright was
12 convicted, yes?

13 A Yes.

14 Q At the end of the day was Neal Davis and Todd
15 Ward, as far as you know, friends with Kelly Siegler?

16 A Certainly not enemies. I mean, everybody was
17 civil with each other. I mean, it was like any trial,
18 there are certain things that your opponent did that
19 aggravated you more than others, but, I mean, nobody
20 walked out of there hating anybody, I don't believe.

21 Q Okay. So let's fast-forward all the way up to
22 2012, if you don't mind. During that time I guess your
23 friendship with Kelly develops, yes?

24 A Yes.

25 Q And you all are closer? Maybe you do more

1 things together, is that fair to say?

2 A When she ran for DA is when we became very
3 good friends and I became what I would classify as
4 family friends. Also good friends with her husband as
5 well.

6 Q Now, talking about the campaign, when did that
7 campaign begin for Kelly Siegler running for the
8 District Attorney's Office about?

9 A She had to kind of do it on the fly in January
10 of 2008.

11 Q And why is that?

12 A Because everybody assumed that up until a new
13 story in late December of 2007, that Chuck Rosenthal was
14 going to be running.

15 Q Now, let me stop you right there. Chuck
16 Rosenthal had currently been the elected District
17 Attorney for Harris County from 2000 to that point in
18 time, is that fair to say?

19 A Yes, sir.

20 Q And there was a scandal involving Chuck
21 Rosenthal, yes?

22 A Yes.

23 Q And because of that, Chuck Rosenthal
24 ultimately had to resign his position as the elected
25 District Attorney of Harris County, correct?

1 A Yes, sir.

2 Q And so because of that -- well, would it be
3 fair to say that at that point in time the filing date
4 to run for District Attorney was closing fast?

5 A Very.

6 Q And so there needed to be somebody else to run
7 that was office-related -- and I'm using the air
8 quotes -- office-related to run for the District
9 Attorney. Is that fair?

10 A That's absolutely fair.

11 Q Were there rumors that people in the office
12 were going to run for that or sign on to run for the
13 position?

14 A I can remember some prosecutors on standby to
15 actually run out the door and make sure they got to the
16 filing deadline before it passed in the event -- I mean,
17 it was chaotic, it was crazy. But, yes, there were
18 several other names. Everybody wanted Kelly to do it,
19 but there were some other people on standby if she said
20 "I can't do it."

21 Q And ultimately Kelly signed papers to run for
22 District Attorney during the year 2008, correct?

23 A Correct.

24 Q Now, Kelly had also some primary opponents
25 that had signed on very late in the game, correct?

1 A Correct.

2 Q But before that, everybody kind of thought
3 that Chuck Rosenthal was going to re-run again and
4 really not have a problem getting reelected?

5 A Right. Nothing had been done in advance, like
6 building up a war chest or getting PR campaigns or
7 anything had been done. All of this had to happen on
8 the fly literally within hours of the filing deadline.

9 Q So after the whole Chuck Rosenthal debacle,
10 some people came in at the very last minute, in addition
11 to Kelly, to run for elected District Attorney, correct?

12 A Some people did.

13 Q And one of them was Patricia Lykos?

14 A Yes.

15 Q Would another one be Jim Leitner?

16 A Yes.

17 Q And was there like a sheriff's guy or a HPD
18 guy who had retired, former law enforcement guy who also
19 ran for the Republican nominee for District Attorney; is
20 that correct?

21 A Yeah. He was a weird dude. He was almost
22 kind of a joke candidate, because, I mean, he had a law
23 degree but about nothing else as far as being a
24 prosecutor.

25 Q Just for context purposes, the real candidates

1 in this race were actually Kelly, Patricia Lykos and Jim
2 Leitner, correct?

3 A Correct.

4 Q And was there somebody from the Democratic
5 side as far as you remember? Maybe? I don't know.

6 A Oh, yes. It was Bradford, it was the former
7 Chief of Police.

8 Q Clarence Bradford?

9 A Yes.

10 Q Who used to be Chief of Police for the Houston
11 Police Department, correct?

12 A Yes.

13 Q And it was under his reign or under his tenure
14 that the Houston Police Department crime lab blew up?

15 A Yes. They had a ton of problems: K-Mart
16 raid. All kinds of problems that they had.

17 Q So just to give a quick context to the
18 election, you worked on the election for Kelly, right?

19 A Very hard, yes.

20 Q You don't work for Patricia Lykos?

21 A No.

22 Q You don't work for Jim Leitner?

23 A Nope.

24 Q Is that a yes or no?

25 A That's a no.

1 Q And you didn't work for the police officer
2 guy?

3 A No.

4 Q All right. So you work for Kelly, and when
5 the Republican primary -- I guess it's the primary
6 election day, who won that?

7 A Well, Kelly had the most numbers, but she
8 didn't avoid a runoff, and it had to go to a runoff
9 about a month later, in which Lykos ultimately defeated
10 her.

11 Q Okay. So essentially, just so that the record
12 is clear, Kelly won the runoff but didn't get 50 percent
13 of the vote, correct?

14 A Kelly won the general primary but not the
15 runoff.

16 Q No, no. I meant she won in terms of numbers.
17 She won that first primary election but did not get
18 50 percent of the vote, and that required then a runoff
19 with the next -- whoever got the next amount of votes,
20 right?

21 A That's correct.

22 Q And that person was Patricia Lykos, correct?

23 A Lykos, yes.

24 Q Up to that point in time were there
25 conversations, as far as you know, because of your

1 involvement with the election, that Kelly was supposed
2 to get support from any of the other candidates who did
3 not make the runoff?

4 A Oh, yeah. You know, Leitner had supposedly
5 said that he was going to remain neutral and he had made
6 some comments that said that if he didn't get it, that
7 he thought a trial lawyer should become the DA. And Pat
8 Lykos was not a trial lawyer and Kelly was. There was a
9 lot of inferences that he made that indicated that he
10 would be supporting Kelly, but then at the end, as soon
11 as he was out of it, he automatically turned around and
12 endorsed Lykos.

13 Q And those statements that you are attributing
14 to Jim Leitner, that he wanted a trial lawyer to be in
15 the elected District Attorney position, was because
16 Patricia Lykos had been a judge, yes?

17 A Right. But the way -- and I heard this
18 statement. It indicated to me that it was a trial
19 lawyer. I actually took him to mean at the occasion
20 that he meant that it should be Kelly over Lykos.

21 Q And that's fine. But Patricia Lykos was a
22 judge, correct?

23 A Correct.

24 Q And she was a police officer, correct?

25 A Correct.

1 Q But she never actually, as far as you know,
2 actually done trial work as one of the litigants or one
3 of the participants as an advocate in a trial?

4 A Still hasn't, to my understanding.

5 Q Okay. Well, that's fine. So ultimately Kelly
6 goes into the runoff with Patricia Lykos and then you
7 said, I think, that Jim Leitner then backed Judge
8 Patricia Lykos, correct?

9 A Almost immediately upon being opted out on the
10 general, like the next day.

11 Q And so Patricia Lykos, with Jim Leitner's
12 support, won the runoff in order to become the
13 Republican nominee for District Attorney?

14 A That's correct.

15 Q And ultimately in the 2008 election Patricia
16 Lykos beat Clarence Bradford in the general election,
17 yes?

18 A Correct.

19 Q And then she became District Attorney
20 effective January the 1st, 2009, right?

21 A Correct.

22 Q Just all of that is kind of contextual, and I
23 apologize for taking so long.

24 Up to that point in 2008, to a certain
25 point in 2008 you were still at the office, correct?

1 A Yes.

2 Q You had already started this blog. You called
3 it a blog or Ms. Gotro called it a blog. What exactly
4 is a blog?

5 A It's basically just a website that an
6 individual can write and you can do anything. You can
7 have a blog to vote at a running or your cats or
8 something like that. I actually started the blog
9 because the prosectorial profession was taking such a
10 bashing in the wake of Chuck Rosenthal's behavior, that
11 I wanted to write something that's just like, "Hey,
12 we're not that. We're not bad people." And then once
13 the election became contested as it did, it picked up a
14 lot of steam.

15 Q So you wanted to provide -- just so I'm
16 understanding you correctly, you were trying to provide
17 a prosectorial perspective to the scandal that had been
18 going on involving the Harris County District Attorney's
19 Office. Is that fair to say?

20 A Correct.

21 Q And so you wrote it from the perspective of an
22 active prosecutor?

23 A Anonymously, but, yes.

24 Q So your name wasn't actually out there as
25 Murray Newman, author of whatever blog it's called?

1 A Correct, not until after -- not until
2 actually -- it was like the worst-kept secret in the
3 courthouse, but it wasn't official until after I lost my
4 job, I believe.

5 Q At some point in time you lost your job
6 because there was a person who had been appointed to
7 become District Attorney between the time that Chuck
8 Rosenthal left to the time that whoever the new elected
9 person was going to get installed as the District
10 Attorney. Who was that?

11 A Ken Magidson.

12 Q And Ken Magidson was a former Assistant U.S.
13 Attorney and he is, I think, currently now the U.S.
14 Attorney for the Southern District of Texas.

15 A That's correct.

16 Q So he became the appointed District Attorney
17 for Harris County, yes?

18 A He did.

19 Q Now, did he remove you as a prosecutor, or
20 tell me what the situation was concerning your
21 separation from the District Attorney's Office.

22 A I had already been given a letter from the
23 in-coming Lykos administration that my contract would
24 not be renewed come January 1st, so I knew that on
25 January 1st I was out of a job.

1 Q Let me stop you there real fast. That was
2 after the general election where Pat Lykos won?

3 A That's correct.

4 Q And then they had some transition team making
5 a determination where they ultimately told you you're
6 not going to come back after January 1, 2009?

7 A Right. I mean, it was kind of a foregone
8 conclusion -- but I had been officially notified --
9 based on some of the things I had written about Judge
10 Lykos and Leitner, yeah. So I was not surprised when I
11 was told I was not going to be kept on under the Lykos
12 administration.

13 Q So you actually had until December 31st, 2008,
14 to --

15 A To pack.

16 Q -- to continue to work, pack, look for a new
17 job, something, right?

18 A Correct.

19 Q But then something precipitated you leaving
20 earlier?

21 A Yes. What became known as the 12 Days of
22 Lykos. It was a blog post that I had written and the
23 commentators started writing in their own verses along the
24 lines of something with the 12 Days of Christmas that
25 ultimately, I think, offended the transition team, and

1 my understanding is they requested Mr. Magidson go ahead
2 and terminate me a little early.

3 Q And he did so, is that fair to say?

4 A 10 o' clock on Christmas Eve.

5 Q That must have made your life --

6 A It wasn't my best Christmas.

7 Q Okay. Going back to the blog, is it fair to
8 say that people who commented on your blog were mostly
9 anonymous or used monikers or actually identified
10 themselves? Which one of the three?

11 A All of them. I mean, it was very, very, very
12 rare that you had someone actually using their actual
13 name.

14 Q Why is that, in your opinion?

15 A They were afraid of retaliation from the
16 District Attorney's Office administration under Lykos.

17 Q What you're saying there, I think, and please
18 correct me if I'm wrong, is you're believing that people
19 who are commenting on your blog are actually prosecutors
20 at the Harris County District Attorney's Office who want
21 to say something or comment on what you have posted, but
22 they don't want anybody to know about it for fear they
23 would lose their job like you ultimately lost your job?

24 A That was a big warning shot, yes. And also
25 because they didn't want to be speaking on behalf of the

1 office as well. That was why I was anonymous at first,
2 because, like I said, it was a terrible secret, but I
3 didn't want anything that I said, someone say "Well,
4 that's the position of the District Attorney's Office."

5 Q Okay. Ms. Gotro was telling you or asking you
6 about all these anonymous commentors, and I don't really
7 understand, so I'm trying to figure out how this works.
8 You have the ability to know, you said, an IP address
9 when someone comments, right?

10 A If I used the third-party software of
11 StatCounter. It's another program.

12 Q And does that cost you money to do that?

13 A I went the cheap route. You can pay for a
14 more expensive one, but for free, I got the free version
15 of it, because it was really more about curiosity than
16 anything else. It just told you how many people had
17 come and viewed your website and it kept a running tally
18 of that and it also kept a tally of the people that had
19 actually looked at it, but only for like the last 500.

20 Q If you have this IP address, is it like
21 numbers or letters or just numbers?

22 A I believe it's all just numbers, like 1-2
23 period, 4-5-6 period, something like that. It's like
24 code of some sort. I'm really not qualified to tell you
25 what it is.

1 Q And do you have the ability, based upon
2 getting that, like, code, do you have the ability to
3 link it to anybody in particular? Like if Mr. Smith
4 comments anonymously on your blog and he leaves this
5 alphanumeric plus minus slash whatever IP address, do
6 you have the ability to link that IP address
7 specifically back to Andrew Smith?

8 A I believe that a more tech-savvy person would
9 be able to do that, but I was not. And there was a lot
10 of different factors. Like, let's say, if multiple
11 people are looking at it at the same time, I'm not going
12 to be able to tell which IP address is the one that
13 commented without further investigation. Like, let's
14 say that it said that it was an AOL address and Andrew
15 came up and said, "Hey, did you like that comment that I
16 left at 3:03 p.m. from the AOL," then I could say "Oh,
17 that's Andrew," and I could actually go and bookmark it
18 at that point that that was Andrew, and if he came back
19 again, I would be able to see that he checked the blog.
20 You could label it, in other words.

21 But, you know, the vast majority of just
22 a cursory look, which is what I had, would say it's Time
23 Warner Cable or this is Comcast or Verizon or Harris
24 County Technology Services. I mean, the DAs that were
25 actually looking at it at their desk, that would be a

1 ton between the hours of 8:00 to 5:00.

2 Q So a vast majority of these commentors,
3 though, you would never be able to link up to who the
4 original commentor is, is that fair to say?

5 A No. And it was actually part of the fun of
6 the blog, people trying to guess who had said what.

7 Q Were you aware of whether in fact Judge Lykos
8 read the blog?

9 A I don't know if she did. I know Leitner did.

10 Q So Jim Leitner, who ultimately became the
11 First Assistant District Attorney, he read the blog
12 consistently based upon what you know?

13 A I heard from several people who said that they
14 would walk in and see that it was on his computer. It
15 was also my understanding that he was the one that had
16 told Magidson about the 12 Days of Lykos.

17 Q Now, I also want to talk to you, as of
18 January 1st, 2009, were you aware of Pat Lykos creating
19 a special unit to do conviction integrity work?

20 A I remember her titling it, so, yes. It seemed
21 to me in its description, it's stuff that you guys have
22 been doing all along. But I do remember her having
23 something specifically branded as that.

24 Q Do you remember that that was fashioned after
25 something that was out of Dallas County where they had

1 this Conviction Integrity Unit, where they were working
2 on cases where they determined the innocence of
3 individuals who had been convicted for crimes and
4 ultimately exonerated through things like DNA testing?

5 A Right.

6 Q Do you know who was in that Post-Conviction
7 Review Section?

8 A I thought you were.

9 Q Okay. Do you know if anybody else was?

10 A Alicia.

11 Q Alicia O'Neill?

12 A I believe so.

13 Q Is that the same Alicia O'Neill that you
14 mentioned as working in the Cold Justice show with you?

15 A Yes.

16 Q Do you know if in that unit any people had
17 been exonerated through Harris County, exonerated for
18 their criminal convictions?

19 A Yes.

20 Q Do you know how many?

21 A I know of at least two high profile, one being
22 Josiah Sutton, but that may have been before, before the
23 creation of the unit. There was the Josiah Sutton case
24 and then there was somebody named Green.

25 Q Michael Anthony Green?

1 A That sounds right, yes.

2 Q Were you aware of a person named Allen Porter?

3 A I wasn't.

4 Q If I told you that a person named Allen Porter
5 had been exonerated within the Lykos administration
6 term, would you have any reason to disagree with me?

7 A No, sir.

8 Q What about a person named George Rodriguez?

9 A Oh, yes, I had heard about that one as well.
10 But, again, I wasn't sure if that had occurred before
11 the creation of that division or not.

12 Q Let me go to -- Ms. Gotro had gone through
13 some of these blog posts and had asked you some
14 questions about it, and if you don't mind, I'm going to
15 ask you just a few questions about it, if you don't
16 mind.

17 A Not at all.

18 Q When you were talking about talking to Kelly
19 Siegler and Kelly Siegler giving you information, was
20 she your only source of information?

21 A No.

22 Q Did you have few or many sources of
23 information for your blog?

24 A Many.

25 Q When you say "many," I mean, would they be

1 sources from inside the courthouse or outside the
2 courthouse?

3 A Both.

4 Q Would they be lawyers or non-lawyers?

5 A Both.

6 Q Did you feel that based upon your knowledge of
7 Kelly, did you believe that she had few or many sources
8 in the courthouse?

9 A Many.

10 Q What about out of the courthouse?

11 A Many.

12 Q Lawyers?

13 A Yes.

14 Q Non-lawyers?

15 A Yes.

16 Q And they were both many sources, correct?

17 A Correct.

18 Q Kelly knew a lot of people, is that fair to
19 say?

20 A That's absolutely fair to say.

21 Q So she was a collector of information?

22 A Yes, she definitely does that.

23 Q And at some point in time she would
24 disseminate it to whoever she felt like disseminating
25 to?

1 A Correct.

2 Q You being one of them?

3 A Me being one of them.

4 Q Do you know, after the Temple trial, whether
5 Kelly had contact with the Lucas family?

6 A I think maybe casually. She certainly -- it
7 would not surprise me, because she kept in contact with
8 the Wright family after the Susan Wright trial. So I
9 would be surprised if she had no contact with them.

10 Q Okay. You were talking with Ms. Gotro about
11 Lance Long and whether Lance Long was one of your
12 sources in relation to the 2012 investigation that Steve
13 Clappart was involved in. Was Lance Long one of your
14 sources?

15 A He was absolutely not. And --

16 Q You said you had something to say. Why do you
17 know that he was not one of your sources?

18 A Lance -- Lance was too smart to be one of my
19 sources. He knew -- I mean, he never would tell me
20 something that could ultimately track back to him and
21 get him in trouble with the Lykos administration.

22 Q And let me stop right there just so that we
23 can contextualize who this person is. Lance Long at the
24 time was a prosecutor at the Harris County District
25 Attorney's Office, correct?

1 A Correct.

2 Q Was he a prosecutor before you started in
3 1999?

4 A Yes.

5 Q So at the time that -- by the time that you
6 had already left the office, at what level was Lance
7 Long in the office?

8 A I want to say he was a chief. He was promoted
9 to division chief sometime after I left the office, but
10 he was a chief in Special Crimes.

11 Q Okay. So division chief, though, is higher
12 than like Kelly Siegler was when you first tried to get
13 an internship with her in the 228th. That would be the
14 district court chief level, correct?

15 A Correct.

16 Q Division chief is higher than that, because a
17 division chief has more or numerous courts that the
18 division chief supervises over?

19 A That's correct.

20 Q So Lance was one of those types of division
21 level chiefs, correct?

22 A He became one after I left the DA's office.

23 Q And as far as you know, was he a division
24 chief for the term of Pat Lykos as District Attorney?

25 A I don't think he was at the beginning, but

1 ultimately he would become so.

2 Q During the time of 2012, was Lance Long a
3 division chief at the District Attorney's Office?

4 A Yeah, I would think so. I would think it had
5 happened by then, yes.

6 Q So we're talking about someone who in a fairly
7 high level in Pat Lykos' administration, not necessarily
8 the high, high level, but he was not a very small
9 potato, correct?

10 A I would describe him as very senior.

11 Q Very senior, thank you. And you said that he
12 was too smart to be one of your sources?

13 A Yeah. He would have never -- I mean, during
14 the election he was very worried about losing his job,
15 because he has a daughter and his wife, and he was very
16 concerned about his future at the DA's office. I
17 wouldn't have ever even asked him for information,
18 because he was so concerned about drawing the ire of the
19 Lykos administration. He would have never ever told me
20 anything.

21 Q When you prepared the blog posting for July
22 30th, September the 11th and September the 30th, were
23 most of your sources -- it seems like most of your
24 sources were Kelly Siegler.

25 A Yes.

1 Q Did you have other ones outside of that in
2 preparing each one of these blog entries?

3 A I did.

4 Q Now, I know Ms. Gotro showed you --

5 MS. GOTRO: It's Gotro.

6 MR. CHIN: Excuse me. Gotro. I
7 apologize. I really do.

8 MS. GOTRO: That's okay.

9 Q (BY MR. CHIN) She showed you like a bunch of
10 phone communications and then asked you about the
11 particular blog posting on a particular day. Were you
12 the type of blogger where as soon as you got a bit of
13 information, "I have to put it on the blog"? Which, you
14 know, if you read blogs, some people are like that,
15 right? Or were you one that collected some information
16 and maybe waited a term and verified some things and
17 then put a blog post in?

18 A It would depend. It would depend on how much
19 background information that I needed. There have been
20 some that I've sat down and written. Those are usually
21 the ones that are like more personal to me. But, you
22 know, ones like this, where I'm having to go and talk
23 about a lot of different facts, these probably took, at
24 a minimum, four hours each, at a minimum, and could very
25 easily have been done over a period of a couple of days.

1 Q Okay. On this blog posting that I want you to
2 look at, Defense 20, which is the --

3 A July 30th.

4 Q -- July 30th, 2012, yes, sir. You mention in
5 there about, if you go like one, two, three, four, five
6 paragraphs from the bottom --

7 MR. CHIN: May I approach the witness,
8 Your Honor?

9 THE COURT: Yes.

10 MR. CHIN: Thank you.

11 Q (BY MR. CHIN) It says here -- I'm going to
12 point you to this paragraph right there, starting with
13 the word "Leitner" and then the parentheses.

14 A Okay.

15 Q It reads there, does it not, it says
16 "Leitner", parentheses, open, "who was rumored to"...

17 A ..."have been leaving last Wednesday."

18 Q Yes, "who was rumored to be leaving last
19 Wednesday." This was very late in the Lykos
20 administration, correct?

21 A Yes. They had about six months to go.

22 Q And at that time she had already lost -- when
23 I say "she," I mean Pat Lykos had already lost the
24 Republican primary to Mike Anderson, correct?

25 A Yes.

1 Q So would it be fair to say that Jim Leitner
2 was about to leave his post as First Assistant District
3 Attorney?

4 A One way or another he was.

5 Q But he wasn't leaving at the end of the term.
6 It was rumored that, according to this, he was rumored
7 to be leaving earlier than the end of the term, correct?

8 A It actually got to be a joke how many times it
9 was rumored that Leitner was leaving that Friday or the
10 next Friday. I mean, there was always new concrete
11 information. It was almost like Where's Waldo trying to
12 figure out when Leitner was actually leaving.

13 Q Okay. And is that why you were talking about
14 A Soft Landing spot for Leitner?

15 A That's correct.

16 Q Because he was leaving the District Attorney's
17 Office for something else?

18 A Correct.

19 Q Ms. Gotro was saying -- in the paragraph
20 starting with the words "So, according to multiple
21 credible sources." Do you find that paragraph?

22 A Do you mind giving me a page number?

23 Q I think your page and my page might not be the
24 same, but for mine it's the second page and it's two
25 paragraphs under --

1 A I gotcha. I found it.

2 Q It says "So, according to multiple credible
3 sources, 1st Assistant Jim Leitner has picked up the
4 David Temple file again. DeGuerin is still claiming
5 that his client is innocent. DeGuerin has even hired
6 former Harris County Sheriff's Office Lieutenant," open
7 parentheses, "and current defense attorney" closed
8 parentheses, "John Denholm to work on the Temple case
9 for him. That's interesting, since Denholm was the
10 Lieutenant in HCSO Homicide when the Temple murder
11 occurred." You said that you got that information from
12 where, if you recall?

13 A I believe Kelly.

14 Q Well, you said multiple sources.

15 A Well, I, mean, the meat of it. There's always
16 like kind of the main story and then there was
17 supporting stuff.

18 Q Okay. At that point in time you knew that
19 John Denholm was friends with Steve Clappart or not?

20 A I did not.

21 Q Okay. At what point in time did you learn
22 that John Denholm had -- was friends with Steve
23 Clappart?

24 A I want to say prior to the writing of this,
25 but I'm not sure. It may have been after the writing of

1 this that I realized -- I mean, I assume that everybody
2 knows everybody around here, but I realize that they
3 actually had an extremely close working relationship
4 later on.

5 Q Okay. Now, did you feel or do you feel that a
6 defense attorney giving information to a district
7 attorney investigator about a particular individual who
8 has been convicted of a crime, do you think that that's
9 improper?

10 A No.

11 Q Okay. Do you think it's improper -- well, let
12 me start this question over. If in fact that happened,
13 a friend of a Harris County District Attorney
14 investigator gets information from a friend talking
15 about someone who is purportedly innocent, what should
16 that criminal investigator do with that information, in
17 your mind?

18 A Well, if there's a personal friendship, I
19 think the first thing they need to do is remove
20 themselves from that situation so there's not an
21 appearance of impropriety.

22 Q What sort of appearance of impropriety do you
23 believe is created there?

24 A I believe that it looks as if someone is
25 saying "Hey, I've got this case where it's highly

1 contested. Can you see what you can do to get this case
2 reversed or get us a new trial?" I think the more
3 appropriate thing to do is to pass it off to a neutral
4 agency that doesn't have those ties.

5 Q Well, what if there are concerns -- I think
6 Ms. Gotro talked about this -- what if there are
7 concerns about the law enforcement agency who did the
8 original investigation maybe not being as objective as
9 possible?

10 A There's always other agencies. There's always
11 other agencies that can look into the integrity of
12 something if someone is conflicted out, whether it be --
13 you get the Attorney General's Office, depending on the
14 facts of the circumstances. Even the FBI if it's a
15 civil rights deal. I mean, there's always somebody
16 else. But even within the office, you could pull it
17 off.

18 Q What do you mean by that?

19 A Well, okay, I mean, Denholm and Clappart are
20 alleged to have been buddies and worked closely together
21 for 20 years, virtually partners in their time together.
22 Any other investigator but Clappart, in my opinion,
23 should be handling that based on that relationship.

24 Q Could it have gone to the Post-Conviction
25 Review Unit that was created in the office?

1 A Absolutely.

2 Q And I'm not here to say Baldwin Chin is the
3 most objective person ever. I'm just saying, at least,
4 I wasn't friends with Denholm, correct?

5 A Yes.

6 Q Or Alicia O'Neill wasn't friends with Denholm?

7 A Correct.

8 Q Or the criminal investigator assigned to that
9 unit wasn't friends with Denholm?

10 A Correct. Handling it the way they did made it
11 look like they were hiding something.

12 Q Now, if you don't mind, let's go to
13 Defendant's 21, and that's the September 11th, 2012 blog
14 post entitled David Temple and the Dereliction of Duty?

15 A Yes.

16 Q Who exactly are you referring to as the person
17 being derelict in their duties, sir?

18 A The upper administration of the Lykos
19 administration, mostly embodied through Jim Leitner.

20 Q Okay. Why did you accuse him of dereliction
21 of duty? I mean, don't you think that the Harris County
22 District Attorney's Office gets information that could
23 potentially exonerate a person convicted of a crime or
24 convicted of that crime that they were convicted for,
25 don't you think that it's incumbent upon the District

1 Attorney's Office to look at it?

2 A Absolutely.

3 Q Okay. Then why would you accuse, at least
4 according to this blog post, Jim Leitner of being
5 derelict in his duty when in fact you're saying that the
6 District Attorney's Office has a responsibility to
7 investigate?

8 A Because the way he was going about it made it
9 look as if it was getting a special type of treatment
10 that didn't have the type of objective review that
11 should be required when you're dealing with the case of
12 a man who has been convicted of killing his pregnant
13 wife.

14 Q Now, you actually mention in this blog post in
15 the third paragraph down from the top, where you say at
16 the very last sentence of that third paragraph -- tell
17 me if you're there, starting with the word "Clappart."

18 A Got it.

19 Q "Clappart, by his own admission, had a,"
20 quote, personal relationship with John Denholm for 20
21 years, closed quote. Is that fair to say?

22 A Yes.

23 Q Is that when you learn about Denholm and
24 Clappart's history?

25 A I had heard it from some other people, if I

1 recall correctly, something about them being on fugitive
2 squad or something together. I had heard different
3 things through the grapevine that like one was at HPD
4 and one was SO and that they had worked together on
5 fugitive apprehension for a long time together.

6 Q On direct examination you were asked about the
7 next paragraph, where the words are, and I'll read it to
8 you, "The position" -- are you there with me?

9 A Yes.

10 Q "The position of the Harris County District
11 Attorney's Office quickly became one of an agency
12 talking out of both sides of its mouth."

13 A Correct.

14 Q "While the Appellate Division of the Office
15 was arguing that Temple's conviction should stand, the
16 First Assistant was covertly authorizing an investigator
17 to try to undermine the factual basis of the very same
18 conviction."

19 Are you here in this blog saying that
20 Alan Curry was doing something wrong in going to the
21 Court of Criminal Appeals and arguing this case in front
22 of the Court of Criminal Appeals?

23 A No. I'm saying he was being undermined.

24 Q And that undermine was based upon what?

25 A It was based on the fact that on one hand you

1 had Alan Curry up arguing that the trial was
2 procedurally correct and the conviction should stand,
3 but in the meantime you had Leitner giving the
4 assignment to Clappart, who was working with his friend
5 Denholm, and this was occurring -- and the people that
6 should be looking into it weren't. You had two
7 different people in the same office trying to prove two
8 different things.

9 Q So you're not here trying to tell this Judge
10 that these allegations, the new allegations, shouldn't
11 have been investigated by someone else other than
12 Clappart?

13 A I'm sorry, would you mind rephrasing that or
14 repeating that, at least?

15 Q You're not here telling this Judge today that
16 the Harris County District Attorney's Office should not
17 have been investigating these new allegations of
18 innocence so long as it was not Clappart doing the
19 investigating?

20 A I just wanted -- my hope was that the
21 investigation would be above board by neutral parties,
22 which I think it was very clear Clappart was not, and it
23 wasn't being handled as if there were neutral parties
24 involved.

25 Q The very last sentence of that paragraph,

1 "Belinda Temple's family" -- are you there with me?

2 A Yes.

3 Q Parentheses, "the Lucas family," closed
4 parentheses, "wasn't informed of what Leitner and
5 Clappart were up to." I don't know if you were given
6 the opportunity to answer the question, but are you
7 saying that the Lucases were not aware of what was
8 happening?

9 A My understanding is that the District
10 Attorney's Office had not told them. I believe that
11 they were being informed through other channels.

12 Q Like Kelly Siegler?

13 A Correct.

14 Q Now, do you believe it's incumbent upon the
15 Harris County District Attorney's Office to tell the
16 Lucas family that they're doing an investigation that
17 relates to the innocence of the person convicted for
18 killing their daughter or sister?

19 A I think it's horrible that they wouldn't.
20 Absolutely it is incumbent upon them.

21 Q Well, if in fact -- let me start over. So
22 your beef here is solely with who the source giving
23 information to the Lucas family was? That's what your
24 big crux was regarding that last sentence, correct?

25 A It was offensive to me as a former prosecutor

1 that the prosecutors now handling the case were not
2 letting the victim's family know what was going on with
3 the case, yes.

4 Q And does that same reasoning go with the next
5 sentence that says "As of this writing, the Lucas family
6 still hasn't been informed of what is going on"?

7 A Yes.

8 Q Now, you talk about, the seventh paragraph,
9 starting with the words "When I wrote the post at the
10 end of July." Do you remember that? Do you see that
11 there?

12 A The paragraph starts off?

13 Q Yes, the paragraph that I care about starts
14 off with the words "When I wrote the post at the end of
15 July," comma.

16 A Yes.

17 Q The last sentence, that second to the last
18 sentence of the paragraph starts with the words "In an
19 effort." Are you there with me?

20 A Yes.

21 Q So that sentence reads, In an effort to
22 attempt some semblance of an appearance of neutrality in
23 the DeGuerin slash Denholm slash Clappart investigation,
24 the Office appointed a, quote, Special Prosecutor,
25 closed quote. Is that right?

1 A Yes, sir.

2 Q And then the next sentence reads, "That
3 paragraph is a reputable attorney" --

4 A Prosecutor.

5 Q I'm sorry. "That prosecutor" -- I apologize.
6 My reading is clearly horrible -- "is a reputable
7 attorney by the name of Brad Beers." You used the word
8 "Special Prosecutor." You put them in quotes, right?
9 Now, do you know how it came about that Brad Beers was
10 appointed?

11 A Not specifically, no.

12 Q So what you're talking about here is just kind
13 of generally there was an appointment of a prosecutor,
14 but you don't really know what the intent was of the
15 appointment of the special prosecutor? You're not here
16 telling this Judge that, are you, right?

17 A No, I'm not telling the Judge that.

18 Q You're just connecting some dots that you see
19 that are there?

20 A Yes.

21 Q That essentially say they're trying to
22 establish this appearance of neutrality?

23 A Correct.

24 Q In order to make it seem like the
25 investigation is objective?

1 A Correct.

2 Q Now, you talked earlier about Brad Beers and
3 why you thought he was not a good choice to be this
4 special prosecutor, and I think you said that he had a
5 conflict of interest?

6 A Correct.

7 Q And as I recall, you said that conflict of
8 interest had to do with representing Steve Clappart,
9 correct?

10 A Correct.

11 Q How would that create -- a prior
12 representation of Clappart by Brad Beers, how would that
13 create a conflict in an investigation related to the
14 Temple case that I'm assuming from prior representation
15 that Beers had with Clappart had nothing to do with it?

16 A Well, let's say theoretically that during the
17 time of his previous representation, that Clappart had
18 admitted that he lied and fabricated evidence all the
19 time and he told that to his attorney under
20 attorney/client privilege, and then arises a situation
21 where Beers is supposed to be a prosecutor where his
22 leading investigator is Clappart, there's a conflict,
23 because he knows in his mind -- and I'm not saying that
24 Steve said that, I'm just saying potentially -- that he
25 might know all kinds of secrets through attorney/client

1 privilege that could be very relevant on what Clappart
2 says. And what if Clappart says, "You know, invoking
3 old attorney/client, I want to tell you this," just to
4 me there's, again, an appearance of impropriety, but
5 there's actually real potential for conflict there.

6 Q So you believe that, again, things should be
7 investigated here, right?

8 A Everything should always be looked at.

9 Q It just shouldn't have been Beers put together
10 with Clappart to do the investigation?

11 A Correct.

12 THE COURT: Mr. Chin, how much longer do
13 you think you'll be?

14 MR. CHIN: Fifteen more minutes, Judge.

15 THE COURT: Will you all have something
16 further?

17 MS. GOTRO: Yes.

18 THE COURT: Would it be convenient if we
19 break for lunch? It's 1:30. Can you do it in a half
20 hour?

21 MR. CHIN: I'm at your disposal, Judge.

22 THE COURT: Okay. We'll be in recess
23 until 2 o'clock.

24 (Lunch recess)

25 THE COURT: You may proceed.

1 MR. CHIN: Thank you, Judge.

2 Q (BY MR. CHIN) Mr. Newman, I don't quite
3 remember where we stopped off. On direct examination
4 you were asked if you informed the District Attorney's
5 Office under the Patricia Lykos administration about
6 your belief of the conflict of interest that Brad Beers
7 had as being special prosecutor in this case. Do you
8 remember that question?

9 A I do remember that question.

10 Q And I think it had to do with you not
11 communicating with the Lykos administration about your
12 concerns of the conflict, but I don't know that you had
13 the opportunity to say why you never communicated with
14 them, so would you please tell me why you did not
15 communicate with the District Attorney's Office at that
16 time about your belief concerning conflict in this case?

