

# IMPOUNDED ORIGINAL

VOL.: III  
PAGES: 1-181  
EXHIBITS: 10

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, SS. DISTRICT COURT DEPARTMENT  
OF THE TRIAL COURT

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IN RE: \*  
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\* Docket No. 2112IN000001  
\*  
MICHAEL CONLON \*  
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\* \* \* \* \*

INQUEST DAY 3  
BEFORE THE HONORABLE JEANMARIE CARROLL

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Newton, Massachusetts  
Courtroom - 2nd Session  
December 8, 2021

Written Record Produced By  
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# I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
DR. CHRISTINA STANLEY				
By Mr. Tarrant	11			
By the Court		60		
By Mr. Tarrant			63	
By the Court				64
By Mr. Anderson		66		
By Ms. West		69		
TROOPER DYLAN FINERTY				
By Mr. Tarrant	76			
By Mr. Anderson		95		
By Mr. McDonald		101		
By Ms. West		102		
By Mr. Anderson				107
By the Court		107		
TROOPER CHRISTIAN HOWELL				
By Mr. Tarrant	109			
By Mr. Anderson		122		
By Ms. West		123		
By Mr. Tarrant			125	
OFFICER CHARLES DiCHIARA				
By Mr. Tarrant	125			
By Mr. Anderson		145		
By Ms. West		151		
By Mr. Anderson				169
By Mr. McDonald		172		

## EXHIBITS

24	Autopsy Photo of Jacket.....	25
25	Autopsy Diagram of Torso.....	30
26	Autopsy Diagram of Hands.....	30
27	Autopsy Photo of Neck.....	35
28	Autopsy Photo of Head and Neck.....	35
29	Toxicology Report.....	57
30	Medical Examiner's Report.....	60
31	Photo of Taser Cartridge.....	93
32	Photo of Taser Cartridge.....	94
33	IACP Consensus.....	169

1 [On the record at 9:05:48 a.m.]

2 [Court cry]

3 THE COURT: Thank you.

4 [Case called]

5 THE COURT: Thank you, Mr. Clerk.

6 Good morning, everyone.

7 A.D.A. Tarrant, I think I have a couple of questions with  
8 regard to some information that's been presented and whether you  
9 have answers to a couple of questions.

10 MR. TARRANT: Sure.

11 THE COURT: I have yet to hear anything about the location of  
12 the fire extinguisher in the --

13 MR. TARRANT: Where --

14 THE COURT: From the witnesses. And --

15 MR. TARRANT: Where it came from?

16 THE COURT: Where it came from. Where it was located at the  
17 time, after the shooting. Whether -- I don't know if you have  
18 anyone from crime scene services or anyone from Newton police.  
19 But the court would like an answer to that.

20 MR. TARRANT: So, just so I understand the question: where  
21 the fire extinguisher ended up after everything? Or --

22 THE COURT: After the shooting.

23 MR. TARRANT: Yep.

24 THE COURT: Before Mr. Conlon was removed. Where was the  
25 fire extinguisher?

1 MR. TARRANT: Okay.

2 THE COURT: And I am aware that -- I think it maybe has been  
3 alluded to, of course. But there has been no testimony as to  
4 where it was at the time of his death.

5 Also, I don't know if the Commonwealth was intending to offer  
6 this testimony, but the court is requesting --

7 MR. TARRANT: Yep.

8 THE COURT: -- that it present information with regard to any  
9 ballistics on the less-than-lethal.

10 MR. TARRANT: I can -- I think I can answer that, Judge.  
11 When this -- When I got the lab reports and I recognized that  
12 there were no -- there was no ballistic report relative to the  
13 less-than-lethal.

14 THE COURT: Right.

15 MR. TARRANT: I contacted the lab to ask them if this is  
16 something I should be expecting. The response was: because the  
17 less-than-lethal was not fired, there was no ballistics. If there  
18 are no ballistics, the lab will not take or seize the item and  
19 test it.

20 So as the court heard, when I asked what happened, the answer  
21 I -- the response I got was essentially the firearm was taken out  
22 of service. And that's all that's really happened with it. It's  
23 still where it is.

24 That's not to say that if we want it test-fired we can't do  
25 it. I think we can.

1 THE COURT: Well, the court would like testimony as to the  
2 operation of it and some form of ballistics information. I think  
3 it is --

4 MR. TARRANT: Okay.

5 THE COURT: -- important to be thorough. And I think that is  
6 relevant.

7 MR. TARRANT: So, that may take some time.

8 THE COURT: That's fine.

9 MR. TARRANT: Okay.

10 THE COURT: And I wanted to just present this now because  
11 obviously we know we have the issue of the witness who has COVID  
12 and will be coming back. And so in thinking about this and the  
13 scheduling, I know that that is information that I would like.

14 MR. TARRANT: Right.

15 THE COURT: And so if it means we have to pick another date  
16 and this process remains open, then that's what we'll do.

17 MR. TARRANT: Right.

18 THE COURT: All right?

19 MR. TARRANT: Okay. We'll -- Yeah.

20 THE COURT: So, that's -- But at least that gives you a  
21 chance to perhaps make some inquiry before we're done and give us  
22 a frame for whether it's a few weeks or what it might look like.  
23 All right? Just to --

24 MR. TARRANT: And I can tell the court that --

25 THE COURT: -- give you some thoughts.

1 MR. TARRANT: I know that the fire extinguisher was seized.  
2 I'm not sure we're going to be able to say it was seized from  
3 where it was left. But --

4 THE COURT: Right. I --

5 MR. TARRANT: But we can try to --

6 THE COURT: I appreciate that. It's just in terms of -- Even  
7 though there -- I know you posted discovery and things for counsel  
8 on the share drive. I have to operate with what's in evidence.

9 MR. TARRANT: Right.

10 THE COURT: There is nothing in evidence to me at this point  
11 in time in terms of who located it, where it was located at the  
12 time that Mr. Conlon was shot. Where was it in proximity to his  
13 body? Those kind of questions, I would appreciate some kind of  
14 response.

15 MR. TARRANT: Absolutely. I can work on that.

16 THE COURT: Appreciate it.

17 Counsel?

18 MR. ANDERSON: And, Judge, I can't answer those questions.  
19 But my memory on the view as I was sitting here was that as we  
20 were down by the doorway where Chisholm came out, on the righthand  
21 side of the stairs there was a fire extinguisher that was affixed.

22 THE COURT: Secured on the wall.

23 MR. ANDERSON: And I didn't think to point it out at the  
24 time.

25 THE COURT: I saw it.

1 MR. ANDERSON: It -- Okay. And I do have a photograph here  
2 that hasn't been offered into evidence that -- Looking down the  
3 hallway, on the righthand side, it looks like there's some type of  
4 red thing on the wall where maybe a fire extinguisher would have  
5 been affixed. If that tells us where it started --

6 THE COURT: I don't want to speculate.

7 MR. ANDERSON: Okay.

8 THE COURT: I want to know an answer.

9 MR. TARRANT: Yeah. And that's the thing. I know we're  
10 talking about perhaps where the extinguisher initially came from.  
11 I don't think any of the officers on scene can definitively say  
12 where it came from. But I think we can track down where it was  
13 found after. I think --

14 THE COURT: Whatever insight can be provided is what I would  
15 really appreciate.

16 MR. TARRANT: Understood.

17 THE COURT: All right?

18 MR. TARRANT: Was there a third thing, or is that --

19 THE COURT: Just two, for now.

20 MR. TARRANT: Okay. I do have an issue I want to address  
21 with the court --

22 THE COURT: Sure, please.

23 MR. TARRANT: -- just briefly. So, last night I received  
24 word that this morning I would be hearing -- Well, I have two  
25 witnesses today from the state police. Last night I got word that



1 their union attorney and their union representative would be  
2 contacting me this morning.

3 They did. The issue was that they were unaware of these  
4 proceedings, that they didn't know that the troopers would be  
5 testifying, and they wanted a continuance so they could be  
6 present.

7 I said they were notified over a month ago. I've met with  
8 them. They're not targets of this investigation. They -- I see  
9 no exposure. They should testify.

10 That being said, the attorney agreed that they would testify  
11 this morning.

12 The attorney's name is Dan Moynihan. He represents the state  
13 police union, at least for this troop. And he was otherwise  
14 engaged this morning. But he said, if possible, he would try to  
15 stop by.

16 I would just ask the court if Attorney Dan Moynihan does come  
17 to the courthouse that he be allowed in the courtroom during the  
18 testimony of the troopers.

19 THE COURT: Yes.

20 MR. TARRANT: So, if we just -- The court officer knows  
21 that --

22 THE COURT: Yes.

23 MR. TARRANT: -- that's on the list.

24 THE COURT: All right. So --

25 MR. TARRANT: And that's it.

1 THE COURT: And we can figure that scheduling out. The  
2 troopers, where were they in the order?

3 MR. TARRANT: So, I have the medical examiner first this  
4 morning. Then I have Trooper Dylan Finerty, Trooper Christian  
5 Howell, and then the -- I anticipate the last witness today would  
6 be Officer Charles DiChiara.

7 THE COURT: Okay. So why don't we hear from the M.E.? And  
8 then we can take a recess, see if Attorney Moynihan is here, what  
9 his ETA might be, and you can let me know what you'd like to do at  
10 that point.

11 MR. TARRANT: Sounds good.

12 THE COURT: Okay.

13 MR. TARRANT: Thank you. Dr. -- So I'll call the witness,  
14 Your Honor?

15 THE COURT: Yes, thank you.

16 MR. TARRANT: Christina Stanley.

17 THE COURT OFFICER: Yep. Dr. Stanley?

18 MR. TARRANT: Yes.

19 [DR. CHRISTINA STANLEY, Sworn.]

20 THE COURT: Doctor, you can stand, sit, whatever's most  
21 comfortable --

22 THE WITNESS: Okay.

23 THE COURT: -- for you. And you are free to either leave the  
24 mask on or take it off. Again, whatever you prefer.

25 THE WITNESS: I think I'm too short to sit. I'll stand up.

## 1 DIRECT EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY

2 BY MR. TARRANT:

3 Q Good morning.

4 A Good morning.

5 Q Could you please state your name, spelling both your first  
6 and last name?7 A Christina Stanley. First name C-H-R-I-S-T-I-N-A. Last name  
8 Stanley, S-T-A-N-L-E-Y.

9 Q And, ma'am, are you employed?

10 A I am.

11 Q Where do you work?

12 A I'm employed by the Commonwealth of Massachusetts. And I  
13 work in their medical examiner office, Office of the Chief Medical  
14 Examiner.15 Q And what do you do for the Office of the Chief Medical  
16 Examiner?17 A I'm a forensic pathologist. My title is "medical examiner,"  
18 although I'm not the chief medical examiner. And I perform  
19 autopsies and -- and do external examinations, review records,  
20 view microscopic studies, toxicology studies, consult with people  
21 to get more about information cases and determine cause and manner  
22 of death on people that fall under the jurisdiction of the medical  
23 examiner's office.24 I also take calls and assist with determining which cases  
25 need to -- are under our jurisdiction and in which cases we can

1 release that jurisdiction.

2 Q And can you just describe your education and training to  
3 become a forensic pathologist?

4 A So, I received my undergraduate degree at MIT.

5 I went back to my home state, in California, and received my  
6 medical degree from the University of California San Diego in  
7 1990 -- 1990.

8 And then 1990 I was -- finished my first year of training and  
9 was able to get a license to practice medicine in California.

10 So, following medical school, I had seven years of additional  
11 postgraduate training. I did four years of training in general  
12 pathology, both anatomic, looking at specimens and doing  
13 autopsies, and clinical pathology, which -- a simplistic way to  
14 look at it is "looking at fluids," but we're also looking at bone  
15 marrow biopsies, laboratory testing, including toxicology.

16 I had spent about five weeks at the medical examiner's office  
17 in my third year of that training and decided I wanted to be a  
18 medical examiner.

19 Toward that, I spent an extra two years in -- at the  
20 University of California San Diego's medical center training in  
21 neuropathology, because there's a lot of neuropathology in  
22 forensic pathology.

23 And then I did my seventh year of training at the Office of  
24 the Chief Medical Examiner in San Diego County, which is a county  
25 of 3 million people -- actually, 3.3 million people now -- and

1 about a little less than half the size of Massachusetts's area.

2 Q Okay. And do you hold any licenses?

3 A Yes.

4 So, I have a license in California that I got in 1990 --  
5 1991, which I still hold.

6 I have a license in Rhode Island, which is inactive.

7 And I have a license in -- I did have a license in  
8 Connecticut, which I let go.

9 And I have a license, of course, to practice medicine in  
10 Massachusetts, which I've had since 2016.

11 Q Okay, which is current, I assume?

12 A Which is current, yes.

13 Q And do you have any certifications?

14 A And I have board certifications by the American Board of  
15 Pathology in anatomic pathology, neuropathology, and forensic  
16 pathology.

17 Q And so, doctor, can you just tell us, what is an autopsy?

18 A An autopsy means "to examine yourself." But it's an exam of  
19 a human person, as opposed to a necropsy, which is an examination  
20 of an animal. Or, actually, in some cases, that's used for a  
21 child, if you're not examining an adult human.

22 But what's involved is examining a -- So, forensic autopsies  
23 and hospital autopsies is a little different. Both include  
24 external examinations and internal examinations and microscopic  
25 examinations, perhaps, in forensics always. And in hospital

1 autopsies, sometimes separate examinations of the brain, which I  
2 can do myself in my cases. Special examinations for the heart...

3 It involves a lot of documentation, on both sides. In  
4 forensic pathology, we do a lot of documentation of the external  
5 findings and patterns of injuries.

6 And we do toxicology, which isn't usually done in forensic --  
7 in the hospital autopsies, to look for substances, which is a big,  
8 big part of our work now, probably the biggest part. And it's  
9 even relevant to the case in point.

10 Q Okay. And what is the purpose of an autopsy?

11 A Purpose of the autopsy for forensic autopsies: primarily to  
12 determine cause and manner of death.

13 But it's also, in my mind, to answer questions that people  
14 would have about a death. In my work, because we don't have that  
15 many homicides, it's mostly to help families understand what --  
16 what has happened and why someone died suddenly and unexpectedly  
17 or of unnatural causes.

18 But also we do spend a significant amount of time addressing  
19 legal issues and all the safety issues, with looking at patterns  
20 and injuries and circumstances of injuries and whether they're  
21 preventable.

22 Q And can you just describe generally the procedure of an  
23 autopsy?

24 A So, I start out by making sure I'm examining the right  
25 person. I always say that because that's important, to make sure

1 | you know who it is.

2 |       And I start out by also finding out as much as I can. And it  
3 | varies from having lots and lots of information, someone who's  
4 | been in the hospital for a long time prior to their event, where  
5 | they've provided right away -- which -- they might not have it  
6 | handy to give to us -- to very little information, where someone  
7 | is just found. So, I review all the information that I have.

8 |       If it's law enforcement that comes to the autopsy, again,  
9 | information from them: sometimes they have it, sometimes they're  
10 | just the person who got sent over, and they don't know any more  
11 | than I do. They're there to take photos or whatever.

12 |       Then I go down and -- So, I determined that I am examining  
13 | the person I expect to and it all fits and it's all consistent,  
14 | and the name matches or identification matches.

15 |       Then I do a examination of -- If there's clothing, medical  
16 | therapy, I do an examination initially without cleaning the body,  
17 | although in some cases I allow the investigators -- the exam room  
18 | staff to clean the face first so they can get a picture to help  
19 | with an ID earlier rather than later.

20 |       When I the examine the body, usually it's already undressed.  
21 | And that's true even for a lot of -- most cases in Massachusetts,  
22 | because a lot of -- most people go to hospitals to be pronounced  
23 | dead; and so, in that process, they get undressed by -- at least  
24 | in part, by the paramedics.

25 |       But if there's clothing there, I examine the clothing, which

1 I did in this case. Actually, I don't do it for all cases in  
2 Massachusetts, but I do it for all homicides in cases where  
3 clothing would be relevant.

4 I examine all the medical therapy, remove all that when I  
5 take the photos of everything I'm examining. I -- After removing  
6 everything and getting photos -- And if there are injuries, I'll  
7 make sure to get a photo of each injury before it's washed. And  
8 then I wash -- I have the body washed or I do some of the that  
9 myself.

10 We retake those photos. During this time, I start making  
11 diagrams of what I've seen. I -- Many of my cases, if I'm going  
12 to do a full report, I dictate it at the table. So, I'm dictating  
13 as I'm going, and that gets transcribed and turned into a report  
14 that I then edit and add to and make sure everything's clear  
15 before it goes out.

16 I do an internal examination. Everything can -- Well,  
17 generally and in this case, everything could be done with our  
18 standard incisions, which is the incision over the top of the head  
19 and behind the ears and a -- what we call a "Y-shaped incision"  
20 from the shoulders to the center of the chest and down to the  
21 pubis.

22 I remove all of the organs, dissect them individually,  
23 examine them. If I'm dealing with a gunshot wound case, for  
24 instance, I want to make sure that I have some idea of where  
25 things are going before I start taking everything out, where paths



1 would be.

2 Again, I take photos, dictate what I'm seeing. I take notes  
3 also. And then --

4 Q Do you use diagrams?

5 A I use diagrams, right. And then I prepare these diagrams  
6 that are general for the external. Sometimes I'll do an internal  
7 diagram, particularly of the skull or something like that. But  
8 mostly just external diagrams. And then I put together a report.

9 Q And do you also take -- Are you -- Do you also -- I'm not  
10 sure if you said it: do you take samples from the body?

11 A Yes.

12 Q Biological samples?

13 A And when you take samples of anything -- all the major  
14 organs, I've gotten in the habit now -- For gunshot wounds, I try  
15 to take samples of the paths so that you could actually, like,  
16 take things out. So, sometimes it takes me more than the 16-ounce  
17 container. I might have two 16-ounce containers. So, it's still  
18 a small amount of tissue.

19 But I'll take some of the wound paths, just to -- so someone  
20 else could look and say, "Yes, there's hemorrhages and a path."  
21 And we get photos of all the organs that have been injured. In  
22 some cases we put in microscopic sections, to look for microscopic  
23 disease or sometimes to look for a hemorrhage if you can't see it  
24 with the naked eye.

25 Q And so how are autopsies assigned at the Office of the Chief

1 Medical Examiner?

2 A Right now -- I'm not sure it would be same at the time of  
3 this case. The chief medical examiner makes that decision every  
4 morning, on Monday through Friday. And the deputy chief does --  
5 makes that decision on Saturday and Sunday. Every once in a  
6 while, they have to cover for each other. But it's always one of  
7 the two of them.

8 In addition to assigning it, they also make a suggestion as  
9 to "This case has to be autopsied" and then "This case, you know,  
10 you can make up your mind, whether you're going to do an autopsy  
11 or just the external portion of the exam."

12 And then we also have some cases now that we certify without  
13 either, with a lot of medical records, someone who's been in the  
14 hospital for days or weeks with an injury and there's no civil or  
15 criminal implications in the case.

16 Q So how many autopsies have you conducted in your career,  
17 approximately?

18 A I've conducted almost 5,000 now. I'm over 5,000 including  
19 the five or six hundred that I've supervised directly that  
20 residents were doing or fellows were doing. And that's just  
21 autopsies.

22 Q And of those autopsies, can you give us a number or  
23 approximation of how many of those have been involved with gunshot  
24 wounds?

25 A Not that -- Well, we don't autopsy suicide gunshot wounds in

1 Massachusetts very often. And that was also getting to be the  
2 case when I left San Diego and Rhode Island, and in Connecticut.

3 It's hard to say. Generally, you know, the homicides are  
4 probably about half our gunshot wounds in my career, because we  
5 had more stabbings. Not "more stabbings," but more stabbings in  
6 San Diego than we did in -- do here.

7 Q Okay. Well, so, how many --

8 A But, I mean, I did about -- I used to do about 48 homicide  
9 cases a year.

10 A Okay.

11 Q But now it's considerably less. The homicide rate has gone  
12 down. Although I understand, this year, things might turn around  
13 for that. It's not -- It just sort of had plateaued in the last  
14 ten. It it really was quite significantly lower than when I had  
15 started, almost half.

16 And, well, so, in Massachusetts we train fellows. And the  
17 fellows get a disproportionate number of those homicides now,  
18 unlike when I was training, because there's fewer homicides and  
19 they need those for their training. But they're all supervised by  
20 me, since I supervise cases this year, the homicides that the  
21 fellows have done already this year.

22 Q And with respect to your examination of gunshot wounds, are  
23 you able to determine or distinguish between notice wounds and  
24 exit wounds?

25 A Most of the time.

1 Q And as a medical examiner or forensic pathologist, have you  
2 had the opportunity to testify in court previously?

3 A Yes.

4 Q Approximately how many times, if you know?

5 A 240, probably.

6 Q And --

7 A In various courts.

8 Q -- would that include both the District and Superior Courts  
9 of the Commonwealth?

10 A I think only the -- I'm not sure which courts of the  
11 Commonwealth.

12 Q But it would be --

13 A It hasn't been all that many in Massachusetts, because I  
14 haven't been here that long.

15 Q Right.

16 A I've been here five years now. But with respect to...

17 Q But fair to say it's been in a court? You have testified in  
18 Massachusetts previously?

19 A Yes, oh, yes. In fact, I testified in Massachusetts even  
20 when I was working in Rhode Island, because we had cases from...

21 Q And at those times, you've testified in your role as a  
22 forensic pathologist?

23 A Always.

24 Q So, ma'am, if --

25 A And sometimes as a neuropathologist.

1 Q Okay.

2 A But also as a forensic neuropathologist.

3 Q So, ma'am, directing your attention to January 6th, 2021, did  
4 you conduct an autopsy on an individual by the name of Michael  
5 Conlon?

6 A Yes.

7 Q And where was that autopsy conducted?

8 A At the Boston facility of the chief medical examiner of the  
9 Commonwealth.

10 Q Okay. And were other person -- other persons present during  
11 that autopsy, --

12 A Yes.

13 Q -- besides yourself?

14 A Yes.

15 Q And who would they be?

16 A I'd need to look at my report, to see.

17 Q If you don't know them by name, were they just assistants  
18 or --

19 A Yeah. Well, assistants. I had assistants and I -- Also,  
20 there was some law enforcement present at this autopsy, state  
21 police, two state police officers.

22 Q There was state police officers --

23 A Yes.

24 Q -- also present?

25 And as part of the autopsy, did you learn Mr. Michael

1 Conlon's age at the time of his death?

2 A Yes.

3 Q And did you learn that he was 28 years old?

4 A Yes.

5 Q That he had a date of birth of July 9th, 1992?

6 A Yes.

7 Q Did you also learn that he was approximately 74 inches tall?

8 A Yes.

9 Q And do you also weigh the body?

10 A The -- That's done when they come in. So...

11 Q And in this case, did -- was Mr. Conlon weighed?

12 A Yes.

13 Q And did that come out to about 267 pounds?

14 A Yes.

15 Q And when you first observed Mr. Conlon, was he clothed?

16 A No.

17 Q Did any items accompany him to the medical examiner's office?

18 A Yes. In his case, I got a -- a lot of clothing, which is  
19 always helpful, actually, with entrance and exits and various  
20 things in gunshot wounds.

21 I did not have his shoes. But I had, it seems like, probably  
22 everything else he -- actually, no -- everything else he was  
23 wearing.

24 Q Okay. So -- But certain clothing items did accompany Mr.  
25 Conlon to the medical examiner's office?

1 A Yes.

2 Q And did the clothing have hospital identification information  
3 on it?

4 A It came in a bag that had hospital identification on it.

5 Q And so could you just describe briefly what was in the bag  
6 you received that was Mr. Conlon's clothing?

7 A So, he had a heavyweight, olive green Cartwright [sic] brand  
8 jacket, a full-length jacket. He had a pullover grey sweatshirt.  
9 All -- The sweatshirt had been cut away. He had a pair of cutaway  
10 black sweatpants and a pair of cutaway black-knit boxers.

11 Q And with respect to the jacket, did you examine that jacket?

12 A Yes.

13 Q And what was the condition of the jacket, as you saw it?

14 A Well, it had been cut away across the front and down the left  
15 sleeve.

16 It had multiple gunshot perforations in it, many more than  
17 the ones that were on his body.

18 And it also had a probe in it, a taser probe. It's a yellow  
19 probe. And it actually was a TASER brand, so it said "TASER" on  
20 it, T-A-S-E-R. And it was inserted in the jacket, kind of  
21 midpoint in his upper arm.

22 And the jacket's pretty thick. It's a quilted -- It's a  
23 quilted lining. And I didn't -- couldn't see any defect, although  
24 the taser probes are fairly small. I didn't see any defect in the  
25 jacket.

1 But more importantly, I didn't see any defect on his skin due  
2 to that.

3 Q And your examination of that taser probe, could you tell  
4 whether or not it perforated or broke through the jacket?

5 A I couldn't be sure, but I didn't find any evidence that it  
6 had.

7 Q Okay. Ma'am, I'm going to show you this document.

8 MR. TARRANT: If I may approach, Your Honor.

9 THE COURT: Yes.

10 BY MR. TARRANT:

11 Q Do you recognize if you depicted [sic] -- What's in that  
12 photograph?

13 A This is a little bit of an oblique photo of the -- right,  
14 yes -- the left arm. So, I had the jacket placed front-down. And  
15 that's the mid portion on the sleeve.

16 It's actually yellow, but for some reason it's not yellow in  
17 this photo.

18 And it's perpendicular. But unfortunately that's the way it  
19 was taken, not correctly. I didn't take this photo.

20 And there's some -- also some defects from gunshot wounds.  
21 Just one, two on the sleeve and on the left side of the back.

22 Q Okay. And does that photograph fairly and accurately depict  
23 how you viewed that jacket back on January 6th of 2021?

24 A It's not a great photo, honestly. But -- But, yeah, it's --

25 Q It otherwise --



1 A It doesn't have anything that didn't exist.

2 Q Thank you.

3 MR. TARRANT: Your Honor, may this be marked?

4 THE COURT: Yes.

5 [Autopsy Photo of Jacket Marked as Exhibit No. 24]

6 BY MR. TARRANT:

7 Q And so, ma'am, after or -- At some point, your examination  
8 moved to Mr. Conlon's body?

9 A Yes.

10 Q And how did that examination begin?

11 A Oh, I'm sorry; I started with my taking pictures -- actually,  
12 I did that before I examined the clothing -- of his body as it  
13 came in. It had some blood on it and a lot of medical therapies  
14 on there. Well, not a lot of medical therapy. But it had some --  
15 some medical therapy. And...

16 Q So --

17 A So, that -- that allowed them to clean him while I was  
18 examining the clothing and taking a picture of the clothing.

19 Q Okay. And so then --

20 A So then I had -- He -- By then, he -- he was washed. And  
21 then I examined him again. And I took even more photos. And I  
22 started describing the wounds based on what I had seen before  
23 washing and also --

24 Q And this would be part of --

25 A -- after.

1 Q -- what you would refer to as the external part of your  
2 examination?

3 A Yes.

4 Q And can you just describe what wounds if any you observed  
5 during your external examination of Mr. Conlon?

6 A He has a lot of gunshot wounds. Some of them were made by --  
7 you know, a bullet made more than one injury, which -- That's a  
8 sort of an -- A lot of atypical wounds. And you've seen, you  
9 know, a lot of gunshot wounds, but these were -- very few of them  
10 were the typical clean, going-in wounds.

11 Q And so what --

12 A So, he has --

13 Q I'm just -- Sorry. What do you mean by that?

14 A That the bullet, instead of going really straight and having  
15 a nice, you know, spin to it, was wobbling. And so the holes  
16 are -- Some of them are bigger. Some of them are more abraded.  
17 Some of them, the jacket has already come off but is still heading  
18 in the same direction; and so it causes an injury, not just the  
19 injury where the bullet went in but injuries around it, the  
20 jacket. And some of those would go in. So, in -- We could start  
21 with just describing each one. At some point I can talk about --

22 Q Okay.

23 A -- the different types of artifacts we had, from the fact  
24 that these bullets had hit other things. I think in some cases  
25 they may have hit parts of his hands.

1 Q And so with respect to your external examination, did you  
2 begin that at the head and work your way down?

3 A Yeah.

4 Q If you could just describe what you observed.

5 A So, he has two gunshot wounds to the head that I consider  
6 penetrating because, both of them, the rounds are inside the  
7 skull. There's one on the right side. So I go right, left... So  
8 the entrance on the right, the main part of the entrance is right  
9 parietal. So, right side up -- I'm pointing to the top of my  
10 head, on the right side. That was actually a fairly clean wound  
11 on the skin. It's oblique.

12 But when it hit the skull, it's very oblique. And it's  
13 actually going backwards. So there are fragments of the jacket  
14 that have come off before they got totally into the head. So I  
15 actually have fragments underneath the skin, not a lot, but some  
16 that have actually exited. So there's a few, I think three little  
17 exit wounds, little tiny exit wounds behind the entrance, quite --  
18 fairly close, behind and below.

19 And then the bulk of this projectile goes into the head, but  
20 it's now not necessarily traveling in as straightforward a path as  
21 most. The -- The bulk of -- The portion of it that isn't jacket  
22 ends up down in his cerebellum, so, the lowest part of his brain,  
23 on the right side, actually lateral.

24 And it hits the base of his skull and it just causes some  
25 fractures there. There are also fractures coming from other

1 places. And it also generates, yes, you know, some fragments of  
2 bone that also go into the brain. So that -- that one --

3 Q Can I just --

4 A Mm-hmm.

5 Q Can I interrupt you, there? It might be easier if I -- if  
6 you start here: did you document on a diagram --

7 A Yes.

8 Q -- all the wounds that you observed?

9 A Yes. I have all the entrance and --

10 Q And --

11 A -- exit wounds. Not all the little ones, though, --

12 Q Okay.

13 A -- are on that diagram.

14 Q With respect to your diagram, did you diagram -- is that  
15 diagram of essentially an anatomical figure, full-body figure?  
16 And did you also do a second diagram of just Mr. Conlon's hands?

17 A Yes.

18 Q And I'm showing you these two documents.

19 A So, it's a -- it's a preprinted diagram that's available in  
20 the office to use. And then I can print a lot on it.

21 Q Okay. And so I'm showing you this first document, and I'd  
22 ask you if you recognize that.

23 A Yes.

24 Q What do you recognize that to be?

25 A This is a diagram I prepared at -- at autopsy. And then I --

1 later date to actually put in a little summary of where the  
2 entrances were for each wound and where the -- either the bullet  
3 ended up or the bullet exited, the main part of the bullet.

4 Q And so you created that document? Or essentially you created  
5 a document so as to put the notes on --

6 A Yes.

7 Q -- where you observe each of the wounds?

8 A Yes. All of this is my writing.

9 Q Okay.

10 MR. TARRANT: Your Honor, may that one be marked?

11 THE COURT: Yes.

12 MR. TARRANT: And, actually, I'm going to do both of them at  
13 the same time.

14 BY MR. TARRANT:

15 Q Is this -- Do you recognize this document?

16 A Yes.

17 Q And what do you recognize that to be?

18 A And this is a document that I made, using similarly  
19 preprinted diagrams of the hands, front and back, right and left.  
20 And it's -- it shows the injuries of his two hands.

21 Q Okay. Thank you.

22 A Gunshot. They're all gunshot wounds.

23 Q And just to be clear, you also created that document?

24 A Yes.

25 And the one on the -- So, the whole -- the whole body also

1 has some non-gunshot-wound injuries on it, which are not very  
2 many. But there are a few.

3 MR. TARRANT: So, Your Honor, I'd just ask these two  
4 documents be marked, beginning with -- The first one would be the  
5 torso diagram.

6 THE COURT: Yes.

7 [Autopsy Diagram of Torso Marked as Exhibit No. 25]

8 [Autopsy Diagram of Hands Marked as Exhibit No. 26]

9 BY MR. TARRANT:

10 Q Thank you. So, I think it may be easier with respect to --  
11 When describing, you can reference your diagram, because I also  
12 notice on the diagram you labeled each of the wounds with a  
13 letter.

14 A Correct. And I did that for the wounds on the head and torso  
15 and arms, but not on the hands.

16 Q Okay. So could you just walk us through your examination in  
17 that regard?

18 A Right. So, the torso diagram also includes the -- the head  
19 and the arms and -- and legs.

20 So, "A" is on there. What's not on there are the partial  
21 exits of the fragments. So if you see some photos there, some  
22 photos in there, some of them are true exits. And one of them  
23 also has a decent-sized piece of metal in it, partly protruding.  
24 So it's a partial exit.

25 But the -- So it's saying the main portion of that bullet,

1 the heavy lead part, was found in his cerebellum after going  
2 through the right side of his brain. But there are other  
3 fragments that went other places within even that hemisphere.

4 The gunshot wound on the left side, "B," --

5 And these are kind of -- wouldn't say they're randomly  
6 assigned, because I start at the head and in general these came  
7 out very well from top to bottom in -- in back -- front, and then  
8 top-to-bottom back.

9 So, "B" is the -- what I designated the entrance on the left  
10 side of the head. It's just a little bit higher up on the head  
11 than "A." And it is actually going more forward. And it's also  
12 variably -- In fact, this one is so oblique that it leaves most of  
13 the jacket -- It sort of splits: the core goes underneath, and  
14 some jacket, and the jacket gets stuck in the scalp in front of  
15 it, although there are no partial exits for this wound.

16 The -- It travels so much through and close to the skull that  
17 it pushes a lot of -- it projects a lot of the skull into the top  
18 of the left side of the brain. And that bullet ends up -- The --  
19 The lead part of that bullet ends up in the front of the left side  
20 of the brain and does a lot of damage between it and the skull.  
21 It has moved a lot of damage to the cerebrum.

22 There's also a fairly good-size fragment of jacket that I  
23 believe from this side -- but it could be from the other, other  
24 bullet -- that's down near the left cerebellum. So there's also  
25 something that comes through, a projectile that comes through at

1 | least the lower part of the left.

2 |       And that sort of had to go through the -- It started on the  
3 | right and had to go through some of the right. But I think it  
4 | just went through the left. But the brain has a lot of different  
5 | paths that -- Frankly, you can't track all of them. There is some  
6 | disruption.

7 | Q     And then?

8 | A     And there's also -- There are fractures of the base of the  
9 | skull from just the pressure and also from some impact. So, the  
10 | fragments to the other side of the skull -- And some breaking,  
11 | some fractures, coming around the sides.

12 | Q     From there, where did you next observe a -- any wounds on Mr.  
13 | Conlon?

14 | A     Yes, so, the next, just going in order on the diagram, top to  
15 | bottom, is: there's an entrance wound that I designated as "C."  
16 | It's on the right side of the neck. In examining the clothing,  
17 | that projectile before entering the right side of his neck has  
18 | gone in and out. Let's see. How many times? But it goes in and  
19 | out several times, of the top of the shoulder of the right side of  
20 | his jacket. And then it ultimately goes through the collar and  
21 | strikes the neck.

22 |       Where this wound is somewhat atypical, it looks like part of  
23 | the jacket has come off. And it's got an extra abrasion to it,  
24 | going in. And it's just bigger than you'd expect for this round.

25 |       In addition, above the level of the jacket -- And we have a



1 photo of this one. It was one of the few we have a photo of that  
2 we're going to show. And there's some little red stippling. I  
3 can't say for sure that they're gunpowder, because the gunpowder,  
4 if it was there, burned away. But -- very consistent with that.  
5 We don't have it with any of the other wounds. But the other  
6 wounds are covered either with hair or with clothing.

7 Q And so, ma'am, I was -- If I can show you this photograph.  
8 There are actually two photographs in here. I'd just ask you to  
9 look at those and ask --

10 A Okay.

11 Q -- if you recognize that.

12 A Yes.

13 Q What do you recognize that to be?

14 A So, one is the right side of Mr. Conlon's neck. It also  
15 shows some of his hair. Very, very top, a little bit of his  
16 earlobe. And so there's beard hair, scalp hair, and a little bit  
17 of chest hair. But it shows his neck.

18 And you can see the atypical entrance wound with something  
19 that's struck here. It's probably his -- the jacket. And then  
20 some stippling, which could be unburned -- could be burned powder.

21 Q And does the stippling have any significance for you as a  
22 forensic pathologist?

23 A It does. It means that the muzzle of the weapon was closer  
24 than if there wasn't.

25 It also means that there's no clothing there, too.

1 Q Okay.

2 A You would have to have both of those things, generally.

3 Q And with the muzzle being closer, are you able to articulate  
4 the distance at which you would see stippling?

5 A I'm not. This is something that -- A ballistics person would  
6 have to take the weapon and say, "How far does unburned powder go  
7 with a gun like this?"

8 Q Okay.

9 A And I don't have that expertise.

10 Q Right.

11 A And -- And you would want to do it actually with that  
12 particular gun and that particular ammunition, to be accurate.

13 Q Thank you.

14 And looking at that first photo, which is a photo of Mr.  
15 Conlon's neck, is that a fair and accurate representation of how  
16 you viewed that wound back on January 6th, 2021?

17 A Yes.

18 Q Thank you. And with the -- For reference, I'd ask you to  
19 look at the second photo.

20 A Right. I don't know if it'd be helpful to do -- Which side?  
21 So, I think you can tell which is the beard and which is the scalp  
22 hair. Here it's --

23 Q Well, --

24 A So, the front of his body is to the right.

25 Q Okay. And if you look at the second photograph, --

1 A Yes.

2 Q -- can that give you the point of reference as to where that  
3 wound is?

4 A Yes. So then we have another photograph that's taken with  
5 his head turned to the left. And it includes much more of his  
6 body, all of his head. In fact, you can see Entrance A as well in  
7 this wound -- in this photo.

8 It best depicts the wound on the right side of his neck and  
9 what's going to be Wound D, which is on his right chest, which  
10 will be the next wound we talk about. And I'll...

11 Q Okay.

12 MR. TARRANT: If I could, Your Honor, I'd ask that these two  
13 be marked.

14 A And Wound D is also a very atypical wound.

15 MR. TARRANT: I'll have the first photo, which would be the  
16 closeup of Mr. Conlon's neck as the next exhibit. And then the  
17 point-of-reference photo follows.

18 [Autopsy Photo of Neck Marked as Exhibit No. 27]

19 [Autopsy Photo of Head and Neck Marked as Exhibit No. 28]

20 BY MR. TARRANT:

21 Q I don't know if these are helpful or if you need them.

22 A Yeah, no, that's good.

23 Q So, with respect to the injury to Mr. Conlon's neck, did you  
24 find an exit wound with that particular injury?

25 A Yes.

1 Q And where was that?

2 A That exit was on his left lateral chest, not too far below  
3 where his -- you know, the fold for your armpit is. Near that.  
4 But posterior and -- and slightly below. Interior, too.

5 Q And is that labeled on your diagram?

6 A Yes.

7 Q And what --

8 A And it's on the back side of it. But it's really a lateral  
9 wound.

10 Q What label did you --

11 A That's "F."

12 Q So "C" would be the entrance, and "F" would be the exit?

13 A Yes.

14 Q And with respect to -- as you -- other injuries that you had  
15 found, what's the next injury?

16 A Yeah, so, in traversing his body from right to left, it  
17 injures his right sternocleidomastoid muscle, which is the biggest  
18 muscle you can see pretty much on everyone's neck. It, in doing  
19 that, also damages the internal jugular vein. Deep [sic] to that,  
20 his thyroid gland.

21 And it passes just into his trachea, but enough that it  
22 actually fractures the tracheal rings. Doesn't really do anything  
23 but affect him functionally. But it's that -- that close.

24 And that's how it gets across to the left side. It's coming  
25 in a downward fashion, and it fractures his left clavicle. And

1 across the front side of his body, it fractures the first and  
2 second ribs. And that results in a bruise of his left lung.

3 Q And does that projectile then --

4 A And then it --

5 Q -- exit?

6 A Then it exits out the back. So it stays quite high in his  
7 body, but it's going downward.

8 Q And so what is the next --

9 A So then "D," --

10 Q -- observation you made?

11 A -- which is the other one that we have a photo of, that's on  
12 his right chest. His jacket does not have any defect in that  
13 area. So the jacket must have been unzipped or open in some  
14 fashion. This wound is on his right chest. It's just below --  
15 lower -- his right nipple and is quite atypical.

16 In addition to kind of a very large defect that the bullet  
17 has entered through, it has an additional more superficial defect  
18 and then two other abrasions. And you can almost imagine how the  
19 bullet started to open, the -- the jacket started to open.

20 And then it hit the body and some of the jacket probably  
21 didn't go in. It all -- Some of the jacket went in. And I  
22 actually found it in the early portions of the tract. But the  
23 main -- There was a hole in his sweatshirt that actually had the  
24 same pattern in it, multiple holes in a cluster.

25 So the main portion of the lead core went through the front

1 of his right chest and then -- I'm touching my left chest;  
2 sorry -- through his right chest, below the level of his nipple.

3 It's also going downward. It goes between his sixth and  
4 seventh ribs, injures the right lung, and then goes through the  
5 diaphragm and perforates the liver, really through the center  
6 portion of the liver and up, just free in the abdominal cavity,  
7 the right upper quadrant of the abdominal cavity.

8 Q And what did you observe next?

9 A Then then going on to "E," so, "E" is a similar level, from  
10 the top to the bottom of his body, as "D." It enters through the  
11 right -- It's in the right side of his chest.

12 It's actually -- Even though I have it on the front of the  
13 diagram, it's kind of posterior. Yeah, so, I have it as 1 1/2  
14 inches posterior to the midaxillary line, which is just a line  
15 from the top of your underarm down through your hip to your foot.  
16 So it's a little more posterior than on that diagram. But...

17 So that actually is a fairly typical entrance wound: a nice,  
18 round, 3/8-inch diameter, a wound that we would typically see with  
19 this, with a nice abrasion rim. A little bit thicker than may be  
20 usual, but he's wearing a thick coat. That would have resulted in  
21 that.

22 It goes through his chest wall, over -- It's actually a  
23 fairly large cavity, because it hits the -- and causes injuries to  
24 both the right and sixth rib. It's going through -- It's again a  
25 fairly oblique path, right to left and forward.

1 I don't know how much detail...

2 So, it also injures the right lung. It goes through the  
3 diaphragm. And it goes along the top of his liver, you could say  
4 "a long tangential path." It's actually 9 centimeters by  
5 1-1/2-centimeter-wide wound at the top of the liver.

6 Then it gets back into the chest, because the diaphragm is  
7 curved. So it's going to go through the diaphragm, along the top  
8 of the liver, and then comes back through the diaphragm.

9 At this point it's near the center of the body. And it  
10 passes through the tissues in the center of the body, as it's  
11 going slightly forward. It does actually not hit the heart, which  
12 is surprising, because most wounds that are close -- Again, it's  
13 very close to the heart, but it does not perforate or injure it in  
14 any way.

15 And then it exits from the left chest, close to the front of  
16 the -- front of the body. And it is recovered in the lateral left  
17 chest wall.

18 Some people, unlike the way we examine them, likely circle it  
19 more like this so it's a little bit more lateral than the photo  
20 would show -- the diagram would show, which -- I don't have it on  
21 the diagram, but... So that wound is -- is passing right to left  
22 and just slightly forward.

23 And it's pretty much a minimally deformed, regular-looking  
24 bullet. It's completely expanded. So it's petaled-out. It's  
25 over the left fifth rib on this side.

1 Q And what was the next observation that you made from there?

2 A So, the next gunshot wound -- so we're now on the sixth  
3 wound -- is a wound that enters at "G." We already used "F" for  
4 an exit.

5 And that is much lower than the -- It's considerably lower on  
6 his torso. And it's a left -- And it's on his left side,  
7 posterior lateral torso. These are more abraded than not. So, a  
8 typical wound, the entire projectile gets into the body.

9 And it actually stays really, like, in his back. It passes  
10 across his back and fractures his posterior twelfth rib from the  
11 outside, not from going on the inside. Does go actually into his  
12 retroperitoneum, so, behind his kidney but not in the portion  
13 that -- It doesn't get the kidney. So this isn't communicating  
14 with the inside of the abdomen.

15 And it -- it stops when it fractures and actually perforates  
16 the first -- the spinous process, this projection from the back of  
17 your spine, the first lumbar vertebrae.

18 Q And can you just describe the next injuries that you  
19 observed?

20 A So now that's everything that hit his torso.

21 Q Okay.

22 A And we have injuries on each arm and injuries on his hands,  
23 some of which could have been aligned with some of the injuries on  
24 his torso. So, going on from "G," I have also given letters to  
25 the ones on his arms. So, from "G" we have "H," which is an



1 entrance wound.

2 And you can see that on our diagram of the torso/entire body,  
3 on his -- the outer portion. I think it would be "outer portion,"  
4 but on the diagram it's "inner" -- of his right arm. So, it's --  
5 it's a mid distal -- mid forearm.

6 I described the entrance. It's an oblique entrance. So  
7 it's -- it's actually 1-1/4 by 5/8 inches. So, somewhat atypical.  
8 I almost wonder if it's two fragments or -- or has also separated  
9 at some point by hitting something else before it got to him.

10 And there are kind of two components to it. One component  
11 does go underneath his skin and comes -- In fact, I think I -- In  
12 this case, I actually know what it probably hit, which we can get  
13 back to. Let me do the arms -- hands. It hit his hand first.

14 So then it goes in obliquely and it continues upwards. And  
15 it also exits through a -- a long oblique wound and leaves --  
16 There's actually a little fragment-exit as well there. And that  
17 exits at -- at "I," which is up closer to his -- his elbow. And  
18 it doesn't actually do any significant damage. It's just beneath  
19 the skin.

20 And then the next is -- The left forearm has a -- also has a  
21 perforating wound. It enters at "J," on the top portion of his  
22 forearm, fairly close to the wrist, 2-1/2 inches from the flexion  
23 crease.

24 It's -- Then it goes from the top to the back and slightly  
25 upward, but not very much upward, and exits at "K," which is on

1 the outer portion here of his distal forearm, his side. And  
2 it's -- that's -- This -- This wound breaks and fragments the  
3 ulna, so, the outer -- the smaller bone as you're close to the  
4 wrist.

5 And then we have the wounds on the hands of -- We're going to  
6 do those on the -- Yeah, I'm going to do the ones on the left  
7 hand.

8 So, on the left hand, he has multiple wounds. But they're  
9 all likely to be made by the same projectile. They all pass from  
10 the fifth-finger side toward the thumb. They perforate the --  
11 Well, first, there's a graze of the fourth digit or ring finger,  
12 across the back side of it, so, the side that's away from the  
13 palm.

14 Then it perforates. And they're all at the level of the  
15 first joint. The next -- And this one, the initial one, is  
16 associated with fracturing of this joint, so, the fourth-finger  
17 joint. Then it perforates the middle finger and also fractures  
18 that joint, both -- both bones there. There's actually a fragment  
19 of bullet jacket that even has some metal core in that wound.

20 And then it goes through the index finger, also perforating  
21 that. And then it strikes the right thumb also over that joint  
22 and creates just a tear in the skin there, without any fracture.  
23 And I don't know; that could have hit something else on his body,  
24 explaining some of the atypical nature of the wound. Or it may  
25 have just kept going.

1       The wounds on his right hand involve his little finger and  
2 his ring finger. And they can be very easily aligned -- in fact,  
3 make a lot of sense out of the wounds along the left side of his  
4 forearm. The first one or the -- Yeah, I'd say "the first one."  
5 So, these go from the thumb side to the little-finger side.

6       And they're -- The one on the ring finger -- These are also  
7 at the level -- These are at the level of the first partial of the  
8 fingers, come across the top of the hand. And then: a larger and  
9 deeper wound across the knuckle and top of the left little finger.  
10 And then it kind of comes in like that. And they align.

11       You can determine direction in these tangential wounds -- not  
12 always, but frequently -- by which way the tags point. So I can  
13 tell that this went here, here, and then went through. Although I  
14 suppose it could be another wound in that way. But they line up  
15 very well. And I have photos of that, if you have access to the  
16 photos.

17       And those are the gunshot wounds that he has that perforate  
18 his skin.

19 Q     Did you find gunshot wounds that did not perforate the skin?

20 A     No, just the one -- just the ones on his hands.

21 Q     Okay.

22 A     That -- It -- It is --

23 Q     Did you find any --

24 A     -- the palm and fingers.

25 Q     Did you find any other wounds --

1 A Yeah. He had some --

2 Q -- that you took note --

3 A -- other external injuries.

4 He has an abrasion over the small of his back. That may be  
5 related to him being transported, you know, dragged a little bit.  
6 It has that appearance. It has lines of travel that are vertical.

7 He has a kind of abrasion versus a rash on his left upper arm  
8 that's well above where that taser perforation was.

9 He has an older, crested mark also on that arm, well above  
10 where the taser probe was.

11 He has a small abrasion, 3/8-by-1/16-inch abrasion, like just  
12 a scratch, on the front of his right knee.

13 He has an older bruise. It's actually fairly large, 4-1/2 by  
14 2 inches, over the front of his -- what I call "right shin," but  
15 the front of his lower leg.

16 And then on the left side, on the back of his thigh, he has  
17 some scratches there, a scratch there that's 1-1/2 -- 1-1/4 inch  
18 and one that's 3/8-by-1/16 inch. So, very minor injuries there on  
19 the back of his left thigh.

20 And those are all on the diagram.

21 Q And did you see any other injuries?

22 A No, except for -- He does have some iatrogenic injuries. He  
23 has some rib fractures that are from CPR. They're associated with  
24 minimal if any hemorrhage.

25 Q And with respect to the rib fractures, is that something that

1 you've become familiar to seeing in some situations?

2 A Most people who have CPR have rib fractures, unless they're  
3 very young. He's pretty young to have them, but...

4 MR. TARRANT: Judge, I usually go through in a little more  
5 detail on internal injuries. But I think the doctor has really  
6 explained those fairly well. I'm not sure if --

7 THE WITNESS: Well, --

8 MR. TARRANT: -- the court or --

9 THE WITNESS: I mean, I think we can talk a little bit about  
10 hemorrhage, because there's some injuries that --

11 MR. TARRANT: All right. Well, certainly, we can --

12 THE WITNESS: Yeah. I don't know where all the -- I know  
13 where hemorrhage is. But some of them are caused by multiple of  
14 the injuries, so I skipped that portion of my...

15 MR. TARRANT: So, then I can -- I think I can generally --  
16 So, with respect to the --

17 THE COURT: Counsel, could you --

18 MR. TARRANT: Yeah.

19 THE COURT: -- approach for a moment?

20 MR. TARRANT: Oh, sure.

21 THE COURT: Attorney West, if you want to come forward.

22 [Sidebar Discussions at 10:08:08 a.m.]

23 MR. TARRANT: I just --

24 THE COURT: I appreciate that. I think part of what you're  
25 doing is because of the presence of the family here. And that's

1 why I just asked you to come up. But at the same time, I would  
2 just caution -- They can certainly step out. And if you think  
3 there is a point at which they -- because I think it is important  
4 to present the information as you need to. And I can take a break  
5 for a minute, if you want to.

6 MR. TARRANT: It's just -- The testimony, usually we go in  
7 and get so much detail. But when she was talking about the  
8 external injuries, she was giving us all kinds of --

9 THE COURT: Sure. I didn't know if you were going to just  
10 offer the autopsy report as an exhibit or how you had discussed  
11 proceeding that way.

12 MR. TARRANT: I usually don't. But given the inquest, I  
13 think that might not be a bad idea. So I would be offering the  
14 report.

15 THE COURT: And I don't know if that -- You know, there may  
16 be certain points that are going to be made, that you're either  
17 going to make or counsel -- one of the attorneys --

18 MR. TARRANT: And I do have more for this witness.

19 THE COURT: Sure.

20 MR. TARRANT: I mean, because...

21 THE COURT: No, understood. I do think the information she  
22 was about to lead in may be -- But --

23 MR. TARRANT: No, I understand that.

24 THE COURT: I just caution that I know counsel may have some  
25 questions, and if you think there's a need to ask the family to

1 step out or if you've already talked about -- You raised this  
2 issue in one of our conferences, and so that's the only reason I  
3 asked you to approach.

4 Okay. Excellent. Thank you. All right. Thank you.

5 MR. TARRANT: Thank you.

6 [End of Sidebar Discussions at 10:09:58 a.m.]

7 [Pause]

8 MS. WEST: Thank you, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. TARRANT: Oh, and, Your Honor, I've just been notified by  
11 the court officer that the -- Attorney Moynihan is here. So I  
12 don't --

13 THE COURT: Perfect.

14 MR. TARRANT: We can just move into the next witness.

15 THE COURT: Perfect.

16 BY MR. TARRANT:

17 Q So, ma'am, focusing now on your internal examination, --

18 A Mm-hmm.

19 Q -- can you just describe -- Well, first of all, based on your  
20 internal examination, are you able to track the path of travel --

21 A Yes.

22 Q -- of the projectiles?

23 A Yes. In this case, except for the wound -- the projectiles  
24 entering at "A" and "B," which I -- They fragmented so much, I  
25 can't track everything up in that end. But the other paths were

1 all clearly differentiated.

2 Q And so directing your attention to the gunshot wound that --  
3 of -- Essentially, it's the neck and left chest, that you identify  
4 as "C" on your diagram.

5 A Yes.

6 Q Can you just describe the direction of path of travel in any  
7 organs or internal injuries that you observed?

8 A Yes. I want to find page 1, which has that. I had it when I  
9 started. [Locating document.] Here it is. Okay, good. Yes.

10 So, --

11 Q And, well, --

12 A Mm-hmm?

13 Q Sorry. Just, I'm switching gears.

14 But with respect to injuries identified as "A" and "B," --

15 A Mm-hmm.

16 Q -- from the top of the head, you -- I think you just said you  
17 were unable to determine path of travel.

18 A Well, I was unable to distinguish between the two paths --

19 Q Oh, I see.

20 A -- of -- of travel. I wasn't -- I was confident where the  
21 projectile entered and where the lead core of each ended up. But  
22 there were a lot of fragments of jacket that went other areas.  
23 And some of them may have crossed the midline. And generally the  
24 main core of each stayed on its respective side where it started.

25 But I'm not sure. There were some perforations in the



1 follicles, between the two sections. So there were things that  
2 went across the midline. But those may be fragments of bone --

3 Q Understood.

4 A -- that were displaced.

5 But there was a lot of damage in the head to the brain, to  
6 the base of the skull. He had a lot of bleeding from his nose and  
7 from his ears.

8 Q And would that be a result of the injury to his skull and --

9 A Yes, from --

10 Q -- brain?

11 A -- the combination of those two bullets.

12 Q And with respect to the injuries to -- well, identified as  
13 "A" and "B," would either of those injuries, in your experience,  
14 be fatal?

15 A Yes.

16 Q Individually?

17 A Probably individually, yes.

18 Q And, sir [sic], -- And so, with respect to the injury  
19 identified as "C," could you describe again the direction of  
20 travel of the projectile and any internal organs?

21 A So, -- So, with "A" --

22 Q Oh, I'm sorry.

23 A The -- Yeah. "A" went -- They both went somewhat downward.  
24 And "A" was going more backward, and "D" was going more forward,  
25 certainly more forward on the left. The main core ended up down

1 below, but they were bumping into a lot of things up there. And I  
2 usually say bullets always go straight, but in this case they were  
3 so spun by the fact they entered so obliquely.

4 But then going with -- So, then with "C" -- The rest of them  
5 are much more straightforward in terms of path. "C," the  
6 direction was right to left and downward. It's through his neck.  
7 As I said, it manages to pass the midline without -- The biggest  
8 thing it injures is his right internal jugular vein. That's the  
9 most significant injury in the neck. And then it does fracture  
10 the first and second left ribs, with injury to the lung  
11 underneath.

12 Q And with that particular injury and its path, can you  
13 determine the position of Mr. Conlon's head and neck --

14 A Yes, I think I --

15 Q -- at the time of that?

16 A -- had to -- He couldn't be in the standard anatomic  
17 position, to complete that. And I make a comment on that in my  
18 report. [Reviewing document.] So, to complete this path that  
19 goes through the front of his neck, he has to have his head more  
20 forward. Really, it's not the -- The anatomic position is this.  
21 [Demonstrating.] And it's really more of a natural position, where  
22 his neck is forward, with respect to the base of the neck, and his  
23 head is turned to the left. And the left shoulder is somewhat  
24 down and also forward. So it can come through here. You get the  
25 front of his trachea or thyroid gland/trachea and then still end

1 up way down here at "F" on the back of his arm.

2 THE COURT: Could you back up and repeat that again?

3 THE WITNESS: Yeah, so let me repeat it for you. Yeah.

4 THE COURT: The angling? Yeah.

5 THE WITNESS: The -- So, it's coming in, you know, here.

6 [Indicating.] But it stays very far forward and yet still ends up  
7 back here, because the shoulder is forward. And I don't know what  
8 position his body is from here. [Indicating.] I can only do from  
9 the start and the end. It could be all sorts of different ways.  
10 But it has to be with his left shoulder kind of down and forward  
11 and his arm -- his neck not, you know, back, the way it is when we  
12 eat or the way we stand in the anatomic position.

13 BY MR. TARRANT:

14 Q Thank you. Any more comment on that particular wound, with  
15 respect to its internal injuries or path of travel?

16 A No.

17 I mean, it -- it's -- Injuring the internal jugular vein is  
18 not a trivial injury. But I can't say that it would be definitely  
19 fatal.

20 Q Would it result in a lot of blood loss?

21 A It would result in significant blood loss.

22 Q And, I think stating the obvious, would it require immediate  
23 attention?

24 A Yeah.

25 Q So with respect to the direction of path of the gunshot wound

1 | labeled "D," are you able to determine that?

2 | A Yes. Well, so, that wound is on the right chest wall, below  
3 | the level of his breast. And it goes downward and just a little  
4 | bit backward. So, really, it comes through and it does injure the  
5 | lung.

6 | And then it more severely injures the liver that's underneath  
7 | the diaphragm. And when it comes out of the liver, I guess it's  
8 | lost all its steam, because it doesn't damage anything below the  
9 | level of the liver, though it's found among the intestines that  
10 | are there. And they are not significantly injured.

11 | Q Okay. So --

12 | A And that's a very serious wound, the one to the center of  
13 | the...

14 | Q And it's traveling downward; --

15 | A Yes.

16 | Q -- is that correct? And --

17 | A With respect to the standard anatomic position.

18 | Q And so it's -- And -- first strikes the right lung, then the  
19 | diaphragm, and then the lower liver before coming to rest?

20 | A Yes. It goes through -- It's really -- The right lower liver  
21 | is much bigger than the left.

22 | Q Okay. And with respect to the wound identified as "E," can  
23 | you just comment on the direction?

24 | A Well, so, the one entering at "E" is also to his right chest.  
25 | Then it goes across the midline. And it's right to left and

1 slightly forward. It's fracturing the fifth and sixth ribs, where  
2 it goes in. In doing that, it perforates the right lung. And  
3 then it goes across the top of the liver, which is also a  
4 significant injury.

5 So these wounds all together that we've talked about in the  
6 torso, up to now, resulted in a lot of bleeding in his chest. Not  
7 surprising: much more on the right, because the -- you've got the  
8 one that comes through the right. And the one that damages the  
9 left is really just the one that comes all the way across.

10 So, there are 800 milliliters of blood in his right chest and  
11 275 in his left chest. And between -- and not very much  
12 hemorrhage in the abdomen. I think that's a reflection of how  
13 quickly he died, because when I examined him he had essentially  
14 very, very little blood remaining where it needs to be, in the  
15 circulatory system. He had no blood in his heart, aorta,  
16 pulmonary vessels, venous return, inferior vena cava, just a  
17 little bit of blood in the femoral veins.

18 Q And so --

19 A Just one more page.

20 Q Yep.

21 A All right. So, I had no blood to submit for toxicology from  
22 his heart. I listed any blood, the small amount I got from his  
23 legs and chest, for toxicology.

24 Q And are you able to determine how much time had passed from  
25 onset of the injury to death?

1 A Only in a general way. I mean, the -- the head injuries are  
2 very, very lethal. It would be immediately incapacitating but not  
3 necessarily immediately fatal. The blood loss is what leads him  
4 to die. And I think a lot of that blood came out his nose and his  
5 ears and then into his chest and out of some of those other holes,  
6 too.

7 Q Would it be --

8 A But mostly --

9 Q -- minutes?

10 A -- from his nose and his ears and from his -- into his chest.

11 Q Well, could -- Would it be measured in minutes?

12 A Yes, definitely minutes. And maybe even seconds. It would  
13 depend on how quickly the wounds -- and what order they were  
14 inflicted.

15 Q Right, right.

16 So now directing your attention to the gunshot wound labeled  
17 "G," could you just describe the direction and path of that wound  
18 and any internal organs that it --

19 A So, "G" is entering on the left lateral back. And it passes  
20 really just through the tissues of the back, striking the back of  
21 the left twelfth rib and fracturing it, and then perforating and  
22 fracturing the spinous process of the twelfth -- sorry -- first  
23 lumbar vertebrae.

24 Q And --

25 A I'll say one more thing about that.

1 Q Can I just ask you, the damage to the first lumbar vertebrae,  
2 what --

3 A It's --

4 Q -- would that result in, if you can comment on it?

5 A That's what -- I was just looking to see what I did with  
6 respect to that. [Reviewing document.]

7 It's just the tip of the bone --

8 Q Okay.

9 A -- that sticks out on the back.

10 Q So the spinal cord was still intact?

11 A Yes, the spinal cord's still intact. [Reviewing document.]

12 It really came to a stop there. So it's fairly -- by that  
13 point. [Reviewing document.] I just need to see that...

14 Well, the spinal cord actually, in an adult, nearly makes it  
15 down to there. So no really significant portions of the spinal  
16 cord actually are down at that one. That's...

17 Q Okay. So with respect to your internal examination, did you  
18 find any other internal injuries that you found significant?

19 A No.

20 Q And so in addition to your internal and external examination,  
21 did you, as part of this autopsy, request the chemical or  
22 toxicology test to be performed?

23 A Yes.

24 Q And was that done with the blood that you recovered from Mr.  
25 Conlon's leg?

1 A Let me take a look to see. It was probably done with a  
2 combination. I'm looking at the report right now.

3 [Pause]

4 A I don't have a copy of the report. But generally they might  
5 screen on one blood specimen, and they quantitate with the --  
6 Ideally, we would have more blood, which -- we did have no more  
7 blood in this case.

8 Q Okay. And so you did request a toxicology?

9 A Yes.

10 Q And based on your request, did you receive a report  
11 identifying --

12 A Yes. And I don't have a copy of it up here.

13 Q Okay. Well, I'll just show you this two-page document and  
14 see if you --

15 A Yeah.

16 Q -- recognize that.

17 A Yes.

18 Q What do you --

19 A And it matches what my summary of the findings are.

20 Q Okay. And do you -- What do you recognize that to be?

21 A This is a copy of the postmortem toxicology report prepared  
22 by the crime laboratory, the Commonwealth of Massachusetts.

23 Q And did that become part of your report?

24 A Yes, yes. And --

25 Q Thank you. Can I --



1 MR. TARRANT: Your Honor, can this be marked?

2 THE COURT: Yes.

3 [Toxicology Report Marked as Exhibit No. 29]

4 MR. TARRANT: Thank you.

5 BY MR. TARRANT:

6 Q So, here. I'm giving you back what's now been marked as  
7 Exhibit No. 29. So, can you just tell us, what were the results  
8 of the testing that you requested?

9 A Well, so, multiple drugs were detected, both prescription and  
10 illicit drugs.

11 Let me just get the prescription drugs out of the way,  
12 because they were prescribed. He was prescribed amphetamine,  
13 alprazolam, buprenorphine, chlorcyclizine, and quetiapine. And  
14 those were detected.

15 He also -- Also detected, which he may also be prescribed --  
16 well, one thing maybe given during transport was hydralazine --  
17 were pseudoephedrine, which is an over the counter medication, but  
18 also lorazepam and gabapentin were described.

19 And then the illicit drug that was detected was  
20 methamphetamine. Some of the amphetamine that's detected may be  
21 prescribed, but some of it is probably a breakdown of  
22 methamphetamine. And it's actually somewhat of a low level for  
23 just being a breakdown of methamphetamine.

24 Q And so with respect to the methamphetamine, are you also  
25 provided a level of --

1 A Yes.

2 Q And what is that?

3 A It's 507 nanograms per milliliter.

4 Q And are you able to tell us, based on your training and  
5 experience, whether -- what effect if any that level of  
6 methamphetamine would have on a person?

7 A So, I am not a trained toxicologist. I don't have training.

8 But I have a lot of experience with methamphetamine because  
9 of the time I spent in San Diego and my activities on the  
10 Methamphetamine Strike Force that I was in for -- for about 10  
11 years there. And I was responsible for presenting all the data  
12 every year and collecting all the data of every year -- everyone  
13 who had methamphetamine detected in San Diego county who was a  
14 medical examiner's case in which we collected blood and/or had  
15 blood available.

16 And this is a high level. It's what we would see in  
17 people -- the highest levels we would usually see of people that  
18 swallowed their drugs, trying to secrete them, but also people who  
19 were driving crazily and people who were shot.

20 In San Diego county, 25 percent of our homicide victims had  
21 methamphetamine in their system when they died. But so did  
22 10 percent of our motor vehicle crashes. And our suicides had  
23 10 percent. And in our officer-involved shootings, it was almost  
24 universal, as well as in many of our domestic violence cases.

25 Q So are you --

1 A And this would be a high level, higher than -- I actually  
2 would specifically look at cases that were over 1,000 every year,  
3 to see what kind of cases those were.

4 But we would consider methamphetamine fatal at very -- much  
5 lower levels: 20, 30, especially if you have some heart disease.

6 But this is a -- definitely would have been a quite high  
7 level. Usually we see it under 100.

8 THE COURT: You usually see it under --

9 THE WITNESS: Yeah, under 100.

10 THE COURT: Okay.

11 BY MR. TARRANT:

12 Q Are you able to tell us what effect that has on a person?

13 A Well, it makes people think they're pretty invincible, I  
14 think is what we see, is that you're not -- you can do anything.  
15 It's a euphoric stimulant drug.

16 It has a very long half-life. People can get a lot of work  
17 done. If they take too much, they can take a long time to work  
18 down [sic].

19 Q So, ma'am, based on your examination, did you form an opinion  
20 based on a reasonable degree of medical or scientific certainty as  
21 to the cause of death of Michael Conlon?

22 A Yes.

23 Q And what is that opinion?

24 A Multiple gunshot wounds.

25 Q And is that based essentially on the examination and -- that

1 you've described for us today?

2 A Yes, entirely on my examination.

3 Q And is it fair to say -- Did you also create a report in  
4 which you articulate all your findings, essentially, during the  
5 autopsy of Michael Conlon?

6 A Yes. I -- That's what I've been referring to, also.

7 Q So I'd just ask you to take a look at that.

8 A Mm-hmm.

9 Q Is that your report?

10 A Yes.

11 Q And that, in combination with the anatomical diagrams, as  
12 well as the toxicology report.

13 A Yes.

14 Q Thank you, ma'am.

15 MR. TARRANT: May this be marked?

16 THE COURT: Yes, it may be marked.

17 [Medical Examiner's Report Marked as Exhibit No. 30]

18 MR. TARRANT: And that's all I have, Your Honor.

19 CROSS EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY

20 BY THE COURT:

21 Q Doctor, during the course of your examination, did you  
22 recover certain projectiles?

23 A Yes.

24 Q Are those documented in the report that's just been marked as  
25 Exhibit --

1 MR. TARRANT: 30.

2 Q -- 30?

3 A Yes.

4 Q All right. And the location of the recovered projectiles,  
5 it's reflected there?

6 A Yes.

7 Q All right.

8 A There's only one error in this case that involves the photos  
9 that -- I got carried away with labeling, I think, more things  
10 than I should have that night. And in the gunshot wound, which I  
11 say -- Number 5, the one that enters at "E," the projectile that  
12 was recovered, they were talking about "from the left anterior  
13 chest." Or the fifth rib is incorrectly labeled as saying that it  
14 entered at "C" rather than at "E."

15 Q All right. The projectiles that were recovered, what was  
16 done with them?

17 A They were turned over to law enforcement.

18 Q Okay.

19 A To crime lab people.

20 Q All right. So was there anything else that was turned over,  
21 other than the projectiles?

22 A Yes. They kept -- They had access to the clothing.

23 Q Right.

24 A I don't know whether they picked it up or not. I don't  
25 remember. Or no. But I also -- And that's -- I think it should

1 be reflected in the report also, too.

2 MR. TARRANT: Your Honor, I do -- Can I ask one more  
3 question?

4 BY THE COURT:

5 A Okay, so, evidence was:

6 The clothing;

7 I did fingernail scrapings from the hands, each hand;

8 I put some scalp, facial, and pubic hair;

9 I secured some blood;

10 The taser probe;

11 All the bullet fragments and projectiles that I recovered;

12 There's actually another projectile that was in the clothing,  
13 that I also turned over.

14 Yeah, that's all.

15 Q All right. But the projectiles from the area of the torso,  
16 the head, -- any projectiles were given to the --

17 A Any one that I --

18 Q -- state police? Labeled and given to the --

19 A -- pulled out --

20 Q -- state police?

21 A And there are some that are very small, particularly in the  
22 head. But, yeah, there was -- Let's see. I have it.

23 I did x-rays, also, --

24 Q Mm-hmm.

25 A -- in this case.

1 And I do talk about the ones I didn't recover. So, they're  
2 minute and small fragments from the brain, left hand, fracture --  
3 I didn't open his arm, the fractured ulna. So there's still tiny  
4 fragments there also, and some near the spinous process that I  
5 didn't get.

6 THE COURT: All right. A.D.A. Tarrant, I think you said you  
7 had another question.

8 MR. TARRANT: Yes, I did. Thank you. I missed this.

9 REDIRECT EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY

10 BY MR. TARRANT:

11 Q Doctor, based on your examination, were you able to determine  
12 how many projectiles created or inflicted the wounds that you  
13 found on Mr. Conlon?

14 A To some degree of certainty. He has -- I mean, if you count  
15 every little finger wound, he's got many wounds. But I'm  
16 confident that they were -- The ones across his left hand, where  
17 he has so many injuries, were made by a single bullet.

18 Q Mm-hmm.

19 A And I thought the one that's across his left hand was made by  
20 a single bullet that also made the perforating wound in his left  
21 arm.

22 Obviously, the wounds that have a bullet at the end of -- The  
23 wounds that have a bullet at the end of them were each made by a  
24 separate bullet.

25 But very -- the torso ones could be realigned. I don't

1 remember what I came up with. [Reviewing document.] One, two,  
2 three... So, we have seven wounds to the torso, each of which  
3 were made by an individual projectile.

4 And then we have two through the arms. So you have now nine.  
5 And then you have the ones through the hands. But the hands and  
6 the arms can be aligned, to some degree, with the body.

7 And we have enough atypical wounds that it's really hard to  
8 say. So I would say that -- at least seven, because some of it --  
9 I just don't think this one that comes up his right arm is going  
10 to enter again.

11 I think a minimum of seven wounds [sic] would have had to  
12 strike his body. And if -- Each wound track, I identified  
13 individually. I identified 10 different wound tracks. But  
14 definitely two of them go together, the -- the arm and the hands,  
15 and then the right arm and the right hand. And the left hand  
16 might have been interpositioned between one of the entrances on  
17 the --

18 **RE CROSS EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY**

19 BY THE COURT:

20 Q Was any one fatal?

21 A They had -- Either one had -- could be fatal.

22 Q Mm-hmm.

23 A The one that struck his right lower chest and went through  
24 his liver would likely be fatal. I mean, there are amazing  
25 things, what they could do with medical therapy.



1       The wound entering on his right lateral chest, 5, also would  
2 be -- Injury to the liver and the lung would be fatal. The one on  
3 his left is potentially fatal. With therapy he could probably --

4 Q       Just so I'm clear: what --

5 A       -- survive that.

6 Q       What letters do those align with?

7 A       That is, yeah, the one that I drew as --

8 Q       You're talking about "C."

9 A       -- a "C."

10 Q       Yeah.

11 A       "C." Not quite so fatal or so rapidly fatal.

12       Apparently the one in the... [Reviewing document.] There  
13 was a little blood in the abdomen. But some of the blood from the  
14 liver frequently will go up into the chest because there are gun  
15 holes in the diaphragm.

16       And the others would not be fatal. The one in the back, he  
17 probably could walk away from. The ones on the hands, I guess  
18 those --

19 Q       Right, right, right.

20 A       They're pretty -- It's a lot of damage.

21 Q       Right.

22 A       He's certainly got secondary problems.

23 Q       Thank you.

24       THE COURT: Attorney McDonald [sic]?

25       MR. ANDERSON: I just have a couple quick questions.

1 THE COURT: Go right ahead.

2 CROSS EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY

3 BY MR. ANDERSON:

4 Q Dr. Stanley, my name's Ken Anderson. I represent some of the  
5 parties in this. Just three quick topics.

6 In terms of the seven bullet wounds that you located, you  
7 can't tell us what order they occurred in, can you?

8 A Not particularly. I mean, they had to occur pretty close  
9 together, to have as little hemorrhage from the things that  
10 damaged his liver, I think.

11 Some of them -- I -- I don't know how he dropped to the  
12 ground. The head wounds would drop him. And I don't know at what  
13 point that happened. But whenever that happened, there are  
14 certain places -- If he landed, you know, he -- any one that would  
15 have been against the floor, it couldn't have been made after  
16 that.

17 But I can't do that.

18 Q The methamphetamine that you told us about, does that have a  
19 street name that it goes by? Is that the same as crystal meth?

20 A Yes.

21 Q Okay. And just --

22 A Crystal meth. And I think in Hawaii it's called "ice."

23 Q Okay. And just in terms of the stippling that you noted on  
24 the neck: you told us you're not a ballistician.

25 A That's correct.

1 Q But you've certainly worked on hundreds and hundreds of  
2 gunshot wounds?

3 A Yes.

4 Q And you understand the mechanics of how a bullet or  
5 projectile is fired from a gun?

6 A Yes.

7 Q And as the bullets fire, there are gases that come out of the  
8 barrel of the gun, --

9 A Yes.

10 Q -- correct?

11 And if I were to -- If this box that's here on counsel  
12 table -- If this was a body and I had my hand against it and I  
13 pulled the trigger of a gun against it, there'd be a star-shaped  
14 pattern on this --

15 A Only -- Only if it was over a bone. But it would -- there'd  
16 be soot.

17 Q Okay. And if I were to move back a distance -- The stippling  
18 that comes out, it comes out in a conical shape, correct?

19 A Well, in a -- Yeah, in a --

20 Q And it would be on the skin on the clothing, depending on  
21 which distance I was at, correct?

22 A Correct.

23 Q And at a certain distance, I'd be too far away to have it  
24 register?

25 A And that's pretty short, --

1 Q Okay. So --

2 A -- for most weapons. And...

3 Q So based upon you finding the stippling on the neck, you drew  
4 the conclusion that at least that shot was fired at close range?

5 A Yes.

6 Q And can you give us an approximation of that range?

7 A I -- I can't. And especially to -- because the powder all  
8 burned away, too.

9 Q Okay. But, I mean, is it more than 5 feet? More than 10  
10 feet? More than --

11 A Oh, no. It's -- It's probably less than that, for --

12 Q Less than 5 feet?

13 A Yeah. I mean, it -- I don't know exactly what they were  
14 firing. I mean, it wasn't a .22, but -- which goes, like, less  
15 than a foot, I think, --

16 Q Okay.

17 A -- for most of them.

18 Q But it's --

19 A But --

20 Q It would be within a range of 0 to 5 feet; is that a fair  
21 statement?

22 A Yes.

23 Q Okay.

24 A Yeah, I would say, within that range.

25 Q Okay.

1 MR. ANDERSON: I have nothing further.

2 THE COURT: Thank you.

3 Counsel?

4 MR. MCDONALD: No questions.

5 THE COURT: All right.

6 Attorney West?

7 MS. WEST: Thank you.

8 CROSS EXAMINATION OF WITNESS, DR. CHRISTINA STANLEY

9 BY MS. WEST:

10 Q Good morning, doctor. My name's Kim West. I represent the  
11 family.

12 You testified that your review of the left hand suggested  
13 that the finger wounds aligned with the wound in the forearm; is  
14 that right?

15 A Actually, that's the right hand.

16 Q Okay. So --

17 A Yeah, right hand.

18 Q -- the right hand --

19 A Yes.

20 Q -- aligned with the wound in the forearm.

21 A Yes.

22 Q If the shooter was standing in front of the deceased, that  
23 would suggest to you that the arm or the hand could not have been  
24 vertical, right?

25 A Correct.

1 Q And if the shooter is standing in front of the deceased --

2 A If he -- If the deceased is standing up, yeah.

3 Q Yeah. If --

4 A Mm-hmm. If he can.

5 Q So, assume the deceased is standing up. If the shooter's in  
6 front, where does that suggest this hand would have been?

7 A Depends on how he's standing. I mean, if he's down on the  
8 ground, it could be different than if he's -- you know, if he's  
9 standing. So --

10 Q If he's standing, yes.

11 A -- if he's standing, he'd have to have his arm, you know,  
12 raised to some -- I'd say either his elbow there, or his arm  
13 raised that way. [Demonstrating.]

14 Q And do the same exercise for the left arm. Is it your  
15 testimony that the injuries on the left fingers is the -- is  
16 aligned in the --

17 A I don't -- No, those are not aligned.

18 Q Okay.

19 A Those are not --

20 Q So --

21 A -- aligned.

22 Q Forget the alignment.

23 A Right.

24 Q If the shooter is standing in front of him and he has grazing  
25 on his left fingers, according to the diagram, where you --

1 A Well, the left finger is actually -- Well, there's graze of  
2 the ring finger and a tear of his thumb. But they're actually  
3 perforating. Tremendous destruction --

4 Q Okay. Assuming --

5 A -- of -- of -- of the fingers.

6 Q -- that the person's in front of him, --

7 A Mm-hmm.

8 Q -- could his arm have been down like this? Straight down to  
9 the ground?

10 A Well, it's coming from the -- toward the thumb, --

11 Q Mm-hmm.

12 A -- the direction of that one. But there's lots of ways you  
13 could have your hand. It's hard to... I mean, it had to be  
14 aligned like this, toward the path of the -- the projectile.  
15 [Demonstrating.]

16 Q Okay.

17 A But where his hand would be would be all over the place.

18 Q All right. Directing your attention to Number [sic] C,  
19 that's the entry wound on the righthand or the right side of the  
20 neck?

21 A Neck, yes.

22 Q That exited at "F"?

23 A Yes.

24 Q In that situation, the shooter would have to be somewhere to  
25 the deceased's right, correct?

1 A The -- Right. But he could have been turned, you know, --

2 Q Right.

3 A -- like that. [Demonstrating.]

4 Q But the bullet's coming in from the --

5 A Yes.

6 Q -- righthand side.

7 A Yeah. It actually comes through the top of the -- that  
8 shoulder, in and out, before it goes into the neck.

9 Q Do the same exercise for "E" and "F." "E" is on the  
10 righthand side here, right?

11 A Yes.

12 Q So the shooter's got to be from this side, hitting him here.

13 A Right, has to have access to that portion of his body.

14 Q Do the same exercise for "G." "G" is in his back.

15 A Yes.

16 Q Where is the shooter going to be standing for that?

17 A "G" is -- is on the left. And that is essentially very much  
18 left to right, because it doesn't -- it barely goes into the --  
19 into the body.

20 Q Focusing on your -- the right hand again, is it possible that  
21 the fingers of this hand, when it received that grazing, could  
22 have been closed around an object at the same time that the  
23 grazing happened?

24 THE COURT: Counsel, could you repeat the question?

25 MS. WEST: Yes.



1 BY MS. WEST:

2 Q Is it possible that the fingers could have received that  
3 injury at the same time they were gripping an object?

4 A [No response.] [Locating document.]

5 Q Do you want the diagram?

6 A I think it's possible. And I do believe that it continued.  
7 But it might not have. But, yeah, he certainly could have his  
8 hand around something.

9 Q All right. So, you said "it continued." Does that mean that  
10 it lines up --

11 A Well, it -- that --

12 Q -- lined up --

13 A That one continued down through, make -- to make another  
14 wound along the left side of the -- all the -- along the -- the  
15 outer side of the -- the --

16 Q The right side?

17 A -- ulnar side of the right arm.

18 Q Okay. So then are you saying that --

19 A And to do that, it had to be positioned like this. But it  
20 might not have. It may have been --

21 Q All right. So --

22 A -- each their own separate wounds. But --

23 Q Sorry to interrupt; I just want to make sure I understand.

24 A Mm-hmm.

25 Q We're talking about the right hand, right?

1 A Right hand, yes.

2 Q And the graze wounds on the fingers of the right hand --

3 A Mm-hmm.

4 Q Are -- Is that aligned with his -- the wound on his arm?

5 A Yes.

6 Q So are you suggesting that's the same bullet?

7 A Yes.

8 Q Okay. And on the left side, are you suggesting that's the  
9 same bullet that went through the left fingers, that --

10 A No.

11 Q Okay.

12 A Definitely not, because that one enters on the top of his  
13 forearm. And the wound itself, you couldn't get your hand up --

14 Q Okay.

15 A -- to make such a -- It was basically straight across.

16 Q Thank you for that clarification.

17 When you testified earlier, you described his jacket as  
18 full-length.

19 A Yeah, I was --

20 Q What do you mean by that?

21 A I mean, it looks -- I mean, it wasn't like a waist-length  
22 one. It was down, you know, kind of mid-thigh-ish. I don't know,  
23 because I didn't see it on him. But it's -- it's not -- It's a  
24 coat, not really a jacket, in some ways. Not -- Not down to his  
25 knees or anything like that. "Full-length" was probably not

1 quite... When I heard myself say that...

2 Q Okay.

3 A Not quite right.

4 MS. WEST: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Anything else?

7 MR. TARRANT: Nothing, Your Honor.

8 THE COURT: Thank you, doctor.

9 [Witness steps down]

10 THE COURT: All right. Why don't we take a short recess.

11 All right? Thank you.

12 [Court in Recess at 10:47:39 a.m.]

13 [Back on Record at 11:02:30 a.m.]

14 [Call to order of the court]

15 MR. TARRANT: So, thank you, Your Honor. Just to clarify, we  
16 had thought that Attorney Dan Moynihan had shown up for the  
17 troopers. In fact, it was a -- the union rep, whose name is Dan  
18 Monaghan [phonetic]. So I think the court can --

19 THE COURT: All right.

20 MR. TARRANT: -- understand where that got confused.

21 THE COURT: Yes.

22 MR. TARRANT: So, we are ready to proceed. Attorney Moynihan  
23 isn't here. But we -- he has -- I -- he has communicated to me  
24 that he will -- that we can move forward without any --

25 THE COURT: That's fine.

1 MR. TARRANT: -- objection from him.

2 THE COURT: Fair enough. Thank you.

3 MR. TARRANT: So, I'll call out Dylan Finerty.

4 [TROOPER DYLAN FINERTY, Sworn.]

5 THE COURT: Good morning, trooper. You are free to leave  
6 your mask on or off, whichever you're comfortable with. And you  
7 can either sit or stand.

8 THE WITNESS: I'm just going to take this off, if that's all  
9 right with you guys.

10 THE COURT: All right.

11 MR. TARRANT: Thank you, Your Honor.

12 DIRECT EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

13 BY MR. TARRANT:

14 Q Sir, can you please state your name, spelling both your first  
15 and last name?

16 A My name is Dylan Finerty, D-Y-L -- D-Y-L-A-N. Last name's  
17 Finerty, F-I-N-E-R-T-Y.

18 Q And, sir, are you employed?

19 A I am.

20 Q Where do you work?

21 A I work for the state police of Massachusetts.

22 Q How long have you worked for the state police?

23 A I'll be three years in January.

24 Q And prior to joining the state police, do you have any other  
25 law enforcement experience?

1 A I do. I was a reserve police officer for the town of  
2 Mansfield.

3 Q And how long were you a reserve police officer for the town  
4 of Mansfield?

5 A Roughly one year.

6 Q And what is your current assignment with the state police?

7 A I work out of the Division of Field Services. I'm assigned  
8 to the state police Millbury barracks, where I work the evening  
9 shift, from 3:00 to 11:00 p.m.

10 Q And are you designated a state trooper?

11 A Yes, correct.

12 Q Your rank is trooper?

13 A Correct.

14 Q And how long have you been in your current assignment?

15 A I've been in the Division of Field Services since I graduated  
16 the academy in June of 2019.

17 Q And what are your duties and responsibilities as a trooper  
18 assigned to the Millbury barracks?

19 A We are assigned highways in -- in the Commonwealth, Route  
20 495, Route 196. Our job is to make sure the highway is safe. We  
21 responded to calls, crashes, disabled motor vehicles.

22 We also help towns, other towns and city agencies, if they  
23 need any assistance.

24 And we can proactively police, if we choose.

25 Q And, sir, if you direct your attention to January 5th, 2021,

1 do you recall that day?

2 A Yes, sir.

3 Q Were you working on that day?

4 A Yes. I was working a -- a paid detail in Brighton.

5 Q And what kind of paid detail were you working?

6 A I was working for the company Middlesex Corp. They were  
7 working on the railroads. I do not -- I can't recall exactly  
8 where the street location was. But basically my duty was to use  
9 my cruiser as well as the cones to block off a section of the  
10 roadway so that they could do their service to the railroad  
11 tracks.

12 Q And so when you're working your paid detail on January 5th,  
13 2021, you're working out of a marked state police cruiser?

14 A Correct.

15 Q Were you also dressed in uniform?

16 A Correct.

17 Q And what kind of uniform were you wearing? Does it differ  
18 than the uniform you wear as a trooper?

19 A I was wearing this uniform, with that jacket.

20 Q So, when you say "this uniform," can you just -- what --

21 A Yeah, sorry.

22 Q Just in words, what kind of --

23 A My fully-issued Class B uniform, winter uniform.

24 Q Okay. And you wear a bright yellow jacket over it?

25 A Correct.

1 Q And that's what you were wearing on that day?

2 A Correct.

3 Q And that uniform is affixed with a badge and police -- state  
4 police insignia; is that correct?

5 A That is correct.

6 Q As well as your jacket? Does that --

7 A That is -- That is correct.

8 Q And do you wear a duty belt when you're working a detail?

9 A I do, yes.

10 Q And were you wearing your duty belt on January 5th, 2021?

11 A I was.

12 Q And what do you carry on your duty belt?

13 A Starting from right to left, I carry a set of handcuffs, my  
14 department-issued firearm, OC spray, my magazine pouches, a cuff  
15 key, my department-issued taser, a handheld flashlight, my  
16 department-issued radio, and another set of handcuffs.

17 Q And with respect to your taser, can you describe any training  
18 you had with the use of a taser?

19 A Yeah. So, we were issued them in the academy. We spent a  
20 full week at the firearms range in New Braintree, where we spent  
21 the entire week learning the ins and outs of it, how to use it,  
22 different scenarios and cases in which you would use it.

23 Q In addition to the academy training, did you attend any other  
24 training relative to the use of the taser?

25 A Yes, yeah. We -- We have to requalify every year with the

1 taser and a firearm up at the academy.

2 Q And do these trainings -- Do they instruct on when to and  
3 when not to use your taser?

4 A Yes.

5 Q And are you put through simulations with taser use?

6 A Yep, yeah. We do different scenario trainings.

7 Q And what kind of scenarios do you run through?

8 A All sorts of different ones, whether it's a motor vehicle  
9 stop, a domestic situation...

10 Q And so are these with role-players?

11 A Yeah, role-players.

12 Q And --

13 A Simulations, yep.

14 Q And so during these, you know, roleplay scenarios, are you  
15 trained on where to aim a taser --

16 A Correct.

17 Q -- at an individual?

18 A Yes.

19 Q And how do you aim a taser?

20 A So, when you activate it, it has two lights that signify the  
21 probes. We were taught in the academy to use the center -- the  
22 waistline as the -- to differentiate the probes: upper body, lower  
23 body.

24 Q And so, a taser -- Can you just describe what a taser is and  
25 how it operates?



1 A Yeah. It's a -- I would say, you know, it's an electronic  
2 device or weapon used as less-lethal force in order to detain or  
3 incapacitate a subject. It causes neuromuscular incapacitation.  
4 It has two probes that, when they are deployed, are supposed to  
5 pierce into the skin, causing the neuromuscular incapacitation  
6 that gives us access to detain a subject in a less-lethal way.

7 Q And so how do you -- When you have two separate probes,  
8 you're trying to get both of those into a body?

9 A Correct.

10 Q How do you aim it?

11 A You would aim it just as you would a firearm.

12 Q And --

13 A It has site pictures. And the probes have red dots that  
14 portray [sic] on your target that you are looking at.

15 Q And so you're trying -- When you're aiming a taser, fair to  
16 say you're trying to put the red dots -- one above the waist, one  
17 below the waist?

18 A Yes, if -- if feasible.

19 Q Well, that would be the best case?

20 A Yeah, yes, sir.

21 Q Are there environmental factors that -- or other variables  
22 that could effect the effectiveness of a taser?

23 A Yeah. I'd say the rain is -- I mean, you could still try to.  
24 But the rain is one instance where they recommend not using it if  
25 you don't have to.

1 Q Okay. And how about clothing?

2 A Yeah, clothing can also play a factor, if they're wearing  
3 multiple layers, a thick jacket, anything like that.

4 Q Okay. And why is that?

5 A Because the probes are -- I don't know the exact length, but  
6 the probes are short. And they need to pierce through the  
7 clothing, into the skin, in order to create that neuromuscular  
8 incapacitation.

9 Q And so, sir, directing your attention to January 5th, 2021,  
10 at approximately 1:45 in the afternoon, were you working that day?

11 A I was.

12 Q And you were working a paid detail at that time?

13 A Yes, I was.

14 Q And so what happened, if anything occurred, as you were  
15 working your detail at 1:45 on that day?

16 A I overheard on our radio -- Station H was advising somewhere  
17 on, I believe it was, Lincoln Street and Newton of a [sic] armed  
18 robbery at a candy store. I believe it was called Indulge.  
19 Turned into a barricaded suspect above the candy store.

20 Q And, sir, hearing that, what did you do?

21 A At that time, I pulled out my GPS. I saw that it was only 2  
22 miles away, approximately. I pulled up to the crew, told them I  
23 had to leave, didn't specify what I was doing. I activated my  
24 lights and sirens and made my way there.

25 Q And approximately how long did it take you to get to the

1 candy store?

2 A Approximately 5 minutes.

3 Q And then -- That's traveling with lights and siren?

4 A Correct.

5 Q And what if anything did you observe upon your arrival to  
6 that area?

7 A A large police presence. I believe there was EMS outside.  
8 Just a lot of commotion.

9 Q So, seeing that, what if anything did you do?

10 A I tried to block off the -- I don't know the intersection I  
11 came in on. But I tried to block traffic off with my cruiser. I  
12 then exited my cruiser, called-off on scene, and was attempting to  
13 look for any Newton police, seeing if I could help out in any way.

14 Q And did you speak to any Newton police officers?

15 A I did. I was approached by a Newton sergeant.

16 Q And do you recall the sergeant's name?

17 A I do not.

18 Q And so, was the sergeant that you spoke to carrying anything?

19 A Yeah. He was carrying a less-lethal beanbag shotgun.

20 Q And did that individual direct you or ask you to do anything?

21 A Yeah. He asked me if I would come upstairs with him and  
22 assist him with the barricaded suspect.

23 Q And so how did you respond?

24 A So, at that time, I had heard another state police cruiser  
25 call off. I didn't want to be the only state police presence

1 upstairs. So I had Trooper Christian Howell come with me.

2 And we followed the Newton sergeant through the alleyway  
3 behind the candy store and upstairs to the apartment.

4 Q Okay. So Trooper Christian Howell was another state trooper  
5 who arrived on that scene?

6 A Correct.

7 Q And you went up together with the Newton sergeant?

8 A Correct.

9 Q And how did you -- Where did you enter the building?

10 A There was, like, a back entrance that led up, like, a dark  
11 staircase.

12 It was a triple-decker. We went all the way up to the third  
13 floor.

14 Q And when you arrived to the third floor, what did you do?  
15 What did you see?

16 A I believe I saw one or two Newton police officers at the back  
17 entrance, at the top of the stairs.

18 I heard a bunch of -- bunch of commotion, some screaming,  
19 verbal commands.

20 Q And could you identify what was being said, when you say  
21 "some screaming and verbal commands"?

22 A Yeah. I heard "Drop the knife" three or four times. And I  
23 couldn't really hear anything else.

24 Q Okay. Could you see who was saying, "Drop the knife"?

25 A Sorry, no, I could not.

1 Q Could you see who he was speaking to?

2 A No, I could not.

3 Q And so where are you when you first hear this, in relation to  
4 the building?

5 A Yeah, so, we're in the -- the back entrance. It's like a  
6 back door to get into the third-floor apartment.

7 Q So -- Okay. And so did you enter that third-floor apartment?

8 A Yes.

9 Q And what if anything -- And when you entered the third-floor  
10 apartment, where did you go? What did you do?

11 A We went through, like, a living room into a kitchen, or a  
12 back room into, like, a kitchenway that opened up into a living  
13 room. And that living room had the main entrance to the  
14 apartment.

15 Q And did you see any other officers as you walked through the  
16 apartment?

17 A Yeah. There was a -- I believe there was one other Newton  
18 police officer in the living room, as well as the Newton captain,  
19 who was wearing a kilt. I believe he was coming from a police  
20 officer funeral.

21 Q And so you made your way all the way into the living room?

22 A Correct.

23 Q And is that fair, that would be on the Lincoln Street side of  
24 the apartment?

25 A Correct.

1 Q And what if anything happened as you were in the living room  
2 in that apartment?

3 A There was a doorway, the main entrance that led to, like, a  
4 small hallway, with a staircase that went down.

5 There was a Newton police officer in the hallway. I kind of  
6 called him "the negotiator." He was standing there, talking to  
7 the gentleman at the end of the hallway. And he had his hands up  
8 and was repeatedly telling him to drop the knife.

9 Q Okay. Just to be clear, who had his hands up?

10 A The Newton police officer.

11 Q And could you --

12 A In the hallway.

13 Q Could you see the person he was speaking to?

14 A At that time, no.

15 Q Sir, showing you what's been marked as Exhibit 14, do you  
16 recognize that photograph?

17 A I do.

18 Q Does that photograph depict where you saw the Newton police  
19 officer in the hallway?

20 A Yeah. He was standing right here, in front of the --

21 Q Actually, can you hold it up and show the court as well as --  
22 show the judge and --

23 A Yeah.

24 Q Where he was standing.

25 A So, I was approximately a couple feet in, right here.

1 [Indicating.] And there was a Newton police officer standing  
2 right here, at the corner of this.

3 Q And where you're pointing to is --

4 A The bannister.

5 Q -- the corner bannister on the far side of the stairway?

6 A Yeah, by the welcome mat.

7 Q All right. Thank you.

8 And so where did you position yourself when you first saw  
9 that, or where were you?

10 A Yeah, I was approximately, like, 4 to 6 feet inside the  
11 living room, from the main entrance of the door.

12 Q Okay. And did you have your firearm drawn at that time?

13 A I did.

14 Q And so as you're standing there, well, could you -- What  
15 happened next, while you were standing there, after you observed  
16 the Newton officer in the hallway?

17 A Yeah, I was able to peek around the threshold, from the door.

18 I saw the gentleman standing in front of the Newton police  
19 officer with his hands up. He had a knife in his hand, up to his  
20 neck. He was talking about simulations and how he wanted to talk  
21 to his real father on the phone.

22 And the Newton police officer who was acting as a negotiator,  
23 with his hands up the whole time, repeatedly was telling him that  
24 he could make a phone call; he could use his -- the Newton police  
25 officer's -- phone; all he had to do was just put the knife down.

1 Q And how long did that progress? Or what happened next as you  
2 were watching that?

3 A I don't know. 10 -- Approximately maybe 10 minutes, 15  
4 minutes.

5 I was originally going upstairs as the lethal coverage  
6 because I did not know there were other police presence up there.

7 Once I realized that there was other Newton police presence  
8 on scene and I realized that they did not carry a taser, I  
9 coordinated with the sergeant and the captain, asked if I could  
10 put my firearm away and then assume less-lethal coverage with my  
11 taser.

12 Q Okay. And at that point had you seen the individual that the  
13 Newton officer was --

14 A Yes.

15 Q -- speaking with?

16 And could you see how he was dressed?

17 A Yeah. He was a bigger, heavysset guy. I believe he had a  
18 beard. He was wearing, like, a green, like, army jacket.

19 Q And so you holstered your firearm at that point?

20 A I did.

21 Q And did you unholster your taser?

22 A I did.

23 Q And then what did you do?

24 A So, we kind of sat there for a little bit.

25 We let the Newton police officer try to negotiate with him.



1       Eventually, we were able to get the gentleman to put the  
2 knife down, which -- the Newton sergeant advised he put the knife  
3 down by his side.

4   Q     And did you see where the knife went at that time? Could  
5 you --

6   A     No. But the Newton sergeant was able to look around the  
7 corner and advise me and the Newton captain that the gentleman had  
8 put the knife down by his side.

9   Q     And so then what happened?

10   A     Myself, the captain, and the sergeant, we decided that we  
11 were going to attempt to use the sergeant's less-lethal beanbag  
12 shotgun to subdue the subject.

13       At this time, the Newton sergeant stepped into the hallway.  
14 He attempted to deploy a beanbag at the subject.

15       It malfunctioned or jammed or did not go off.

16       He attempted to fire a second beanbag.

17       And that also did not go off.

18   Q     And where were you when that was happening?

19   A     4 to 6 feet from the -- Approximately 4 to 6 feet from the  
20 door, into the living room.

21   Q     And could you --

22   A     So I was in the living room, facing the door that went out  
23 into the hallway.

24   Q     And could you see into the hallway, as far as where the  
25 individual was that the Newton officer was speaking to?

1 A I only had one look. And he was roughly 4 to 6 feet from the  
2 doorway, to the right, in the hallway, towards the staircase. I  
3 only had saw him once. And it was before he put the knife down.  
4 He had the knife up to his neck.

5 Q Okay. Did he have anything else in his hands at that time,  
6 that you saw?

7 A No.

8 Q Other than the knife?

9 A No, not that I recall.

10 Q Just the knife?

11 A Yep.

12 Q And so after you saw that the shotgun malfunctioned, what  
13 happened next?

14 A The suspect picked the knife back up.

15 And the sergeant was yelling out that he had the knife again.

16 The sergeant then came back into the living room that we were  
17 in. He kind of stepped to the left side. Like, from the doorway,  
18 he stepped to the left.

19 So then it was me looking at the doorframe.

20 The subject stepped into the doorway, facing me. He was  
21 approximately, I don't know, 4 feet away.

22 At -- When the sergeant went to deploy the beanbag, we kind  
23 of naturally took a step forward to see what would happen.

24 And then he picked up the knife.

25 The Newton sergeant came back in.

1       The subject came into the doorway, towards the living room,  
2 towards me, was approximately 3 to 4 feet away from me. He had  
3 the knife in his hand, in his right hand, holding it like this so  
4 the blade was facing outwards. [Demonstrating.]

5   Q     So --

6   A     And then --

7   Q     So your forearm is up by your shoulder?

8   A     Yeah. He had it, like, up by his right shoulder, like this.

9   Q     And the blade pointing outwardly?

10   A     Yeah, blade pointing outward, towards me.

11   Q     And what happened next?

12   A     I attempted to deploy my taser.

13       And almost simultaneously, maybe approximately a half a  
14 second later -- There was a Newton police officer to my left. We  
15 were shoulder-to-shoulder. He was assuming lethal coverage. And  
16 I want to say he fired approximately two to four rounds or three  
17 to four rounds at the subject.

18   Q     And where was the sergeant at this time, with the  
19 less-lethal?

20   A     He was -- He was probably to the left of me and the Newton  
21 police officer, facing, like, closer to Lincoln Street.

22   Q     And so what happened after you heard the shots fired?

23   A     I had my radio on. I immediately advised Station H, which is  
24 our, like, duty office and dispatch, that shots were fired and  
25 that we needed EMS and an AED.

1        Pretty sure EMS was already staged out front. And within  
2 approximately 30 seconds to a minute, they were rendering aid on  
3 him.

4    Q     And besides the officer to your left, are you aware if any  
5 other police officers discharged their firearm at that time?

6    A     No.

7    Q     And when you -- Did you see Mr. Conlon fall or did you see --  
8 Did you come to learn that the individual's name was Michael  
9 Conlon?

10   A     After the fact, yes.

11   Q     Okay. Did you see Mr. Conlon fall to the ground after the  
12 shots fired?

13   A     I did.

14   Q     Did you see anything in his hands at that point?

15   A     At that point, no.

16        But when he was entering the doorway, facing me, he had the  
17 knife in his right hand. I don't know if it fell out or if he  
18 maintained a grip on it.

19   Q     Okay. So you're not sure where it went after Mr. Conlon  
20 fell?

21   A     No, not sure.

22   Q     And with respect to -- Well, after he fell to the ground,  
23 what happened next? After you called --

24   A     Yeah, I called for EMS.

25        I don't know if it was the Newton police officers or if it

1 was EMS itself, but he -- they were rendering aid to him almost  
2 immediately.

3 I took my spent cartridge from the taser out and I put -- I  
4 believe there was, like, a coffee table right down in front of me.  
5 I put it down there.

6 And I kind of just stood by and made sure everyone else was  
7 okay, if anyone else needed assistance.

8 Q And, sir, I'm going to show you a photograph and ask you if  
9 you recognize it or recognize what's depicted in this photograph.

10 A Yeah, that's my taser cartridge that I put down on the table.

11 Q And so does that photograph fairly and accurately depict your  
12 taser cartridge and where you placed it after deploying?

13 A Correct.

14 Q Thank you.

15 MR. TARRANT: May this be marked, Your Honor?

16 THE COURT: Yes.

17 [Photo of Taser Cartridge Marked as Exhibit No. 31]

18 BY MR. TARRANT:

19 Q So now showing you Exhibit 31, I guess to make it a little  
20 clearer, can you just circle the taser cartridge?

21 A [Marking photograph.]

22 Q Thank you.

23 Sir, showing you this photograph, I'd ask you if you  
24 recognize what's depicted there.

25 A That's one of the prongs from my taser.

1 Q And does it appear to be stuck in something?

2 A Yeah. It looks like a wall or a doorway.

3 Q Do you know where that is in relation to the apartment you  
4 were in?

5 A I do not.

6 Q So are you aware of whether it's the same apartment to your  
7 door, or the door across the hall?

8 A I am not.

9 Q But that is your -- one of the probes from your taser?

10 A I believe it is, you.

11 MR. TARRANT: Can this be marked, Your Honor?

12 [Photo of Taser Cartridge Marked as Exhibit No. 32]

13 BY MR. TARRANT:

14 Q So, after the shots fired, at some point did you leave the  
15 apartment? Obviously, you left the apartment.

16 A Yeah, I did.

17 Q But --

18 A I did.

19 Q How much time after you left the apartment -- between the  
20 shots fired and --

21 A Approximately 10 minutes.

22 Q Okay. And were you in the apartment for those 10 minutes?  
23 Meaning, did you ever go out into the hallway after the shots  
24 being fired?

25 A I did not.

1 Q And so how did you leave the apartment?

2 A I left the way I came in. I went through the living room,  
3 through the kitchen, whatever that back room is. And I went down  
4 the stairs and out the alleyway onto Lincoln Street.

5 Q And so fair to say that the only look -- the only time you  
6 looked into the hallway was when you initially made your first  
7 observations of Mr. Conlon?

8 A Correct.

9 Q All right. Was there another time in the timeframe that you  
10 were there that you went into the hallway?

11 A No.

12 MR. TARRANT: Thank you. That's all the questions I have.

13 THE COURT: Counsel?

14 CROSS EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

15 BY MR. ANDERSON:

16 Q Good morning, Trooper Finerty. My name is Ken Anderson. I  
17 represent some of the Newton superior officers in this case, the  
18 captain that you described, Sergeant Chisholm, and some of the  
19 other individuals.

20 When you were with the Mansfield police department as a  
21 reserve officer, you had some academy training?

22 A I did.

23 Q And did you have a taser with Mansfield?

24 A I did not. I was considered a reserve police officer; they  
25 only issued tasers to the fulltime officers.

1 Q Okay. But then you had taser training, a weeklong training  
2 at the Mass. state police academy, correct?

3 A Correct.

4 Q And as a Mass. state trooper, do you also have a shotgun in  
5 your vehicle? Have you trained on a shotgun?

6 A We are trained in them. But due to quantity and stuff, we  
7 are not -- not everybody is issued one.

8 Q Okay. And you're not familiar professionally with the  
9 less-lethal shotgun or beanbag gun?

10 A I am not.

11 Q Let me just try to get a better understanding of exactly what  
12 you did that day. And let me just give you a little bit of  
13 background, if I can.

14 Monday morning, we went out to the site and took a view, with  
15 the judge and counsel. And we measured what the distance was from  
16 the doorway.

17 Let me just -- It's Exhibit 14, that you were shown before?

18 A Yes.

19 Q You recognize that?

20 A Yeah.

21 Q And you agree with me that you were in this doorway that's  
22 over here by the left-hand side?

23 A [No response.]

24 Q And we measured from this doorway down to the wall at the  
25 other end of the hallway where the individual was. All right, I'm



1 not going to take it out. And it was the distance of 12 feet 10  
2 inches. And yesterday afternoon I actually took a tape measure  
3 and measured from the end of the railing here where the court  
4 officer sits, down along the jury box. And it was somewhere  
5 between the end of the jury box and the witness stand where you  
6 are, was 12 feet 10 inches.

7 So, if you could pretend like you're in the location now of  
8 the individual who had the knife to the throat. And down here,  
9 beyond where the court officer sits, would be the doorway where  
10 Sergeant Chisholm was located.

11 A Yep.

12 Q And can you visualize the scene now?

13 A Yes, I can.

14 Q Okay. And it's fair to say that at some point there was an  
15 officer you're describing as a negotiator who was outside, who was  
16 engaging the suspect verbally, --

17 A Yes.

18 Q -- correct?

19 A Correct.

20 Q And he was trying to get him to put the knife down?

21 A Correct.

22 Q And before this happened, you had had a discussion with  
23 somebody named -- a Captain Marzilli?

24 A Correct.

25 Q Do you remember Captain Marzilli?

1 A Correct.

2 Q And Sergeant Chisholm, correct?

3 A Correct.

4 Q And Trooper Howell was there?

5 A Correct.

6 Q And they asked you about the tasers and their operation?

7 A Correct.

8 Q And it's fair to say, Newton police, they told you that they  
9 don't carry tasers?

10 A Correct.

11 Q And you were able to assess the scene. You looked out and  
12 you saw this individual with the green jacket and the knife,  
13 correct?

14 A Correct.

15 Q And did you tell them that you didn't know if the taser would  
16 be able to penetrate, because of the jacket?

17 A I don't recall.

18 Q Okay. But you had some reservations about whether the prongs  
19 would actually get through, to work, correct?

20 A Correct.

21 Q But in this meeting, it was decided that you were going to be  
22 a second layer of less-lethal option, correct?

23 A Correct.

24 Q So Sergeant Chisholm was going to be the first option of  
25 less-lethal, correct?

1 A Correct.

2 Q And even though it may not work, you were going to give it a  
3 second shot, to see if you could give another layer of less-lethal  
4 before police had to go up to lethal option, correct?

5 A Correct.

6 Q And at some point when the word goes out that the knife is  
7 dropped, Sergeant Chisholm steps out as if he's going to fire a  
8 round from the less-lethal shotgun?

9 A Correct.

10 Q And at that point you're still, you said, about 4 feet in the  
11 room?

12 A Correct.

13 Q And from your vantage point, could you see down the hallway  
14 at that point?

15 A Could not.

16 Q And at some point very quickly, he realized that the gun  
17 malfunctioned and wouldn't shoot, correct?

18 A Correct.

19 Q And then he kind of turned his back and kind of came back  
20 into the room and tried to clear it?

21 A Correct.

22 Q And at some point you moved closer to the doorway?

23 A Correct.

24 Q And you said you moved closer to the doorway when he came out  
25 with the gun, because you wanted to see what's happened.

1 A Correct.

2 Q And at some point, the suspect was actually right in the  
3 doorway itself.

4 A Correct.

5 Q And where were you in relationship to Sergeant Chisholm at  
6 that point? Were you also right in that doorway?

7 A Correct.

8 Q And the gunshots, did you see the person who actually  
9 discharged the firearm, where they were in relation to you?

10 A Yeah. The Newton officer was directly to my left. And the  
11 rounds went off right in my left ear.

12 Q Okay. And how -- What was the distance? Were you  
13 shoulder-to-shoulder with him?

14 A Yeah, we were shoulder-to-shoulder, approximately, like, 3 or  
15 4 feet away from the subject, who was in the -- the threshold of  
16 the doorway.