17 A Well, in all honesty, I think that me writing
18 these blogs was kind of in a way that I was. But the
19 Lykos administration and that group that were part of
20 her quote-unquote leadership team and I were not on
21 friendly terms by any stretch of the imagination. I
22 could not fathom a scenario in which my critiquing them
23 on a one-on-one basis would have been at all productive
24 or even received.

25 Q You know that prior to the Lykos

1 administration, there had been like, I don't want to say
2 old home days, but there had been times where
3 prosecutors had gotten together and celebrated, you
4 know, retired or whatnot. Had you during that period of
5 time in 2009 until 2012 ever been invited back during
6 that period to celebrate any sort of retirement or
7 office-related celebration?

8 A Not anything that was officially sanctioned by
9 the office, no.

10 Q You talked about on direct examination about a
11 pocket warrant?

12 A Yes.

13 Q And are you aware of whether a pocket warrant
14 was ever signed in this case?

15 A My understanding is that one was not.

16 Q In your blog post, I think it's Defendant's
17 21, if you would look at that for me, it's my second
18 page. Okay?

19 A Okay.

20 Q And there's a single-line paragraph starting
21 with the words "Now" comma. Do you see it?

22 A Yes, sir.

23 Q And that sentence was "Now, let's get back to
24 the events of this week and that Pocket Warrant,"
25 correct?

1 A Okay. Yes, sir.

2 Q The next paragraph reads "Clappart has been
3 shopping around a warrant for the arrest of the"
4 parentheses "then", closed parentheses, "teen for the
5 Capital Murder of Belinda Temple." That's what it says,
6 right?

7 A That's correct.

8 Q Further, you write "He cites the testimony of
9 a new witness who, per the warrant, had only learned of
10 Belinda Temple's death," parentheses, "which happened in
11 1999," closed parentheses, "only, quote, 5 or 6 months
12 ago," closed quote.

13 "Furthermore, that," quote, Smoking Gun,
14 closed quote "evidence that this new witness has
15 involves him overhearing one of the three," open
16 parentheses, "then," closed parentheses, "teens
17 admitting to shooting a dog during a burglary and
18 throwing it in the closet." Is that what it says?

19 A That's correct, yes, sir.

20 Q The very next sentence, which reads "Yep, you
21 read that right." That's what that says, too?

22 A Correct.

23 Q That last sentence that I just read seems kind
24 of mocking. Is it?

25 A Yes.

1 Q And why are you having a seemingly mocking
2 tone in that sentence?

3 A Because the information in there was just so,
4 in my opinion, ridiculous to be basing a pocket warrant
5 on, that I wanted to illustrate that the information, as
6 I understood it, there was no secret warrant that had
7 more information in it. It was about the killing of a
8 dog, not a human being.

9 Q So your understanding about this new
10 evidence -- and correct me if I'm wrong -- your
11 understanding of this new evidence had to do with
12 admissions made by somebody about killing a dog and
13 throwing it in a closet?

14 A Yes. And my feeling on that was that the
15 extrapolation from that to capital murder was many, many
16 leaps and bounds.

17 MR. CHIN: May I approach the witness,
18 Judge?

19 THE COURT: Yes, sir.

20 MR. CHIN: Thank you, sir.

21 Q (BY MR. CHIN) During the break would it be
22 fair to say that I let you read or asked you to read
23 what has been admitted into evidence as Defendant's
24 Exhibit No. 7?

25 A Yes. You are my source on this now.

1 Q I am the source. Thank you. You can quote
2 me, I guess. Did you in fact read Defendant's Exhibit
3 No. 7?

4 A I did.

5 Q And just for purposes of the record, is it
6 fair to say that that is, Defendant's 7, an unsigned
7 probable cause statement in order to get an arrest
8 warrant for the offense of capital murder against Cody
9 Ray Ellis?

10 A Yes.

11 Q And the proposed or purported affiant there,
12 who is identified at the top, is actually Steve
13 Clappart. Is that fair to say?

14 A That's correct.

15 Q And it is actually highlighted in orange
16 there, correct?

17 A Yes.

18 Q Did you read Defendant's Exhibit 7, sir?

19 A Yes.

20 Q And did I ask you to evaluate the assertions
21 stated therein, which, if presented to a judge, could
22 potentially be the basis of an arrest warrant for
23 capital murder?

24 MS. GOTRO: Your Honor, I'm going to
25 object to the line of questioning and specifically that

1 opinion. He didn't have that affidavit at the time the
2 statements were made of the posting and his legal
3 conclusion about that document now is irrelevant.

4 THE COURT: Overruled.

5 A You did ask me to read that and you did ask me
6 what my opinion was.

7 Q (BY MR. CHIN) Now, I'm not a defense
8 attorney, but you are, right?

9 A Yes, sir.

10 Q Now, you understand that or would you agree
11 with me that sometimes as prosecutors we might have a
12 little bit of a lower standard of probable cause when
13 reviewing what a police officer is telling us in order
14 to put it into a warrant to get it signed by a judge?

15 A I would agree that there are different levels
16 of interpretation on it, yes.

17 Q Sometimes prosecutors are just a little bit
18 lower than the defense attorney, where a defense
19 attorney might say "No, you need to have a higher level
20 of assertions of fact in order to support probable cause
21 to arrest somebody," yes?

22 A Certainly an arguable point, yes.

23 Q I'm not asking you to -- well, I guess I might
24 be. In your opinion as a defense attorney or
25 prosecutor, do you believe that the assertions contained

1 in State's (sic) Exhibit 7 provide sufficient probable
2 cause to secure an arrest warrant against Cody Ellis for
3 the offense of capital murder?

4 A No, not even close.

5 Q Why is that?

6 A It's kind of like how long you got. I mean,
7 number one, it doesn't state a confession to anything.
8 It talks about the shooting of a dog during a burglary,
9 but it doesn't ever have any direct witness testimony
10 about where that burglary had occurred, like with a
11 street address listed or anything like that, or whether
12 there was a dog. There's nothing -- it's a huge leap
13 and bound from the idea that you had a person that
14 overheard something that was not a confession to capital
15 murder, somehow trying to turn it into a warrant for
16 capital murder. Quite frankly, this document is
17 frightening.

18 Q Why is it frightening?

19 A It's frightening that someone of Steve
20 Clappart's tenure as a police officer actually even
21 contemplated briefly trying to get someone arrested for
22 capital murder based on facts like this, and reading how
23 Clappart bends over backwards to try and make this
24 witness even more credible, it's upsetting and it pretty
25 much validates why Kelly Siegler was concerned and why I

1 was concerned that the District Attorney's Office at
2 that time was doing something improper.

3 Q Well, do you at least think that there would
4 be sufficient facts or assertions in Defendant's 7 to
5 support a charge of animal cruelty?

6 A No, because you don't even have a dead dog. I
7 mean, you don't even have the dog. To me this is a
8 warrant that has the factual sufficiency to charge
9 somebody with absolutely nothing.

10 Q If there were a dead dog in the Temple
11 incident, would you believe in that situation maybe it
12 might warrant a sufficient probable cause for animal
13 cruelty?

14 A Yes.

15 Q But that's not what we have in the Temple
16 case, correct?

17 A Correct, to my understanding.

18 Q Going back to Defendant's 21, sir, I want to
19 take you to a paragraph that is two paragraphs above the
20 big black area.

21 A Okay. Gotcha, gotcha.

22 Q And it starts with the words "As an aside."

23 A Gotcha.

24 Q Do you see that?

25 A Yes.

1 Q So would you agree with me that it reads, "As
2 an aside, in their Motion/Writ, DeGuerin and Schneider
3 make mention of the statement of the," quote, "New
4 Witness," closed quote, "being sealed for his
5 protection. It isn't being sealed for the witness'
6 protection -- it's being sealed because it's a
7 confession to animal cruelty -- not capital murder." Is
8 that what it says there?

9 A Yes.

10 Q Does it say or are you trying to say in that
11 part of the blog post that there actually is animal
12 cruelty here? Because it says there is a confession to
13 animal cruelty.

14 A Well, it's a confession to animal cruelty. I
15 could say I confess to being a millionaire, but there's
16 absolutely nothing that substantiates that I am one.

17 Q Now, let's talk a little bit more about pocket
18 warrant. A pocket warrant is different usually than
19 what we sometimes call a charge warrant, right?

20 A Yes, sir.

21 Q Because a charge warrant usually results in
22 creation of a case file with the District Clerk's
23 Office, with a cause number, and it being assigned to a
24 court, correct?

25 A That's correct.

1 Q And then the charge becomes a matter of public
2 record for defense attorneys to see, for the public to
3 see, for anybody to see, right?

4 A Correct.

5 Q However, in a pocket warrant situation, there
6 are no charges filed in conjunction with the pocket
7 warrant, right?

8 A I'm sorry, would you repeat that?

9 Q I apologize. In relation to the pocket
10 warrant, there is no actual charge that is directly
11 filed from that warrant to create the charge, correct?

12 A That's correct.

13 Q So nothing is filed with the District Clerk's
14 Office, right?

15 A Correct.

16 Q And nothing is made public to the general
17 public?

18 A That is my understanding, correct.

19 Q So really nobody knows that the police officer
20 or the law enforcement officer has secured that arrest
21 warrant, right?

22 A Correct.

23 Q That's why we call it a pocket warrant?

24 A Correct.

25 Q Now, the level of probable cause, though,

1 doesn't change in order to get an arrest warrant versus
2 a pocket warrant, right?

3 A Correct.

4 Q The facts still need to support sufficient
5 assertions to justify the charge?

6 A Correct.

7 Q Now, in the actual choice of executing a
8 pocket warrant, I think you talked about on direct
9 examination that a police officer or a law enforcement
10 officer has the choice or an option as to when and where
11 he or she will execute the warrant, right?

12 A And that is my understanding, Mr. Chin. For
13 the record, I had never -- I never wrote a pocket
14 warrant during my time with the DA's office, so it's
15 based on my understanding of it, but not personal
16 knowledge.

17 Q In fact, have you dealt with a pocket warrant
18 since you've been a defense attorney?

19 A I actually have not.

20 Q Okay. Let's talk about, then, just warrants
21 in general, if you don't mind.

22 A Okay.

23 Q Isn't it more difficult, since you've seen
24 this as a defense attorney and a prosecutor, isn't it
25 more difficult for a defense attorney to challenge the

1 legality of a defendant's statement if they are made
2 voluntarily and not while in custody?

3 A Sure. Noncustodial statements are much more
4 difficult from the defense perspective to suppress than
5 those that are improperly done for custodial purposes.

6 Q So for a person who is actually in custody, a
7 law enforcement officer or prosecutor, whomever, if
8 taking a statement from that individual in custody would
9 need to follow certain statutory requirements before
10 that statement becomes admissible in a court of law,
11 right?

12 A Correct.

13 Q Whereas, if in fact a law enforcement officer
14 goes up and just approaches an individual, who may be
15 the subject of a warrant, and just talks to them and
16 extracts information from them during that conversation
17 while they are not in custody, it's much more difficult
18 to challenge the admissibility of those statements if
19 made voluntarily, correct or incorrect?

20 A Correct.

21 Q So it would behoove a law enforcement officer,
22 wouldn't it, to try to speak to a suspect while not in
23 custody, correct?

24 A There is certainly less requirements for him
25 to follow.

1 Q And it might behoove that law enforcement
2 officer to wait and not execute the warrant before
3 getting that suspect or individual to talk. Is that
4 fair to say?

5 A There's all types of possible advantages to
6 doing it that way, yes.

7 Q Okay. You talked about on direct examination
8 with Ms. Gotro about Defendant's Exhibit 22, which is
9 entitled Kelly Siegler Responds.

10 A Correct.

11 Q Now, it seemed to me that Ms. Gotro was not
12 very happy with you publishing that excerpt of that
13 affidavit in her questioning. Would that be fair or
14 unfair to say?

15 A I don't know. I can never read Ms. Gotro.
16 You never know if she's mad or just being Ms. Gotro.

17 Q Okay. Regardless, do you feel that it was
18 improper for you to publish either excerpts or the
19 entire affidavit of Kelly Siegler in that blog post in
20 Defendant's 22?

21 A No.

22 Q Why not?

23 A Because it was something -- if I recall
24 correctly, Kelly had provided her responses to the
25 different allegations and I thought that it was

1 important that they -- that the public be made aware,
2 such as the public is, that actually reads that blog.

3 Q Were you aware whether in fact the assertions
4 from this affidavit from your blog post was actually a
5 part of the State's response to a motion/writ filed by
6 Dick DeGuerin and Stan Schneider, which was entitled
7 Out-of-Time Motion for New trial or Writ of Habeas
8 Corpus?

9 A I don't know if it was actually the body of
10 that actual document or if Kelly had just sent me her
11 responses on different issues. I really don't recall
12 the actual form in which I received it in.

13 Q If I told you it was a part of the State's
14 response to such motion/writ, would you have a reason to
15 disagree with me?

16 A No, sir. But I think the things that I listed
17 mostly are usually -- or those things that I had in
18 italics in the course of Defense Exhibit 22 are the
19 actual direct responses of Ms. Siegler.

20 Q Did you have Ms. Siegler's approval to publish
21 her excerpts or her affidavit?

22 A Yes.

23 Q And if in fact this document was a part of a
24 State's response to a defense filing, such as an
25 Out-of-Time Motion for New Trial, slash, Writ of Habeas

1 Corpus, that would actually be a public record, correct?

2 A Yes.

3 Q And which anybody could access if they wanted
4 to, come to the courthouse and access it, right?

5 A Yes.

6 Q Finally, I'm going to ask, did you write any
7 particular blog post depicted in Defense Exhibit 21 --
8 excuse me -- 20, 21 or 22 at the request or at the
9 behest of Kelly Siegler?

10 A Did I write it because she requested me to?

11 Q Yes, sir.

12 A It was more along the lines of she had told me
13 what was happening and it was usually me saying "I think
14 I should write about that unless it's going to cause
15 problems for you down the road." Kelly, to my
16 knowledge, never specifically requested that I write
17 something. It actually -- this is kind of picky, but,
18 you know, it actually annoys me when people come up and
19 say, "Hey, you need to write this" or something like
20 that, and I think I've griped to Kelly about that,
21 especially during election time when people come up and
22 start telling me what I need to write. So I can pretty
23 certainly tell you that Kelly never said "Hey, you need
24 to write this."

25 Q All right. Thank you, Mr. Newman.

1 MR. CHIN: I'll pass the witness, Judge.

2 THE COURT: Thank you, sir.

3 Yes, ma'am.

4 **REDIRECT EXAMINATION**

5 Q (BY MS. GOTRO) Mr. Newman, that list of cases
6 that Mr. Chin asked you about that, I guess, the
7 division -- the Post-Conviction Division that he had
8 mentioned earlier, do you remember those cases?

9 A Oh, the ones from the exonerations?

10 Q Right.

11 A I knew the names of some of them.

12 Q And they have been found actually innocent?

13 A I wasn't familiar with one, but I know that on
14 the other three, I believe that's correct.

15 Q And the reason that he was asking you about
16 that was to suggest that if there is in fact new
17 evidence, that evidence should be brought to that
18 division?

19 A I presume that's where he was going at.

20 Q Kelly Siegler wasn't a prosecutor on any of
21 those cases, was she, to your knowledge?

22 A I don't believe she was.

23 MS. GOTRO: May I approach the witness,
24 Judge?

25 THE COURT: Yes, ma'am.

1 Q (BY MS. GOTRO) Mr. Newman, we've heard a lot
2 of testimony from you about your opinion of the
3 impropriety of this investigation, and correct me if I'm
4 wrong, but it was your understanding that what Steve
5 Clappart was trying to do was to prove David Temple
6 innocent. That was the crux of his investigation?

7 A Yes.

8 Q I'm going to show you what's been marked
9 Defendant's Exhibit 24 for identification purposes.

10 MS. GOTRO: And I'm going to tender it to
11 the State. It's an email that was provided to me this
12 morning.

13 Q (BY MS. GOTRO) And so it was your
14 understanding that basically it's Jim Leitner and Steve
15 Clappart flying under the radar, doing this
16 investigation, where they're trying to prove David
17 Temple innocent?

18 A It is my belief that they were trying to do
19 something without drawing much attention to it and
20 trying to keep it under the radar because they were not
21 doing it in a proper manner in which a case under those
22 allegations would normally be done.

23 MR. CHIN: I have no objection to
24 Defendant's 24, Judge.

25 THE COURT: Can you tell me what it is,

1 please?

2 MS. GOTRO: Yes, sir. It is an email
3 between Mr. Clappart and Alan Curry.

4 THE COURT: 24 is admitted.

5 MS. GOTRO: And it's dated July 24th,
6 Judge.

7 Q (BY MS. GOTRO) You also offered some opinions
8 about that probable cause, that affidavit?

9 A Yes.

10 Q Were you aware that Mr. Clappart was actually
11 working with Alan Curry in developing that document?

12 A No.

13 Q Does that surprise you at all to know that
14 Alan Curry was aware of this investigation and was
15 working with Mr. Clappart to develop that affidavit?

16 A It would surprise me if he was -- if he was
17 working with it in that manner.

18 Q I'm going to show you what has been marked and
19 admitted as Defendant's Exhibit 24, and if you could
20 take a minute just to read over that.

21 A (Complies.)

22 Q Primarily just the first part of the email
23 from Mr. Curry.

24 A Okay.

25 Q Where you testified earlier that you had

1 concerns with the District Attorney's Office speaking
2 out of both sides of its mouth, right?

3 A Yes.

4 Q But you've got Alan Curry up in Austin at the
5 CCA arguing that this conviction should be affirmed,
6 right?

7 A Correct.

8 Q And some sort of subvert investigation back
9 here at the DA's office, yes?

10 A Yes.

11 Q With that email, Mr. Newman, is it clear to
12 you that Mr. Curry wasn't aware of the Clappart
13 investigation?

14 MR. CHIN: I would object, number one,
15 there's no foundation for this. He's not privy to that
16 email string, and Mr. Curry will testify in this hearing
17 if the Court allows it.

18 THE COURT: Overruled.

19 Go ahead.

20 MS. GOTRO: Thank you.

21 A I'm sorry, do you mind saying it again?

22 Q (BY MS. GOTRO) Sure. In that email, to
23 summarize, Mr. Curry states very clearly that a jury has
24 spoken about this issue, right?

25 A Yes.

1 Q But if there is new information, it needs to
2 be investigated, right?

3 A Yes.

4 Q And in looking at the affidavit of Steve
5 Clappart, Mr. Curry's response is "I think we may be on
6 the right road, but we are not there yet towards
7 pursuing a warrant."

8 A He doesn't say that. He says "I think we may
9 be on that road" -- not the right road -- "but we are
10 not there yet towards pursuing a warrant for Ellis." I
11 read this email as Alan shutting Clappart down.

12 Q Well, that doesn't surprise me, Mr. Newman,
13 but up until reading this email, you had been led to
14 believe that Alan Curry was opposed to what was going on
15 with this Clappart investigation, as you call it?

16 A As opposed to it?

17 Q He was opposed to the Clappart investigation.

18 A I don't believe I said that.

19 Q Well, you said earlier that you thought the
20 DA's office was speaking out of both sides of its mouth.

21 A Right, but I wasn't talking about Alan Curry
22 in particular. I said you basically have two divisions
23 of the office pursuing two different roads in regards to
24 David Temple, or as I said, speaking out of both sides
25 of its mouth. I didn't say that Alan Curry, like, got

1 up every morning and was like "Oh, we've got to stop
2 those guys."

3 Q If Alan Curry were giving Steve Clappart
4 specific instructions about what type of evidence needs
5 to be investigated in order to corroborate or refute
6 this witness' new evidence, does that change your
7 opinion at all, Mr. Newman?

8 A Not really. I think you're reading more into
9 this than I am.

10 Q Perhaps. How long have you been a defense
11 attorney, again, Mr. Newman?

12 A I'll do the math. I think since end of 2008.
13 So we're at the end of -- six years or five-and-a-half,
14 five years.

15 Q Back when you were a prosecutor, this District
16 Attorney's Office had a closed-file policy, did it not?

17 A Yes.

18 Q And if a defense attorney filed a motion for
19 an examining trial, your policy was to close the file?

20 A Yes. We had open file until the case was set
21 for trial or an examining trial was requested, yes,
22 that's correct.

23 Q Okay. And so when an examining trial is
24 requested, the file gets closed?

25 A Yes.

1 Q Now, while you were at the office, if a
2 defense lawyer files a motion for an examining trial,
3 you close your file. Let's say you find a piece of
4 evidence in there that's favorable to the defendant.
5 Does that closed-file policy excuse you from turning it
6 over to the defense attorney?

7 A Of course not.

8 Q And you knew when you were prosecuting, that
9 you had an ongoing duty, no matter whether the file was
10 open or closed, to turn over evidence that was favorable
11 to the defense?

12 A Absolutely.

13 Q In all of your time -- that's a good point.
14 As soon as you find it?

15 A Yes.

16 Q Because if you find this favorable evidence,
17 why withhold it for six months as a prosecutor, right?

18 A I mean, I don't know which one you're talking
19 about specifically or what was --

20 Q Wait. I'm going to stop you right there.
21 This is a hypothetical. Okay?

22 A Okay.

23 Q And so under my hypothetical, when the
24 prosecutor finds evidence that is favorable to the
25 defense, is it true that he or she has an obligation to

1 turn it over in a timely fashion?

2 A Yes.

3 Q In all of your time as a lawyer, both on the
4 criminal defense side and on the prosecution side,
5 what's the largest offense report you've ever seen? How
6 many pages?

7 A Oh, man, some of them, like the bank fraud
8 things that incorporate all those records, I mean, I've
9 seen some doozies. A couple of boxes full, I mean.

10 Q Let me ask the question better.

11 A That's not small.

12 Q Let me ask the question in a better way.
13 We're talking about crimes against a person?

14 A Okay.

15 Q Right? In a murder, largest?

16 A I mean, I've seen -- I've seen them get into
17 the -- like on just a straight-up offense report, like a
18 blue back from HPD?

19 Q Straight-up offense report.

20 A I've seen them go into the 150s, 160s, and
21 sometimes maybe even 200.

22 Q And, Mr. Newman, I'm going to hold up this
23 stack of papers right here and if I told you that was
24 approximately 200 pages, just that stack, about
25 4 inches, would you have any reason to refute that?

1 A I can't -- I can't concentrate with your math
2 assistant there, but that sounds about right.

3 Q As a defense attorney, if you were in trial
4 and your prosecutor in the middle of trial lets you see
5 for the first time that volume of paper, what effect
6 would that have on you in the middle of trial,
7 Mr. Newman? And keep in mind, you've never seen it
8 until the middle of trial.

9 A I would need an immediate recess to read it
10 all.

11 Q What would you think or how would you feel,
12 rather, if you found out there was another 1,000,
13 1-0-0-0 pages of an offense report that you never got to
14 see at all?

15 A Well, obviously I'd be upset.

16 Q Do you think having this volume of offense
17 reports tendered to you in the middle of a trial allows
18 you to effectively defend your client?

19 A I mean, it depends on what's in that. I mean,
20 I can't say that certainly. I would say there's
21 absolutely a possibility that it would, sure.

22 Q You would at least want the opportunity to
23 read through it?

24 A Absolutely.

25 Q Now, when you were prosecuting, if you have a

1 witness on the stand and you ask the witness a question
2 and you know definitively that the answer you just got
3 from the witness stand does not match a written
4 statement that is in your file as the prosecutor, can
5 you tell us what your obligation is as the prosecutor?

6 A I would immediately confront them with their
7 previous statement like while they were on the stand:
8 Well, isn't it true that you previously said this?"

9 Q Even if it's one of your own witnesses?

10 A Of course.

11 Q Why is that, Mr. Newman?

12 A Because you don't want to create a false
13 impression with the Court.

14 Q Or with the jury?

15 A I consider them part of it.

16 Q Did you have an opportunity to actually look
17 at the writ that was filed in Mr. Temple's case?

18 A On this one that we're here on now?

19 Q Yes, sir.

20 A No.

21 Q So you don't know what the allegations are?

22 A I don't.

23 Q One of the allegations that is being litigated
24 hotly is whether or not Ms. Siegler timely disclosed
25 evidence, and specifically 1400 pages' worth of offense

1 reports.

2 A Okay.

3 Q And so when we go through your blogs and
4 you're proffering these opinions about David Temple's
5 innocence, can you and I agree, Mr. Newman, that as a
6 defense lawyer, if you find out after the conviction
7 that you've got a 1,000 pages of papers that you never
8 put your eyes on, there's something unfair about that?

9 A It would depend -- it would depend on what was
10 in that.

11 Q Let's say some of it's favorable.

12 A I mean, okay, fine. Yeah, sure.

13 Q It bares investigating, doesn't it?

14 A Sure it does.

15 Q Just like newly discovered evidence. Do you
16 know the name of the witness that came forward?

17 A Is that Glasscock?

18 Q Right. Were you ever informed that
19 Mr. Glasscock at some point had his life threatened?

20 A No.

21 Q Wouldn't that be a good reason to have his
22 name filed under seal or his statement, rather, filed
23 under seal?

24 A It could be, yes.

25 Q It could be? With a new witness and a new

1 statement theretofore never disclosed to anyone, is it
2 not the District Attorney's job to investigate the
3 statement?

4 A To investigate it properly, yes.

5 Q Just investigate it?

6 A Yes.

7 Q Tell me what that proper investigation looks
8 like.

9 A What the proper investigation looks like?

10 Q What do you do to investigate a statement like
11 that?

12 A You don't act like you're a cockroach when the
13 lights just got turned on.

14 Q Mr. Newman, I'm not asking you to tell me what
15 you don't do. I'm asking you to tell us what is the
16 proper way for a district attorney's office to
17 investigate a new statement like that?

18 A If I were a DA, I would have handed it all
19 over to the Integrity Unit in its entirety.

20 Q Well, what if one of the claims in the writ,
21 Mr. Newman, is that the very unit that would normally
22 investigate that evidence hid it the first go-round?

23 A Okay. Then I would have asked a neighboring
24 county to look into it, one that didn't involve the
25 attorney who had previously been the attorney for your

1 lead investigator.

2 Q But can you and I agree if the allegations are
3 that evidence was hidden, that false testimony was
4 proffered by a particular district attorney's office,
5 it's probably not a good idea to have that investigation
6 managed in its entirety by that district attorney's
7 office?

8 A Right. But you have the entire Bar
9 Association that you could have picked a special
10 prosecutor, not Brad Beers, who had previously
11 represented Clappart.

12 Q So now your issue is, it isn't necessarily the
13 investigation but who's investigating it?

14 A I've had issues with the way that the District
15 Attorney's Office handled this particular incident from
16 head to toe.

17 Q Mr. Newman, would it surprise you to know that
18 the Sheriff's Office was involved in this investigation
19 virtually the entire time?

20 A Well, define the term "the entire time." I
21 mean, are you talking about from the day that Belinda
22 Temple was murdered?

23 Q No, no, no. The new evidence in the summer of
24 2012, that's what I'm talking about.

25 A I'm sure that they were informed of it. Their

1 level of involvement in it, I have no awareness of.

2 Q What makes you so certain they were informed
3 of it?

4 A Because, as I told you, I was aware when they
5 removed Dean Holtke off of it.

6 Q Okay. Were you aware when they were informed
7 of it?

8 A Wait, what?

9 Q When did the Sheriff's Office find out about
10 Daniel Glasscock's statement?

11 A That I don't know.

12 Q But you were aware when Holtke was removed?

13 A Yes.

14 Q Do you know why Holtke was removed?

15 A No.

16 Q So he never disclosed that to you?

17 A I mean, he said that he was taken off of it
18 and he felt that it was political, I believe was his
19 terms.

20 Q Did he tell you that he went out to visit Cody
21 Ellis?

22 A No, not that I recall.

23 Q Did he tell you that he had an obligation to
24 coordinate his efforts with Brad Beers and Steve
25 Clappart?

1 A Not that I recall.

2 Q And did he tell you that he went out to visit
3 Cody Ellis without telling anybody?

4 A I don't recall him telling me that, no.

5 Q And that after that one-hour visit, Cody Ellis
6 hired a lawyer. Never told you that?

7 A No.

8 Q Do you know who represents Cody Ellis?

9 A No.

10 Q Paul Doyle. Does that surprise you?

11 A No.

12 Q Do you know who arranged Cody Ellis' meeting
13 with Paul Doyle?

14 A I do not.

15 Q Riley Joe Sanders. Do you know who represents
16 him?

17 A Well, I'm going to guess Chip at this point.

18 Q That's a good guess.

19 A Well, you mentioned him.

20 Q I mentioned him?

21 A Yeah. Well, we've talked -- I mean, I've
22 heard talk of this case outside of this courtroom
23 obviously.

24 Q And so let's assume that the --

25 MS. GOTRO: May I approach the witness,

1 Judge?

2 THE COURT: You may.

3 Q (BY MS. GOTRO) Let's assume that the district
4 attorney's job is to investigate this newly discovered
5 evidence. All right? And it makes sense that the
6 first -- that they might involve the original prosecutor
7 on the case?

8 A Yes.

9 Q Have a conversation with her, get her take on
10 it, did you ever hear about this person, yes?

11 A Yes.

12 Q And that it also makes sense for the
13 investigator to maybe attempt to corroborate whether or
14 not this new evidence is true or false?

15 A Which investigator are we talking about at
16 this point?

17 Q Any investigator.

18 A Okay, yeah.

19 Q Does it make sense for a prosecutor to help
20 these witnesses that could possibly corroborate this
21 statement just obtain lawyers and no longer talk to law
22 enforcement?

23 A Okay, what? Repeat that question, please.

24 Q Fair enough. Cody Ellis and Riley Joe
25 Sanders, these fellas were implicated in Daniel

1 Glasscock's statement. Did you know that?

2 A After reading this, yes.

3 Q So it makes sense for an investigator, whether
4 it's Steve Clappart or the Sheriff's Department, to go
5 and talk to these guys, right?

6 A Sure.

7 Q "Hey, do you know Glasscock? Have you ever
8 heard of him?"

9 A It makes sense that someone would, yes.

10 Q Someone who's objective?

11 A Correct.

12 Q Someone who is not accused of having hidden
13 evidence the first go-round?

14 A Correct.

15 Q Someone who hasn't perjured themselves?
16 Basically an objective investigation?

17 A Okay.

18 Q Does it make sense for the prosecutor to get
19 her two buddies to represent these guys?

20 A I don't know if that's the case.

21 Q I'm just --

22 A Would it make sense?

23 Q Yeah.

24 A In what sense? I mean, it's a strange
25 question, Ms. Gotro.

1 Q I understand.

2 A I guess, no, it doesn't make sense.

3 Q In all of your years as a prosecutor, did you
4 ever help a suspect obtain defense counsel, Mr. Newman?

5 A Yes.

6 Q How many times?

7 A Once.

8 Q Were you at work when you did it?

9 A Yeah.

10 Q Did you call a buddy of yours to come down to
11 the office and represent him?

12 A No. I told them that they needed to find an
13 attorney.

14 Q I'm sorry?

15 A I told them -- I told that particular
16 individual that he needed to find an attorney.

17 Q Okay. Well, that's a little bit different
18 than saying "Hey, let me get you an attorney." Can we
19 agree?

20 A Sure.

21 Q Have you ever done anything like that while
22 you were a prosecutor?

23 A Well, like for family friend or something.

24 Q No, a suspect.

25 A Well, I had a family friend who was a suspect.

1 Q While you were on the clock?

2 A No.

3 Q Do you know of any other prosecutor that has
4 ever done anything like that here in Harris County?

5 A Not that they've mentioned to me.

6 Q Is that something, if in fact Kelly Siegler
7 did that, would that be out of character for her, in
8 your opinion?

9 A Yes and no. Yes and no.

10 Q So do you think if you're in the middle of a
11 trial, that you could effectively go through this amount
12 of information, 200 pages of offense report that you've
13 never put your eyeballs on? Do you think you could do
14 that effectively?

15 A If given a recess and having an overnight to
16 do so, yeah. I've actually had to do that.

17 Q And that's provided that these pages don't
18 reveal anything that you don't already know?

19 A Not necessarily. I had a case where I got a
20 ton of medical -- mental health records dropped on me in
21 the middle of trial.

22 Q Just so that we're clear, Mr. Newman, are you
23 telling me you can get 200 pages of reports dropped on
24 you in the middle of trial, revealing information you've
25 never heard of before, that is favorable to your case

1 and you can still be effective?

2 A In that particular instance that applied to
3 me, I was able to. It was okay. I'm not saying that on
4 any situation it could be done.

5 Q So that it didn't require any investigation
6 from you, did it?

7 A No, because it all helped me. It was all good
8 for me. In that particular case it was like, hey, look,
9 he's just as mentally ill as we always said he was. I
10 just had to find it and highlight it.

11 Q Well, you were very lucky then. Can you
12 imagine a circumstance where it wasn't favorable for
13 you?

14 A Sure.

15 MR. CHIN: Object to the relevance,
16 Judge.

17 THE COURT: Sustained.

18 MS. GOTRO: Thank you, Mr. Newman.

19 I pass the witness.

20 MR. CHIN: May I have a few more, Judge?

21 THE COURT: Yes, sir.

22 MR. CHIN: Thank you, sir.

23 **RE-CROSS-EXAMINATION**

24 Q (BY MR. CHIN) Sorry, Murray.

25 A That's okay.

1 Q Ms. Gotro talked to you about Daniel Glasscock
2 getting his life threatened. Had you heard that?

3 A I had heard that that was a stated reason from
4 the DeGuerin camp, yes.

5 Q Were you aware that Mr. DeGuerin and Mr.
6 Schneider actually made those statements to Judge
7 Mendoza about the time that they filed their out-of-time
8 motion for new trial and writ of habeas corpus?

9 A I was not. I don't believe I had personal
10 knowledge of it.

11 Q Were you ever made aware that it was
12 ultimately Judge Harmon, that the threats made to Daniel
13 Glasscock were actually from a former girlfriend that he
14 had broken up with and not having to do with anything
15 related to the Temple investigation or the assertions
16 that he made in relation to the three boys talking about
17 killing a dog?

18 A No, I was not aware of that.

19 Q Now, in your previous questioning you were
20 asked about the investigation, an investigator of the
21 Sheriff's Office, and particularly Holtke?

22 A Yes.

23 Q And she mentions how Holtke got off the case
24 and you said you don't really know how Holtke got off
25 the case?

1 A Correct.

2 Q Do you know whether he was removed off the
3 case or he asked off the case?

4 A My assumption was that he had been removed off
5 of the case.

6 Q That was the impression you got from your
7 conversation with him?

8 A Yes.

9 Q And did he mention anything about Dick
10 DeGuerin going to the Sheriff, Adrian Garcia, in order
11 to have him removed from this investigation?

12 A You know, I heard that down the line, but I
13 don't know if I heard that from Holtke or from someone
14 else.

15 Q Okay.

16 A Dean is not a super talkative type individual,
17 so he wasn't like just going on and on and on.

18 Q In your experience as a prosecutor and defense
19 attorney, have you found him to be a pretty fair
20 investigator?

21 A Dean Holtke?

22 Q Yes.

23 A Yes, he's an excellent investigator.

24 Q So if he is given an assignment, like to
25 investigate the allegations, the new allegations that we

1 have here regarding three boys shooting a dog, did you
2 think that he would lay down on the job and not do the
3 investigation or do you think that he would be active in
4 trying to find out what's going on?