17 Q And at that point the subject had the knife in his right  
18 hand, as you demonstrated earlier?

19 A Yeah. He was attempting to enter the living room, where we  
20 were.

21 Q Raised up around his --

22 A Yeah.

23 Q -- head?

24 A His -- His right --

25 Q His ear?

1 A Over his right shoulder.

2 Q Okay.

3 MR. ANDERSON: I don't have any further questions.

4 THE COURT: Counsel?

5 CROSS EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

6 BY MR. MCDONALD:

7 Q Trooper Finerty, my name is Alan McDonald. I am counsel for  
8 the Newton Police Association and representing several of the  
9 witnesses here from that group.

10 You mentioned that as you were trying to assist the Newton  
11 officers -- that you thought you were going to be operating as the  
12 lethal option.

13 A Correct.

14 Q Is that correct? And what did you mean by that?

15 A That I was going to use -- If -- If it came to that  
16 situation, I would be using my department-issued firearm.

17 Q And when you say "it came to that situation," what situation?

18 A If it came to a use-of-force situation that required lethal  
19 force.

20 Q And did you see a use-of-force situation that required lethal  
21 force --

22 A Yes.

23 Q -- as you were observing what was going on? And what was  
24 that?

25 A It was the subject making entry to us, with a knife.

1 Q And had you been the lethal option at that time, what would  
2 you have done?

3 A If I was the lethal option, I -- I would have used lethal  
4 force and deployed my firearm.

5 MR. MCDONALD: Thank you. That's all I have.

6 THE COURT: Thank you, counsel.

7 Attorney West?

8 MS. WEST: Thank you.

9 CROSS EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

10 BY MS. WEST:

11 Q Good morning, trooper. My name's Kim West. I represent the  
12 family.

13 When you arrived on the third floor and in the first few  
14 minutes, how many captains did you meet?

15 A I met one, I believe.

16 Q And was that the one in the kilt?

17 A Correct.

18 Q And did you understand him to be in charge?

19 A Correct.

20 Q You talked about being in the living room, watching Sergeant  
21 Chisholm step into the hallway and having his shotgun  
22 malfunctioning; do you remember that?

23 A Correct.

24 Q From your vantage point, as you saw that, where was the  
25 negotiator?

1 A I believe he was just to the left, maybe a little bit behind  
2 him.

3 Q Was he in the hallway or was he in the apartment?

4 A He was in the apartment.

5 Q And how far out in the hallway was he?

6 A In what sense? From the door, where I --

7 Q From the door.

8 A 2 feet, maybe. 3 feet.

9 Q And the whole time that the negotiator was talking to the  
10 suspect, was he always in the hallway?

11 A Yes.

12 Q And while you were in the apartment, was the man in the kilt  
13 also with you?

14 A He was to my right, in the living room, in the apartment.

15 Q And the door was open?

16 A Correct.

17 Q And how from you to your right was he?

18 A Approximately 3 -- 4 to 6 feet, maybe.

19 Q And from his vantage point, did he see the negotiator in the  
20 hallway?

21 A He could.

22 Q You said that -- You just answered some questions from  
23 Attorney Anderson about "reservations." You had reservations  
24 about the taser working through the clothes; do you remember  
25 talking about that?

1 A Yes.

2 Q Why did you have reservations?

3 A Because, depending on the clothing, the thickness, the probes  
4 are not able to pierce through into the skin. Therefore, it would  
5 not function properly.

6 Q And in your very quick look into the hallway, you could see  
7 he had, like, a canvas Carhartt kind of jacket on, right?

8 A Yeah, he had some type of jacket on.

9 Q And were you concerned that the tasers weren't going to  
10 penetrate that?

11 A I -- I wasn't thinking of it at the moment, no.

12 Q All right. Well, you had some reservations.

13 A Yeah.

14 Q Did you --

15 A Yeah.

16 Q -- communicate those reservations?

17 A Yes.

18 Q All right. At some point, there was a plan that was made.

19 Strike that.

20 Do you remember being interviewed about these events two days  
21 after the events, January 7th?

22 A Correct.

23 Q And at some point while you're on that third floor, a plan is  
24 formulated, correct?

25 A Correct.



1 Q Can you -- Were you actually giving your opinion as to what  
2 should be done?

3 A No.

4 Q You said you "heard 'Drop the knife' several times. And then  
5 I just kind of heard bickering between the Newton officers, just  
6 trying to formulate a plan. It was a small area. So I was just  
7 kind of sitting back, waiting for orders. I didn't want to step  
8 on anyone's toes."

9 Those Newton officers, do you remember who they were?

10 A No, I don't -- I don't recall their names. But I -- I --  
11 Yeah, I remember being with them. But I didn't know them by a  
12 first-name basis.

13 Q What did you mean by "bickering"?

14 A "Bickering" as in trying to -- They were trying to get the  
15 gentleman to -- to drop the knife, and figure out what their plan  
16 of action was if they were to get him to drop the knife.

17 Q So they were bickering among themselves.

18 A Correct.

19 Q How many of them?

20 A There was -- There was the captain. There was the sergeant.  
21 There was the Newton officer to my left.

22 And then there was the Newton officer out in the hallway, but  
23 his -- he wasn't talking to us. He was talking to the gentleman  
24 in the hallway, with his hands up the entire time.

25 Q And while he's talking to the gentleman in the hallway, is

1 the gentleman screaming or is -- are they just actually then  
2 having a conversation?

3 A No, he was -- his voice was raised. I was classify -- He was  
4 screaming.

5 Q All right. You particularly chose this word, "bickering."  
6 Can you just give us more detail about what you mean by that?

7 A No, I can't.

8 I mean, they were -- I guess a better word would have been --  
9 They were just talking, deliberating, trying to figure out what  
10 the best plan in that moment would have been.

11 Q Was there disagreement among them?

12 A No.

13 Q But you chose the word "bickering," correct? That means some  
14 sort of tension. Or would you agree with me that that means some  
15 sort of decision-making that's at odds with each other? Would you  
16 agree with that?

17 A No, I wouldn't agree with that. I -- And that might have  
18 just been the wrong word for me. It was a year ago. It was --  
19 might have been the wrong word to choose. But...

20 Q When you saw the negotiator in the hallway, he didn't have  
21 any protection in front of him, did he?

22 A No, he did not.

23 Q And the distance between him and the suspect was -- in your  
24 estimation, was it a short distance?

25 A Yes.

1 Q And there were no -- If the suspect were to charge at him,  
2 there was nothing between him and the suspect, right?

3 A No, there was not.

4 Q Are you aware whether there was a request made of the state  
5 police to call for a state police negotiator?

6 A I was not aware of that.

7 MS. WEST: I have nothing else, Your Honor.

8 THE COURT: Counsel, anything else?

9 MR. ANDERSON: Just quickly.

10 RE CROSS EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

11 BY MR. ANDERSON:

12 Q You were asked if the individual with the knife charged at  
13 the negotiating officer -- if there was anything between them.

14 It's fair to say Sergeant Chisholm was in between the  
15 individual with the knife and the negotiator, correct, with his  
16 less-lethal shotgun?

17 A Yeah, correct.

18 Q Okay.

19 MR. ANDERSON: I have nothing else.

20 THE COURT: Anything else?

21 MR. McDONALD: Nothing.

22 CROSS EXAMINATION OF WITNESS, TROOPER DYLAN FINERTY

23 BY THE COURT:

24 Q Trooper, you testified that there was an individual in a kilt  
25 who was present during the time that you were there.

1 A Yes, ma'am.

2 Q Did that individual ever leave the apartment?

3 A I -- No.

4 Q Prior to the shooting.

5 A To my knowledge, no. He was there the whole time.

6 Q Okay. And did any other superior officer arrive? Anyone  
7 else come in that was identified as a captain during the time that  
8 you were there, other than the gentleman in the kilt?

9 A To my knowledge, no.

10 Q Thank you, trooper.

11 A No.

12 Thank you.

13 THE COURT: Anything else anyone has?

14 All right. Thanks so much. You may step down.

15 THE WITNESS: Thanks. Thank you.

16 [Witness steps down]

17 [Pause]

18 [TROOPER CHRISTIAN HOWELL, Sworn.]

19 THE COURT: Good morning, trooper.

20 THE WITNESS: Good morning.

21 THE COURT: You can certainly take your mask down if you're  
22 comfortable doing so.

23 THE WITNESS: Sure.

24 THE COURT: And you can stand, sit. Whatever's most  
25 comfortable.

1 THE WITNESS: Okay.

2 THE COURT: Okay?

3 MR. TARRANT: Thank you.

4 DIRECT EXAMINATION OF WITNESS, TROOPER CHRISTIAN HOWELL

5 BY MR. TARRANT:

6 Q Good morning.

7 A Morning.

8 Q Can you please state your name, spelling both your first and  
9 last name?

10 A Christian Howell.

11 Q And can you spell that for us?

12 A First name is Christian, C-H-R-I-S-T-I-A-N. Last name  
13 Howell, H-O-W-E-L-L.

14 Q And, sir, are you employed?

15 A Yes.

16 Q Where do you work?

17 A Massachusetts state police.

18 Q And how long have you worked for the Massachusetts state  
19 police?

20 A It'll be two years in January.

21 Q And where are you -- What do you currently do for the  
22 Massachusetts state police?

23 A I'm just a patrol trooper.

24 Q And where are you assigned?

25 A H. H4. It's in Brighton. So, a couple --

1 Q H4?

2 A H4, yes. A couple miles away.

3 Q And how long have you been working out of Brighton?

4 A I want to say 18 months, maybe.

5 Q And can you just describe what your duties and  
6 responsibilities are when you -- for a trooper working out of the  
7 H4 barracks?

8 A Well, we patrol many of the DCR roadways. So, if there's  
9 crashes or emergency calls, we'll respond. So -- our primary role  
10 as trooper, just to summarize it.

11 Q Okay. And so if I direct your attention to January 5th,  
12 2021, do you remember that day?

13 A Yes, sir.

14 Q Were you working on that day?

15 A Yes, sir.

16 Q And what was your assignment on January 5th, 2021?

17 A I worked a mid-shift. So, 7:00 a.m. I started doing a detail  
18 for RISE Construction. I was directly in front of the H4  
19 barracks, on the Leo Birmingham Parkway right in Brighton. So I  
20 was just pretty much overseeing the detail going on.

21 Q And so what's your assignment work in the detail?

22 A Just, you know, assisting with lights, getting trucks in and  
23 out if they're dropping off, you know, equipment or whatever the  
24 case may be. Just whatever they need me...

25 Q And, sir, you're working out of a marked cruiser, as well?

1 A Yes.

2 Q And how were you dressed for that?

3 A Same uniform I have on, just the winter uniform.

4 Q Okay, which is a full police -- state trooper's uniform?

5 A Yes.

6 Q And you have a badge?

7 A Badge is -- Yep, badge can show.

8 Q And police insignias --

9 A Yep. Patches on the --

10 Q -- on your shoulders?

11 A -- right shoulder. So...

12 Q And are you -- were you wearing a duty belt that day?

13 A I was, sir.

14 Q And what do you carry on your duty belt?

15 A OC, baton, taser, firearm, and two extra mags for the rounds.

16 Q Magazines for your firearm?

17 A Yes, sir.

18 Q And so, directing again your attention to that date, January

19 5th, 2021, approximately 1:45 in the afternoon, do you recall what

20 you were doing at that time on that day?

21 A Well, the detail was just ending. Might have been ending

22 around 2:00 p.m. So it was about 15 minutes to go. And then --

23 So I -- But we keep our -- you know, our radio on. So anything in

24 the nearby area, we'll pretty much be hearing.

25 Q Okay. And did something occur approximately at that time?

1 A Yes, sir. Around 1:45, approximately, there was a radio call  
2 from a state police sergeant saying he was responding to -- he  
3 wants to respond to an incident, maybe a robbery or attempted  
4 kidnapping or... He wasn't -- He was unsure. But that's pretty  
5 much what I heard at that time.

6 Q Were you provided with the location of that attempted  
7 robbery?

8 A I think it was maybe 16 or 18 Lincoln Street, Newton.

9 Q And hearing that, what did you do?

10 A So, he was my supervisor. So -- Technically, he was my  
11 supervisor at the time. So I left the detail and started heading  
12 that way.

13 Q To Lincoln Street, Newton?

14 A To -- Yep, yes, sir.

15 Q And how long did it take you to get there?

16 A Less than 10 minutes. So -- Well, approximately 8 to -- 8 to  
17 12 minutes. I'm not sure.

18 Q Okay. So can you just describe what you saw when you arrived  
19 to Lincoln Street?

20 A Just a, you know, big police presence: a bunch of cruisers  
21 outside, state police cruisers, Newton police cruisers, and just  
22 personnel, police personnel.

23 Q Seeing that, what did you do?

24 A I got out of my cruiser. My coworker, Finerty, Dylan  
25 Finerty, he was there. He pretty much, you know, got me up to



1 speed, you know, what was going on. He might have been only there  
2 2 to 3 minutes before me, so...

3 Q But anyway, you had a conversation with Trooper Finerty?

4 A Yep, I had a conversation with him, a couple of Newton guys  
5 there, as well. So --

6 Q Did you know any of the Newton police officers?

7 A No, I did not.

8 Q And so after having a conversation with Trooper Finerty, what  
9 did you do?

10 A There was a -- a Newton officer. You know, he, you know, got  
11 me up to speed, told me there were a couple guys upstairs in the  
12 apartment. He wanted me to come up there, along with Dylan. So  
13 that's what we did.

14 Q And so where did you go? What did you do?

15 A So, the only way to access the apartment was through the  
16 back. So, we got on Lincoln Street, went to the back. There's a  
17 back stairwell.

18 I want to say we got up to the second or third floor, maybe.  
19 Definitely not the first. So, we pretty much went in the back,  
20 back stairwell, listening to what was going on in the apartment.

21 Q And so did -- You went up the stairs?

22 A I did.

23 Q Okay. And who was with you when you went up the stairs?

24 A Myself, Dylan, a couple of the Newton guys, Newton police  
25 officers.

1 Q And could you hear anything going on in the stairway as you  
2 went up?

3 A I did. The apartment was obviously just the next wall over.  
4 So I just heard a guy in there yelling.

5 I heard a Newton sergeant. Maybe he was just a regular  
6 patrolman; I'm not sure. He was talking to him, was trying to get  
7 him to relax.

8 But just a bunch of yelling, bunch of talking going on.

9 Q Could you hear what was being said, or understand what was  
10 being said?

11 A Just a couple, you know, F-bombs: "F this" and stuff along --  
12 along that line.

13 Q And who was saying that?

14 A The suspect, or "the deceased party" later on, at the time.

15 Q Okay. Did you come to learn his name to be Michael Conlon?

16 A Yes, sir.

17 Q So you heard Michael Conlon saying something?

18 A Yep. Just -- Just a couple swear words. And, like, it was a  
19 little muffled. But I could hear him. He was a little bit more  
20 irate.

21 And the guy talking to him, which was the Newton officer, he  
22 pretty much sounded like me, just trying to deescalate the  
23 situation.

24 Q And where were you when you could hear that?

25 A Same -- Same stairwell, right in that back stairwell.

1 Q And from the back stairwell, did you go anywhere?

2 A Yeah. Maybe some minutes later, we actually went inside the  
3 apartment and ended up, like, -- I guess what was the living room  
4 area.

5 Q And while you were in the living room area, what could you  
6 see? What could you hear?

7 A Well, once I got into the living room area, there were maybe  
8 seven of us. By "us" I mean just police, police personnel.

9 Q Both state police and Newton police?

10 A Yep. State police, myself, Dylan -- which -- I believe at  
11 the time he might have been the only state trooper up there  
12 besides myself and the other Newton officers.

13 Q And so what could you observe happening out in the hallway at  
14 that time?

15 A Well, so, say this door, this doorway behind you, would be  
16 the entrance to the hallway.

17 So, I could just see the Newton officer talking to the guy,  
18 which was Michael Conlon. But he's behind that wall, so I can't  
19 see him. But I can -- I know he's talking to -- to him at that  
20 point.

21 Q And could you hear what was being said at that point?

22 A Yeah. Same thing from what was happening in the stairwell:  
23 just, you know, "Relax."

24 They talked about his dad a couple times. I'm not sure the  
25 specifics on it. But it was about, you know, contacting his dad

1 or whatever the case may be.

2 Q Did they -- So it goes to conversation about contacting  
3 Michael Conlon's father?

4 A Yes, yeah.

5 Q And do you recall any specifics about that conversation?

6 A No, just I believe Michael asked him how he would call him,  
7 maybe. Just -- you know, just ways to contact the dad, just a  
8 bunch of back and forth about that.

9 Q And so how long did this conversation go on for?

10 A Not sure. Maybe approximately 5 -- 5 to 8 minutes, maybe.

11 Q And so, are you aware of any discussion or strategies  
12 trying -- amongst the police officers that you were with to  
13 resolve this particular situation?

14 A Well, yeah. The strategy wasn't my plan or anybody else's,  
15 or Dylan's plan. But it was, you know, just to -- we were just  
16 trying to -- They wanted to get him to drop the -- the knife that  
17 he had and eventually, you know, for him to, you know, cuff up or  
18 whatever the case may be. But it was -- that was the main  
19 objective, was to get him to drop the knife.

20 Q And so what, if anything, occurred? How did it unfold?

21 A Just -- So, he eventually put it down. I didn't see, but  
22 that's what was said. Obviously, he's behind the -- the wall, so  
23 I --

24 Q You're still not --

25 A -- can't see.

1 Q Right. You're still not seeing into the hallway where --

2 A No. I can just --

3 Q -- Mr. Conlon is.

4 A -- see the negotiator, or the Newton officer, talking to him.

5 So, he says to us in the room, "He put the knife down."

6 So that's when we assume he put it down, because he's the

7 only one that could see him. So...

8 Q Okay. And so what happened next?

9 A I'm not sure of his position, but there was another Newton

10 officer. He had the -- the beanbag rifle, if that's what it's

11 called. Different departments call it different things.

12 Q Okay. But you know it to be a shotgun that shoots a beanbag?

13 A Yeah, nonlethal shotgun.

14 Q Okay.

15 A He stepped in the doorway.

16 It didn't work. I believe something may have, you know,

17 fallen out of it. I'm not sure if it was the beanbag or the --

18 the lethal cartridge.

19 Q Well, can --

20 A I'm not trained on them, so I don't know what it's actually

21 called. But --

22 Q Right.

23 A -- something fell out of it, which means it malfunctioned.

24 And then, Michael, he charged into the officer in the

25 hallway. So he kind of, like, fell into him. And there was,

1 like, a little confrontation.

2 And then that's when he was, you know, eventually shot.

3 Q So did you see Mr. Conlon come down the hallway?

4 A I did. Yeah, I saw him make contact, like, right in the  
5 doorway. So...

6 Q In the doorway? With who?

7 A The officer in the doorway. So...

8 Q Was that the officer holding the shotgun?

9 A Yes, sir.

10 Q And then when you saw Mr. Conlon, at that point did you have  
11 your firearm unholstered?

12 A The only thing I had was my taser.

13 Q Okay.

14 A I didn't discharge it. But I had it, like, at a low-ready  
15 position, just -- just in case.

16 Q And where are you in relation to Trooper Finerty?

17 A He -- I don't know. He might have been on my right, maybe.  
18 Maybe, like... Not on my right shoulder. But he might have been  
19 just on the right side. Or he could have been, like, a little in  
20 front of me. I mean, it just happened so fast. I'm not sure.

21 Q Okay. And how were other officers positioned in relation to  
22 you?

23 A There were a few guys on my left, a few guys maybe, like,  
24 diagonally on my left. So --

25 Q Was there anybody in front of you?

1 A Just the guy in the hallway. So, he was the only person,  
2 like, directly in front of me.

3 Q And you had your taser out?

4 A I did.

5 Q Was it activated?

6 A Yeah, it was on.

7 Q And did -- You did not discharge your taser?

8 A No, I did not.

9 Q So, when you saw Mr. Conlon coming towards the doorway, what  
10 happened at that point?

11 A Just to reiterate, he made contact. It was like a little,  
12 small tussle ensued.

13 I believe he still had the knife. So, he might have. If he  
14 dropped it in the hallway, I couldn't see him drop it. He might  
15 have picked it back up.

16 Q But when you saw him, the knife was in his hand?

17 A Yeah. I saw, like, kind of like -- They made a commotion.  
18 They made a collision. And he still kind of had it. So...

19 Q And so what happened at that point?

20 A I'm not sure the officer's name, but that's when he  
21 discharged his firearm and struck Michael.

22 Q And do you know how many officers discharged their firearms?

23 A To my knowledge, only the one. I'm not sure.

24 Q Okay. And how many shots did you hear?

25 A Maybe -- Approximately maybe six to ten. I'm not sure.

1 But...

2 Q And were they in quick succession?

3 A Yeah. They were -- They were right after each other.

4 Q And are you aware whether or not Trooper Finerty had a taser?

5 A He did have his taser.

6 Q Okay. Do you know what, if anything he did with it?

7 A He used it.

8 Q He did discharge it?

9 A Yeah.

10 Q And did you see where -- when he changed it, where the probes  
11 went?

12 A No, I didn't see where they went.

13 Q Do you know if the taser had any effect on Mr. Conlon that  
14 you could see?

15 A Really, really couldn't see because it kind of happened in  
16 sequence with the -- with the gunshot. So...

17 Q And when you say "it happened in sequence," how quickly apart  
18 was -- Well, could you hear a taser being deployed?

19 A You really couldn't -- I just heard him say, "Taser." But  
20 you really couldn't hear the difference. What -- It just happened  
21 kind of just quickly. So...

22 Q Because it happened so close together?

23 A Yeah.

24 Q And so after you heard the firearm discharge, what did you  
25 see next?



1 A I just saw him hit the floor. He pretty much --

2 Q Mr. Conlon?

3 A -- fell. Yeah. He pretty much fell. Michael pretty much  
4 fell back into the hallway.

5 Q And then what happened?

6 A I think it was the Newton captain, he started doing chest  
7 compressions on him.

8 Then maybe a couple -- Maybe less than a minute after that,  
9 EMS came upstairs and started trying to work on Michael.

10 Q And what did you do?

11 A I pretty much -- After he fell, I kind of looked to see, you  
12 know, what his condition was. That's when the Newton captain, I  
13 believe, started the chest compressions on him.

14 Q And seeing that, did you enter into the hallway?

15 A I -- I just poked my head into the hallway, --

16 Q Okay.

17 A -- pretty much, and then got back into the living room.

18 Q And can you make any observations of anything in the hallway  
19 at that point, other than Mr. Conlon on the ground?

20 A No. I just remember it was just a set of stairs that maybe  
21 led to the front door. But that was pretty much it.

22 Q And so did you leave the apartment at that point or close  
23 thereto?

24 A Yeah. I left maybe less than a minute later, just went  
25 outside to pretty much get some air or whatever.

1 Q And when you left, did you leave the same way you came in?

2 A I did. Yeah, I went through the back.

3 MR. TARRANT: Thank you. I have nothing further.

4 THE COURT: Thank you.

5 Counsel?

6 MR. ANDERSON: I just want to clarify one quick thing.

7 CROSS EXAMINATION OF WITNESS, TROOPER CHRISTIAN HOWELL

8 BY MR. ANDERSON:

9 Q Good morning, Trooper Howell.

10 A Good morning.

11 Q My name's Ken Anderson. I represent some of the superior  
12 officers in this matter.

13 You told us that you heard Trooper Finerty yell or say,  
14 "Taser"?

15 A I did.

16 Q Okay. And it's fair to say part of your training is: before  
17 you discharge the taser, you're supposed to yell, "Taser," so the  
18 people around you know that you're deploying it?

19 A Yeah. If -- Yeah, if you can. Yeah. Well, you should.  
20 But...

21 Q Okay. And do you think when he yelled, "Taser," that was  
22 consistent with his training? Is that why he yelled it?

23 A Yeah, I'm pretty sure that's probably why he did.

24 Q Okay.

25 MR. ANDERSON: I don't have anything else.

1 THE COURT: Attorney McDonald?

2 MR. MCDONALD: No questions.

3 THE COURT: All right. Thank you.

4 Attorney West?

5 MS. WEST: Okay. Thank you.

6 CROSS EXAMINATION OF WITNESS, TROOPER CHRISTIAN HOWELL

7 BY MS. WEST:

8 Q Good afternoon, trooper. My name's Kim West. I represent  
9 the family.

10 When you testified a few minutes ago, you said, in regard to  
11 the beanbag shotgun, you're not trained on it. But you thought  
12 something fell out of it?

13 A Yeah.

14 Q What did you see?

15 A I didn't -- I didn't pretty much know what it was. It might  
16 have just been -- It could have been a cartridge. I'm pretty sure  
17 that's the only thing, you know, allowed to be put in the -- the  
18 nonlethal shotgun. So...

19 Q So you actually saw something drop out of the shotgun and hit  
20 the ground?

21 A Yeah. It was something. It just kind of just came out of  
22 it. I'm not sure what it was.

23 Q Was it one thing or two things?

24 A Maybe just one. I'm not sure.

25 Q And did you hear it hit the ground?

1 A Yeah.

2 Q Did you see anybody pick it up?

3 A No.

4 Q At any point, did you become aware that somebody from Newton  
5 police requested a negotiator from the state police to come and  
6 help?

7 A No, I wasn't aware of that.

8 Q You received training on tasers while you were at New  
9 Braintree, right?

10 A Yes.

11 Q And that training included some sort of caution that a taser  
12 may not work through heavy clothing; is that right?

13 A Yes.

14 Q And you shared that concern with the Newton police department  
15 that day, didn't you?

16 A No. Me, personally, I didn't speak to anybody in -- about my  
17 taser working on anything due to clothing.

18 Q Did you hear Trooper Finerty share that concern?

19 A No. If he did, it was away from me.

20 Q Okay.

21 MS. WEST: Nothing else. Thank you.

22 THE COURT: Anything else? All right.

23 MR. TARRANT: Can I just ask something?

24 THE COURT: Yes.

25 REDIRECT EXAMINATION OF WITNESS, TROOPER CHRISTIAN HOWELL

1 BY MR. TARRANT:

2 Q When you saw something drop from the gun, from the shotgun,  
3 from what -- could you tell what part of the gun it fell from?

4 Meaning --

5 A No, I couldn't -- I couldn't tell. Might have been in the  
6 center, if anything.

7 Q Could have been the center? Could have been the barrel?

8 A Could have been. It could have been.

9 Q You just don't know?

10 A I -- I just don't know.

11 Q Okay.

12 MR. TARRANT: All right. Thank you. That was it.

13 THE COURT: Thank you, trooper. You may step down.

14 THE WITNESS: Okay. Thank you.

15 [Pause]

16 [OFFICER CHARLES DiCHIARA, Sworn.]

17 THE COURT: Good afternoon.

18 THE WITNESS: Good afternoon.

19 THE COURT: You can stand, sit, whatever's most comfortable  
20 for you. And if you are comfortable doing so, you may remove your  
21 mask, or you can leave it on, whatever you prefer.

22 THE WITNESS: Thank you.

23 DIRECT EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA

24 BY MR. TARRANT:

25 Q Okay, sir. Can you please state your name, spelling both

1 your first and last name?

2 A Yes, sir. Your Honor, if it pleases the court, my name is  
3 Charles DiChiara. Last name is D-I-C-H-I-A-R-A.

4 Q Sir, are you employed?

5 A Yes, sir, I am.

6 Q Where do you work?

7 A I work for the city of Waltham police department.

8 Q And how long have you worked for the city of Waltham police  
9 department?

10 A 33 years total.

11 Q And can you just briefly go through -- What's your  
12 educational background, your education?

13 A My educational background? I went to North Andover school  
14 systems.

15 And when I graduated, I went to a reserve police academy in  
16 Tewksbury.

17 Then I embarked on a college career as a police officer. And  
18 I graduated with a B.S. from Springfield College, in criminal  
19 justice.

20 Q And you're currently a police officer with the Waltham police  
21 department?

22 A Yes, sir.

23 Q And so what's your current assignment with that department?

24 A My current assignment is: I am assigned to training fulltime.  
25 I oversee training for the police department, 160-man department,

1 everything from brand-new recruits to our senior in-service police  
2 officers.

3 Q And how long have you been in this assignment?

4 A Probably about 6 years.

5 Q Okay. And what specific areas do you train police officers  
6 in?

7 A I train them in mostly physical skills, physical fitness,  
8 arrest and control, police baton, firearms, less-lethal force,  
9 taser, police use-of-force in general.

10 Q And prior to that assignment, what did you do for the Waltham  
11 police department?

12 A I worked nights on patrol for probably about 27, 28 years.

13 Q Okay. And can you describe what specialized training you  
14 have as it relates to firearms, defensive tactics, and use of  
15 force?

16 A Well, I'm -- I'm an instructor for the state in firearms and  
17 defensive tactics, a Level 4 or state coordinator in those  
18 disciplines.

19 So, I went to the basic police academy, where I received my  
20 standard 80 hours of training in self-defense and defensive  
21 tactics. Following that, I became defensive tactics instructor,  
22 was -- which was a 12-day class to be an instruct in those areas,  
23 followed by a 5-day class in order to teach in the police academy.

24 And then in the last -- I've been doing it for probably over  
25 20 years. I've probably been -- I probably have a couple thousand

1 hours of specialized training in this area.

2 Q And do you have any certifications in that regard?

3 A Yes, I do.

4 Q And what are they?

5 A I am certified as a Level 4 instructor in use of force,  
6 firearms, and defensive tactics for the Commonwealth of  
7 Massachusetts.

8 Q And how many different levels are there to being an  
9 instructor of that nature?

10 A There are four, technically.

11 Q So, four being which? The top --

12 A Four is the highest. One, two, three, and four.

13 Q And how many Level 4 instructors are there in Massachusetts?

14 A Maybe 10 across the state.

15 Q And approximately how many police officers have you trained  
16 in the use-of-force defensive tactics?

17 A I'd say from Massachusetts -- And I've trained  
18 internationally and across the country. So probably -- probably  
19 well over 10,000.

20 Q Do you have national certifications?

21 A I do.

22 Q What are they?

23 A I am certified as a master instructor through the Safariland  
24 Training Group, which is a international group of police officers  
25 that trains officers from the United States, Canada, Switzerland,



1 England, and Columbia.

2 Q In addition to being a Waltham police officer, do you have  
3 any other special assignments that you do?

4 A Yes, I do.

5 Q And what's that?

6 A I've been -- For the last 30 years, I've been assigned to the  
7 NEMLEC SWAT team.

8 Q What is NEMLEC?

9 A NEMLEC is a -- stands for Northeast Massachusetts Law  
10 Enforcement Council. And it's a consortium of 64 cities and towns  
11 in Essex County and Middlesex County. And it's a 35-man,  
12 basically, SWAT team that responds to special situations, hostage  
13 situations, barricade, suicidal individuals, high-risk warrant  
14 service, drug raids, that type of stuff.

15 Q Okay. So what's your duty or responsibility as a member of  
16 the NEMLEC SWAT team?

17 A I'm on the -- I'm on the primary entry team. And I'm one of  
18 the trainers for the unit.

19 Q Are you employed by any other agencies?

20 A Just as the Commonwealth of Massachusetts -- as a -- as a  
21 state coordinator.

22 Q Okay. And are you an instructor at any other -- at any  
23 police academies?

24 A Yes, sir.

25 Q Which ones?

1 A I am a lead instructor at the Lowell police academy, the  
2 Randolph police academy, the -- Merrimack College has a --  
3 Merrimack College has a new police academy, Northern Essex  
4 Community College, and I assist at the Reading police academy.

5 Q And, sir, directing your attention to January 5th, 2021, did  
6 you respond to an incident in Newton, either as a member of the  
7 Waltham police department or NEMLEC, on that day?

8 A I believe I -- I had gotten a call, but I did not respond.  
9 It cancelled pretty quickly. So, we -- I got the call over  
10 my phone. And then I got it cancelled pretty quickly after that.

11 Q Okay. Did NEMLEC, to your knowledge, respond?

12 A I believe -- It got called off fast. I believe there was  
13 maybe one or two officers there. And that was only and officer  
14 from Newton that I think was there. I think he was there quickly  
15 because he was from Newton. And then there was a sergeant from  
16 Watertown. I think he'd arrived or he was -- might have been en  
17 route. But that was -- that was it. One -- One to two, at the  
18 most.

19 Q Okay. And so it's fair to say when NEMLEC gets a callout  
20 officers are coming from different areas?

21 A That's correct.

22 Q And I'm just curious, really: the -- when NEMLEC responds, do  
23 you first group-in at an essential area, or does everybody respond  
24 to the scene at the call [sic]?

25 A So, it depends on the situation. If it's something that's

1 | happening rapidly, the first officers will go there and they'll  
2 | set up an IAT, which means "Immediate Action Team." So, the first  
3 | five or six or seven guys will go right to the scene to help that  
4 | agency assist with whatever they might need. And then the other  
5 | officers will respond to a staging area, and they get assignments  
6 | from there.

7 | Q Does the staging area differ depending on where the call is  
8 | made?

9 | A Yes, sir. Correct, yes.

10 | Q And how is the staging area designated?

11 | A They just try to pick a place that's -- you can park  
12 | vehicles, because we don't do a great job of --

13 | Q Okay, so --

14 | A -- parking vehicles. So it's -- it's offsite.

15 | Q It always depends on the geography of the scene?

16 | A Correct, yes.

17 | Q And, sir, have you testified previously in courts of the  
18 | Commonwealth?

19 | A Yes, sir, I have.

20 | Q And has your testimony essentially been on the use of force  
21 | or defensive tactics of police officers?

22 | A Yes, sir.

23 | Q And, sir, how is "use of force" defined, as a training  
24 | instructor --

25 | A We --

1 Q -- on that topic?

2 A We define it as the amount of effort required by police to  
3 compel compliance from an unwilling individual.

4 Q And how is -- how would you define "deadly force"?

5 A We would define "deadly force" as force, physical force,  
6 which is likely to or intended to cause death or serious bodily  
7 injury.

8 Q And so what dictates the amount of force an officer is  
9 authorized to use in a given situation?

10 A We're -- We're trained. And everything that we're trained in  
11 is -- is to use a set of standards and -- and guidelines as -- to  
12 help us determine what level of force to use.

13 Q Okay. Is there a difference between your standards and  
14 guidelines?

15 A Standards would -- we would describe as the -- as  
16 clearly-established case law. Like, "This is what the law says  
17 about the amount of force that you should be using and -- and how  
18 it should be judged."

19 And then from there, we have a guidelines. And the  
20 guidelines is different. Guidelines would be, like, the  
21 use-of-force model that we teach officers. Or it would be your  
22 police department's policy and procedure.

23 Q And is there a particular case law that you rely upon in  
24 making those determinations?

25 A Yes, sir, we do.

1 Q And what is that?

2 A The case that we train police officers in is the federal case  
3 from the United States Supreme Court, Graham vs. Connor. And that  
4 case sets the standard for how a police officer will be judged on  
5 what level of force they should use.

6 Q And so can you just describe the proposition for which that  
7 case stands for?

8 A So, the case basically means that a -- a police officer  
9 should use the amount of force only that's objectively reasonable.  
10 And "objectively" means based on facts but objectively reasonable  
11 based on the scenario that's in front of them. And there's  
12 factors that determine -- You know, there's -- there's factors  
13 that determine what amount of force we should use.

14 Q And are the standards different between federal, state, or  
15 other jurisdictions?

16 A They're somewhat, yes.

17 Q And as part of the training that you do, do you teach police  
18 officers the law as well as standards and guidelines? Is that  
19 what you do?

20 A Yes, sir.

21 Q And do you use specific teaching tools or teaching methods?

22 A Yes. In addition to teaching case law, we also -- in  
23 Massachusetts, we use a use-of-force -- some people call it "the  
24 use-of-force continuum." I would call it "the use-of-force  
25 model."

1 Q And so what is the use-of-force model?

2 A The model is just to give the officers a visual tool of  
3 factors they should be looking at to determine what levels of  
4 force they should use. So they use the model coupled with  
5 something we call "the totality triangle."

6 Q And what is the totality triangle?

7 A So, the totality triangle is -- is three-pronged. And what  
8 we do is we try to get the officers to -- In order so that they  
9 can choose a -- a reasonable force option that's within the law,  
10 the first thing they look at is going to be your perceived  
11 circumstances. That's the first part of that category, is  
12 perceived circumstances, which is your risk assessment.

13 The second portion is the subject's actions, the person and  
14 what you're dealing with, is "What are their actions?"

15 And then the -- And if you analyze a -- A good analysis of  
16 risk coupled with what the subject is doing will help you make a  
17 good decision.

18 And that third part of the category is the officer's  
19 responses.

20 Q And so how is the totality triangle employed out in the field  
21 or during a situation?

22 A We teach an officer to respond to the totality of the  
23 circumstances. And that's everything from the -- the "why he's  
24 there in the first place" to the time of the day to "does he have  
25 backup?" to the officer's skillset.

1       So under totality of the circumstances, we teach the officer  
2 to first analyze his -- his risk, his -- his -- the risk of the  
3 arena that he's operating in, all the danger cues and what's going  
4 on as far as risk factors.

5 Q     And so is that -- is the use-of-force model different than  
6 the totality triangle?

7 A     So, yes and no. So, what -- what -- The way it's -- The way  
8 it's taught is the -- It's both. So the -- the use-of-force  
9 continuum has five levels. But if you were to -- if you were to  
10 drop the totality triangle into the use-of-force model, it's --  
11 it -- it -- it -- it's all-encompassing. So it's -- There's three  
12 levels on the -- There's five levels on the use-of-force model.

13 Q     Okay. And --

14 A     But it's broken down into three subsections. And those  
15 subsections are the totality triangle.

16 Q     Okay. So what are they? What are the categories of the  
17 use-of-force model?

18 A     So, the five levels is first a -- So, you want from "the  
19 subject's actions" or "threat perception"? So --

20 Q     My -- I'm assuming "perception," at this point.

21 A     Okay. So, on the -- The first category on the five levels  
22 deals with -- with the officer's responding to his risk.

23       So, level -- first level is "strategic."

24       Second level is "tactical."

25       The third level is "volatile."

1 And the top, level five, is "lethal."

2 Q And what do -- So what are the risk perception categories?

3 A So, those -- those are the risk perception categories:

4 strategic, --

5 Q Oh, those are --

6 A -- tactical, volatile, harmful, lethal.

7 So when -- An officer is taught in training to first respond  
8 to the -- everything that's going on. So, it would be "Is it a  
9 volatile situation? Are we past that? Is it harmful? Is it a  
10 potentially lethal situation?"

11 Q Okay. And then where do you move on from there, in your  
12 analysis?

13 A Once you're analyzing risk, then we analyze what the subject  
14 is actually doing. And that would be the section in the totality  
15 triangle that says "subject's actions."

16 Q Okay. And are there different levels of that, of subject's  
17 actions that you consider?

18 A Correct. There's also five levels on that.

19 Q And what are they?

20 A The first level is "compliant," a compliant individual.

21 The second level is "passive resistant."

22 The third level is "active resistant."

23 The fourth level is "assaultive." And -- "assaultive, slash,  
24 'bodily harm.'"

25 And the fifth level is "assaultive, serious bodily harm or



1 death," level five.

2 Q Okay. So can you explain how the risk perception categories  
3 and the subject's actions categories relate to an officer's  
4 response?

5 A Yes. So, you -- What you should be analyzing -- Officers are  
6 taught and trained to analyze -- to respond to the risk and the  
7 subject's actions. So, I'll just -- I will give an example:

8 If -- If a person is dealing with a either domestic -- The  
9 first thing they would respond to is the arena that they're  
10 operating in, so: if it's a -- it's a volatile situation. And  
11 then they could analyze the subject's actions from there.

12 So the way the totality triangle works is you're -- it's a  
13 constant analysis of the risk factors coupled with what the  
14 subject is doing. And if they can analyze those two together, it  
15 will help the officer make a good decision on what level of force  
16 he should be using.

17 MR. ANDERSON: I'm sorry; this is on page 2 of Exhibit 18,  
18 what he's -- I just didn't know if you --

19 THE COURT: Thank you.

20 BY MR. TARRANT:

21 Q So, when you discussed looking for a balanced or reasonable  
22 response, how -- where do you begin when determining what level of  
23 response? Meaning:

24 What is the lowest response to the highest response? When  
25 you're looking for a balanced response or a reasonable response to

1 a situation, where does that begin?

2 A So, do you mean, like, at the bottom level of Level 1? Or  
3 just -- It starts when -- the minute --

4 Q Well, --

5 A -- we respond to the call.

6 Q Okay. Well, I mean, what are the different responses and how  
7 do they -- from the most minimal response to the most aggressive  
8 response?

9 A Okay. So, a -- "Tactical" would be more or less a mindset.  
10 So, a tactical risk perception is, like, a baseline perception of  
11 occupationally accepted risk. So if a police officer comes to  
12 work -- and the fact that he's wearing a uniform and a gun and a  
13 badge, he should have a tactical mindset. So that's Level 1, just  
14 responding.

15 Level 2, when we get into a tactical response, that's any  
16 time we have a series of risk increases. So say I had to go to  
17 a -- even pulling over a motor vehicle for a Chapter 90 vehicle,  
18 for a moving violation. Now the fact that I'm going to pull a car  
19 over -- now I have to switch, and my risk assessment becomes more  
20 tactical because there's risk factors involved.

21 So the way it works is we would teach the officer to go to a  
22 tactical risk assessment and then start to deploy safety  
23 strategies: call for another cruiser, look for a safe place to  
24 stop the car, call in a description of the plate. So that would  
25 be tactical, is when we start to deploy safety factors based on

1 the call that we're going on.

2 Q And then how do you determine -- What are the levels of  
3 control that you would employ?

4 A So, on -- on a -- on the first level is -- We would call that  
5 "cooperative controls." And those are your Level 1 responses.  
6 And that really just deals with, you know, people that are  
7 doing -- people that are compliant. And your cooperative  
8 controls, your officers' responses are your verbal skills, calm  
9 presence, professionalism, compliant handcuffing. Those are your  
10 Level 1 responses.

11 Q And then is there a Level 2?

12 A Yes, sir.

13 Q What would be Level 2?

14 A Level 2, we would call "contact," C-O-N-C-A-T [sic] -- C --  
15 "contact controls." And that is just low level of force. And it  
16 deals with light touch tactics: push, shove, guide, drag. We call  
17 it "light hands-on tactics," for Level 2. And those are called  
18 "contact controls."

19 Q And is there a Level 3?

20 A Yes, sir.

21 Q What is that?

22 A Level 3 response is -- Now that the situation has escalated  
23 and -- Now we would use -- If we're dealing with a person that is  
24 now noncompliant and their noncompliance is met with physical,  
25 actual energy-based resistance, we could use a high level of

1 responses. And those would be called "compliance techniques."

2 Q And are those just hands-on techniques?

3 A Yeah. Compliance techniques actually refers to pain  
4 compliance techniques. And that would entail distractionary-type  
5 techniques, joint manipulations, causing pain to a joint. It  
6 could be -- Pepper spray is listed as a pain-compliance technique.

7 The taser is deployed two different ways, but the first way  
8 is at Level 3, where you'd use a -- where they would call it  
9 "drive stun," where you don't deploy probes. You just press the  
10 taser against the person. And the pain is more localized, but  
11 you're not -- you're not launching any projectiles. That would --  
12 We would call that "a drive stun." That would be a Level 3 pain  
13 compliance response.

14 Q And what would be Level 4?

15 A So Level 4 is -- Now that's -- It's a more intense  
16 interaction. And the resistance level is higher. If you're  
17 dealing with an assaultive individual, our intent is to get them  
18 to stop fighting immediately, or stop their violent behavior. So  
19 it's a high level of force. So, on -- on Level 4 responses, we  
20 would refer to it as "defensive tactics."

21 Q And so what are some of the defensive tactics that you would  
22 employ?

23 A Defensive tactics refer to -- It's just what is described as  
24 "impact." So, personal weapons or intermediate weapons.

25 Your personal weapons would be punches, kicks, elbow strikes,

1 knee strikes, basically weapons of the body, to respond. So  
2 you're using -- You're using striking-type techniques with your  
3 personal weapons of the body.

4 And then your intermediate weapons would be -- Your police  
5 baton would fall in that Level 4. And your taser, firing the  
6 probes, would be at Level 4. Or using a B-gun, less-lethal-type  
7 shotgun, would be Level 4 but rising to a Level 5.

8 Q Okay. And what is Level 5?

9 A And Level 5 is just considered deadly force. It's not too  
10 specific. If an officer is -- If an officer or somebody else's  
11 life is placed in immediate peril, we -- we call it "imminent  
12 harm." If an officer is faced with imminent harm of himself or  
13 another person, then they're taught to use -- taught that it's  
14 reasonable to use deadly force in that situation.

15 And deadly force is any force that could stop a violent  
16 attack immediately. It could be a firearm, which is what most  
17 people think. But it could be -- It's not tool-specific. It  
18 could be every -- other items.

19 Q And, well, with respect to firearms, in a deadly force  
20 scenario --

21 A Yes, sir.

22 Q -- is an officer trained -- and do you deal with this in your  
23 training, that when they discharge their firearm -- where to aim  
24 the firearm?

25 A Yes. All police officers are taught and trained to shoot to

1 stop and to shoot at center mass.

2 Q Okay. And why is that? Why is center mass always the  
3 target?

4 A Well, the first reason is accuracy. You want to -- You're --  
5 If you're -- You can only use deadly force if you're dealing with  
6 immediate-threat situations, imminent harm. So in that situation,  
7 it's important that you hit where you're shooting at. So we try  
8 to teach center mass of available target for accuracy and also to  
9 stop the person that's violent.

10 And the third reason, also, is: police officers, we're  
11 responsible for every round that leaves the weapon. So it's  
12 important that we hit our target, because every round that doesn't  
13 hit our target could hit an innocent person.

14 Q And are police officers trained on how many shots to fire  
15 when they discharge their firearm?

16 A They're not trained to count the number of rounds in a  
17 stressful situation. They're taught and trained that -- to shoot  
18 to stop. And when the -- when the action that caused you to shoot  
19 stops, you should stop shooting. But we don't teach officers  
20 under stressful situations to count their rounds, no.

21 Q And, sir, what -- Do you train on lethal and nonlethal cover?

22 A Yes, sir.

23 Q What is nonlethal cover? What would that be?

24 A So, if time -- if time and opportunity affords itself, a --  
25 Preservation of life is our core value. So if we can preserve

1 life and protect life, we will. So even a deadly force situation,  
2 if we have time and opportunity presents itself, we will always  
3 have less-lethal cover, because if we can use less-than-lethal  
4 cover or a less-than-lethal response what we'll do in a deadly  
5 force situation is try to mitigate the need to use deadly force,  
6 if possible. So we try to deescalate and we try to use tools that  
7 are less-than-lethal, if possible.

8 Q And if you're employing less-lethal cover, are you also  
9 employing lethal cover?

10 A Yes, you have to, yes.

11 Q Why is that?

12 A Well, if you're deploying -- If it's a lethal situation, you  
13 can just use less-lethal tools, because if it -- if the  
14 less-lethal tool doesn't work or if things go badly quickly, then  
15 it's putting the officers' lives or other people's lives in peril.  
16 So the way it's taught is to, if possible, always have a lethal  
17 option and less-lethal option if possible.

18 Q Okay. And do you train on the use of pepper spray?

19 A Yes, sir.

20 Q And is pepper spray an effective method of quelling deadly  
21 force?

22 A For deadly force situations, I would not say -- I would say  
23 no, because it's a Level 3 response against a -- in a Level 5  
24 situation. So it would be -- It's not to say you can't do it, but  
25 you would be putting yourself and others at risk because pepper

1 spray does not work immediately. It takes -- It takes time. And  
2 it has a different effect on everybody. Some people, it doesn't  
3 affect at all. And if you used it in a lethal situation and it  
4 didn't work, then it could be -- it could be very problematic for  
5 innocent people and for the police officer.

6 Q Okay. Do you also train on the use of tasers?

7 A I do.

8 Q Are tasers an appropriate tool for quelling deadly force?

9 A It could be. It could be, as a less-lethal option. We've  
10 used tasers multiple times in -- in situations where it would --  
11 it would work. So, it's a -- it's a -- it's an applicable option.  
12 We will use taser if possible.

13 Q Okay. Are you familiar with what's called a "less-lethal  
14 shotgun" or a beanbag gun?

15 A Yes, sir.

16 Q Do you train on that?

17 A I do.

18 Q And what would you say -- Essentially the same question: is a  
19 less-lethal shotgun an appropriate tool for trying to quell deadly  
20 force?

21 A So, it's a good -- it's a good secondary option. We -- We  
22 use them quite a bit on the SWAT team. And what it is is it's --  
23 it's similar. It's "impact." So it's similar to hitting somebody  
24 with a police baton but from a distance. So, it's a safer  
25 distance. So, we use beanbag shotguns as a secondary option.



1        So, it's the same thing: if we had a deadly force situation  
2 and we could use a less-lethal shotgun, we absolutely would  
3 because, again, we're trying to -- we're trying to mitigate the  
4 need to use deadly force if possible.

5        However, if it was a deadly force situation and I was there  
6 by myself or -- I would not have a less-lethal shotgun. It would  
7 be a lethal situation until -- The -- The -- The less-lethal  
8 options are secondary options if you're involved in a deadly force  
9 situation.

10    Q     Okay. So is it fair to say when involved in a deadly force  
11 situation a less-lethal option would always be backed up by a  
12 lethal option?

13    A     Correct.

14    Q     All right.

15        MR. TARRANT: I think that's all I have, Your Honor.

16        **CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

17    BY MR. ANDERSON:

18    A     Good morning, sir.

19    Q     Good afternoon, Officer DiChiara.

20        In terms of related weapons, when you teach at the academy,  
21 do you teach officers how to respond to situations where somebody  
22 has an edged weapon, a knife, per se?

23    A     Yes, sir.

24    Q     And what type of training do you give someone? What are they  
25 supposed to be mindful of in those situations, if they're

1 confronted with somebody who's got a knife?

2 A Well, they -- they got -- they got to be mindful of the  
3 person's intent; environmental conditions like distance, space,  
4 time, and that type of stuff, barriers; how much space is between  
5 them; if there are other innocent persons in the area.

6 Q And is there a certain distance that officers are trained to  
7 have a certain level of awareness about?

8 A So, the -- the number that comes up is 21 feet. And  
9 that's -- that's going back 35 years, where people call it "the  
10 21-foot rule." It's not really a rule. It doesn't have any --  
11 doesn't have any legal basis. But it's -- officers have heard it  
12 so long.

13 We address the issue. And the 21-foot rule comes from a test  
14 long ago where a -- a defensive tactics instructor like myself  
15 wanted to analyze how fast, how much distance a -- a person could  
16 close by the time an officer recognized a threat and pulled out  
17 his firearm. So that's where the 21-foot rule comes from.

18 But we teach -- So, officers know that 21 feet is kind of the  
19 guideline for a safe distance. So that's what most officers are  
20 aware of.

21 Q Now, the situation that we're dealing with today involved a  
22 situation where somebody was within at least 13 feet, if not  
23 closer to a door where there were some officers located in an  
24 apartment. It's fair to say that would fall well within that  
25 21-foot rule?

1 A Yes, sir. 15 feet is very close.

2 Q And what type of level would that rise to on that pyramid  
3 that you told us about? If someone has a knife, threatening to  
4 shank people, threatening to kill themselves, waving that knife  
5 violently, waving a fire extinguisher violently?

6 A So, if an officer has taken in those type of factors, he --  
7 he absolutely would be -- we would describe it -- you're in the  
8 lethal arena. It doesn't mean you have to use deadly force. It  
9 means your threat perception is the -- the -- scenario that you're  
10 on has a potential to cause you or somebody else death or serious  
11 bodily injury.

12 Q And in that situation, you talked about -- you would often  
13 have -- want to have less-lethal and then also lethal cover?

14 A Absolutely. Yes, sir.

15 Q And the goal is hopefully preservation of life, --

16 A Correct.

17 Q -- correct? And you want to arrest that person before they  
18 do harm to themselves or they come and harm others?

19 A Correct.

20 Q And in terms of the less-lethal shotgun, under the Newton  
21 policy -- this is Exhibit 18, page 9, Section 5A -- it says, "The  
22 tool is intended to incapacitate the subject and prevent  
23 incapacitate the subject and prevent further aggressive action."  
24 Is that how you view how a less-lethal shotgun would work?

25 A Yes, sir.

1 Q And they describe it in here as -- on the following page, on  
2 page 10: "The blunt trauma force from a projectile has been  
3 determined to be greater than that of a thrown baseball by a Major  
4 League baseball pitcher." Is that accurate?

5 A That's correct, accurate.

6 Q And in what context would you use a less-lethal gun on  
7 someone who may either have a knife to their throat, may have a  
8 knife that they've dropped to the ground right by their feet, or  
9 may have a knife in their hand? How would you deploy that?

10 A So, we -- we would deploy it -- At first, we're -- we're  
11 always going to try to do some talking and deescalate and slow  
12 things down.

13 But the officer that has less-lethal cover is taught that,  
14 you know, if an opportunity presents itself -- So, time is good;  
15 we always try to slow things down and use time to our advantage.  
16 But if an opportunity presents itself...

17 So, it might be 5 minutes into it, and a -- and -- and the  
18 opportunity presents itself. So the person turns to go back into  
19 an apartment or drop a -- There's a bunch of variables. But if  
20 you have an opportunity to end it with less-lethal force, then we  
21 try to teach an officer to do that.

22 Q And if someone were to come out and take a shot from a  
23 distance of 13 feet or closer to somebody, with a less-lethal  
24 round, what would you expect to happen to the individual who's  
25 struck with that round? What would their response be?

1 A It -- It's like with any use-of-force option. There could  
2 be -- There could be a bunch of things. But my experiences  
3 with -- with hitting people with beanbag rounds is it's similar --  
4 If you hit them once or twice, it's similar to getting hit with a  
5 baton strike. And a lot of times, the people think they've been  
6 shot, and they comply and they give up, and they're not shot. But  
7 it gives -- it gives blunt trauma, like getting hit with a  
8 96-mile-an-hour baseball. So if you -- if you hit them once or  
9 twice, a lot of times that helps to gain compliance without any  
10 serious injury.

11 Q Okay. And the mechanics we've heard about, these less-lethal  
12 shotguns, it's a pump action, and you can fire multiple rounds  
13 from one weapon?

14 A I believe so. I'm not sure what Newton carries. There's  
15 different weapons systems. But most of them are a pump-type 870  
16 shotgun.

17 Q Okay. And if I told you that we've heard testimony that they  
18 carry five rounds and that you could get out five shots fairly  
19 quickly, is that consistent with your knowledge of these weapons?

20 A That sounds accurate, yes, sir.

21 Q And if someone were to try to engage that weapon on someone  
22 who had a knife or had just dropped the knife down by their feet,  
23 would it be appropriate in that situation to have lethal cover for  
24 that individual?

25 A Yes, sir.

1 Q Now, this hasn't come up today, and I don't know what further  
2 testimony we're going to have; but in terms of someone wearing a  
3 ballistic vest, what's the design of a ballistic vest? Are you  
4 familiar with how they work?

5 A Somewhat.

6 Q Okay. And is a ballistic vest going to stop a knife from  
7 penetrating?

8 A No, sir. They make a different type of vest that would, but  
9 not the -- The common vest the police officers wear in patrol is  
10 not stab-resistant. No, sir.

11 Q And in a situation where somebody were 13 feet away, with a  
12 knife, and then they begin approaching with a knife up over their  
13 head, and get within a distance of somewhere between 1 and 5 feet,  
14 what level would that rise to in that situation?

15 A We would put that at Level 5, sir.

16 Q Okay. And that would be a case where deadly force would be  
17 appropriate?

18 A That's correct.

19 MR. ANDERSON: If I can just have a moment.

20 [Pause]

21 MR. ANDERSON: I don't have any further questions.

22 MR. MCDONALD: No questions; thank you.

23 THE COURT: Thank you.

24 Attorney West?

25 MS. WEST: Thank you.

## 1 CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA

2 BY MS. WEST:

3 Q Good afternoon.

4 A How are you, ma'am?

5 Q I'm well. My name's Kim West, and I am the attorney for the  
6 family.

7 A Okay.

8 Q A couple times in your testimony, you've mentioned  
9 de-escalation, --

10 A Yes, ma'am.

11 Q -- right?

12 A Yes.

13 Q Can you give me the definition of "de-escalation"?

14 A De-escalation, there's -- there's a lot of different  
15 definitions. But I would use it as -- as using proactive  
16 techniques and tactics to try to help stabilize a situation, to  
17 mitigate the need to use force or a higher level of force. And  
18 there's a bunch of different techniques and tactics we would use.19 Q Okay. And, those tactics, can you give me some examples of  
20 those tactics?21 A Some of it's body language. Try to develop a rapport with  
22 the person you're talking to, slow things down, contain the  
23 situation from getting any worse, utilize distance, space, time,  
24 barriers.

25 Also, use -- We use advocates quite a bit now, mental health,

1 if -- if possible. Or at least -- We don't -- We don't always get  
2 to use them. But we try to have them at -- on the scene if  
3 possible now.

4 Q Did you review Newton police department's de-escalation  
5 policy?

6 A I did not.

7 Q Did you review any policies?

8 A I did not review any documents in this case.

9 Q Okay. You're familiar with the International Association of  
10 Chiefs of Police, correct?

11 A Yes, ma'am.

12 Q And how are you familiar with that?

13 A I'm a member. And I read a lot of their stuff. And that's  
14 where we -- When I got the definition from Massachusetts that we  
15 use for use-of-force, I use it from the IACP. So we're -- we read  
16 a lot of their stuff.

17 Q Okay.

18 MS. WEST: Your Honor, can I remove my mask?

19 THE COURT: Yes.

20 MS. WEST: Thank you.

21 BY MS. WEST:

22 Q So, the definition you just gave of "de-escalation" is  
23 actually quite close to IACP's definition, right?

24 A Probably, I believe.

25 Q And you've used -- In previous testimony, you have cited to



1 IACP before, haven't you?

2 A I believe so.

3 Q And you consider IACP to be sort of a well-respected  
4 organization in the field of use-of-force?

5 A I do.

6 MS. WEST: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MS. WEST:

9 A Thank you.

10 Q So, I just put in front of you what's called "The National  
11 Consensus Policy and Discussion Paper on the Use of Force."  
12 It's -- It was revised in July 2020. Are you familiar with this?

13 A I am. I've seen it.

14 Q Okay. And if you go to page 2, there it talks -- on the  
15 right-hand side of page 2, it talks about de-escalation. And it  
16 gives a definition.

17 MR. ANDERSON: Judge, if I can object to this line of  
18 questioning. I think this would have been maybe more appropriate  
19 for the witnesses who testified -- were involved in this  
20 situation, to see if they were aware of this. I don't -- I'm not  
21 sure how this assists the court, if the actual participants were  
22 never trained in any of this.

23 THE COURT: Go ahead.

24 MS. WEST: May I be heard, Your Honor?

25 THE COURT: Yes.

1 MS. WEST: This gentleman has indicated that much of his  
2 training is mirrored by IACP. He has cited that definition that  
3 is clearly from IACP in his past testimony. He has used it. He  
4 has not reviewed any Newton police department policies. And this  
5 court has heard information that Newton police does not have a  
6 de-escalation policy. So in order to understand his testimony, I  
7 think it would be helpful to look through what he bases some of  
8 his testimony on.

9 THE COURT: All right. I'm allowing the testimony.

10 MS. WEST: Thank you.

11 BY MS. WEST:

12 Q So if you can look at the de-escalation definition.

13 A Yes, ma'am.

14 Q You see that? It says, "Taking action or communicating  
15 verbally or nonverbally during a potential force encounter in an  
16 attempt to stabilize the situation and reduce the immediacy of the  
17 threat so that more time, options, and resources can be called  
18 upon to resolve the situation without the use of force or with a  
19 reduction in force necessary. De-escalation may include the use  
20 of such techniques as command presence, advisements, warnings,  
21 verbal persuasion, and tactical repositioning."

22 Do you agree with that definition?

23 A I do.

24 Q What is tactical repositioning?

25 A It could be just changing the angle. It could be moving to a

1 different place of cover. It could be backing off, backing up,  
2 depending on the situation. So it's just taking a different  
3 position of advantage.

4 Q And when you say "back off," do you mean, like, physically  
5 putting more distance in between them?

6 A Correct, yeah, yes.

7 Q You -- Earlier in your testimony, you said "distance"; I  
8 think you said "barriers"; and you said "time." Can you speak  
9 about those three concepts and give the court a sense of what that  
10 means?

11 A Well, what -- Tell me which one you want me to hit first, and  
12 then --

13 Q Why don't you start with "distance."

14 A Distance. So, distance is -- distance is -- is good. We  
15 create distance if possible. It depends on the situation, but --  
16 And the environment helps out.

17 But we try to create some distance because, one, it gives you  
18 more time to respond to a threat. And, two, it actually -- it can  
19 lower the officer's heartrate as well. And you tend to make good  
20 decisions when you're -- when you're heartrate is lower. So we  
21 try to do it for the officer's point of view and safety-type  
22 stuff. So we try to create distance if possible.

23 Q Okay. And if you're in a confined area and you can't create  
24 distance but you could use a barrier, would that make sense?

25 A If there's a barrier there, yes, we would -- we would teach

1 that, barriers, as well. Yes.

2 Q Yeah. And let me back up. I should have just asked you: can  
3 you tell us what --

4 A Yeah.

5 Q -- a barrier us?

6 A Yeah. The same -- same type of thing. If me -- If we're out  
7 in the street and you have a knife, I -- I would try to put a --  
8 a -- a police car in between us, or a fence. So, any kind of --  
9 any kind of barrier that you could use so that you could buy  
10 distance and time to -- to make a decision and to keep yourself  
11 safe.

12 Q And a barrier would also include a shield, right?

13 A If possible, yes.

14 Q And it could include a door, couldn't it?

15 A It could.

16 Q The third concept you mentioned was time.

17 A Yes.

18 Q Can you talk about that?

19 A As far as time, like, my experiences with these -- these  
20 things sometimes is: right in the beginning, when the event kicks  
21 off and everybody's emotions are high, and if -- If it gets  
22 brought to a head sometimes in the beginning, it -- it can go  
23 badly.

24 So we kind of use time like -- We try to use time to our  
25 advantage. Like, okay, if we -- The -- The more time that you

1 buy, historically, you can get some resources, and things tend to  
2 slow down. You can try to develop a rapport if possible.

3 So, with the time thing, it just seems -- It's not always,  
4 but sometimes the more time you have in between can help to  
5 diffuse the situation. That's all.

6 Q And it's also -- So, as you said, time can give you an  
7 opportunity to get more resources, right?

8 A Correct.

9 Q And in a situation where NEMLEC was called, getting that time  
10 would give NEMLEC more time to get there, right?

11 A It could, yes.

12 Q Can you turn to page 12, please? And do you see the part  
13 under "de-escalation"?

14 A Yes, ma'am. 8? I'm sorry; B.

15 Q B, yes.

16 A My eyes are going.

17 Q It says, "Procedurally, whenever possible and appropriate,  
18 officers should utilize de-escalation techniques consistent with  
19 their training before resorting to use -- using force or to reduce  
20 the need for force. In many instances, these steps will allow  
21 officers additional time to assess the situation, request  
22 additional resources, and better formulate a response to the  
23 resistant individual, to include the use of communication skills  
24 in an attempt to defuse the situation."

25 Do you agree with that, those sentences I just read out?

1 A Sure.

2 Q And here it focuses on communication skills in an attempt to  
3 diffuse the situation. Can you tell us a little bit about that  
4 and what that means?

5 A Well, we've -- we've gotten better in law enforcement over  
6 the last 10 -- 10 years on -- on teaching, you know, effective  
7 communication and -- and slowing things down and not screaming and  
8 yelling, and lowering your tone and -- and trying to have positive  
9 body language, and asking people to do -- to do something, rather  
10 than telling them.

11 So just -- we've -- we've -- we've worked on effective  
12 communication skills quite a bit. We do it from use-of-force to  
13 patrol tactics. We include communication skills in just about  
14 everything we teach.

15 Q And if the officer, say, is negotiating, the negotiator is  
16 having a conversation with the person, communicating with that  
17 person, and that person is beginning to corroborate [sic], would  
18 you consider that de-escalation technique to be working?

19 "Cooperate."

20 A If they're building a rapport and things -- and -- and  
21 nothing bad is happening and --

22 Q Yeah.

23 A -- it's slowing down? I would say that's good, yes.

24 Q So if they're complying, like, if the officer is saying, "I  
25 would like you to do this," and they actually do that, would you

1 consider that "cooperation"?

2 A Yes, ma'am.

3 Q If you can turn to page 9 on this. Top right-hand. It says,  
4 "Another de-escalation technique is tactical repositioning. In  
5 many cases, officers can move to another location that lessens the  
6 level of danger. An example is an instant involving an individual  
7 with a knife. By increasing the distance with the individual,  
8 officers greatly reduce the risk to their safety and can explore  
9 additional options before resorting to a use of force,  
10 notwithstanding the need to control the threat to others."

11 So, this again mentions the issue of repositioning that you  
12 mentioned before. Can you just tell the court a little bit more  
13 about what repositioning actually means?

14 A Well, it's -- it's a -- it's a pretty generic term. I mean,  
15 it could be something as simple as -- as -- as backing out or  
16 backing off or taking a different angle of approach.

17 But that's what I would -- that's what I would use to  
18 describe -- That's what it would mean to me. But it might mean  
19 different things to different officers, as well. It's a very --  
20 It's a very subjective term.

21 If I said -- If -- If somebody was in -- is in a bathroom  
22 with a -- with a knife, and I close the door and back out, I could  
23 call that repositioning.

24 So it means a lot of things to a lot of different people.  
25 But I would just say using a change in your -- a change in your

1 angle and -- and try -- try to give yourself a tactical advantage.

2 Q Okay. But you don't disagree with any of the statements I  
3 just read?

4 A I don't disagree with that, no.

5 Q Okay. And if you had a confined hallway with an individual  
6 in that hallway, with a knife, and a police officer in that  
7 confined hallway, without a shield, without a barrier, a  
8 repositioning technique would be to bring that officer into a  
9 room, correct?

10 A If -- So, I -- If I'm -- I'm not -- I don't know of any  
11 specific event.

12 Q Yeah. I --

13 A But it -- it --

14 Q Understood, understood.

15 A So I -- because I don't have -- I have read no reports on  
16 this, so I'm not sure what you're -- you're asking me.

17 Q So let me start over again.

18 A Okay.

19 Q And my apologies.

20 A Oh, no problem.

21 Q Imagine a confined space, with a person with a knife at one  
22 end. And the space is about 15 feet long, and it's about 4 feet  
23 wide. And there's an officer in that space. And there's no exit  
24 from that space except a door that goes into another room.

25 Would you consider putting that officer inside the door to be



1 this repositioning that we've been talking about, this concept of  
2 repositioning?

3 A Sure.

4 Q Is it fair to say that bad tactics prior to the use of deadly  
5 force can escalate a situation?

6 A That's fair to say.

7 Q And can you give me an example of one?

8 A Oh... So, I saw a case where there was a suicidal woman in a  
9 vehicle. And she had -- she had a firearm. They knew she had a  
10 firearm. And she was -- she was threatening to hurt herself.

11 And the officer -- One officer was trying to talk to her and  
12 got behind cover, was speaking to the woman.

13 And then another officer left cover and went right up to the  
14 car to talk to the woman.

15 And she turned and pointed the gun at the officer.

16 And he shot her.

17 So the shooting was reasonable and justified, but it -- it  
18 probably didn't have to happen. So I would call that -- I would  
19 give that example of bad tactics leading to a use-of-force. There  
20 may be better tactics. We don't know. We don't have a crystal  
21 ball. But maybe better tactics could have helped the situation.

22 Q And perhaps better tactics might have been, in that  
23 situation, to have some sort of barrier in front of that person?

24 A Sure, yes.

25 Q Or better tactics --

1 A I mean "yes, ma'am." I'm sorry.

2 Q Yeah. Better tactics would have been to not have that person  
3 even actually go up to the car to begin with?

4 A Correct.

5 Q I think you said earlier you have not looked at any of the  
6 Newton police department's regular or -- policies, right?

7 A Yes, ma'am, that's correct.

8 Q But you yourself do have some training and instruction  
9 experience in shotgun beanbags, right?

10 A Yes, ma'am.

11 Q And on what occasions would you use a beanbag?

12 A The last time I -- I used one was a person that was trying to  
13 blow his house up and had had a -- broke all the windows and was  
14 cutting himself and came out onto the porch. And he was close to  
15 us, so I hit him with a -- with a beanbag in his leg, I think  
16 twice. And we took him into custody.

17 So that -- that would be an example. But we've used them in  
18 deadly force situations and non-deadly-force situations.

19 Q Can you explain generally how it is that you load a beanbag,  
20 if you can?

21 A So, there's, like, 10,000 cops in Massachusetts, and they  
22 probably all load it differently. So --

23 Q Mm-hmm.

24 A I would just -- I would -- What I would do is I would throw  
25 one round into the port and -- and put it forward. And then I

1 would stuff the other four rounds into the barrel.

2 But people load them different. People do a combat load.  
3 People just -- People sometimes have a shotgun loaded, but not  
4 loaded and ready to go. They don't have a round in the chamber.  
5 So it's just -- It's pretty -- It's pretty generic, on how you  
6 load a beanbag shotgun. You know?

7 Q If we can go back to that example that we were talking about  
8 in a hallway, and you had an individual there who had a knife, and  
9 it was in a narrow hallway and you made a decision to use a  
10 shotgun beanbag, what would be your expectation would happen to  
11 this person if they were hit by the projectile?

12 A It -- It really depends. But the expectation would be that  
13 it would cause some kind of a -- some kind of a stoppage. But  
14 I -- We've hit people with beanbags seven times and it didn't do  
15 anything. And we've hit them one time and it works. So it's --  
16 it's -- it really is situation-driven. You know, sometimes --

17 Q Okay.

18 A -- it's clothing, sometimes it's distance. A lot of times  
19 it's where you hit the person. So all that stuff comes into play.  
20 They're all -- There's a lot of variables when you're using  
21 less-lethal force.

22 Q And is one variable that you would consider that if they had  
23 a knife in their hand and they were hit by the projectile and they  
24 fell, the knife too would fall to the ground?

25 A That could happen as a variable.

1 Q And would you consider that while you were putting together a  
2 plan, and think about what the next step would be, like: what are  
3 you going to do after that?

4 A Correct.

5 Q And what would you do after that?

6 A After we --

7 Q He fell to the ground, but the knife is right next to him.

8 A If he fell to the ground and the knife was -- After we hit  
9 him with a beanbag?

10 Q Yeah.

11 A Then we would try to do an apprehension if we -- if possible.  
12 If we had a shield or we had an arrest team, we would try to take  
13 him into custody. If -- If you have, like, a -- If you have a  
14 stop in the action and you have an opportunity to take the person  
15 into custody, we would do that.

16 Q Can you go to page 12 on the IACP consensus? Under -- You  
17 see "Less-lethal force"?

18 A Yes, ma'am.

19 Q "In situations where de-escalation techniques are either  
20 ineffective or inappropriate and there is a need to control a  
21 noncompliant or actively resistant individual, officer should  
22 consider the use of less-lethal force."

23 Do you agree with that?

24 A I do.

25 Q Okay. And a need -- I want to focus on the language of "a

1 need to control a noncompliant or actively resistant individual."

2 So then my question to you is: would you -- if a subject was  
3 being compliant at that moment and was not actively resisting  
4 anything, was being cooperative, could you then use less-lethal on  
5 them?

6 A You could.

7 Q And why could you?

8 A Because when we're teaching less-lethal options, again, with  
9 the -- The -- The way we teach officers responding to these calls  
10 is preservation for life -- preservation of life is the most  
11 important goal, is to take this person into custody without loss  
12 of life. So if you have a chance to use less-lethal force at any  
13 time and the opportunity presents itself, then we would do that.

14 So even if a -- So, it's an ongoing event. It's not -- It's  
15 not chunk-things [sic] going on. It's an ongoing event. So if a  
16 person is -- If you're in a lethal situation and the person is --  
17 is resisting and not compliant, he might be compliant for a  
18 second. But if he drops the knife, you could -- you could say  
19 he's noncompliant at that moment, but it is not -- it's -- it --  
20 it's a -- it's a second, it's a split second. So even though he's  
21 noncompliant at that moment, we would still try to deploy a taser  
22 or a beanbag because it's so -- it's such a low level of force  
23 that if we had a chance to end the incident, we would.

24 Q So let me ask you a question: what if he had two things in  
25 his hand? What if he had a knife in one and a firearm [sic] in

1 one and the negotiator had some conversation with him, was  
2 talking, and as a result of that conversation they put the knife  
3 to their waist? Let's stop there.

4 A Okay.

5 Q Then conversation continued, and they put the knife on the  
6 ground. Conversation continued, and then they put the fire  
7 extinguisher on the ground.

8 Would you consider that those acts of the subject suggested  
9 that the conversation was working, that it was progressing, and  
10 that maybe the conversation should continue before less-lethal was  
11 used?

12 A It could, yes.

13 Q Can you go to page 10, please.

14 During your testimony, you spoke about force models. You  
15 were speaking about the triangle, use-of-force continuum. And as  
16 you said, it has different names.

17 Are you familiar with the criticism of that type of  
18 use-of-force model?

19 A I am.

20 Q And you know IACP strongly discourages use of the continuum?

21 A So, it's an ongoing -- It changes. So, in -- A lot of states  
22 have gotten rid of use-of-force continuum. And they just teach  
23 the law, Graham vs. Connor. So, across the country, there was a  
24 movement, and a lot of states got rid of use-of-force continuums  
25 or use-of-force models, because officers get confused sometimes.

1 And there's a -- there's a -- there's a debate, whether to use  
2 them or not.

3 But now, after the -- after the incidents out in Minneapolis,  
4 now the national movement is to make every department have a  
5 use-of-force model. So we went from use-of-force models and  
6 continuums to "let's get rid of them" to now --

7 In Massachusetts, we've never gotten rid of it. We've talked  
8 about it. We've been involved in the conversations.

9 But now, after the "8 Can't Wait" Minneapolis situations they  
10 want police to focus on, one of the biggest things out of "8 Can't  
11 Wait" is: officers have documented use-of-force continuum and  
12 training. So we're right back to use-of-force continuums.

13 And not -- And I'm not sure where we're going to go in  
14 Massachusetts. I think we're going to keep teaching it. But it  
15 changes from time to time, ma'am.

16 Q But in regard to IACP, have they changed their view on  
17 use-of-force continuums?

18 A I don't know.

19 Q Okay. Earlier, with Mr. Anderson, you spoke about the  
20 21-foot rule. You said it goes back 35 years. And is it taught  
21 nowadays?

22 A So, it's taught. It's mentioned and explained, and we teach  
23 it because so many officers have heard it. Like, if I got to a  
24 police academy class on day one and I ask them about the 21-foot  
25 rule, there's -- a bunch of people have heard it, a bunch of

1 people have a different -- have misconceptions about it. So I try  
2 to address it in terms of "This is the 21-foot rule. This is what  
3 it means. But always go back to doing what's right. And every  
4 situation is still totality of the circumstances."

5 It could be a situation where a person is 30 feet away and  
6 deadly force is authorized and -- and should be the situation.  
7 And there's situations where a person could be, you know, 15 feet  
8 away if it's a -- if it's a homeless drunk person and they're not  
9 a threat. They might be 15 feet away, but if they're not a  
10 threat...

11 So we try to teach more totality of the circumstances and  
12 doing what's right versus -- versus distances. But the distance  
13 is important, and that's what they have in their mind as -- as the  
14 distance in space. Like, "21 feet" is in every officer's mind,  
15 that that's unsafe.

16 Q Right. But that 21 feet has to do with the amount of time to  
17 cover it, which would include the officer recognizing the threat,  
18 unholstering their firearm, and shooting, right?

19 A Yes, ma'am.

20 Q Okay. In a situation where the shotgun is already up and  
21 it's focused, then the 21-foot rule isn't necessarily applicable.

22 A Correct.

23 MS. WEST: Your Honor, I would move to admit the consensus  
24 policy.

25 THE COURT: All right.



1 MR. ANDERSON: I was going to object for the record, but I  
2 have --

3 THE COURT: You can object. I'm going to --

4 MR. ANDERSON: Okay.

5 THE COURT: -- allow it.

6 MR. ANDERSON: So I can stand all the way up.

7 THE COURT: That's all right. You needed to stretch, maybe,  
8 too.

9 [IACP Consensus Marked as Exhibit No. 33]

10 MR. ANDERSON: If I could just --

11 THE COURT: Yes.

12 RECROSS EXAMINATION OF WITNESS, OFFICER CHARLES DICHIARA

13 BY MR. ANDERSON:

14 Q Sir, just going back, quick: you being part of NEMLEC, you  
15 know the other members on the team?

16 A I -- Yes, sir.

17 Q And this situation happened, I guess, in Newton Highlands.  
18 Where would the other members be responding from, to get there?  
19 Who would -- Like, what cities and towns were people coming from?

20 A Well, we're -- we're picked -- we're spread out throughout  
21 the -- Northeast Mass. part of the state. So we have  
22 cops/officers coming from Lowell, Methuen, Waltham, Methuen [sic],  
23 Dracut. And we have some officers who might be in the area:  
24 Watertown, Belmont, Waltham. So -- But we're spread out quite a  
25 bit.

1 Q And in this one -- Like, for instance, if a call came out  
2 right now, it's almost one o'clock. For you to go to a call, you  
3 wouldn't be able to go to that call; is that correct? Or you  
4 would go after leaving here and changing out of your suit?

5 A Yes. I would go if I -- if you let me go.

6 Q Okay. You have to ask --

7 A If you would let me go.

8 Q So, it's fair to say there are times when calls come up and  
9 people just simply aren't able to respond.

10 A Correct.

11 Q And then people are coming from various distances, correct?

12 A That's correct.

13 Q And in your situation, you were in Waltham, you got the call,  
14 but by the time you were getting ready to -- to travel there, it  
15 had already been disengaged --

16 A Yes.

17 Q -- or called off?

18 A That's correct.

19 Q Okay. And so you don't know what the timing was from when  
20 you first got the call to when it was called off?

21 A I do not know.

22 Q And in terms of the procedure for a call going out to NEMLEC,  
23 say a lieutenant on the scene calls into Newton dispatch and says,  
24 "Can you active NEMLEC," do you know what the process is in terms  
25 of notifying people?

1 A I do.

2 Q And how does that work?

3 A So, there's three control chiefs. One is from Concord, one  
4 is from Sudbury, and one is from Gloucester. And what happens  
5 is -- is when they request SWAT, a call goes to the North Andover  
6 police station, which is the dispatch, central dispatch. Then  
7 they get ahold of the chief, and they tell them what the -- they  
8 have. And the chief uses, like, a -- a matrix at the time to  
9 determine if it's a SWAT callout or not. And then they make the  
10 decision, and then they put out the call to us.

11 Q And does that come by cell phone or --

12 A Yes. They put up --

13 Q And is it like a group text? Like, "We have a barricaded  
14 suspect in Burlington at the high school," and then everybody  
15 grabs their gear and then goes?

16 A Correct.

17 Q Okay. So the timing for when people could actually respond  
18 to a call in Newton, that could be anywhere from 15 minutes to an  
19 hour?

20 A Yes, correct.

21 Q And then you get there, assemble, there's a group that would  
22 kind of be the initial action team, and then the other group would  
23 kind of get a more formulated plan?

24 A Correct.

25 Q Okay. And in terms of the number of calls that you get

1 called out to and then once you start getting there the situation  
2 ends, does that happen often?

3 A It does.

4 Q And if you get a call for someone who's got a knife to their  
5 throat, it's possible by the time you get there that person could  
6 have already slashed their throat?

7 A Correct.

8 MR. ANDERSON: I have nothing else.

9 THE COURT: Anything else?

10 CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA

11 BY MR. MCDONALD:

12 Q Mr. Conlon, you were asked by counsel for the family about  
13 changing positions and taking other tactics during the course of a  
14 negotiation; do you recall that?

15 A I do, sir.

16 Q And isn't it fair to say that that's really up to the  
17 judgment of the negotiator, whether there would be any change of  
18 position or change in tactics based on the progress of the  
19 negotiation?

20 A Yes. It's -- It's from the perspective of the officer that's  
21 there, what he feels is reasonable.

22 Q Right. And if an officer seems to be having success in the  
23 conversation, would there be any need to change position or engage  
24 in any further tactics other than what he was employing already?

25 A If he's doing well and he's comfortable, he -- he could stay

1 there. That's fine.

2 Q Okay.

3 MR. MCDONALD: Thank you. That's all.

4 THE COURT: Anything else for this witness, anyone?

5 MR. TARRANT: No, Your Honor; thank you.

6 THE COURT: All right. Thank you so much. You may step  
7 down.

8 [Witness steps down]

9 MR. TARRANT: So, Your Honor, that, for the Commonwealth,  
10 would be the last witness that I would call.

11 I think there's some -- there's a few issues we need to go  
12 over and resolve, to continue or to see how we're going to  
13 continue from here.

14 THE COURT: Okay.

15 MR. TARRANT: One would -- Do you want me to go through them  
16 or --

17 THE COURT: We can certainly go through them. I can tell you  
18 I would like to hear testimony with regard to the ballistics on  
19 the projectiles recovered by the M.E. --

20 MR. TARRANT: Yep.

21 THE COURT: -- and on any comparison to firearms in this  
22 case.

23 MR. TARRANT: Okay.

24 THE COURT: And that, of course, is in addition to what we  
25 already covered this morning about testimony regarding the fire

1 extinguisher and ballistics on the less-than-lethal.

2 MR. TARRANT: Right. Any -- Is that it, or...

3 THE COURT: That's it, at the moment. Now, I don't -- We can  
4 continue this conversation now. I don't know if you want to take  
5 a break to be able to resume at two so you can tell me if you have  
6 any sense of a -- you know, --

7 MR. TARRANT: I --

8 THE COURT: -- and talk collectively --

9 MR. TARRANT: Certainly.

10 THE COURT: -- amongst yourselves about what a schedule might  
11 look like. I can tell you if we have to come back, in terms of  
12 coming back to this court --

13 And there is also the issue of the witness who was ill and  
14 unavailable.

15 MR. TARRANT: Right.

16 THE COURT: So --

17 MR. TARRANT: But we --

18 THE COURT: Go ahead.

19 MR. TARRANT: Just one more thing.

20 THE COURT: I apologize.

21 MR. TARRANT: I'm sorry. With respect to Officers Scaltreto  
22 and Officer Bennis [phonetic], --

23 THE COURT: Yes.

24 MR. TARRANT: -- I believe they do have a right to testify.

25 THE COURT: They do.

1 MR. TARRANT: They do also have a right not to testify. I  
2 don't know if we have a decision on where that is going, if that  
3 was to happen today, or if we would be introducing recorded  
4 statements. I just put that on the radar. I'm not trying to rush  
5 anybody.

6 THE COURT: Right.

7 MR. TARRANT: But it's just one unresolved issue.

8 THE COURT: No, of course that remains open. And, you know,  
9 I assume that that would be something that -- after everything has  
10 been presented to the court, maybe that decision is reached. Or  
11 perhaps it has already been reached. So --

12 MR. TARRANT: Okay. So --

13 THE COURT: -- I don't want to rush anyone, either, or --

14 MR. TARRANT: I think I'm putting --

15 THE COURT: -- step on toes with regard to the decisions on  
16 that end.

17 MR. TARRANT: So, yeah, I'm --

18 MR. MCDONALD: Your Honor, we'd like to hold --

19 MR. TARRANT: -- probably put the cart before --

20 MR. MCDONALD: -- until everything is in.

21 MR. TARRANT: Right.

22 MR. MCDONALD: Thank you.

23 MR. TARRANT: So I'm putting the cart before the horse. I  
24 didn't...

25 THE COURT: That's all right.

1 MR. TARRANT: I'm sorry about that.

2 THE COURT: But certainly, why don't we do this: why don't we  
3 take a break. You know what it is that the court is looking for.  
4 I don't know if it's possible to at least get some framework as to  
5 how many weeks or what kind of timeframe. Some of this may  
6 already exist.

7 MR. TARRANT: Right.

8 THE COURT: Some of it may not.

9 MR. TARRANT: Right.

10 THE COURT: I can tell you for scheduling purposes that for  
11 this court I believe Thursdays would be a day that would be  
12 available to us. Obviously, they had set away -- aside this time.  
13 But moving forward, I think it would be helpful if scheduling-wise  
14 we could look at a Thursday, perhaps, to finish things up on.  
15 Okay? So I'm going to step off, and we'll resume right at two  
16 o'clock, okay?

17 MR. TARRANT: All right.

18 THE COURT: Thank you.

19 [Court in Recess at 1:05:37 p.m.]

20 [Back on Record at 2:04:32 p.m.]

21 THE COURT: All right. So, I'd asked Mr. Clerk to check in  
22 and to come up with a few dates that might be workable. I  
23 understand he presented those, and there was a discussion of the  
24 use of January 27; is that correct? All right. All right.

25 So we will continue this proceeding until January 27 of '22



1 at 9:00 a.m.

2 Are there any other issues or concerns anyone wanted to  
3 address before we adjourn?

4 MR. TARRANT: I don't think so, Judge. I did get some  
5 answers to --

6 THE COURT: Okay.

7 MR. TARRANT: -- what's going on, --

8 THE COURT: Oh, great.

9 MR. TARRANT: -- just to what -- for expectation --

10 THE COURT: Sure, sure.

11 MR. TARRANT: -- purposes, I suppose. With respect to the  
12 ballistics, I did speak to the ballisticians during the break who  
13 did work on this case, got available dates from him which I think  
14 will work for the court.

15 There were comparisons done. We do have the report. So  
16 that -- I don't think there should be any delay --

17 THE COURT: Perfect.

18 MR. TARRANT: -- with respect to that.

19 The shotgun shells were seized. They -- And I've been told  
20 that they are in -- they were sent to the lab. Whether they're  
21 still at the lab or the state police have them, I'm not sure.

22 The firearm is in the custody of the Newton police  
23 department. They are sending that to the lab. And they're  
24 coordinating to get the shotgun shells together with the firearm.  
25 So that should be happening in the meantime. And I don't

1 anticipate that should take very long.

2 THE COURT: Okay.

3 MR. TARRANT: Although, with the lab, you know, we're looking  
4 at 90 days, plus. But I may be able to try to get that moving  
5 along.

6 THE COURT: Okay.

7 MR. TARRANT: And I -- Am I missing -- There was something  
8 else.

9 THE COURT: It was the fire extinguisher.

10 MR. TARRANT: Oh, the fire extinguisher. So, I can just tell  
11 the court my knowledge of the fire extinguisher is:

12 The night that this happened, we didn't learn about the  
13 relevance of the fire extinguisher until several hours after. It  
14 was late at night, when the first interview occurred. And when  
15 that occurred and the fire extinguisher was mentioned, at that  
16 point in time we did request it to be seized.

17 However, the maintenance staff at the building had already  
18 moved it and took custody of it. So it was retrieved from  
19 maintenance.

20 I think what is relevant is where it was at the time of the  
21 incident. And either one of the officers up the stairs is going  
22 to have to provide that information -- I feel that it was moot  
23 fairly early on.

24 In the photographs, it's shown in the back stairwell area  
25 where -- That door was closed, so I know it wasn't there.

1       So I do anticipate I will -- with Mr. McDonald, who, I think,  
2 represents the officers that would be relevant to this, trying to  
3 re-interview and determine where the fire extinguisher was. But  
4 that's where we are with that, so...

5       THE COURT: Okay.

6       MR. TARRANT: I don't know what kind of answer I'm going to  
7 have.

8       THE COURT: All right. Well, I appreciate the update. And  
9 hopefully we'll have greater clarity the next time we're able to  
10 get together.

11       If there is a need for any Zoom meeting or exchange of  
12 information, anything of that kind, please feel free to reach out  
13 to Clerk Okstein, and we can always figure something out and use  
14 Zoom for that.

15       MR. TARRANT: Okay.

16       THE COURT: Other than that, I'll see you on the 27th. And  
17 thank you all for everything --

18       MR. TARRANT: Thank you.

19       THE COURT: -- the last few days.

20                   [Court in Recess at 2:07:48 p.m.]

21                   [Back on Record at 2:19:17 p.m.]

22       THE CLERK: The following is the recording from the view on  
23 In Re: Michael Conlon, 2112IN-1, that occurred on December 6th,  
24 2021. And the view occurred at 18 Lincoln Street in Newton  
25 Highlands, Mass. And the recording is being switched from a

1 | iPhone to the FTR recording.

2 | [Recording playing at 2:19:48 p.m.]

3 | THE CLERK: And that is the end of the recording from the  
4 | view that occurred on December 6th, 2021.

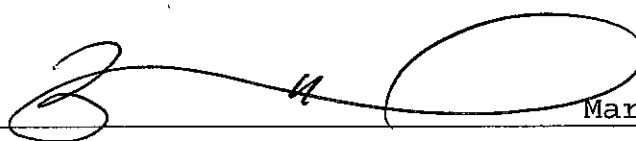
5 | [Adjourned at 2:33:36 p.m.]

## C E R T I F I C A T I O N

I, Quaverly H. Rothenberg, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the above-entitled matter provided to me in the form of an electronic sound recording.

I, Quaverly H. Rothenberg, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Quaverly H. Rothenberg, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



March 31, 2022

Quaverly H. Rothenberg of Q & A Transcripts

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**AUDIO ASSESSMENT FORM**

**TODAY'S DATE:** March 31, 2022

**TRANSCRIBER NAME:** Quaverly Rothenberg

**CASE NAME:** IN RE: MICHAEL CONLON

**DOCKET NUMBER:** 2112IN000001

**RECORDING DATE:** December 8, 2021 **TRANSCRIPT VOLUME:** III\_

**TYPE:** ☒ FTR ☐ JAVS

**QUALITY:** ☐ EXCELLENT ☐ GOOD ☐ FAIR ☒ POOR

**ISSUES:**

**Time stamp(s) of indiscernible word(s):**

☐ background noise

☐ low audio

☐ low audio at sidebar

☒ simultaneous speech

☒ speaking away from mic.

☐ other: pronunciation unclear

**COMMENTS:** First witness was not mic'd, for an hour. Cross talk was excessive through much of the transcript. If you could kindly ask this clerk to collaborate with the court to ensure the clerk is monitoring the recording at least at the start of witness testimony and spotchecking throughout, and also that the court not allow speaking interruptions to occur. (Witnesses must finish their answers before questions start, and witnesses should also not interrupt questions. A few firm reminders from the court usually get the job done.) Thanks!

#	2021 [13] 21, 3; 24, 23; 34, 16; 77, 25; 78, 13; 79, 10; 82, 9; 110, 12; 110, 16; 111, 19; 130, 5; 179, 24; 180, 4; 21 [4] 146, 8; 146, 18; 168, 14; 168, 16; 21-foot [8] 146, 10; 146, 13; 146, 17; 146, 25; 167, 20; 167, 24; 168, 2; 168, 21; 2112in-1 [1] 179, 23; 24 [1] 25, 5; 240 [1] 20, 5; 25 [2] 30, 7; 58, 20; 26 [1] 30, 8; 267 [1] 22, 13; 27 [4] 35, 18; 127, 12; 176, 24; 176, 25; 275 [1] 53, 11; 27th [1] 179, 16; 28 [3] 22, 3; 35, 19; 127, 12; 29 [2] 57, 3; 57, 7; 2:00 p.m. [1] 111, 22; 3 [12] 12, 25; 12, 25; 91, 2; 100, 14; 103, 8; 103, 18; 113, 2; 139, 19; 139, 22; 140, 8; 140, 12; 143, 23; 3/8-by-1/16 [1] 44, 18; 3/8-by-1/16-inch [1] 44, 11; 3/8-inch [1] 38, 18; 30 [7] 59, 5; 60, 17; 61, 1; 61, 2; 92, 2; 129, 6; 168, 5; 31 [2] 93, 17; 93, 19; 32 [1] 94, 12; 33 [2] 126, 10; 169, 9; 35 [2] 146, 9; 167, 20; 35-man [1] 129, 11; 3:00 [1] 77, 9; 4 [19] 87, 10; 89, 19; 89, 19; 90, 1; 90, 21; 91, 2; 99, 10; 100, 15; 103, 18; 127, 17; 128, 5; 128, 13; 140, 14; 140, 15; 140, 19; 141, 5; 141, 6; 141, 7; 160, 22; 4-1/2 [1] 44, 13; 48 [1] 19, 8; 495 [1] 77, 20; 5 [15] 61, 11; 65, 1; 68, 9; 68, 12; 68, 20; 83, 2; 116, 10; 116, 10; 141, 7; 141, 8; 141, 9; 143, 23; 148, 17; 150, 13; 150, 15; 5,000 [2] 18, 18; 18, 18; 5-day [1] 127, 23; 5/8 [1] 41, 7; 507 [1] 58, 3; 5a [1] 147, 21; 5th [8] 77, 25; 78, 12; 79, 10; 82, 9; 110, 11; 110, 16; 111, 19; 130, 5; 6 [6] 87, 10; 89, 19; 89, 19; 90, 1; 103, 18; 127, 4; 64 [1] 129, 10; 6th [5] 21, 3; 24, 23; 34, 16; 179, 23; 180, 4; 74 [1] 22, 7; 7:00 a.m. [1] 110, 17; 7th [1] 104, 21; 8 [6] 112, 16; 112, 16; 116, 10; 157, 14; 167, 9; 167, 10; 80 [1] 127, 20; 800 [1] 53, 10; 870 [1] 149, 15; 9 [3] 39, 4; 147, 21; 159, 3; 90 [2] 138, 17; 178, 4; 96-mile-an-hour [1] 149, 8; 9:00 a.m. [1] 177, 1; 9th [1] 22, 5;	academy [16] 77, 16; 79, 19; 79, 23; 80, 1; 80, 21; 95, 21; 96, 2; 126, 15; 127, 19; 127, 23; 130, 1; 130, 2; 130, 3; 130, 4; 145, 20; 167, 24; accepted [1] 138, 11; access [5] 43, 15; 61, 22; 72, 13; 81, 6; 113, 15; accompany [2] 22, 17; 22, 24; according [1] 70, 25; accuracy [2] 142, 4; 142, 8; accurate [5] 34, 12; 34, 15; 148, 4; 148, 5; 149, 20; accurately [2] 24, 22; 93, 11; across [18] 23, 14; 36, 24; 37, 1; 40, 10; 42, 12; 43, 8; 43, 9; 49, 2; 52, 25; 53, 3; 53, 9; 63, 16; 63, 19; 74, 15; 94, 7; 128, 14; 128, 18; 166, 23; acting [1] 87, 22; action [8] 105, 16; 131, 2; 142, 18; 147, 23; 149, 12; 154, 14; 164, 14; 171, 22; actions [8] 134, 13; 134, 14; 135, 19; 136, 15; 136, 17; 137, 3; 137, 7; 137, 11; activate [1] 80, 20; activated [2] 82, 23; 119, 5; active [2] 136, 22; 170, 24; actively [3] 164, 21; 165, 1; 165, 3; activities [1] 58, 9; acts [1] 166, 8; actual [2] 139, 25; 153, 21; actually [63] 12, 25; 13, 20; 16, 1; 17, 15; 22, 19; 22, 22; 23, 19; 24, 16; 25, 11; 27, 10; 27, 13; 27, 15; 27, 16; 27, 23; 29, 1; 29, 12; 31, 11; 33, 8; 34, 11; 36, 22; 37, 22; 37, 23; 38, 12; 38, 17; 38, 22; 39, 4; 39, 11; 40, 9; 40, 11; 40, 15; 41, 7; 41, 12; 41, 16; 41, 18;
---	--	--

42, 18; 44, 13; 55, 14; 55, 16; 57, 22; 59, 1; 62, 12; 69, 15; 71, 1; 71, 2; 72, 7; 86, 21; 97, 2; 98, 19; 100, 2; 100, 8; 105, 1; 106, 1; 115, 2; 117, 20; 123, 19; 136, 14; 140, 3; 152, 23; 155, 18; 158, 25; 159, 13; 162, 3; 171, 17;

**add** [1] 16, 14;

**addition** [8] 18, 8; 32, 25; 37, 16; 55, 20; 79, 23; 129, 2; 133, 22; 173, 24;

**additional** [5] 12, 10; 37, 17; 157, 21; 157, 22; 159, 9;

**address** [4] 8, 20; 146, 13; 168, 2; 177, 3;

**addressing** [1] 14, 18;

**adjourn** [1] 177, 3;

**adjourned** [1] 180, 5;

**admit** [1] 168, 23;

**adult** [2] 13, 21; 55, 14;

**advantage** [4] 148, 15; 155, 3; 156, 25; 160, 1;

**advise** [1] 89, 7;

**advised** [2] 89, 2; 91, 23;

**advisements** [1] 154, 20;

**advising** [1] 82, 16;

**advocates** [1] 151, 25;

**aed** [1] 91, 25;

**affect** [2] 36, 23; 144, 3;

**affixed** [3] 7, 21; 8, 5; 79, 3;

**affords** [1] 142, 24;

**after** [38] 4, 17; 4, 21; 4, 22; 8, 13; 16, 5; 25, 7; 25, 25; 31, 1; 66, 15; 87, 15; 90, 12; 91, 22; 92, 10; 92, 11; 92, 19; 92, 22; 92, 23; 93, 12; 94, 14; 94, 19; 94, 23; 104, 21; 113, 8; 120, 3; 120, 24; 121, 8; 121, 11; 130, 10; 164, 3; 164, 5; 164, 6; 164, 8; 167, 3; 167, 3; 167, 9; 170, 4; 175, 9; 178, 13;

**afternoon** [8] 82, 10; 97, 2; 111, 19; 123, 8; 125, 17; 125, 18; 145, 19; 151, 3;

**against** [5] 66, 15; 67, 12; 67, 13; 140, 10; 143, 23;

**age** [1] 22, 1;

**agencies** [2] 77, 22; 129, 19;

**agency** [1] 131, 4;

**aggressive** [2] 138, 7; 147, 23;

**ago** [4] 9, 7; 106, 18; 123, 10; 146, 14;

**agree** [7] 96, 21; 106, 14; 106, 16; 106, 17; 154, 22; 157, 25; 164, 23;

**agreed** [1] 9, 10;

**ahead** [3] 66, 1; 153, 23; 174, 18;

**ahold** [1] 171, 7;

**aid** [2] 92, 2; 93, 1;

**aim** [5] 80, 15; 80, 19; 81, 10; 81, 11; 141, 23;

**aiming** [1] 81, 15;

**air** [1] 121, 25;

**alan** [1] 101, 7;

**align** [2] 43, 10; 65, 6;

**aligned** [10] 40, 23; 43, 2; 64, 6; 69, 13; 69, 20; 70, 16; 70, 17; 70, 21; 71, 14; 74, 4;

**alignment** [1] 70, 22;

**all-encompassing** [1] 135, 11;

**alleyway** [2] 84, 2; 95, 4;

**allow** [3] 15, 17; 157, 20; 169, 5;

**allowed** [3] 9, 17; 25, 17; 123, 17;

**allowing** [1] 154, 9;

**alluded** [1] 5, 3;

**almost** [8] 18, 18; 19, 15; 37, 18; 41, 8; 58, 23; 91, 13; 93, 1; 170, 2;

**along** [10] 39, 3; 39, 7; 43, 3; 73, 14; 73, 14; 97, 4; 113, 12; 114, 11; 114, 12; 178, 5;

**alprazolam** [1] 57, 13;

**already** [14] 15, 20; 19, 21; 26, 17; 40, 3; 47, 1; 92, 1; 168, 20; 170, 15; 172, 6; 172, 24; 173, 25; 175, 11; 176, 6; 178, 17;

**always** [19] 13, 25; 14, 25; 18, 6; 20, 23; 22, 19; 43, 12; 50, 2; 103, 10; 131, 15; 142, 2; 143, 2; 143, 16; 145, 11; 148, 11; 148, 15; 152, 1; 157, 3; 168, 3; 179, 13;

**amazing** [1] 64, 24;

**american** [1] 13, 14;

**ammunition** [1] 34, 12;

**among** [3] 52, 9; 105, 17; 106, 11;

**amongst** [2] 116, 12; 174, 10;

**amount** [9] 14, 18; 17, 18; 53, 22; 132, 2; 132, 8; 132, 17; 133, 9; 133, 13; 168, 16;

**amphetamine** [2] 57, 12; 57, 20;

**analysis** [3] 134, 15; 136, 12; 137, 13;

**analyze** [7] 134, 15; 135, 2; 136, 13; 137, 6; 137, 11; 137, 14; 146, 15;

**analyzing** [2] 136, 13; 137, 5;

**anatomic** [6] 12, 12; 13, 15; 50, 16; 50, 20; 51, 12; 52, 17;

**anatomical** [2] 28, 15; 60, 11;

**and/or** [1] 58, 14;

**anderson** [11] 66, 3; 66, 4; 95, 15; 95, 16; 103, 23; 107, 11; 122, 8; 122, 11; 145, 17; 167, 19; 169, 13;

**andover** [2] 126, 13; 171, 5;

**angle** [3] 154, 25; 159, 16; 160, 1;

**angling** [1] 51, 4;

**animal** [1] 13, 20;

**another** [18] 6, 15; 35, 4; 43, 14; 62, 12; 63, 7; 73, 13; 79, 16; 83, 24; 84, 4; 95, 9; 99, 3; 117, 9; 138, 23; 141, 13; 159, 4; 159, 5; 160, 24; 161, 13;

**answer** [7] 4, 19; 5, 10; 5, 20; 7, 18; 8, 8; 14, 13; 179, 6;

**answered** [1] 103, 22;

**answers** [2] 4, 9; 177, 5;

**anterior** [1] 61, 12;

**anticipate** [3] 10, 5; 178, 1; 179, 1;

**anybody** [5] 116, 14; 118, 25; 124, 2; 124, 16; 175, 5;

**anyone** [8] 4, 18; 4, 18; 93, 7; 108, 6; 108, 13; 173, 4; 175, 13; 177, 2;

**anyone's** [1] 105, 8;

**anything** [38] 4, 11; 17, 13; 25, 1; 36, 22;

52, 8; 59, 14; 61, 20; 74, 25; 75, 6; 82, 3; 82, 14; 83, 5; 83, 9; 83, 18; 83, 20; 84, 23; 85, 9; 86, 1; 90, 5; 92, 14; 107, 8; 107, 13; 107, 20; 108, 13; 111, 23; 114, 1; 116, 20; 120, 6; 121, 18; 122, 25; 124, 17; 124, 22; 125, 6; 163, 15; 165, 4; 172, 9; 173, 4; 179, 12;

**anyway** [1] 113, 3;

**anywhere** [2] 115, 1; 171, 18;

**aorta** [1] 53, 15;

**apart** [1] 120, 17;

**apartment** [28] 84, 3; 85, 6; 85, 7; 85, 10; 85, 14; 85, 16; 85, 24; 86, 2; 94, 3; 94, 6; 94, 15; 94, 15; 94, 19; 94, 22; 95, 1; 103, 3; 103, 4; 103, 12; 103, 14; 108, 2; 113, 12; 113, 15; 113, 20; 114, 3; 115, 3; 121, 22; 146, 24; 148, 19;

**apologies** [1] 160, 19;

**apologize** [1] 174, 20;

**apparently** [1] 65, 12;

**appear** [1] 94, 1;

**appearance** [1] 44, 6;

**applicable** [1] 144, 11;

**applicable** [1] 168, 21;

**appreciate** [6] 7, 6; 7, 13; 7, 16; 8, 15; 45, 24; 179, 8;

**apprehension** [1] 164, 11;

**approach** [5] 24, 8; 45, 19; 47, 3; 153, 6; 159, 16;

**approached** [1] 83, 15;

**approaching** [1] 150, 12;

**appropriate** [6] 144, 8; 144, 19; 149, 23; 150, 17; 153, 18; 157, 17;

**approximately** [26] 18, 17; 20, 4; 22, 7; 82, 10; 82, 22; 82, 25; 83, 2; 86, 25; 87, 10; 88, 3; 89, 19; 90, 21; 91, 2; 91, 13; 91, 16; 92, 2; 94, 21; 100, 14; 103, 18; 111, 19; 111, 25; 112, 1; 112, 16; 116, 10; 119, 25; 128, 15;

**approximation** [2] 18, 23; 68, 6;

**area** [18] 13, 1; 37, 13;



62, 15; 83, 6; 105, 6; 111, 24; 115, 4; 115, 5; 115, 7; 128, 1; 130, 23; 131, 5; 131, 7; 131, 10; 146, 5; 155, 23; 169, 23; 178, 24; <b>areas</b> [4] 48, 22; 127, 5; 127, 22; 130, 20; <b>arena</b> [3] 135, 3; 137, 9; 147, 8; <b>arm</b> [20] 23, 21; 24, 14; 40, 22; 41, 4; 44, 7; 44, 9; 51, 1; 51, 11; 63, 3; 63, 21; 64, 9; 64, 14; 64, 15; 69, 23; 70, 11; 70, 12; 70, 14; 71, 8; 73, 17; 74, 4; <b>armed</b> [1] 82, 17; <b>armpit</b> [1] 36, 3; <b>arms</b> [6] 30, 15; 30, 19; 40, 25; 41, 13; 64, 4; 64, 6; <b>army</b> [1] 88, 18; <b>around</b> [11] 19, 12; 26, 19; 32, 11; 72, 22; 73, 8; 87, 17; 89, 6; 100, 21; 111, 22; 112, 1; 122, 18; <b>arrest</b> [3] 127, 8; 147, 17; 164, 12; <b>arrival</b> [1] 83, 5; <b>arrive</b> [1] 108, 6; <b>arrived</b> [5] 84, 5; 84, 14; 102, 13; 112, 18; 130, 16; <b>articulate</b> [2] 34, 3; 60, 4; <b>artifacts</b> [1] 26, 23; <b>aside</b> [1] 176, 12; <b>ask</b> [19] 5, 15; 9, 16; 28, 22; 30, 3; 33, 8; 33, 9; 34, 18; 35, 12; 46, 25; 55, 1; 60, 7; 62, 2; 83, 20; 93, 8; 93, 23; 124, 23; 165, 24; 167, 24; 170, 6; <b>asked</b> [11] 5, 20; 46, 1; 47, 3; 83, 21; 88, 9; 98, 6; 107, 12; 116, 6; 156, 2; 172, 12; 176, 21; <b>asking</b> [2] 158, 9; 160, 16; <b>assaultive</b> [4] 136, 23; 136, 23; 136, 25; 140, 17; <b>assemble</b> [1] 171, 21; <b>assess</b> [2] 98, 11; 157, 21; <b>assessment</b> [3] 134, 12; 138, 19; 138, 22; <b>assigned</b> [8] 17, 25; 31, 6; 77, 7; 77, 18;	77, 19; 109, 24; 126, 24; 129, 6; <b>assigning</b> [1] 18, 8; <b>assignment</b> [8] 77, 6; 77, 14; 110, 16; 110, 21; 126, 23; 126, 24; 127, 3; 127, 10; <b>assignments</b> [2] 129, 3; 131, 5; <b>assist</b> [5] 11, 24; 83, 22; 101, 10; 130, 4; 131, 4; <b>assistance</b> [2] 77, 23; 93, 7; <b>assistants</b> [3] 21, 17; 21, 19; 21, 19; <b>assisting</b> [1] 110, 22; <b>assists</b> [1] 153, 21; <b>associated</b> [2] 42, 16; 44, 23; <b>association</b> [2] 101, 8; 152, 9; <b>assume</b> [5] 13, 11; 70, 5; 88, 10; 117, 6; 175, 9; <b>assuming</b> [3] 71, 4; 91, 15; 135, 20; <b>attack</b> [1] 141, 16; <b>attempt</b> [4] 89, 11; 154, 16; 157, 24; 158, 2; <b>attempted</b> [5] 89, 14; 89, 16; 91, 12; 112, 3; 112, 6; <b>attempting</b> [2] 83, 12; 100, 19; <b>attend</b> [1] 79, 23; <b>attention</b> [10] 21, 3; 48, 2; 51, 23; 54, 16; 71, 18; 77, 25; 82, 9; 110, 11; 111, 18; 130, 5; <b>attorney</b> [16] 9, 1; 9, 10; 9, 16; 10, 8; 45, 21; 47, 11; 65, 24; 69, 6; 75, 16; 75, 22; 102, 7; 103, 23; 123, 1; 123, 4; 150, 24; 151, 5; <b>attorney's</b> [1] 9, 12; <b>attorneys</b> [1] 46, 17; <b>atypical</b> [8] 26, 8; 32, 22; 33, 18; 35, 14; 37, 15; 41, 7; 42, 24; 64, 7; <b>authorized</b> [2] 132, 9; 168, 6; <b>autopsied</b> [1] 18, 9; <b>autopsies</b> [11] 11, 19; 12, 13; 13, 22; 13, 23; 14, 1; 14, 7; 14, 11; 17, 25; 18, 16; 18, 21; 18, 22; <b>autopsy</b> [22] 13, 17;	13, 18; 14, 10; 14, 11; 14, 23; 15, 8; 18, 10; 18, 25; 21, 4; 21, 7; 21, 11; 21, 20; 21, 25; 25, 5; 28, 25; 30, 7; 30, 8; 35, 18; 35, 19; 46, 10; 55, 21; 60, 5; <b>available</b> [5] 28, 19; 58, 15; 142, 8; 176, 12; 177, 13; <b>aware</b> [11] 5, 2; 92, 4; 94, 6; 107, 4; 107, 6; 116, 11; 120, 4; 124, 4; 124, 7; 146, 20; 153, 20; <b>awareness</b> [1] 146, 7; <b>away</b> [21] 15, 5; 23, 9; 23, 14; 33, 4; 42, 12; 61, 9; 65, 17; 67, 23; 68, 8; 82, 22; 88, 10; 90, 21; 91, 2; 100, 15; 110, 2; 124, 19; 150, 11; 168, 5; 168, 8; 168, 9; 176, 12;  <b>B</b>  <b>b-gun</b> [1] 141, 6; <b>b.s.</b> [1] 126, 18; <b>back</b> [73] 6, 12; 12, 5; 24, 21; 24, 23; 29, 19; 31, 7; 31, 8; 34, 16; 36, 8; 37, 6; 39, 6; 39, 8; 40, 9; 40, 10; 40, 16; 41, 13; 41, 24; 42, 12; 44, 4; 44, 16; 44, 19; 51, 1; 51, 2; 51, 7; 51, 11; 54, 19; 54, 20; 54, 20; 55, 9; 57, 6; 65, 16; 67, 17; 72, 14; 75, 13; 84, 10; 84, 16; 85, 5; 85, 6; 85, 12; 90, 14; 90, 16; 90, 25; 95, 3; 99, 19; 99, 19; 105, 7; 113, 16; 113, 16; 113, 17; 113, 19; 113, 20; 114, 25; 115, 1; 116, 8; 119, 15; 121, 4; 121, 17; 122, 2; 146, 9; 148, 18; 155, 4; 156, 2; 159, 22; 163, 7; 167, 12; 167, 20; 168, 3; 169, 14; 174, 11; 174, 12; 176, 20; 178, 24; 179, 21; <b>backed</b> [1] 145, 11; <b>background</b> [3] 96, 13; 126, 12; 126, 13; <b>backing</b> [4] 155, 1; 155, 1; 159, 15; 159, 16; <b>backup</b> [1] 134, 25;	<b>backward</b> [2] 49, 24; 52, 4; <b>backwards</b> [1] 27, 13; <b>bad</b> [4] 46, 13; 158, 21; 161, 4; 161, 19; <b>badge</b> [5] 79, 3; 111, 6; 111, 7; 111, 7; 138, 13; <b>badly</b> [2] 143, 14; 156, 23; <b>bag</b> [2] 23, 4; 23, 5; <b>balanced</b> [2] 137, 21; 137, 25; <b>ball</b> [1] 161, 21; <b>ballistic</b> [4] 5, 12; 150, 3; 150, 3; 150, 6; <b>ballistician</b> [2] 66, 24; 177, 12; <b>ballistics</b> [8] 5, 9; 5, 17; 5, 18; 6, 2; 34, 5; 173, 18; 174, 1; 177, 12; <b>bannister</b> [2] 87, 4; 87, 5; <b>barely</b> [1] 72, 18; <b>barracks</b> [4] 77, 8; 77, 18; 110, 7; 110, 19; <b>barrel</b> [3] 67, 8; 125, 7; 163, 1; <b>barricade</b> [1] 129, 13; <b>barricaded</b> [3] 82, 19; 83, 22; 171, 13; <b>barrier</b> [7] 155, 24; 155, 25; 156, 5; 156, 9; 156, 12; 160, 7; 161, 23; <b>barriers</b> [4] 146, 4; 151, 24; 155, 8; 156, 1; <b>base</b> [4] 27, 24; 32, 8; 49, 6; 50, 22; <b>baseball</b> [3] 148, 3; 148, 4; 149, 8; <b>based</b> [13] 25, 22; 47, 19; 56, 10; 58, 4; 59, 19; 59, 20; 59, 25; 63, 11; 68, 3; 133, 10; 133, 11; 138, 25; 172, 18; <b>baseline</b> [1] 138, 10; <b>bases</b> [1] 154, 7; <b>basic</b> [1] 127, 19; <b>basically</b> [5] 74, 15; 78, 8; 129, 12; 133, 8; 141, 1; <b>basis</b> [2] 105, 12; 146, 11; <b>bathroom</b> [1] 159, 21; <b>baton</b> [5] 111, 15; 127, 8; 141, 5; 144, 24; 149, 5; <b>beanbag</b> [20] 83, 19; 89, 11; 89, 14; 89, 16; 90, 22; 96, 9; 117, 10;
---	--	--	--