5 A I think he would be active. Even if it meant
6 getting in trouble, he would do the right thing.

7 Q Do you feel that if in fact there was an -- I
8 think Ms. Gotro said -- an agreement, if he was aware of
9 an agreement that all investigation would be coordinated
10 through or approved by the special prosecutor, that Dean
11 Holtke would in fact do that?

12 A Unless he thought the investigation was dirty.

13 Q Was what?

14 A Dirty.

15 Q Meaning not objective?

16 A Correct.

17 Q So if in fact he did inform somebody at the
18 District Attorney's Office of his intent to go interview
19 Cody Ellis, does that lead you to believe that that was
20 done improperly or underhandedly?

21 A I'm not sure I fully understand the question,
22 the wording of the question.

23 Q I don't even know if I understand the question
24 now that I think about it. But if in fact he
25 communicated with a member of the District Attorney's

1 Office at the time and told that member of the District
2 Attorney's Office that he was going down to visit with
3 Cody Ellis about these allegations or to investigate
4 them, do you consider that to be underhanded or
5 something outside of what he is assigned to do in regard
6 to this case?

7 A That would sound like he was following
8 protocol.

9 MR. CHIN: Thank you, Mr. Newman.

10 Thank you, Judge. Pass the witness.

11 THE COURT: Anything further?

12 MS. GOTRO: Yes, sir.

13 **FURTHER REDIRECT EXAMINATION**

14 Q (BY MS. GOTRO) You said some things about
15 Dean Holtke's, I guess, investigative abilities. Is he
16 the kind of person that you know who would tip off a
17 suspect to help him avoid a warrant?

18 A Not if he thought it's a legal warrant, no.

19 Q Let's assume it's municipal warrants, just
20 outstanding traffic warrants. Can we assume that?

21 A Okay.

22 Q And you and I both know that law enforcement
23 often use municipal warrants to get somebody in custody
24 and have a conversation with them?

25 A Right.

1 Q Dean Holtke is not the kind of person you
2 would expect, right, to go and speak with a suspect
3 before other members of law enforcement have a chance to
4 execute those mini warrants?

5 A No, I disagree with that. I've seen plenty of
6 homicide investigators call someone on the phone and say
7 "I know you've got municipal warrants. Don't worry
8 about that and I need to talk to you." I've seen that
9 happen on many occasions.

10 Q Have you seen it happen where a detective will
11 call them up and say "Hey, heads up, on Sunday some
12 folks are going to come by your place with some mini
13 warrants. You might not want to come back to town"?
14 Have you ever seen anything like that?

15 A I'm not aware of that particular situation,
16 no.

17 Q Have you ever seen that?

18 A I have not seen that situation occur, no.

19 Q And if Holtke did something like that, that's
20 not what you understand his character to be, is it?

21 A Not based on those ways that you described it,
22 no.

23 MS. GOTRO: Thank you, Mr. Newman.

24 I pass this witness, Judge.

25 THE COURT: Anything else?

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MR. CHIN: I have no more. Thank you.

THE COURT: Thank you.

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3
4 I, Gina Bench, Deputy Court Reporter in and for the
5 178th District Court of Harris County, State of Texas,
6 do hereby certify that the above and foregoing contains
7 a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$_____ and
18 was paid/will be paid by Harris County.

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2 o'clock [1] 107/23 20 [8] 14/14 15/9 15/10 15/15 94/2 98/21 100/20 122/8 200 [4] 130/21 130/24 141/12 141/23 2000 [1] 73/17 2002 [1] 58/3 2004 [2] 7/20 7/21 2007 [2] 14/4 73/13 2008 [11] 6/22 13/22 14/1 14/5 73/10 74/22 79/15 79/24 79/25 82/13 128/12 2009 [7] 18/16 19/6 19/13 79/20 82/6 86/18 109/5 2012 [26] 9/16 9/22 9/25 12/3 14/19 15/17 15/20 16/22 16/25 20/14 26/25 30/14 32/7 32/21 33/13 47/13 52/19 54/14 55/21 72/22 90/12 92/2 94/4 99/13 109/5 135/24 2013 [4] 9/15 9/19 10/5 10/14 2014 [2] 1/14 3/4 2016 [1] 149/25 2080 [1] 17/13 209th [3] 66/12 67/8 67/14 21 [8] 14/14 15/9 15/10 99/13 109/17 115/18 122/7 122/8 212 [1] 4/3 216 [1] 4/4	6 60 [1] 60/18 62 [1] 3/22 69 [1] 3/22 6th [1] 2/4	
2000 [1] 73/17 2002 [1] 58/3 2004 [2] 7/20 7/21 2007 [2] 14/4 73/13 2008 [11] 6/22 13/22 14/1 14/5 73/10 74/22 79/15 79/24 79/25 82/13 128/12 2009 [7] 18/16 19/6 19/13 79/20 82/6 86/18 109/5 2012 [26] 9/16 9/22 9/25 12/3 14/19 15/17 15/20 16/22 16/25 20/14 26/25 30/14 32/7 32/21 33/13 47/13 52/19 54/14 55/21 72/22 90/12 92/2 94/4 99/13 109/5 135/24 2013 [4] 9/15 9/19 10/5 10/14 2014 [2] 1/14 3/4 2016 [1] 149/25 2080 [1] 17/13 209th [3] 66/12 67/8 67/14 21 [8] 14/14 15/9 15/10 99/13 109/17 115/18 122/7 122/8 212 [1] 4/3 216 [1] 4/4	7 713 [5] 17/8 17/13 17/19 50/9 54/8 713.755.5800 [1] 2/5 713.951.9994 [1] 2/11 73 [1] 3/23 74 [1] 3/23 75 [1] 4/3 77002 [3] 2/5 2/10 149/24 7th [2] 53/23 54/1	
2008 [11] 6/22 13/22 14/1 14/5 73/10 74/22 79/15 79/24 79/25 82/13 128/12 2009 [7] 18/16 19/6 19/13 79/20 82/6 86/18 109/5 2012 [26] 9/16 9/22 9/25 12/3 14/19 15/17 15/20 16/22 16/25 20/14 26/25 30/14 32/7 32/21 33/13 47/13 52/19 54/14 55/21 72/22 90/12 92/2 94/4 99/13 109/5 135/24 2013 [4] 9/15 9/19 10/5 10/14 2014 [2] 1/14 3/4 2016 [1] 149/25 2080 [1] 17/13 209th [3] 66/12 67/8 67/14 21 [8] 14/14 15/9 15/10 99/13 109/17 115/18 122/7 122/8 212 [1] 4/3 216 [1] 4/4	8 800 [1] 2/10 817-1821 [2] 17/8 17/19 864-2080 [1] 17/13 8:00 [1] 86/1	
2012 [26] 9/16 9/22 9/25 12/3 14/19 15/17 15/20 16/22 16/25 20/14 26/25 30/14 32/7 32/21 33/13 47/13 52/19 54/14 55/21 72/22 90/12 92/2 94/4 99/13 109/5 135/24 2013 [4] 9/15 9/19 10/5 10/14 2014 [2] 1/14 3/4 2016 [1] 149/25 2080 [1] 17/13 209th [3] 66/12 67/8 67/14 21 [8] 14/14 15/9 15/10 99/13 109/17 115/18 122/7 122/8 212 [1] 4/3 216 [1] 4/4	9 95 percent [1] 48/14 9800 [1] 50/9	
2013 [4] 9/15 9/19 10/5 10/14 2014 [2] 1/14 3/4 2016 [1] 149/25 2080 [1] 17/13 209th [3] 66/12 67/8 67/14 21 [8] 14/14 15/9 15/10 99/13 109/17 115/18 122/7 122/8 212 [1] 4/3 216 [1] 4/4	A a.m [1] 22/22 Abbandando [2] 13/1 13/4 Abby [3] 13/1 13/4 13/4 abilities [1] 146/15 ability [5] 29/18 84/8 85/1 85/2 85/6 able [8] 10/19 24/6 69/18 85/9 85/12 85/19 86/3 142/3	

A	Anderson [1] 94/24	105/19 109/13 111/1 111/25 113/8
affiant [1] 112/11	Andrew [5] 2/3 85/7 85/14 85/17 85/18	113/15 113/17 116/10 117/6 119/1 119/3
affidavit [10] 47/19 48/1 113/1 120/13 120/19 121/4 121/21 125/8 125/15 127/4	animal [6] 115/5 115/12 116/7 116/11 116/13 116/14	119/5 119/17 121/17 121/18 127/6 127/9 132/21 135/2 135/21 138/15 141/22 147/12
affirmed [1] 126/5	annoy [1] 122/18	area [1] 115/20
afraid [1] 83/15	anonymous [9] 23/11 23/12 23/13 23/14 23/20 23/22 83/9 84/1 84/6	arguable [1] 113/22
after [23] 14/3 16/10 23/22 29/13 30/6 38/12 53/19 66/5 71/9 75/9 81/1 81/3 82/2 82/6 86/24 90/4 90/8 91/9 91/22 96/25 133/6 137/5 139/2	anonymously [2] 80/23 85/4	argue [1] 25/10
AG's [1] 29/22	another [7] 37/5 45/6 70/14 75/15 84/11 95/4 131/12	arguing [9] 27/18 27/20 28/12 30/25 44/23 101/15 101/21 102/1 126/5
again [16] 13/3 20/14 22/13 27/7 42/4 43/3 46/16 64/3 75/3 85/19 88/10 96/4 107/4 107/6 126/21 128/11	answer [9] 24/9 28/20 42/1 42/2 42/23 43/7 43/8 103/6 132/2	argument [2] 46/10 46/19
against [6] 63/14 63/25 72/4 112/8 114/2 130/13	Anthony [1] 87/25	arguments [2] 46/15 46/21
agencies [2] 98/10 98/11	antisocial [1] 68/22	arises [1] 106/20
agency [4] 29/15 98/4 98/7 101/11	any [39] 12/1 17/10 24/25 25/17 26/6 31/8 41/22 41/24 42/18 42/21 47/7 48/7 50/1 51/6 51/14 51/25 54/11 54/13 54/13 55/13 60/6 62/8 67/18 72/17 78/2 87/16 88/6 98/22 108/21 109/6 114/9 122/6 123/20 130/25 138/17 141/3 142/4 142/5 149/15	around [10] 14/5 16/21 43/14 54/22 57/15 58/3 67/24 78/11 97/2 110/3
agency's [1] 29/18	anybody [12] 16/16 34/14 41/7 46/4 48/15 72/20 83/22 85/3 87/9 117/3 122/3 137/3	arranged [1] 137/12
aggravated [1] 72/19	anyone [2] 34/9 134/1	arrest [11] 37/21 39/4 42/6 43/15 110/3 112/7 112/22 113/21 114/2 117/20 118/1
ago [3] 26/21 43/23 110/12	anything [22] 12/14 18/6 21/9 25/21 41/12 68/1 75/7 80/6 84/3 84/16 92/20 109/8 114/7 114/11 140/21 141/4 141/18 143/14 144/9 146/11 147/14 147/25	arrested [1] 114/21
agree [8] 23/1 39/14 113/10 113/15 116/1 133/5 135/2 140/19	anytime [1] 11/11	article [5] 19/19 27/2 34/22 36/3 46/5
agreement [2] 145/8 145/9	AOL [2] 85/14 85/16	as [118] 6/7 6/23 7/13 11/5 11/16 13/7 13/14 14/14 14/19 14/20 21/1 21/2 23/6 25/8 25/20 25/21 25/21 29/21 30/19 32/21 32/21 33/13 33/19 35/11 43/24 45/18 46/6 49/4 49/16 51/14 52/7 55/13 55/13 56/5 56/22 60/17 60/18 61/11 62/6 62/6 63/12 64/20 67/22 68/17 72/15 72/15 73/3 73/4 73/24 75/23 75/23 76/5 76/5 77/25 77/25 78/10 78/11 79/1 79/1 79/2 79/3 80/13 80/24 81/9 81/19 82/21 84/1 86/17 86/23 87/14 88/9 91/23 91/23 91/24 92/10 93/12 93/12 95/2 97/24 98/8 98/8 99/16 100/9 102/18 102/23 103/25 104/5 106/7 108/7 111/5 111/23 113/11 113/24 114/20 115/22 116/1 118/10 118/24 121/2 121/24 125/19 127/11 127/15 127/16 127/24 129/14 129/14 129/17 130/3 131/3 132/4 132/5 133/5 136/4 140/3 142/9 142/9 144/18
ahead [3] 40/25 83/1 126/19	apologize [5] 71/2 79/23 93/7 105/5 117/9	ask [14] 14/15 14/24 22/21 29/15 46/17 54/6 88/15 112/20 113/5 113/5 122/6 130/10 130/12 132/1
air [1] 74/7	apparently [1] 22/8	asked [16] 14/22 21/2 23/5 38/18 52/4 56/23 88/13 92/17 93/10 101/6 108/4 111/22 123/6 134/23 143/20 144/3
aired [3] 9/23 9/24 10/9	appeal [3] 28/21 62/9 62/13	asking [9] 20/1 25/16 51/1 51/5 84/5 113/23 123/15 134/14 134/15
airing [1] 9/24	appeals [11] 25/13 28/23 29/2 62/13 62/14 62/16 62/20 66/17 67/15 101/21 101/22	asleep [1] 22/23
Alan [21] 4/20 12/23 46/9 61/8 61/10 61/13 62/4 62/6 62/8 62/20 101/20 102/1 125/3 125/11 125/14 126/4 127/11 127/14 127/21 127/25 128/3	appear [1] 22/4	assertions [7] 112/20 113/20 113/25 115/4 118/5 121/3 143/15
Alcala [2] 66/14 67/14	appearance [8] 29/21 34/24 60/21 97/21 97/22 104/22 105/22 107/4	assigned [10] 11/16 11/17 26/6 59/7 59/12 60/24 67/7 99/8 116/23 146/5
Alicia [5] 12/9 87/10 87/11 87/13 99/6	APPEARANCES [1] 2/1	assignment [2] 102/4 144/24
all [66] 10/6 10/14 10/18 10/19 14/1 17/15 18/18 21/2 23/11 23/11 24/5 24/21 28/25 29/3 34/8 36/9 48/11 50/16 50/23 52/10 56/2 56/9 59/1 60/20 62/12 63/1 64/18 65/1 65/5 66/17 69/15 69/15 70/23 72/21 72/25 75/7 76/16 77/4 79/22 83/11 84/6 84/22 86/22 88/17 106/18 106/25 107/15 108/17 108/23 120/5 122/25 125/13 128/7 129/13 130/3 130/8 131/10 131/14 134/18 138/5 140/3 142/7 142/7 145/9 149/7 149/11	appellate [10] 27/17 28/6 28/11 28/16 28/20 46/9 47/7 61/12 62/4 101/14	assistant [13] 2/4 6/23 8/7 20/8 20/13 27/19 27/23 81/12 86/11 95/2 96/3 101/16 131/2
allegations [14] 29/6 29/9 29/12 102/10 102/10 102/17 120/25 124/22 132/21 132/23 135/2 144/25 144/25 146/3	Applicant [2] 1/5 2/11	assisted [1] 12/13
alleged [1] 98/20	Applicant/Defendant [1] 2/11	assisting [1] 27/10
allegedly [1] 34/2	Application [1] 47/21	associates [1] 71/25
Allen [2] 88/2 88/4	applied [3] 66/11 66/20 142/2	Association [1] 135/9
allows [2] 126/17 131/17	appointed [7] 35/1 35/11 35/17 81/6 81/16 104/24 105/10	assume [8] 39/5 40/7 62/18 97/1 137/24 138/3 146/19 146/20
almost [8] 16/24 17/1 23/11 58/13 68/1 75/21 79/9 95/11	appointment [4] 35/14 50/12 105/13 105/15	assumed [2] 35/18 73/12
along [12] 22/17 41/15 43/19 45/3 45/4 48/19 48/20 70/3 70/5 82/23 86/22 122/12	appreciate [1] 41/5	assuming [1] 106/14
ALPHABETICAL [2] 3/19 4/1	apprehension [1] 101/5	assumption [2] 40/9 144/4
alphanumeric [1] 85/5	approach [6] 14/9 49/12 94/7 111/17 123/23 137/25	at [147] 6/14 7/9 7/16 10/19 11/11 11/12 12/8 14/20 15/2 19/11 20/8 20/18 21/3 21/7 22/16 22/22 23/3 23/17 23/18 23/19 24/13 25/11 25/13 28/9 29/2 32/2 33/3 34/8 36/8 36/12 37/7 37/21 37/22 38/3 40/19 40/22 42/6 42/24 47/4 49/1 49/5 51/19 53/13 54/13 54/13 55/6 55/10 56/9
already [7] 71/10 80/2 81/22 91/6 94/22 94/23 141/18	approaches [1] 119/14	
also [17] 11/3 12/10 12/10 19/24 23/14 38/15 51/16 51/17 73/4 74/24 75/18 83/24 84/18 86/15 86/17 125/7 138/12	appropriate [2] 72/10 98/3	
Alternative [1] 47/21	approval [1] 121/20	
although [2] 22/7 62/23	approved [2] 10/13 145/10	
always [8] 68/20 95/10 96/15 98/10 98/10 98/15 107/8 142/9	approximately [1] 130/24	
am [9] 6/17 7/5 30/21 46/2 47/25 50/14 112/1 116/16 128/9	are [101] 6/10 6/15 6/18 8/16 8/17 8/22 9/2 9/8 10/1 12/1 12/2 13/18 14/18 15/11 16/23 16/25 18/21 18/22 19/22 20/7 21/11 22/7 23/11 23/12 24/6 28/25 29/1 29/17 29/24 35/2 35/4 37/20 39/20 39/22 40/2 42/5 45/12 45/12 46/7 49/4 50/11 50/23 51/3 52/18 52/19 56/3 56/4 57/9 57/10 58/7 59/19 60/20 62/12 62/23 63/17 66/17 67/6 71/1 72/18 72/25 78/13 83/19 83/19 85/11 93/14 93/20 93/21 98/5 98/6 98/19 99/16 101/7 101/8 101/19 103/1 103/6 104/19 105/16	
amongst [1] 50/17		
amount [2] 77/19 141/11		

A
 at... [99] 57/1 57/13 57/25 58/18 58/22
 60/18 61/11 62/3 62/4 62/11 62/13 62/14
 63/5 63/6 64/13 64/14 64/22 65/2 65/5
 65/7 65/9 66/10 66/19 66/23 68/12 68/12
 69/7 69/10 71/5 72/14 74/3 75/10 78/10
 78/19 79/25 80/7 81/5 83/20 84/1 84/19
 85/11 85/11 85/16 85/18 85/25 85/25
 87/21 88/17 89/23 90/23 90/24 91/5 91/6
 91/25 92/3 92/16 93/23 93/24 94/2 94/22
 95/5 96/18 96/21 99/3 100/1 100/3
 100/15 101/3 102/14 104/9 104/14 107/8
 107/21 108/15 108/23 109/17 112/12
 113/1 115/1 115/3 122/8 122/8 123/19
 125/13 126/4 126/9 127/4 128/7 128/13
 129/1 131/14 131/22 132/17 133/19
 137/17 138/15 140/8 145/17 146/1
 attached [1] 22/15
 attack [1] 18/24
 attempt [3] 34/23 104/22 138/13
 attention [10] 16/8 18/10 20/11 24/19
 26/22 33/9 33/18 37/17 53/3 124/19
 attorney [51] 6/16 6/24 8/7 27/11 72/1
 73/17 73/25 74/4 74/9 74/22 75/11 75/19
 78/15 79/13 79/19 81/7 81/10 81/13
 81/14 81/16 86/11 91/24 95/3 96/7 97/6
 97/7 97/13 98/13 105/3 105/7 106/19
 106/20 106/25 107/3 113/8 113/18
 113/19 113/24 118/18 118/24 118/25
 128/11 128/18 129/6 131/3 134/25
 134/25 140/13 140/16 140/18 144/19
 attorney's [51] 7/6 7/10 11/6 13/21 20/25
 29/12 33/16 38/3 46/8 47/5 51/10 56/10
 58/14 58/22 62/5 65/2 65/10 65/16 66/20
 68/7 68/11 73/8 80/18 81/21 83/16 83/20
 84/4 90/25 92/3 95/16 99/22 100/1 100/6
 101/11 102/16 103/10 103/15 108/4
 108/15 115/1 126/1 128/16 134/2 134/16
 135/4 135/6 135/15 138/4 145/18 145/25
 146/2
 attorney/client [3] 106/20 106/25 107/3
 attorneys [3] 2/4 20/8 117/2
 attractive [1] 65/25
 attributing [1] 78/13
 Audio [1] 4/7
 August [4] 7/2 32/21 53/23 54/1
 August 16th [1] 7/2
 August 7th [1] 54/1
 Austin [1] 126/4
 authenticity [1] 15/1
 author [1] 80/25
 authority [1] 38/4
 authorized [1] 21/9
 authorizing [2] 27/24 101/16
 automatically [1] 78/11
 avoid [2] 77/8 146/17
 aware [30] 12/1 17/5 21/21 21/24 44/24
 50/11 50/14 61/15 62/11 62/12 62/19
 64/14 86/7 86/18 88/2 103/7 109/13
 121/1 121/3 125/10 125/14 126/12 136/4
 136/6 136/12 143/5 143/11 143/18 145/8
 147/15
 awareness [1] 136/1
 away [3] 33/19 63/22 67/23

B
 back [28] 10/14 10/14 10/20 13/20 18/10
 18/13 19/18 22/23 25/24 28/5 29/14
 29/15 41/4 42/25 49/9 68/1 82/6 83/7
 85/7 85/18 90/20 109/5 109/23 115/18
 126/8 128/15 130/18 147/13
 back-to-back [1] 10/14
 backed [1] 79/7

background [3] 58/8 65/17 93/19
 backwards [1] 114/23
 bad [3] 7/2 67/5 80/12
 Bailey [7] 63/12 63/17 63/24 64/16 64/24
 65/12 65/19
 Baldwin [3] 2/3 15/12 99/2
 Ball [1] 2/9
 bank [1] 130/7
 Bar [1] 135/8
 bares [1] 133/13
 base [2] 10/4 30/21
 based [17] 25/8 25/10 28/3 38/14 47/21
 51/12 62/19 82/9 85/1 86/12 89/6 98/23
 101/24 101/25 114/22 118/15 147/21
 bashing [1] 80/10
 basically [12] 14/18 25/15 37/12 45/4
 48/25 55/6 60/7 60/14 80/5 124/14
 127/22 139/16
 basing [1] 111/4
 basis [6] 27/25 30/4 30/4 101/17 108/23
 112/22
 batches [1] 60/17
 be [103] 1/15 7/8 8/8 9/7 17/22 19/24
 20/14 21/24 22/20 25/1 29/24 30/25
 31/15 31/18 33/20 37/10 38/7 38/11
 39/15 41/6 41/7 42/2 46/21 51/20 52/4
 58/15 59/12 64/20 64/23 65/14 68/21
 69/18 71/24 73/14 74/2 74/6 75/15 76/10
 78/10 78/14 78/20 81/24 82/11 83/25
 85/9 85/12 85/25 86/3 88/25 89/4 90/9
 90/18 91/13 92/12 94/18 95/1 95/7 95/8
 95/23 98/12 98/23 100/11 102/6 102/21
 106/3 106/21 107/1 107/6 107/8 107/13
 107/18 107/22 111/4 111/21 112/22
 113/24 115/4 119/14 120/13 121/1 122/1
 123/17 124/22 126/5 127/2 127/5 127/9
 128/5 131/15 133/21 133/24 133/25
 141/7 142/1 142/4 144/19 145/3 145/5
 145/9 146/4 147/20 149/9 149/18
 beat [1] 79/16
 became [16] 50/14 64/9 64/10 64/11
 68/25 69/14 69/23 73/2 73/3 79/19 80/13
 81/16 82/21 86/10 91/22 101/11
 because [60] 7/7 10/2 10/4 10/12 11/1
 13/5 15/21 17/5 18/7 18/8 19/3 26/3
 27/17 30/6 31/11 32/2 35/18 35/24 37/5
 37/15 40/2 42/1 44/5 46/25 51/1 52/8
 55/17 57/2 66/15 71/11 73/12 73/23 74/2
 75/22 77/25 78/15 80/9 81/6 83/25 84/2
 84/15 90/7 91/16 92/15 92/18 95/16
 100/8 106/23 111/3 115/6 116/6 116/12
 116/21 120/23 122/10 124/20 129/16
 132/12 136/4 142/7
 become [6] 64/7 71/6 78/7 79/12 81/7
 92/1
 becomes [2] 117/1 119/10
 becoming [1] 69/9
 bed [5] 7/24 7/25 8/3 8/6 31/12
 beef [1] 103/22
 been [76] 6/7 6/20 9/13 11/4 14/13 16/21
 17/17 17/18 18/9 18/14 19/20 21/1 21/9
 30/24 32/20 33/14 34/19 35/11 36/25
 40/21 40/21 41/19 46/13 47/2 48/19
 48/24 48/25 49/3 49/16 52/11 52/17
 53/19 54/18 58/3 64/25 65/4 67/21 70/12
 73/16 75/5 75/7 78/16 80/17 81/6 81/22
 82/8 86/22 87/3 87/17 87/22 88/5 93/19
 93/25 94/17 96/25 97/8 98/20 100/12
 102/11 102/17 104/6 107/9 108/23 109/1
 109/2 109/5 110/2 111/23 118/18 123/12
 124/8 125/18 127/13 128/10 134/25
 144/4
 beers [19] 35/10 36/5 36/9 37/1 37/5

37/12 49/19 50/11 68/15 105/7 105/9
 106/2 106/12 106/15 106/21 107/9 108/6
 135/10 136/24
 before [30] 1/16 10/9 11/23 12/14 13/24
 23/8 25/12 31/5 31/5 32/1 37/13 46/11
 51/3 56/2 56/11 56/18 58/18 70/12 71/7
 71/8 74/16 75/2 87/22 87/22 88/10 91/2
 119/9 120/2 141/25 147/3
 began [2] 9/15 14/2
 begin [2] 69/9 73/7
 beginning [3] 49/5 70/25 91/25
 begins [1] 51/1
 behalf [1] 83/25
 behavior [1] 80/10
 behest [1] 122/9
 behoove [2] 119/21 120/1
 being [42] 12/14 25/17 30/23 31/12
 35/17 39/21 41/13 41/14 45/8 45/20
 50/17 54/24 55/16 55/19 58/4 58/17 59/6
 62/7 63/2 68/24 69/12 75/23 79/9 87/21
 90/2 90/3 98/8 99/17 100/4 101/1 101/23
 102/23 103/11 108/7 111/8 116/4 116/5
 116/6 116/15 116/23 120/16 132/23
 belief [4] 55/11 108/6 108/16 124/18
 believe [40] 20/23 21/10 32/24 33/3
 33/25 39/9 40/12 42/11 44/17 44/19
 47/18 47/18 47/19 48/5 50/16 56/8 62/10
 63/14 67/22 72/20 81/4 84/22 85/8 87/12
 89/7 96/13 97/23 97/24 103/10 103/14
 107/6 113/25 115/11 123/14 123/22
 127/14 127/18 136/18 143/9 145/19
 believed [2] 33/20 36/21
 believing [1] 83/18
 Belinda [6] 31/21 37/22 103/1 110/5
 110/10 135/21
 Belinda's [1] 32/19
 Bench [3] 149/4 149/20 149/21
 bends [1] 114/23
 benefit [1] 25/1
 besides [1] 17/10
 besmirch [1] 19/9
 best [3] 15/18 22/17 83/6
 better [3] 70/2 130/10 130/12
 between [10] 4/20 25/2 35/25 36/12
 50/21 66/7 66/8 81/7 86/1 125/3
 big [6] 42/3 60/17 64/10 83/24 103/24
 115/20
 bill [1] 61/1
 biopsy [1] 55/15
 bit [9] 12/16 24/9 38/16 58/8 93/12
 113/12 113/17 116/17 140/17
 bizarre [1] 55/8
 black [1] 115/20
 blanking [1] 71/19
 blew [1] 76/14
 blog [63] 4/15 4/16 4/17 13/22 14/4 14/6
 14/7 14/18 14/21 14/22 15/16 15/19
 23/19 23/21 28/16 31/11 33/4 35/19
 42/13 42/16 42/20 47/9 47/12 47/14 52/5
 52/10 52/13 52/24 52/25 80/2 80/3 80/3
 80/4 80/7 80/8 80/25 82/22 83/7 83/8
 83/19 85/4 85/19 86/6 86/8 86/11 88/13
 88/23 92/21 93/2 93/11 93/13 93/17 94/1
 99/13 100/4 100/14 101/19 109/16
 116/11 120/19 121/2 121/4 122/7
 blogger [1] 93/12
 blogging [1] 23/22
 blogs [4] 24/8 93/14 108/18 133/3
 blood [1] 32/19
 blue [2] 68/21 130/18
 board [1] 102/21
 Bob [1] 63/22
 body [1] 121/9

<p>B</p> <p>Bonds [2] 11/3 11/5 bookmark [1] 85/17 both [13] 27/16 40/4 51/23 72/9 89/3 89/5 89/16 101/12 126/2 127/20 127/24 130/3 146/22 bottom [2] 22/3 94/6 bound [1] 114/13 bounds [1] 111/16 Bowen [2] 10/23 10/24 boxed [1] 43/6 boxes [1] 130/9 boys [2] 143/16 145/1 Brad [14] 35/10 36/5 37/1 37/5 37/12 49/18 50/11 105/7 105/9 106/2 106/12 108/6 135/10 136/24 Brad's [1] 35/13 Bradford [3] 76/6 76/8 79/16 Bradley [2] 69/1 69/5 branded [1] 86/23 Brandon [1] 2/9 break [4] 59/5 66/15 107/19 111/21 Brian [3] 12/9 32/16 63/14 brief [1] 59/3 briefly [2] 54/16 114/21 brings [1] 46/6 broken [1] 143/14 brought [2] 8/3 123/17 Brown [1] 12/24 Bryan [2] 58/9 58/10 Bryan/College [1] 58/10 buddies [3] 64/10 98/20 139/19 buddy [1] 140/10 building [1] 75/6 bunch [1] 93/9 bureau [7] 59/2 59/6 59/22 59/24 60/11 61/4 63/1 burglaries [1] 33/20 burglary [4] 44/13 110/17 114/8 114/10 business [1] 64/12 but [125] 7/8 7/20 7/22 7/24 9/17 10/5 10/17 10/18 11/15 12/16 13/5 17/3 17/14 18/3 21/15 21/19 21/24 23/10 24/1 24/12 24/15 24/24 25/11 26/18 28/8 29/23 30/16 31/1 34/4 34/12 34/20 35/15 38/7 39/5 41/19 42/3 46/3 46/3 49/9 50/2 50/15 51/16 51/22 53/11 55/8 56/4 56/6 57/17 59/23 63/9 65/16 65/18 66/12 67/7 67/22 67/24 68/21 70/1 70/13 71/14 72/19 74/17 74/19 75/2 75/23 77/7 77/12 77/14 77/17 78/10 78/17 78/21 79/1 80/23 81/3 82/8 82/19 83/21 84/2 84/14 84/19 85/9 85/21 86/22 87/22 88/10 91/9 91/25 92/8 93/21 95/5 95/24 96/25 97/2 98/16 98/22 102/3 103/6 105/14 107/4 108/12 108/18 109/2 113/8 114/9 115/15 116/15 118/15 121/16 122/17 123/13 124/4 126/4 127/1 127/6 127/9 127/13 127/21 131/2 135/2 135/8 135/13 136/12 144/12 145/24</p>	<p>camp [1] 143/4 campaign [2] 73/6 73/7 campaigns [1] 75/6 can [45] 15/15 16/14 19/16 19/24 21/14 22/16 23/1 23/24 29/11 32/1 37/24 38/1 39/14 40/6 41/21 47/17 49/24 50/25 53/5 58/7 61/21 62/6 70/23 74/14 80/6 80/6 80/6 84/13 90/23 98/1 98/1 98/11 107/19 112/1 120/15 122/22 124/25 132/4 133/5 135/2 140/18 141/23 142/1 142/11 146/20 can't [9] 15/21 17/2 40/9 42/23 51/24 74/20 131/1 131/1 131/20 candidate [1] 75/22 candidates [2] 75/25 78/2 Candy [1] 10/22 Canyon [1] 55/6 capital [12] 39/22 63/13 64/4 110/5 111/15 112/8 112/23 114/3 114/14 114/16 114/22 116/7 care [1] 104/13 careful [1] 24/21 Carl [1] 10/24 cars [1] 61/22 case [69] 7/19 7/23 8/3 8/11 14/19 16/12 18/23 24/1 25/12 34/19 40/10 40/22 46/10 50/13 52/3 55/4 55/13 55/15 55/17 55/21 55/23 56/5 60/22 62/9 63/25 64/3 64/15 70/7 70/9 70/14 70/15 70/16 70/19 70/21 70/24 71/6 71/8 71/17 72/4 72/11 87/23 96/8 97/25 98/1 100/11 101/21 104/1 104/3 106/14 108/7 108/16 109/14 115/16 116/22 124/21 128/20 132/17 137/22 138/7 139/20 141/19 141/25 142/8 143/23 143/25 144/3 144/3 144/5 146/6 cases [19] 12/15 12/17 26/6 59/7 59/8 59/10 59/13 59/17 59/23 60/8 60/16 60/16 60/18 61/5 69/20 87/2 123/5 123/8 123/21 Casie [1] 2/8 casually [1] 90/6 cats [1] 80/7 cause [14] 1/2 1/16 38/13 60/15 112/7 113/12 113/20 114/2 115/12 116/23 117/25 122/14 125/8 149/11 CCA [2] 46/11 126/5 celebrate [1] 109/6 celebrated [1] 109/3 celebration [1] 109/7 cell [7] 17/14 50/12 50/20 51/8 51/15 51/21 51/24 certain [8] 15/21 22/20 23/6 24/7 72/18 79/24 119/9 136/2 certainly [7] 49/7 72/16 90/6 113/22 119/24 122/23 131/20 certify [3] 149/6 149/13 149/16 chair [1] 7/24 challenge [2] 118/25 119/18 chambers [1] 149/12 chance [6] 7/10 16/3 22/14 49/20 51/12 147/3 change [2] 118/1 128/6 changed [1] 18/7 channels [1] 103/11 chaotic [1] 74/17 character [3] 19/10 141/7 147/20 charge [8] 115/5 115/8 116/19 116/21 117/1 117/10 117/11 118/5 charged [1] 59/19 charges [1] 117/6 cheap [1] 84/13 check [1] 18/3</p>	<p>checked [1] 85/19 chest [1] 75/6 chief [16] 66/22 67/13 67/13 69/23 76/7 76/10 91/8 91/9 91/10 91/11 91/14 91/16 91/17 91/18 91/24 92/3 chiefs [2] 64/22 91/21 Chin [17] 2/3 40/19 41/9 50/1 57/9 93/6 99/2 107/12 108/2 111/20 111/21 118/12 123/6 142/15 142/20 142/22 146/9 Chip [1] 137/17 choice [3] 106/3 118/7 118/10 Christmas [4] 14/3 82/24 83/4 83/6 CHRONOLOGICAL [1] 3/1 Chuck [10] 14/2 14/2 73/13 73/15 73/20 73/23 75/3 75/9 80/10 81/7 circumstance [1] 142/12 circumstances [1] 98/14 cite [1] 43/22 cites [1] 110/8 civil [2] 72/17 98/15 claiming [1] 96/4 claims [1] 134/20 Clappart [58] 21/5 21/6 21/8 27/8 27/10 31/3 31/10 31/15 31/18 31/22 33/18 33/23 34/10 34/25 35/5 37/4 37/13 37/20 42/5 43/14 90/13 96/19 96/23 98/19 98/22 100/17 100/19 102/4 102/12 102/18 102/22 103/5 104/23 106/8 106/12 106/15 106/17 106/22 107/1 107/2 107/10 110/2 112/13 114/23 124/5 124/15 125/3 125/10 125/15 126/12 127/5 127/11 127/15 127/17 128/3 135/11 136/25 139/4 Clappart's [4] 30/1 30/11 100/24 114/20 Clappart/Denholm [2] 33/18 35/5 Clarence [2] 76/8 79/16 clarification [1] 24/10 clarify [1] 32/23 class [2] 60/8 69/15 classify [1] 73/3 clear [4] 77/12 102/22 126/11 141/22 clearly [2] 105/6 126/23 clerk [1] 63/12 Clerk's [2] 116/22 117/13 client [5] 96/5 106/20 106/25 107/3 131/18 clients [3] 25/20 26/4 40/5 clock [2] 83/4 141/1 close [5] 41/17 97/3 114/4 128/19 129/3 closed [14] 96/7 100/21 103/3 104/25 110/4 110/11 110/12 110/14 110/16 116/4 128/16 128/24 129/5 129/10 closed-file [2] 128/16 129/5 closely [2] 11/9 98/20 closer [1] 72/25 closet [3] 44/14 110/18 111/13 closing [1] 74/4 cockroach [1] 134/12 cocounsel [1] 7/23 code [2] 84/24 85/2 Cody [11] 41/23 112/8 114/2 136/20 137/3 137/5 137/8 137/12 138/24 145/19 146/3 cohorts [1] 68/17 coincidence [1] 55/8 Cold [3] 8/24 9/24 87/14 collected [1] 93/15 collector [1] 89/21 College [1] 58/10 collusion [1] 35/25 Comcast [1] 85/23 come [20] 16/1 20/22 21/13 21/15 29/5 29/7 29/9 60/25 68/18 68/20 69/25 81/24</p>
<p>C</p> <p>C-u-r-r-y [1] 61/8 Cable [1] 85/23 call [9] 6/5 51/17 53/11 116/19 117/23 127/15 140/10 147/6 147/11 called [8] 9/10 23/17 37/15 38/5 60/14 80/2 80/3 80/25 calling [1] 67/25 calls [3] 6/3 13/4 53/9 came [18] 1/15 10/20 12/9 14/20 19/8 23/8 34/1 48/12 58/13 68/7 68/10 69/3 70/3 75/10 85/15 85/18 105/9 133/16</p>		