117, 12; 117, 17; 123, 11;  
144, 14; 144, 25; 149, 3;  
162, 11; 162, 15; 162, 19;  
163, 6; 163, 10; 164, 9;  
165, 22;  
**beanbags** [2] 162, 9;  
163, 14;  
**beard** [3] 33, 16; 34, 21;  
88, 18;  
**became** [1] 127, 21;  
**become** [4] 12, 3; 45, 1;  
56, 23; 124, 4;  
**becomes** [1] 138, 19;  
**before** [27] 4, 24; 6, 21;  
16, 7; 16, 15; 16, 25;  
25, 12; 25, 22; 27, 14;  
32, 17; 41, 9; 52, 19;  
72, 8; 90, 3; 96, 17;  
97, 22; 99, 4; 113, 2;  
122, 16; 147, 17; 153, 1;  
157, 19; 159, 9; 159, 12;  
166, 10; 175, 19; 175, 23;  
177, 3;  
**begin** [6] 25, 10; 27, 2;  
137, 22; 138, 1; 150, 12;  
162, 3;  
**beginning** [4] 30, 4;  
156, 20; 156, 22; 158, 17;  
**behavior** [1] 140, 18;  
**behind** [10] 16, 19;  
27, 17; 27, 18; 40, 12;  
84, 3; 103, 1; 115, 15;  
115, 18; 116, 22; 161, 12;  
**believe** [26] 31, 23; 73, 6;  
82, 17; 82, 18; 83, 7;  
84, 16; 85, 17; 85, 19;  
88, 17; 93, 4; 94, 10;  
102, 15; 103, 1; 115, 10;  
116, 6; 117, 16; 119, 13;  
121, 13; 130, 8; 130, 12;  
130, 12; 149, 14; 152, 24;  
153, 2; 174, 24; 176, 11;  
**belmont** [1] 169, 24;  
**below** [9] 27, 18; 36, 2;  
36, 4; 37, 14; 38, 2; 50, 1;  
52, 2; 52, 8; 81, 17;  
**belt** [5] 79, 8; 79, 10;  
79, 12; 111, 12; 111, 14;  
**beneath** [1] 41, 18;  
**bennis** [1] 174, 22;  
**besides** [3] 21, 13; 92, 4;  
115, 12;  
**best** [3] 35, 8; 81, 19;  
106, 10;  
**better** [9] 96, 11; 106, 8;  
157, 22; 158, 5; 161, 20;  
161, 21; 161, 22; 161, 25;  
162, 2;

**between** [21] 19, 23;  
31, 20; 38, 3; 48, 18;  
49, 1; 53, 11; 64, 16;  
94, 19; 97, 5; 105, 5;  
106, 23; 107, 2; 107, 13;  
107, 14; 132, 13; 133, 14;  
146, 4; 150, 13; 155, 5;  
156, 8; 157, 4;  
**beyond** [1] 97, 9;  
**bickering** [6] 105, 5;  
105, 13; 105, 14; 105, 17;  
106, 5; 106, 13;  
**big** [3] 14, 7; 14, 8;  
112, 20;  
**bigger** [4] 26, 16; 32, 24;  
52, 21; 88, 17;  
**biggest** [4] 14, 8; 36, 17;  
50, 7; 167, 10;  
**biological** [1] 17, 12;  
**biopsies** [1] 12, 15;  
**birmingham** [1] 110, 19;  
**birth** [1] 22, 5;  
**bit** [20] 24, 13; 31, 10;  
33, 15; 33, 16; 38, 19;  
39, 19; 44, 5; 45, 9; 52, 4;  
53, 17; 88, 24; 96, 12;  
103, 1; 114, 19; 144, 22;  
151, 25; 158, 3; 158, 12;  
159, 12; 169, 25;  
**black** [1] 23, 10;  
**black-knit** [1] 23, 10;  
**blade** [3] 91, 4; 91, 9;  
91, 10;  
**bleeding** [2] 49, 6; 53, 6;  
**block** [3] 78, 9; 83, 10;  
83, 11;  
**blood** [20] 25, 13; 51, 20;  
51, 21; 53, 10; 53, 14;  
53, 15; 53, 17; 53, 21;  
53, 22; 54, 3; 54, 4;  
55, 24; 56, 5; 56, 6; 56, 7;  
58, 14; 58, 15; 62, 9;  
65, 13; 65, 13;  
**blow** [1] 162, 13;  
**blunt** [2] 148, 2; 149, 7;  
**board** [2] 13, 14; 13, 14;  
**bodily** [4] 132, 6;  
136, 24; 136, 25; 147, 11;  
**body** [36] 7, 13; 15, 16;  
15, 20; 16, 8; 17, 10;  
22, 9; 23, 17; 25, 8;  
25, 12; 29, 25; 34, 24;  
35, 6; 36, 16; 37, 1; 37, 7;  
37, 20; 38, 10; 39, 9;  
39, 10; 39, 16; 40, 8;  
41, 2; 42, 23; 51, 8; 64, 6;  
64, 12; 67, 12; 72, 13;  
72, 19; 80, 22; 80, 23;

81, 8; 141, 1; 141, 3;  
151, 21; 158, 9;  
**bone** [6] 12, 14; 28, 2;  
42, 3; 49, 2; 55, 7; 67, 15;  
**bones** [1] 42, 18;  
**boston** [1] 21, 8;  
**both** [19] 11, 5; 12, 12;  
13, 23; 14, 3; 20, 8; 27, 6;  
29, 12; 34, 2; 38, 24;  
42, 18; 42, 18; 49, 23;  
57, 9; 76, 14; 81, 8;  
109, 8; 115, 9; 125, 25;  
135, 8;  
**bottom** [4] 31, 7; 32, 15;  
38, 10; 138, 2;  
**box** [3] 67, 11; 97, 4;  
97, 5;  
**boxers** [1] 23, 10;  
**brain** [10] 14, 1; 27, 22;  
28, 2; 31, 2; 31, 18;  
31, 20; 32, 4; 49, 5;  
49, 10; 63, 2;  
**braintree** [2] 79, 20;  
124, 9;  
**brand** [2] 23, 7; 23, 19;  
**brand-new** [1] 127, 1;  
**break** [4] 46, 4; 174, 5;  
176, 3; 177, 12;  
**breakdown** [2] 57, 21;  
57, 23;  
**breaking** [1] 32, 10;  
**breaks** [1] 42, 2;  
**breast** [1] 52, 3;  
**briefly** [3] 8, 23; 23, 5;  
126, 11;  
**bright** [1] 78, 24;  
**brighton** [4] 78, 4;  
109, 25; 110, 3; 110, 19;  
**bring** [1] 160, 8;  
**broke** [2] 24, 4; 162, 13;  
**broken** [1] 135, 14;  
**brought** [1] 156, 22;  
**bruise** [2] 37, 2; 44, 13;  
**building** [4] 84, 9; 85, 4;  
158, 20; 178, 17;  
**bulk** [2] 27, 19; 27, 21;  
**bullet** [24] 26, 7; 26, 14;  
26, 19; 29, 2; 29, 3; 29, 3;  
30, 25; 31, 18; 31, 19;  
31, 24; 37, 16; 37, 19;  
39, 24; 42, 19; 62, 11;  
63, 17; 63, 20; 63, 22;  
63, 23; 63, 24; 66, 6;  
67, 4; 74, 6; 74, 9;  
**bullet's** [1] 72, 4;  
**bullets** [4] 26, 24; 49, 11;  
50, 2; 67, 7;  
**bumping** [1] 50, 1;

**bunch** [11] 84, 18;  
84, 18; 112, 20; 114, 8;  
114, 8; 116, 8; 148, 19;  
149, 2; 151, 18; 167, 25;  
167, 25;  
**buprenorphine** [1]  
57, 13;  
**burlington** [1] 171, 14;  
**burned** [3] 33, 4; 33, 20;  
68, 8;  
**buy** [2] 156, 9; 157, 1;  
  
**C**  
**c-h-r-i-s-t-i-a-n** [1]  
109, 12;  
**c-h-r-i-s-t-i-a-n-a** [1] 11, 7;  
**c-o-n-c-a-t** [1] 139, 14;  
**california** [5] 12, 5;  
12, 6; 12, 9; 12, 20; 13, 4;  
**call** [42] 10, 13; 16, 19;  
44, 14; 75, 14; 76, 3;  
83, 25; 87, 24; 107, 5;  
112, 1; 116, 6; 117, 11;  
130, 8; 130, 9; 130, 24;  
131, 7; 133, 23; 133, 24;  
134, 5; 138, 5; 138, 23;  
138, 24; 139, 1; 139, 4;  
139, 14; 139, 16; 140, 8;  
140, 12; 141, 11; 146, 9;  
159, 23; 161, 18; 170, 1;  
170, 2; 170, 3; 170, 13;  
170, 20; 170, 22; 171, 5;  
171, 10; 171, 18; 172, 4;  
173, 10;  
**called** [18] 4, 4; 66, 22;  
82, 18; 86, 6; 92, 23;  
92, 24; 117, 11; 117, 21;  
130, 12; 139, 17; 140, 1;  
144, 13; 153, 10; 154, 17;  
157, 9; 170, 17; 170, 20;  
172, 1;  
**called-off** [1] 83, 12;  
**callout** [2] 130, 19;  
171, 9;  
**calls** [7] 11, 24; 77, 21;  
110, 9; 165, 9; 170, 8;  
170, 23; 171, 25;  
**calm** [1] 139, 8;  
**came** [26] 4, 15; 4, 16;  
7, 20; 8, 10; 8, 12; 23, 4;  
25, 13; 31, 6; 54, 4;  
55, 12; 64, 1; 83, 11;  
90, 16; 90, 25; 91, 1;  
95, 2; 99, 19; 99, 24;  
101, 15; 101, 17; 101, 18;  
121, 9; 122, 1; 123, 21;  
162, 14; 170, 1;

<b>canada</b> [1] 128, 25;	163, 13;	<b>chemical</b> [1] 55, 21;	<b>clearly</b> [2] 48, 1; 154, 3;
<b>cancelled</b> [2] 130, 9;	<b>caused</b> [2] 45, 13;	<b>chest</b> [29] 16, 20; 33, 17;	<b>clearly-established</b> [1]
130, 10;	142, 18;	35, 9; 36, 2; 37, 12;	132, 16;
<b>candy</b> [4] 82, 18; 82, 19;	<b>causes</b> [5] 14, 17; 26, 18;	37, 14; 38, 1; 38, 1; 38, 2;	<b>clerk</b> [3] 4, 5; 176, 21;
83, 1; 84, 3;	27, 24; 38, 23; 81, 3;	38, 11; 38, 22; 39, 6;	179, 13;
<b>canvas</b> [1] 104, 7;	<b>causing</b> [2] 81, 5; 140, 5;	39, 15; 39, 17; 48, 3;	<b>clinical</b> [1] 12, 13;
<b>captain</b> [11] 85, 18;	<b>caution</b> [3] 46, 2; 46, 24;	52, 2; 52, 24; 53, 6;	<b>close</b> [17] 27, 18; 31, 16;
88, 9; 89, 7; 89, 10;	124, 11;	53, 10; 53, 11; 53, 23;	36, 23; 39, 12; 39, 13;
95, 18; 97, 23; 97, 25;	<b>cava</b> [1] 53, 16;	54, 5; 54, 10; 61, 13;	39, 15; 41, 22; 42, 3;
105, 20; 108, 7; 121, 6;	<b>cavity</b> [3] 38, 6; 38, 7;	64, 23; 65, 1; 65, 14;	66, 8; 68, 4; 120, 22;
121, 12;	38, 23;	121, 6; 121, 13;	121, 22; 146, 16; 147, 1;
<b>captains</b> [1] 102, 14;	<b>cell</b> [1] 171, 11;	<b>chief</b> [10] 11, 13; 11, 15;	152, 23; 159, 22; 162, 14;
<b>car</b> [5] 138, 18; 138, 24;	<b>center</b> [12] 12, 20;	11, 18; 12, 24; 17, 25;	<b>closed</b> [2] 72, 22;
156, 8; 161, 14; 162, 3;	16, 20; 38, 5; 39, 9;	18, 3; 18, 4; 21, 8; 171, 7;	178, 25;
<b>career</b> [3] 18, 16; 19, 4;	39, 10; 52, 12; 80, 21;	171, 8;	<b>closer</b> [8] 33, 23; 34, 3;
126, 17;	125, 6; 125, 7; 142, 1;	<b>chiefs</b> [2] 152, 10; 171, 3;	41, 17; 91, 21; 99, 22;
<b>carhartt</b> [1] 104, 7;	142, 2; 142, 8;	<b>child</b> [1] 13, 21;	99, 24; 146, 23; 148, 23;
<b>carried</b> [1] 61, 9;	<b>centimeters</b> [1] 39, 4;	<b>chisholm</b> [9] 7, 20;	<b>closeup</b> [1] 35, 16;
<b>carries</b> [1] 149, 14;	<b>central</b> [1] 171, 6;	95, 18; 97, 10; 98, 2;	<b>clothed</b> [1] 22, 15;
<b>carry</b> [6] 79, 12; 79, 13;	<b>cerebellum</b> [3] 27, 22;	98, 24; 99, 7; 100, 5;	<b>clothes</b> [1] 103, 24;
88, 8; 98, 9; 111, 14;	31, 1; 31, 24;	102, 21; 107, 14;	<b>clothing</b> [25] 15, 15;
149, 18;	<b>cerebrum</b> [1] 31, 21;	<b>chlorcyclizine</b> [1] 57, 13;	15, 25; 15, 25; 16, 3;
<b>carrying</b> [2] 83, 18;	<b>certain</b> [7] 22, 24; 46, 16;	<b>choose</b> [3] 77, 24;	22, 18; 22, 24; 23, 2;
83, 19;	60, 22; 66, 14; 67, 23;	106, 9; 134, 9;	23, 6; 25, 12; 25, 18;
<b>cart</b> [2] 175, 19; 175, 23;	146, 6; 146, 7;	<b>chose</b> [2] 106, 5; 106, 13;	25, 18; 32, 16; 33, 6;
<b>cartridge</b> [8] 93, 3;	<b>certainly</b> [10] 45, 11;	<b>christian</b> [10] 10, 4;	33, 25; 61, 22; 62, 6;
93, 10; 93, 12; 93, 17;	46, 2; 49, 25; 65, 22;	84, 1; 84, 4; 108, 18;	62, 12; 67, 20; 82, 1;
93, 20; 94, 12; 117, 18;	67, 1; 73, 7; 108, 21;	109, 4; 109, 10; 109, 12;	82, 2; 82, 7; 104, 3;
123, 16;	173, 17; 174, 9; 176, 2;	122, 7; 123, 6; 124, 25;	124, 12; 124, 17; 163, 18;
<b>cartwright</b> [1] 23, 7;	<b>certainty</b> [2] 59, 20;	<b>christina</b> [9] 10, 16;	<b>cluster</b> [1] 37, 24;
<b>case</b> [38] 4, 4; 14, 9;	63, 14;	10, 19; 11, 1; 11, 7;	<b>coat</b> [2] 38, 20; 74, 24;
16, 1; 16, 17; 16, 23;	<b>certifications</b> [4] 13, 13;	60, 19; 63, 9; 64, 18;	<b>coffee</b> [1] 93, 4;
18, 3; 18, 9; 18, 9; 18, 15;	13, 14; 128, 2; 128, 20;	66, 2; 69, 8;	<b>collar</b> [1] 32, 20;
19, 2; 22, 11; 22, 18;	<b>certified</b> [2] 128, 5;	<b>chunk-things</b> [1] 165, 15;	<b>collected</b> [1] 58, 14;
41, 12; 47, 23; 50, 2;	128, 23;	<b>circle</b> [2] 39, 18; 93, 20;	<b>collecting</b> [1] 58, 12;
56, 7; 58, 14; 61, 8;	<b>certify</b> [1] 18, 12;	<b>circulatory</b> [1] 53, 15;	<b>collectively</b> [1] 174, 8;
62, 25; 81, 19; 95, 17;	<b>chamber</b> [1] 163, 4;	<b>circumstances</b> [7] 14, 20;	<b>college</b> [5] 126, 17;
110, 24; 116, 1; 116, 18;	<b>chance</b> [3] 6, 21; 165, 12;	134, 11; 134, 12; 134, 23;	126, 18; 130, 2; 130, 3;
118, 15; 132, 16; 132, 23;	165, 23;	135, 1; 168, 4; 168, 11;	130, 4;
133, 2; 133, 2; 133, 4;	<b>change</b> [5] 159, 25;	<b>cited</b> [2] 152, 25; 154, 2;	<b>collision</b> [1] 119, 18;
133, 7; 133, 8; 133, 22;	159, 25; 172, 17; 172, 18;	<b>cities</b> [2] 129, 10;	<b>columbia</b> [1] 129, 1;
150, 16; 152, 8; 161, 8;	172, 23;	169, 19;	<b>combat</b> [1] 163, 2;
173, 22; 177, 13;	<b>changed</b> [2] 120, 10;	<b>city</b> [3] 77, 22; 126, 7;	<b>combination</b> [3] 49, 11;
<b>cases</b> [21] 11, 21; 11, 24;	167, 16;	126, 8;	56, 2; 60, 11;
11, 25; 13, 20; 14, 2;	<b>changes</b> [2] 166, 21;	<b>civil</b> [1] 18, 14;	<b>come</b> [26] 9, 16; 22, 10;
15, 17; 15, 21; 16, 1;	167, 15;	<b>clarification</b> [1] 74, 16;	22, 13; 26, 17; 27, 14;
16, 2; 16, 11; 17, 22;	<b>changing</b> [3] 154, 25;	<b>clarify</b> [2] 75, 15; 122, 6;	32, 23; 43, 8; 45, 21;
18, 12; 19, 9; 19, 20;	170, 4; 172, 13;	<b>clarity</b> [1] 179, 9;	46, 1; 50, 24; 67, 7;
20, 20; 26, 24; 58, 24;	<b>chapter</b> [1] 138, 17;	<b>class</b> [4] 78, 23; 127, 22;	83, 21; 84, 1; 92, 8;
59, 2; 59, 3; 79, 22;	<b>charge</b> [2] 102, 18;	127, 23; 167, 24;	108, 7; 113, 12; 114, 15;
159, 5;	107, 1;	<b>classify</b> [1] 106, 3;	118, 3; 124, 5; 147, 18;
<b>categories</b> [5] 135, 16;	<b>charged</b> [2] 107, 12;	<b>clavicle</b> [1] 36, 25;	148, 22; 150, 1; 170, 8;
136, 2; 136, 3; 137, 2;	117, 24;	<b>clean</b> [4] 15, 18; 25, 17;	171, 11; 174, 11; 176, 22;
137, 3;	<b>charles</b> [8] 10, 6;	26, 10; 27, 10;	<b>comes</b> [19] 15, 8; 31, 25;
<b>category</b> [3] 134, 11;	125, 16; 125, 23; 126, 3;	<b>cleaning</b> [1] 15, 16;	31, 25; 39, 8; 41, 11;
134, 18; 135, 21;	145, 16; 151, 1; 169, 12;	<b>clear</b> [5] 16, 14; 29, 23;	43, 10; 52, 4; 52, 7; 53, 8;
<b>cause</b> [6] 11, 21; 14, 12;	172, 10;	65, 4; 86, 9; 99, 20;	53, 9; 64, 9; 67, 18;
59, 21; 132, 6; 147, 10;	<b>check</b> [1] 176, 21;	<b>clearer</b> [1] 93, 20;	67, 18; 72, 7; 138, 11;

146, 8; 146, 13; 146, 17; 163, 19; <b>comfortable</b> [7] 10, 21; 76, 6; 108, 22; 108, 25; 125, 19; 125, 20; 172, 25; <b>coming</b> [15] 6, 12; 27, 25; 32, 11; 36, 24; 51, 5; 52, 19; 71, 10; 72, 4; 85, 19; 119, 9; 130, 20; 169, 19; 169, 22; 170, 11; 174, 12; <b>command</b> [1] 154, 20; <b>commands</b> [2] 84, 19; 84, 21; <b>comment</b> [4] 50, 17; 51, 14; 52, 23; 55, 4; <b>common</b> [1] 150, 9; <b>commonwealth</b> [11] 5, 5; 11, 12; 20, 9; 20, 11; 21, 9; 56, 22; 77, 19; 128, 6; 129, 20; 131, 18; 173, 9; <b>commotion</b> [3] 83, 8; 84, 18; 119, 17; <b>communicate</b> [1] 104, 16; <b>communicated</b> [1] 75, 23; <b>communicating</b> [3] 40, 13; 154, 14; 158, 16; <b>communication</b> [5] 157, 23; 158, 2; 158, 7; 158, 12; 158, 13; <b>community</b> [1] 130, 4; <b>company</b> [1] 78, 6; <b>comparison</b> [1] 173, 21; <b>comparisons</b> [1] 177, 15; <b>compel</b> [1] 132, 3; <b>complete</b> [2] 50, 17; 50, 18; <b>completely</b> [1] 39, 24; <b>compliance</b> [6] 132, 3; 140, 1; 140, 3; 140, 4; 140, 13; 149, 9; <b>compliant</b> [7] 136, 20; 136, 20; 139, 7; 139, 9; 165, 3; 165, 17; 165, 17; <b>comply</b> [1] 149, 6; <b>complying</b> [1] 158, 24; <b>component</b> [1] 41, 10; <b>components</b> [1] 41, 10; <b>compressions</b> [2] 121, 7; 121, 13; <b>concept</b> [2] 156, 16; 161, 1; <b>concepts</b> [1] 155, 9; <b>concern</b> [2] 124, 14; 124, 18; <b>concerned</b> [1] 104, 9; <b>concerns</b> [1] 177, 2;	<b>conclusion</b> [1] 68, 4; <b>concord</b> [1] 171, 3; <b>condition</b> [2] 23, 13; 121, 12; <b>conditions</b> [1] 146, 3; <b>conduct</b> [1] 21, 4; <b>conducted</b> [3] 18, 16; 18, 18; 21, 7; <b>cones</b> [1] 78, 9; <b>conferences</b> [1] 47, 2; <b>confident</b> [2] 48, 20; 63, 16; <b>confined</b> [4] 155, 23; 160, 5; 160, 7; 160, 21; <b>confrontation</b> [1] 118, 1; <b>confronted</b> [1] 146, 1; <b>confused</b> [2] 75, 20; 166, 25; <b>conical</b> [1] 67, 18; <b>conlon</b> [28] 4, 24; 7, 12; 21, 5; 22, 11; 22, 15; 22, 25; 26, 5; 32, 13; 59, 21; 60, 5; 63, 13; 92, 7; 92, 9; 92, 11; 92, 19; 95, 7; 114, 15; 114, 17; 115, 18; 117, 3; 118, 3; 118, 10; 119, 9; 120, 13; 121, 2; 121, 19; 172, 12; 179, 23; <b>conlon's</b> [11] 22, 1; 23, 6; 25, 8; 28, 16; 33, 14; 34, 15; 35, 16; 35, 23; 50, 13; 55, 25; 116, 3; <b>connecticut</b> [2] 13, 8; 19, 2; <b>connor</b> [2] 133, 3; 166, 23; <b>consensus</b> [4] 153, 11; 164, 16; 168, 23; 169, 9; <b>consider</b> [11] 27, 5; 59, 4; 136, 17; 153, 3; 158, 18; 159, 1; 160, 25; 163, 22; 164, 1; 164, 22; 166, 8; <b>considerably</b> [2] 19, 11; 40, 5; <b>considered</b> [2] 95, 24; 141, 9; <b>consistent</b> [5] 15, 13; 33, 4; 122, 22; 149, 19; 157, 18; <b>consortium</b> [1] 129, 10; <b>constant</b> [1] 137, 13; <b>construction</b> [1] 110, 18; <b>consult</b> [1] 11, 20; <b>contact</b> [6] 116, 7; 118, 4; 119, 11; 139, 14; 139, 15; 139, 18;	<b>contacted</b> [1] 5, 15; <b>contacting</b> [3] 9, 2; 115, 25; 116, 2; <b>contain</b> [1] 151, 22; <b>container</b> [1] 17, 17; <b>containers</b> [1] 17, 17; <b>context</b> [1] 148, 6; <b>continuance</b> [1] 9, 5; <b>continue</b> [5] 166, 10; 173, 12; 173, 13; 174, 4; 176, 25; <b>continued</b> [5] 73, 6; 73, 9; 73, 13; 166, 5; 166, 6; <b>continues</b> [1] 41, 14; <b>continuum</b> [6] 133, 24; 135, 9; 166, 15; 166, 20; 166, 22; 167, 11; <b>continuums</b> [4] 166, 24; 167, 6; 167, 12; 167, 17; <b>control</b> [6] 127, 8; 139, 3; 159, 10; 164, 20; 165, 1; 171, 3; <b>controls</b> [4] 139, 5; 139, 8; 139, 15; 139, 18; <b>conversation</b> [16] 106, 2; 113, 3; 113, 4; 113, 8; 116, 2; 116, 5; 116, 9; 158, 16; 166, 1; 166, 2; 166, 5; 166, 6; 166, 9; 166, 10; 172, 23; 174, 4; <b>conversations</b> [1] 167, 8; <b>cooperate</b> [1] 158, 19; <b>cooperation</b> [1] 159, 1; <b>cooperative</b> [3] 139, 5; 139, 7; 165, 4; <b>coordinated</b> [1] 88, 9; <b>coordinating</b> [1] 177, 24; <b>coordinator</b> [2] 127, 17; 129, 21; <b>cops</b> [1] 162, 21; <b>cops/officers</b> [1] 169, 22; <b>copy</b> [3] 56, 4; 56, 12; 56, 21; <b>cord</b> [3] 55, 10; 55, 14; 55, 16; <b>cord's</b> [1] 55, 11; <b>core</b> [7] 31, 13; 37, 25; 42, 19; 48, 21; 48, 24; 49, 25; 142, 25; <b>corner</b> [3] 87, 2; 87, 5; 89, 7; <b>corp</b> [1] 78, 6; <b>correct</b> [99] 30, 14; 52, 16; 66, 25; 67, 10; 67, 18; 67, 21; 67, 22; 69, 25; 71, 25; 77, 11; 77, 13; 78, 14; 78, 16;	78, 25; 79, 2; 79, 4; 79, 5; 79, 7; 80, 16; 81, 9; 83, 4; 84, 6; 84, 8; 85, 22; 85, 25; 93, 13; 95, 8; 96, 2; 96, 3; 97, 18; 97, 19; 97, 21; 97, 24; 98, 1; 98, 2; 98, 3; 98, 5; 98, 7; 98, 10; 98, 13; 98, 14; 98, 19; 98, 20; 98, 22; 98, 23; 98, 25; 99, 1; 99, 4; 99, 5; 99, 9; 99, 12; 99, 17; 99, 18; 99, 21; 99, 23; 100, 1; 100, 4; 100, 7; 101, 13; 101, 14; 102, 17; 102, 19; 102, 23; 103, 16; 104, 22; 104, 24; 104, 25; 105, 18; 106, 13; 107, 15; 107, 17; 130, 21; 131, 9; 131, 16; 136, 18; 145, 13; 147, 16; 147, 17; 147, 19; 148, 5; 150, 18; 152, 10; 155, 6; 157, 8; 160, 9; 162, 4; 162, 7; 164, 4; 168, 22; 170, 3; 170, 10; 170, 11; 170, 12; 170, 18; 171, 16; 171, 20; 171, 24; 172, 7; 176, 24; <b>correctly</b> [1] 24, 19; <b>corroborate</b> [1] 158, 17; <b>council</b> [1] 129, 10; <b>counsel</b> [16] 7, 7; 7, 17; 45, 17; 46, 17; 46, 24; 67, 11; 69, 3; 72, 24; 95, 13; 96, 15; 101, 4; 101, 7; 102, 6; 107, 8; 122, 5; 172, 12; <b>count</b> [3] 63, 14; 142, 16; 142, 20; <b>counter</b> [1] 57, 17; <b>country</b> [2] 128, 18; 166, 23; <b>county</b> [6] 12, 24; 12, 24; 58, 13; 58, 20; 129, 11; 129, 11; <b>couple</b> [15] 4, 7; 4, 9; 65, 25; 86, 25; 109, 25; 110, 2; 113, 4; 113, 11; 113, 24; 114, 11; 114, 18; 115, 24; 121, 8; 127, 25; 151, 8; <b>coupled</b> [3] 134, 4; 134, 16; 137, 13; <b>course</b> [6] 5, 3; 13, 9; 60, 21; 172, 13; 173, 24; 175, 8; <b>court</b> [37] 4, 2; 4, 19; 5, 6; 5, 20; 6, 1; 6, 24;
--	---	--	---

8, 21; 9, 16; 9, 20; 20, 2; 20, 17; 45, 8; 47, 11; 60, 20; 62, 4; 64, 19; 75, 12; 75, 14; 75, 18; 86, 21; 97, 3; 97, 9; 107, 23; 126, 2; 133, 3; 153, 21; 154, 5; 155, 9; 159, 12; 174, 12; 175, 10; 176, 3; 176, 11; 176, 19; 177, 14; 178, 11; 179, 20; **courthouse** [1] 9, 17; **courtroom** [1] 9, 17; **courts** [4] 20, 7; 20, 8; 20, 10; 131, 17; **cover** [14] 18, 6; 142, 21; 142, 23; 143, 3; 143, 4; 143, 8; 143, 9; 147, 13; 148, 13; 149, 23; 155, 1; 161, 12; 161, 13; 168, 17; **coverage** [3] 88, 5; 88, 10; 91, 15; **covered** [2] 33, 6; 173, 25; **covid** [1] 6, 11; **coworker** [1] 112, 24; **cpr** [2] 44, 23; 45, 2; **crashes** [3] 58, 22; 77, 21; 110, 9; **crazily** [1] 58, 19; **crease** [1] 41, 23; **create** [6] 60, 3; 82, 7; 155, 15; 155, 17; 155, 22; 155, 23; **created** [4] 29, 4; 29, 4; 29, 23; 63, 12; **creates** [1] 42, 22; **crested** [1] 44, 9; **crew** [1] 82, 22; **crime** [3] 4, 18; 56, 22; 61, 19; **criminal** [2] 18, 15; 126, 18; **criticism** [1] 166, 17; **cross** [12] 60, 19; 66, 2; 69, 8; 95, 14; 101, 5; 102, 9; 107, 22; 122, 7; 123, 6; 145, 16; 151, 1; 172, 10; **crossed** [1] 48, 23; **cruiser** [8] 78, 9; 78, 13; 83, 11; 83, 12; 83, 24; 110, 25; 112, 24; 138, 23; **cruisers** [3] 112, 20; 112, 21; 112, 21; **cry** [1] 4, 2; **crystal** [3] 66, 19; 66, 22; 161, 20; **cues** [1] 135, 3; **cuff** [2] 79, 14; 116, 17; **curious** [1] 130, 22; **current** [6] 13, 11; 13, 12; 77, 6; 77, 14; 126, 23; 126, 24; **currently** [2] 109, 21; 126, 20; **curved** [1] 39, 7; **custody** [6] 162, 16; 164, 13; 164, 15; 165, 11; 177, 22; 178, 18; **cut** [2] 23, 9; 23, 14; **cutaway** [2] 23, 9; 23, 10; **cutting** [1] 162, 14;

**D**

**d-i-c-h-i-a-r-a** [1] 126, 3; **d-y-l** [1] 76, 16; **d-y-l-a-n** [1] 76, 16; **dad** [3] 115, 24; 115, 25; 116, 7; **damage** [7] 31, 20; 31, 21; 41, 18; 49, 5; 52, 8; 55, 1; 65, 20; **damaged** [1] 66, 10; **damages** [2] 36, 19; 53, 8; **dan** [4] 9, 12; 9, 16; 75, 16; 75, 17; **danger** [2] 135, 3; 159, 6; **dark** [1] 84, 10; **data** [2] 58, 11; 58, 12; **date** [4] 6, 15; 22, 5; 29, 1; 111, 18; **dates** [2] 176, 22; 177, 13; **day** [15] 78, 1; 78, 3; 79, 1; 82, 10; 82, 15; 96, 12; 110, 12; 110, 14; 111, 12; 111, 20; 124, 15; 130, 7; 134, 24; 167, 24; 176, 11; **days** [4] 18, 14; 104, 20; 178, 4; 179, 19; **dcr** [1] 110, 8; **de-escalation** [14] 151, 9; 151, 13; 151, 14; 152, 4; 152, 22; 153, 15; 154, 6; 154, 12; 154, 19; 157, 13; 157, 18; 158, 18; 159, 4; 164, 19; **dead** [1] 15, 23; **deadly** [24] 132, 4; 132, 5; 141, 9; 141, 14; 141, 15; 141, 19; 142, 5; 143, 1; 143, 4; 143, 5; 143, 20; 143, 22; 144, 8; 144, 19; 145, 1; 145, 4; 145, 5; 145, 8; 145, 10; 147, 8; 150, 16; 161, 4; 162, 18; 168, 6; **deal** [1] 141, 22; **dealing** [7] 16, 23; 134, 14; 137, 8; 139, 23; 140, 17; 142, 5; 146, 21; **deals** [3] 135, 22; 139, 6; 139, 16; **death** [10] 5, 4; 11, 22; 14, 12; 14, 14; 22, 1; 53, 25; 59, 21; 132, 6; 137, 1; 147, 10; **debate** [1] 167, 1; **deceased** [5] 69, 22; 70, 1; 70, 2; 70, 5; 114, 14; **deceased's** [1] 71, 25; **december** [2] 179, 23; 180, 4; **decent-sized** [1] 30, 23; **decided** [3] 12, 17; 89, 10; 98, 21; **decision** [9] 18, 3; 18, 5; 134, 17; 137, 15; 156, 10; 163, 9; 171, 10; 175, 2; 175, 10; **decision-making** [1] 106, 15; **decisions** [2] 155, 20; 175, 15; **deep** [1] 36, 19; **deeper** [1] 43, 9; **deescalate** [3] 114, 22; 143, 6; 148, 11; **defect** [6] 23, 23; 23, 24; 24, 1; 37, 12; 37, 16; 37, 17; **defects** [1] 24, 20; **defensive** [11] 127, 14; 127, 17; 127, 20; 127, 21; 128, 6; 128, 16; 131, 21; 140, 20; 140, 21; 140, 23; 146, 14; **define** [3] 132, 2; 132, 4; 132, 5; **defined** [1] 131, 23; **definitely** [6] 51, 18; 54, 12; 59, 6; 64, 14; 74, 12; 113, 19; **definition** [8] 151, 13; 152, 14; 152, 22; 152, 23; 153, 16; 154, 2; 154, 12; 154, 22; **definitions** [1] 151, 15; **definitively** [1] 8, 11; **deformed** [1] 39, 23; **defuse** [1] 157, 24; **degree** [5] 12, 4; 12, 6; 59, 20; 63, 14; 64, 6; **delay** [1] 177, 16; **deliberating** [1] 106, 9; **demonstrated** [1] 100, 18; **demonstrating** [5] 50, 21; 70, 13; 71, 15; 72, 3; 91, 4; **department** [13] 95, 20; 124, 14; 126, 7; 126, 9; 126, 21; 126, 23; 126, 25; 126, 25; 127, 11; 130, 7; 154, 4; 167, 4; 177, 23; **department's** [3] 132, 22; 152, 4; 162, 6; **department-issued** [4] 79, 14; 79, 15; 79, 16; 101, 16; **departments** [1] 117, 11; **depend** [1] 54, 13; **depending** [4] 67, 20; 104, 3; 131, 7; 155, 2; **depends** [5] 70, 7; 130, 25; 131, 15; 155, 15; 163, 12; **depict** [3] 24, 22; 86, 18; 93, 11; **depicted** [3] 24, 11; 93, 9; 93, 24; **depicts** [1] 35, 8; **deploy** [9] 89, 14; 90, 22; 91, 12; 138, 22; 138, 25; 140, 9; 148, 9; 148, 10; 165, 21; **deployed** [4] 81, 4; 102, 4; 120, 18; 140, 7; **deploying** [3] 93, 12; 122, 18; 143, 12; **deputy** [1] 18, 4; **describe** [20] 12, 2; 14, 22; 23, 5; 26, 4; 27, 4; 40, 18; 47, 19; 48, 6; 49, 19; 54, 17; 79, 17; 80, 24; 110, 5; 112, 18; 127, 13; 132, 15; 133, 6; 147, 7; 148, 1; 159, 18; **described** [6] 41, 6; 57, 18; 60, 1; 74, 17; 95, 18; 140, 23; **describing** [4] 25, 22; 26, 21; 30, 11; 97, 15; **description** [1] 138, 24; **design** [1] 150, 3; **designated** [4] 31, 9; 32, 15; 77, 10; 131, 10;

<b>destruction</b> [1] 71, 3;	<b>difference</b> [2] 120, 20;	<b>distal</b> [2] 41, 5; 42, 1;	<b>doorway</b> [23] 7, 20;
<b>detail</b> [15] 39, 1; 45, 5;	132, 13;	<b>distance</b> [33] 34, 4;	86, 3; 90, 2; 90, 17;
46, 7; 78, 4; 78, 5; 78, 12;	<b>different</b> [33] 13, 23;	67, 17; 67, 21; 67, 23;	90, 20; 91, 1; 92, 16;
79, 8; 82, 12; 82, 15;	26, 23; 32, 4; 51, 9;	96, 15; 97, 1; 100, 12;	94, 2; 96, 16; 96, 21;
106, 6; 110, 17; 110, 20;	64, 13; 70, 8; 79, 22;	106, 23; 106, 24; 144, 24;	96, 24; 97, 9; 99, 22;
110, 21; 111, 21; 112, 11;	80, 6; 80, 8; 117, 11;	144, 25; 146, 3; 146, 6;	99, 24; 100, 3; 100, 6;
<b>detain</b> [2] 81, 2; 81, 6;	117, 11; 128, 8; 130, 20;	146, 15; 146, 19; 148, 23;	100, 16; 115, 15; 117, 15;
<b>detected</b> [6] 57, 9;	132, 20; 133, 14; 135, 5;	150, 13; 151, 23; 155, 5;	118, 5; 118, 6; 118, 7;
57, 14; 57, 15; 57, 19;	136, 16; 138, 6; 140, 7;	155, 7; 155, 13; 155, 14;	119, 9;
57, 20; 58, 13;	144, 2; 149, 15; 150, 8;	155, 14; 155, 14; 155, 15;	<b>dots</b> [2] 81, 13; 81, 16;
<b>determinations</b> [1]	151, 14; 151, 18; 155, 1;	155, 17; 155, 22; 155, 24;	<b>down</b> [58] 7, 20; 8, 2;
132, 24;	155, 2; 159, 16; 159, 19;	156, 10; 159, 7; 163, 18;	8, 12; 15, 12; 16, 20;
<b>determine</b> [16] 11, 21;	159, 19; 159, 24; 163, 2;	168, 12; 168, 14;	19, 12; 23, 14; 27, 2;
14, 12; 19, 23; 43, 11;	166, 16; 168, 1;	<b>distances</b> [2] 168, 12;	27, 22; 31, 24; 38, 15;
48, 17; 50, 13; 52, 1;	<b>differentiate</b> [1] 80, 22;	170, 11;	49, 25; 50, 24; 51, 1;
53, 24; 63, 11; 132, 12;	<b>differentiated</b> [1] 48, 1;	<b>distinguish</b> [2] 19, 23;	51, 10; 55, 15; 55, 16;
133, 12; 133, 13; 134, 3;	<b>differently</b> [1] 162, 22;	48, 18;	59, 18; 70, 7; 71, 8; 71, 8;
139, 2; 171, 9; 179, 3;	<b>diffuse</b> [2] 157, 5; 158, 3;	<b>distractionary-type</b> [1]	73, 13; 74, 22; 74, 24;
<b>determined</b> [2] 15, 12;	<b>digit</b> [1] 42, 11;	140, 4;	75, 9; 86, 4; 87, 25; 89, 2;
148, 3;	<b>direct</b> [7] 11, 1; 76, 12;	<b>district</b> [1] 20, 8;	89, 3; 89, 8; 90, 3; 93, 4;
<b>determining</b> [2] 11, 24;	77, 25; 83, 20; 109, 4;	<b>division</b> [2] 77, 7; 77, 15;	93, 5; 93, 10; 95, 3;
137, 22;	110, 11; 125, 23;	<b>doctor</b> [7] 10, 20; 13, 17;	96, 24; 97, 4; 97, 8;
<b>develop</b> [2] 151, 21;	<b>directing</b> [7] 21, 3; 48, 2;	45, 5; 60, 21; 63, 11;	97, 20; 99, 13; 108, 14;
157, 2;	54, 16; 71, 18; 82, 9;	69, 10; 75, 8;	108, 16; 108, 21; 116, 21;
<b>device</b> [1] 81, 2;	111, 18; 130, 5;	<b>document</b> [17] 24, 7;	117, 5; 117, 6; 118, 3;
<b>diagonally</b> [1] 118, 24;	<b>direction</b> [9] 26, 18;	28, 6; 28, 21; 29, 4; 29, 5;	125, 13; 135, 14; 148, 12;
<b>diagram</b> [27] 17, 7;	43, 11; 48, 6; 49, 19;	29, 15; 29, 18; 29, 23;	148, 15; 149, 22; 151, 22;
28, 6; 28, 13; 28, 14;	50, 6; 51, 25; 52, 23;	48, 9; 50, 18; 55, 6;	157, 2; 158, 7; 158, 23;
28, 14; 28, 15; 28, 16;	54, 17; 71, 12;	55, 11; 55, 13; 56, 13;	173, 7; 173, 8;
28, 19; 28, 25; 30, 5;	<b>directly</b> [4] 18, 19;	64, 1; 65, 12; 73, 4;	<b>downward</b> [7] 36, 25;
30, 7; 30, 8; 30, 11;	100, 10; 110, 18; 119, 2;	<b>documentation</b> [2] 14, 3;	37, 7; 38, 3; 49, 23; 50, 6;
30, 12; 30, 18; 32, 14;	<b>disabled</b> [1] 77, 21;	14, 4;	52, 3; 52, 14;
36, 5; 38, 13; 38, 16;	<b>disagree</b> [2] 160, 2;	<b>documented</b> [2] 60, 24;	<b>dr</b> [10] 10, 13; 10, 17;
39, 20; 39, 21; 41, 2;	160, 4;	167, 11;	10, 19; 11, 1; 60, 19;
41, 4; 44, 20; 48, 4;	<b>disagreement</b> [1] 106, 11;	<b>documents</b> [3] 28, 18;	63, 9; 64, 18; 66, 2; 66, 4;
70, 25; 73, 5;	<b>discharge</b> [7] 118, 14;	30, 4; 152, 8;	69, 8;
<b>diagrams</b> [7] 16, 11;	119, 7; 120, 8; 120, 24;	<b>doing</b> [20] 12, 12; 18, 20;	<b>dracut</b> [1] 169, 23;
17, 4; 17, 5; 17, 5; 17, 8;	122, 17; 141, 23; 142, 15;	18, 20; 36, 18; 45, 25;	<b>drag</b> [1] 139, 16;
29, 19; 60, 11;	<b>discharged</b> [4] 92, 5;	53, 2; 82, 23; 108, 22;	<b>dragged</b> [1] 44, 5;
<b>diameter</b> [1] 38, 18;	100, 9; 119, 21; 119, 22;	110, 17; 111, 20; 121, 6;	<b>drawn</b> [1] 87, 12;
<b>diaphragm</b> [8] 38, 5;	<b>disciplines</b> [1] 127, 18;	125, 20; 127, 24; 134, 16;	<b>dressed</b> [3] 78, 15;
39, 3; 39, 6; 39, 7; 39, 8;	<b>discourages</b> [1] 166, 20;	136, 14; 137, 14; 139, 7;	88, 16; 111, 2;
52, 7; 52, 19; 65, 15;	<b>discovery</b> [1] 7, 7;	168, 3; 168, 12; 172, 25;	<b>drew</b> [2] 65, 7; 68, 3;
<b>dichiara</b> [9] 10, 6;	<b>discussed</b> [2] 46, 10;	<b>domestic</b> [3] 58, 24;	<b>drive</b> [3] 7, 8; 140, 9;
125, 16; 125, 23; 126, 3;	137, 21;	80, 9; 137, 8;	140, 12;
145, 16; 145, 19; 151, 1;	<b>discussion</b> [4] 97, 22;	<b>done</b> [12] 6, 21; 14, 6;	<b>driving</b> [1] 58, 19;
169, 12; 172, 10;	116, 11; 153, 11; 176, 23;	16, 17; 19, 21; 22, 10;	<b>drop</b> [14] 66, 12; 84, 22;
<b>dictate</b> [2] 16, 12; 17, 2;	<b>discussions</b> [2] 45, 22;	55, 24; 56, 1; 59, 17;	84, 24; 86, 8; 105, 4;
<b>dictates</b> [1] 132, 8;	47, 6;	61, 16; 102, 2; 105, 2;	105, 15; 105, 16; 116, 16;
<b>dictating</b> [1] 16, 12;	<b>disease</b> [2] 17, 23; 59, 5;	177, 15;	116, 19; 119, 14; 123, 19;
<b>die</b> [1] 54, 4;	<b>disengaged</b> [1] 170, 15;	<b>door</b> [18] 85, 6; 87, 11;	125, 2; 135, 10; 148, 19;
<b>died</b> [3] 14, 16; 53, 13;	<b>dispatch</b> [4] 91, 24;	87, 17; 89, 20; 89, 22;	<b>dropped</b> [5] 66, 11;
58, 21;	170, 23; 171, 6; 171, 6;	94, 7; 94, 7; 103, 6;	99, 7; 119, 14; 148, 8;
<b>diego</b> [7] 12, 6; 12, 24;	<b>displaced</b> [1] 49, 4;	103, 7; 103, 15; 115, 15;	149, 22;
19, 2; 19, 6; 58, 9; 58, 13;	<b>disproportionate</b> [1]	121, 21; 146, 23; 156, 14;	<b>dropping</b> [1] 110, 23;
58, 20;	19, 17;	159, 22; 160, 24; 160, 25;	<b>drops</b> [1] 165, 18;
<b>diego's</b> [1] 12, 20;	<b>disruption</b> [1] 32, 6;	178, 25;	<b>drug</b> [3] 57, 19; 59, 15;
<b>differ</b> [2] 78, 17; 131, 7;	<b>dissect</b> [1] 16, 22;	<b>doorframe</b> [1] 90, 19;	129, 14;

**drugs** [4] 57, 9; 57, 10; 57, 11; 58, 18;  
**drunk** [1] 168, 8;  
**due** [3] 24, 1; 96, 6; 124, 17;  
**during** [15] 9, 17; 16, 10; 21, 10; 26, 5; 57, 16; 60, 4; 60, 21; 80, 14; 107, 25; 108, 7; 134, 21; 154, 15; 166, 14; 172, 13; 177, 12;  
**duties** [2] 77, 17; 110, 5;  
**duty** [8] 78, 8; 79, 8; 79, 10; 79, 12; 91, 24; 111, 12; 111, 14; 129, 15;  
**dylan** [14] 10, 4; 76, 3; 76, 4; 76, 12; 76, 16; 95, 14; 101, 5; 102, 9; 107, 10; 107, 22; 112, 24; 113, 12; 113, 24; 115, 10;  
**dylan's** [1] 116, 15;

## E

**each** [16] 16, 7; 18, 6; 26, 21; 29, 2; 29, 7; 30, 12; 40, 22; 48, 21; 48, 24; 62, 7; 63, 23; 64, 2; 64, 12; 73, 22; 106, 15; 120, 3;  
**ear** [2] 100, 11; 100, 25;  
**earlier** [6] 15, 19; 74, 17; 100, 18; 155, 7; 162, 5; 167, 19;  
**earlobe** [1] 33, 16;  
**early** [2] 37, 22; 178, 23;  
**ears** [4] 16, 19; 49, 7; 54, 5; 54, 10;  
**easier** [2] 28, 5; 30, 10;  
**easily** [1] 43, 2;  
**eat** [1] 51, 12;  
**edged** [1] 145, 22;  
**edit** [1] 16, 14;  
**education** [2] 12, 2; 126, 12;  
**educational** [2] 126, 12; 126, 13;  
**effect** [5] 58, 5; 59, 12; 81, 22; 120, 13; 144, 2;  
**effective** [3] 143, 20; 158, 6; 158, 11;  
**effectiveness** [1] 81, 22;  
**effort** [1] 132, 2;  
**either** [15] 10, 23; 18, 13; 29, 2; 33, 6; 46, 16; 49, 13; 64, 21; 70, 12; 76, 7; 130, 6; 137, 8; 148, 7; 164, 19; 175, 13;

178, 21;  
**elbow** [3] 41, 17; 70, 12; 140, 25;  
**electronic** [1] 81, 1;  
**else** [25] 17, 20; 22, 22; 22, 22; 41, 9; 42, 23; 61, 20; 75, 6; 84, 23; 90, 5; 93, 6; 93, 7; 107, 7; 107, 8; 107, 19; 107, 20; 108, 7; 108, 13; 122, 25; 124, 21; 124, 22; 147, 10; 172, 8; 172, 9; 173, 4; 178, 8;  
**else's** [2] 116, 14; 141, 10;  
**embarked** [1] 126, 17;  
**emergency** [1] 110, 9;  
**emotions** [1] 156, 21;  
**employ** [2] 139, 3; 140, 22;  
**employed** [7] 11, 9; 11, 12; 76, 18; 109, 14; 126, 4; 129, 19; 134, 20;  
**employing** [3] 143, 8; 143, 9; 172, 24;  
**ems** [6] 83, 7; 91, 25; 92, 1; 92, 24; 93, 1; 121, 9;  
**en** [1] 130, 16;  
**encounter** [1] 154, 15;  
**end** [15] 47, 6; 47, 25; 50, 25; 51, 9; 63, 22; 63, 23; 86, 7; 96, 25; 97, 3; 97, 5; 148, 20; 160, 22; 165, 23; 175, 16; 180, 3;  
**ended** [5] 4, 21; 29, 3; 48, 21; 49, 25; 115, 3;  
**ending** [2] 111, 21; 111, 21;  
**ends** [5] 27, 22; 31, 18; 31, 19; 51, 6; 172, 2;  
**energy-based** [1] 139, 25;  
**enforcement** [6] 15, 8; 21, 20; 61, 17; 76, 25; 129, 10; 158, 5;  
**engage** [2] 149, 21; 172, 23;  
**engaged** [1] 9, 14;  
**engaging** [1] 97, 16;  
**england** [1] 129, 1;  
**enough** [3] 36, 21; 64, 7; 76, 2;  
**ensued** [1] 119, 12;  
**entail** [1] 140, 4;  
**enter** [5] 64, 10; 84, 9; 85, 7; 100, 19; 121, 14;  
**entered** [5] 37, 17;

48, 21; 50, 3; 61, 14; 85, 9;  
**entering** [6] 32, 17; 47, 24; 52, 24; 54, 19; 65, 1; 92, 16;  
**enters** [5] 38, 10; 40, 3; 41, 21; 61, 11; 74, 12;  
**entire** [3] 40, 8; 79, 21; 105, 24;  
**entirely** [1] 60, 2;  
**entrance** [21] 22, 19; 27, 8; 27, 8; 27, 17; 28, 9; 31, 9; 32, 15; 33, 18; 35, 6; 36, 12; 38, 17; 41, 1; 41, 6; 41, 6; 84, 10; 84, 17; 85, 5; 85, 13; 86, 3; 87, 11; 115, 16;  
**entrances** [2] 29, 2; 64, 16;  
**entry** [3] 71, 19; 101, 25; 129, 17;  
**environment** [1] 155, 16;  
**environmental** [2] 81, 21; 146, 3;  
**equipment** [1] 110, 23;  
**error** [1] 61, 8;  
**escalate** [1] 161, 5;  
**escalated** [1] 139, 22;  
**especially** [2] 59, 5; 68, 7;  
**essential** [1] 130, 23;  
**essentially** [10] 5, 21; 28, 15; 29, 4; 48, 3; 53, 13; 59, 25; 60, 4; 72, 17; 131, 20; 144, 18;  
**essex** [2] 129, 11; 130, 3;  
**estimation** [1] 106, 24;  
**eta** [1] 10, 9;  
**euphoric** [1] 59, 15;  
**even** [15] 7, 6; 14, 9; 15, 21; 20, 19; 25, 21; 31, 3; 38, 12; 42, 19; 54, 12; 99, 2; 138, 17; 143, 1; 162, 3; 165, 14; 165, 20;  
**evening** [1] 77, 8;  
**event** [5] 15, 4; 156, 20; 160, 11; 165, 14; 165, 15;  
**events** [2] 104, 20; 104, 21;  
**eventually** [4] 89, 1; 116, 17; 116, 21; 118, 2;  
**ever** [2] 94, 23; 108, 2;  
**every** [13] 18, 3; 18, 5; 58, 12; 58, 12; 59, 2; 63, 15; 79, 25; 141, 18; 142, 11; 142, 12; 167, 4; 168, 3; 168, 14;

**everybody** [4] 96, 7; 130, 23; 144, 2; 171, 14;  
**everybody's** [1] 156, 21;  
**everyone** [3] 4, 6; 58, 12; 93, 6;  
**everyone's** [1] 36, 18;  
**everything** [18] 4, 21; 16, 5; 16, 6; 16, 16; 16, 17; 16, 25; 22, 22; 22, 22; 40, 20; 47, 25; 127, 1; 132, 10; 134, 23; 136, 8; 158, 14; 175, 9; 175, 20; 179, 17;  
**everything's** [1] 16, 14;  
**evidence** [5] 7, 8; 7, 10; 8, 2; 24, 5; 62, 5;  
**exact** [1] 82, 5;  
**exactly** [3] 68, 13; 78, 7; 96, 11;  
**exam** [3] 13, 18; 15, 17; 18, 11;  
**examination** [42] 11, 1; 13, 19; 15, 15; 15, 16; 16, 16; 19, 22; 24, 3; 25, 7; 25, 10; 26, 2; 26, 5; 27, 1; 30, 16; 47, 17; 47, 20; 55, 17; 55, 20; 59, 19; 59, 25; 60, 2; 60, 19; 60, 21; 63, 9; 63, 11; 64, 18; 66, 2; 69, 8; 76, 12; 95, 14; 101, 5; 102, 9; 107, 10; 107, 22; 109, 4; 122, 7; 123, 6; 124, 25; 125, 23; 145, 16; 151, 1; 169, 12; 172, 10;  
**examinations** [6] 11, 19; 13, 24; 13, 24; 13, 25; 14, 1; 14, 2;  
**examine** [6] 15, 20; 15, 25; 16, 4; 16, 23; 23, 11; 39, 18;  
**examined** [3] 25, 12; 25, 21; 53, 13;  
**examiner** [12] 10, 3; 11, 13; 11, 14; 11, 16; 11, 17; 11, 18; 12, 18; 12, 24; 18, 1; 18, 3; 20, 1; 21, 8;  
**examiner's** [6] 11, 23; 12, 16; 22, 17; 22, 25; 58, 14; 60, 17;  
**examining** [7] 13, 21; 13, 22; 14, 24; 15, 12; 16, 5; 25, 18; 32, 16;  
**example** [6] 137, 7; 159, 6; 161, 7; 161, 19; 162, 17; 163, 7;

**examples** [1] 151, 19;  
**excellent** [1] 47, 4;  
**except** [3] 44, 22; 47, 23; 160, 24;  
**exchange** [1] 179, 11;  
**exercise** [3] 70, 14; 72, 9; 72, 14;  
**exhibit** [19] 25, 5; 30, 7; 30, 8; 35, 16; 35, 18; 35, 19; 46, 10; 57, 3; 57, 7; 60, 17; 60, 25; 86, 15; 93, 17; 93, 19; 94, 12; 96, 17; 137, 17; 147, 21; 169, 9;  
**exist** [2] 25, 1; 176, 6;  
**exit** [11] 19, 24; 27, 17; 27, 17; 28, 11; 30, 24; 35, 24; 36, 2; 36, 12; 37, 5; 40, 4; 160, 23;  
**exited** [4] 27, 16; 29, 3; 71, 22; 83, 12;  
**exits** [9] 22, 19; 30, 21; 30, 22; 31, 15; 37, 6; 39, 15; 41, 15; 41, 17; 41, 25;  
**exmaine** [1] 13, 18;  
**expanded** [1] 39, 24;  
**expect** [3] 15, 13; 32, 24; 148, 24;  
**expectation** [3] 163, 10; 163, 12; 177, 9;  
**expecting** [1] 5, 16;  
**experience** [5] 49, 13; 58, 5; 58, 8; 76, 25; 162, 9;  
**experiences** [2] 149, 2; 156, 19;  
**expertise** [1] 34, 9;  
**explain** [2] 137, 2; 162, 19;  
**explained** [2] 45, 6; 167, 22;  
**explaining** [1] 42, 24;  
**explore** [1] 159, 8;  
**exposure** [1] 9, 9;  
**external** [12] 11, 19; 13, 24; 14, 4; 17, 6; 17, 8; 18, 11; 26, 1; 26, 5; 27, 1; 44, 3; 46, 8; 55, 20;  
**extinguisher** [16] 4, 12; 4, 21; 4, 25; 7, 1; 7, 21; 8, 4; 8, 10; 147, 5; 166, 7; 174, 1; 178, 9; 178, 10; 178, 11; 178, 13; 178, 15; 179, 3;  
**extra** [3] 12, 19; 32, 23; 111, 15;  
**eye** [1] 17, 24;

**eyes** [1] 157, 16;  
**F**  
**f-bombs** [1] 114, 11;  
**f-i-n-e-r-t-y** [1] 76, 17;  
**face** [1] 15, 18;  
**faced** [1] 141, 12;  
**facial** [1] 62, 8;  
**facility** [1] 21, 8;  
**facing** [5] 89, 22; 90, 20; 91, 4; 91, 21; 92, 16;  
**fact** [11] 20, 19; 26, 23; 31, 12; 35, 6; 41, 11; 43, 2; 50, 3; 75, 17; 92, 10; 138, 12; 138, 18;  
**factor** [1] 82, 2;  
**factors** [9] 81, 21; 133, 12; 133, 12; 134, 3; 135, 4; 137, 13; 138, 20; 138, 25; 147, 6;  
**facts** [1] 133, 10;  
**fair** [19] 20, 17; 34, 15; 60, 3; 68, 20; 76, 2; 81, 15; 85, 23; 95, 5; 97, 14; 98, 8; 107, 14; 122, 16; 130, 19; 145, 10; 146, 24; 161, 4; 161, 6; 170, 8; 172, 16;  
**fairly** [15] 23, 24; 24, 22; 27, 10; 27, 18; 31, 22; 38, 17; 38, 23; 38, 25; 41, 22; 44, 13; 45, 6; 55, 12; 93, 11; 149, 18; 178, 23;  
**fall** [6] 11, 22; 92, 7; 92, 11; 141, 5; 146, 24; 163, 24;  
**fallen** [1] 117, 17;  
**familiar** [8] 45, 1; 96, 8; 144, 13; 150, 4; 152, 9; 152, 12; 153, 12; 166, 17;  
**families** [1] 14, 15;  
**family** [7] 45, 25; 46, 25; 69, 11; 102, 12; 123, 9; 151, 6; 172, 12;  
**far** [9] 34, 6; 36, 2; 51, 6; 67, 23; 87, 5; 89, 24; 103, 5; 135, 4; 156, 19;  
**fashion** [2] 36, 25; 37, 14;  
**fast** [3] 118, 20; 130, 12; 146, 15;  
**fatal** [12] 49, 14; 51, 19; 54, 3; 59, 4; 64, 20; 64, 21; 64, 24; 65, 2; 65, 3; 65, 11; 65, 11;

65, 16;  
**father** [2] 87, 21; 116, 3;  
**feasible** [1] 81, 18;  
**federal** [2] 133, 2; 133, 14;  
**feel** [2] 178, 22; 179, 12;  
**feels** [1] 172, 21;  
**feet** [34] 68, 9; 68, 10; 68, 12; 68, 20; 86, 25; 87, 10; 89, 19; 89, 19; 90, 1; 90, 21; 91, 2; 97, 1; 97, 6; 99, 10; 100, 15; 103, 8; 103, 8; 103, 18; 146, 8; 146, 18; 146, 22; 147, 1; 148, 8; 148, 23; 149, 22; 150, 11; 150, 13; 160, 22; 160, 22; 168, 5; 168, 7; 168, 9; 168, 14; 168, 16;  
**fell** [14] 92, 17; 92, 20; 92, 22; 117, 23; 117, 25; 121, 3; 121, 3; 121, 4; 121, 11; 123, 12; 125, 3; 163, 24; 164, 7; 164, 8;  
**fellows** [4] 18, 20; 19, 16; 19, 17; 19, 21;  
**femoral** [1] 53, 17;  
**fence** [1] 156, 8;  
**few** [12] 6, 22; 26, 9; 27, 16; 30, 2; 33, 1; 102, 13; 118, 23; 118, 23; 123, 10; 173, 11; 176, 22; 179, 19;  
**fewer** [1] 19, 18;  
**field** [4] 77, 7; 77, 15; 134, 20; 153, 4;  
**fifth** [4] 39, 25; 53, 1; 61, 13; 136, 25;  
**fifth-finger** [1] 42, 10;  
**fighting** [1] 140, 18;  
**figure** [6] 10, 1; 28, 15; 28, 15; 105, 15; 106, 9; 179, 13;  
**find** [7] 24, 5; 35, 24; 43, 19; 43, 23; 43, 25; 48, 8; 55, 18;  
**finding** [2] 15, 2; 68, 3;  
**findings** [3] 14, 5; 56, 19; 60, 4;  
**fine** [3] 6, 8; 75, 25; 173, 1;  
**finerty** [21] 10, 4; 76, 3; 76, 4; 76, 12; 76, 16; 76, 17; 95, 14; 95, 16; 101, 5; 101, 7; 102, 9; 107, 10; 107, 22; 112, 24; 112, 25; 113, 3; 113, 8; 118, 16; 120, 4; 122, 13;

124, 18;  
**finger** [11] 42, 11; 42, 17; 42, 20; 43, 1; 43, 2; 43, 6; 43, 9; 63, 15; 69, 13; 71, 1; 71, 2;  
**finger nail** [1] 62, 7;  
**fingers** [9] 43, 8; 43, 24; 70, 15; 70, 25; 71, 5; 72, 21; 73, 2; 74, 2; 74, 9;  
**finish** [1] 176, 14;  
**finished** [1] 12, 8;  
**fire** [20] 4, 12; 4, 21; 4, 25; 7, 1; 7, 21; 8, 4; 67, 7; 89, 16; 99, 7; 142, 14; 147, 5; 149, 12; 166, 6; 173, 25; 178, 9; 178, 10; 178, 11; 178, 13; 178, 15; 179, 3;  
**firearm** [27] 5, 21; 79, 14; 80, 1; 81, 11; 87, 12; 88, 10; 88, 19; 92, 5; 100, 9; 101, 16; 102, 4; 111, 15; 111, 16; 118, 11; 119, 21; 120, 24; 141, 16; 141, 23; 141, 24; 142, 15; 146, 17; 161, 9; 161, 10; 165, 25; 168, 18; 177, 22; 177, 24;  
**firearms** [8] 79, 20; 119, 22; 127, 8; 127, 14; 127, 16; 128, 6; 141, 19; 173, 21;  
**fired** [10] 5, 17; 67, 5; 68, 4; 91, 16; 91, 22; 91, 24; 92, 12; 94, 14; 94, 20; 94, 24;  
**firing** [2] 68, 14; 141, 5;  
**first** [54] 10, 3; 11, 5; 11, 7; 12, 8; 15, 18; 22, 15; 28, 21; 30, 4; 34, 14; 35, 15; 37, 1; 40, 16; 40, 17; 41, 13; 42, 11; 42, 15; 43, 4; 43, 4; 43, 7; 47, 19; 50, 10; 52, 18; 54, 22; 55, 1; 76, 14; 85, 3; 87, 8; 95, 6; 98, 24; 102, 13; 109, 8; 109, 12; 113, 19; 126, 1; 130, 23; 131, 1; 131, 2; 134, 10; 134, 11; 134, 24; 135, 2; 135, 18; 135, 21; 135, 23; 136, 7; 136, 20; 137, 9; 139, 4; 140, 7; 142, 4; 148, 10; 155, 11; 170, 20; 178, 14;  
**first-name** [1] 105, 12;  
**fitness** [1] 127, 7;  
**fits** [1] 15, 13;



**five** [13] 12, 16; 18, 19; 20, 16; 131, 3; 135, 9; 135, 12; 135, 18; 135, 21; 136, 1; 136, 18; 137, 1; 149, 18; 149, 18;  
**flashlight** [1] 79, 15;  
**flexion** [1] 41, 22;  
**floor** [7] 66, 15; 84, 13; 84, 14; 102, 13; 104, 23; 113, 18; 121, 1;  
**fluids** [1] 12, 14;  
**focus** [2] 164, 25; 167, 10;  
**focused** [1] 168, 21;  
**focuses** [1] 158, 2;  
**focusing** [2] 47, 17; 72, 20;  
**fold** [1] 36, 3;  
**follicles** [1] 49, 1;  
**followed** [2] 84, 2; 127, 23;  
**following** [4] 12, 10; 127, 21; 148, 1; 179, 22;  
**follows** [1] 35, 17;  
**foot** [2] 38, 15; 68, 15;  
**force** [65] 58, 10; 81, 2; 101, 19; 101, 21; 102, 4; 127, 8; 127, 15; 128, 5; 131, 20; 131, 23; 132, 4; 132, 5; 132, 5; 132, 5; 132, 8; 132, 12; 132, 17; 133, 5; 133, 9; 133, 13; 134, 4; 134, 9; 137, 15; 139, 15; 140, 19; 141, 9; 141, 14; 141, 15; 141, 15; 141, 19; 142, 5; 143, 1; 143, 5; 143, 5; 143, 21; 143, 22; 144, 8; 144, 20; 145, 1; 145, 4; 145, 5; 145, 8; 145, 10; 147, 8; 148, 2; 148, 20; 150, 16; 151, 17; 151, 17; 153, 11; 154, 15; 154, 18; 154, 19; 157, 19; 157, 20; 159, 9; 161, 5; 162, 18; 163, 21; 164, 17; 164, 22; 165, 12; 165, 22; 166, 14; 168, 6;  
**forearm** [9] 41, 5; 41, 20; 41, 22; 42, 1; 43, 4; 69, 13; 69, 20; 74, 13; 91, 7;  
**forensic** [12] 11, 17; 12, 3; 12, 22; 13, 15; 13, 22; 14, 4; 14, 6; 14, 11; 20, 1; 20, 22; 21, 2; 33, 22;  
**forensics** [1] 13, 25;  
**forget** [1] 70, 22;

**form** [2] 6, 2; 59, 19;  
**formulate** [2] 105, 6; 157, 22;  
**formulated** [2] 104, 24; 171, 23;  
**forth** [1] 116, 8;  
**forward** [18] 31, 11; 38, 25; 39, 11; 39, 22; 45, 21; 49, 24; 49, 25; 50, 20; 50, 22; 50, 24; 51, 6; 51, 7; 51, 10; 53, 1; 75, 24; 90, 23; 162, 25; 176, 13;  
**found** [8] 8, 13; 15, 7; 31, 1; 36, 15; 37, 22; 52, 9; 55, 18; 63, 13;  
**four** [9] 12, 11; 84, 22; 91, 16; 91, 17; 128, 10; 128, 11; 128, 12; 128, 12; 163, 1;  
**fourth** [2] 42, 11; 136, 23;  
**fourth-finger** [1] 42, 16;  
**fracture** [3] 42, 22; 50, 9; 63, 2;  
**fractured** [1] 63, 3;  
**fractures** [13] 27, 25; 27, 25; 32, 8; 32, 11; 36, 22; 36, 25; 37, 1; 40, 10; 40, 15; 42, 17; 44, 23; 44, 25; 45, 2;  
**fracturing** [4] 42, 16; 53, 1; 54, 21; 54, 22;  
**fragment** [2] 31, 22; 42, 18;  
**fragment-exit** [1] 41, 16;  
**fragmented** [1] 47, 24;  
**fragments** [13] 27, 13; 27, 15; 28, 1; 30, 21; 31, 3; 32, 10; 41, 8; 42, 2; 48, 22; 49, 2; 62, 11; 63, 2; 63, 4;  
**frame** [1] 6, 22;  
**framework** [1] 176, 4;  
**frankly** [1] 32, 5;  
**free** [4] 10, 23; 38, 6; 76, 5; 179, 12;  
**frequently** [2] 43, 12; 65, 14;  
**friday** [1] 18, 4;  
**from** [149] 4, 14; 4, 15; 4, 16; 4, 18; 4, 18; 7, 2; 8, 10; 8, 12; 8, 25; 10, 7; 12, 6; 15, 3; 15, 9; 16, 20; 17, 10; 20, 20; 24, 20; 26, 23; 27, 25; 31, 7; 31, 23; 31, 23; 32, 9; 32, 9; 32, 12; 36, 16;

38, 9; 38, 15; 39, 15; 40, 1; 40, 10; 40, 11; 40, 16; 40, 24; 40, 25; 41, 22; 41, 24; 42, 9; 42, 12; 43, 5; 44, 23; 48, 16; 49, 6; 49, 7; 49, 9; 51, 8; 51, 8; 53, 21; 53, 22; 53, 24; 54, 10; 54, 10; 55, 24; 61, 12; 62, 7; 62, 15; 63, 2; 65, 13; 65, 17; 66, 9; 67, 5; 71, 10; 72, 4; 72, 12; 76, 1; 77, 9; 79, 13; 85, 19; 87, 11; 87, 17; 89, 19; 89, 19; 90, 1; 90, 17; 91, 2; 93, 3; 93, 25; 94, 9; 96, 15; 96, 24; 97, 3; 99, 8; 99, 13; 100, 15; 101, 9; 102, 24; 103, 6; 103, 7; 103, 17; 103, 19; 103, 22; 112, 2; 115, 1; 115, 22; 124, 4; 124, 5; 124, 19; 125, 2; 125, 2; 125, 3; 125, 3; 126, 18; 127, 1; 128, 17; 128, 25; 130, 14; 130, 15; 130, 15; 130, 20; 131, 6; 132, 3; 132, 19; 133, 3; 134, 23; 135, 18; 136, 11; 137, 11; 138, 7; 144, 24; 146, 13; 146, 17; 148, 2; 148, 22; 149, 13; 150, 6; 151, 23; 152, 14; 152, 15; 154, 3; 158, 12; 160, 24; 167, 5; 167, 15; 169, 18; 169, 19; 169, 22; 170, 11; 170, 19; 171, 3; 171, 4; 171, 4; 171, 18; 172, 20; 173, 13; 177, 13; 178, 18; 179, 22; 179, 25; 180, 3;  
**front** [34] 23, 14; 29, 19; 31, 7; 31, 14; 31, 19; 34, 24; 37, 1; 37, 25; 38, 12; 39, 15; 39, 16; 44, 12; 44, 14; 44, 15; 50, 19; 50, 25; 69, 22; 70, 1; 70, 6; 70, 24; 71, 6; 86, 20; 87, 18; 92, 1; 93, 4; 106, 21; 110, 18; 118, 20; 118, 25; 119, 2; 121, 21; 133, 11; 153, 10; 161, 23;  
**front-down** [1] 24, 14;  
**frt** [1] 180, 1;  
**full** [3] 16, 12; 79, 20; 111, 4;  
**full-body** [1] 28, 15;

**full-length** [3] 23, 8; 74, 18; 74, 25;  
**fulltime** [2] 95, 25; 126, 24;  
**fully-issued** [1] 78, 23;  
**function** [1] 104, 5;  
**functionally** [1] 36, 23;  
**funeral** [1] 85, 20;  
**further** [7] 69, 1; 101, 3; 122, 3; 147, 23; 150, 1; 150, 21; 172, 24;

## G

**gabapentin** [1] 57, 18;  
**gain** [1] 149, 9;  
**gases** [1] 67, 7;  
**gave** [1] 152, 22;  
**gear** [1] 171, 15;  
**gears** [1] 48, 13;  
**general** [5] 12, 11; 17, 6; 31, 6; 54, 1; 127, 9;  
**generally** [8] 14, 22; 16, 17; 19, 3; 34, 2; 45, 15; 48, 23; 56, 4; 162, 19;  
**generates** [1] 28, 1;  
**generic** [2] 159, 14; 163, 5;  
**gentleman** [10] 86, 7; 87, 18; 89, 1; 89, 7; 105, 15; 105, 23; 105, 25; 106, 1; 108, 8; 154, 1;  
**geography** [1] 131, 15;  
**get** [53] 11, 21; 12, 9; 15, 18; 15, 23; 16, 7; 17, 21; 19, 17; 40, 13; 41, 12; 46, 7; 50, 24; 57, 11; 59, 16; 63, 5; 74, 13; 81, 8; 82, 25; 85, 6; 89, 1; 96, 11; 97, 20; 98, 19; 105, 14; 105, 16; 112, 15; 114, 6; 116, 16; 116, 19; 121, 25; 131, 5; 134, 8; 138, 15; 140, 17; 149, 18; 150, 13; 152, 1; 157, 1; 157, 7; 157, 10; 166, 25; 167, 6; 169, 18; 171, 7; 171, 21; 171, 23; 171, 25; 172, 4; 172, 5; 176, 4; 177, 4; 177, 24; 178, 4; 179, 10;  
**gets** [7] 16, 13; 31, 14; 36, 24; 39, 6; 40, 8; 130, 19; 156, 21;  
**getting** [9] 16, 6; 19, 1; 110, 22; 149, 4; 149, 7; 151, 23; 157, 9; 170, 14;

172, 1;  
**give** [22] 6, 21; 6, 25;  
 15, 6; 18, 22; 35, 2; 68, 6;  
 96, 12; 99, 2; 99, 3;  
 106, 6; 134, 2; 137, 7;  
 145, 24; 149, 6; 151, 13;  
 151, 19; 155, 9; 157, 6;  
 157, 10; 160, 1; 161, 7;  
 161, 19;  
**given** [6] 40, 24; 46, 12;  
 57, 16; 62, 16; 62, 18;  
 132, 9;  
**gives** [6] 6, 20; 81, 6;  
 149, 7; 149, 7; 153, 16;  
 155, 17;  
**giving** [3] 46, 8; 57, 6;  
 105, 1;  
**gland** [1] 36, 20;  
**gland/trachea** [1] 50, 25;  
**gloucester** [1] 171, 4;  
**go** [56] 13, 8; 15, 12;  
 15, 22; 26, 20; 27, 7;  
 28, 2; 32, 2; 32, 3; 34, 6;  
 37, 21; 39, 7; 40, 11;  
 41, 11; 43, 5; 45, 4; 46, 6;  
 50, 2; 64, 14; 65, 14;  
 66, 1; 85, 10; 89, 15;  
 89, 17; 94, 23; 99, 4;  
 111, 22; 113, 14; 115, 1;  
 116, 9; 126, 11; 131, 1;  
 131, 3; 138, 16; 138, 21;  
 143, 14; 148, 18; 153, 14;  
 153, 23; 156, 22; 162, 3;  
 163, 4; 163, 7; 164, 16;  
 166, 13; 167, 13; 168, 3;  
 170, 2; 170, 3; 170, 4;  
 170, 5; 170, 5; 170, 7;  
 173, 11; 173, 15; 173, 17;  
 174, 18;  
**goal** [2] 147, 15; 165, 11;  
**goes** [29] 16, 15; 27, 19;  
 31, 13; 32, 18; 32, 20;  
 38, 3; 38, 4; 38, 22; 39, 2;  
 39, 3; 41, 14; 41, 24;  
 42, 20; 50, 19; 52, 3;  
 52, 20; 52, 25; 53, 2;  
 53, 3; 66, 19; 68, 14;  
 72, 8; 72, 18; 99, 6;  
 116, 2; 160, 24; 167, 20;  
 171, 5; 171, 15;  
**going** [76] 7, 2; 16, 11;  
 16, 13; 16, 25; 18, 10;  
 24, 7; 26, 14; 27, 13;  
 29, 12; 31, 1; 31, 11;  
 32, 14; 32, 24; 33, 2;  
 35, 9; 37, 7; 38, 3; 38, 9;  
 38, 24; 39, 7; 39, 11;  
 40, 11; 40, 24; 42, 5;

42, 6; 42, 25; 46, 9;  
 46, 16; 46, 17; 49, 24;  
 49, 24; 50, 4; 64, 9;  
 72, 16; 76, 8; 88, 5;  
 89, 11; 93, 8; 97, 1;  
 98, 21; 98, 24; 99, 2;  
 99, 7; 101, 11; 101, 15;  
 101, 23; 104, 9; 110, 20;  
 113, 1; 113, 20; 114, 1;  
 114, 8; 134, 10; 135, 3;  
 136, 8; 138, 18; 139, 1;  
 146, 9; 148, 11; 150, 2;  
 150, 6; 157, 16; 164, 3;  
 165, 15; 167, 13; 167, 14;  
 169, 1; 169, 3; 169, 14;  
 170, 22; 173, 12; 175, 2;  
 176, 15; 177, 7; 178, 21;  
 179, 6;  
**going-in** [1] 26, 10;  
**gone** [2] 19, 11; 32, 18;  
**good** [30] 4, 6; 10, 11;  
 11, 3; 11, 4; 35, 22; 48, 9;  
 69, 10; 76, 5; 95, 16;  
 102, 11; 108, 19; 108, 20;  
 109, 6; 122, 9; 122, 10;  
 123, 8; 125, 17; 125, 18;  
 134, 15; 134, 17; 137, 15;  
 144, 21; 144, 21; 145, 18;  
 145, 19; 148, 14; 151, 3;  
 155, 14; 155, 19; 158, 23;  
**good-size** [1] 31, 22;  
**gotten** [5] 17, 14; 130, 8;  
 158, 5; 166, 22; 167, 7;  
**gps** [1] 82, 21;  
**grabs** [1] 171, 15;  
**graduated** [3] 77, 15;  
 126, 15; 126, 18;  
**graham** [2] 133, 3;  
 166, 23;  
**graze** [3] 42, 11; 71, 1;  
 74, 2;  
**grazing** [3] 70, 24;  
 72, 21; 72, 23;  
**great** [3] 24, 24; 131, 12;  
 177, 8;  
**greater** [2] 148, 3;  
 179, 9;  
**greatly** [1] 159, 8;  
**green** [3] 23, 7; 88, 18;  
 98, 12;  
**grey** [1] 23, 8;  
**grip** [1] 92, 18;  
**gripping** [1] 73, 3;  
**ground** [14] 66, 12;  
 70, 8; 71, 9; 92, 11;  
 92, 22; 121, 19; 123, 20;  
 123, 25; 148, 8; 163, 24;  
 164, 7; 164, 8; 166, 6;

166, 7;  
**group** [6] 101, 9;  
 128, 24; 128, 24; 171, 13;  
 171, 21; 171, 22;  
**group-in** [1] 130, 23;  
**guess** [6] 52, 7; 65, 17;  
 93, 19; 106, 8; 115, 3;  
 169, 17;  
**guide** [1] 139, 16;  
**guideline** [1] 146, 19;  
**guidelines** [6] 132, 11;  
 132, 14; 132, 19; 132, 20;  
 132, 20; 133, 18;  
**gun** [15] 34, 7; 34, 12;  
 65, 14; 67, 5; 67, 8;  
 67, 13; 96, 9; 99, 16;  
 99, 25; 125, 2; 125, 3;  
 138, 12; 144, 14; 148, 6;  
 161, 15;  
**gunpowder** [2] 33, 3;  
 33, 3;  
**gunshot** [25] 16, 23;  
 17, 14; 18, 23; 18, 25;  
 19, 4; 19, 22; 22, 20;  
 23, 16; 24, 20; 26, 6;  
 26, 9; 27, 5; 29, 22;  
 29, 22; 31, 4; 40, 2;  
 43, 17; 43, 19; 48, 2;  
 51, 25; 54, 16; 59, 24;  
 61, 10; 67, 2; 120, 16;  
**gunshots** [1] 100, 8;  
**guy** [5] 88, 17; 114, 4;  
 114, 21; 115, 17; 119, 1;  
**guys** [7] 76, 9; 113, 4;  
 113, 11; 113, 24; 118, 23;  
 118, 23; 131, 3;

## H

**h-o-w-e-l-l** [1] 109, 13;  
**h4** [5] 109, 25; 110, 1;  
 110, 2; 110, 7; 110, 18;  
**habit** [1] 17, 14;  
**hair** [7] 33, 6; 33, 15;  
 33, 16; 33, 16; 33, 17;  
 34, 22; 62, 8;  
**half** [4] 13, 1; 19, 4;  
 19, 15; 91, 13;  
**half-life** [1] 59, 16;  
**hall** [1] 94, 7;  
**hallway** [42] 8, 3; 86, 4;  
 86, 5; 86, 7; 86, 12;  
 86, 19; 87, 16; 89, 13;  
 89, 23; 89, 24; 90, 2;  
 94, 23; 95, 6; 95, 10;  
 96, 25; 99, 13; 102, 21;  
 103, 3; 103, 5; 103, 10;  
 103, 20; 104, 6; 105, 22;

105, 24; 105, 25; 106, 20;  
 115, 13; 115, 16; 117, 1;  
 117, 25; 118, 3; 119, 1;  
 119, 14; 121, 4; 121, 14;  
 121, 15; 121, 18; 160, 5;  
 160, 6; 160, 7; 163, 8;  
 163, 9;  
**hand** [36] 41, 13; 42, 7;  
 42, 8; 43, 1; 43, 8; 62, 7;  
 63, 2; 63, 16; 63, 19;  
 64, 15; 64, 15; 67, 12;  
 69, 12; 69, 15; 69, 17;  
 69, 18; 69, 23; 70, 6;  
 71, 13; 71, 17; 72, 20;  
 72, 21; 73, 8; 73, 25;  
 74, 1; 74, 2; 74, 13;  
 87, 19; 91, 3; 91, 3;  
 92, 17; 100, 18; 119, 16;  
 148, 9; 163, 23; 165, 25;  
**handcuffing** [1] 139, 9;  
**handcuffs** [2] 79, 13;  
 79, 16;  
**handheld** [1] 79, 15;  
**hands** [22] 26, 25;  
 28, 16; 29, 19; 29, 20;  
 30, 8; 30, 15; 40, 22;  
 41, 13; 42, 5; 43, 20;  
 62, 7; 64, 5; 64, 5; 64, 14;  
 65, 17; 86, 7; 86, 9;  
 87, 19; 87, 23; 90, 5;  
 92, 14; 105, 24;  
**hands-on** [2] 139, 17;  
 140, 2;  
**handy** [1] 15, 6;  
**happen** [7] 90, 23;  
 148, 24; 161, 18; 163, 10;  
 163, 25; 172, 2; 175, 3;  
**happened** [28] 5, 20;  
 5, 22; 14, 16; 66, 13;  
 66, 13; 72, 23; 82, 14;  
 86, 1; 87, 15; 88, 1; 89, 9;  
 90, 13; 91, 11; 91, 22;  
 92, 23; 97, 22; 99, 25;  
 117, 8; 118, 20; 119, 10;  
 119, 19; 120, 15; 120, 17;  
 120, 20; 120, 22; 121, 5;  
 169, 17; 178, 12;  
**happening** [6] 89, 18;  
 115, 13; 115, 22; 131, 1;  
 158, 21; 177, 25;  
**happens** [1] 171, 4;  
**hard** [3] 19, 3; 64, 7;  
 71, 13;  
**harm** [7] 136, 24;  
 136, 25; 141, 12; 141, 12;  
 142, 6; 147, 18; 147, 18;  
**harmful** [2] 136, 6;  
 136, 9;

**hawaii** [1] 66, 22;  
**head** [27] 16, 18; 27, 2;  
 27, 5; 27, 10; 27, 14;  
 27, 19; 30, 14; 30, 18;  
 31, 6; 31, 10; 31, 10;  
 35, 5; 35, 6; 35, 19;  
 48, 16; 49, 5; 50, 13;  
 50, 19; 50, 23; 54, 1;  
 62, 16; 62, 22; 66, 12;  
 100, 23; 121, 15; 150, 13;  
 156, 22;  
**heading** [2] 26, 17;  
 112, 11;  
**health** [1] 151, 25;  
**hear** [16] 4, 11; 10, 7;  
 84, 23; 85, 3; 114, 1;  
 114, 9; 114, 19; 114, 24;  
 115, 6; 115, 21; 119, 24;  
 120, 18; 120, 20; 123, 25;  
 124, 18; 173, 18;  
**heard** [22] 5, 20; 75, 1;  
 83, 24; 84, 18; 84, 22;  
 91, 22; 105, 4; 105, 5;  
 112, 5; 114, 4; 114, 5;  
 114, 17; 120, 19; 120, 24;  
 122, 13; 146, 11; 149, 11;  
 149, 17; 153, 24; 154, 5;  
 167, 23; 167, 25;  
**hearing** [4] 8, 24; 82, 20;  
 111, 24; 112, 9;  
**heart** [6] 14, 2; 39, 11;  
 39, 13; 53, 15; 53, 22;  
 59, 5;  
**heartrate** [2] 155, 19;  
 155, 20;  
**heavy** [2] 31, 1; 124, 12;  
**heavyset** [1] 88, 17;  
**heavyweight** [1] 23, 7;  
**help** [11] 14, 15; 15, 18;  
 77, 22; 83, 13; 124, 6;  
 131, 3; 132, 12; 134, 16;  
 137, 15; 151, 16; 157, 4;  
**helped** [1] 161, 21;  
**helpful** [5] 22, 19; 34, 20;  
 35, 21; 154, 7; 176, 13;  
**helps** [2] 149, 9; 155, 16;  
**hemisphere** [1] 31, 3;  
**hemorrhage** [6] 17, 23;  
 44, 24; 45, 10; 45, 13;  
 53, 12; 66, 9;  
**hemorrhages** [1] 17, 20;  
**herself** [1] 161, 10;  
**high** [8] 37, 6; 58, 16;  
 59, 1; 59, 6; 139, 25;  
 140, 19; 156, 21; 171, 14;  
**high-risk** [1] 129, 13;  
**higher** [4] 31, 10; 59, 1;  
 140, 16; 151, 17;

**highest** [3] 58, 17;  
 128, 12; 137, 24;  
**highlands** [2] 169, 17;  
 179, 25;  
**highway** [1] 77, 20;  
**highways** [1] 77, 19;  
**him** [61] 22, 17; 25, 17;  
 25, 21; 36, 23; 41, 9;  
 44, 5; 53, 13; 54, 3;  
 66, 12; 70, 24; 71, 6;  
 72, 12; 74, 23; 76, 1;  
 83, 21; 83, 22; 86, 6;  
 86, 8; 87, 23; 88, 25;  
 90, 3; 92, 3; 93, 1; 97, 20;  
 100, 13; 102, 18; 103, 2;  
 105, 16; 106, 21; 106, 23;  
 107, 1; 107, 2; 113, 4;  
 114, 6; 114, 7; 114, 19;  
 114, 21; 115, 19; 115, 19;  
 116, 6; 116, 6; 116, 16;  
 116, 17; 116, 19; 117, 4;  
 117, 7; 117, 25; 118, 4;  
 119, 14; 119, 16; 120, 19;  
 121, 1; 121, 7; 121, 13;  
 162, 15; 162, 16; 164, 7;  
 164, 9; 164, 13; 166, 1;  
 177, 13;  
**himself** [2] 141, 12;  
 162, 14;  
**hip** [1] 38, 15;  
**historically** [1] 157, 1;  
**hit** [28] 26, 24; 26, 25;  
 27, 12; 37, 20; 39, 11;  
 40, 20; 41, 12; 41, 13;  
 42, 23; 121, 1; 123, 19;  
 123, 25; 142, 7; 142, 12;  
 142, 13; 142, 13; 149, 4;  
 149, 4; 149, 7; 149, 8;  
 155, 11; 162, 15; 163, 11;  
 163, 14; 163, 15; 163, 19;  
 163, 23; 164, 8;  
**hits** [2] 27, 24; 38, 23;  
**hitting** [4] 41, 9; 72, 12;  
 144, 23; 149, 3;  
**hold** [4] 13, 2; 13, 5;  
 86, 21; 175, 18;  
**holding** [2] 91, 3; 118, 8;  
**hole** [1] 37, 23;  
**holes** [4] 26, 15; 37, 24;  
 54, 5; 65, 15;  
**holstered** [1] 88, 19;  
**home** [1] 12, 5;  
**homeless** [1] 168, 8;  
**homicide** [3] 19, 8;  
 19, 11; 58, 20;  
**homicides** [6] 14, 15;  
 16, 2; 19, 3; 19, 17;  
 19, 18; 19, 20;

**honestly** [1] 24, 24;  
**hopefully** [2] 147, 15;  
 179, 9;  
**horse** [1] 175, 23;  
**hospital** [7] 13, 23;  
 13, 25; 14, 7; 15, 4;  
 18, 14; 23, 2; 23, 4;  
**hospitals** [1] 15, 22;  
**hostage** [1] 129, 12;  
**hour** [1] 171, 19;  
**hours** [3] 127, 20; 128, 1;  
 178, 13;  
**house** [1] 162, 13;  
**howell** [12] 10, 5; 84, 1;  
 84, 4; 98, 4; 108, 18;  
 109, 4; 109, 10; 109, 13;  
 122, 7; 122, 9; 123, 6;  
 124, 25;  
**human** [2] 13, 19; 13, 21;  
**hundred** [1] 18, 19;  
**hundreds** [2] 67, 1;  
 67, 1;  
**hurt** [1] 161, 10;  
**hydralazine** [1] 57, 16;  
**I**  
**iacp** [9] 152, 15; 153, 1;  
 153, 3; 154, 2; 154, 3;  
 164, 16; 166, 20; 167, 16;  
 169, 9;  
**iacp's** [1] 152, 23;  
**iat** [1] 131, 2;  
**iatrogenic** [1] 44, 22;  
**ice** [1] 66, 22;  
**idea** [2] 16, 24; 46, 13;  
**ideally** [1] 56, 6;  
**identification** [3] 15, 14;  
 23, 2; 23, 4;  
**identified** [7] 48, 14;  
 49, 12; 49, 19; 52, 22;  
 64, 12; 64, 13; 108, 7;  
**identify** [2] 48, 3; 84, 20;  
**identifying** [1] 56, 11;  
**ill** [1] 174, 13;  
**illicit** [2] 57, 10; 57, 19;  
**imagine** [2] 37, 18;  
 160, 21;  
**immediacy** [1] 154, 16;  
**immediate** [3] 51, 22;  
 131, 2; 141, 11;  
**immediate-threat** [1]  
 142, 6;  
**immediately** [7] 54, 2;  
 54, 3; 91, 23; 93, 2;  
 140, 18; 141, 16; 144, 1;  
**imminent** [3] 141, 11;  
 141, 12; 142, 6;

**impact** [3] 32, 9; 140, 24;  
 144, 23;  
**implications** [1] 18, 15;  
**important** [7] 6, 5;  
 14, 25; 46, 3; 142, 7;  
 142, 12; 165, 11; 168, 13;  
**importantly** [1] 24, 1;  
**in-service** [1] 127, 1;  
**inactive** [1] 13, 6;  
**inappropriate** [1]  
 164, 20;  
**incapacitate** [3] 81, 3;  
 147, 22; 147, 23;  
**incapacitating** [1] 54, 2;  
**incapacitation** [3] 81, 3;  
 81, 5; 82, 8;  
**inch** [2] 44, 17; 44, 18;  
**inches** [7] 22, 7; 38, 14;  
 41, 7; 41, 22; 44, 14;  
 97, 2; 97, 6;  
**incident** [4] 112, 3;  
 130, 6; 165, 23; 178, 21;  
**incidents** [1] 167, 3;  
**incision** [2] 16, 18;  
 16, 19;  
**incisions** [1] 16, 18;  
**include** [8] 13, 23; 20, 8;  
 154, 19; 156, 12; 156, 14;  
 157, 23; 158, 13; 168, 17;  
**included** [1] 124, 11;  
**includes** [2] 30, 18; 35, 5;  
**including** [2] 12, 15;  
 18, 18;  
**incorrectly** [1] 61, 13;  
**increases** [1] 138, 16;  
**increasing** [1] 159, 7;  
**index** [1] 42, 20;  
**indicated** [1] 154, 1;  
**indicating** [3] 51, 6;  
 51, 8; 87, 1;  
**individual** [25] 21, 4;  
 64, 3; 80, 17; 83, 20;  
 88, 12; 89, 25; 96, 25;  
 97, 8; 98, 12; 107, 12;  
 107, 15; 107, 24; 108, 2;  
 132, 3; 136, 20; 140, 17;  
 148, 24; 149, 24; 157, 23;  
 159, 6; 159, 7; 160, 5;  
 163, 8; 164, 21; 165, 1;  
**individual's** [1] 92, 8;  
**individually** [4] 16, 22;  
 49, 16; 49, 17; 64, 13;  
**individuals** [2] 95, 19;  
 129, 13;  
**indulge** [1] 82, 18;  
**ineffective** [1] 164, 20;  
**inferior** [1] 53, 16;  
**inflicted** [2] 54, 14;

63, 12;  
**information** [15] 4, 8;  
 5, 8; 6, 2; 6, 13; 11, 21;  
 15, 3; 15, 6; 15, 7; 15, 9;  
 23, 2; 46, 4; 46, 21;  
 154, 5; 178, 22; 179, 12;  
**initial** [2] 42, 15; 171, 22;  
**initially** [3] 8, 10; 15, 16;  
 95, 6;  
**injure** [2] 39, 13; 52, 4;  
**injured** [2] 17, 21;  
 52, 10;  
**injures** [5] 36, 17; 38, 4;  
 39, 2; 50, 8; 52, 6;  
**injuries** [30] 14, 5;  
 14, 20; 14, 20; 16, 6;  
 26, 19; 29, 20; 30, 1;  
 36, 14; 38, 23; 40, 18;  
 40, 22; 40, 22; 40, 23;  
 44, 3; 44, 18; 44, 21;  
 44, 22; 45, 5; 45, 10;  
 45, 14; 46, 8; 48, 7;  
 48, 14; 49, 12; 49, 13;  
 51, 15; 54, 1; 55, 18;  
 63, 17; 70, 15;  
**injuring** [1] 51, 17;  
**injury** [21] 16, 7; 18, 14;  
 26, 7; 26, 18; 26, 19;  
 35, 23; 35, 24; 36, 15;  
 49, 8; 49, 18; 50, 9;  
 50, 10; 50, 12; 51, 18;  
 53, 4; 53, 25; 65, 2; 73, 3;  
 132, 7; 147, 11; 149, 10;  
**inner** [1] 41, 4;  
**innocent** [3] 142, 13;  
 144, 5; 146, 5;  
**inquest** [1] 46, 12;  
**inquiry** [1] 6, 21;  
**ins** [1] 79, 21;  
**inserted** [1] 23, 20;  
**inside** [6] 27, 6; 40, 11;  
 40, 14; 87, 10; 115, 2;  
 160, 25;  
**insight** [1] 8, 14;  
**insignia** [1] 79, 4;  
**insignias** [1] 111, 8;  
**instance** [3] 16, 24;  
 81, 24; 170, 1;  
**instances** [1] 157, 20;  
**instant** [1] 159, 6;  
**instead** [1] 26, 14;  
**instruct** [2] 80, 2;  
 127, 22;  
**instruction** [1] 162, 8;  
**instructor** [9] 127, 16;  
 127, 21; 128, 5; 128, 9;  
 128, 23; 129, 22; 130, 1;  
 131, 24; 146, 14;

**instructors** [1] 128, 13;  
**intact** [2] 55, 10; 55, 11;  
**intended** [2] 132, 6;  
 147, 22;  
**intending** [1] 5, 5;  
**intense** [1] 140, 15;  
**intent** [2] 140, 17; 146, 3;  
**interaction** [1] 140, 16;  
**interior** [1] 36, 4;  
**intermediate** [2] 140, 24;  
 141, 4;  
**internal** [16] 13, 24;  
 16, 16; 17, 6; 36, 19;  
 45, 5; 47, 17; 47, 20;  
 48, 7; 49, 20; 50, 8;  
 51, 15; 51, 17; 54, 18;  
 55, 17; 55, 18; 55, 20;  
**international** [2] 128, 24;  
 152, 9;  
**internationally** [1]  
 128, 18;  
**interpositioned** [1]  
 64, 16;  
**interrupt** [2] 28, 5;  
 73, 23;  
**intersection** [1] 83, 10;  
**interview** [1] 178, 14;  
**interviewed** [1] 104, 20;  
**intestines** [1] 52, 9;  
**introducing** [1] 175, 3;  
**investigation** [1] 9, 8;  
**investigators** [1] 15, 17;  
**invincible** [1] 59, 13;  
**involve** [1] 43, 1;  
**involved** [8] 13, 22;  
 18, 23; 138, 20; 145, 8;  
 145, 10; 146, 21; 153, 19;  
 167, 8;  
**involves** [2] 14, 3; 61, 8;  
**involving** [1] 159, 6;  
**iphone** [1] 180, 1;  
**irate** [1] 114, 20;  
**island** [3] 13, 6; 19, 2;  
 20, 20;  
**issue** [8] 6, 11; 8, 20;  
 9, 3; 47, 2; 146, 13;  
 159, 11; 174, 13; 175, 7;  
**issued** [3] 79, 19; 95, 25;  
 96, 7;  
**issues** [4] 14, 19; 14, 19;  
 173, 11; 177, 2;  
**item** [1] 5, 18;  
**items** [3] 22, 17; 22, 24;  
 141, 18;  
**itself** [9] 74, 13; 93, 1;  
 100, 3; 142, 24; 143, 2;  
 148, 14; 148, 16; 148, 18;  
 165, 13;

**J**  
**jacket** [41] 23, 8; 23, 8;  
 23, 11; 23, 11; 23, 13;  
 23, 20; 23, 25; 24, 4;  
 24, 14; 24, 23; 25, 5;  
 26, 17; 26, 20; 27, 13;  
 27, 21; 31, 13; 31, 14;  
 31, 14; 31, 22; 32, 20;  
 32, 23; 32, 25; 33, 19;  
 37, 12; 37, 13; 37, 19;  
 37, 20; 37, 21; 42, 19;  
 48, 22; 74, 17; 74, 24;  
 78, 19; 78, 24; 79, 6;  
 82, 3; 88, 18; 98, 12;  
 98, 16; 104, 7; 104, 8;  
**jacket's** [1] 23, 22;  
**jammed** [1] 89, 15;  
**january** [16] 21, 3;  
 24, 23; 34, 16; 76, 23;  
 77, 25; 78, 12; 79, 10;  
 82, 9; 104, 21; 109, 20;  
 110, 11; 110, 16; 111, 18;  
 130, 5; 176, 24; 176, 25;  
**job** [2] 77, 20; 131, 12;  
**joining** [1] 76, 24;  
**joint** [7] 42, 15; 42, 16;  
 42, 17; 42, 18; 42, 21;  
 140, 5; 140, 5;  
**judge** [7] 5, 10; 7, 18;  
 45, 4; 86, 22; 96, 15;  
 153, 17; 177, 4;  
**judged** [2] 132, 18;  
 133, 4;  
**judgment** [1] 172, 17;  
**jugular** [3] 36, 19; 50, 8;  
 51, 17;  
**july** [2] 22, 5; 153, 12;  
**june** [1] 77, 16;  
**jurisdiction** [3] 11, 22;  
 11, 25; 12, 1;  
**jurisdictions** [1] 133, 15;  
**jury** [2] 97, 4; 97, 5;  
**justice** [1] 126, 19;  
**justified** [1] 161, 17;  
  
**K**  
**keep** [3] 111, 23; 156, 10;  
 167, 14;  
**ken** [3] 66, 4; 95, 16;  
 122, 11;  
**kept** [2] 42, 25; 61, 22;  
**key** [1] 79, 15;  
**kicks** [2] 140, 25;  
 156, 20;  
**kidnapping** [1] 112, 4;  
**kidney** [2] 40, 12; 40, 13;

**kill** [1] 147, 4;  
**kilt** [5] 85, 19; 102, 16;  
 103, 12; 107, 24; 108, 8;  
**kim** [4] 69, 10; 102, 11;  
 123, 8; 151, 5;  
**kind** [44] 7, 13; 7, 13;  
 23, 20; 31, 5; 37, 16;  
 38, 13; 41, 10; 43, 10;  
 44, 7; 51, 10; 59, 3;  
 74, 22; 78, 5; 78, 17;  
 78, 22; 80, 7; 86, 5;  
 88, 24; 90, 17; 90, 22;  
 93, 6; 99, 19; 99, 19;  
 104, 7; 105, 5; 105, 7;  
 117, 25; 119, 17; 119, 18;  
 120, 15; 120, 21; 121, 11;  
 123, 21; 146, 18; 156, 8;  
 156, 9; 156, 24; 163, 13;  
 163, 13; 171, 22; 171, 23;  
 176, 5; 179, 6; 179, 12;  
**kinds** [1] 46, 8;  
**kitchen** [2] 85, 11; 95, 3;  
**kitchenway** [1] 85, 12;  
**knee** [2] 44, 12; 141, 1;  
**knees** [1] 74, 25;  
**knew** [1] 161, 9;  
**knife** [61] 84, 22; 84, 24;  
 86, 8; 87, 19; 87, 25;  
 89, 2; 89, 2; 89, 4; 89, 8;  
 90, 3; 90, 4; 90, 8; 90, 10;  
 90, 14; 90, 15; 90, 24;  
 91, 3; 92, 17; 97, 8;  
 97, 20; 98, 12; 99, 6;  
 100, 17; 101, 25; 105, 4;  
 105, 15; 105, 16; 107, 12;  
 107, 15; 116, 16; 116, 19;  
 117, 5; 119, 13; 119, 16;  
 145, 22; 146, 1; 147, 3;  
 147, 4; 148, 7; 148, 8;  
 148, 9; 149, 22; 149, 22;  
 150, 6; 150, 12; 150, 12;  
 156, 7; 159, 7; 159, 22;  
 160, 6; 160, 21; 163, 8;  
 163, 23; 163, 24; 164, 7;  
 164, 8; 165, 18; 165, 25;  
 166, 2; 166, 5; 172, 4;  
**know** [116] 4, 17; 5, 5;  
 6, 11; 6, 13; 7, 1; 7, 7;  
 8, 8; 8, 9; 9, 4; 10, 9;  
 15, 1; 15, 10; 18, 9; 19, 3;  
 20, 4; 21, 17; 26, 7; 26, 9;  
 26, 15; 28, 1; 34, 20;  
 35, 21; 36, 3; 39, 1;  
 41, 12; 42, 23; 44, 5;  
 45, 12; 45, 12; 46, 9;  
 46, 15; 46, 15; 46, 24;  
 51, 5; 51, 7; 51, 11;  
 61, 24; 66, 11; 66, 12;

66, 14; 68, 13; 70, 8;  
70, 11; 72, 1; 74, 22;  
74, 22; 80, 14; 81, 1;  
82, 5; 83, 10; 88, 3; 88, 6;  
90, 21; 92, 17; 92, 25;  
94, 3; 98, 15; 105, 11;  
110, 22; 110, 23; 111, 23;  
112, 20; 112, 25; 113, 1;  
113, 6; 113, 10; 113, 10;  
114, 11; 115, 19; 115, 23;  
115, 25; 116, 7; 116, 15;  
116, 17; 116, 17; 117, 12;  
117, 16; 117, 20; 118, 2;  
118, 17; 119, 22; 120, 6;  
120, 13; 121, 12; 122, 18;  
123, 15; 123, 17; 125, 9;  
125, 10; 133, 12; 137, 18;  
139, 6; 146, 18; 148, 14;  
150, 1; 158, 6; 160, 10;  
161, 20; 163, 6; 163, 16;  
166, 20; 167, 18; 168, 7;  
169, 15; 170, 19; 170, 21;  
170, 24; 174, 4; 174, 6;  
175, 2; 175, 8; 176, 3;  
176, 4; 178, 3; 178, 25;  
179, 6;  
**knowledge** [6] 108, 5;  
108, 9; 119, 23; 130, 11;  
149, 19; 178, 11;  
**knows** [1] 9, 20;  
**knuckle** [1] 43, 9;