<p>C</p> <p>come... [8] 82/6 84/17 122/4 122/18 122/21 140/10 147/12 147/13</p> <p>comes [1] 29/13</p> <p>comfortable [1] 40/3</p> <p>coming [9] 7/7 14/23 18/22 20/18 31/5 39/15 39/23 43/24 81/23</p> <p>comma [2] 104/15 109/21</p> <p>comment [7] 23/22 41/3 42/18 42/19 42/20 83/21 85/15</p> <p>commented [2] 83/8 85/13</p> <p>commenting [1] 83/19</p> <p>commentor [1] 86/4</p> <p>commentors [3] 82/23 84/6 86/2</p> <p>comments [12] 14/20 22/15 22/20 23/5 23/6 24/8 33/4 41/5 41/6 78/6 84/9 85/4</p> <p>commit [2] 58/15 58/17</p> <p>commitment [1] 66/10</p> <p>committing [1] 33/20</p> <p>communicate [2] 36/8 108/15</p> <p>communicated [2] 108/13 145/25</p> <p>communicating [1] 108/11</p> <p>communications [1] 93/10</p> <p>company [2] 9/10 9/11</p> <p>compare [1] 49/18</p> <p>comparison [1] 50/1</p> <p>Complies [1] 125/21</p> <p>computer [1] 86/14</p> <p>computerized [1] 1/18</p> <p>computers [1] 18/7</p> <p>concede [1] 28/13</p> <p>concentrate [1] 131/1</p> <p>concerned [4] 92/16 92/18 114/25 115/1</p> <p>concerning [2] 81/20 108/16</p> <p>concerns [4] 98/5 98/7 108/12 126/1</p> <p>conclusion [3] 28/3 82/8 113/3</p> <p>concrete [1] 95/10</p> <p>conduct [1] 59/20</p> <p>conducted [1] 72/9</p> <p>confess [2] 22/9 116/15</p> <p>confession [5] 114/7 114/14 116/7 116/12 116/14</p> <p>confessor [1] 22/10</p> <p>confidentiality [1] 13/18</p> <p>confirmed [1] 22/8</p> <p>conflict [14] 36/5 36/9 36/19 36/24 37/10 70/4 106/5 106/7 106/13 106/22 107/5 108/6 108/12 108/16</p> <p>conflicted [1] 98/12</p> <p>confront [1] 132/6</p> <p>congratulations [1] 13/13</p> <p>conjunction [1] 117/6</p> <p>connecting [1] 105/18</p> <p>consider [2] 132/15 146/4</p> <p>consideration [1] 25/17</p> <p>considered [1] 38/11</p> <p>consistently [1] 86/12</p> <p>consulting [3] 9/8 9/14 12/2</p> <p>CONT'D [2] 4/1 5/1</p> <p>contact [6] 16/20 50/20 66/6 90/5 90/7 90/9</p> <p>contacted [2] 37/5 52/2</p> <p>contained [1] 113/25</p> <p>contains [1] 149/6</p> <p>contemplated [1] 114/21</p> <p>contentious [2] 72/7 72/8</p> <p>contested [2] 80/13 98/1</p> <p>context [2] 75/25 76/17</p> <p>contextual [1] 79/22</p> <p>contextualize [1] 90/23</p> <p>continuance [1] 71/12</p> <p>continuances [1] 71/12</p>	<p>continue [1] 82/16</p> <p>contract [1] 81/23</p> <p>contracts [1] 13/16</p> <p>convenient [1] 107/18</p> <p>conversation [7] 39/8 39/23 54/1 119/16 138/9 144/7 146/24</p> <p>conversations [3] 42/12 42/15 77/25</p> <p>convicted [8] 72/12 87/3 97/8 99/23 99/24 99/24 100/12 103/17</p> <p>conviction [21] 1/11 3/3 22/6 27/18 27/25 28/12 28/17 29/2 29/13 47/5 57/21 86/19 87/1 87/6 98/24 101/15 101/18 102/2 123/7 126/5 133/6</p> <p>convictions [1] 87/18</p> <p>cook [1] 68/16</p> <p>coordinate [1] 136/24</p> <p>coordinated [1] 145/9</p> <p>copies [1] 14/13</p> <p>cops [1] 39/22</p> <p>copy [2] 44/2 44/3</p> <p>corpus [4] 47/21 121/8 122/1 143/8</p> <p>correct [138] 7/5 8/10 11/8 16/2 18/20 21/5 23/23 24/24 27/12 30/3 31/23 32/12 33/25 36/1 36/4 42/11 44/19 47/16 47/25 48/2 48/5 50/10 58/19 58/24 59/8 59/9 59/13 59/14 59/24 59/25 63/4 64/2 65/13 66/23 67/3 67/8 67/11 67/15 67/16 68/4 68/5 68/8 69/7 69/8 70/17 70/18 72/6 73/25 74/22 74/23 74/25 75/1 75/11 75/20 76/2 76/3 76/11 77/13 77/21 77/22 78/22 78/23 78/24 78/25 79/8 79/14 79/18 79/21 79/25 80/20 81/1 81/15 82/3 82/18 83/18 89/16 89/17 90/1 90/25 91/1 91/14 91/15 91/19 91/21 92/9 94/20 94/24 95/7 95/15 95/18 99/4 99/7 99/10 101/13 102/2 103/13 103/24 105/23 106/1 106/6 106/9 106/10 107/11 109/25 110/7 110/19 110/22 111/10 112/14 112/16 115/16 115/17 116/24 116/25 117/4 117/11 117/12 117/15 117/18 117/22 117/24 118/3 118/6 119/12 119/19 119/20 119/23 120/10 122/1 123/14 124/3 126/7 128/22 139/11 139/14 144/1 145/16 149/7</p> <p>correctly [7] 11/16 25/13 38/19 80/16 101/1 120/24 149/14</p> <p>corresponding [1] 14/20</p> <p>corroborate [3] 128/5 138/13 138/20</p> <p>cost [2] 84/12 149/16</p> <p>could [49] 6/11 13/3 16/8 18/3 18/10 20/11 21/2 21/13 24/14 24/16 24/18 25/15 26/22 27/21 32/13 37/17 38/10 38/14 39/2 39/3 39/3 39/12 44/20 53/3 63/3 63/16 68/19 69/21 85/16 85/17 85/20 90/20 93/24 98/16 98/24 99/22 107/1 108/22 112/21 116/15 122/3 125/19 133/24 133/25 135/9 138/20 141/11 141/13 142/4</p> <p>counsel [6] 2/6 2/11 56/12 56/18 140/4 149/9</p> <p>counts [1] 56/5</p> <p>county [45] 1/6 1/17 6/24 11/6 12/19 12/20 18/17 20/9 20/25 26/1 27/8 27/16 33/16 35/21 38/2 58/14 58/23 59/11 62/5 63/18 65/2 65/5 65/7 65/9 73/17 73/25 80/18 81/17 83/20 85/24 86/25 87/17 90/24 96/6 97/13 99/21 101/10 102/16 103/15 134/24 141/4 149/2 149/5 149/18 149/23</p> <p>couple [6] 13/1 13/6 55/5 71/7 93/25 130/9</p> <p>course [7] 7/17 38/23 39/7 70/6 121/18 129/7 132/10</p>	<p>court [46] 1/2 1/4 14/11 23/9 25/12 28/23 29/2 46/11 47/2 49/14 50/7 59/7 59/11 59/11 60/2 60/21 62/13 62/14 62/15 64/21 66/12 66/16 66/21 66/22 66/24 67/4 67/8 67/13 67/14 67/15 91/14 101/21 101/22 107/12 107/25 116/24 119/10 126/17 126/18 132/13 138/2 149/4 149/5 149/11 149/22 149/22</p> <p>courtesy [1] 52/7</p> <p>courthouse [8] 25/18 26/1 81/3 89/1 89/2 89/8 89/10 122/4</p> <p>courtroom [4] 8/4 41/7 46/17 137/22</p> <p>courts [2] 60/4 91/17</p> <p>covertly [2] 27/23 101/16</p> <p>coworker [1] 61/11</p> <p>crack [1] 60/16</p> <p>crazy [1] 74/17</p> <p>create [4] 106/11 106/13 117/11 132/12</p> <p>created [2] 97/23 98/25</p> <p>creating [1] 86/18</p> <p>creation [3] 87/23 88/11 116/22</p> <p>credible [3] 95/21 96/2 114/24</p> <p>Creek [1] 55/6</p> <p>crime [6] 38/25 56/1 76/14 97/8 99/23 99/24</p> <p>crimes [8] 11/13 11/17 38/1 38/2 65/8 87/3 91/10 130/13</p> <p>criminal [16] 6/20 25/13 26/1 28/23 29/2 62/14 62/16 63/17 66/16 67/15 87/18 97/16 99/8 101/21 101/22 130/4</p> <p>critiquing [1] 108/22</p> <p>cross [10] 3/8 3/12 3/15 3/20 4/2 4/23 4/24 5/4 57/7 61/13</p> <p>CROSS-EXAMINATION [1] 57/7</p> <p>cruelty [6] 115/5 115/13 116/7 116/12 116/13 116/14</p> <p>crux [2] 103/24 124/6</p> <p>CSR [2] 149/21 149/21</p> <p>Cuero [2] 10/10 10/22</p> <p>curiosity [1] 84/15</p> <p>current [1] 96/7</p> <p>currently [7] 6/15 24/6 37/20 42/5 67/15 73/16 81/13</p> <p>Curry [24] 4/20 46/9 46/23 61/8 61/10 61/14 62/4 62/6 62/8 62/20 101/20 102/1 125/3 125/11 125/14 125/23 126/4 126/12 126/16 126/23 127/14 127/21 127/25 128/3</p> <p>Curry's [2] 46/15 127/5</p> <p>Curry/S.Clappart [1] 4/20</p> <p>cursor [1] 85/22</p> <p>custodial [1] 119/5</p> <p>custody [6] 119/2 119/6 119/8 119/17 119/23 146/23</p> <hr/> <p>D</p> <p>D.A [1] 44/21</p> <p>D.Glasscock [2] 4/8 5/7</p> <p>DA [4] 27/8 73/2 78/7 134/18</p> <p>DA's [26] 7/16 11/11 11/19 12/2 20/9 27/16 31/5 32/25 35/21 36/8 36/12 37/6 48/16 55/10 55/11 57/13 64/13 64/22 65/7 66/10 68/13 91/22 92/16 118/14 126/9 127/20</p> <p>daily [1] 17/18</p> <p>Dallas [1] 86/25</p> <p>Daniel [4] 136/10 138/25 143/1 143/12</p> <p>DAs [2] 20/4 85/24</p> <p>date [8] 15/15 41/14 47/12 52/10 52/13 53/20 54/3 74/3</p> <p>dated [1] 125/5</p> <p>dating [1] 58/2</p> <p>daughter [2] 92/15 103/18</p>
--	--	---

D		
DAVID [17] 1/4 14/19 18/14 22/6 22/9 25/1 26/12 26/25 33/19 48/18 52/22 96/4 99/14 124/5 124/16 127/24 133/4	description [4] 4/6 4/13 5/2 86/21 desk [4] 18/15 19/5 19/20 85/25 detached [1] 37/16 detail [2] 15/23 44/14 details [2] 22/7 55/25 detective [4] 10/24 12/18 12/20 147/10 determination [1] 82/5 determined [1] 87/2 develop [1] 125/15 developed [2] 68/4 69/12 developing [1] 125/11 develops [1] 72/23 Devlin [1] 12/7 Devoy [1] 12/10 Dick [6] 25/2 35/25 72/1 72/4 121/6 144/9 did [141] 7/1 7/10 7/12 7/15 8/11 10/6 10/7 10/17 10/20 11/10 11/21 12/12 12/13 13/25 14/24 17/2 17/4 17/24 21/15 22/12 22/16 23/3 23/8 25/19 26/19 27/13 28/2 29/4 30/5 30/8 30/14 31/2 31/24 32/16 33/5 33/6 33/23 35/16 36/8 36/15 36/16 36/18 36/23 36/23 40/11 40/15 41/12 41/16 41/22 42/9 42/18 42/21 42/22 43/9 44/2 44/7 44/14 46/20 46/20 46/22 46/25 47/5 47/7 47/19 48/3 49/20 51/15 52/3 52/7 52/21 52/22 54/13 54/20 55/8 55/14 56/10 57/15 59/1 60/13 61/13 61/15 62/3 63/9 64/7 66/7 66/9 67/2 67/17 68/10 70/6 71/6 72/18 73/6 75/12 77/17 78/2 80/13 81/18 81/19 83/3 85/15 86/9 86/9 88/22 89/6 89/7 93/1 93/3 96/20 96/21 97/5 98/7 99/10 99/20 108/14 112/2 112/4 112/18 112/20 113/5 113/5 121/20 122/6 122/10 128/16 132/16 136/9 136/20 136/23 137/2 138/10 139/1 140/3 140/8 140/10 141/7 142/6 144/9 145/1 145/17 147/19 didn't [28] 10/17 11/1 18/2 21/7 26/17 28/13 28/19 32/18 37/15 41/19 43/5 46/1 46/19 48/7 57/24 61/12 68/12 77/1 77/8 77/12 78/6 83/25 84/3 100/10 113/1 127/25 134/24 142/5 different [15] 20/4 30/9 40/10 62/23 85/10 93/23 101/2 102/7 102/8 113/15 116/18 120/25 121/11 127/23 140/17 difficult [4] 118/23 118/25 119/4 119/17 digital [2] 42/19 44/3 diminished [1] 45/5 direct [24] 3/8 3/12 3/15 3/20 4/2 6/8 16/8 20/11 22/17 24/19 26/22 33/9 37/17 44/16 53/3 62/9 62/13 101/6 108/3 109/10 114/9 118/8 120/7 121/19 directly [2] 7/15 117/10 dirty [3] 31/12 145/12 145/14 disagree [5] 31/8 54/11 88/6 121/15 147/5 disclosed [3] 132/24 134/1 136/16 discovered [4] 24/25 47/22 133/15 138/4 discretion [1] 38/8 discuss [1] 54/14 discussing [2] 28/16 56/5 disgusted [1] 55/10 dismissal [1] 61/6 dismissed [1] 60/22 disposal [1] 107/21 dispute [4] 15/1 50/22 51/6 51/14 disseminate [1] 89/24 disseminating [1] 89/24 district [87] 1/4 1/7 2/4 6/24 7/6 7/9 8/7 11/6 13/21 20/8 20/25 29/11 33/16 38/3 46/8 47/4 51/10 56/10 58/14 58/22 59/11 62/4 64/21 65/2 65/9 66/12 66/19 66/21	66/22 67/8 67/13 68/7 68/10 73/8 73/16 73/25 74/4 74/8 74/22 75/11 75/19 78/15 79/13 79/19 80/18 81/7 81/9 81/14 81/16 81/21 83/16 83/20 84/4 86/11 90/24 91/14 91/24 92/3 95/2 95/16 97/6 97/13 99/22 99/25 100/6 101/10 102/16 103/9 103/15 108/4 108/15 115/1 116/22 117/13 126/1 128/15 134/2 134/16 135/4 135/6 135/14 138/3 145/18 145/25 146/1 149/5 149/22 diversion [1] 59/3 division [23] 27/18 28/11 38/2 46/9 59/16 60/23 61/12 62/7 62/24 69/23 88/11 91/9 91/11 91/16 91/17 91/18 91/20 91/23 92/3 101/14 123/7 123/7 123/18 Division's [2] 28/6 28/17 divisions [2] 62/23 127/22 DNA [1] 87/4 do [130] 7/1 10/15 11/15 12/7 13/9 13/9 14/16 14/17 17/10 19/2 19/4 19/16 20/16 23/8 23/14 24/12 25/15 27/1 27/3 28/7 28/20 29/18 38/14 40/6 41/1 42/12 42/14 43/24 45/24 47/7 48/16 48/22 49/8 49/20 50/21 51/6 53/5 53/25 54/7 55/21 60/24 60/25 61/8 61/9 61/10 62/8 62/10 64/18 70/5 71/16 72/25 73/9 74/18 74/20 80/6 84/12 85/1 85/2 85/5 85/9 86/19 86/22 86/24 87/6 87/9 87/16 87/20 90/4 90/16 93/7 95/21 95/22 97/5 97/8 97/11 97/16 97/19 97/22 98/1 98/3 98/18 103/14 104/10 104/10 105/9 106/8 106/15 107/10 107/12 107/19 108/7 108/9 108/10 109/21 111/11 113/25 115/3 115/24 120/17 123/8 124/5 124/18 126/21 128/12 131/16 133/15 134/10 134/15 136/14 137/8 137/12 137/14 137/15 139/7 141/3 141/10 141/13 141/13 141/16 141/16 143/14 144/2 145/2 145/3 145/6 145/7 145/11 146/4 146/5 149/6 document [5] 113/3 114/16 121/10 121/23 125/11 documents [1] 14/13 does [21] 12/21 13/15 14/25 20/22 24/11 50/3 62/17 84/12 89/22 94/15 104/4 116/10 125/13 128/6 129/5 132/3 133/14 137/10 138/19 139/18 145/19 doesn't [12] 8/19 33/3 51/7 60/22 98/4 114/7 114/9 118/1 127/8 127/12 133/13 140/2 dog [11] 44/13 110/17 111/8 111/12 114/8 114/12 115/6 115/7 115/10 143/17 145/1 doing [22] 9/7 12/7 12/13 13/11 15/23 17/18 25/5 25/22 28/22 29/22 48/7 56/4 56/4 57/21 86/22 101/20 102/18 103/16 115/2 120/6 124/15 124/21 don't [109] 10/24 11/14 13/17 13/17 15/1 16/16 17/2 17/12 18/1 18/1 18/5 20/3 21/24 23/18 24/10 26/6 28/20 32/24 33/5 33/8 34/11 34/11 34/12 34/14 34/18 34/20 35/15 36/11 37/11 39/18 40/18 40/18 41/4 41/14 41/17 41/20 42/9 42/21 43/4 45/1 45/11 45/11 46/3 46/3 46/12 46/12 46/14 46/25 47/1 47/1 47/9 48/15 48/21 49/9 52/21 55/14 55/14 56/1 56/6 56/8 59/21 62/10 67/6 70/13 71/10 71/11 72/20 72/22 76/5 76/20 76/22 83/22 84/6 86/9 88/14 88/15 91/25 99/12 99/21 99/25 103/5 105/14 108/2 108/12 109/1 115/6 115/7 118/21 120/15 121/9 121/11 123/22 127/18 129/18 132/12 132/21 132/22 134/12 134/15 136/11 137/4

<p>D</p> <p>don't... [8] 139/20 141/17 141/18 143/9 143/24 144/13 145/23 147/7</p> <p>done [16] 12/10 13/1 13/6 35/18 37/1 50/1 75/5 75/7 79/2 93/25 119/5 124/22 140/21 141/4 142/4 145/20</p> <p>door [4] 22/24 24/20 24/21 74/15</p> <p>doozies [1] 130/9</p> <p>dots [1] 105/18</p> <p>doubt [2] 18/5 18/6</p> <p>down [16] 10/22 38/16 39/6 39/16 41/4 41/17 59/5 66/15 93/20 100/15 122/15 127/11 140/10 144/12 145/2 146/2</p> <p>Doyle [4] 8/1 8/7 137/10 137/13</p> <p>drawing [2] 92/18 124/19</p> <p>drew [1] 28/3</p> <p>drinking [1] 49/1</p> <p>dropped [3] 59/8 141/20 141/23</p> <p>dude [1] 75/21</p> <p>duly [1] 6/7</p> <p>during [26] 7/17 9/16 21/16 21/22 38/23 39/7 44/13 49/7 63/1 64/7 68/3 69/2 71/5 72/22 74/22 92/2 92/13 106/16 109/4 109/5 110/17 111/21 114/8 118/14 119/16 122/21</p> <p>duties [2] 25/5 99/17</p> <p>duty [5] 27/1 99/14 99/21 100/5 129/9</p> <p>dynamic [1] 65/22</p>	<p>enemies [1] 72/16</p> <p>enforcement [19] 31/3 31/7 34/17 38/20 38/24 39/9 39/16 40/3 75/18 98/7 117/20 118/9 119/7 119/13 119/21 120/1 138/22 146/22 147/3</p> <p>enough [5] 7/9 11/2 38/13 56/9 138/24</p> <p>entire [5] 59/2 120/19 135/8 135/19 135/20</p> <p>entirely [2] 7/20 71/13</p> <p>entirety [2] 134/19 135/6</p> <p>entitled [3] 99/14 120/9 121/6</p> <p>entries [1] 93/2</p> <p>episode [6] 9/17 9/21 10/7 10/10 10/15 12/9</p> <p>episodes [3] 10/14 13/2 13/6</p> <p>Eric [1] 12/6</p> <p>Escobedo [2] 58/2 58/4</p> <p>especially [1] 122/21</p> <p>essentially [4] 59/6 72/3 77/11 105/21</p> <p>establish [1] 105/22</p> <p>establishment [1] 49/1</p> <p>evaluate [1] 112/20</p> <p>Eve [1] 83/4</p> <p>even [16] 48/21 68/4 92/17 96/5 98/14 98/16 108/24 114/4 114/20 114/24 115/6 115/7 130/21 132/9 145/5 145/23</p> <p>event [1] 74/16</p> <p>events [3] 42/25 64/19 109/24</p> <p>ever [24] 7/15 40/21 42/18 42/22 47/5 47/7 54/13 71/12 92/17 92/19 99/3 109/5 109/14 114/9 130/5 133/18 138/10 139/7 140/4 140/21 141/4 143/11 147/14 147/17</p> <p>every [10] 10/15 16/24 17/1 17/3 40/10 49/6 49/9 49/11 69/16 128/1</p> <p>everybody [8] 13/4 21/25 72/16 73/12 74/18 75/2 97/1 97/2</p> <p>everything [3] 11/12 17/14 107/8</p> <p>evidence [42] 15/3 15/25 24/25 29/5 29/7 29/9 29/13 29/23 33/24 34/1 34/15 40/24 44/11 44/25 47/22 47/23 49/17 51/9 52/19 56/7 106/18 110/14 111/10 111/11 111/23 123/17 123/17 128/4 128/6 129/4 129/10 129/16 129/24 132/25 133/15 134/22 135/3 135/23 138/5 138/14 139/13 149/8</p> <p>ex [2] 1/4 58/4</p> <p>ex-wife [1] 58/4</p> <p>exact [1] 43/22</p> <p>exactly [3] 20/3 80/3 99/16</p> <p>examination [10] 6/8 57/7 101/6 108/3 109/10 118/9 120/7 123/4 142/23 146/13</p> <p>examining [4] 128/19 128/21 128/23 129/2</p> <p>excellent [1] 144/23</p> <p>excerpt [1] 120/12</p> <p>excerpts [3] 48/1 120/18 121/21</p> <p>Exculpatory [1] 47/23</p> <p>excuse [4] 40/13 93/6 122/8 129/5</p> <p>execute [6] 38/25 39/10 40/16 118/11 120/2 147/4</p> <p>executed [1] 41/13</p> <p>executing [1] 118/7</p> <p>exhibit [16] 4/6 4/13 5/2 15/15 26/23 49/16 50/5 111/24 112/2 112/18 114/1 120/8 121/18 122/7 124/9 125/19</p> <p>exhibits [5] 4/5 4/12 5/1 14/14 149/15</p> <p>exonerate [1] 99/23</p> <p>exonerated [4] 87/4 87/17 87/17 88/5</p> <p>exonerations [1] 123/9</p> <p>expect [1] 147/2</p> <p>expense [1] 21/3</p> <p>expensive [1] 84/14</p>	<p>experience [3] 58/7 70/11 144/18</p> <p>Expiration [1] 149/25</p> <p>explain [1] 24/2</p> <p>explanation [2] 19/1 42/3</p> <p>extracts [1] 119/16</p> <p>extrapolation [1] 111/15</p> <p>extremely [2] 8/21 97/3</p> <p>eye [1] 24/21</p> <p>eyeballs [1] 141/13</p> <p>eyes [1] 133/8</p>
<p>E</p> <p>each [8] 14/21 57/12 64/12 67/25 70/2 72/17 93/2 93/24</p> <p>earlier [6] 82/20 95/7 106/2 123/8 125/25 127/19</p> <p>early [5] 9/15 14/1 18/16 32/21 83/2</p> <p>earth [1] 44/20</p> <p>easily [1] 93/25</p> <p>easy [1] 42/1</p> <p>education [1] 58/8</p> <p>effect [2] 49/2 131/5</p> <p>effective [2] 79/20 142/1</p> <p>effectively [3] 131/18 141/11 141/14</p> <p>effort [3] 34/23 104/19 104/21</p> <p>efforts [1] 136/24</p> <p>either [7] 9/18 14/4 40/9 48/5 53/7 66/16 120/18</p> <p>elaborate [3] 21/14 43/5 43/9</p> <p>elected [5] 73/16 73/24 75/11 78/15 81/8</p> <p>election [11] 76/18 76/18 77/6 77/17 78/1 79/15 79/16 80/13 82/2 92/14 122/21</p> <p>element [1] 39/6</p> <p>Ellis [11] 41/23 112/9 114/2 127/10 136/21 137/3 137/5 137/8 138/24 145/19 146/3</p> <p>Ellis' [1] 137/12</p> <p>Elsa [1] 67/14</p> <p>else [13] 9/9 17/22 29/22 38/12 74/6 75/23 84/16 87/9 95/17 98/16 102/11 144/14 147/25</p> <p>Elves [2] 9/11 13/19</p> <p>email [13] 4/20 5/11 17/23 17/24 18/3 124/11 125/2 125/22 126/11 126/16 126/22 127/11 127/13</p> <p>embodied [1] 99/19</p> <p>employ [1] 24/6</p> <p>employed [2] 9/8 9/10</p> <p>employee [1] 9/5</p> <p>employees [2] 12/4 20/8</p> <p>employers [2] 12/2 12/6</p> <p>end [10] 14/20 42/24 72/14 78/10 95/5 95/7 104/10 104/14 128/12 128/13</p> <p>ended [1] 66/12</p> <p>endorsed [1] 78/12</p>	<p>F</p> <p>fabricated [1] 106/18</p> <p>Facebook [1] 9/3</p> <p>Facsimile [2] 4/9 4/10</p> <p>fact [23] 25/19 28/19 28/22 37/4 54/18 62/15 86/7 97/12 100/5 101/25 103/21 112/2 113/20 118/17 119/13 121/3 121/23 123/16 141/6 145/7 145/11 145/17 145/24</p> <p>factors [1] 85/10</p> <p>facts [6] 55/23 93/23 98/14 114/22 115/4 118/4</p> <p>factual [3] 27/25 101/17 115/8</p> <p>fair [33] 7/9 8/19 11/2 14/6 48/8 56/9 60/8 61/25 62/21 63/17 64/23 66/25 71/24 73/1 73/18 74/3 74/9 74/10 80/19 83/3 83/7 86/4 89/18 89/20 95/1 100/21 111/22 112/6 112/13 120/4 120/13 138/24 144/19</p> <p>fairly [1] 92/6</p> <p>fall [1] 59/10</p> <p>false [3] 132/12 135/3 138/14</p> <p>familiar [2] 8/16 123/13</p> <p>family [20] 16/24 31/21 32/10 32/19 32/19 32/21 33/2 33/4 33/13 73/4 90/5 90/8 103/1 103/3 103/16 103/23 104/2 104/5 140/23 140/25</p> <p>fan [2] 9/2 9/4</p> <p>far [7] 55/13 72/15 75/23 76/5 77/25 79/1 91/23</p> <p>fashion [1] 130/1</p> <p>fashioned [1] 86/24</p> <p>fast [4] 59/5 72/21 74/4 82/1</p> <p>fast-forward [1] 72/21</p> <p>fathom [1] 108/22</p> <p>favorable [7] 129/4 129/10 129/16 129/24 133/11 141/25 142/12</p> <p>FBI [1] 98/14</p> <p>fear [1] 83/22</p> <p>February [4] 7/21 9/18 14/4 24/16</p> <p>federal [1] 65/4</p> <p>feel [6] 89/6 97/5 97/5 120/17 131/11 145/7</p> <p>feeling [1] 111/14</p> <p>fell [1] 59/21</p> <p>fellas [1] 138/25</p> <p>felony [1] 64/21</p> <p>felt [5] 54/19 55/16 55/18 89/24 136/18</p> <p>few [5] 18/9 88/15 88/22 89/7 142/20</p> <p>Fifteen [1] 107/14</p> <p>figure [2] 84/7 95/12</p> <p>file [18] 4/14 18/14 19/4 19/9 19/11 19/20 20/13 48/18 96/4 116/22 128/16 128/19 128/20 128/24 129/3 129/5 129/9 132/4</p> <p>filed [10] 47/23 117/6 117/11 117/13 121/5 128/18 132/17 133/22 133/22 143/7</p> <p>files [1] 129/2</p> <p>filing [4] 74/3 74/16 75/8 121/24</p> <p>filmed [5] 9/18 9/23 10/12 10/22 12/14</p> <p>filming [3] 9/15 10/6 10/14</p>	

F	G	H
<p>Finally [1] 122/6 find [12] 23/24 46/22 95/21 129/3 129/14 129/16 133/6 136/9 140/12 140/16 142/10 145/4 finds [2] 39/22 129/24 fine [4] 57/11 78/21 79/5 133/12 finish [3] 26/11 32/1 67/6 firm [3] 63/18 72/1 72/4 first [32] 9/17 9/17 10/10 15/19 15/22 19/6 20/13 27/19 27/23 31/11 35/3 45/17 52/2 52/10 57/17 63/10 63/11 66/8 68/12 70/7 77/17 84/1 86/11 91/12 95/2 97/19 101/16 125/22 131/5 134/22 138/6 139/13 five [3] 94/5 128/13 128/14 five-and-a-half [1] 128/13 fix [1] 61/21 flipped [1] 30/6 floor [2] 57/21 71/14 Flr [1] 2/4 fly [2] 73/9 75/8 flying [1] 124/15 focus [1] 33/19 folks [3] 24/7 40/16 147/12 follow [3] 22/17 119/9 119/25 following [2] 1/14 146/7 follows [1] 6/7 force [1] 26/6 foregoing [1] 149/6 foregone [1] 82/7 forever [1] 48/19 forgot [1] 41/10 form [1] 121/12 former [11] 12/1 12/4 12/19 20/20 64/25 75/18 76/6 81/12 96/6 103/25 143/13 forth [1] 46/21 forward [6] 29/5 29/7 29/9 29/13 72/21 133/16 forwarded [1] 17/14 found [6] 52/18 56/7 96/1 123/12 131/12 144/19 foundation [1] 126/15 four [6] 45/16 53/9 64/23 64/25 93/24 94/5 frame [2] 49/7 53/15 Franklin [2] 2/4 149/23 frankly [1] 114/16 fraud [1] 130/7 free [3] 24/12 84/14 84/14 frequently [1] 49/8 Friday [2] 95/9 95/10 friend [11] 48/8 57/25 63/6 63/7 65/25 69/10 97/13 97/14 102/4 140/23 140/25 friend-attractive [1] 65/25 friend-friends [1] 69/10 friendly [2] 21/11 108/21 friends [23] 8/22 16/24 21/7 49/4 63/2 64/7 64/11 64/16 68/24 68/25 69/9 69/10 69/14 69/24 72/15 73/3 73/4 73/4 96/19 96/22 99/4 99/6 99/9 friendship [2] 72/23 97/18 frightening [3] 114/17 114/18 114/19 front [5] 24/20 43/8 47/11 60/6 101/21 fugitive [2] 101/1 101/5 full [2] 6/11 130/9 fully [1] 145/21 fun [3] 13/11 60/10 86/5 further [8] 41/16 85/13 107/16 110/8 146/11 146/13 149/13 149/16 Furthermore [2] 44/10 110/13 future [1] 92/16</p>	<p>gallery [1] 41/5 game [1] 74/25 Garcia [1] 144/10 gave [4] 34/5 38/8 48/6 58/6 general [7] 30/14 77/14 79/10 79/16 82/2 117/16 118/21 General's [1] 98/13 generalized [2] 54/23 54/24 generally [3] 60/25 62/20 105/13 George [1] 88/8 get [59] 7/10 13/9 18/7 18/10 19/16 22/12 22/23 24/14 25/9 26/6 27/13 28/2 31/24 37/21 38/25 40/7 41/21 42/6 42/9 42/25 43/12 43/20 44/6 44/14 46/7 49/20 57/2 58/18 58/25 59/8 60/22 66/19 66/20 67/2 68/14 68/17 68/20 70/14 77/12 77/17 78/2 78/6 81/9 90/21 91/12 98/1 98/2 98/13 109/23 112/7 113/14 114/21 118/1 130/16 138/9 139/18 140/18 141/23 146/23 gets [6] 17/14 58/17 60/22 97/14 99/22 128/24 getting [12] 19/23 22/5 25/24 26/1 55/4 75/4 75/6 85/2 100/9 120/3 143/2 145/6 Gina [3] 149/4 149/20 149/21 girlfriend [1] 143/13 gist [2] 1/16 44/17 give [10] 14/12 15/15 22/1 43/8 43/10 58/7 69/11 70/10 71/11 76/17 given [7] 21/1 51/25 60/6 81/22 103/5 141/15 144/24 giving [9] 18/25 48/16 51/11 88/19 95/22 97/6 102/3 103/22 128/3 Glasscock [5] 133/17 133/19 139/7 143/1 143/13 Glasscock's [2] 136/10 139/1 glimpse [2] 58/6 58/25 go [40] 6/13 18/3 20/5 22/3 24/14 27/15 28/25 33/17 38/10 39/2 40/25 41/8 43/22 45/7 47/25 50/25 60/15 61/6 62/1 64/20 68/14 69/24 77/8 83/1 85/17 88/12 93/22 94/5 94/21 99/12 104/4 126/19 130/20 133/3 134/22 139/4 139/13 141/11 145/18 147/2 go-round [2] 134/22 139/13 go-to [1] 62/1 goes [4] 23/21 38/21 79/6 119/14 going [51] 14/12 15/14 17/5 19/3 20/5 25/12 28/9 32/10 32/24 33/9 33/14 38/16 39/10 39/15 49/15 52/4 67/24 68/23 73/14 74/12 75/3 78/5 80/18 81/9 82/6 82/11 83/7 85/11 88/14 94/11 100/8 101/20 104/2 104/6 112/24 115/18 122/6 122/14 123/19 124/8 124/10 125/18 127/14 129/20 130/22 137/17 144/10 144/17 145/4 146/2 147/12 gone [4] 43/16 56/24 88/12 98/24 Gonzalez [1] 63/14 good [17] 6/9 6/10 6/11 20/19 38/25 39/9 48/8 63/6 63/7 73/3 73/4 106/3 129/13 133/21 135/5 137/18 142/7 Goode [1] 4/11 Googled [2] 52/22 52/24 got [39] 10/13 10/18 12/7 12/23 13/10 20/17 27/17 32/4 39/23 43/13 44/18 46/16 47/9 50/17 54/20 58/22 68/21 70/1 74/15 77/19 84/14 93/12 95/8 96/11 97/25 100/18 114/6 126/4 127/25 128/1 131/13 132/2 133/7 134/13 141/19 143/23 143/24 144/6 147/7 gotcha [6] 28/1 35/12 96/1 115/21</p>	<p>115/21 115/23 Gotro [33] 2/8 6/10 14/9 14/12 25/11 40/4 49/15 50/5 50/8 80/3 84/5 88/12 90/10 93/4 93/5 93/5 93/6 95/19 98/6 120/8 120/11 120/15 120/16 124/10 124/13 137/25 138/3 139/25 142/18 143/1 145/8 146/12 147/23 gotten [5] 22/1 24/3 43/13 56/24 109/3 grab [1] 68/14 graduated [3] 58/9 58/11 58/12 grand [9] 56/17 56/20 59/4 60/12 60/13 60/17 60/19 60/23 60/25 granted [2] 40/21 62/15 grapevine [1] 101/3 gravitate [1] 66/3 greater [1] 68/4 Green [2] 87/24 87/25 griped [1] 122/20 ground [1] 71/14 group [4] 67/20 67/20 68/2 108/19 grumbler [1] 54/24 grumbling [1] 54/23 guess [19] 9/13 10/23 12/1 13/15 20/14 42/2 51/20 53/20 63/3 72/22 77/5 86/6 112/2 113/23 123/6 137/17 137/18 140/2 146/15 guilt [1] 34/4 guilty [4] 39/25 40/2 40/6 40/7 Gun [1] 110/13 Gun' [1] 44/10 guy [12] 7/24 7/25 8/6 26/7 37/14 57/21 62/24 63/20 75/17 75/18 75/18 77/2 guys [7] 34/15 49/20 63/21 86/21 128/2 139/5 139/19</p>
		<p>H habeas [4] 47/21 121/7 121/25 143/8 had [162] half [3] 10/9 107/19 128/13 hall [1] 56/24 hand [1] 101/25 handed [1] 134/18 handle [3] 59/7 59/12 59/16 handled [3] 60/7 102/23 135/15 handling [4] 62/20 98/23 99/10 104/1 hands [2] 35/20 35/21 hang [1] 69/20 happen [3] 75/7 147/9 147/10 happened [7] 34/20 45/2 46/17 55/9 92/5 97/12 110/10 happening [3] 33/3 103/8 122/13 happens [1] 32/2 happy [3] 13/14 67/21 120/12 hard [4] 13/5 44/2 49/10 76/19 hardly [1] 10/19 Harmon [1] 143/12 HARRIS [42] 1/6 1/17 6/24 11/6 12/19 12/20 18/17 20/9 20/25 26/1 27/8 27/16 33/16 35/21 38/2 58/14 58/23 62/5 63/18 65/2 65/5 65/7 65/9 73/17 73/25 80/18 81/17 83/20 85/23 87/17 90/24 96/6 97/13 99/21 101/10 102/16 103/15 141/4 149/2 149/5 149/18 149/23 has [31] 8/24 11/4 12/10 12/18 13/1 19/4 19/20 20/13 20/19 20/25 35/11 40/20 44/11 51/10 91/17 92/15 96/3 96/5 97/8 100/6 100/12 110/2 110/14 111/23 115/8 117/20 118/10 125/18 126/23 129/25 141/3 hasn't [5] 33/14 50/2 79/4 104/6 139/15 hating [1] 72/20 have [139] 6/1 6/20 9/13 11/15 14/13 15/3 15/5 15/8 15/22 16/1 16/3 16/21</p>

<p>H</p> <p>have... [127] 17/12 17/13 17/17 17/18 18/2 21/19 22/14 23/1 23/8 23/16 23/25 26/3 26/17 26/20 28/19 30/5 31/8 32/13 33/2 33/7 33/15 36/17 39/5 39/23 39/25 41/19 41/22 44/7 44/8 44/21 46/10 46/12 46/15 47/2 47/11 48/7 48/17 49/17 50/2 51/6 51/16 52/11 53/9 53/10 53/19 54/11 56/10 56/24 56/25 57/12 58/2 61/15 65/4 67/18 67/21 71/13 75/4 80/7 83/5 83/21 84/8 84/20 85/1 85/2 85/6 86/21 87/22 88/6 88/22 92/13 92/17 92/19 93/1 93/13 93/19 93/25 94/17 96/25 98/4 98/20 98/24 100/10 102/11 102/17 107/9 107/15 108/23 113/1 113/11 113/19 114/9 115/6 115/7 115/15 118/17 118/19 121/14 121/20 123/12 124/23 127/22 128/10 130/25 131/6 131/25 132/16 133/21 134/18 134/23 135/5 135/8 135/9 136/1 138/9 139/7 140/21 142/20 144/11 144/19 145/1 146/24 147/3 147/10 147/14 147/17 147/18 148/1 haven't [3] 22/24 24/3 50/1 having [17] 6/7 11/14 16/20 23/2 28/20 34/21 36/5 42/12 42/14 52/17 86/22 93/22 111/1 131/16 139/12 141/15 143/14 HCSO [2] 4/21 96/10 he [161] he's [9] 13/5 31/19 39/9 39/18 39/25 50/17 126/15 142/9 144/23 head [3] 46/9 65/8 135/16 heads [1] 147/11 health [1] 141/20 hear [4] 19/7 30/8 69/17 138/10 heard [20] 22/8 30/6 30/22 34/2 43/16 55/7 55/9 78/17 86/13 88/9 100/25 101/2 124/1 137/22 139/8 141/25 143/2 143/3 144/12 144/13 hearing [6] 1/11 3/3 25/14 33/1 46/16 126/16 hears [1] 38/24 heated [1] 18/18 held [2] 1/15 1/17 Hello [1] 57/9 help [4] 8/11 138/19 140/4 146/17 helped [1] 142/7 helping [1] 64/5 her [39] 7/13 7/23 8/16 11/13 16/20 16/24 17/1 17/20 17/22 51/7 51/7 51/15 51/15 51/17 51/20 51/23 51/23 51/24 51/25 66/3 67/23 68/1 68/22 70/16 73/4 77/10 86/20 86/22 91/13 108/20 120/13 120/24 121/10 121/21 121/21 138/9 138/9 139/19 141/7 here [33] 6/24 7/16 11/5 14/23 26/4 30/25 41/4 46/13 47/9 52/14 53/6 56/4 56/4 56/7 63/18 65/5 65/15 94/11 97/2 99/2 101/19 102/9 102/15 103/22 105/12 105/15 107/7 116/12 126/9 130/23 132/18 141/4 145/1 hereby [1] 149/6 hey [13] 28/25 39/9 55/9 69/18 80/11 85/15 97/25 122/19 122/23 139/7 140/18 142/8 147/11 Hi [1] 57/8 hid [1] 134/22 hidden [2] 135/3 139/12 hiding [1] 99/11 hierarchy [1] 59/22 high [9] 37/6 58/9 69/19 70/19 70/21 87/21 92/7 92/8 92/8</p>	<p>high-level [1] 37/6 High-profile [1] 70/21 high-publicity [2] 69/19 70/19 higher [6] 62/20 69/6 69/6 91/11 91/16 113/19 highlight [1] 142/10 highlighted [1] 112/15 highly [3] 18/6 72/7 97/25 him [38] 13/4 21/7 25/16 31/11 37/8 38/14 39/4 39/23 44/11 46/16 49/1 55/6 55/8 55/11 55/14 56/1 61/11 61/25 62/7 78/19 90/20 90/21 92/10 92/17 96/9 99/20 110/15 119/24 137/4 137/16 137/19 137/20 139/8 140/11 144/7 144/11 144/19 146/17 himself [1] 61/20 Hinton [10] 63/12 63/16 63/21 63/24 64/15 64/24 65/6 65/18 67/20 68/2 Hinton-Sussman [2] 67/20 68/2 hired [3] 20/19 96/5 137/6 his [41] 13/5 25/4 30/22 36/24 45/20 46/19 46/21 48/19 50/12 55/4 55/10 55/18 62/19 73/24 76/13 76/13 86/14 92/14 92/15 92/16 95/2 96/5 100/5 100/12 100/19 102/4 106/17 106/19 106/21 106/23 113/2 116/4 124/6 133/19 133/21 133/22 136/18 136/24 143/2 145/18 147/20 history [1] 100/24 hit [1] 14/3 hold [1] 130/22 Hollywood [1] 13/11 Holtke [14] 48/24 54/15 55/21 136/5 136/12 136/14 143/21 143/23 143/24 144/13 144/21 145/11 147/1 147/19 Holtke's [4] 4/24 5/5 54/10 146/15 home [4] 51/16 51/17 51/24 109/2 homicide [2] 96/10 147/6 honestly [2] 18/1 51/24 honesty [1] 108/17 Honor [6] 15/2 15/8 40/19 49/12 94/8 112/24 Honorable [1] 1/16 hope [1] 102/20 horrible [2] 103/19 105/6 host [1] 64/20 hot [1] 60/10 hotly [1] 132/24 hour [2] 107/20 137/5 hours [5] 21/1 67/21 75/8 86/1 93/24 Houston [7] 1/17 2/5 2/10 58/12 76/10 76/14 149/24 how [44] 6/10 6/20 7/1 8/16 9/13 13/9 14/17 17/22 23/18 25/7 25/19 30/23 31/2 39/11 41/17 43/5 44/20 51/25 53/1 57/9 57/10 57/12 61/10 65/6 68/9 68/22 69/11 84/7 84/16 87/20 93/18 95/8 105/9 106/11 106/12 107/12 114/6 114/22 128/10 130/5 131/11 140/6 143/23 143/24 However [1] 117/5 HPD [9] 11/23 11/24 12/24 12/25 13/7 31/4 75/17 101/3 130/18 huge [3] 9/2 9/4 114/12 huh [4] 11/25 13/8 56/19 56/21 human [1] 111/8 hung [1] 69/16 husband [1] 73/4 hypothetical [2] 129/21 129/23</p>	<p>I'm [92] 6/11 7/2 7/20 7/22 9/2 9/4 9/5 9/10 10/1 14/12 15/14 16/19 18/2 19/3 19/14 20/1 21/23 24/24 27/21 28/23 30/16 31/1 32/23 32/25 33/7 33/9 34/11 34/11 38/16 39/10 41/1 41/19 45/12 46/13 47/2 49/15 51/1 51/5 51/5 51/11 51/11 51/22 51/22 57/10 57/11 67/5 67/22 71/13 71/19 74/7 80/15 83/18 84/7 84/24 85/11 88/14 93/22 94/11 96/25 99/2 99/3 101/23 102/13 105/5 105/17 106/14 106/23 106/24 107/21 111/10 112/24 113/7 113/23 117/8 122/6 124/3 124/8 124/10 125/18 126/21 129/20 130/22 134/14 134/15 135/24 135/25 137/17 139/21 140/14 142/3 145/21 147/15 I've [20] 18/7 18/8 31/6 45/12 46/16 49/3 52/8 52/14 93/20 97/25 122/20 130/8 130/16 130/16 130/20 135/14 137/21 141/16 147/5 147/8 idea [5] 26/20 32/10 36/17 114/13 135/5 identification [2] 14/14 124/9 identified [2] 83/9 112/12 identity [1] 45/8 if [149] 12/18 14/15 15/5 16/8 17/17 17/20 18/6 18/10 18/17 20/11 21/14 22/17 23/25 24/10 24/18 24/20 24/24 24/25 25/13 26/22 29/17 31/7 32/13 32/20 34/14 34/18 37/17 38/11 38/19 38/23 39/14 39/18 39/21 39/25 40/6 40/18 41/21 42/21 42/22 43/8 45/1 48/10 48/22 49/9 50/3 50/8 50/19 51/22 53/3 54/10 56/22 59/11 62/1 62/4 63/16 65/15 66/6 67/6 67/23 71/11 71/12 72/22 74/19 78/6 83/18 84/10 84/20 85/3 85/10 85/18 86/9 87/9 87/16 88/4 88/10 88/14 88/15 90/9 93/14 94/5 96/12 97/12 97/18 97/24 98/5 98/6 98/12 98/14 99/12 100/9 100/17 100/25 102/23 103/5 103/21 107/2 107/18 108/4 109/17 111/10 112/21 115/10 118/21 119/1 119/7 119/13 119/18 120/16 120/23 121/9 121/10 121/13 121/23 122/3 123/16 124/3 125/16 125/16 125/19 126/17 127/1 128/3 128/18 129/1 129/16 130/23 131/3 131/12 131/25 132/9 133/6 134/18 134/20 135/2 139/20 141/6 141/10 141/15 144/13 144/24 145/5 145/7 145/8 145/17 145/23 145/24 146/18 147/19 149/15 ill [1] 142/9 illustrate [2] 31/1 111/5 imagination [1] 108/21 imagine [1] 142/12 immediate [1] 131/9 immediately [4] 19/8 58/13 79/9 132/6 implicated [1] 138/25 implication [1] 26/18 implying [2] 18/22 24/25 important [1] 121/1 impression [2] 132/13 144/6 improper [4] 97/9 97/11 115/2 120/18 improperly [3] 25/7 119/5 145/20 impropriety [5] 29/21 97/21 97/22 107/4 124/3 in [338] in-coming [2] 7/7 81/23 inches [1] 130/25 incident [2] 115/11 135/15 included [1] 149/9 incorporate [1] 130/8 incorrect [1] 119/19 incumbent [3] 99/25 103/14 103/20</p>
---	---	--

	145/12	142/20 143/6 143/12 146/10 147/24
INDEX [6] 3/1 3/19 4/1 4/5 4/12 5/1	investigations [1] 8/17	JUDICIAL [1] 1/7
indicate [1] 19/19	investigative [1] 146/15	July [21] 15/17 16/21 20/14 25/8 30/7
indicated [2] 78/9 78/18	investigator [20] 11/6 20/24 27/8 37/6	30/14 30/22 35/19 40/13 50/20 50/25
indictment [1] 60/19	44/21 97/7 97/14 97/16 98/22 99/8	51/1 52/11 53/20 53/20 92/21 94/3 94/4
individual [9] 41/24 65/23 80/6 97/7	101/16 106/22 135/1 138/13 138/15	104/10 104/15 125/5
119/8 119/14 120/3 140/16 144/16	138/17 139/3 143/20 144/20 144/23	July 24th [1] 125/5
individuals [3] 59/17 64/25 87/3	investigators [1] 147/6	July 27th [2] 50/25 51/1
infant [1] 22/24	invite [1] 69/22	July 30th [6] 15/17 16/21 30/14 30/22
inferences [1] 78/9	invited [2] 67/21 109/5	35/19 94/3
inferring [1] 30/21	invoking [1] 107/2	jurors [1] 60/25
inform [1] 145/17	involve [2] 134/24 138/6	jury [10] 56/17 56/20 59/4 60/12 60/13
information [43] 6/14 17/24 20/17 21/13	involved [7] 37/2 48/25 70/24 71/6 90/13	60/17 60/19 60/23 126/23 132/14
22/12 27/13 28/2 30/4 31/24 32/4 34/6	102/24 135/18	just [86] 7/3 7/4 8/2 10/21 11/17 13/10
34/10 41/18 41/22 42/10 43/10 44/18	involvement [3] 34/20 78/1 136/1	13/20 18/22 23/12 24/5 24/9 25/23 28/3
45/10 48/11 48/16 52/4 88/19 88/20	involves [2] 44/11 110/15	28/24 30/9 32/13 33/8 36/14 37/12 38/16
88/23 89/21 92/17 93/13 93/15 93/19	involving [2] 73/20 80/18	39/6 41/21 42/5 49/1 50/23 51/9 52/14
95/11 96/11 97/6 97/14 97/16 99/22	IP [8] 23/14 23/22 24/7 84/8 84/20 85/5	52/24 54/18 55/7 55/7 55/16 56/3 56/25
103/23 111/3 111/5 111/7 119/16 127/1	85/6 85/12	57/20 58/25 60/15 61/11 63/9 63/21
141/12 141/24	ire [1] 92/18	66/15 70/1 75/25 76/17 77/11 79/22 80/5
informed [11] 31/22 33/14 37/7 103/4	irrelevant [1] 113/3	80/11 80/15 84/16 84/21 84/22 85/21
103/11 104/6 108/4 133/18 135/25 136/2	is [209]	88/15 90/22 99/3 102/20 105/12 105/18
136/6	isn't [5] 116/5 118/23 118/24 132/8	106/24 107/3 107/9 110/23 111/3 112/5
infrequently [2] 21/18 21/18	135/12	113/17 118/20 119/14 119/15 120/16
initial [1] 60/21	issue [4] 38/5 65/14 126/24 135/12	121/10 125/20 125/22 130/17 130/24
initially [3] 45/2 48/24 70/3	issues [2] 121/11 135/14	132/2 133/15 134/5 134/13 138/21
innocence [5] 47/22 87/2 102/18 103/17	it [352]	139/21 141/22 142/9 142/10 144/17
133/5	it's [60] 13/12 15/22 18/5 18/6 23/18	146/19
innocent [7] 26/7 26/12 96/5 97/15	24/13 30/17 35/9 38/6 38/15 42/2 45/16	Justice [5] 8/25 9/25 60/1 60/5 87/14
123/12 124/6 124/17	48/19 49/10 50/5 57/2 57/17 63/21 63/24	justify [1] 118/5
inside [1] 89/1	68/3 77/5 80/5 80/25 84/11 84/22 84/23	juvenile [3] 59/3 59/15 59/16
insinuate [1] 25/3	85/22 86/21 93/5 95/24 95/24 97/11	
inspection [1] 15/4	97/25 98/14 99/25 103/14 103/19 107/19	K
installed [1] 81/9	109/16 109/17 114/6 114/12 114/19	K-Mart [1] 76/15
instance [2] 11/14 142/2	114/24 116/6 116/6 116/14 118/14	K.Siegler [1] 5/11
instead [1] 67/7	119/17 122/14 124/11 124/14 125/5	Kaplan [1] 2/8
instructions [1] 128/4	132/9 133/11 135/5 139/4 139/24 146/18	keep [5] 24/21 30/2 30/11 124/20 131/7
insulted [1] 54/19	146/19	keeps [2] 24/12 61/20
integrity [5] 55/18 86/19 87/1 98/11	italics [1] 121/18	Kelly [118] 7/11 8/3 9/8 11/2 11/9 11/17
134/19	its [10] 27/17 29/18 50/3 86/21 101/12	12/21 13/15 16/17 16/18 16/23 17/4
intent [2] 105/14 145/18	126/2 127/20 127/25 134/19 135/6	17/17 18/18 18/24 19/17 19/23 20/18
intents [1] 17/15	itself [2] 23/19 56/1	20/22 21/10 21/21 21/25 22/13 26/8
interact [1] 65/19	IV [1] 6/13	26/15 27/14 28/2 28/16 30/10 31/25 32/4
interaction [2] 67/18 68/6	J	32/9 32/20 32/25 33/2 33/23 34/5 35/13
interest [9] 18/23 36/6 36/10 36/19 36/24	jailhouse [1] 22/8	36/16 37/9 40/11 41/12 41/23 42/10
37/10 106/5 106/8 108/6	January [11] 7/21 14/4 19/5 19/13 19/20	42/13 43/4 43/9 44/17 44/18 45/9 46/1
interesting [1] 96/9	73/9 79/20 81/24 81/25 82/6 86/18	47/14 48/12 49/2 49/6 50/9 53/11 55/7
internship [5] 66/10 66/19 67/2 67/17	January 1 [1] 82/6	63/2 63/8 63/9 63/11 63/14 63/25 64/7
91/13	January 1st [3] 81/24 81/25 86/18	64/9 64/16 64/20 65/19 66/12 66/21
interpretation [1] 113/16	January the [1] 79/20	67/18 68/20 69/10 69/10 69/24 69/25
interview [7] 4/7 38/10 38/12 38/21 38/23	Jim [21] 18/14 19/1 19/5 19/15 20/13	70/4 70/5 72/3 72/15 72/23 73/7 74/18
56/11 145/18	22/5 25/2 27/5 35/25 75/15 76/1 76/22	74/21 74/24 75/11 76/1 76/18 77/4 77/7
into [24] 8/3 15/3 19/8 43/6 49/1 52/19	78/14 79/7 79/11 86/10 95/1 96/3 99/19	77/12 77/14 78/1 78/8 78/10 78/20 79/5
55/6 55/8 59/3 59/8 59/10 66/21 68/7	100/4 124/14	88/18 88/19 89/7 89/18 90/5 91/12 92/24
68/10 79/6 98/11 102/6 111/23 113/14	job [14] 29/18 57/2 58/17 58/22 81/4	96/13 103/12 114/25 120/9 120/19
114/15 128/8 130/16 130/20 134/24	81/5 81/25 82/17 83/23 83/23 92/14	120/24 121/10 122/9 122/15 122/20
investigate [10] 100/7 134/2 134/4 134/5	134/2 138/4 145/2	122/23 123/20 141/6
134/10 134/17 134/22 138/4 144/25	Joe [3] 41/24 137/15 138/24	Kelly's [7] 9/14 12/3 18/14 19/9 48/1
146/3	John [7] 3/21 20/20 27/11 96/8 96/19	50/17 51/16
investigated [5] 29/24 102/11 107/7	96/22 100/20	Ken [2] 81/11 81/12
127/2 128/5	Johnny [7] 11/2 11/5 11/14 11/16 11/18	kept [7] 30/24 41/14 81/2 82/11 84/17
investigating [9] 29/15 29/18 33/24 34/10	12/23 13/15	84/18 90/7
34/15 102/17 102/19 133/13 135/13	joke [3] 68/22 75/22 95/8	kicked [1] 55/4
investigation [50] 15/20 17/25 27/24	Josiah [2] 87/22 87/23	kids [1] 59/17
28/15 30/1 30/12 30/24 32/11 33/18	JP [2] 59/3 60/1	killing [5] 100/12 103/18 111/7 111/12
34/25 37/2 40/22 41/25 44/25 52/19	judge [45] 1/16 14/10 15/5 32/14 41/3	143/17
54/14 54/19 54/21 55/12 55/21 85/13	41/9 43/17 43/18 46/7 50/2 50/6 66/13	kind [24] 11/12 26/18 42/2 51/19 56/3
90/12 98/8 102/21 103/16 104/23 105/25	66/13 66/14 66/16 66/24 67/10 67/10	63/7 63/7 63/20 64/3 68/21 68/23 73/9
106/13 107/10 124/3 124/6 124/16	67/15 78/16 78/22 79/7 82/9 86/7 102/9	75/2 75/22 79/22 82/7 96/16 105/12
125/14 126/8 126/13 127/15 127/17	102/15 105/16 105/17 107/14 107/21	108/18 110/23 114/6 122/17 146/16
134/7 134/9 135/5 135/13 135/18 139/16	108/1 111/18 112/21 113/14 123/1	147/1
142/5 143/15 143/20 144/11 145/3 145/9	123/24 124/24 125/6 138/1 142/16	kinds [2] 76/16 106/25
		knew [18] 25/8 28/4 31/4 31/18 32/24

<p>K</p> <p>knew... [13] 37/4 40/18 48/24 61/11 61/24 61/24 68/1 81/24 89/18 90/19 96/18 123/11 129/8</p> <p>know [120] 8/24 11/11 11/12 12/23 13/17 13/17 18/18 23/18 25/19 28/24 30/15 32/16 33/2 34/11 34/11 34/12 34/13 34/14 34/18 34/19 34/20 37/12 37/13 37/14 38/2 39/18 40/4 40/9 40/15 40/18 40/18 40/24 41/17 42/21 45/11 45/24 46/12 46/12 46/25 47/1 48/20 48/22 49/9 52/21 56/1 56/6 57/24 61/8 61/10 62/3 62/8 62/10 63/20 65/16 66/17 69/14 69/18 69/18 70/2 71/11 72/15 76/5 77/25 78/4 79/1 83/22 84/8 85/21 86/9 86/9 86/12 87/6 87/9 87/16 87/20 87/21 90/4 90/17 91/23 93/4 93/14 93/22 103/5 104/2 105/9 105/14 106/25 107/2 108/12 108/25 109/4 120/15 120/16 121/9 122/18 123/13 125/13 129/18 132/2 132/21 133/16 135/17 136/11 136/14 137/8 137/12 137/15 139/1 139/7 139/20 141/3 141/18 143/24 144/2 144/12 144/13 145/23 146/16 146/22 147/7</p> <p>knowledge [11] 11/18 30/5 31/2 32/6 34/8 34/9 89/6 118/16 122/16 123/21 143/10</p> <p>known [6] 31/6 44/21 49/3 52/8 57/12 82/21</p> <p>knows [4] 39/14 97/2 106/23 117/19</p>	<p>95/9 95/12 95/16</p> <p>led [2] 9/17 127/13</p> <p>left [11] 7/6 13/21 53/10 59/1 63/20 63/21 81/8 85/16 91/6 91/9 91/22</p> <p>legal [4] 36/25 62/2 113/2 146/18</p> <p>legality [1] 119/1</p> <p>Leithner's [2] 4/22 5/8</p> <p>Leitner [36] 16/4 19/1 19/15 20/13 24/22 25/2 25/4 25/14 27/5 30/2 30/11 31/13 31/19 31/22 35/25 75/15 76/2 76/22 78/4 78/14 79/7 82/10 86/9 86/10 94/13 94/16 95/1 95/9 95/12 95/14 96/3 99/19 100/4 102/3 103/4 124/14</p> <p>Leitner's [8] 18/15 18/23 19/5 19/20 22/5 22/5 48/19 79/11</p> <p>lengthy [1] 12/15</p> <p>Leon [2] 37/6 37/14</p> <p>less [3] 29/20 29/21 119/24</p> <p>let [27] 10/21 25/23 26/5 26/11 28/5 28/25 32/23 33/2 43/5 43/9 47/18 48/17 54/6 59/5 63/16 66/15 67/6 73/15 82/1 88/12 90/22 97/11 103/21 111/22 130/10 130/12 140/18</p> <p>let's [16] 19/16 39/5 42/25 72/21 85/10 85/13 99/12 106/16 109/23 116/17 118/20 129/3 133/11 137/24 138/3 146/19</p> <p>lets [1] 131/4</p> <p>letter [3] 4/9 4/10 81/22</p> <p>letters [1] 84/21</p> <p>letting [1] 104/2</p> <p>level [14] 29/2 37/6 61/13 62/14 62/15 72/1 91/6 91/14 91/21 92/7 92/8 113/19 117/25 136/1</p> <p>levels [1] 113/15</p> <p>license [2] 58/18 58/21</p> <p>lied [1] 106/18</p> <p>lieutenant [3] 20/20 96/6 96/10</p> <p>life [3] 83/5 133/19 143/2</p> <p>light [1] 16/1</p> <p>lights [1] 134/13</p> <p>like [115] 7/21 9/21 10/6 10/8 10/20 12/8 14/25 15/3 16/23 21/15 21/19 24/11 24/12 24/13 24/14 25/11 29/13 30/17 33/4 33/7 34/16 37/3 37/4 38/10 46/15 46/15 46/19 48/13 48/13 48/17 53/10 55/9 55/10 55/14 55/16 55/18 56/3 56/6 57/17 60/7 60/16 60/23 61/21 64/10 64/11 64/12 65/15 67/3 67/21 68/1 68/3 68/18 69/10 69/22 72/17 75/5 75/17 79/10 80/8 80/11 81/2 83/23 84/2 84/19 84/20 84/22 84/23 84/23 85/2 85/3 85/10 85/13 85/15 87/4 89/24 91/12 92/23 93/9 93/14 93/21 93/22 94/5 95/11 96/16 99/11 101/3 103/12 105/24 109/1 114/6 114/10 114/11 114/22 122/19 127/25 128/1 130/7 130/17 130/17 132/7 133/15 134/8 134/9 134/10 134/12 134/17 140/21 140/23 141/4 142/8 144/17 144/24 146/7 147/14 147/19</p> <p>Liked [1] 9/3</p> <p>likely [1] 16/17</p> <p>limitations [1] 24/2</p> <p>limited [1] 38/6</p> <p>line [7] 41/17 45/17 51/20 51/24 109/20 112/25 144/12</p> <p>lines [8] 41/15 43/19 45/3 45/4 48/20 70/5 82/24 122/12</p> <p>link [3] 85/3 85/6 86/3</p> <p>linked [1] 23/25</p> <p>list [1] 123/5</p> <p>listed [2] 114/11 121/16</p> <p>literally [1] 75/8</p>	<p>litigants [1] 79/2</p> <p>litigated [1] 132/23</p> <p>little [13] 12/16 24/9 29/20 29/20 38/16 53/12 58/7 68/16 83/2 113/12 113/17 116/17 140/17</p> <p>lobbying [1] 16/11</p> <p>log [1] 21/1</p> <p>logged [1] 24/15</p> <p>long [24] 6/20 7/1 9/13 12/16 21/11 21/15 31/2 31/4 40/5 52/8 57/12 57/14 62/6 79/23 90/11 90/11 90/13 90/23 91/7 92/2 101/5 102/18 114/6 128/10</p> <p>longer [2] 107/12 138/21</p> <p>look [19] 14/25 23/3 23/5 23/17 23/19 47/18 53/5 53/6 82/16 85/22 94/2 98/11 99/11 100/1 100/9 109/17 132/16 134/24 142/8</p> <p>looked [2] 84/19 107/8</p> <p>looking [5] 53/13 85/11 85/25 102/6 127/4</p> <p>looks [5] 6/14 53/10 97/24 134/7 134/9</p> <p>Looney [1] 3/22</p> <p>Lord [1] 54/2</p> <p>lose [2] 10/4 83/23</p> <p>losing [1] 92/14</p> <p>lost [6] 45/12 81/3 81/5 83/23 94/22 94/23</p> <p>lot [18] 9/16 11/14 20/3 20/4 20/4 22/24 30/9 52/16 54/23 61/24 64/21 69/1 78/9 80/14 85/9 89/18 93/23 124/1</p> <p>Louis [1] 6/13</p> <p>Louisiana [1] 2/10</p> <p>lower [2] 113/12 113/18</p> <p>Lucas [11] 32/10 32/16 32/21 33/2 33/4 33/13 90/5 103/3 103/16 103/23 104/5</p> <p>Lucases [1] 103/7</p> <p>Luci [10] 12/11 12/12 12/12 12/17 68/25 69/5 69/22 69/24 70/3 70/4</p> <p>lucky [1] 142/11</p> <p>lunch [5] 67/25 69/22 69/24 107/19 107/24</p> <p>Lykos [39] 14/7 16/10 16/11 18/19 75/13 76/1 76/20 77/9 77/22 77/23 78/8 78/12 78/16 78/20 78/21 79/6 79/8 79/11 79/16 81/23 82/2 82/10 82/11 82/22 83/16 86/7 86/16 86/18 88/5 90/21 91/24 92/19 94/19 94/23 99/18 108/5 108/11 108/19 108/25</p> <p>Lykos' [1] 92/7</p>
<p>L</p> <p>lab [1] 76/14</p> <p>label [1] 85/20</p> <p>Lance [13] 21/11 21/13 21/15 21/16 90/11 90/11 90/13 90/18 90/18 90/23 91/6 91/20 92/2</p> <p>land [1] 51/20</p> <p>Landing [2] 16/3 95/14</p> <p>lap [1] 59/10</p> <p>largest [2] 130/5 130/15</p> <p>Larry [1] 1/16</p> <p>last [24] 10/20 12/8 13/3 13/5 24/11 24/12 24/15 24/16 24/19 35/3 35/4 35/9 46/5 55/20 75/10 84/19 94/17 94/18 100/16 102/25 103/24 104/17 104/17 110/23</p> <p>late [3] 73/13 74/25 94/19</p> <p>later [5] 11/15 50/14 62/14 77/9 97/4</p> <p>law [27] 31/3 31/7 34/17 38/20 38/24 39/9 39/16 40/3 58/12 61/23 61/24 63/12 66/8 66/9 75/18 75/22 98/7 117/20 118/9 119/7 119/10 119/13 119/21 120/1 138/21 146/22 147/3</p> <p>lawyer [10] 56/23 57/3 78/7 78/8 78/14 78/19 129/2 130/3 133/6 137/6</p> <p>lawyers [7] 31/12 40/7 89/4 89/4 89/12 89/14 138/21</p> <p>lay [1] 145/2</p> <p>lead [3] 45/5 135/1 145/19</p> <p>leadership [1] 108/20</p> <p>leading [2] 8/17 106/22</p> <p>leads [1] 39/8</p> <p>leap [1] 114/12</p> <p>leaps [1] 111/16</p> <p>learn [2] 96/21 100/23</p> <p>learned [1] 110/9</p> <p>least [13] 20/18 23/18 37/21 38/3 40/22 42/6 62/11 87/21 99/3 100/3 102/14 115/3 131/22</p> <p>leave [4] 8/19 23/14 23/21 95/2</p> <p>leaves [2] 23/13 85/4</p> <p>leaving [8] 82/19 94/17 94/18 95/5 95/7</p>	<p>level [14] 29/2 37/6 61/13 62/14 62/15 72/1 91/6 91/14 91/21 92/7 92/8 113/19 117/25 136/1</p> <p>levels [1] 113/15</p> <p>license [2] 58/18 58/21</p> <p>lied [1] 106/18</p> <p>lieutenant [3] 20/20 96/6 96/10</p> <p>life [3] 83/5 133/19 143/2</p> <p>light [1] 16/1</p> <p>lights [1] 134/13</p> <p>like [115] 7/21 9/21 10/6 10/8 10/20 12/8 14/25 15/3 16/23 21/15 21/19 24/11 24/12 24/13 24/14 25/11 29/13 30/17 33/4 33/7 34/16 37/3 37/4 38/10 46/15 46/15 46/19 48/13 48/13 48/17 53/10 55/9 55/10 55/14 55/16 55/18 56/3 56/6 57/17 60/7 60/16 60/23 61/21 64/10 64/11 64/12 65/15 67/3 67/21 68/1 68/3 68/18 69/10 69/22 72/17 75/5 75/17 79/10 80/8 80/11 81/2 83/23 84/2 84/19 84/20 84/22 84/23 84/23 85/2 85/3 85/10 85/13 85/15 87/4 89/24 91/12 92/23 93/9 93/14 93/21 93/22 94/5 95/11 96/16 99/11 101/3 103/12 105/24 109/1 114/6 114/10 114/11 114/22 122/19 127/25 128/1 130/7 130/17 130/17 132/7 133/15 134/8 134/9 134/10 134/12 134/17 140/21 140/23 141/4 142/8 144/17 144/24 146/7 147/14 147/19</p> <p>Liked [1] 9/3</p> <p>likely [1] 16/17</p> <p>limitations [1] 24/2</p> <p>limited [1] 38/6</p> <p>line [7] 41/17 45/17 51/20 51/24 109/20 112/25 144/12</p> <p>lines [8] 41/15 43/19 45/3 45/4 48/20 70/5 82/24 122/12</p> <p>link [3] 85/3 85/6 86/3</p> <p>linked [1] 23/25</p> <p>list [1] 123/5</p> <p>listed [2] 114/11 121/16</p> <p>literally [1] 75/8</p>	<p>M</p> <p>ma'am [9] 6/25 13/8 15/13 17/9 32/15 47/8 47/11 123/3 123/25</p> <p>machine [1] 1/19</p> <p>mad [1] 120/16</p> <p>made [21] 15/16 15/19 15/22 23/6 41/7 46/10 78/5 78/9 83/5 99/10 100/8 111/12 113/2 117/16 119/1 119/19 121/1 143/6 143/11 143/12 143/16</p> <p>Magical [2] 9/10 13/18</p> <p>Magidson [4] 81/11 81/12 83/1 86/16</p> <p>magnetic [1] 66/1</p> <p>mail [1] 44/6</p> <p>mailed [1] 44/5</p> <p>main [2] 62/24 96/16</p> <p>maintain [1] 29/1</p> <p>majority [3] 48/13 85/21 86/2</p> <p>make [16] 28/5 30/5 34/3 40/9 45/19 46/8 69/20 74/15 78/3 105/24 114/23 116/3 138/19 139/18 139/22 140/2</p> <p>makes [6] 38/24 136/2 138/5 138/12 139/3 139/9</p> <p>making [1] 82/4</p>