## L

**lab** [8] 5, 11; 5, 15;  
5, 18; 61, 19; 177, 20;  
177, 21; 177, 23; 178, 3;  
**label** [1] 36, 10;  
**labeled** [6] 30, 12; 36, 5;  
52, 1; 54, 16; 61, 13;  
62, 18;  
**labeling** [1] 61, 9;  
**laboratory** [2] 12, 15;  
56, 22;  
**landed** [1] 66, 14;  
**language** [3] 151, 21;  
158, 9; 164, 25;  
**large** [4] 37, 16; 38, 23;  
44, 13; 83, 7;  
**larger** [1] 43, 8;  
**last** [18] 8, 23; 8, 25;  
10, 5; 11, 6; 11, 7; 19, 13;  
76, 15; 76, 16; 109, 9;  
109, 12; 126, 1; 126, 3;  
127, 24; 129, 6; 158, 6;  
162, 12; 173, 10; 179, 19;  
**late** [1] 178, 14;  
**later** [6] 15, 19; 29, 1;

91, 14; 114, 14; 115, 2;  
121, 24;  
**lateral** [8] 27, 23; 36, 2;  
36, 8; 39, 16; 39, 19;  
40, 7; 54, 19; 65, 1;  
**launching** [1] 140, 11;  
**law** [13] 15, 8; 21, 20;  
61, 17; 76, 25; 129, 9;  
132, 16; 132, 16; 132, 23;  
133, 18; 133, 22; 134, 9;  
158, 5; 166, 23;  
**layer** [2] 98, 22; 99, 3;  
**layers** [1] 82, 3;  
**lead** [6] 31, 1; 31, 19;  
37, 25; 46, 22; 48, 21;  
130, 1;  
**leading** [1] 161, 19;  
**leads** [1] 54, 3;  
**league** [1] 148, 4;  
**learn** [6] 21, 25; 22, 3;  
22, 7; 92, 8; 114, 15;  
178, 12;  
**learning** [1] 79, 21;  
**least** [9] 6, 20; 9, 13;  
15, 23; 32, 1; 64, 8; 68, 4;  
146, 22; 152, 1; 176, 4;  
**leave** [9] 10, 23; 76, 5;  
82, 23; 94, 14; 95, 1;  
108, 2; 121, 22; 122, 1;  
125, 21;  
**leaves** [3] 31, 12; 41, 15;  
142, 11;  
**leaving** [1] 170, 4;  
**led** [3] 84, 10; 86, 3;  
121, 21;  
**left** [85] 7, 3; 19, 2;  
23, 14; 24, 14; 24, 21;  
27, 7; 29, 19; 31, 4; 31, 9;  
31, 18; 31, 19; 31, 24;  
32, 1; 32, 4; 35, 5; 36, 2;  
36, 16; 36, 24; 36, 25;  
37, 2; 38, 1; 38, 25;  
39, 15; 39, 16; 39, 21;  
39, 25; 40, 6; 40, 6;  
41, 20; 42, 6; 42, 8; 43, 3;  
43, 9; 44, 7; 44, 16;  
44, 19; 48, 3; 49, 25;  
50, 6; 50, 10; 50, 23;  
50, 23; 51, 10; 52, 21;  
52, 25; 53, 9; 53, 11;  
54, 19; 54, 21; 61, 12;  
63, 2; 63, 16; 63, 19;  
63, 20; 64, 15; 65, 3;  
69, 12; 70, 14; 70, 15;  
70, 25; 71, 1; 72, 17;  
72, 18; 73, 14; 74, 8;  
74, 9; 79, 13; 90, 17;  
90, 18; 91, 14; 91, 20;

92, 4; 94, 15; 94, 19;  
95, 2; 100, 10; 100, 11;  
103, 1; 105, 21; 112, 11;  
118, 23; 118, 24; 121, 24;  
122, 1; 161, 13;  
**left-hand** [1] 96, 22;  
**leg** [3] 44, 15; 55, 25;  
162, 15;  
**legal** [2] 14, 19; 146, 11;  
**legs** [2] 30, 19; 53, 23;  
**length** [1] 82, 5;  
**leo** [1] 110, 19;  
**less** [9] 13, 1; 19, 11;  
68, 11; 68, 12; 68, 14;  
112, 16; 121, 8; 121, 24;  
138, 9;  
**less-lethal** [40] 81, 2;  
81, 6; 83, 19; 88, 10;  
89, 11; 91, 19; 96, 9;  
98, 22; 98, 25; 99, 3;  
99, 8; 107, 16; 127, 8;  
143, 3; 143, 8; 143, 13;  
143, 14; 143, 17; 144, 9;  
144, 13; 144, 19; 145, 2;  
145, 6; 145, 7; 145, 11;  
147, 13; 147, 20; 147, 24;  
148, 6; 148, 13; 148, 20;  
148, 23; 149, 11; 163, 21;  
164, 17; 164, 22; 165, 4;  
165, 8; 165, 12; 166, 10;  
**less-lethal-type** [1]  
141, 6;  
**less-than-lethal** [7] 5, 9;  
5, 13; 5, 17; 143, 3;  
143, 4; 143, 7; 174, 1;  
**lessens** [1] 159, 5;  
**lethal** [25] 54, 2; 88, 5;  
91, 15; 99, 4; 101, 12;  
101, 18; 101, 20; 102, 1;  
102, 3; 102, 3; 117, 18;  
136, 1; 136, 6; 136, 10;  
142, 21; 143, 9; 143, 12;  
143, 16; 144, 3; 145, 7;  
145, 12; 147, 8; 147, 13;  
149, 23; 165, 16;  
**letter** [1] 30, 13;  
**letters** [2] 40, 24; 65, 6;  
**level** [69] 32, 25; 38, 2;  
38, 9; 42, 14; 43, 7; 43, 7;  
52, 3; 52, 9; 57, 22;  
57, 25; 58, 5; 58, 16;  
59, 1; 59, 7; 127, 17;  
128, 5; 128, 13; 132, 12;  
133, 5; 135, 23; 135, 23;  
135, 24; 135, 25; 136, 1;  
136, 20; 136, 21; 136, 22;  
136, 23; 136, 25; 137, 1;  
137, 15; 137, 22; 138, 2;

138, 2; 138, 13; 138, 15;  
139, 4; 139, 5; 139, 10;  
139, 11; 139, 13; 139, 14;  
139, 15; 139, 17; 139, 19;  
139, 22; 139, 25; 140, 8;  
140, 12; 140, 14; 140, 15;  
140, 16; 140, 19; 140, 19;  
141, 5; 141, 6; 141, 7;  
141, 7; 141, 8; 141, 9;  
143, 23; 143, 23; 146, 7;  
147, 2; 150, 14; 150, 15;  
151, 17; 159, 6; 165, 22;  
**levels** [12] 58, 17; 59, 5;  
128, 8; 134, 3; 135, 9;  
135, 12; 135, 12; 135, 18;  
135, 21; 136, 16; 136, 18;  
139, 2;  
**license** [6] 12, 9; 13, 4;  
13, 6; 13, 7; 13, 7; 13, 9;  
**licenses** [1] 13, 2;  
**lieutenant** [1] 170, 23;  
**life** [8] 141, 11; 142, 25;  
143, 1; 143, 1; 147, 15;  
165, 10; 165, 10; 165, 12;  
**light** [2] 139, 16; 139, 17;  
**lights** [4] 80, 20; 82, 24;  
83, 3; 110, 22;  
**likely** [4] 39, 18; 42, 9;  
64, 24; 132, 6;  
**lincoln** [9] 82, 17; 85, 23;  
91, 21; 95, 4; 112, 8;  
112, 13; 112, 19; 113, 16;  
179, 24;  
**line** [5] 38, 14; 38, 14;  
43, 14; 114, 12; 153, 17;  
**lined** [1] 73, 12;  
**lines** [2] 44, 6; 73, 10;  
**lining** [1] 23, 23;  
**list** [1] 9, 23;  
**listed** [2] 53, 22; 140, 6;  
**listening** [1] 113, 20;  
**little** [38] 13, 1; 13, 23;  
15, 6; 24, 13; 27, 16;  
27, 17; 28, 11; 29, 1;  
31, 10; 33, 2; 33, 15;  
33, 16; 38, 16; 38, 19;  
39, 19; 41, 16; 43, 1;  
43, 9; 44, 5; 45, 4; 45, 9;  
52, 3; 53, 14; 53, 17;  
63, 15; 65, 13; 66, 9;  
88, 24; 93, 19; 96, 12;  
103, 1; 114, 19; 114, 19;  
118, 1; 118, 19; 119, 11;  
158, 3; 159, 12;  
**little-finger** [1] 43, 5;  
**liver** [15] 38, 5; 38, 6;  
39, 3; 39, 5; 39, 8; 52, 6;  
52, 7; 52, 9; 52, 19;

52, 20; 53, 3; 64, 24; 65, 2; 65, 14; 66, 10; <b>lives</b> [2] 143, 15; 143, 15; <b>living</b> [19] 85, 11; 85, 12; 85, 13; 85, 18; 85, 21; 86, 1; 87, 11; 89, 20; 89, 22; 90, 16; 91, 1; 95, 2; 100, 19; 102, 20; 103, 14; 115, 3; 115, 5; 115, 7; 121, 17; <b>load</b> [5] 162, 19; 162, 22; 163, 2; 163, 2; 163, 6; <b>loaded</b> [2] 163, 3; 163, 4; <b>localized</b> [1] 140, 10; <b>located</b> [6] 4, 16; 7, 11; 7, 11; 66, 6; 97, 10; 146, 23; <b>locating</b> [2] 48, 9; 73, 4; <b>location</b> [6] 4, 11; 61, 4; 78, 8; 97, 7; 112, 6; 159, 5; <b>long</b> [21] 15, 4; 20, 14; 39, 4; 41, 15; 59, 16; 59, 17; 76, 22; 77, 3; 77, 14; 82, 25; 88, 1; 109, 18; 110, 3; 112, 15; 116, 9; 126, 8; 127, 3; 146, 12; 146, 14; 160, 22; 178, 1; <b>look</b> [24] 6, 22; 12, 14; 14, 7; 17, 20; 17, 22; 17, 23; 21, 16; 33, 9; 34, 19; 34, 25; 56, 1; 59, 2; 60, 7; 83, 13; 89, 6; 90, 1; 95, 5; 104, 6; 134, 10; 138, 23; 154, 7; 154, 12; 174, 11; 176, 14; <b>looked</b> [4] 95, 6; 98, 11; 121, 11; 162, 5; <b>looking</b> [15] 8, 2; 12, 12; 12, 14; 12, 14; 14, 19; 34, 14; 55, 5; 56, 2; 81, 14; 90, 19; 134, 3; 137, 21; 137, 25; 176, 3; 178, 3; <b>looks</b> [4] 8, 3; 32, 22; 74, 21; 94, 2; <b>lorazepam</b> [1] 57, 18; <b>loss</b> [4] 51, 20; 51, 21; 54, 3; 165, 11; <b>lost</b> [1] 52, 8; <b>lot</b> [42] 12, 21; 14, 3; 14, 4; 15, 21; 15, 22; 18, 13; 22, 18; 25, 13; 25, 14; 26, 6; 26, 8; 26, 9; 27, 15; 28, 20; 31, 17; 31, 17; 31, 20; 31, 21; 32, 4; 43, 3; 48, 22; 49, 5;	49, 6; 50, 1; 51, 20; 53, 6; 54, 4; 58, 8; 59, 16; 65, 20; 83, 8; 149, 5; 149, 9; 151, 14; 152, 13; 152, 16; 159, 24; 159, 24; 163, 18; 163, 20; 166, 21; 166, 24; <b>lots</b> [3] 15, 3; 15, 3; 71, 12; <b>low</b> [3] 57, 22; 139, 15; 165, 22; <b>low-ready</b> [1] 118, 14; <b>lowell</b> [2] 130, 1; 169, 22; <b>lower</b> [13] 19, 14; 32, 1; 37, 15; 40, 5; 40, 5; 44, 15; 52, 19; 52, 20; 59, 5; 64, 23; 80, 22; 155, 19; 155, 20; <b>lowering</b> [1] 158, 8; <b>lowest</b> [2] 27, 22; 137, 24; <b>lumbar</b> [3] 40, 17; 54, 23; 55, 1; <b>lung</b> [8] 37, 2; 38, 4; 39, 2; 50, 10; 52, 5; 52, 18; 53, 2; 65, 2;  <b>M</b>  <b>m.e.</b> [2] 10, 7; 173, 19; <b>made</b> [24] 26, 6; 26, 7; 29, 18; 37, 10; 40, 1; 42, 9; 46, 16; 63, 17; 63, 19; 63, 20; 63, 23; 64, 3; 66, 15; 82, 24; 85, 21; 93, 6; 95, 6; 104, 18; 107, 4; 119, 11; 119, 17; 119, 18; 131, 8; 163, 9; <b>magazine</b> [1] 79, 14; <b>magazines</b> [1] 111, 16; <b>mags</b> [1] 111, 15; <b>main</b> [11] 27, 8; 29, 3; 30, 25; 37, 23; 37, 25; 48, 24; 49, 25; 85, 13; 86, 3; 87, 11; 116, 18; <b>maintained</b> [1] 92, 18; <b>maintenance</b> [2] 178, 17; 178, 19; <b>major</b> [2] 17, 13; 148, 3; <b>make</b> [27] 6, 21; 14, 25; 16, 7; 16, 14; 16, 24; 18, 8; 18, 10; 43, 3; 46, 17; 50, 17; 73, 13; 73, 13; 73, 23; 74, 15; 77, 20; 87, 24; 93, 19; 118, 4; 121, 18; 134, 16; 137, 15; 150, 8; 155, 19;	155, 24; 156, 10; 167, 4; 171, 9; <b>makes</b> [4] 18, 3; 18, 5; 55, 14; 59, 13; <b>making</b> [4] 14, 24; 16, 10; 101, 25; 132, 24; <b>malfunctioned</b> [4] 89, 15; 90, 12; 99, 17; 117, 23; <b>malfunctioning</b> [1] 102, 22; <b>man</b> [1] 103, 12; <b>manages</b> [1] 50, 7; <b>manipulations</b> [1] 140, 5; <b>manner</b> [2] 11, 21; 14, 12; <b>mansfield</b> [4] 77, 2; 77, 4; 95, 20; 95, 23; <b>many</b> [27] 14, 15; 16, 11; 18, 16; 18, 23; 19, 7; 20, 4; 20, 13; 23, 16; 30, 2; 32, 18; 58, 24; 63, 12; 63, 15; 63, 17; 102, 14; 105, 19; 110, 8; 119, 22; 119, 24; 128, 8; 128, 13; 128, 15; 142, 14; 157, 20; 159, 5; 167, 23; 176, 5; <b>mark</b> [1] 44, 9; <b>marked</b> [24] 25, 3; 25, 5; 29, 10; 30, 4; 30, 7; 30, 8; 35, 13; 35, 18; 35, 19; 57, 1; 57, 3; 57, 6; 60, 15; 60, 16; 60, 17; 60, 24; 78, 13; 86, 15; 93, 15; 93, 17; 94, 11; 94, 12; 110, 25; 169, 9; <b>marking</b> [1] 93, 21; <b>marrow</b> [1] 12, 15; <b>marzilli</b> [2] 97, 23; 97, 25; <b>mask</b> [5] 10, 24; 76, 6; 108, 21; 125, 21; 152, 18; <b>mass</b> [7] 96, 2; 96, 4; 142, 1; 142, 2; 142, 8; 169, 21; 179, 25; <b>massachusetts</b> [24] 11, 12; 13, 10; 15, 21; 16, 2; 19, 1; 19, 16; 20, 13; 20, 18; 20, 19; 56, 22; 76, 21; 109, 17; 109, 18; 109, 22; 128, 7; 128, 13; 128, 17; 129, 9; 129, 20; 133, 23; 152, 14; 162, 21; 167, 7; 167, 14; <b>massachusetts's</b> [1] 13, 1; <b>master</b> [1] 128, 23; <b>mat</b> [1] 87, 6; <b>matches</b> [3] 15, 14;	15, 14; 56, 19; <b>matrix</b> [1] 171, 8; <b>matter</b> [1] 122, 12; <b>maybe</b> [36] 5, 2; 8, 4; 54, 12; 57, 16; 88, 3; 91, 13; 103, 1; 103, 8; 103, 18; 110, 4; 112, 3; 112, 8; 113, 18; 114, 5; 115, 2; 115, 7; 116, 7; 116, 10; 116, 10; 118, 17; 118, 18; 118, 23; 119, 25; 119, 25; 121, 8; 121, 8; 121, 20; 121, 24; 123, 24; 128, 14; 130, 13; 153, 18; 161, 21; 166, 10; 169, 7; 175, 10; <b>medonald</b> [6] 65, 24; 101, 6; 101, 7; 123, 1; 172, 11; 179, 1; <b>mean</b> [33] 19, 8; 26, 13; 45, 9; 46, 20; 51, 17; 54, 1; 63, 14; 64, 24; 66, 8; 68, 9; 68, 13; 68, 14; 70, 7; 71, 13; 73, 9; 74, 20; 74, 21; 74, 21; 81, 23; 101, 14; 105, 13; 106, 6; 106, 8; 115, 8; 118, 20; 138, 2; 138, 6; 147, 8; 155, 4; 159, 14; 159, 18; 159, 18; 162, 1; <b>meaning</b> [3] 94, 23; 125, 4; 137, 23; <b>means</b> [16] 6, 15; 13, 18; 33, 23; 33, 25; 106, 13; 106, 14; 117, 23; 131, 2; 133, 8; 133, 10; 147, 9; 155, 10; 158, 4; 159, 13; 159, 24; 168, 3; <b>meantime</b> [1] 177, 25; <b>measure</b> [1] 97, 2; <b>measured</b> [4] 54, 11; 96, 15; 96, 24; 97, 3; <b>mechanics</b> [2] 67, 4; 149, 11; <b>medical</b> [29] 10, 3; 11, 13; 11, 13; 11, 15; 11, 17; 11, 18; 11, 22; 12, 6; 12, 10; 12, 16; 12, 18; 12, 20; 12, 24; 15, 15; 16, 4; 18, 1; 18, 3; 18, 13; 20, 1; 21, 8; 22, 17; 22, 25; 25, 13; 25, 14; 25, 15; 58, 14; 59, 20; 60, 17; 64, 25; <b>medication</b> [1] 57, 17; <b>medicine</b> [2] 12, 9; 13, 9; <b>meet</b> [1] 102, 14;
--	---	---	--

<b>meeting</b> [2] 98, 21; 179, 11;	<b>millbury</b> [2] 77, 8; 77, 18;	122, 10; 145, 18; 173, 25;	95, 16; 101, 7; 109, 8;
<b>member</b> [3] 129, 15; 130, 6; 152, 13;	<b>milliliter</b> [1] 58, 3;	<b>most</b> [20] 10, 20; 15, 21; 15, 22; 19, 25; 27, 21;	109, 9; 109, 12; 109, 12;
<b>members</b> [2] 169, 15; 169, 18;	<b>milliliters</b> [1] 53, 10;	31, 12; 39, 12; 45, 2;	114, 15; 119, 20; 125, 25;
<b>memory</b> [1] 7, 19;	<b>million</b> [2] 12, 25; 12, 25;	50, 9; 68, 2; 68, 17;	126, 1; 126, 2; 126, 3;
<b>mental</b> [1] 151, 25;	<b>mind</b> [4] 14, 13; 18, 10; 168, 13; 168, 14;	108, 24; 125, 19; 130, 18;	<b>name's</b> [7] 66, 4; 69, 10;
<b>mentioned</b> [6] 101, 10; 151, 8; 156, 16; 159, 12;	<b>mindful</b> [2] 145, 25; 146, 2;	138, 7; 138, 7; 141, 16;	76, 16; 102, 11; 122, 11;
167, 22; 178, 15;	<b>mindset</b> [2] 138, 9; 138, 13;	146, 19; 149, 15; 165, 10;	123, 8; 151, 5;
<b>mentions</b> [1] 159, 11;	<b>minimal</b> [2] 44, 24; 138, 7;	<b>mostly</b> [4] 14, 15; 17, 8; 54, 8; 127, 7;	<b>named</b> [1] 97, 23;
<b>merrimack</b> [2] 130, 2; 130, 3;	<b>minimally</b> [1] 39, 23;	<b>motor</b> [4] 58, 22; 77, 21; 80, 8; 138, 17;	<b>names</b> [2] 105, 10; 166, 16;
<b>met</b> [3] 9, 7; 102, 15; 139, 24;	<b>minimum</b> [1] 64, 11;	<b>move</b> [6] 47, 14; 67, 17; 75, 24; 136, 11; 159, 5;	<b>nanograms</b> [1] 58, 3;
<b>metal</b> [2] 30, 23; 42, 19;	<b>minneapolis</b> [2] 167, 3; 167, 9;	168, 23;	<b>narrow</b> [1] 163, 9;
<b>meth</b> [2] 66, 19; 66, 22;	<b>minor</b> [1] 44, 18;	<b>moved</b> [5] 25, 8; 31, 21; 99, 22; 99, 24; 178, 18;	<b>national</b> [3] 128, 20; 153, 10; 167, 4;
<b>methamphetamine</b> [11] 57, 20; 57, 22; 57, 23;	<b>minute</b> [6] 46, 5; 63, 2; 92, 2; 121, 8; 121, 24; 138, 3;	<b>movement</b> [2] 166, 24; 167, 4;	<b>natural</b> [1] 50, 21;
57, 24; 58, 6; 58, 8;	<b>minutes</b> [18] 54, 9; 54, 11; 54, 12; 83, 2;	<b>moving</b> [4] 138, 18; 154, 25; 176, 13; 178, 4;	<b>naturally</b> [1] 90, 23;
58, 10; 58, 13; 58, 21; 59, 4; 66, 18;	88, 3; 88, 4; 94, 21; 94, 22; 102, 14; 111, 22;	<b>moynihan</b> [6] 9, 12; 9, 16; 10, 8; 47, 11; 75, 16; 75, 22;	<b>nature</b> [2] 42, 24; 128, 9;
<b>method</b> [1] 143, 20;	112, 16; 112, 17; 113, 2; 115, 2; 116, 10; 123, 10;	<b>much</b> [38] 15, 2; 31, 16; 35, 5; 36, 18; 39, 1;	<b>near</b> [4] 31, 24; 36, 3; 39, 9; 63, 4;
<b>methods</b> [1] 133, 21;	148, 17; 171, 18;	39, 23; 40, 5; 41, 25;	<b>nearby</b> [1] 111, 24;
<b>methuen</b> [2] 169, 22; 169, 22;	<b>mirrored</b> [1] 154, 2;	46, 7; 47, 24; 50, 5;	<b>nearly</b> [1] 55, 14;
<b>michael</b> [15] 21, 4; 21, 25; 59, 21; 60, 5;	<b>misconceptions</b> [1] 168, 1;	52, 21; 53, 7; 53, 11;	<b>necessarily</b> [3] 27, 20; 54, 3; 168, 21;
92, 8; 114, 15; 114, 17;	<b>missed</b> [1] 63, 8;	53, 24; 59, 4; 59, 17;	<b>necessary</b> [1] 154, 19;
115, 18; 116, 3; 116, 6;	<b>missing</b> [1] 178, 7;	72, 17; 94, 19; 108, 14;	<b>neck</b> [27] 32, 16; 32, 17; 32, 21; 33, 14; 33, 17;
117, 24; 119, 21; 121, 3; 121, 9; 179, 23;	<b>mit</b> [1] 12, 4;	110, 20; 111, 24; 112, 5;	34, 15; 35, 8; 35, 16;
<b>microscopic</b> [4] 11, 20; 13, 24; 17, 22; 17, 22;	<b>mitigate</b> [3] 143, 5; 145, 3; 151, 17;	112, 25; 113, 19; 114, 22;	35, 18; 35, 19; 35, 23;
<b>mid</b> [3] 24, 15; 41, 5; 41, 5;	<b>model</b> [11] 132, 21; 133, 25; 134, 1; 134, 2;	121, 1; 121, 3; 121, 3;	36, 18; 48, 3; 50, 6; 50, 9;
<b>mid-shift</b> [1] 110, 17;	134, 4; 135, 5; 135, 10;	121, 11; 121, 17; 121, 21;	50, 13; 50, 19; 50, 22;
<b>mid-thigh-ish</b> [1] 74, 22;	135, 12; 135, 17; 166, 18;	121, 25; 123, 15; 146, 4;	50, 22; 51, 11; 66, 24;
<b>midaxillary</b> [1] 38, 14;	167, 5;	146, 15; 154, 1; 173, 6;	68, 3; 71, 20; 71, 21;
<b>middle</b> [1] 42, 17;	<b>models</b> [3] 166, 14; 166, 25; 167, 5;	<b>muffled</b> [1] 114, 19;	72, 8; 87, 20; 90, 4;
<b>middlesex</b> [2] 78, 6; 129, 11;	<b>moment</b> [8] 45, 19; 104, 11; 106, 10; 150, 19;	<b>multiple</b> [9] 23, 16; 37, 24; 42, 8; 45, 13;	<b>necropsy</b> [1] 13, 19;
<b>midline</b> [4] 48, 23; 49, 2; 50, 7; 52, 25;	165, 3; 165, 19; 165, 21; 174, 3;	57, 9; 59, 24; 82, 3;	<b>need</b> [22] 11, 25; 19, 19; 21, 16; 35, 21; 46, 4;
<b>midpoint</b> [1] 23, 21;	<b>monaghan</b> [1] 75, 18;	144, 10; 149, 12;	46, 25; 55, 13; 77, 23;
<b>might</b> [32] 6, 22; 10, 9; 15, 5; 17, 17; 19, 12;	<b>monday</b> [2] 18, 4; 96, 14;	<b>muscle</b> [2] 36, 17; 36, 18;	82, 6; 110, 24; 131, 4;
28, 5; 46, 13; 56, 4; 64, 16; 73, 7; 73, 20;	<b>month</b> [1] 9, 7;	<b>must</b> [1] 37, 13;	143, 5; 145, 4; 151, 17;
106, 17; 106, 19; 111, 21;	<b>months</b> [1] 110, 4;	<b>muzzle</b> [2] 33, 23; 34, 3;	157, 20; 159, 10; 164, 20;
113, 1; 115, 11; 118, 17;	<b>moot</b> [1] 178, 22;	<b>myself</b> [9] 14, 2; 16, 9; 75, 1; 89, 10; 113, 24;	164, 25; 165, 1; 172, 23;
118, 18; 119, 13; 119, 14;	<b>morning</b> [22] 4, 6; 8, 24; 9, 2; 9, 11; 9, 14; 10, 4;	115, 10; 115, 12; 145, 6;	173, 11; 179, 11;
123, 15; 125, 5; 130, 16;	11, 3; 11, 4; 18, 4; 69, 10;	146, 14;	<b>needed</b> [3] 91, 25; 93, 7; 169, 7;
131, 4; 148, 17; 159, 18;	76, 5; 95, 16; 96, 14;	<b>N</b>	<b>needs</b> [1] 53, 14;
161, 22; 165, 17; 168, 9;	102, 11; 108, 19; 108, 20;	<b>naked</b> [1] 17, 24;	<b>negotiate</b> [1] 88, 25;
169, 23; 174, 10; 176, 22;	109, 6; 109, 7; 122, 9;	<b>name</b> [27] 9, 12; 11, 5; 11, 6; 11, 7; 11, 7; 15, 14;	<b>negotiating</b> [2] 107, 13; 158, 15;
<b>miles</b> [2] 82, 22; 110, 2;		21, 4; 21, 17; 66, 19;	<b>negotiation</b> [2] 172, 14; 172, 19;
		75, 17; 76, 14; 76, 15;	<b>negotiator</b> [14] 86, 6; 87, 22; 97, 15; 102, 25;
		76, 16; 83, 16; 92, 8;	103, 9; 103, 19; 106, 20;

130, 7; 130, 11; 130, 19;  
130, 22; 157, 9; 157, 10;  
169, 14; 170, 22; 170, 24;  
**neuromuscular** [3] 81, 3;  
81, 5; 82, 7;  
**neuropathologist** [2]  
20, 25; 21, 2;  
**neuropathology** [3]  
12, 21; 12, 21; 13, 15;  
**never** [2] 153, 22; 167, 7;  
**new** [3] 79, 20; 124, 8;  
130, 3;  
**newton** [72] 4, 18;  
82, 17; 83, 13; 83, 14;  
83, 15; 84, 2; 84, 7;  
84, 16; 85, 17; 85, 18;  
86, 5; 86, 10; 86, 18;  
87, 1; 87, 16; 87, 18;  
87, 22; 87, 24; 88, 7;  
88, 13; 88, 25; 89, 2;  
89, 6; 89, 7; 89, 13;  
89, 25; 90, 25; 91, 14;  
91, 20; 92, 25; 95, 17;  
98, 8; 100, 10; 101, 8;  
101, 10; 105, 5; 105, 9;  
105, 21; 105, 22; 112, 8;  
112, 13; 112, 21; 113, 4;  
113, 6; 113, 10; 113, 24;  
113, 24; 114, 5; 114, 21;  
115, 9; 115, 12; 115, 17;  
117, 4; 117, 9; 121, 6;  
121, 12; 124, 4; 124, 14;  
130, 6; 130, 14; 130, 15;  
147, 20; 149, 14; 152, 4;  
154, 4; 154, 5; 162, 6;  
169, 17; 170, 23; 171, 18;  
177, 22; 179, 24;  
**nice** [3] 26, 15; 38, 17;  
38, 19;  
**night** [5] 8, 23; 8, 25;  
61, 10; 178, 12; 178, 14;  
**nights** [1] 127, 12;  
**nine** [1] 64, 4;  
**nipple** [2] 37, 15; 38, 2;  
**non-deadly-force** [1]  
162, 18;  
**non-gunshot-wound** [1]  
30, 1;  
**noncompliance** [1]  
139, 24;  
**noncompliant** [5]  
139, 24; 164, 21; 165, 1;  
165, 19; 165, 21;  
**nonlethal** [4] 117, 13;  
123, 18; 142, 21; 142, 23;  
**nonverbally** [1] 154, 15;  
**north** [2] 126, 13; 171, 5;  
**northeast** [2] 129, 9;

169, 21;  
**northern** [1] 130, 3;  
**nose** [3] 49, 6; 54, 4;  
54, 10;  
**note** [1] 44, 2;  
**noted** [1] 66, 23;  
**notes** [2] 17, 2; 29, 5;  
**nothing** [11] 7, 10; 69, 1;  
75, 7; 107, 2; 107, 7;  
107, 19; 107, 21; 122, 3;  
124, 21; 158, 21; 172, 8;  
**notice** [2] 19, 23; 30, 12;  
**notified** [2] 9, 7; 47, 10;  
**notifying** [1] 170, 25;  
**notwithstanding** [1]  
159, 10;  
**nowadays** [1] 167, 21;  
**number** [7] 18, 22;  
19, 17; 61, 11; 71, 18;  
142, 16; 146, 8; 171, 25;  
  
**O**  
  
**o'clock** [2] 170, 2;  
176, 16;  
**object** [5] 72, 22; 73, 3;  
153, 17; 169, 1; 169, 3;  
**objection** [1] 76, 1;  
**objective** [1] 116, 19;  
**objectively** [3] 133, 9;  
133, 10; 133, 10;  
**oblique** [7] 24, 13;  
27, 11; 27, 12; 31, 12;  
38, 25; 41, 6; 41, 15;  
**obliquely** [2] 41, 14;  
50, 3;  
**observation** [2] 37, 10;  
40, 1;  
**observations** [2] 95, 7;  
121, 18;  
**observe** [5] 29, 7; 32, 12;  
38, 8; 83, 5; 115, 13;  
**observed** [7] 22, 15;  
26, 4; 27, 4; 28, 8; 40, 19;  
48, 7; 87, 15;  
**observing** [1] 101, 23;  
**obvious** [1] 51, 22;  
**obviously** [6] 6, 11;  
63, 22; 94, 15; 114, 3;  
116, 22; 176, 12;  
**oc** [2] 79, 14; 111, 15;  
**occasions** [1] 162, 11;  
**occupationally** [1]  
138, 11;  
**occur** [2] 66, 8; 111, 25;  
**occurred** [8] 66, 7;  
82, 14; 116, 20; 178, 14;  
178, 15; 179, 23; 179, 24;

180, 4;  
**odds** [1] 106, 15;  
**off** [22] 10, 24; 26, 17;  
27, 14; 32, 23; 76, 6;  
76, 8; 78, 9; 83, 10;  
83, 11; 83, 25; 89, 15;  
89, 17; 100, 11; 110, 23;  
130, 12; 155, 1; 155, 4;  
156, 21; 159, 16; 170, 17;  
170, 20; 176, 15;  
**offer** [2] 5, 5; 46, 10;  
**offered** [1] 8, 2;  
**offering** [1] 46, 13;  
**office** [11] 11, 13; 11, 13;  
11, 15; 11, 23; 12, 16;  
12, 23; 17, 25; 22, 17;  
22, 25; 28, 20; 91, 24;  
**officer** [82] 9, 20; 10, 6;  
47, 11; 77, 1; 77, 3;  
85, 18; 85, 20; 86, 5;  
86, 10; 86, 19; 87, 1;  
87, 16; 87, 19; 87, 22;  
88, 13; 88, 25; 89, 25;  
91, 14; 91, 21; 92, 4;  
95, 21; 95, 24; 97, 4;  
97, 9; 97, 15; 100, 10;  
105, 21; 105, 22; 107, 13;  
108, 6; 113, 10; 114, 21;  
115, 17; 117, 4; 117, 10;  
117, 24; 118, 7; 118, 8;  
125, 16; 125, 23; 126, 17;  
126, 20; 129, 2; 130, 13;  
132, 8; 133, 4; 133, 8;  
134, 22; 135, 1; 136, 7;  
137, 15; 138, 11; 138, 21;  
141, 10; 141, 10; 141, 12;  
141, 22; 144, 5; 145, 16;  
145, 19; 146, 16; 147, 6;  
148, 13; 148, 21; 151, 1;  
158, 15; 158, 24; 160, 6;  
160, 8; 160, 23; 160, 25;  
161, 11; 161, 11; 161, 13;  
161, 15; 164, 21; 168, 17;  
169, 12; 172, 10; 172, 20;  
172, 22; 174, 22;  
**officer's** [9] 87, 25;  
119, 20; 134, 18; 134, 25;  
135, 22; 137, 3; 155, 19;  
155, 21; 168, 14;  
**officer-involved** [1]  
58, 23;  
**officers** [62] 8, 11;  
21, 21; 21, 22; 83, 14;  
84, 16; 85, 15; 92, 5;  
92, 25; 95, 17; 95, 25;  
101, 11; 105, 5; 105, 9;  
113, 6; 113, 25; 115, 12;  
116, 12; 118, 21; 119, 22;

122, 12; 127, 2; 127, 5;  
128, 15; 128, 24; 128, 25;  
130, 13; 130, 20; 131, 1;  
131, 5; 131, 21; 132, 21;  
133, 2; 133, 18; 134, 2;  
134, 8; 137, 5; 139, 8;  
141, 25; 142, 10; 142, 14;  
142, 19; 143, 15; 145, 21;  
146, 6; 146, 11; 146, 18;  
146, 19; 146, 23; 150, 9;  
157, 18; 157, 21; 159, 5;  
159, 8; 159, 19; 165, 9;  
166, 25; 167, 11; 167, 23;  
169, 23; 174, 21; 178, 21;  
179, 2;  
**offsite** [1] 131, 14;  
**often** [3] 19, 1; 147, 12;  
172, 2;  
**okstein** [1] 179, 13;  
**old** [1] 22, 3;  
**older** [2] 44, 9; 44, 13;  
**olive** [1] 23, 7;  
**once** [8] 18, 5; 88, 7;  
90, 3; 115, 7; 136, 13;  
149, 4; 149, 8; 172, 1;  
**one** [100] 18, 6; 24, 21;  
26, 7; 26, 21; 27, 7; 28, 2;  
29, 10; 29, 25; 30, 4;  
30, 22; 31, 12; 33, 1;  
33, 1; 33, 14; 37, 11;  
41, 10; 42, 15; 42, 15;  
43, 4; 43, 4; 43, 6; 43, 20;  
44, 18; 46, 17; 47, 2;  
52, 12; 52, 24; 53, 8;  
53, 8; 53, 9; 53, 19;  
54, 25; 55, 16; 56, 5;  
57, 16; 61, 8; 61, 11;  
62, 2; 62, 17; 63, 19;  
64, 1; 64, 9; 64, 16;  
64, 20; 64, 21; 64, 23;  
65, 2; 65, 7; 65, 12;  
65, 16; 66, 14; 71, 12;  
73, 13; 74, 12; 74, 22;  
77, 5; 81, 16; 81, 16;  
81, 24; 84, 16; 85, 17;  
90, 1; 93, 25; 94, 9; 96, 7;  
102, 15; 102, 16; 117, 7;  
119, 23; 122, 6; 123, 23;  
123, 24; 128, 12; 129, 17;  
130, 13; 130, 17; 130, 17;  
149, 13; 155, 11; 155, 17;  
160, 21; 161, 7; 161, 11;  
162, 12; 162, 25; 163, 15;  
163, 22; 165, 25; 166, 1;  
167, 10; 167, 24; 170, 1;  
170, 2; 171, 3; 171, 3;  
171, 4; 173, 15; 174, 19;  
175, 7; 178, 21;



ones [12] 23, 17; 28, 11;  
40, 25; 42, 6; 43, 20;  
63, 1; 63, 16; 63, 25;  
64, 5; 65, 17; 80, 8;  
129, 25;  
ongoing [3] 165, 14;  
165, 15; 166, 21;  
only [25] 20, 10; 47, 2;  
51, 8; 54, 1; 61, 8; 67, 15;  
67, 15; 82, 21; 83, 25;  
90, 1; 90, 3; 95, 5; 95, 5;  
95, 25; 113, 1; 113, 15;  
115, 11; 117, 7; 118, 12;  
119, 1; 119, 23; 123, 17;  
130, 13; 133, 9; 142, 5;  
onset [1] 53, 25;  
open [7] 6, 16; 37, 13;  
37, 19; 37, 19; 63, 3;  
103, 15; 175, 8;  
opened [1] 85, 12;  
operate [1] 7, 8;  
operates [1] 80, 25;  
operating [3] 101, 11;  
135, 3; 137, 10;  
operation [2] 6, 2; 98, 6;  
opinion [3] 59, 19;  
59, 23; 105, 1;  
opportunity [10] 20, 2;  
142, 24; 143, 2; 148, 14;  
148, 16; 148, 18; 148, 20;  
157, 7; 164, 14; 165, 13;  
opposed [1] 13, 19;  
option [16] 98, 22;  
98, 24; 99, 4; 101, 12;  
102, 1; 102, 3; 134, 9;  
143, 17; 143, 17; 144, 9;  
144, 11; 144, 21; 144, 25;  
145, 11; 145, 12; 149, 1;  
options [5] 145, 8;  
145, 8; 154, 17; 159, 9;  
165, 8;  
order [10] 10, 2; 32, 14;  
54, 13; 66, 7; 75, 14;  
81, 2; 82, 7; 127, 23;  
134, 8; 154, 6;  
orders [1] 105, 7;  
organization [1] 153, 4;  
organs [6] 16, 22; 17, 14;  
17, 21; 48, 7; 49, 20;  
54, 18;  
originally [1] 88, 5;  
other [58] 18, 6; 21, 10;  
21, 10; 26, 24; 27, 25;  
31, 2; 31, 3; 31, 23;  
31, 23; 32, 10; 33, 5;  
33, 5; 36, 14; 37, 11;  
37, 18; 43, 25; 44, 3;  
44, 21; 47, 25; 48, 22;

54, 5; 55, 18; 61, 21;  
76, 24; 77, 22; 79, 23;  
81, 21; 85, 15; 85, 17;  
88, 6; 88, 7; 90, 8; 92, 5;  
95, 19; 96, 25; 106, 15;  
108, 6; 108, 8; 115, 12;  
118, 21; 120, 3; 121, 19;  
129, 3; 129, 19; 129, 22;  
131, 4; 133, 15; 141, 18;  
143, 15; 146, 5; 163, 1;  
169, 15; 169, 18; 171, 22;  
172, 13; 172, 24; 177, 2;  
179, 16;  
others [4] 65, 16;  
143, 25; 147, 18; 159, 10;  
otherwise [2] 9, 13;  
24, 25;  
outer [5] 41, 3; 41, 3;  
42, 1; 42, 3; 73, 15;  
outs [1] 79, 21;  
outside [5] 40, 11; 83, 7;  
97, 15; 112, 21; 121, 25;  
outward [1] 91, 10;  
outwardly [1] 91, 9;  
outwards [1] 91, 4;  
over [29] 9, 7; 15, 10;  
16, 18; 18, 18; 38, 22;  
39, 25; 42, 21; 44, 4;  
44, 14; 57, 17; 59, 2;  
61, 17; 61, 20; 62, 13;  
67, 15; 71, 17; 78, 24;  
96, 22; 101, 1; 114, 3;  
127, 24; 128, 19; 130, 9;  
138, 17; 138, 19; 150, 12;  
158, 5; 160, 17; 173, 12;  
overheard [1] 82, 16;  
oversee [1] 126, 25;  
overseeing [1] 110, 20;  
own [1] 73, 22;

## P

page [12] 48, 8; 53, 19;  
137, 17; 147, 21; 148, 1;  
148, 2; 153, 14; 153, 15;  
157, 12; 159, 3; 164, 16;  
166, 13;  
paid [4] 78, 4; 78, 5;  
78, 12; 82, 12;  
pain [4] 140, 3; 140, 5;  
140, 10; 140, 12;  
pain-compliance [1]  
140, 6;  
pair [2] 23, 9; 23, 10;  
palm [2] 42, 13; 43, 24;  
paper [1] 153, 11;  
paramedics [1] 15, 24;  
parietal [1] 27, 9;

park [1] 131, 11;  
parking [1] 131, 14;  
parkway [1] 110, 19;  
part [24] 14, 8; 14, 8;  
15, 24; 21, 25; 25, 24;  
26, 1; 27, 8; 27, 22; 29, 3;  
31, 1; 31, 19; 32, 1;  
32, 22; 45, 24; 55, 21;  
56, 23; 122, 16; 125, 3;  
133, 17; 134, 11; 134, 18;  
157, 12; 169, 14; 169, 21;  
partial [4] 30, 20; 30, 24;  
31, 15; 43, 7;  
participants [1] 153, 21;  
particular [7] 34, 12;  
34, 12; 35, 24; 50, 12;  
51, 14; 116, 13; 132, 23;  
particularly [4] 17, 7;  
62, 21; 66, 8; 106, 5;  
parties [1] 66, 5;  
partly [1] 30, 23;  
parts [1] 26, 25;  
party [1] 114, 14;  
pass [2] 42, 9; 50, 7;  
passed [1] 53, 24;  
passes [4] 36, 21; 39, 10;  
40, 9; 54, 19;  
passing [1] 39, 21;  
passive [1] 136, 21;  
past [2] 136, 9; 154, 3;  
patches [1] 111, 9;  
path [14] 17, 20; 27, 20;  
38, 25; 39, 4; 47, 20;  
48, 6; 48, 17; 50, 5;  
50, 12; 50, 18; 51, 15;  
51, 25; 54, 17; 71, 14;  
pathologist [5] 11, 17;  
12, 3; 20, 1; 20, 22;  
33, 22;  
pathology [7] 12, 12;  
12, 13; 12, 22; 13, 15;  
13, 15; 13, 16; 14, 4;  
paths [6] 16, 25; 17, 15;  
17, 19; 32, 5; 47, 25;  
48, 18;  
patrol [5] 109, 23;  
110, 8; 127, 12; 150, 9;  
158, 13;  
patrolman [1] 114, 6;  
pattern [2] 37, 24;  
67, 14;  
patterns [2] 14, 5;  
14, 19;  
pause [5] 47, 7; 56, 3;  
108, 17; 125, 15; 150, 20;  
peek [1] 87, 17;  
penetrate [2] 98, 16;  
104, 10;

penetrating [2] 27, 6;  
150, 7;  
people [40] 11, 20;  
11, 22; 12, 25; 12, 25;  
14, 13; 15, 22; 39, 18;  
45, 2; 58, 17; 58, 17;  
58, 18; 58, 19; 59, 13;  
59, 16; 61, 19; 122, 18;  
133, 23; 139, 6; 139, 7;  
141, 17; 144, 2; 144, 5;  
146, 9; 147, 4; 149, 3;  
149, 5; 158, 9; 159, 24;  
163, 2; 163, 2; 163, 3;  
163, 3; 163, 14; 167, 25;  
168, 1; 169, 19; 170, 9;  
170, 11; 170, 25; 171, 17;  
people's [1] 143, 15;  
pepper [4] 140, 6;  
143, 18; 143, 20; 143, 25;  
per [2] 58, 3; 145, 22;  
perceived [2] 134, 10;  
134, 12;  
percent [3] 58, 20;  
58, 22; 58, 23;  
perception [8] 135, 19;  
135, 20; 136, 2; 136, 3;  
137, 2; 138, 10; 138, 10;  
147, 9;  
perfect [3] 47, 13; 47, 15;  
177, 17;  
perforate [4] 39, 13;  
42, 10; 43, 17; 43, 19;  
perforated [1] 24, 4;  
perforates [5] 38, 5;  
40, 15; 42, 14; 42, 17;  
53, 2;  
perforating [5] 41, 21;  
42, 20; 54, 21; 63, 20;  
71, 3;  
perforation [1] 44, 8;  
perforations [2] 23, 16;  
48, 25;  
perform [1] 11, 18;  
performed [1] 55, 22;  
perhaps [6] 6, 21; 8, 10;  
13, 25; 161, 22; 175, 11;  
176, 14;  
peril [2] 141, 11; 143, 15;  
perpendicular [1] 24, 18;  
person [39] 13, 19;  
14, 25; 15, 10; 15, 13;  
21, 10; 34, 5; 58, 6;  
59, 12; 86, 13; 100, 8;  
119, 1; 134, 13; 137, 8;  
139, 23; 140, 10; 141, 13;  
142, 9; 142, 13; 146, 15;  
147, 17; 148, 18; 151, 22;  
158, 16; 158, 17; 158, 17;

160, 21; 161, 23; 162, 2;  
162, 12; 163, 11; 163, 19;  
164, 14; 165, 11; 165, 16;  
165, 16; 168, 5; 168, 7;  
168, 8; 172, 5;  
**person's** [2] 71, 6;  
146, 3;  
**personal** [3] 140, 24;  
140, 25; 141, 3;  
**personally** [1] 124, 16;  
**personnel** [3] 112, 22;  
112, 22; 115, 8;  
**persons** [2] 21, 10;  
146, 5;  
**perspective** [1] 172, 20;  
**persuasion** [1] 154, 21;  
**petaled-out** [1] 39, 24;  
**phone** [5] 87, 21; 87, 24;  
87, 25; 130, 10; 171, 11;  
**phonetic** [2] 75, 18;  
174, 22;  
**photo** [20] 16, 7; 24, 13;  
24, 17; 24, 19; 24, 24;  
25, 5; 33, 1; 33, 1; 34, 14;  
34, 14; 34, 19; 35, 7;  
35, 15; 35, 17; 35, 18;  
35, 19; 37, 11; 39, 19;  
93, 17; 94, 12;  
**photograph** [13] 8, 1;  
24, 12; 24, 22; 33, 7;  
34, 25; 35, 4; 86, 16;  
86, 18; 93, 8; 93, 9;  
93, 11; 93, 21; 93, 23;  
**photographs** [2] 33, 8;  
178, 24;  
**photos** [12] 15, 11; 16, 5;  
16, 6; 16, 10; 17, 2;  
17, 21; 25, 21; 30, 21;  
30, 22; 43, 15; 43, 16;  
61, 8;  
**physical** [4] 127, 7;  
127, 7; 132, 5; 139, 24;  
**physically** [1] 155, 4;  
**pick** [3] 6, 15; 124, 2;  
131, 11;  
**picked** [5] 61, 24; 90, 14;  
90, 24; 119, 15; 169, 20;  
**picture** [2] 15, 18;  
25, 18;  
**pictures** [2] 25, 11;  
81, 13;  
**piece** [1] 30, 23;  
**pierce** [3] 81, 5; 82, 6;  
104, 4;  
**pitcher** [1] 148, 4;  
**place** [5] 71, 17; 131, 11;  
134, 24; 138, 23; 155, 1;  
**placed** [3] 24, 14; 93, 12;

141, 11;  
**places** [3] 28, 1; 31, 3;  
66, 14;  
**plan** [9] 104, 18; 104, 23;  
105, 6; 105, 15; 106, 10;  
116, 14; 116, 15; 164, 2;  
171, 23;  
**plate** [1] 138, 24;  
**plateaued** [1] 19, 13;  
**play** [2] 82, 2; 163, 19;  
**playing** [1] 180, 2;  
**please** [8] 8, 22; 11, 5;  
76, 14; 109, 8; 125, 25;  
157, 12; 166, 13; 179, 12;  
**pleases** [1] 126, 2;  
**plus** [1] 178, 4;  
**point** [43] 7, 10; 7, 23;  
10, 10; 14, 9; 25, 7;  
26, 21; 35, 2; 39, 9; 41, 9;  
43, 12; 46, 3; 55, 13;  
66, 13; 88, 12; 88, 19;  
92, 14; 92, 15; 94, 14;  
97, 14; 99, 6; 99, 10;  
99, 13; 99, 14; 99, 16;  
99, 22; 100, 2; 100, 6;  
100, 17; 102, 24; 103, 19;  
104, 18; 104, 23; 115, 20;  
115, 21; 118, 10; 119, 10;  
119, 19; 121, 19; 121, 22;  
124, 4; 135, 20; 155, 21;  
178, 16;  
**point-of-reference** [1]  
35, 17;  
**pointed** [1] 161, 15;  
**pointing** [4] 27, 9; 87, 3;  
91, 9; 91, 10;  
**points** [1] 46, 16;  
**poked** [1] 121, 15;  
**police** [120] 4, 18; 8, 25;  
9, 13; 21, 21; 21, 21;  
21, 22; 62, 18; 62, 20;  
76, 21; 76, 22; 76, 24;  
77, 1; 77, 3; 77, 6; 77, 8;  
77, 24; 78, 13; 79, 3;  
79, 4; 83, 7; 83, 13;  
83, 14; 83, 24; 83, 25;  
84, 16; 85, 18; 85, 19;  
86, 5; 86, 10; 86, 18;  
87, 1; 87, 18; 87, 22;  
87, 24; 88, 6; 88, 7;  
88, 25; 91, 14; 91, 21;  
92, 5; 92, 25; 95, 20;  
95, 24; 96, 2; 98, 8; 99, 4;  
101, 8; 107, 5; 107, 5;  
109, 17; 109, 19; 109, 22;  
111, 4; 111, 8; 112, 2;  
112, 20; 112, 21; 112, 21;  
112, 22; 113, 6; 113, 24;

115, 8; 115, 8; 115, 9;  
115, 9; 115, 10; 116, 12;  
124, 5; 124, 5; 124, 14;  
126, 7; 126, 8; 126, 15;  
126, 17; 126, 20; 126, 20;  
126, 25; 127, 1; 127, 5;  
127, 8; 127, 9; 127, 11;  
127, 19; 127, 23; 128, 15;  
128, 24; 129, 2; 129, 23;  
130, 1; 130, 2; 130, 3;  
130, 4; 130, 7; 131, 21;  
132, 2; 132, 22; 133, 2;  
133, 4; 133, 8; 133, 17;  
138, 11; 141, 4; 141, 25;  
142, 10; 142, 14; 144, 5;  
144, 24; 150, 9; 152, 4;  
152, 10; 154, 4; 154, 5;  
156, 8; 160, 6; 162, 6;  
167, 10; 167, 24; 171, 6;  
177, 21; 177, 22;  
**policies** [3] 152, 7;  
154, 4; 162, 6;  
**policy** [6] 132, 22;  
147, 21; 152, 5; 153, 11;  
154, 6; 168, 24;  
**porch** [1] 162, 14;  
**port** [1] 162, 25;  
**portion** [14] 18, 11;  
24, 15; 27, 21; 30, 25;  
37, 25; 38, 6; 40, 12;  
41, 3; 41, 3; 41, 21; 42, 1;  
45, 14; 72, 13; 134, 13;  
**portions** [2] 37, 22;  
55, 15;  
**portray** [1] 81, 14;  
**position** [13] 50, 13;  
50, 17; 50, 20; 50, 21;  
51, 8; 51, 12; 52, 17;  
87, 8; 117, 9; 118, 15;  
155, 3; 172, 18; 172, 23;  
**positioned** [2] 73, 19;  
118, 21;  
**positions** [1] 172, 13;  
**positive** [1] 158, 8;  
**possible** [20] 9, 14;  
72, 20; 73, 2; 73, 6;  
143, 6; 143, 7; 143, 16;  
143, 17; 144, 12; 145, 4;  
152, 1; 152, 3; 155, 15;  
155, 22; 156, 13; 157, 2;  
157, 17; 164, 11; 172, 5;  
176, 4;  
**posted** [1] 7, 7;  
**posterior** [6] 36, 4;  
38, 13; 38, 14; 38, 16;  
40, 7; 40, 10;  
**postgraduate** [1] 12, 11;  
**postmortem** [1] 56, 21;

**potential** [2] 147, 10;  
154, 15;  
**potentially** [2] 65, 3;  
136, 10;  
**pouches** [1] 79, 14;  
**pounds** [1] 22, 13;  
**powder** [3] 33, 20; 34, 6;  
68, 7;  
**practice** [2] 12, 9; 13, 9;  
**prefer** [2] 10, 24;  
125, 21;  
**prepare** [1] 17, 5;  
**prepared** [2] 28, 25;  
56, 21;  
**preprinted** [2] 28, 19;  
29, 19;  
**prescribed** [4] 57, 12;  
57, 12; 57, 15; 57, 21;  
**prescription** [2] 57, 9;  
57, 11;  
**presence** [8] 45, 25;  
83, 7; 83, 25; 88, 6; 88, 7;  
112, 20; 139, 9; 154, 20;  
**present** [8] 5, 8; 6, 10;  
9, 6; 21, 10; 21, 20;  
21, 24; 46, 4; 107, 25;  
**presented** [3] 4, 8;  
175, 10; 176, 23;  
**presenting** [1] 58, 11;  
**presents** [5] 143, 2;  
148, 14; 148, 16; 148, 18;  
165, 13;  
**preservation** [4] 142, 25;  
147, 15; 165, 10; 165, 10;  
**preserve** [1] 142, 25;  
**press** [1] 140, 9;  
**pressure** [1] 32, 9;  
**pretend** [1] 97, 7;  
**pretty** [30] 23, 22;  
36, 18; 39, 23; 45, 3;  
59, 13; 65, 20; 66, 8;  
67, 25; 92, 1; 110, 20;  
111, 24; 112, 4; 112, 25;  
113, 19; 114, 22; 121, 1;  
121, 3; 121, 3; 121, 11;  
121, 17; 121, 21; 121, 25;  
122, 23; 123, 15; 123, 16;  
130, 9; 130, 10; 159, 14;  
163, 5; 163, 5;  
**prevent** [2] 147, 22;  
147, 23;  
**preventable** [1] 14, 21;  
**previous** [1] 152, 25;  
**previously** [3] 20, 2;  
20, 18; 131, 17;  
**primarily** [1] 14, 11;  
**primary** [2] 110, 9;  
129, 17;