<p>M</p> <p>man [4] 55/9 61/8 100/12 130/7 managed [1] 135/6 manner [3] 72/10 124/21 125/17 many [17] 21/1 68/17 84/16 87/20 88/22 88/24 88/25 89/7 89/9 89/11 89/16 95/8 111/15 111/15 130/6 140/6 147/9 March [1] 9/18 MARK [1] 1/4 marked [4] 14/13 49/16 124/8 125/18 Married [1] 58/10 Mart [1] 76/15 masked [1] 13/18 match [1] 132/3 math [3] 7/2 128/12 131/1 matter [3] 54/14 117/1 129/9 may [32] 9/7 11/15 14/9 15/5 15/22 16/1 18/2 21/19 24/2 30/25 37/10 47/2 49/12 50/16 50/19 59/12 65/4 65/14 66/17 67/21 87/22 94/7 96/25 107/25 111/17 119/14 123/23 127/5 127/8 137/25 138/2 142/20 maybe [14] 12/11 21/13 31/10 39/19 52/21 53/17 72/25 76/5 90/6 93/16 98/8 115/11 130/21 138/13 McKinney [1] 2/9 McSpadden [2] 66/13 67/11 me [134] 10/21 12/7 12/18 13/3 14/24 15/15 16/17 17/6 18/25 22/1 22/18 22/22 23/3 23/11 23/12 24/10 24/24 25/11 25/23 26/5 26/11 28/5 31/19 32/2 32/23 35/7 35/12 36/12 37/5 37/7 37/15 37/16 37/24 40/13 41/18 43/5 43/6 43/8 43/11 44/4 44/5 44/9 44/17 46/4 46/18 47/11 47/17 47/18 48/6 48/6 48/17 49/2 50/23 51/3 51/10 51/13 51/17 51/23 53/5 54/6 55/7 58/7 59/5 60/13 62/17 63/7 63/16 66/15 67/6 69/11 70/6 70/23 73/15 78/18 81/20 82/1 83/2 83/18 86/21 88/6 88/12 90/3 90/7 90/19 90/22 92/19 93/6 93/21 95/22 97/12 100/17 101/8 103/1 103/21 103/25 104/19 107/4 108/14 108/17 109/17 111/10 112/2 113/5 113/5 113/11 115/7 116/1 120/11 121/10 121/15 122/8 122/10 122/12 122/13 122/18 122/22 124/3 124/11 124/25 125/16 127/12 130/10 130/12 134/7 134/14 137/4 140/18 141/5 141/20 141/23 142/3 142/7 142/8 149/12 mean [90] 13/15 15/22 16/16 16/23 17/3 17/14 18/1 18/2 21/19 21/23 21/24 22/16 22/16 23/10 23/10 25/10 25/20 26/5 26/17 26/21 28/4 28/22 28/24 28/25 30/9 30/25 31/5 31/13 31/14 32/18 34/16 34/17 34/19 39/18 41/19 42/14 42/19 42/22 46/13 49/3 49/4 49/8 49/9 50/23 51/24 52/16 52/21 52/25 55/5 55/25 56/5 62/17 62/22 64/10 67/19 67/24 72/9 72/16 72/17 72/19 74/16 75/22 78/19 82/7 83/11 85/24 88/25 90/19 92/13 94/23 95/10 96/15 97/1 98/15 98/18 98/19 99/21 114/6 115/7 129/18 130/8 130/9 130/16 131/19 131/19 133/12 135/21 136/17 137/21 139/24 Meaning [1] 145/15 meant [3] 77/16 78/20 145/5 meantime [1] 102/3 meat [1] 96/15 media [1] 14/3 medical [1] 141/20 meet [1] 63/9 meeting [1] 137/12</p>	<p>member [2] 145/25 146/1 members [1] 147/3 memory [4] 12/18 18/4 23/6 51/12 Mendoza [2] 46/7 143/7 mental [1] 141/20 mentally [1] 142/9 mention [7] 20/24 27/7 45/19 94/4 100/14 116/3 144/9 mentioned [9] 42/7 60/11 63/2 69/4 87/14 123/8 137/19 137/20 141/5 mentions [1] 143/23 mentor [4] 7/13 68/9 68/10 69/13 mentoring [1] 69/3 message [2] 23/2 53/10 met [4] 57/17 58/1 63/8 63/11 Mexico [1] 22/10 Michael [2] 67/10 87/25 middle [8] 20/11 131/4 131/6 131/8 131/17 141/10 141/21 141/24 might [15] 25/1 41/19 46/12 48/17 53/10 71/13 95/23 106/25 113/11 113/19 113/23 115/12 120/1 138/6 147/13 Mike [1] 94/24 mildly [1] 72/8 millionaire [1] 116/15 mind [14] 24/10 41/1 67/7 72/22 88/14 88/16 95/22 97/17 99/12 102/13 106/23 118/21 126/21 131/7 mine [4] 45/16 57/25 68/17 95/24 mini [2] 147/4 147/12 minimum [2] 93/24 93/24 minus [1] 85/5 minute [3] 53/15 75/10 125/20 minutes [2] 53/12 107/14 mischaracterization [1] 40/20 misdemeanor [1] 69/23 misdemeanors [1] 60/8 misstate [1] 45/1 mistaken [1] 9/22 mocking [2] 110/24 111/1 moment [1] 15/5 Monday [2] 15/17 56/1 money [1] 84/12 monikers [1] 83/9 monkeys [1] 60/15 month [2] 52/1 77/9 months [5] 43/23 71/7 94/21 110/11 129/17 moon [1] 68/21 more [27] 18/25 41/15 43/16 43/18 43/20 47/9 64/24 72/19 72/25 84/14 84/15 85/8 91/17 93/21 98/2 107/14 111/7 114/24 116/17 118/23 118/25 119/3 119/17 122/12 128/8 142/20 148/1 morning [6] 6/9 6/10 19/16 22/20 124/12 128/1 most [6] 16/17 46/13 77/7 92/23 92/23 99/3 mostly [4] 54/23 83/8 99/19 121/17 mother [1] 67/23 motion [13] 44/22 45/18 45/21 46/8 47/20 116/2 121/5 121/7 121/14 121/25 128/18 129/2 143/8 motion/writ [4] 45/18 116/2 121/5 121/14 mouth [5] 27/17 101/12 126/2 127/20 127/25 Mr [29] 2/3 2/3 2/7 2/8 2/9 13/20 19/18 25/7 30/8 40/19 41/9 50/1 93/6 108/2 111/20 111/21 125/10 126/12 126/16 126/23 128/11 134/14 142/15 142/18 142/20 142/22 143/5 146/9 146/9 Mr. [83] 6/5 6/9 9/22 14/12 15/12 15/16 16/4 16/11 17/7 18/4 18/21 18/23 21/8</p>	<p>22/4 22/15 23/1 23/13 24/18 24/20 24/22 25/4 25/14 25/16 25/19 25/24 26/23 29/4 30/16 31/2 32/22 36/9 37/24 39/20 41/22 42/24 43/9 43/23 44/15 46/15 46/23 47/4 47/10 47/24 47/24 48/11 50/8 51/13 52/2 53/4 54/4 54/7 56/10 57/5 57/8 57/9 83/1 85/3 107/12 108/2 118/12 122/25 123/5 123/6 124/1 125/3 125/15 125/23 126/11 127/5 127/12 128/7 130/22 131/7 132/11 132/17 133/5 133/19 134/21 135/17 140/4 141/22 143/5 147/23 Mr. Baldwin [1] 15/12 Mr. Beers [1] 36/9 Mr. Chin [4] 57/9 107/12 118/12 123/6 Mr. Clappart [2] 125/3 125/15 Mr. Curry [2] 46/23 125/23 Mr. Curry's [2] 46/15 127/5 Mr. DeGuerin [4] 16/11 25/16 47/24 143/5 Mr. Glasscock [1] 133/19 Mr. Leitner [3] 24/22 25/4 25/14 Mr. Leitner's [1] 18/23 Mr. Magidson [1] 83/1 Mr. Newmman [56] 6/5 6/9 9/22 14/12 15/16 16/4 17/7 18/4 18/21 21/8 22/4 22/15 23/1 23/13 24/18 25/19 26/23 29/4 30/16 31/2 32/22 37/24 39/20 41/22 42/24 43/9 43/23 44/15 47/4 47/10 48/11 50/8 51/13 52/2 53/4 54/4 54/7 56/10 57/5 57/8 108/2 122/25 123/5 124/1 126/11 127/12 128/7 130/22 131/7 132/11 133/5 134/21 135/17 140/4 141/22 147/23 Mr. Schneider [1] 47/24 Mr. Smith [1] 85/3 Mr. Temple [2] 24/20 25/24 Mr. Temple's [1] 132/17 Ms [33] 2/8 4/10 6/10 8/8 14/9 14/12 25/11 40/4 49/15 50/5 50/8 80/3 84/5 88/12 90/10 93/4 93/5 95/19 98/6 120/8 120/11 120/15 120/22 53/4 54/4 54/7 56/10 137/25 138/3 139/25 142/18 143/1 145/8 146/12 147/23 Ms. [8] 8/11 8/22 18/19 42/18 50/21 121/19 121/20 132/24 Ms. Lykos [1] 18/19 Ms. Siegler [6] 8/11 8/22 42/18 50/21 121/19 132/24 Ms. Siegler's [1] 121/20 much [9] 13/9 13/18 50/14 93/18 107/12 114/25 119/3 119/17 124/19 multiple [5] 20/12 85/10 95/20 96/2 96/14 municipal [3] 146/19 146/23 147/7 Murat [1] 6/13 murder [17] 22/6 22/9 34/19 37/22 39/22 64/4 96/10 110/5 111/15 112/8 112/23 114/3 114/15 114/16 114/22 116/7 130/15 murdered [1] 135/22 Murray [7] 4/3 6/3 6/6 6/14 6/15 80/25 142/24 must [2] 25/1 83/5 my [54] 13/14 17/13 17/14 18/8 19/3 19/19 23/20 23/24 24/1 25/10 26/6 26/7 26/15 28/14 32/1 33/15 35/4 38/6 38/15 45/6 50/24 62/22 62/24 66/7 66/8 69/14 79/4 81/3 81/23 83/1 83/6 86/15 90/18 95/23 98/22 102/20 103/9 105/6 108/22 109/15 109/17 111/4 111/14 111/25 113/6 115/17 117/18 118/12 118/14 118/15 122/15 124/18 129/23 144/4</p> <p>N</p> <p>name [9] 6/11 13/3 13/5 21/7 80/24</p>
--	--	--

N
name... [4] 83/13 105/7 133/16 133/22
named [6] 37/6 61/8 87/24 88/2 88/4 88/8
names [5] 10/25 64/24 69/4 74/18 123/11
nature [1] 59/20
Neal [5] 71/18 71/25 72/4 72/9 72/14
necessarily [4] 63/8 92/7 135/12 141/19
need [10] 21/2 97/19 113/19 118/4 119/9 122/19 122/22 122/23 131/9 147/8
needed [4] 74/6 93/19 140/12 140/16
needs [2] 127/1 128/4
Negotiating [1] 13/10
negotiations [1] 9/16
neighborhood [1] 33/21
neighboring [1] 134/23
neutral [4] 78/5 98/3 102/21 102/23
neutrality [4] 34/24 35/10 104/22 105/22
never [23] 12/13 31/18 38/1 79/1 86/3 90/19 92/13 92/19 108/13 118/13 118/13 120/15 120/16 122/16 122/23 131/7 131/13 133/7 134/1 136/16 137/6 141/13 141/25
new [43] 15/25 18/7 29/4 29/6 29/8 29/12 33/24 34/1 34/2 34/5 34/15 43/24 44/11 44/22 44/25 45/8 47/20 52/19 54/14 73/12 81/8 82/16 95/10 98/2 102/10 102/17 110/9 110/14 111/9 111/11 116/3 121/7 121/25 123/16 127/1 128/6 133/25 133/25 134/17 135/23 138/14 143/8 144/25
newly [3] 47/22 133/15 138/4
Newman [70] 4/3 4/18 6/4 6/5 6/6 6/9 6/13 9/22 13/21 14/12 15/16 16/4 17/7 18/4 18/21 19/18 21/8 22/4 22/15 23/1 23/13 24/18 25/8 25/19 26/23 29/4 30/8 30/16 31/2 32/22 37/24 39/20 41/22 42/24 43/9 43/23 44/15 47/4 47/10 48/11 50/8 51/13 52/2 53/4 54/4 54/7 56/10 57/5 57/8 80/25 108/2 122/25 123/5 124/1 126/11 127/12 128/7 128/11 130/22 131/7 132/11 133/5 134/14 134/21 135/17 140/4 141/22 142/18 146/9 147/23
Newman/Siegler [1] 4/18
next [18] 6/2 26/22 33/9 35/6 37/18 45/9 54/3 66/5 68/6 77/19 77/19 79/10 95/10 101/7 104/4 105/2 110/2 110/20
nice [1] 31/19
nights [1] 68/15
nine [3] 7/3 7/4 16/9
no [119] 1/2 10/6 11/23 15/8 15/15 16/7 21/2 21/14 22/19 23/10 24/5 24/17 25/25 26/10 26/20 28/3 28/19 29/25 31/9 31/14 31/15 32/10 32/23 33/7 33/12 34/17 36/14 36/15 36/17 39/25 40/13 41/6 41/21 42/1 42/2 43/5 44/4 44/8 45/25 46/18 47/6 47/8 48/17 48/24 50/2 50/5 50/20 50/20 52/24 54/2 54/3 54/9 54/12 54/13 57/4 57/19 60/18 62/24 65/3 65/4 67/4 68/5 71/1 76/21 76/24 76/25 77/3 77/16 77/16 86/5 88/7 88/21 90/9 97/10 101/23 105/11 105/17 109/9 111/6 111/24 112/3 113/19 114/4 115/6 117/6 117/10 120/21 121/16 124/23 125/12 126/15 129/9 132/20 133/20 135/23 135/23 135/23 136/1 136/15 136/22 137/4 137/7 137/9 137/11 138/21 140/2 140/12 140/24 141/2 141/9 141/9 142/7 143/18 146/18 147/5 147/16 147/18 147/22 148/1

nobody [2] 72/19 117/19
nominee [2] 75/19 79/13
non [4] 60/11 64/12 89/4 89/14
non-business [1] 64/12
non-lawyers [2] 89/4 89/14
non-trial [1] 60/11
Noncustodial [1] 119/3
Nope [1] 76/23
normally [2] 124/22 134/21
not [176]
nothing [9] 51/3 75/5 75/23 106/15 114/12 115/9 116/16 117/13 117/16
notified [1] 82/8
now [55] 10/7 11/15 12/3 12/18 13/12 17/12 18/17 19/16 24/14 35/24 41/10 42/25 44/16 46/3 49/8 58/6 60/1 63/21 63/24 66/5 66/14 67/2 68/9 69/1 73/6 73/15 74/24 81/13 81/19 86/17 93/4 97/5 99/12 100/14 103/14 104/1 104/8 105/9 106/2 109/21 109/23 111/25 113/3 113/7 113/10 116/17 117/25 118/7 120/11 129/1 131/25 132/18 135/12 143/19 145/24
number [15] 17/7 17/19 45/16 50/4 50/9 50/24 51/16 51/17 54/7 54/9 54/11 95/22 114/7 116/23 126/14
numbered [2] 1/16 149/10
numbers [6] 17/10 77/7 77/16 84/21 84/21 84/22
numerous [1] 91/17

O
o' [1] 83/4
o'clock [1] 107/23
O'Neill [5] 12/9 12/10 87/11 87/13 99/6
object [5] 40/19 41/3 112/25 126/14 142/15
objection [4] 15/8 40/23 50/2 124/23
objective [9] 33/17 35/5 98/8 99/3 100/10 105/25 139/10 139/16 145/15
obligation [3] 129/25 132/5 136/23
obtain [2] 138/21 140/4
obtained [1] 49/18
obviously [2] 131/15 137/23
occasion [2] 21/19 78/19
occasionally [1] 12/19
occasions [1] 147/9
occur [1] 147/18
occurred [5] 71/13 88/10 96/11 114/10 149/11
occurrence [1] 17/3
occurring [1] 102/5
occurs [1] 60/21
off [22] 13/11 38/7 48/25 49/3 54/18 54/20 55/4 55/11 55/17 98/3 98/17 104/12 104/14 108/3 136/5 136/17 143/23 143/24 144/2 144/3 144/4 146/16
offended [1] 82/25
offense [13] 5/5 5/8 5/9 5/10 112/8 114/3 130/5 130/17 130/19 131/13 131/16 132/25 141/12
offensive [1] 103/25
offered [6] 4/6 4/13 5/2 50/2 125/7 149/15
offers [1] 24/11
office [114] 7/6 7/10 7/16 11/7 11/11 11/19 12/2 13/21 16/11 17/12 17/13 19/8 20/9 20/25 27/16 27/18 28/11 29/19 29/22 31/5 32/25 33/16 34/25 35/21 36/8 36/12 37/6 38/3 38/5 46/9 47/5 48/16 48/19 51/10 55/10 55/11 56/10 57/13 58/14 58/18 58/22 61/11 62/5 63/9 64/13 64/22 65/3 65/7 65/10 65/16 66/11 66/20

68/7 68/11 68/13 69/6 73/8 74/7 74/8 74/11 79/25 80/19 81/21 83/16 83/20 84/1 84/4 90/25 91/6 91/7 91/9 91/22 92/3 92/16 95/17 96/6 98/13 98/16 98/25 99/22 100/1 100/6 101/11 101/14 102/7 102/16 103/10 103/15 104/24 108/5 108/15 109/7 109/9 115/1 116/23 117/14 118/14 126/1 126/9 127/20 127/23 128/16 129/1 134/16 135/4 135/7 135/15 135/18 136/9 140/11 143/21 145/18 146/1 146/2
office-related [3] 74/7 74/8 109/7
officer [14] 38/8 39/9 77/1 78/24 113/13 114/20 117/19 117/20 118/9 118/10 119/7 119/13 119/21 120/2
official [1] 81/3
officially [2] 82/8 109/8
often [2] 51/25 146/23
Oh [16] 12/6 12/12 16/23 23/3 35/6 49/25 54/24 64/18 66/1 76/6 78/4 85/16 88/9 123/9 128/1 130/7
okay [91] 9/6 10/15 10/21 13/25 14/6 14/25 18/10 19/21 19/24 20/1 23/7 24/4 27/9 28/10 29/8 31/18 37/19 37/23 39/5 42/4 43/2 45/7 50/11 50/18 51/18 52/17 53/8 53/15 53/18 53/24 58/6 58/17 59/5 59/23 62/8 63/25 65/6 65/18 66/15 66/17 66/18 66/24 67/7 68/3 70/15 71/24 72/21 77/11 79/5 83/7 84/5 87/9 90/10 91/11 93/8 94/1 94/14 95/13 96/18 96/21 97/5 97/11 98/19 99/20 100/3 107/22 109/18 109/19 110/1 115/21 118/20 118/22 120/7 120/17 125/24 128/23 129/21 129/22 130/14 133/2 133/12 134/23 136/6 138/18 138/23 139/17 140/17 142/3 142/25 144/15 146/21
old [3] 18/8 107/3 109/2
older [2] 68/19 69/16
on [201]
once [7] 10/13 56/15 56/16 60/20 68/21 80/12 140/7
one [95] 7/5 10/18 10/20 10/23 10/25 15/23 17/11 17/16 18/7 18/8 19/15 22/1 22/4 22/18 23/4 23/12 24/10 30/10 30/22 32/13 33/3 33/3 33/4 33/12 34/2 34/5 35/7 35/13 37/21 39/12 42/7 42/23 43/12 43/16 43/18 43/20 44/4 44/12 45/16 46/4 47/9 49/1 53/7 56/17 56/24 58/5 59/12 59/13 63/20 64/24 65/4 70/10 70/11 75/13 75/15 79/2 79/2 83/10 84/14 85/12 86/15 87/21 88/9 90/2 90/3 90/11 90/13 90/17 90/18 91/20 91/22 92/12 93/2 93/15 94/5 95/4 101/3 101/4 101/11 101/25 108/23 108/23 109/15 110/15 114/7 116/16 123/13 126/14 129/18 132/9 132/18 132/23 134/20 134/24 137/5
one-hour [1] 137/5
one-on-one [1] 108/23
ones [10] 10/18 19/23 38/4 40/7 53/2 60/20 93/1 93/21 93/22 123/9
ongoing [1] 129/9
only [13] 7/17 17/15 24/11 24/12 38/4 52/18 55/3 58/6 65/14 84/19 88/20 110/9 110/11
open [6] 94/16 96/6 110/15 128/20 129/10 149/11
opinion [13] 28/4 28/6 36/18 37/9 83/14 98/22 111/4 113/1 113/6 113/24 124/2 128/7 141/8
opinions [2] 125/7 133/4
opponent [2] 71/16 72/18
opponents [1] 74/24

<p>O</p> <p>opportunity [5] 56/11 103/6 108/13 131/22 132/16</p> <p>opposed [3] 127/14 127/16 127/17</p> <p>opted [1] 79/9</p> <p>option [1] 118/10</p> <p>or [146] 7/3 9/8 9/18 9/23 10/9 17/23 23/11 23/11 23/12 24/5 28/21 28/21 36/14 36/23 38/9 38/12 38/21 41/7 41/21 41/23 41/24 43/19 43/23 44/3 44/24 45/3 45/5 45/6 47/20 48/6 51/13 51/13 51/22 51/24 53/5 56/11 59/11 59/17 59/20 60/8 60/22 61/6 61/6 62/11 64/15 64/16 64/16 64/24 65/3 66/16 67/25 67/25 71/2 71/8 71/25 74/12 75/6 75/6 75/17 76/13 76/24 79/2 80/3 80/7 80/7 81/19 83/9 83/9 83/21 84/5 84/21 84/21 85/23 85/23 85/23 88/11 88/22 89/1 89/4 89/7 91/17 93/15 95/4 95/9 96/19 97/5 98/2 99/6 99/8 99/23 101/2 102/13 103/18 108/24 109/4 109/6 110/11 111/22 112/11 113/10 113/24 114/11 114/11 115/4 116/10 117/20 118/9 118/10 118/11 119/7 119/19 120/3 120/13 120/16 120/18 121/7 121/10 121/17 121/21 122/8 122/8 122/19 127/24 128/5 128/13 128/21 129/10 129/19 129/25 131/11 132/14 132/24 133/22 138/13 138/14 139/4 140/23 143/15 144/3 144/13 145/3 145/10 145/20 146/3 146/4 149/11</p> <p>orange [1] 112/15</p> <p>order [8] 79/12 105/24 112/7 113/13 113/20 118/1 128/5 144/10</p> <p>original [3] 86/4 98/8 138/6</p> <p>other [37] 10/25 12/1 16/7 17/10 22/9 23/12 25/17 25/25 34/9 34/14 34/16 52/16 55/5 57/12 60/11 61/3 64/12 67/25 69/4 70/2 72/1 72/17 74/18 74/19 78/2 85/20 93/1 98/10 98/11 98/22 100/25 102/11 103/11 123/14 141/3 147/3 149/8</p> <p>others [2] 52/20 72/19</p> <p>our [2] 40/4 59/16</p> <p>ourselves [1] 60/14</p> <p>out [44] 18/22 20/5 22/24 24/20 26/17 27/16 27/21 30/6 39/22 46/4 46/22 47/20 56/24 60/22 60/25 61/5 68/23 69/20 70/12 72/20 74/15 78/11 79/9 80/24 81/25 84/7 86/25 89/10 95/12 98/12 101/12 121/7 121/25 126/2 127/20 127/24 131/12 133/6 136/9 136/20 137/2 141/7 143/7 145/4</p> <p>out-of-time [4] 47/20 121/7 121/25 143/7</p> <p>Outline [3] 4/22 4/24 5/3</p> <p>outside [6] 23/16 23/17 89/1 93/1 137/22 146/5</p> <p>outstanding [1] 146/20</p> <p>over [19] 7/4 23/5 26/21 29/14 38/8 53/5 53/6 67/5 78/20 91/18 93/25 97/12 103/21 114/23 125/20 129/6 129/10 130/1 134/19</p> <p>overheard [1] 114/14</p> <p>overhearing [2] 44/12 110/15</p> <p>overnight [1] 141/15</p> <p>overruled [3] 40/23 113/4 126/18</p> <p>overtime [3] 21/1 21/9 27/7</p> <p>overturned [1] 22/6</p> <p>own [3] 82/23 100/19 132/9</p>	<p>pack [2] 82/15 82/16</p> <p>page [17] 16/8 18/11 20/12 22/4 24/19 33/11 33/12 35/3 35/7 35/12 42/24 45/12 95/22 95/23 95/23 95/24 109/18</p> <p>pages [7] 130/6 130/24 131/13 133/7 141/12 141/17 141/23</p> <p>pages' [1] 132/25</p> <p>paid [3] 13/9 149/18 149/18</p> <p>paid/will [1] 149/18</p> <p>paper [1] 131/5</p> <p>papers [3] 74/21 130/23 133/7</p> <p>paragraph [28] 16/9 18/13 24/19 27/4 27/22 35/3 35/4 35/6 35/10 37/18 42/4 45/9 45/15 94/12 95/19 95/21 100/15 100/16 101/7 102/25 104/8 104/12 104/13 104/18 105/3 109/20 110/2 115/19</p> <p>paragraphs [4] 46/5 94/6 95/25 115/19</p> <p>parentheses [12] 94/13 94/16 96/7 96/8 103/3 103/4 110/4 110/4 110/10 110/11 110/16 110/16</p> <p>part [15] 13/17 14/1 32/18 33/15 46/24 46/24 57/19 86/5 108/19 116/11 121/5 121/13 121/23 125/22 132/15</p> <p>PARTE [1] 1/4</p> <p>participants [1] 79/3</p> <p>participated [1] 44/25</p> <p>participating [1] 48/22</p> <p>particular [16] 15/16 16/16 59/7 67/4 85/3 93/11 93/11 97/7 122/7 127/22 135/4 135/15 140/15 142/2 142/8 147/15</p> <p>particularly [1] 143/21</p> <p>parties [5] 10/25 102/21 102/23 149/9 149/15</p> <p>partners [1] 98/21</p> <p>party [2] 23/25 84/10</p> <p>pass [8] 15/14 35/22 57/6 98/3 123/1 142/19 146/10 147/24</p> <p>passed [3] 63/22 67/23 74/16</p> <p>past [2] 11/4 40/5</p> <p>Pat [6] 78/7 82/2 86/18 91/24 92/7 94/23</p> <p>paths [1] 61/13</p> <p>Patricia [11] 75/13 76/1 76/20 77/22 78/16 78/21 79/6 79/8 79/11 79/15 108/5</p> <p>Paul [5] 3/22 8/1 8/7 137/10 137/13</p> <p>pay [1] 84/13</p> <p>PDR [1] 62/15</p> <p>Peace [2] 60/2 60/5</p> <p>pending [1] 46/11</p> <p>people [34] 24/15 30/9 30/10 34/16 37/1 40/2 40/6 55/5 64/21 66/3 68/14 69/2 69/6 69/18 74/11 74/19 75/10 75/12 80/12 83/8 83/18 84/16 84/18 85/11 86/6 86/13 87/16 89/18 93/14 100/25 102/5 102/7 122/18 122/21</p> <p>per [1] 110/9</p> <p>percent [3] 48/14 77/12 77/18</p> <p>Perhaps [1] 128/10</p> <p>period [11] 21/17 21/22 68/3 69/2 70/1 71/11 84/23 84/23 93/25 109/4 109/6</p> <p>perjured [1] 139/15</p> <p>permission [1] 21/1</p> <p>person [25] 17/23 38/9 39/3 43/20 48/6 62/1 69/19 77/22 81/6 81/9 85/8 88/2 88/4 88/8 90/23 99/3 99/16 99/23 103/17 114/13 119/6 130/13 138/10 146/16 147/1</p> <p>personal [5] 93/21 97/18 100/20 118/15 143/9</p> <p>personality [1] 66/2</p> <p>perspective [3] 80/17 80/21 119/4</p> <p>phase [1] 71/5</p> <p>phone [19] 4/18 17/7 17/10 17/12 17/13</p>	<p>17/20 50/9 50/12 50/21 51/8 51/15 51/21 53/9 53/11 54/7 54/10 67/25 93/10 147/6</p> <p>pick [1] 38/9</p> <p>picked [4] 20/13 80/13 96/3 135/9</p> <p>picky [1] 122/17</p> <p>piece [3] 28/9 34/1 129/3</p> <p>pilot [4] 9/21 10/7 10/7 10/17</p> <p>pipe [1] 60/16</p> <p>pitched [1] 10/13</p> <p>place [3] 59/6 60/11 147/12</p> <p>platforms [1] 24/6</p> <p>players [1] 66/17</p> <p>plea [1] 61/6</p> <p>please [7] 6/1 26/11 54/17 83/17 108/14 125/1 138/23</p> <p>pled [2] 60/22 70/13</p> <p>plenty [1] 147/5</p> <p>plus [1] 85/5</p> <p>pocket [30] 37/24 38/5 38/14 38/19 39/1 39/4 39/15 39/24 40/11 40/16 40/21 41/11 41/12 43/1 43/3 43/11 109/11 109/13 109/24 111/4 116/17 116/18 117/5 117/6 117/9 117/23 118/2 118/8 118/13 118/17</p> <p>Poe [1] 66/25</p> <p>point [32] 11/13 21/7 27/21 28/14 33/3 40/5 40/20 49/10 54/13 57/1 57/25 63/5 63/6 69/10 69/20 71/5 73/17 74/3 77/24 79/24 79/25 81/5 85/18 89/23 94/12 96/18 96/21 113/22 129/13 133/19 137/17 138/16</p> <p>police [11] 38/8 76/7 76/10 76/11 76/14 77/1 78/24 113/13 114/20 117/19 118/9</p> <p>policy [3] 128/16 128/19 129/5</p> <p>political [2] 18/24 136/18</p> <p>politics [1] 54/22</p> <p>poor [1] 33/15</p> <p>popped [2] 52/23 53/2</p> <p>Porter [2] 88/2 88/4</p> <p>portions [1] 149/7</p> <p>position [7] 28/17 73/24 74/13 78/15 84/4 101/8 101/10</p> <p>possibility [1] 131/21</p> <p>possible [3] 10/3 98/9 120/5</p> <p>possibly [2] 21/2 138/20</p> <p>post [31] 1/11 3/3 4/15 4/16 4/17 15/16 15/19 23/14 24/7 31/11 35/8 35/19 47/5 54/3 57/21 82/22 87/6 93/17 95/2 98/24 99/14 100/4 100/14 104/9 104/14 109/16 116/11 120/19 121/4 122/7 123/7</p> <p>post-conviction [7] 1/11 3/3 47/5 57/21 87/6 98/24 123/7</p> <p>posted [1] 83/21</p> <p>poster [2] 23/13 23/21</p> <p>posting [7] 52/11 52/13 53/21 92/21 93/11 94/1 113/2</p> <p>postings [1] 27/5</p> <p>posts [7] 14/18 14/23 25/9 42/13 42/16 42/20 88/13</p> <p>potato [1] 92/9</p> <p>potential [2] 38/21 107/5</p> <p>potentially [3] 99/23 106/24 112/22</p> <p>poured [1] 18/8</p> <p>PR [1] 75/6</p> <p>practically [1] 49/6</p> <p>practice [1] 6/18</p> <p>practicing [3] 6/15 6/20 60/6</p> <p>Pray [1] 25/7</p> <p>pre [3] 58/15 58/17 66/10</p> <p>pre-commit [2] 58/15 58/17</p> <p>pre-commitment [1] 66/10</p> <p>precipitated [1] 82/19</p> <p>preferred [1] 30/24</p>
<p>P</p> <p>P.C [1] 2/9</p> <p>P.Looney [1] 4/9</p> <p>P.Looney's [1] 4/14</p> <p>p.m [1] 85/16</p>		

<p>P</p> <p>pregnant [1] 100/12 preliminary [1] 60/21 premier [3] 9/20 9/24 10/22 preparation [1] 149/17 prepare [1] 8/11 prepared [1] 92/21 preparing [1] 93/2 present [1] 60/15 presentation [1] 60/24 presented [1] 112/21 presenting [1] 60/18 Presiding [1] 1/17 presume [4] 22/13 32/18 33/1 123/19 pretty [5] 55/10 67/20 114/24 122/22 144/19 previous [5] 27/5 36/25 106/17 132/7 143/19 previously [4] 6/7 132/8 134/25 135/10 Primarily [1] 125/22 primary [7] 18/18 74/24 77/5 77/5 77/14 77/17 94/24 prime [1] 33/19 printouts [1] 14/18 prior [6] 6/23 14/23 96/24 106/11 106/14 108/25 private [1] 6/18 privilege [2] 106/20 107/1 privy [1] 126/15 probable [9] 38/13 60/15 112/7 113/12 113/20 114/1 115/12 117/25 125/8 probably [12] 20/18 35/15 39/15 39/25 44/10 46/18 48/14 52/21 56/25 71/10 93/23 135/5 problem [3] 40/1 48/7 75/4 problems [3] 76/15 76/16 122/15 procedurally [1] 102/2 proceed [1] 107/25 proceedings [5] 1/15 1/18 57/1 149/8 149/14 process [1] 12/15 produces [1] 9/11 production [1] 9/11 productive [1] 108/23 profession [1] 80/9 professional [2] 52/7 61/13 professionally [1] 67/19 proffered [1] 135/4 proffering [1] 133/4 profile [3] 62/20 70/21 87/21 program [6] 8/24 9/14 11/3 12/3 12/22 84/11 project [1] 22/5 projects [1] 22/5 promoted [1] 91/8 pronounce [1] 13/5 proper [4] 124/21 134/7 134/9 134/16 properly [2] 25/4 134/4 proposed [1] 112/11 prosectorial [3] 65/17 80/9 80/17 prosecute [1] 59/23 prosecuting [2] 129/8 131/25 prosecution [1] 130/4 prosecutor [41] 35/11 35/16 35/23 47/1 56/22 66/14 68/13 75/24 80/22 81/19 90/24 91/2 103/25 104/24 105/4 105/5 105/8 105/13 105/15 106/4 106/21 108/7 113/25 118/24 119/7 123/20 128/15 129/17 129/24 131/4 132/4 132/5 135/10 138/6 138/19 139/18 140/3 140/22 141/3 144/18 145/10 prosecutor. [1] 35/1</p>	<p>prosecutors [14] 59/12 60/23 64/25 68/18 68/18 68/19 69/15 70/11 74/14 83/19 104/1 109/3 113/11 113/17 prosecutors' [1] 69/16 protection [3] 45/20 116/5 116/6 protocol [1] 146/8 prove [3] 102/7 124/5 124/16 provide [3] 80/15 80/16 114/1 provided [6] 25/17 49/17 51/10 120/24 124/11 141/17 public [8] 30/14 117/1 117/2 117/16 117/17 121/1 121/2 122/1 publicity [2] 69/19 70/19 publicized [1] 25/21 publish [4] 48/1 48/3 120/18 121/20 published [1] 52/5 publishing [1] 120/12 pull [2] 38/13 98/16 pulled [5] 19/9 19/11 53/1 55/11 55/17 purported [1] 112/11 purportedly [1] 97/15 purpose [1] 44/8 purposes [6] 14/14 17/15 75/25 112/5 119/5 124/9 pursue [1] 28/13 pursuing [3] 127/7 127/10 127/23 put [10] 26/5 46/21 56/2 93/13 93/17 105/8 107/9 113/14 133/8 141/13</p>	<p>110/20 116/1 121/2 real [6] 36/13 59/5 70/15 75/25 82/1 107/5 realize [1] 97/2 realized [1] 97/1 really [18] 24/3 41/10 57/24 60/9 60/10 61/19 63/6 67/5 75/4 84/6 84/15 84/24 93/7 105/14 117/19 121/11 128/8 143/24 realtime [1] 41/15 reason [13] 31/8 31/10 31/15 45/6 51/6 51/14 54/11 88/6 121/14 123/15 130/25 133/21 143/3 reasoning [1] 104/4 reasons [1] 7/6 recall [24] 11/14 11/16 16/16 18/1 20/3 20/16 25/13 41/20 45/1 45/11 46/4 48/15 55/14 55/15 56/6 56/8 96/12 101/1 106/7 120/23 121/11 136/22 137/1 137/4 received [2] 108/24 121/12 receiving [1] 41/18 recently [1] 52/18 receptive [1] 36/13 recess [4] 107/22 107/24 131/9 141/15 recognize [3] 14/15 14/17 54/7 recollection [3] 15/18 33/8 51/12 record [11] 1/1 8/2 66/16 77/11 112/5 117/2 118/13 122/1 149/10 149/13 149/17 records [9] 4/19 49/18 50/12 50/17 50/21 51/14 51/21 130/8 141/20 RE CROSS [1] 142/23 RE CROSS- EXAMINATION [1] 142/23 recuse [1] 46/23 recused [1] 46/16 REDIRECT [2] 123/4 146/13 reelected [1] 75/4 refer [2] 14/7 19/18 reference [3] 15/22 27/4 53/16 referencing [2] 28/24 44/22 referring [7] 8/2 8/7 19/22 20/7 21/5 30/16 99/16 reflects [1] 149/14 refresh [2] 18/4 23/6 refuse [1] 39/3 refute [2] 128/5 130/25 regard [1] 146/5 regarding [4] 14/19 55/13 103/24 145/1 Regardless [1] 120/17 regards [1] 127/23 regular [1] 16/20 regularly [2] 21/20 68/14 reign [1] 76/13 related [6] 41/24 74/7 74/8 106/13 109/7 143/15 relates [1] 103/17 relation [4] 40/22 90/12 117/9 143/16 relationship [6] 36/12 68/4 69/12 97/3 98/23 100/20 relevance [1] 142/15 relevant [1] 107/1 reliable [2] 16/10 16/14 remain [1] 78/5 remainder [1] 61/4 remember [28] 10/1 10/25 15/23 23/10 27/1 35/15 42/9 42/12 42/14 43/4 47/2 53/25 55/22 62/6 62/7 66/6 67/22 71/16 74/14 76/5 86/20 86/22 86/24 104/10 108/3 108/8 108/9 123/8 remembering [3] 33/7 46/2 51/25 remove [2] 81/19 97/19 removed [9] 41/7 54/18 54/20 136/5 136/12 136/14 144/2 144/4 144/11 renegotiated [1] 13/16</p>
<p>Q</p> <p>qualified [1] 84/24 qualify [2] 30/19 48/17 question [21] 19/1 19/4 23/20 26/15 35/24 41/1 41/10 43/6 62/2 97/12 103/6 108/8 108/9 130/10 130/12 132/1 138/23 139/25 145/21 145/22 145/23 questioned [1] 55/19 questioning [4] 39/20 112/25 120/13 143/19 questions [5] 21/2 29/17 41/8 88/14 88/15 quick [2] 58/25 76/17 quickly [3] 27/16 69/11 101/11 quiet [2] 61/19 61/19 quite [2] 108/2 114/16 quote [17] 34/4 35/22 43/23 43/23 44/16 100/20 100/21 104/24 104/25 108/20 110/11 110/12 110/13 110/14 112/1 116/3 116/4 quote-unquote [3] 34/4 35/22 108/20 quotes [2] 74/8 105/8</p>	<p>R</p> <p>race [1] 76/1 radar [7] 30/2 30/12 30/17 30/19 30/25 124/15 124/20 raid [1] 76/16 raise [1] 13/10 ran [4] 49/1 55/6 73/2 75/19 Rangers [1] 29/22 rare [1] 83/12 rarely [3] 42/22 42/22 42/22 rather [3] 55/12 131/12 133/22 Ray [1] 112/9 re [1] 75/3 re-run [1] 75/3 reaction [1] 30/22 read [21] 14/22 16/3 22/14 23/2 33/6 86/8 86/11 93/14 101/7 110/21 110/23 111/22 111/22 112/2 112/18 113/5 120/15 125/20 127/11 131/9 131/23 reading [7] 60/14 69/19 105/6 114/22 127/13 128/8 139/2 reads [7] 94/15 104/21 105/2 110/2</p>	<p>qualified [1] 84/24 qualify [2] 30/19 48/17 question [21] 19/1 19/4 23/20 26/15 35/24 41/1 41/10 43/6 62/2 97/12 103/6 108/8 108/9 130/10 130/12 132/1 138/23 139/25 145/21 145/22 145/23 questioned [1] 55/19 questioning [4] 39/20 112/25 120/13 143/19 questions [5] 21/2 29/17 41/8 88/14 88/15 quick [2] 58/25 76/17 quickly [3] 27/16 69/11 101/11 quiet [2] 61/19 61/19 quite [2] 108/2 114/16 quote [17] 34/4 35/22 43/23 43/23 44/16 100/20 100/21 104/24 104/25 108/20 110/11 110/12 110/13 110/14 112/1 116/3 116/4 quote-unquote [3] 34/4 35/22 108/20 quotes [2] 74/8 105/8</p>

<p>R</p> <p>renewed [1] 81/24</p> <p>reopen [1] 16/12</p> <p>repeat [2] 117/8 138/23</p> <p>repeating [2] 41/1 102/14</p> <p>rephrasing [1] 102/13</p> <p>report [11] 4/21 5/5 5/8 5/9 5/10 29/15 130/5 130/17 130/19 131/13 141/12</p> <p>reported [2] 1/18 149/12</p> <p>Reporter [2] 149/4 149/22</p> <p>REPORTER'S [4] 1/1 149/10 149/13 149/17</p> <p>reporting [1] 26/12</p> <p>reports [6] 19/19 19/22 19/24 131/17 133/1 141/23</p> <p>represent [2] 139/19 140/11</p> <p>representation [3] 106/12 106/14 106/17</p> <p>representations [1] 37/1</p> <p>represented [4] 37/13 62/12 72/4 135/11</p> <p>representing [4] 37/8 51/5 61/5 106/8</p> <p>represents [3] 37/14 137/8 137/15</p> <p>Republican [4] 75/19 77/5 79/13 94/24</p> <p>reputable [2] 105/3 105/6</p> <p>reputation [3] 61/15 61/18 62/19</p> <p>request [2] 19/12 122/8</p> <p>requested [8] 56/12 56/18 83/1 122/10 122/16 128/21 128/24 149/8</p> <p>require [1] 142/5</p> <p>required [2] 77/18 100/11</p> <p>requirements [2] 119/9 119/24</p> <p>requires [1] 24/9</p> <p>reread [2] 16/6 16/7</p> <p>resident [1] 18/17</p> <p>resign [1] 73/24</p> <p>respect [3] 15/19 15/25 28/15</p> <p>respective [1] 149/15</p> <p>Respondent [1] 2/6</p> <p>Respondent/The [1] 2/6</p> <p>responding [2] 29/1 47/17</p> <p>Responds [2] 47/15 120/9</p> <p>response [9] 24/8 28/23 35/19 47/19 47/20 121/5 121/14 121/24 127/5</p> <p>responses [3] 120/24 121/11 121/19</p> <p>responsibility [2] 29/12 100/6</p> <p>responsible [1] 45/9</p> <p>responsive [1] 48/1</p> <p>rest [1] 61/3</p> <p>results [1] 116/21</p> <p>retaliation [1] 83/15</p> <p>retired [4] 11/18 51/19 75/18 109/4</p> <p>retirement [1] 109/6</p> <p>return [1] 44/7</p> <p>returns [1] 53/11</p> <p>reveal [1] 141/18</p> <p>revealing [1] 141/24</p> <p>reversed [1] 98/2</p> <p>review [3] 87/7 98/25 100/10</p> <p>reviewing [1] 113/13</p> <p>ridiculous [1] 111/4</p> <p>right [82] 10/11 11/3 13/23 14/3 14/23 16/20 18/19 19/3 20/15 24/14 27/6 28/1 28/25 40/2 42/7 45/22 46/2 48/8 51/2 52/10 52/12 57/18 59/20 59/21 62/12 63/1 63/23 65/11 65/14 70/23 73/15 75/5 76/18 77/4 77/20 78/17 79/20 82/7 82/17 84/9 87/5 88/1 90/22 93/15 94/12 104/25 105/8 105/16 107/7 110/6 110/21 113/8 116/19 117/3 117/7 117/14 117/21 118/2 118/11 119/11 122/4 122/25 123/10 126/2 126/6 126/24 127/2 127/6 127/9 127/21 129/17 129/20 130/15 130/23 131/2 133/18 135/8 138/5 139/5 145/6</p>	<p>146/25 147/2</p> <p>rights [1] 98/15</p> <p>Riley [3] 41/23 137/15 138/24</p> <p>RMR [1] 149/21</p> <p>road [4] 122/15 127/6 127/9 127/9</p> <p>roads [1] 127/23</p> <p>Roberts [1] 12/9</p> <p>Rodriguez [1] 88/8</p> <p>role [3] 62/9 62/10 62/11</p> <p>Romy [1] 2/8</p> <p>room [1] 56/20</p> <p>Rosenthal [9] 14/2 14/2 73/13 73/16 73/21 73/23 75/3 75/9 81/8</p> <p>Rosenthal's [1] 80/10</p> <p>rotates [1] 24/14</p> <p>round [2] 134/22 139/13</p> <p>route [1] 84/13</p> <p>RPR [1] 149/21</p> <p>rule [1] 56/3</p> <p>ruling [1] 46/8</p> <p>rumored [5] 94/16 94/18 95/6 95/6 95/9</p> <p>rumors [1] 74/11</p> <p>run [10] 55/8 74/4 74/6 74/8 74/12 74/12 74/15 74/21 75/3 75/11</p> <p>rundown [1] 69/11</p> <p>running [5] 68/22 73/7 73/14 80/7 84/17</p> <p>runoff [8] 77/8 77/8 77/12 77/15 77/18 78/3 79/6 79/12</p> <p>S</p> <p>S.Clappart [1] 4/20</p> <p>said [45] 12/6 19/16 20/1 25/24 26/20 31/15 33/16 37/13 41/4 45/21 56/23 64/1 67/2 68/9 70/5 70/13 74/19 78/5 78/6 79/7 84/2 84/3 84/8 85/14 85/15 86/6 86/13 90/16 92/11 96/11 96/14 106/4 106/7 106/24 122/23 127/18 127/19 127/22 127/24 132/8 136/17 142/9 143/24 145/8 146/14</p> <p>same [9] 25/13 27/25 52/22 85/11 87/13 95/24 101/17 102/7 104/4</p> <p>sanctioned [1] 109/8</p> <p>Sanders [3] 41/24 137/15 138/25</p> <p>sat [1] 93/20</p> <p>savvy [1] 85/8</p> <p>saw [5] 9/3 48/18 56/1 65/18 65/22</p> <p>say [92] 7/21 8/6 8/19 13/3 14/6 15/21 16/18 17/2 19/19 20/7 20/12 26/19 27/15 27/15 28/19 29/19 30/17 34/23 37/11 37/12 41/12 42/5 42/19 42/24 43/14 44/4 48/13 48/18 49/10 51/13 52/3 60/8 61/25 62/21 63/3 63/5 63/6 63/17 64/9 64/11 64/23 66/25 68/24 69/3 71/24 72/8 73/1 73/18 74/3 80/19 83/3 83/8 83/21 84/3 85/10 85/14 85/16 85/22 86/4 88/25 89/19 89/20 90/16 91/8 94/23 95/1 96/24 99/2 100/15 100/21 105/21 106/16 108/13 109/1 111/22 112/6 112/13 113/19 116/10 116/10 116/15 120/4 120/14 122/19 127/8 127/25 129/3 131/20 131/20 133/11 147/6 147/11</p> <p>saying [30] 7/5 16/25 18/2 18/22 19/25 28/24 29/3 32/23 32/25 40/8 41/19 43/6 47/25 51/22 51/22 56/6 83/17 95/19 97/25 99/3 100/5 101/19 101/23 103/7 106/23 106/24 122/13 126/21 140/18 142/3</p> <p>says [14] 35/8 39/8 94/11 94/15 96/2 104/5 107/2 107/2 110/5 110/18 110/21 116/8 116/12 127/8</p> <p>scandal [2] 73/20 80/17</p> <p>scenario [1] 108/22</p> <p>Schmidt's [2] 5/3 5/10</p>	<p>Schneider [11] 2/7 2/9 44/20 44/23 45/19 46/6 46/14 47/24 116/2 121/6 143/6</p> <p>school [4] 58/9 58/12 66/8 66/9</p> <p>screen [1] 53/4</p> <p>screener [1] 12/17</p> <p>screening [3] 12/12 12/13 12/15</p> <p>seal [2] 133/22 133/23</p> <p>sealed [5] 45/8 45/20 116/4 116/5 116/6</p> <p>search [2] 52/23 52/25</p> <p>season [2] 10/18 10/19</p> <p>seat [1] 6/1</p> <p>second [15] 7/24 10/21 13/20 16/9 18/13 22/2 25/23 27/4 28/5 32/14 66/8 66/8 95/24 104/17 109/17</p> <p>secret [4] 30/18 81/2 84/2 111/6</p> <p>secrets [1] 106/25</p> <p>Section [1] 87/7</p> <p>secure [1] 114/2</p> <p>secured [1] 117/20</p> <p>see [17] 19/16 22/11 28/7 43/25 49/24 85/19 86/14 98/1 104/10 105/18 109/21 115/24 117/2 117/3 117/3 131/4 131/14</p> <p>seeking [1] 46/22</p> <p>seem [2] 37/15 105/24</p> <p>seemed [4] 25/11 25/14 86/20 120/11</p> <p>seemingly [1] 111/1</p> <p>seems [2] 92/23 110/23</p> <p>seen [13] 118/23 130/5 130/9 130/16 130/16 130/20 131/7 147/5 147/8 147/10 147/14 147/17 147/18</p> <p>semantics [1] 30/25</p> <p>semblance [3] 34/23 35/10 104/22</p> <p>semi [1] 51/19</p> <p>semi-retired [1] 51/19</p> <p>send [1] 48/3</p> <p>sending [1] 44/9</p> <p>senior [3] 68/17 92/10 92/11</p> <p>sense [9] 138/5 138/12 138/19 139/3 139/9 139/18 139/22 139/24 140/2</p> <p>sent [3] 48/5 60/22 121/10</p> <p>sentence [15] 32/1 33/10 35/9 100/16 102/25 103/24 104/5 104/17 104/18 104/21 105/2 109/23 110/20 110/23 111/2</p> <p>separation [1] 81/21</p> <p>September [17] 9/21 9/21 9/25 25/9 26/25 32/7 33/12 34/22 40/14 40/15 47/13 50/17 54/5 54/6 92/22 92/22 99/13</p> <p>September 11th [4] 33/12 40/14 54/5 99/13</p> <p>September 30th [1] 47/13</p> <p>September 3rd [1] 9/25</p> <p>seriously [1] 39/20</p> <p>serves [1] 12/18</p> <p>Services [1] 85/24</p> <p>set [5] 10/10 71/8 71/9 71/10 128/20</p> <p>seventh [1] 104/8</p> <p>several [3] 39/12 74/18 86/13</p> <p>severe [1] 24/2</p> <p>sexy [1] 60/9</p> <p>share [1] 36/18</p> <p>shared [1] 37/9</p> <p>sharing [1] 45/10</p> <p>she [85] 7/15 8/19 8/21 8/24 10/23 12/13 12/18 12/19 17/5 17/6 17/24 18/2 18/2 26/17 26/19 26/20 28/19 32/2 33/1 34/8 35/16 35/18 36/18 36/21 36/23 36/23 37/11 37/11 42/21 42/21 43/11 47/17 47/19 48/3 48/5 50/2 50/3 51/16 51/19 53/10 56/11 63/5 63/6 65/22 66/23 67/22 68/9 68/10 68/12 68/20 68/23 69/23 69/25 70/8 70/10 70/13 73/2 73/9 74/19 77/7 77/16 77/17 78/24 79/1 79/19 86/9</p>
---	--	--

<p>S</p> <p>she... [19] 88/20 89/7 89/21 89/22 89/23 89/24 90/6 90/7 90/9 93/9 94/22 94/23 118/11 122/10 122/12 123/21 123/22 129/25 143/23</p> <p>she's [6] 7/13 12/23 26/13 48/8 66/1 120/16</p> <p>Sheriff [1] 144/10</p> <p>sheriff's [12] 11/21 12/20 20/20 29/19 44/24 48/21 75/17 96/6 135/18 136/9 139/4 143/21</p> <p>shift [1] 33/18</p> <p>shifts [1] 11/12</p> <p>Shipley's [1] 5/9</p> <p>shoot [1] 10/7</p> <p>shooting [4] 44/13 110/17 114/8 145/1</p> <p>shopping [2] 43/14 110/3</p> <p>short [1] 42/2</p> <p>shot [2] 10/8 83/24</p> <p>should [20] 24/21 27/19 28/12 28/17 29/14 33/15 78/7 78/20 97/15 98/23 100/11 101/15 102/2 102/6 102/16 107/6 107/8 122/14 123/17 126/5</p> <p>shouldn't [3] 29/24 102/10 107/9</p> <p>show [13] 9/12 10/16 12/8 12/10 12/14 24/15 24/16 44/2 51/7 68/20 87/14 124/8 125/18</p> <p>showed [4] 44/4 57/20 93/4 93/9</p> <p>showing [1] 51/11</p> <p>shown [1] 52/14</p> <p>shutting [1] 127/11</p> <p>shy [1] 7/3</p> <p>sic [1] 114/1</p> <p>sick [2] 10/18 12/7</p> <p>side [4] 64/5 76/5 130/4 130/4</p> <p>sides [5] 27/17 101/12 126/2 127/20 127/24</p> <p>Siegler [41] 4/18 7/11 8/9 8/11 8/22 11/9 16/19 17/18 19/17 26/15 41/23 42/18 43/10 47/14 48/12 50/21 63/2 63/8 63/10 63/11 63/15 64/1 64/17 65/20 66/21 67/18 72/15 73/7 88/19 88/19 91/12 92/24 103/12 114/25 120/9 120/19 121/19 122/9 123/20 132/24 141/6</p> <p>Siegler's [2] 50/9 121/20</p> <p>sign [2] 43/21 74/12</p> <p>signed [7] 37/21 38/7 42/6 74/21 74/25 109/14 113/14</p> <p>similarly [1] 59/24</p> <p>simple [1] 60/16</p> <p>simply [1] 39/2</p> <p>simulated [1] 8/4</p> <p>since [14] 6/22 12/3 18/15 19/5 19/6 19/20 22/25 23/2 46/10 57/13 96/9 118/18 118/23 128/12</p> <p>single [2] 10/15 109/20</p> <p>single-line [1] 109/20</p> <p>sir [35] 15/6 15/7 15/10 45/14 55/1 57/16 58/20 61/2 61/7 67/1 71/1 72/2 73/19 74/1 88/7 94/4 99/17 105/1 109/22 110/1 110/19 111/19 111/20 112/18 113/9 115/18 116/20 121/16 122/11 123/2 125/2 132/19 142/21 142/22 146/12</p> <p>sister [1] 103/18</p> <p>sit [3] 39/16 41/4 70/3</p> <p>site [1] 23/21</p> <p>sits [1] 39/6</p> <p>sitting [1] 19/4</p> <p>situation [8] 81/20 97/20 106/20 115/11 117/5 142/4 147/15 147/18</p> <p>six [3] 94/21 128/13 129/17</p> <p>sixth [1] 57/21</p>	<p>slash [4] 85/5 104/23 104/23 121/25</p> <p>slow [1] 38/16</p> <p>small [2] 92/8 130/11</p> <p>smart [5] 61/19 61/21 61/22 90/18 92/12</p> <p>Smith [3] 2/3 85/3 85/7</p> <p>Smoking [1] 110/13</p> <p>snitch [1] 22/8</p> <p>so [133] 7/3 7/5 8/16 10/9 10/13 13/5 17/14 17/17 18/8 18/21 19/8 19/22 20/23 21/24 22/24 23/20 26/8 26/19 28/2 31/7 32/6 32/9 32/20 33/23 34/22 35/7 38/14 38/19 40/12 42/4 42/22 44/18 46/5 48/10 50/16 51/11 51/20 52/10 53/9 55/16 56/7 56/22 58/21 59/10 61/24 62/18 63/25 67/6 68/3 68/18 69/9 69/20 69/21 69/24 70/4 70/7 70/13 70/15 72/3 72/21 74/2 74/6 75/9 76/17 77/4 77/11 77/11 79/5 79/11 79/23 80/15 80/15 80/21 80/24 81/16 81/24 82/10 82/13 83/3 84/7 86/2 86/10 86/20 87/12 89/21 90/8 90/22 91/5 91/11 91/20 92/1 92/4 92/6 92/18 95/1 95/20 96/2 97/20 101/4 102/9 102/18 103/21 104/21 105/12 107/6 108/14 111/3 111/9 116/1 117/13 117/19 118/14 119/6 119/21 122/22 124/13 128/13 128/23 129/23 132/21 133/3 135/12 136/2 136/16 137/24 139/3 141/10 141/16 141/22 142/5 144/17 144/24 145/17</p> <p>social [3] 67/20 68/13 68/13</p> <p>socialization [1] 64/19</p> <p>socialize [1] 68/19</p> <p>Soft [2] 16/3 95/14</p> <p>software [5] 23/16 23/17 24/1 24/5 84/10</p> <p>sold [1] 10/8</p> <p>solely [1] 103/22</p> <p>some [60] 9/7 11/12 12/12 12/13 15/25 18/24 22/7 24/2 27/4 29/4 29/6 31/12 34/23 35/10 35/24 40/16 45/6 49/18 50/12 51/9 57/20 62/11 63/5 63/6 64/19 65/16 68/17 69/22 70/11 71/25 74/14 74/19 74/24 75/10 75/12 78/6 81/5 82/4 82/9 84/24 88/13 88/13 89/23 93/14 93/15 93/16 93/20 100/25 104/22 105/18 123/11 125/7 126/8 130/7 130/9 133/11 133/19 146/14 147/11 147/12</p> <p>somebody [16] 22/8 23/11 24/16 29/22 34/12 44/5 65/7 74/6 76/4 87/24 98/15 111/12 113/21 115/9 145/17 146/23</p> <p>somehow [2] 19/9 114/15</p> <p>someone [24] 9/9 19/24 26/11 38/10 41/4 44/2 48/18 58/17 83/12 84/3 84/9 92/6 97/15 97/24 98/12 102/11 114/19 114/21 139/9 139/10 139/12 139/15 144/13 147/6</p> <p>something [47] 15/23 19/25 25/5 29/20 30/2 38/12 38/20 38/24 39/8 41/16 43/19 44/5 45/2 45/3 45/3 48/20 49/2 70/5 80/8 80/11 82/17 82/19 82/24 83/21 84/23 86/23 86/25 90/16 90/20 95/17 98/12 99/11 101/1 101/2 101/20 107/15 114/14 115/2 120/23 122/17 122/19 124/19 133/8 140/23 141/6 146/5 147/19</p> <p>sometime [1] 91/9</p> <p>sometimes [11] 10/5 12/23 39/19 44/5 60/17 69/25 69/25 113/11 113/17 116/19 130/21</p> <p>somewhere [2] 14/5 67/23</p> <p>soon [4] 16/10 78/10 93/12 129/14</p> <p>sorry [11] 13/8 16/19 27/21 41/2 45/12 102/13 105/5 117/8 126/21 140/14 142/24</p> <p>sort [6] 18/24 35/25 84/24 97/22 109/6</p>	<p>126/8</p> <p>sound [1] 146/7</p> <p>sounds [3] 50/10 88/1 131/2</p> <p>source [6] 20/16 52/4 88/20 103/22 111/25 112/1</p> <p>sources [17] 16/10 16/14 20/12 88/22 89/1 89/7 89/16 90/12 90/14 90/17 90/19 92/12 92/23 92/24 95/21 96/3 96/14</p> <p>Southern [1] 81/14</p> <p>speak [4] 51/15 51/23 119/22 147/2</p> <p>speaking [9] 17/17 17/22 21/16 21/21 40/1 83/25 126/1 127/20 127/24</p> <p>special [20] 11/13 11/16 25/25 35/11 35/16 35/22 38/1 38/2 47/1 65/8 86/19 91/10 100/9 104/24 105/8 105/15 106/4 108/7 135/9 145/10</p> <p>specific [10] 19/4 20/16 20/24 23/4 23/21 41/22 42/12 48/15 50/23 128/4</p> <p>specifically [14] 21/23 26/19 26/20 34/18 43/4 52/3 66/20 85/7 86/23 105/11 112/25 122/16 129/19 132/25</p> <p>specifics [1] 55/13</p> <p>speculate [1] 46/3</p> <p>spell [1] 26/17</p> <p>spelling [1] 46/4</p> <p>spent [1] 61/3</p> <p>spoke [2] 51/25 55/20</p> <p>spoken [1] 126/24</p> <p>spot [1] 95/14</p> <p>squad [1] 101/2</p> <p>stabbing [1] 8/4</p> <p>stack [2] 130/23 130/24</p> <p>Stan [2] 44/23 121/6</p> <p>stand [8] 27/19 28/12 28/18 101/15 102/2 132/1 132/3 132/7</p> <p>standard [1] 113/12</p> <p>standby [2] 74/14 74/19</p> <p>Stanley [2] 2/7 6/14</p> <p>start [5] 13/25 57/15 97/12 103/21 122/22</p> <p>started [23] 7/2 10/6 10/14 13/11 13/22 13/24 14/4 16/11 49/10 58/2 59/1 62/3 64/13 66/7 68/12 68/24 69/15 70/12 70/24 80/2 80/8 82/23 91/2</p> <p>starting [6] 63/8 94/12 95/20 100/17 104/9 109/20</p> <p>startling [1] 34/1</p> <p>starts [5] 35/4 104/12 104/13 104/18 115/22</p> <p>StatCounter [4] 23/17 24/1 24/11 84/11</p> <p>state [25] 2/6 6/11 15/4 16/9 18/13 20/19 22/3 22/7 24/20 30/1 31/21 33/17 44/20 46/6 46/14 49/17 56/22 61/5 62/13 63/14 70/7 114/7 124/11 149/1 149/5</p> <p>STATE'S [6] 4/5 28/22 114/1 121/5 121/13 121/24</p> <p>stated [2] 112/21 143/3</p> <p>statement [24] 5/6 18/21 19/6 28/4 28/6 30/5 34/3 45/19 78/18 112/7 116/3 119/1 119/8 119/10 132/4 132/7 133/22 134/1 134/3 134/10 134/17 136/10 138/21 139/1</p> <p>statements [5] 78/13 113/2 119/3 119/18 143/6</p> <p>states [1] 126/23</p> <p>stating [2] 19/15 55/14</p> <p>Station [1] 58/10</p> <p>statutory [1] 119/9</p> <p>stay [1] 59/2</p> <p>steak [1] 68/15</p> <p>steaks [1] 68/16</p> <p>steam [1] 80/14</p> <p>stenotype [1] 1/18</p>
--	--	--

<p>S</p> <p>Steve [21] 21/5 21/8 27/8 31/3 31/6 31/10 37/4 37/13 90/12 96/19 96/22 106/8 106/24 112/12 114/19 124/4 124/14 127/4 128/3 136/24 139/4 still [17] 8/22 18/5 18/6 31/19 33/12 33/13 34/22 35/3 38/8 39/3 46/10 79/4 79/25 96/4 104/6 118/4 142/1 stone [1] 8/19 stop [10] 10/21 19/3 24/14 25/23 63/16 73/15 82/1 90/22 128/1 129/20 stopped [1] 108/3 store [1] 24/13 stories [2] 53/1 69/17 story [3] 14/3 73/13 96/16 straddled [1] 8/8 straight [2] 130/17 130/19 straight-up [2] 130/17 130/19 strange [1] 139/24 street [1] 114/11 stretch [1] 108/21 strictly [1] 68/2 string [1] 126/16 stuff [8] 9/16 34/21 52/16 57/22 60/9 60/10 86/21 96/17 stunned [1] 6/14 styled [1] 149/10 subbed [1] 12/7 subject [1] 119/15 subpoenaed [1] 50/12 substantiates [1] 116/16 subvert [1] 126/8 successfully [1] 43/13 such [4] 80/9 121/2 121/14 121/24 sufficiency [1] 115/8 sufficient [4] 114/1 115/4 115/12 118/4 suggest [1] 123/16 suggesting [1] 29/23 Suite [1] 2/10 summarize [1] 126/23 summary [4] 48/10 49/16 51/9 51/11 summer [1] 135/23 Sunday [1] 147/11 super [2] 48/13 144/16 supervise [1] 7/15 supervises [1] 91/18 Supplement [1] 4/21 support [5] 78/2 79/12 113/20 115/5 118/4 supporting [2] 78/10 96/17 supposed [3] 70/3 78/1 106/21 supposedly [2] 22/10 78/4 suppress [1] 119/4 Suppression [1] 47/23 sure [23] 7/20 7/22 18/12 20/10 26/24 34/11 34/12 42/23 47/3 71/13 74/15 88/10 96/25 119/3 126/22 131/21 133/12 133/14 135/25 139/6 140/20 142/14 145/21 surely [1] 25/1 surmise [1] 19/14 surmising [1] 46/18 surprise [9] 32/22 39/6 62/17 90/7 125/13 125/16 127/12 135/17 137/10 surprised [4] 21/23 21/25 82/10 90/9 surveillance [2] 24/13 24/13 survivors [1] 10/23 Susan [13] 7/17 8/3 11/13 11/15 69/3 70/2 70/8 70/16 71/1 71/2 71/17 72/11 90/8 susceptible [1] 19/2 suspect [16] 33/19 38/11 38/21 38/25</p>	<p>39/6 39/8 39/14 39/21 56/11 119/22 120/3 140/4 140/24 140/25 146/17 147/2 suspicion [1] 39/22 Sussman [10] 63/12 63/16 63/22 64/15 64/24 65/14 65/15 65/19 67/20 68/2 Sustained [1] 142/17 Sutton [2] 87/22 87/23 sworn [2] 6/7 56/2 Sylvia [4] 58/1 58/1 58/2 58/4</p> <p>T</p> <p>T.Wilson [1] 4/9 take [4] 28/9 115/19 125/20 138/9 taken [3] 48/25 49/3 136/17 taking [5] 45/5 60/17 79/23 80/9 119/8 talk [28] 9/6 9/16 16/24 17/4 17/4 20/4 32/2 39/3 39/16 40/5 43/20 45/7 45/7 49/6 49/8 53/11 59/15 64/12 86/17 93/22 104/8 116/17 118/20 120/3 137/22 138/21 139/5 147/8 talkative [1] 144/16 talked [13] 16/25 49/11 51/7 54/17 55/3 60/1 98/6 106/2 109/10 118/8 120/7 137/21 143/1 talking [26] 17/20 27/16 34/8 40/3 49/21 53/25 55/25 59/16 67/5 71/1 73/6 88/18 88/18 90/10 92/6 95/13 97/14 101/12 105/12 127/21 129/18 130/13 135/21 135/24 138/15 143/16 talks [4] 21/25 39/7 114/8 119/15 tally [2] 84/17 84/18 task [1] 26/6 taxpayers' [1] 21/3 TDCJ [1] 24/21 team [3] 82/4 82/25 108/20 tease [1] 68/22 tech [1] 85/8 tech-savvy [1] 85/8 technically [1] 56/5 Technology [1] 85/24 Ted [1] 66/24 teen [1] 110/4 teenagers [4] 33/20 34/3 37/22 42/7 teens [2] 44/12 110/16 Telephone [3] 2/5 2/11 149/24 television [1] 8/24 tell [41] 16/14 23/3 25/7 26/7 29/11 33/23 35/16 36/23 37/24 40/11 42/23 46/1 47/17 50/8 50/19 51/13 51/24 54/17 54/20 60/13 63/7 69/18 70/23 81/20 84/24 85/12 90/19 100/16 102/9 103/15 107/3 108/14 122/23 124/25 132/5 134/7 134/14 134/15 136/20 136/23 137/2 telling [16] 17/6 26/13 26/16 32/9 32/25 43/4 51/3 84/5 102/15 105/16 105/17 113/13 122/22 137/3 137/4 141/23 TEMPLE [36] 1/4 14/19 15/20 17/24 18/14 18/23 19/4 19/9 19/11 22/6 22/9 24/20 25/1 25/24 26/12 26/25 33/19 41/24 48/18 52/22 55/12 62/9 90/4 96/4 96/8 96/10 99/14 106/14 110/5 115/10 115/15 124/5 124/17 127/24 135/22 143/15 Temple's [10] 27/18 28/12 31/21 37/22 46/10 101/15 103/1 110/10 132/17 133/4 ten [1] 53/12 tender [3] 15/4 49/15 124/10 tendered [1] 131/17 tends [1] 56/7 tenure [2] 76/13 114/20 term [8] 52/23 52/25 88/6 91/24 93/16 95/5 95/7 135/20 terminate [1] 83/2</p>	<p>terminated [1] 56/25 terminology [1] 28/21 terms [5] 61/21 64/13 77/16 108/21 136/19 terrible [2] 10/5 84/2 testified [2] 6/7 125/25 testify [1] 126/16 testifying [1] 52/3 testimony [7] 48/11 48/23 49/5 110/8 114/9 124/2 135/3 testing [1] 87/4 TEXAS [15] 1/6 1/17 2/5 2/6 2/10 29/22 56/22 58/11 70/8 81/14 149/1 149/5 149/21 149/23 149/24 texted [2] 22/19 22/22 than [20] 22/9 34/9 34/14 34/16 43/16 43/18 43/20 61/3 69/6 72/19 84/15 91/12 91/16 95/7 102/11 113/18 116/18 119/4 128/9 140/18 thank [23] 15/7 15/10 15/12 41/9 57/5 57/10 59/19 67/10 92/11 94/10 108/1 111/20 112/1 122/25 123/2 126/20 142/18 142/22 146/9 146/10 147/23 148/1 148/2 that [901] that's [77] 9/6 10/3 10/12 11/8 19/14 20/18 26/8 26/21 28/4 29/3 31/1 32/12 33/15 33/25 35/7 35/12 39/12 40/21 42/4 42/11 44/16 44/19 46/18 48/5 52/13 53/1 53/15 57/5 57/23 65/18 68/5 68/8 68/23 68/25 70/7 70/18 74/10 76/25 77/21 78/21 79/5 79/14 80/11 81/15 82/3 84/4 85/17 89/20 91/19 93/8 95/15 96/9 97/8 99/13 103/23 110/5 110/7 110/19 110/21 112/14 115/15 116/25 117/12 117/23 123/14 123/19 128/22 129/4 129/13 130/11 135/24 137/18 139/20 140/17 141/17 142/25 147/19 their [19] 13/16 35/20 35/21 45/4 45/18 46/8 46/9 82/23 83/12 83/23 85/25 87/18 98/21 99/17 103/18 116/2 132/6 135/25 143/7 them [50] 10/19 14/15 14/17 14/25 15/1 22/17 22/18 26/7 29/15 29/16 33/1 33/4 38/24 39/7 40/1 43/20 49/17 50/17 57/2 58/5 60/17 60/19 65/4 69/21 69/22 69/22 75/13 83/11 90/2 90/3 90/9 101/1 103/10 103/20 105/8 108/14 108/22 119/15 119/16 123/11 130/7 130/16 130/20 132/6 132/15 140/12 140/15 146/4 146/24 147/11 themselves [4] 72/9 83/10 97/20 139/15 then [46] 10/13 10/18 12/8 13/24 17/13 20/8 22/25 25/1 29/19 40/6 41/16 44/12 45/2 48/25 49/9 51/4 51/20 53/17 53/23 68/1 70/2 70/13 77/18 78/10 79/6 79/7 79/19 80/12 82/4 82/19 85/16 87/24 92/5 93/10 93/17 94/13 96/16 100/3 105/2 106/20 110/4 110/16 117/1 118/20 134/23 142/11 theoretically [1] 106/16 there [110] 9/15 12/14 14/5 18/5 18/6 19/3 20/3 22/20 25/1 25/3 25/20 28/7 29/7 29/8 29/17 35/24 36/25 38/3 39/2 40/20 41/6 43/11 43/12 46/3 50/20 52/20 53/5 55/5 55/6 58/11 58/13 59/23 60/13 60/24 62/23 64/19 64/20 66/22 67/3 67/20 68/15 69/12 70/10 70/11 71/11 71/12 71/14 72/18 72/20 73/15 73/20 74/6 74/11 74/17 74/19 75/17 76/4 77/24 78/8 80/24 81/6 82/1 83/17 85/9 87/23 87/24 90/22 93/19 94/5 94/12 94/15 95/10 96/16 97/23 98/5 98/6 100/17</p>
--	---	--

<p>T</p> <p>there... [33] 101/8 102/23 103/1 104/11 104/19 105/13 105/19 107/5 109/1 109/2 111/3 111/6 112/11 112/16 113/15 114/12 115/3 115/10 116/8 116/11 116/12 117/5 117/10 119/24 123/16 127/1 127/6 127/10 129/4 129/20 131/2 131/12 145/7</p> <p>there's [24] 12/15 18/6 18/25 24/1 42/1 51/3 51/13 52/25 96/15 97/18 97/20 98/10 98/10 98/15 106/22 107/4 107/5 109/20 114/12 116/15 120/5 126/15 131/20 133/8</p> <p>therefore [1] 56/7</p> <p>therein [1] 112/21</p> <p>theretofore [1] 134/1</p> <p>these [28] 14/18 15/3 19/22 23/11 34/14 42/21 50/23 51/14 52/18 52/23 53/1 69/2 69/19 84/6 86/2 88/13 93/2 93/23 102/10 102/17 108/18 133/4 138/20 138/25 139/5 139/19 141/17 146/3</p> <p>they [104] 10/7 10/8 10/8 10/12 13/17 20/5 23/12 23/14 23/14 23/21 25/21 28/13 28/20 28/22 28/25 29/14 29/21 32/24 33/5 33/5 34/12 34/20 35/19 36/11 36/13 38/4 38/9 38/10 38/11 38/11 38/13 38/14 38/25 39/2 39/3 39/5 40/5 41/16 43/12 43/13 44/9 45/2 45/3 45/5 46/15 46/19 46/20 46/20 46/22 46/25 48/22 56/18 63/13 63/17 63/19 63/20 63/25 64/18 64/19 65/1 65/5 69/5 69/21 74/15 76/15 76/16 82/4 82/5 83/1 83/15 83/22 83/22 83/25 86/13 86/25 87/1 87/2 88/25 89/4 89/16 94/21 97/2 97/19 99/10 99/11 99/24 101/4 103/11 103/19 119/1 119/17 121/1 122/3 123/12 124/18 124/20 132/7 135/25 136/2 136/4 136/6 138/6 140/12 143/7</p> <p>they'll [1] 41/7</p> <p>they're [5] 23/10 28/24 103/16 105/21 124/16</p> <p>they've [2] 39/23 141/5</p> <p>thing [6] 36/2 52/22 55/3 97/19 98/3 145/6</p> <p>things [15] 44/6 59/20 60/7 72/18 73/1 82/9 87/4 93/16 101/3 102/8 107/6 121/16 121/17 130/8 146/14</p> <p>think [81] 7/3 7/20 10/1 10/4 10/20 10/24 17/12 18/25 19/1 19/11 19/15 21/24 22/1 24/18 25/3 25/22 26/7 29/11 29/14 31/4 35/18 36/23 37/11 38/24 41/14 41/15 44/9 46/24 47/9 54/22 55/14 55/18 57/5 59/21 63/24 65/5 65/15 67/6 70/3 72/9 79/7 81/13 82/25 83/17 90/6 91/25 92/4 92/4 95/23 97/8 97/11 97/19 98/2 98/5 99/21 99/25 102/22 103/19 106/4 107/13 108/10 108/17 109/16 115/3 118/8 121/16 122/13 122/20 127/5 127/8 128/8 128/12 131/11 131/16 141/10 141/13 145/2 145/3 145/5 145/8 145/24</p> <p>third [5] 23/25 66/9 84/10 100/15 100/16</p> <p>third-party [2] 23/25 84/10</p> <p>this [167]</p> <p>thorough [2] 8/16 8/21</p> <p>those [27] 16/14 34/2 37/11 42/14 43/19 45/4 48/20 53/1 59/12 59/13 64/23 64/25 78/13 91/20 93/20 98/4 119/5 119/18 121/17 123/8 123/21 124/21 128/2 130/8 143/6 147/4 147/21</p> <p>though [4] 38/17 86/3 91/11 117/25</p> <p>thought [17] 12/6 25/5 32/3 33/5 33/8 36/9 36/13 38/12 46/20 75/2 78/7 87/8</p>	<p>106/3 120/25 127/19 145/12 146/18 threatened [2] 133/19 143/2</p> <p>threats [1] 143/12</p> <p>three [14] 44/12 45/13 45/16 46/5 52/14 52/18 52/23 53/1 83/10 94/5 110/15 123/14 143/16 145/1</p> <p>through [22] 14/22 18/9 22/14 23/25 24/22 50/16 50/25 52/17 58/1 68/2 70/1 87/4 87/17 88/12 99/19 101/3 103/11 106/25 131/23 133/3 141/11 145/10</p> <p>throwing [3] 44/13 110/18 111/13</p> <p>thrown [1] 54/22</p> <p>tied [1] 8/8</p> <p>ties [1] 98/4</p> <p>time [88] 10/5 15/2 16/21 21/17 21/22 22/16 22/24 25/12 25/14 28/9 31/4 36/12 37/7 37/22 41/17 47/20 49/1 49/7 51/19 52/8 54/13 54/25 55/2 55/20 56/9 56/17 57/14 57/20 58/21 58/25 59/1 59/2 60/18 61/4 61/4 62/3 63/1 63/5 63/6 63/10 63/11 64/14 66/23 67/24 69/2 69/7 69/11 70/23 71/5 71/7 71/11 72/22 73/18 74/3 77/24 81/5 81/7 81/8 85/11 85/22 89/23 90/24 91/5 91/5 92/2 94/22 96/18 96/21 98/21 101/5 106/17 106/19 108/16 109/5 113/1 115/2 118/14 121/7 121/25 122/21 129/13 130/3 131/5 135/19 135/20 143/7 143/7 146/1</p> <p>timely [2] 130/1 132/24</p> <p>times [3] 95/8 109/2 140/6</p> <p>tip [1] 146/16</p> <p>title [1] 47/14</p> <p>titled [1] 1/15</p> <p>titling [1] 86/20</p> <p>TNT [2] 10/8 10/13</p> <p>today [5] 14/23 46/6 52/15 57/10 102/15</p> <p>Todd [7] 71/18 71/21 71/22 71/24 72/5 72/9 72/14</p> <p>toe [1] 135/16</p> <p>together [14] 7/18 33/24 67/25 68/14 68/15 70/9 73/1 98/20 98/21 101/2 101/4 101/5 107/9 109/3</p> <p>told [32] 16/15 16/17 21/8 22/20 26/8 28/16 31/7 32/20 35/13 43/11 44/17 49/2 49/5 54/10 55/7 82/5 82/11 84/16 86/16 88/4 92/19 103/10 106/19 121/13 122/12 130/23 136/4 137/6 140/12 140/15 140/15 146/1</p> <p>tolerate [1] 69/21</p> <p>ton [3] 76/15 86/1 141/20</p> <p>tone [1] 111/2</p> <p>too [8] 13/16 20/22 37/14 45/10 65/12 90/18 92/12 110/21</p> <p>took [3] 16/10 78/19 93/23</p> <p>top [2] 100/15 112/12</p> <p>total [1] 149/16</p> <p>totally [1] 30/6</p> <p>toto [1] 48/10</p> <p>touch [1] 32/20</p> <p>toward [1] 66/3</p> <p>towards [4] 22/3 22/18 127/6 127/10</p> <p>town [1] 147/13</p> <p>track [2] 10/5 90/20</p> <p>traffic [2] 60/7 146/20</p> <p>transcription [1] 149/7</p> <p>transition [2] 82/4 82/25</p> <p>treated [1] 55/16</p> <p>treatment [2] 25/25 100/9</p> <p>trial [53] 1/2 4/14 7/18 8/12 8/17 18/14 44/22 47/20 59/2 59/6 59/22 59/24 60/11 61/4 61/6 63/1 64/8 66/5 66/7 70/4 70/16 71/6 71/7 71/8 71/9 72/7 72/17 78/7 78/8 78/14 78/18 79/2 79/3 90/4 90/8 98/2</p>	<p>102/1 121/7 121/25 128/19 128/21 128/21 128/23 129/2 131/3 131/4 131/6 131/8 131/17 141/11 141/21 141/24 143/8</p> <p>tried [7] 7/18 7/19 40/16 43/19 63/25 66/9 91/12</p> <p>trio [1] 33/20</p> <p>trouble [2] 90/21 145/6</p> <p>true [8] 51/14 51/16 57/23 60/25 129/25 132/8 138/14 149/7</p> <p>truly [1] 149/14</p> <p>Trust [1] 24/10</p> <p>try [13] 10/4 27/24 38/1 66/19 67/6 68/14 68/17 69/20 70/6 70/10 101/17 114/23 119/22</p> <p>trying [30] 10/1 21/6 22/23 25/3 29/1 31/1 37/20 42/6 43/12 43/20 46/7 63/13 67/22 68/20 72/3 80/16 84/7 86/6 95/11 102/7 102/9 105/21 114/15 114/21 116/10 124/5 124/16 124/18 124/20 145/4</p> <p>turn [4] 29/14 114/15 129/10 130/1</p> <p>turned [3] 38/13 78/11 134/13</p> <p>turning [1] 129/5</p> <p>two [21] 10/20 16/8 18/11 24/19 26/21 33/11 34/14 35/7 35/12 45/16 55/3 63/20 87/21 94/5 95/24 102/6 102/7 115/19 127/22 127/23 139/19</p> <p>type [6] 47/7 93/12 100/9 100/10 128/4 144/16</p> <p>types [2] 91/20 120/5</p> <p>U</p> <p>U.S [3] 65/16 81/12 81/13</p> <p>Uh [4] 11/25 13/8 56/19 56/21</p> <p>Uh-huh [4] 11/25 13/8 56/19 56/21</p> <p>ultimately [14] 72/11 73/24 74/21 77/9 79/5 79/15 82/5 82/25 83/23 86/10 87/4 90/20 92/1 143/12</p> <p>uncommon [1] 51/23</p> <p>under [29] 30/2 30/12 30/17 30/19 30/24 39/21 53/12 56/3 59/17 59/17 59/18 59/19 59/21 66/11 66/12 66/13 76/13 76/13 82/11 83/16 95/25 106/19 108/5 124/15 124/20 124/21 129/23 133/22 133/23</p> <p>underhanded [2] 25/6 146/4</p> <p>underhandedly [1] 145/20</p> <p>undermine [3] 27/24 101/17 101/24</p> <p>undermined [1] 101/23</p> <p>understand [11] 24/18 29/4 36/11 38/19 48/10 84/7 113/10 140/1 145/21 145/23 147/20</p> <p>understanding [20] 23/24 38/6 38/15 45/6 62/23 62/25 79/4 80/16 83/1 86/15 103/9 109/15 111/9 111/11 115/17 117/18 118/12 118/15 124/4 124/14</p> <p>understatement [1] 7/8</p> <p>understood [5] 9/7 9/20 29/6 29/8 111/6</p> <p>unfair [2] 120/14 133/8</p> <p>unfairly [1] 55/17</p> <p>unit [8] 86/19 87/1 87/16 87/23 98/25 99/9 134/19 134/21</p> <p>University [1] 58/12</p> <p>unless [2] 122/14 145/12</p> <p>unlimited [1] 27/7</p> <p>unquote [3] 34/4 35/22 108/20</p> <p>unsigned [1] 112/6</p> <p>until [13] 12/3 32/1 64/13 73/12 81/1 81/1 81/3 82/13 107/23 109/5 127/13 128/20 131/8</p> <p>untuned [1] 8/20</p> <p>unusual [1] 17/3</p>
---	--	---

U
up [48] 8/8 8/17 9/17 13/20 19/15 20/13
23/2 25/12 25/24 28/5 31/22 38/10 38/13
41/14 43/8 44/21 46/13 52/23 53/1 53/2
57/20 66/12 68/21 69/6 72/21 73/12 75/6
76/14 77/24 79/24 80/13 85/15 86/3 96/3
102/1 103/5 119/14 122/18 122/21 126/4
127/13 128/1 130/17 130/19 130/22
143/14 147/11 147/11
upon [10] 50/12 62/19 79/9 85/1 86/12
89/6 99/25 101/24 103/14 103/20
upper [2] 35/20 99/18
upset [8] 30/13 30/23 31/10 31/16 31/19
31/20 55/12 131/15
upsetting [1] 114/24
us [12] 6/12 16/14 29/11 46/6 49/5 54/17
58/6 69/21 98/2 113/13 132/5 134/15
use [4] 17/10 23/16 23/17 146/23
used [6] 11/5 11/21 76/10 83/9 84/10
105/7
uses [2] 12/19 38/20
using [2] 74/7 83/12
usually [6] 60/20 93/20 116/18 116/21
121/17 122/13

V
V.Dire [5] 3/8 3/12 3/15 3/20 4/2
v4 [14] 3/21 3/21 3/22 3/22 3/22 3/22
3/23 3/23 4/3 4/3 4/3 4/3 4/4 5/5
vacation [1] 60/4
vague [1] 33/7
validates [1] 114/25
Vanessa [2] 69/1 69/4
vast [3] 48/13 85/21 86/2
Velasquez [2] 69/1 69/5
verbally [2] 19/25 20/2
verbiage [1] 43/22
verified [1] 93/16
Verizon [1] 85/23
verses [1] 82/23
version [1] 84/14
versus [1] 118/1
very [53] 10/10 11/9 12/15 12/16 13/14
13/18 18/16 18/18 19/2 20/19 21/12
21/18 21/18 25/14 27/25 36/2 37/15
37/17 45/9 60/16 61/19 61/19 63/10
65/22 65/25 68/13 70/20 70/25 73/2 74/5
74/25 75/10 76/19 83/11 83/11 83/11
92/8 92/10 92/11 92/14 92/15 93/24
94/19 100/16 101/17 102/22 102/25
107/1 110/20 120/12 126/23 134/21
142/11
via [1] 46/9
Vic [2] 63/15 64/1
victim's [1] 104/2
video [2] 5/6 24/13
viewed [1] 84/17
virtually [3] 48/11 98/21 135/19
visit [4] 136/20 137/2 137/5 146/2
voice [1] 53/10
volume [5] 1/1 3/2 131/5 131/16 149/9
VOLUMES [1] 1/1
voluntarily [2] 119/2 119/19
volunteered [1] 8/8
vote [3] 77/13 77/18 80/7
votes [1] 77/19

W
wagon [1] 57/19
wait [5] 32/1 42/9 120/2 129/20 136/8
waited [1] 93/16
wake [1] 80/10
Waldo [1] 95/11

walk [1] 86/14
walked [1] 72/20
walks [2] 24/20 24/22
want [27] 7/21 9/6 13/20 21/7 22/17
25/23 30/14 44/4 45/1 46/21 53/5 70/5
71/10 83/20 83/22 83/25 84/3 86/17 91/8
94/1 96/24 107/3 109/1 115/18 131/22
132/12 147/13
wanted [15] 35/20 35/21 38/9 67/3 69/16
69/17 69/17 70/10 74/18 78/14 80/11
80/15 102/20 111/5 122/3
wanting [1] 19/2
war [2] 69/17 75/6
Ward [6] 71/20 71/21 71/22 71/25 72/5
72/15
Warner [1] 85/23
warning [1] 83/24
warrant [60] 37/25 38/5 38/7 38/15 38/20
39/1 39/4 39/10 39/15 39/24 40/11 40/17
40/21 41/11 41/11 41/12 41/23 43/1 43/3
43/11 43/15 43/23 44/3 44/3 109/11
109/13 109/24 110/3 110/9 111/4 111/6
112/8 112/22 113/14 114/2 114/15 115/8
115/12 116/18 116/18 116/19 116/21
117/5 117/7 117/10 117/11 117/21
117/23 118/1 118/2 118/8 118/11 118/14
118/17 119/15 120/2 127/7 127/10
146/17 146/18
warrants [9] 37/21 42/6 118/20 146/19
146/20 146/23 147/4 147/7 147/13
was [426]
wash [2] 35/20 35/21
wasn't [23] 25/21 31/21 32/25 57/25
64/10 71/14 80/24 81/3 83/6 88/3 88/10
95/5 99/4 99/6 99/9 102/23 103/4 123/13
123/20 126/12 127/21 142/12 144/17
water [1] 18/8
way [16] 26/5 39/12 42/1 50/16 59/1
59/22 72/21 78/17 95/4 99/10 100/8
108/18 120/6 130/12 134/16 135/14
ways [1] 147/21
we [71] 7/18 8/6 8/24 9/18 10/6 10/13
17/4 18/17 19/16 21/19 23/1 24/21 30/25
35/2 35/4 40/5 40/6 40/9 42/4 47/10 49/8
49/8 49/10 49/10 50/25 53/9 55/14 56/2
56/2 57/12 59/16 60/14 60/15 64/10
64/11 64/18 67/24 68/19 68/22 68/24
69/14 69/15 69/16 69/17 69/17 69/18
69/20 69/21 69/24 70/1 70/12 71/1 73/2
90/22 107/18 108/3 113/11 115/15
116/19 117/23 127/5 127/6 127/8 127/9
128/20 133/3 138/15 140/18 142/9
144/25 146/20
We'll [2] 25/8 107/22
we're [15] 8/2 8/6 16/23 28/9 33/12 34/22
35/3 53/13 80/12 80/12 92/6 128/13
130/13 132/18 141/22
we've [6] 22/1 27/17 47/9 124/1 128/1
137/21
website [4] 23/19 52/17 80/5 84/17
Wednesday [4] 68/15 68/16 94/17 94/19
week [4] 13/11 13/12 42/25 109/24
weekend [2] 40/16 41/13
weights [1] 48/20
weird [1] 75/21
welcome [1] 57/19
well [71] 13/7 13/13 14/20 15/25 16/6
17/22 18/25 19/18 19/24 22/19 22/22
23/16 24/3 25/10 25/20 25/20 26/5 28/5
28/8 31/18 34/9 39/2 39/18 43/5 43/8
44/16 46/24 49/4 50/14 50/25 51/9 52/17
55/5 55/18 56/6 57/10 66/13 67/22 69/14
73/5 74/2 77/7 79/5 84/1 84/3 88/9 96/14

96/15 97/11 97/18 98/5 98/19 103/21
106/16 108/17 113/23 115/3 116/14
127/12 127/19 131/15 132/8 134/20
135/20 137/17 137/19 137/21 140/17
140/23 140/25 142/11
went [7] 58/9 58/10 58/12 70/16 84/13
136/20 137/2
were [138] 7/16 7/23 16/15 16/20 20/3
21/6 21/16 21/21 22/15 25/21 26/8 28/20
28/22 29/22 31/22 33/24 34/12 34/15
34/20 37/2 38/4 42/4 43/12 44/9 44/23
44/23 45/2 45/3 46/11 46/17 46/22 47/4
48/22 49/18 50/19 52/23 53/2 53/25 55/5
56/2 56/2 57/19 58/15 59/24 60/6 60/24
61/15 62/19 63/13 63/19 64/5 64/14
64/14 64/16 64/18 64/19 64/21 65/5 67/7
67/17 67/24 68/19 69/5 69/6 69/7 69/24
70/25 71/2 71/3 71/12 71/12 71/25 74/11
74/12 74/17 74/19 76/1 77/24 79/25
80/16 83/8 83/15 85/24 86/7 86/18 87/1
87/8 88/2 88/18 89/16 90/10 92/22 92/24
93/11 93/15 95/13 99/11 99/24 101/6
102/23 103/5 103/5 103/7 103/11 104/1
108/4 108/19 108/20 113/2 115/10 121/3
124/18 124/20 125/10 128/3 128/15
129/1 129/8 131/3 131/25 132/7 133/18
134/18 135/25 136/2 136/6 136/6 136/12
138/25 140/8 140/22 141/1 142/11 143/5
143/11 143/13 143/19 149/12
weren't [5] 36/11 36/13 45/5 70/24 102/6
what [136] 9/6 10/12 12/7 17/5 18/15
19/2 19/14 19/16 20/5 24/21 24/24 25/3
25/8 25/11 25/14 25/21 26/8 26/12 26/15
26/19 26/20 28/3 28/6 28/23 28/25 29/11
29/17 29/21 30/4 30/20 30/21 31/1 31/22
32/9 32/10 32/23 32/24 33/1 33/2 33/11
33/14 34/20 36/13 36/23 36/23 37/24
38/5 40/7 40/24 44/17 44/21 47/17 47/19
49/21 51/11 53/25 54/17 55/9 56/3 56/4
58/15 59/17 60/10 60/13 61/18 61/22
61/24 62/10 64/3 71/5 73/3 80/3 81/20
82/21 83/17 83/21 84/25 85/22 86/6
86/12 88/8 89/10 91/6 96/21 97/15 97/22
98/1 98/5 98/6 98/18 101/24 103/4 103/7
103/23 104/2 104/6 105/12 105/14 107/1
107/2 110/5 110/18 110/21 111/23 113/6
113/13 115/15 116/8 116/19 122/13
122/22 124/4 124/25 125/18 127/14
128/4 129/19 131/5 131/11 132/5 132/21
133/9 134/7 134/9 134/10 134/14 134/15
134/20 135/24 136/2 136/8 138/23
139/24 145/13 146/5 147/20
what's [13] 27/19 30/4 45/17 47/12 49/15
50/4 53/20 54/3 66/5 124/8 130/5 131/19
145/4
whatever [5] 25/15 28/21 59/10 80/25
85/5
whatnot [1] 109/4
when [81] 7/15 7/19 8/6 9/23 9/23 9/24
12/7 13/21 13/25 14/2 16/18 20/7 22/19
22/23 23/13 23/20 26/6 29/12 32/2 34/19
35/8 38/3 38/20 41/18 42/19 44/22 46/17
47/4 49/10 52/2 55/20 55/25 56/2 58/1
59/15 59/24 60/24 62/15 63/9 64/18 66/7
67/23 68/6 68/10 68/12 68/25 70/2 73/2
73/2 73/6 77/4 82/10 84/9 88/18 88/25
91/12 92/21 94/22 95/12 96/10 100/5
100/11 100/23 104/9 104/14 113/12
118/10 122/18 122/21 128/15 128/23
129/8 129/23 131/25 133/3 134/12 136/4
136/6 136/9 136/12 140/8
whenever [1] 69/21
where [48] 8/3 19/19 20/16 22/11 22/12

W
 where... [43] 27/13 31/24 35/2 44/14
 45/2 45/11 46/22 49/10 59/6 59/7 59/16
 59/17 60/23 61/5 63/7 65/18 66/21 68/23
 70/15 82/2 82/5 86/25 87/1 87/2 93/12
 93/22 96/12 97/25 100/15 101/7 106/21
 106/21 108/3 109/2 113/18 114/10
 118/10 123/19 124/16 125/25 141/19
 142/12 147/10
 Where's [1] 95/11
 Whereas [1] 119/13
 whether [17] 38/9 44/24 51/13 62/8
 64/15 86/7 90/4 90/11 98/12 109/13
 114/11 121/3 129/9 132/24 138/13 139/3
 144/2
 which [30] 9/11 10/10 14/3 16/21 24/1
 27/21 39/12 45/15 60/5 64/5 70/8 77/9
 83/10 85/12 85/22 93/13 94/2 102/22
 108/22 110/10 110/20 112/21 120/8
 121/6 121/12 122/3 124/21 129/18
 138/15 149/11
 while [13] 7/9 12/16 27/19 27/23 67/17
 101/14 119/2 119/17 119/22 129/1 132/7
 140/21 141/1
 who [64] 7/25 8/8 12/24 16/14 16/17
 20/1 21/8 23/6 24/7 32/16 34/2 34/18
 37/3 39/21 39/21 57/24 58/7 58/17 61/12
 64/21 66/17 67/14 69/6 71/16 75/18
 75/18 76/10 77/6 78/2 81/6 81/10 83/8
 83/19 83/20 86/3 86/6 86/10 86/13 87/3
 87/6 90/23 92/6 94/16 94/18 97/7 97/15
 98/7 99/16 100/12 102/4 103/22 110/9
 112/12 119/6 119/14 134/25 135/10
 137/8 137/12 137/15 139/12 139/15
 140/25 146/16
 who's [3] 6/2 135/13 139/10
 whoever [3] 77/19 81/8 89/24
 whole [1] 75/9
 whom [1] 30/8
 whomever [1] 119/7
 whose [1] 34/19
 why [26] 21/14 35/16 44/9 45/24 46/1
 54/20 73/11 83/14 84/1 90/16 95/13
 99/20 100/3 106/3 108/13 108/14 111/1
 114/5 114/18 114/25 114/25 117/23
 120/22 129/17 132/11 136/14
 wife [4] 13/14 58/4 92/15 100/13
 will [7] 41/6 43/9 107/15 118/11 126/16
 147/10 149/18
 Willful [1] 47/23
 willing [2] 25/15 39/16
 Wilson [2] 37/7 37/14
 wish [1] 40/5
 wished [1] 30/2
 Wisner [2] 63/15 64/1
 withhold [1] 129/17
 within [7] 20/25 38/4 48/15 52/25 75/8
 88/5 98/16
 without [3] 85/13 124/19 137/3
 witness [29] 14/9 34/2 34/5 38/21 43/24
 44/11 45/8 49/13 56/20 56/23 57/6 94/7
 110/9 110/14 111/17 114/9 114/24 116/4
 123/1 123/23 132/1 132/1 132/3 133/16
 133/25 137/25 142/19 146/10 147/24
 witness' [3] 45/20 116/5 128/6
 witnesses [5] 3/19 4/1 60/18 132/9
 138/20
 woke [1] 19/15
 woken [1] 23/1
 won [7] 77/6 77/12 77/14 77/16 77/17
 79/12 82/2
 Woodrow's [1] 68/16

word [5] 54/22 69/17 94/13 100/17 105/7
 wording [1] 145/22
 words [11] 30/16 37/11 43/24 85/20
 95/20 101/7 104/9 104/14 104/18 109/21
 115/22
 work [27] 7/10 10/15 10/17 10/17 10/19
 11/1 11/5 11/21 12/10 21/9 31/3 39/13
 47/5 47/7 58/13 61/5 66/11 70/12 76/20
 76/22 77/1 77/4 79/2 82/16 86/19 96/8
 140/8
 worked [7] 6/23 11/9 57/13 70/9 76/18
 98/20 101/4
 working [10] 7/9 63/12 64/15 87/1 87/14
 97/3 102/4 125/11 125/15 125/17
 works [3] 11/12 39/11 84/7
 worried [1] 92/14
 worry [2] 70/13 147/7
 worst [1] 81/2
 worst-kept [1] 81/2
 worth [1] 132/25
 would [147] 7/8 15/3 15/23 16/21 17/17
 17/18 17/22 18/3 19/14 20/4 20/5 20/14
 21/14 22/4 22/13 22/20 22/21 29/19
 30/19 30/21 31/8 31/15 32/21 33/1 33/2
 38/7 39/25 40/5 42/2 44/6 44/8 46/15
 48/13 51/17 51/20 52/11 53/19 54/11
 56/24 56/25 58/2 59/23 60/15 60/24 61/5
 62/17 64/9 64/12 64/18 64/19 64/20
 64/20 64/21 64/23 68/14 68/16 68/17
 68/20 68/22 68/24 69/3 69/20 69/21
 69/24 69/25 71/24 72/8 73/3 74/2 75/15
 78/10 81/23 83/23 85/8 85/19 85/22
 85/25 86/3 86/14 88/6 88/25 89/4 89/23
 90/7 90/9 90/19 91/13 92/1 92/4 92/4
 92/10 92/13 92/19 93/18 93/18 95/1
 100/3 102/13 102/21 106/11 106/12
 107/18 108/14 108/23 109/17 111/21
 113/10 113/15 115/3 115/11 116/1 117/8
 119/8 119/21 120/13 121/14 122/1
 124/22 125/16 126/14 130/25 131/6
 131/9 131/11 131/11 131/20 131/21
 131/22 132/6 133/9 133/9 134/18 134/21
 134/23 135/17 139/9 139/22 141/7 145/2
 145/3 145/5 145/6 145/9 145/11 146/7
 146/16 147/2
 wouldn't [8] 21/24 31/8 64/11 69/25
 92/17 103/19 119/22 133/21
 Wright [15] 7/17 8/3 8/13 11/14 11/15
 69/3 70/2 70/8 70/16 71/1 71/2 71/17
 72/11 90/8 90/8
 writ [13] 1/11 3/3 28/21 45/18 47/21
 116/2 121/5 121/7 121/14 121/25 132/17
 134/20 143/8
 write [10] 80/6 80/11 110/8 122/6 122/10
 122/14 122/16 122/19 122/22 122/24
 writing [11] 13/22 27/1 33/13 33/15 42/19
 82/23 96/24 96/25 104/5 108/17 149/8
 written [6] 30/13 30/23 82/9 82/22 93/20
 132/3
 wrong [6] 10/2 24/24 83/18 101/20
 111/10 124/4
 wrote [14] 14/19 16/5 22/11 22/23 30/7
 30/17 35/8 36/2 41/18 52/16 80/21 104/9
 104/14 118/13

Y
 yeah [42] 7/14 12/5 12/12 12/22 16/23
 17/15 17/20 20/10 21/6 22/1 22/11 23/3
 26/18 27/23 28/8 31/17 39/18 45/21
 45/23 48/9 48/18 52/9 52/14 52/16 53/14
 56/14 56/17 57/13 65/4 65/8 66/1 75/21
 78/4 82/10 92/4 92/13 133/12 137/21
 138/18 139/23 140/9 141/16

year [7] 10/5 10/9 10/9 24/16 66/8 66/9
 74/22
 year-and-a-half [1] 10/9
 years [12] 7/3 7/4 26/21 31/6 31/7 49/4
 70/1 98/21 100/21 128/13 128/14 140/3
 yells [1] 32/2
 Yep [1] 110/20
 yes [196]
 yesterday [1] 18/8
 yet [2] 127/6 127/10
 you [751]
 you'll [1] 107/13
 you're [33] 11/11 18/17 18/25 19/23 21/5
 24/24 28/15 29/23 40/8 44/22 49/21 52/4
 55/25 59/6 59/11 59/15 69/19 82/5 83/17
 83/18 100/5 100/11 100/17 102/9 102/15
 105/12 105/15 105/18 128/8 129/18
 133/4 134/12 141/10
 you've [9] 118/18 118/23 126/4 130/5
 131/7 133/7 141/12 141/24 147/7
 younger [2] 68/18 70/11
 your [131] 6/11 7/13 11/18 14/22 15/2
 15/8 15/18 16/8 17/7 18/3 18/4 18/10
 20/11 23/6 23/21 24/8 24/19 26/22 27/4
 31/2 31/11 32/6 33/9 34/8 34/9 37/17
 40/19 40/23 41/8 42/13 42/16 42/18
 42/20 48/10 48/23 49/5 49/12 51/12
 51/12 51/21 52/3 52/5 52/10 52/17 52/24
 53/3 53/20 56/9 57/2 58/4 58/6 58/8
 58/18 58/21 59/2 59/10 61/4 61/4 63/1
 66/5 67/2 68/4 68/6 68/9 69/11 71/16
 72/18 72/22 77/25 80/7 80/24 81/5 81/20
 83/5 83/8 83/14 83/19 83/23 84/17 85/4
 88/20 88/23 89/6 90/11 90/13 90/17
 92/12 92/23 92/23 94/8 95/23 97/17
 103/22 103/23 107/21 108/6 108/11
 108/16 109/16 111/9 111/10 112/24
 113/24 121/4 123/21 124/2 124/4 124/13
 128/6 128/19 129/3 129/13 130/3 131/1
 131/4 131/18 132/4 132/5 132/9 133/3
 133/8 134/25 135/12 140/3 141/8 141/13
 141/25 143/19 144/6 144/18 147/12
 yours [1] 140/10