**print** [1] 28, 20;  
**prior** [5] 15, 4; 76, 24;  
 108, 4; 127, 10; 161, 4;  
**proactive** [1] 151, 15;  
**proactively** [1] 77, 24;  
**probably** [27] 14, 8;  
 19, 4; 20, 5; 22, 21;  
 33, 19; 37, 20; 41, 12;  
 49, 17; 56, 1; 57, 21;  
 65, 3; 65, 17; 68, 11;  
 74, 25; 91, 20; 122, 23;  
 127, 4; 127, 12; 127, 24;  
 127, 25; 127, 25; 128, 18;  
 128, 18; 152, 24; 161, 18;  
 162, 22; 175, 19;  
**probe** [6] 23, 18; 23, 18;  
 23, 19; 24, 3; 44, 10;  
 62, 10;  
**probes** [13] 23, 24;  
 80, 21; 80, 22; 81, 4;  
 81, 7; 81, 13; 82, 5; 82, 6;  
 94, 9; 104, 3; 120, 10;  
 140, 9; 141, 6;  
**problem** [1] 160, 20;  
**problematic** [1] 144, 4;  
**problems** [1] 65, 22;  
**procedurally** [1] 157, 17;  
**procedure** [3] 14, 22;  
 132, 22; 170, 22;  
**proceed** [1] 75, 22;  
**proceeding** [2] 46, 11;  
 176, 25;  
**proceedings** [1] 9, 4;  
**process** [6] 6, 16; 15, 23;  
 40, 16; 54, 22; 63, 4;  
 170, 24;  
**professionalism** [1]  
 139, 9;  
**professionally** [1] 96, 8;  
**progress** [2] 88, 1;  
 172, 18;  
**progressing** [1] 166, 9;  
**projectile** [16] 27, 19;  
 31, 25; 32, 17; 37, 3;  
 40, 8; 42, 9; 48, 21;  
 49, 20; 61, 11; 62, 12;  
 64, 3; 67, 5; 71, 14;  
 148, 2; 163, 11; 163, 23;  
**projectiles** [12] 47, 22;  
 47, 23; 60, 22; 61, 4;  
 61, 15; 61, 21; 62, 11;  
 62, 15; 62, 16; 63, 12;  
 140, 11; 173, 19;  
**projection** [1] 40, 16;  
**projects** [1] 31, 17;  
**prongs** [2] 93, 25; 98, 18;  
**pronounced** [1] 15, 22;  
**properly** [1] 104, 5;

**proposition** [1] 133, 6;  
**protect** [1] 143, 1;  
**protection** [1] 106, 21;  
**protruding** [1] 30, 23;  
**provide** [1] 178, 22;  
**provided** [4] 8, 14; 15, 5;  
 57, 25; 112, 6;  
**proximity** [1] 7, 12;  
**pseudoephedrine** [1]  
 57, 17;  
**pubic** [1] 62, 8;  
**pubis** [1] 16, 21;  
**pull** [1] 138, 18;  
**pulled** [5] 62, 19; 67, 13;  
 82, 21; 82, 22; 146, 16;  
**pulling** [1] 138, 17;  
**pullover** [1] 23, 8;  
**pulmonary** [1] 53, 16;  
**pump** [1] 149, 12;  
**pump-type** [1] 149, 15;  
**punches** [1] 140, 25;  
**purpose** [2] 14, 10;  
 14, 11;  
**purposes** [2] 176, 10;  
 177, 11;  
**push** [1] 139, 16;  
**pushes** [1] 31, 17;  
**put** [32] 17, 8; 17, 22;  
 29, 1; 29, 5; 62, 8; 80, 5;  
 81, 16; 87, 25; 88, 10;  
 89, 1; 89, 2; 89, 8; 90, 3;  
 93, 3; 93, 5; 93, 10;  
 97, 20; 116, 21; 117, 5;  
 117, 6; 123, 17; 150, 15;  
 153, 10; 156, 7; 162, 25;  
 166, 2; 166, 5; 166, 6;  
 171, 10; 171, 12; 175, 4;  
 175, 19;  
**putting** [7] 143, 15;  
 143, 25; 155, 5; 160, 25;  
 164, 1; 175, 14; 175, 23;  
**pyramid** [1] 147, 2;

## Q

**quadrant** [1] 38, 7;  
**quantitate** [1] 56, 5;  
**quantity** [1] 96, 6;  
**quell** [1] 144, 19;  
**quelling** [2] 143, 20;  
 144, 8;  
**question** [7] 4, 20; 62, 3;  
 63, 7; 72, 24; 144, 18;  
 165, 2; 165, 24;  
**questioning** [1] 153, 18;  
**questions** [14] 4, 7; 4, 9;  
 7, 13; 7, 18; 14, 13;  
 46, 25; 65, 25; 69, 4;

95, 12; 101, 3; 103, 22;  
 123, 2; 150, 21; 150, 22;  
**quetiapine** [1] 57, 13;  
**quick** [6] 65, 25; 66, 5;  
 104, 6; 120, 2; 122, 6;  
 169, 14;  
**quickly** [11] 53, 13;  
 54, 13; 99, 16; 107, 9;  
 120, 17; 120, 21; 130, 9;  
 130, 10; 130, 14; 143, 14;  
 149, 19;  
**quilted** [2] 23, 22; 23, 23;

## R

**radar** [1] 175, 4;  
**radio** [5] 79, 16; 82, 16;  
 91, 23; 111, 23; 112, 1;  
**raids** [1] 129, 14;  
**railing** [1] 97, 3;  
**railroad** [1] 78, 10;  
**railroads** [1] 78, 7;  
**rain** [2] 81, 23; 81, 24;  
**raised** [5] 47, 1; 70, 12;  
 70, 13; 100, 21; 106, 3;  
**randolph** [1] 130, 2;  
**randomly** [1] 31, 5;  
**range** [5] 68, 4; 68, 6;  
 68, 20; 68, 24; 79, 20;  
**rank** [1] 77, 12;  
**rapidly** [2] 65, 11;  
 131, 1;  
**rapport** [3] 151, 21;  
 157, 2; 158, 20;  
**rash** [1] 44, 7;  
**rate** [1] 19, 11;  
**rather** [3] 15, 19; 61, 14;  
 158, 9;  
**re** [1] 179, 23;  
**re-interview** [1] 179, 3;  
**reach** [1] 179, 12;  
**reached** [2] 175, 10;  
 175, 11;  
**read** [5] 152, 13; 152, 15;  
 157, 25; 160, 3; 160, 15;  
**reading** [1] 130, 4;  
**ready** [3] 75, 22; 163, 4;  
 170, 14;  
**real** [1] 87, 21;  
**realigned** [1] 63, 25;  
**realized** [3] 88, 7; 88, 8;  
 99, 16;  
**reason** [4] 24, 16; 47, 2;  
 142, 4; 142, 10;  
**reasonable** [9] 59, 20;  
 133, 9; 133, 10; 134, 9;  
 137, 21; 137, 25; 141, 14;  
 161, 17; 172, 21;  
**recall** [9] 78, 1; 78, 7;  
 83, 16; 90, 9; 98, 17;  
 105, 10; 111, 19; 116, 5;  
 172, 14;  
**receive** [1] 56, 10;  
**received** [8] 8, 23; 12, 4;  
 12, 5; 23, 6; 72, 21; 73, 2;  
 124, 8; 127, 19;  
**recess** [5] 10, 8; 75, 10;  
 75, 12; 176, 19; 179, 20;  
**recognize** [14] 24, 11;  
 28, 22; 28, 24; 29, 15;  
 29, 17; 33, 11; 33, 13;  
 56, 16; 56, 20; 86, 16;  
 93, 9; 93, 9; 93, 24;  
 96, 19;  
**recognized** [2] 5, 11;  
 146, 16;  
**recognizing** [1] 168, 17;  
**recommend** [1] 81, 24;  
**record** [5] 4, 1; 75, 13;  
 169, 1; 176, 20; 179, 21;  
**recorded** [1] 175, 3;  
**recording** [5] 179, 22;  
 179, 25; 180, 1; 180, 2;  
 180, 3;  
**records** [2] 11, 19;  
 18, 13;  
**recover** [2] 60, 22; 63, 1;  
**recovered** [7] 39, 16;  
 55, 24; 61, 4; 61, 12;  
 61, 15; 62, 11; 173, 19;  
**recross** [3] 64, 18;  
 107, 10; 169, 12;  
**recruits** [1] 127, 1;  
**red** [4] 8, 4; 33, 2;  
 81, 13; 81, 16;  
**redirect** [2] 63, 9;  
 124, 25;  
**reduce** [3] 154, 16;  
 157, 19; 159, 8;  
**reduction** [1] 154, 19;  
**refer** [3] 26, 1; 140, 20;  
 140, 23;  
**reference** [3] 30, 11;  
 34, 18; 35, 2;  
**referring** [1] 60, 6;  
**refers** [1] 140, 3;  
**reflected** [2] 61, 5; 62, 1;  
**reflection** [1] 53, 12;  
**regard** [8] 4, 8; 5, 8;  
 30, 17; 123, 10; 128, 2;  
 167, 16; 173, 18; 175, 15;  
**regarding** [1] 173, 25;  
**register** [1] 67, 24;  
**regular** [2] 114, 5;  
 162, 6;  
**regular-looking** [1]

39, 23;  
**reiterate** [1] 119, 11;  
**relate** [1] 137, 3;  
**related** [2] 44, 5; 145, 20;  
**relates** [1] 127, 14;  
**relation** [5] 85, 3; 94, 3;  
 100, 9; 118, 16; 118, 21;  
**relationship** [1] 100, 5;  
**relative** [2] 5, 12; 79, 24;  
**relax** [2] 114, 7; 115, 23;  
**release** [1] 12, 1;  
**relevance** [1] 178, 13;  
**relevant** [5] 6, 6; 14, 9;  
 16, 3; 178, 20; 179, 2;  
**rely** [1] 132, 23;  
**remaining** [1] 53, 14;  
**remains** [2] 6, 16; 175, 8;  
**remember** [10] 61, 25;  
 64, 1; 97, 25; 102, 22;  
 103, 24; 104, 20; 105, 9;  
 105, 11; 110, 12; 121, 20;  
**remove** [4] 16, 4; 16, 22;  
 125, 20; 152, 18;  
**removed** [1] 4, 24;  
**removing** [1] 16, 5;  
**rendering** [2] 92, 2;  
 93, 1;  
**rep** [1] 75, 17;  
**repeat** [3] 51, 2; 51, 3;  
 72, 24;  
**repeatedly** [2] 86, 8;  
 87, 23;  
**report** [21] 5, 12; 16, 12;  
 16, 13; 17, 8; 21, 16;  
 46, 10; 46, 14; 50, 18;  
 56, 2; 56, 4; 56, 10;  
 56, 21; 56, 23; 57, 3;  
 60, 3; 60, 9; 60, 12;  
 60, 17; 60, 24; 62, 1;  
 177, 15;  
**reports** [2] 5, 11;  
 160, 15;  
**repositioning** [9] 154, 21;  
 154, 24; 159, 4; 159, 11;  
 159, 13; 159, 23; 160, 8;  
 161, 1; 161, 2;  
**represent** [6] 66, 4;  
 69, 10; 95, 17; 102, 11;  
 122, 11; 123, 8;  
**representation** [1] 34, 15;  
**representative** [1] 9, 1;  
**representing** [1] 101, 8;  
**represents** [2] 9, 12;  
 179, 2;  
**requallyfy** [1] 79, 25;  
**request** [7] 55, 21; 56, 8;  
 56, 10; 107, 4; 157, 21;  
 171, 5; 178, 16;

**requested** [2] 57, 8;  
 124, 5;  
**requesting** [1] 5, 6;  
**require** [1] 51, 22;  
**required** [3] 101, 18;  
 101, 20; 132, 2;  
**reservations** [6] 98, 18;  
 103, 23; 103, 23; 104, 2;  
 104, 12; 104, 16;  
**reserve** [5] 77, 1; 77, 3;  
 95, 21; 95, 24; 126, 15;  
**residents** [1] 18, 20;  
**resistance** [2] 139, 25;  
 140, 16;  
**resistant** [5] 136, 21;  
 136, 22; 157, 23; 164, 21;  
 165, 1;  
**resisting** [2] 165, 3;  
 165, 17;  
**resolve** [3] 116, 13;  
 154, 18; 173, 12;  
**resorting** [2] 157, 19;  
 159, 9;  
**resources** [4] 154, 17;  
 157, 1; 157, 7; 157, 22;  
**respect** [27] 19, 22;  
 20, 16; 23, 11; 27, 1;  
 28, 14; 30, 10; 35, 23;  
 36, 14; 44, 25; 45, 16;  
 48, 14; 49, 12; 49, 18;  
 50, 22; 51, 15; 51, 25;  
 52, 17; 52, 22; 55, 6;  
 55, 17; 57, 24; 79, 17;  
 92, 22; 141, 19; 174, 21;  
 177, 11; 177, 18;  
**respective** [1] 48, 24;  
**respond** [18] 83, 23;  
 110, 9; 112, 3; 130, 6;  
 130, 8; 130, 11; 130, 23;  
 131, 5; 134, 22; 136, 7;  
 137, 6; 137, 9; 138, 5;  
 141, 1; 145, 21; 155, 18;  
 170, 9; 171, 17;  
**responded** [1] 77, 21;  
**responding** [5] 112, 2;  
 135, 22; 138, 14; 165, 9;  
 169, 18;  
**responds** [2] 129, 12;  
 130, 22;  
**response** [21] 5, 16;  
 5, 21; 7, 14; 73, 4; 96, 23;  
 137, 4; 137, 22; 137, 23;  
 137, 24; 137, 24; 137, 25;  
 137, 25; 138, 7; 138, 8;  
 138, 15; 139, 22; 140, 13;  
 143, 4; 143, 23; 148, 25;  
 157, 22;  
**responses** [7] 134, 19;

138, 6; 139, 5; 139, 8;  
 139, 10; 140, 1; 140, 19;  
**responsibilities** [2]  
 77, 17; 110, 6;  
**responsibility** [1] 129, 15;  
**responsible** [2] 58, 11;  
 142, 11;  
**rest** [2] 50, 4; 52, 19;  
**result** [5] 49, 8; 51, 20;  
 51, 21; 55, 4; 166, 2;  
**resulted** [2] 38, 20; 53, 6;  
**results** [2] 37, 2; 57, 7;  
**resume** [2] 174, 5;  
 176, 15;  
**retake** [1] 16, 10;  
**retrieved** [1] 178, 18;  
**retroperitoneum** [1]  
 40, 12;  
**return** [1] 53, 16;  
**review** [6] 11, 19; 15, 7;  
 69, 12; 152, 4; 152, 7;  
 152, 8;  
**reviewed** [1] 154, 4;  
**reviewing** [6] 50, 18;  
 55, 6; 55, 11; 55, 13;  
 64, 1; 65, 12;  
**revised** [1] 153, 12;  
**rhode** [3] 13, 6; 19, 2;  
 20, 20;  
**rib** [8] 38, 24; 39, 25;  
 40, 10; 44, 23; 44, 25;  
 45, 2; 54, 21; 61, 13;  
**ribs** [4] 37, 2; 38, 4;  
 50, 10; 53, 1;  
**rid** [4] 166, 22; 166, 24;  
 167, 6; 167, 7;  
**rifle** [1] 117, 10;  
**right-hand** [2] 153, 15;  
 159, 3;  
**righthand** [5] 7, 20; 8, 3;  
 71, 19; 72, 6; 72, 10;  
**rim** [1] 38, 19;  
**ring** [4] 42, 11; 43, 2;  
 43, 6; 71, 2;  
**rings** [1] 36, 22;  
**rise** [3] 110, 18; 147, 2;  
 150, 14;  
**rising** [1] 141, 7;  
**risk** [20] 134, 12;  
 134, 16; 135, 2; 135, 2;  
 135, 4; 135, 22; 136, 2;  
 136, 3; 136, 13; 137, 2;  
 137, 6; 137, 13; 138, 10;  
 138, 11; 138, 16; 138, 19;  
 138, 20; 138, 22; 143, 25;  
 159, 8;  
**roadway** [1] 78, 10;  
**roadways** [1] 110, 8;

**robbery** [3] 82, 18;  
 112, 3; 112, 7;  
**role** [2] 20, 21; 110, 9;  
**role-players** [2] 80, 10;  
 80, 11;  
**roleplay** [1] 80, 14;  
**room** [27] 15, 17; 85, 11;  
 85, 12; 85, 13; 85, 13;  
 85, 18; 85, 21; 86, 1;  
 87, 11; 89, 20; 89, 22;  
 90, 16; 91, 1; 95, 2; 95, 3;  
 99, 11; 99, 20; 100, 19;  
 102, 20; 103, 14; 115, 3;  
 115, 5; 115, 7; 117, 5;  
 121, 17; 160, 9; 160, 24;  
**roughly** [2] 77, 5; 90, 1;  
**round** [9] 32, 24; 38, 18;  
 99, 8; 142, 11; 142, 12;  
 148, 24; 148, 25; 162, 25;  
 163, 4;  
**rounds** [11] 27, 6; 91, 16;  
 91, 17; 100, 11; 111, 15;  
 142, 16; 142, 20; 149, 3;  
 149, 12; 149, 18; 163, 1;  
**route** [3] 77, 19; 77, 20;  
 130, 17;  
**rule** [9] 146, 10; 146, 10;  
 146, 13; 146, 17; 146, 25;  
 167, 20; 167, 25; 168, 2;  
 168, 21;  
**run** [1] 80, 7;  
**rush** [2] 175, 4; 175, 13;  
  
**S**  
**s-t-a-n-l-e-y** [1] 11, 8;  
**safariland** [1] 128, 23;  
**safe** [4] 77, 20; 138, 23;  
 146, 19; 156, 11;  
**safer** [1] 144, 24;  
**safety** [4] 14, 19; 138, 22;  
 138, 25; 159, 8;  
**safety-type** [1] 155, 21;  
**said** [27] 9, 7; 9, 10;  
 9, 14; 17, 10; 23, 19;  
 48, 16; 50, 7; 63, 6; 73, 9;  
 84, 20; 99, 10; 99, 24;  
 103, 22; 105, 4; 114, 9;  
 114, 10; 115, 21; 116, 22;  
 123, 10; 155, 7; 155, 8;  
 155, 8; 157, 6; 159, 21;  
 162, 5; 166, 16; 167, 20;  
**same** [24] 18, 2; 26, 18;  
 29, 13; 37, 24; 42, 9;  
 46, 1; 66, 19; 70, 14;  
 72, 9; 72, 14; 72, 22;  
 73, 3; 74, 6; 74, 9; 94, 6;  
 111, 3; 114, 25; 114, 25;

115, 22; 122, 1; 144, 18;  
145, 1; 156, 6; 156, 6;  
**samples** [4] 17, 10;  
17, 12; 17, 13; 17, 15;  
**san** [8] 12, 6; 12, 20;  
12, 24; 19, 2; 19, 6; 58, 9;  
58, 13; 58, 20;  
**sat** [1] 88, 24;  
**saturday** [1] 18, 5;  
**saw** [23] 7, 25; 23, 13;  
82, 21; 84, 16; 86, 18;  
87, 8; 87, 18; 90, 3; 90, 6;  
90, 12; 98, 12; 102, 24;  
106, 20; 112, 18; 118, 4;  
118, 10; 119, 9; 119, 16;  
119, 17; 121, 1; 123, 19;  
125, 2; 161, 8;  
**say** [59] 5, 24; 7, 2;  
8, 11; 14, 25; 17, 20;  
19, 3; 20, 17; 31, 5; 33, 3;  
34, 6; 39, 3; 43, 4; 50, 2;  
51, 18; 54, 25; 60, 3;  
61, 11; 64, 8; 64, 8;  
68, 24; 70, 12; 75, 1;  
78, 20; 81, 1; 81, 16;  
81, 23; 84, 20; 91, 16;  
95, 5; 97, 14; 98, 8;  
101, 17; 107, 14; 110, 4;  
113, 18; 115, 15; 120, 17;  
120, 19; 122, 13; 122, 16;  
128, 17; 130, 19; 138, 16;  
143, 22; 143, 22; 143, 24;  
144, 18; 145, 10; 146, 24;  
155, 4; 158, 15; 158, 23;  
159, 25; 161, 4; 161, 6;  
165, 18; 170, 8; 170, 23;  
172, 16;  
**saying** [8] 30, 25; 61, 13;  
73, 18; 84, 24; 112, 2;  
114, 13; 114, 17; 158, 24;  
**says** [8] 117, 5; 132, 16;  
136, 15; 147, 21; 154, 14;  
157, 17; 159, 3; 170, 23;  
**scalp** [4] 31, 14; 33, 16;  
34, 21; 62, 8;  
**scaltreto** [1] 174, 21;  
**scenario** [4] 80, 6;  
133, 11; 141, 20; 147, 9;  
**scenarios** [3] 79, 22;  
80, 7; 80, 14;  
**scene** [12] 4, 18; 8, 11;  
83, 12; 84, 5; 88, 8;  
97, 12; 98, 11; 130, 24;  
131, 3; 131, 15; 152, 2;  
170, 23;  
**schedule** [1] 174, 10;  
**scheduling** [3] 6, 13;  
10, 1; 176, 10;

**scheduling-wise** [1]  
176, 13;  
**school** [3] 12, 10;  
126, 13; 171, 14;  
**scientific** [1] 59, 20;  
**scrapings** [1] 62, 7;  
**scratch** [2] 44, 12;  
44, 17;  
**scratches** [1] 44, 17;  
**screaming** [5] 84, 18;  
84, 21; 106, 1; 106, 4;  
158, 7;  
**screen** [1] 56, 5;  
**se** [1] 145, 22;  
**second** [16] 28, 16;  
34, 19; 34, 25; 37, 2;  
50, 10; 89, 16; 91, 14;  
98, 22; 99, 3; 113, 18;  
134, 13; 135, 24; 136, 21;  
165, 18; 165, 20; 165, 20;  
**secondary** [4] 65, 22;  
144, 21; 144, 25; 145, 8;  
**seconds** [2] 54, 12; 92, 2;  
**secrete** [1] 58, 18;  
**section** [3] 78, 9; 136, 14;  
147, 21;  
**sections** [2] 17, 22; 49, 1;  
**secured** [2] 7, 22; 62, 9;  
**see** [72] 9, 8; 10, 8;  
17, 23; 21, 16; 23, 23;  
23, 24; 24, 1; 30, 21;  
32, 18; 33, 18; 34, 4;  
35, 6; 36, 18; 38, 18;  
41, 2; 44, 21; 48, 19;  
55, 5; 55, 13; 56, 1;  
56, 14; 58, 16; 58, 17;  
59, 3; 59, 7; 59, 8; 59, 14;  
62, 22; 74, 23; 84, 15;  
84, 24; 85, 1; 85, 15;  
86, 13; 88, 16; 89, 4;  
89, 24; 90, 23; 92, 7;  
92, 7; 92, 11; 92, 14;  
99, 3; 99, 13; 99, 25;  
100, 8; 101, 20; 103, 19;  
104, 6; 115, 6; 115, 17;  
115, 19; 116, 21; 116, 25;  
117, 4; 117, 7; 118, 3;  
119, 14; 120, 10; 120, 12;  
120, 14; 120, 15; 120, 25;  
121, 11; 123, 14; 124, 2;  
153, 20; 154, 14; 157, 12;  
164, 17; 173, 12; 179, 16;  
**seeing** [7] 17, 2; 45, 1;  
83, 9; 83, 13; 112, 23;  
117, 1; 121, 14;  
**seems** [3] 22, 21; 157, 3;  
172, 22;  
**seen** [5] 16, 11; 25, 22;

26, 8; 88, 12; 153, 13;  
**seize** [1] 5, 18;  
**seized** [4] 7, 1; 7, 2;  
177, 19; 178, 16;  
**self-defense** [1] 127, 20;  
**sending** [1] 177, 23;  
**senior** [1] 127, 1;  
**sense** [5] 43, 3; 103, 6;  
155, 9; 155, 24; 174, 6;  
**sent** [2] 15, 10; 177, 20;  
**sentences** [1] 157, 25;  
**separate** [4] 14, 1;  
63, 24; 73, 22; 81, 7;  
**separated** [1] 41, 8;  
**sequence** [2] 120, 16;  
120, 17;  
**sergeant** [26] 83, 15;  
83, 18; 84, 2; 84, 7; 88, 9;  
89, 2; 89, 6; 89, 10;  
89, 13; 90, 15; 90, 16;  
90, 22; 90, 25; 91, 18;  
95, 18; 97, 10; 98, 2;  
98, 24; 99, 7; 100, 5;  
102, 20; 105, 20; 107, 14;  
112, 2; 114, 5; 130, 15;  
**sergeant's** [2] 83, 16;  
89, 11;  
**series** [1] 138, 16;  
**serious** [5] 52, 12; 132, 6;  
136, 25; 147, 10; 149, 10;  
**service** [3] 5, 22; 78, 10;  
129, 14;  
**services** [3] 4, 18; 77, 7;  
77, 15;  
**set** [6] 79, 13; 79, 16;  
121, 20; 131, 2; 132, 11;  
176, 12;  
**sets** [1] 133, 4;  
**seven** [8] 12, 10; 64, 2;  
64, 8; 64, 11; 66, 6;  
115, 8; 131, 3; 163, 14;  
**seventh** [2] 12, 23; 38, 4;  
**several** [4] 32, 19; 101, 8;  
105, 4; 178, 13;  
**severely** [1] 52, 6;  
**shank** [1] 147, 4;  
**shape** [1] 67, 18;  
**share** [2] 7, 8; 124, 18;  
**shared** [1] 124, 14;  
**shells** [2] 177, 19;  
177, 24;  
**shield** [3] 156, 12; 160, 7;  
164, 12;  
**shift** [1] 77, 9;  
**shin** [1] 44, 14;  
**shoes** [1] 22, 21;  
**shoot** [5] 99, 17; 141, 25;  
142, 1; 142, 17; 142, 18;

**shooter** [5] 69, 22; 70, 1;  
70, 24; 71, 24; 72, 16;  
**shooter's** [2] 70, 5;  
72, 12;  
**shooting** [7] 4, 17; 4, 22;  
108, 4; 142, 7; 142, 19;  
161, 17; 168, 18;  
**shootings** [1] 58, 23;  
**shoots** [1] 117, 12;  
**short** [5] 10, 25; 67, 25;  
75, 10; 82, 6; 106, 24;  
**shot** [9] 7, 12; 58, 19;  
68, 4; 99, 3; 118, 2;  
148, 22; 149, 6; 149, 6;  
161, 16;  
**shotgun** [31] 83, 19;  
89, 12; 90, 12; 96, 4;  
96, 5; 96, 9; 99, 8;  
102, 21; 107, 16; 117, 12;  
117, 13; 118, 8; 123, 11;  
123, 18; 123, 19; 125, 2;  
141, 7; 144, 14; 144, 19;  
145, 2; 145, 6; 147, 20;  
147, 24; 149, 16; 162, 9;  
163, 3; 163, 6; 163, 10;  
168, 20; 177, 19; 177, 24;  
**shotguns** [2] 144, 25;  
149, 12;  
**shots** [9] 91, 22; 91, 24;  
92, 12; 94, 14; 94, 20;  
94, 23; 119, 24; 142, 14;  
149, 18;  
**shoulder** [10] 32, 19;  
50, 23; 51, 7; 51, 10;  
72, 8; 91, 7; 91, 8; 101, 1;  
111, 11; 118, 18;  
**shoulder-to-shoulder** [3]  
91, 15; 100, 13; 100, 14;  
**shoulders** [2] 16, 20;  
111, 10;  
**shove** [1] 139, 16;  
**show** [10] 24, 7; 33, 2;  
33, 7; 39, 20; 39, 20;  
56, 13; 86, 21; 86, 22;  
93, 8; 111, 7;  
**showing** [5] 28, 18;  
28, 21; 86, 15; 93, 19;  
93, 23;  
**shown** [3] 75, 16; 96, 17;  
178, 24;  
**shows** [3] 29, 20; 33, 15;  
33, 17;  
**sic** [16] 23, 7; 24, 11;  
36, 19; 49, 18; 59, 18;  
64, 11; 65, 24; 71, 18;  
81, 14; 82, 17; 130, 24;  
139, 14; 158, 17; 165, 15;  
165, 25; 169, 22;

**side** [52] 7, 21; 8, 3;  
24, 21; 27, 7; 27, 9;  
27, 10; 27, 23; 31, 2;  
31, 4; 31, 10; 31, 18;  
31, 19; 31, 23; 32, 10;  
32, 16; 32, 17; 32, 19;  
33, 14; 34, 20; 35, 8;  
36, 8; 36, 24; 37, 1;  
38, 11; 39, 25; 40, 6;  
42, 1; 42, 10; 42, 12;  
42, 12; 43, 3; 43, 5; 43, 5;  
44, 16; 48, 24; 71, 19;  
72, 6; 72, 10; 72, 12;  
73, 14; 73, 15; 73, 16;  
73, 17; 74, 8; 85, 23;  
87, 5; 89, 3; 89, 8; 90, 17;  
96, 22; 118, 19; 153, 15;  
**sidebar** [2] 45, 22; 47, 6;  
**sides** [2] 14, 3; 32, 11;  
**significance** [1] 33, 21;  
**significant** [7] 14, 18;  
41, 18; 50, 9; 51, 21;  
53, 4; 55, 15; 55, 18;  
**significantly** [2] 19, 14;  
52, 10;  
**signify** [1] 80, 20;  
**similar** [5] 38, 9; 144, 23;  
144, 23; 149, 3; 149, 4;  
**similarly** [1] 29, 18;  
**simple** [1] 159, 15;  
**simplistic** [1] 12, 13;  
**simply** [1] 170, 9;  
**simulations** [3] 80, 5;  
80, 13; 87, 20;  
**simultaneously** [1]  
91, 13;  
**single** [2] 63, 17; 63, 20;  
**siren** [1] 83, 3;  
**sirens** [1] 82, 24;  
**sit** [5] 10, 20; 10, 25;  
76, 7; 108, 24; 125, 19;  
**site** [2] 81, 13; 96, 14;  
**sits** [2] 97, 4; 97, 9;  
**sitting** [2] 7, 19; 105, 7;  
**situation** [59] 71, 24;  
80, 9; 101, 16; 101, 17;  
101, 17; 101, 18; 101, 20;  
114, 23; 116, 13; 130, 25;  
132, 9; 134, 21; 136, 9;  
136, 10; 137, 10; 138, 1;  
139, 22; 141, 14; 142, 6;  
142, 17; 143, 1; 143, 5;  
143, 12; 143, 24; 144, 3;  
145, 1; 145, 5; 145, 7;  
145, 9; 145, 11; 146, 21;  
146, 22; 147, 12; 149, 23;  
150, 11; 150, 14; 151, 16;  
151, 23; 153, 20; 154, 16;

154, 18; 155, 2; 155, 15;  
157, 5; 157, 9; 157, 21;  
157, 24; 158, 3; 161, 5;  
161, 21; 161, 23; 165, 16;  
168, 4; 168, 5; 168, 6;  
168, 20; 169, 17; 170, 13;  
172, 1;  
**situation-driven** [1]  
163, 16;  
**situations** [14] 45, 1;  
129, 12; 129, 13; 142, 6;  
142, 20; 143, 22; 144, 10;  
145, 21; 145, 25; 162, 18;  
162, 18; 164, 19; 167, 9;  
168, 7;  
**six** [3] 18, 19; 119, 25;  
131, 3;  
**sixth** [4] 38, 3; 38, 24;  
40, 2; 53, 1;  
**size** [1] 13, 1;  
**skills** [6] 127, 7; 139, 8;  
157, 23; 158, 2; 158, 12;  
158, 13;  
**skillset** [1] 134, 25;  
**skin** [12] 24, 1; 27, 11;  
27, 15; 41, 11; 41, 19;  
42, 22; 43, 18; 43, 19;  
67, 20; 81, 5; 82, 7;  
104, 4;  
**skipped** [1] 45, 14;  
**skull** [11] 17, 7; 27, 7;  
27, 12; 27, 24; 31, 16;  
31, 17; 31, 20; 32, 9;  
32, 10; 49, 6; 49, 8;  
**slash** [1] 136, 23;  
**slashed** [1] 172, 6;  
**sleeve** [3] 23, 15; 24, 15;  
24, 21;  
**slightly** [5] 36, 4; 39, 11;  
39, 22; 41, 24; 53, 1;  
**slow** [4] 148, 11; 148, 15;  
151, 22; 157, 2;  
**slowing** [2] 158, 7;  
158, 23;  
**small** [10] 17, 18; 23, 24;  
44, 4; 44, 11; 53, 22;  
62, 21; 63, 2; 86, 4;  
105, 6; 119, 12;  
**smaller** [1] 42, 3;  
**somebody** [11] 97, 23;  
124, 4; 141, 10; 144, 23;  
145, 21; 146, 1; 146, 22;  
147, 10; 148, 23; 150, 11;  
159, 21;  
**someone** [13] 14, 16;  
15, 3; 15, 6; 17, 19;  
18, 13; 145, 24; 147, 3;  
148, 7; 148, 22; 149, 21;

149, 21; 150, 2; 172, 4;  
**sometimes** [14] 14, 1;  
15, 9; 15, 9; 17, 6; 17, 16;  
17, 23; 20, 25; 156, 20;  
156, 22; 157, 4; 163, 3;  
163, 16; 163, 18; 166, 25;  
**somewhat** [7] 32, 22;  
41, 7; 49, 23; 50, 23;  
57, 22; 133, 16; 150, 5;  
**somewhere** [4] 71, 24;  
82, 16; 97, 4; 150, 13;  
**soot** [1] 67, 16;  
**sorry** [14] 25, 11; 26, 13;  
38, 2; 48, 13; 49, 22;  
54, 22; 73, 23; 78, 21;  
84, 25; 137, 17; 157, 14;  
162, 1; 174, 21; 176, 1;  
**sort** [9] 19, 13; 26, 8;  
31, 13; 32, 2; 106, 14;  
106, 15; 124, 11; 153, 3;  
161, 23;  
**sorts** [2] 51, 9; 80, 8;  
**sounded** [1] 114, 22;  
**sounds** [2] 10, 11;  
149, 20;  
**space** [8] 146, 3; 146, 4;  
151, 23; 160, 21; 160, 22;  
160, 23; 160, 24; 168, 14;  
**speak** [4] 83, 14; 124, 16;  
155, 8; 177, 12;  
**speaking** [6] 85, 1;  
86, 13; 88, 15; 89, 25;  
161, 12; 166, 15;  
**special** [3] 14, 2; 129, 3;  
129, 12;  
**specialized** [2] 127, 13;  
128, 1;  
**specific** [4] 127, 5;  
133, 21; 141, 10; 160, 11;  
**specifically** [1] 59, 2;  
**specifics** [2] 115, 25;  
116, 5;  
**specify** [1] 82, 23;  
**specimen** [1] 56, 5;  
**specimens** [1] 12, 12;  
**speculate** [1] 8, 6;  
**speed** [2] 113, 1; 113, 11;  
**spell** [1] 109, 11;  
**spelling** [4] 11, 5; 76, 14;  
109, 8; 125, 25;  
**spend** [1] 14, 18;  
**spent** [6] 12, 16; 12, 19;  
58, 9; 79, 19; 79, 20;  
93, 3;  
**spin** [1] 26, 15;  
**spinal** [4] 55, 10; 55, 11;  
55, 14; 55, 15;  
**spine** [1] 40, 17;

**spinous** [3] 40, 16;  
54, 22; 63, 4;  
**split** [1] 165, 20;  
**splits** [1] 31, 13;  
**spoke** [3] 83, 18; 166, 14;  
167, 19;  
**spray** [5] 79, 14; 140, 6;  
143, 18; 143, 20; 144, 1;  
**spread** [2] 169, 20;  
169, 24;  
**springfield** [1] 126, 18;  
**spun** [1] 50, 3;  
**stab-resistant** [1] 150, 10;  
**stabblings** [3] 19, 5;  
19, 5; 19, 5;  
**stabilize** [2] 151, 16;  
154, 16;  
**staff** [2] 15, 18; 178, 17;  
**staged** [1] 92, 1;  
**staging** [3] 131, 5;  
131, 7; 131, 10;  
**staircase** [3] 84, 11;  
86, 4; 90, 2;  
**stairs** [7] 7, 21; 84, 17;  
95, 4; 113, 21; 113, 23;  
121, 20; 178, 21;  
**stairway** [2] 87, 5;  
114, 1;  
**stairwell** [7] 113, 17;  
113, 20; 114, 25; 114, 25;  
115, 1; 115, 22; 178, 24;  
**stand** [8] 10, 20; 10, 25;  
51, 12; 76, 7; 97, 5;  
108, 24; 125, 19; 169, 6;  
**standard** [5] 16, 18;  
50, 16; 52, 17; 127, 20;  
133, 4;  
**standards** [5] 132, 11;  
132, 13; 132, 15; 133, 14;  
133, 18;  
**standing** [17] 69, 22;  
70, 1; 70, 2; 70, 5; 70, 7;  
70, 9; 70, 10; 70, 11;  
70, 24; 72, 16; 86, 6;  
86, 20; 86, 24; 87, 1;  
87, 14; 87, 15; 87, 18;  
**stands** [2] 129, 9; 133, 7;  
**stanley** [12] 10, 16;  
10, 17; 10, 19; 11, 1;  
11, 7; 11, 8; 60, 19; 63, 9;  
64, 18; 66, 2; 66, 4; 69, 8;  
**star-shaped** [1] 67, 13;  
**start** [13] 14, 24; 15, 2;  
16, 10; 16, 25; 26, 20;  
28, 6; 31, 6; 51, 9;  
138, 22; 138, 25; 155, 13;  
160, 17; 172, 1;  
**started** [14] 8, 5; 19, 15;

25, 11; 25, 22; 32, 2;  
37, 19; 37, 19; 48, 9;  
48, 24; 110, 17; 112, 11;  
121, 6; 121, 9; 121, 13;  
**starting** [1] 79, 13;  
**starts** [1] 138, 3;  
**state** [44] 8, 25; 9, 12;  
11, 5; 12, 5; 21, 20;  
21, 21; 21, 22; 62, 18;  
62, 20; 76, 14; 76, 21;  
76, 22; 76, 24; 77, 6;  
77, 8; 77, 10; 78, 13;  
79, 3; 83, 24; 83, 25;  
84, 4; 96, 2; 96, 4; 107, 4;  
107, 5; 109, 8; 109, 17;  
109, 18; 109, 22; 111, 4;  
112, 2; 112, 21; 115, 9;  
115, 10; 115, 11; 124, 5;  
125, 25; 127, 16; 127, 17;  
128, 14; 129, 21; 133, 14;  
169, 21; 177, 21;  
**statement** [1] 68, 21;  
**statements** [2] 160, 2;  
175, 4;  
**states** [4] 128, 25; 133, 3;  
166, 21; 166, 24;  
**stating** [1] 51, 22;  
**station** [3] 82, 16; 91, 23;  
171, 6;  
**stay** [1] 172, 25;  
**stayed** [1] 48, 24;  
**stays** [3] 37, 6; 40, 9;  
51, 6;  
**steam** [1] 52, 8;  
**step** [11] 46, 2; 47, 1;  
90, 23; 102, 21; 105, 7;  
108, 14; 125, 13; 164, 2;  
173, 6; 175, 15; 176, 15;  
**stepped** [5] 89, 13;  
90, 17; 90, 18; 90, 20;  
117, 15;  
**steps** [5] 75, 9; 99, 7;  
108, 16; 157, 20; 173, 8;  
**sternocleidomastoid** [1]  
36, 17;  
**sticks** [1] 55, 9;  
**still** [18] 5, 23; 13, 5;  
17, 17; 26, 17; 50, 25;  
51, 6; 55, 10; 55, 11;  
63, 3; 81, 23; 99, 10;  
116, 24; 117, 1; 119, 13;  
119, 18; 165, 21; 168, 4;  
177, 21;  
**stimulant** [1] 59, 15;  
**stippling** [7] 33, 2;  
33, 20; 33, 21; 34, 4;  
66, 23; 67, 17; 68, 3;  
**stood** [1] 93, 6;

**stop** [14] 9, 15; 55, 12;  
80, 9; 138, 24; 140, 18;  
140, 18; 141, 15; 142, 1;  
142, 9; 142, 18; 142, 19;  
150, 6; 164, 14; 166, 3;  
**stoppage** [1] 163, 13;  
**stops** [2] 40, 15; 142, 19;  
**store** [4] 82, 18; 82, 19;  
83, 1; 84, 3;  
**straight** [4] 26, 14; 50, 2;  
71, 8; 74, 15;  
**straightforward** [2]  
27, 20; 50, 5;  
**strategic** [2] 135, 23;  
136, 4;  
**strategies** [2] 116, 11;  
138, 23;  
**strategy** [1] 116, 14;  
**street** [12] 66, 19; 78, 8;  
82, 17; 85, 23; 91, 21;  
95, 4; 112, 8; 112, 13;  
112, 19; 113, 16; 156, 7;  
179, 24;  
**stressful** [2] 142, 17;  
142, 20;  
**stretch** [1] 169, 7;  
**strike** [4] 58, 10; 64, 12;  
104, 19; 149, 5;  
**strikes** [5] 32, 21; 42, 21;  
52, 18; 140, 25; 141, 1;  
**striking** [1] 54, 20;  
**striking-type** [1] 141, 2;  
**strongly** [1] 166, 20;  
**struck** [4] 33, 19; 64, 23;  
119, 21; 148, 25;  
**stuck** [2] 31, 14; 94, 1;  
**studies** [2] 11, 20; 11, 20;  
**stuff** [9] 96, 6; 114, 11;  
129, 14; 146, 4; 152, 13;  
152, 16; 155, 22; 163, 1;  
163, 19;  
**stun** [2] 140, 9; 140, 12;  
**subdue** [1] 89, 12;  
**subject** [17] 81, 3; 81, 6;  
89, 12; 89, 14; 90, 20;  
91, 1; 91, 17; 100, 15;  
100, 17; 101, 25; 134, 16;  
136, 13; 137, 14; 147, 22;  
147, 23; 165, 2; 166, 8;  
**subject's** [7] 134, 13;  
135, 19; 136, 15; 136, 16;  
137, 3; 137, 7; 137, 11;  
**subjective** [1] 159, 20;  
**submit** [1] 53, 21;  
**subsections** [2] 135, 14;  
135, 15;  
**substances** [1] 14, 7;  
**success** [1] 172, 22;

**succession** [1] 120, 2;  
**sudbury** [1] 171, 4;  
**suddenly** [1] 14, 16;  
**suggest** [2] 69, 23; 70, 6;  
**suggested** [2] 69, 12;  
166, 8;  
**suggesting** [2] 74, 6;  
74, 8;  
**suggestion** [1] 18, 8;  
**suicidal** [2] 129, 13;  
161, 8;  
**suicide** [1] 18, 25;  
**suicides** [1] 58, 22;  
**suit** [1] 170, 4;  
**summarize** [1] 110, 10;  
**summary** [2] 29, 1;  
56, 19;  
**sunday** [1] 18, 5;  
**superficial** [1] 37, 17;  
**superior** [4] 20, 8;  
95, 17; 108, 6; 122, 11;  
**supervise** [1] 19, 20;  
**supervised** [2] 18, 19;  
19, 19;  
**supervisor** [2] 112, 10;  
112, 11;  
**suppose** [2] 43, 14;  
177, 11;  
**supposed** [3] 81, 4;  
122, 17; 145, 25;  
**supreme** [1] 133, 3;  
**surprising** [2] 39, 12;  
53, 7;  
**survive** [1] 65, 5;  
**suspect** [11] 82, 19;  
83, 22; 90, 14; 97, 16;  
100, 2; 103, 10; 106, 23;  
107, 1; 107, 2; 114, 14;  
171, 14;  
**swallowed** [1] 58, 18;  
**swat** [6] 129, 7; 129, 12;  
129, 16; 144, 22; 171, 5;  
171, 9;  
**swear** [1] 114, 18;  
**sweatpants** [1] 23, 10;  
**sweatshirt** [3] 23, 8;  
23, 9; 37, 23;  
**switch** [1] 138, 19;  
**switched** [1] 179, 25;  
**switching** [1] 48, 13;  
**switzerland** [1] 128, 25;  
**sworn** [4] 10, 19; 76, 4;  
108, 18; 125, 16;  
**system** [2] 53, 15; 58, 21;  
**systems** [2] 126, 14;  
149, 15;

**T**  
**t-a-s-e-r** [1] 23, 20;  
**table** [4] 16, 12; 67, 12;  
93, 4; 93, 10;  
**tactical** [13] 135, 24;  
136, 6; 138, 9; 138, 10;  
138, 13; 138, 15; 138, 20;  
138, 22; 138, 25; 154, 21;  
154, 24; 159, 4; 160, 1;  
**tactics** [28] 127, 14;  
127, 17; 127, 21; 127, 21;  
128, 6; 128, 16; 131, 21;  
139, 16; 139, 17; 140, 20;  
140, 21; 140, 23; 146, 14;  
151, 16; 151, 18; 151, 19;  
151, 20; 158, 13; 161, 4;  
161, 19; 161, 20; 161, 21;  
161, 22; 161, 25; 162, 2;  
172, 13; 172, 18; 172, 24;  
**tags** [1] 43, 12;  
**take** [35] 5, 18; 6, 7;  
10, 8; 10, 24; 11, 24;  
15, 11; 16, 5; 17, 2; 17, 2;  
17, 9; 17, 10; 17, 13;  
17, 15; 17, 16; 17, 19;  
24, 19; 34, 6; 46, 4; 56, 1;  
59, 17; 59, 17; 60, 7;  
75, 10; 76, 8; 82, 25;  
97, 1; 108, 21; 112, 15;  
148, 22; 164, 12; 164, 14;  
165, 11; 174, 4; 176, 3;  
178, 1;  
**taken** [4] 5, 21; 24, 19;  
35, 4; 147, 6;  
**takes** [3] 17, 16; 144, 1;  
144, 1;  
**taking** [7] 16, 25; 25, 11;  
25, 18; 154, 14; 155, 2;  
159, 16; 172, 13;  
**talk** [9] 26, 21; 35, 10;  
45, 9; 63, 1; 87, 20;  
156, 18; 161, 11; 161, 14;  
174, 8;  
**talked** [6] 47, 1; 53, 5;  
102, 20; 115, 24; 147, 12;  
167, 7;  
**talking** [24] 8, 10; 46, 7;  
61, 12; 65, 8; 73, 25;  
86, 6; 87, 20; 103, 9;  
103, 25; 105, 23; 105, 23;  
105, 25; 106, 9; 114, 6;  
114, 8; 114, 21; 115, 17;  
115, 19; 117, 4; 148, 11;  
151, 22; 161, 1; 163, 7;  
166, 2;  
**talks** [2] 153, 14;  
153, 15;

<b>tall</b> [1] 22, 7;	128, 10;	76, 11; 87, 7; 93, 14;	84, 12; 84, 14; 102, 13;
<b>tangential</b> [2] 39, 4;	<b>technique</b> [4] 140, 6;	93, 22; 95, 12; 102, 5;	104, 23; 113, 18; 134, 18;
43, 11;	158, 18; 159, 4; 160, 8;	102, 6; 102, 8; 108, 10;	135, 25; 136, 22; 142, 10;
<b>tape</b> [1] 97, 2;	<b>techniques</b> [11] 140, 1;	108, 12; 108, 15; 109, 3;	156, 16;
<b>target</b> [5] 81, 14; 142, 3;	140, 2; 140, 3; 140, 4;	122, 3; 122, 4; 123, 3;	<b>third-floor</b> [3] 85, 6;
142, 8; 142, 12; 142, 13;	140, 5; 141, 2; 151, 16;	123, 5; 124, 21; 125, 12;	85, 7; 85, 9;
<b>targets</b> [1] 9, 8;	151, 18; 154, 20; 157, 18;	125, 13; 125, 14; 125, 22;	<b>thorough</b> [1] 6, 5;
<b>tarrant</b> [20] 4, 7; 11, 2;	164, 19;	137, 19; 150, 22; 150, 23;	<b>thought</b> [4] 63, 19;
24, 10; 25, 6; 29, 14;	<b>tell</b> [22] 6, 24; 13, 17;	150, 25; 152, 20; 153, 9;	75, 16; 101, 11; 123, 11;
30, 9; 35, 20; 47, 16;	24, 3; 34, 21; 43, 13;	154, 10; 173, 3; 173, 5;	<b>thoughts</b> [1] 6, 25;
51, 13; 57, 5; 59, 11;	57, 7; 58, 4; 59, 12; 66, 7;	173, 6; 175, 22; 176, 18;	<b>thousand</b> [1] 127, 25;
63, 6; 63, 10; 76, 13;	98, 15; 125, 3; 125, 5;	179, 17; 179, 18;	<b>threat</b> [9] 135, 19;
93, 18; 94, 13; 109, 5;	155, 11; 156, 3; 158, 3;	<b>thanks</b> [2] 108, 14;	146, 16; 147, 9; 154, 17;
125, 1; 125, 24; 137, 20;	159, 12; 171, 7; 173, 17;	108, 15;	155, 18; 159, 10; 168, 9;
<b>taser</b> [58] 23, 18; 23, 19;	174, 5; 174, 11; 176, 10;	<b>themselves</b> [3] 105, 17;	168, 10; 168, 17;
23, 19; 23, 24; 24, 3;	178, 10;	147, 4; 147, 18;	<b>threatening</b> [3] 147, 3;
44, 8; 44, 10; 62, 10;	<b>telling</b> [3] 86, 8; 87, 23;	<b>therapies</b> [1] 25, 13;	147, 4; 161, 10;
79, 15; 79, 17; 79, 18;	158, 10;	<b>therapy</b> [6] 15, 16; 16, 4;	<b>three</b> [11] 27, 16; 64, 2;
79, 24; 80, 1; 80, 3; 80, 5;	<b>tells</b> [1] 8, 5;	25, 14; 25, 15; 64, 25;	66, 5; 76, 23; 84, 22;
80, 15; 80, 19; 80, 24;	<b>ten</b> [2] 19, 14; 119, 25;	65, 3;	91, 16; 128, 12; 135, 11;
80, 24; 81, 15; 81, 22;	<b>tend</b> [2] 155, 19; 157, 1;	<b>thereto</b> [1] 121, 23;	135, 14; 155, 9; 171, 3;
88, 8; 88, 11; 88, 21;	<b>tension</b> [1] 106, 14;	<b>thick</b> [3] 23, 22; 38, 20;	<b>three-pronged</b> [1] 134, 7;
91, 12; 93, 3; 93, 10;	<b>term</b> [2] 159, 14;	82, 3;	<b>threshold</b> [2] 87, 17;
93, 12; 93, 17; 93, 20;	159, 20;	<b>thicker</b> [1] 38, 19;	100, 15;
93, 25; 94, 9; 94, 12;	<b>terms</b> [13] 7, 6; 7, 11;	<b>thickness</b> [1] 104, 3;	<b>throat</b> [4] 97, 8; 148, 7;
95, 23; 96, 1; 98, 15;	50, 5; 66, 6; 66, 23;	<b>thigh</b> [2] 44, 16; 44, 19;	172, 5; 172, 6;
103, 24; 111, 15; 118, 12;	145, 20; 147, 20; 150, 2;	<b>thing</b> [17] 8, 4; 8, 9;	<b>through</b> [60] 18, 4; 24, 4;
119, 3; 119, 7; 120, 4;	168, 2; 170, 22; 170, 24;	8, 18; 50, 8; 54, 25;	30, 16; 31, 2; 31, 16;
120, 5; 120, 13; 120, 18;	171, 25; 174, 11;	57, 16; 115, 22; 118, 12;	31, 25; 31, 25; 32, 2;
120, 19; 122, 14; 122, 17;	<b>test</b> [3] 5, 19; 55, 22;	122, 6; 123, 17; 123, 23;	32, 3; 32, 4; 32, 20;
122, 17; 122, 21; 124, 11;	146, 13;	134, 10; 137, 9; 145, 1;	37, 17; 37, 25; 38, 2;
124, 17; 127, 9; 140, 7;	<b>test-fired</b> [1] 5, 24;	156, 6; 157, 3; 174, 19;	38, 4; 38, 5; 38, 10;
140, 10; 141, 5; 144, 12;	<b>testified</b> [9] 20, 17;	<b>think</b> [69] 4, 7; 5, 2;	38, 15; 38, 22; 38, 24;
165, 21;	20, 19; 20, 21; 69, 12;	5, 10; 5, 25; 6, 2; 6, 5;	39, 2; 39, 7; 39, 8; 39, 10;
<b>tasers</b> [8] 95, 25; 98, 6;	74, 17; 107, 24; 123, 10;	7, 23; 8, 11; 8, 12; 8, 13;	41, 15; 42, 20; 43, 13;
98, 9; 104, 9; 124, 8;	131, 17; 153, 19;	10, 25; 20, 10; 26, 24;	45, 4; 50, 6; 50, 19;
144, 6; 144, 8; 144, 10;	<b>testify</b> [5] 9, 9; 9, 10;	27, 16; 30, 10; 32, 3;	50, 24; 52, 4; 52, 20;
<b>taught</b> [12] 80, 21;	20, 2; 174, 24; 175, 1;	34, 21; 41, 3; 41, 11;	53, 8; 54, 20; 64, 4; 64, 5;
135, 8; 136, 7; 137, 6;	<b>testifying</b> [1] 9, 5;	45, 5; 45, 9; 45, 15;	64, 23; 72, 7; 73, 13;
141, 13; 141, 13; 141, 25;	<b>testimony</b> [19] 5, 3; 5, 6;	45, 24; 46, 2; 46, 3;	74, 9; 80, 5; 80, 7; 82, 6;
142, 17; 143, 16; 148, 13;	6, 1; 9, 18; 46, 6; 70, 15;	46, 13; 46, 21; 46, 25;	84, 2; 85, 11; 85, 15;
167, 20; 167, 22;	131, 20; 149, 17; 150, 2;	48, 16; 50, 14; 51, 22;	95, 2; 95, 3; 98, 19;
<b>teach</b> [18] 127, 23;	151, 8; 152, 25; 154, 3;	53, 12; 54, 4; 59, 13;	103, 24; 104, 4; 113, 15;
132, 21; 133, 17; 134, 22;	154, 6; 154, 8; 154, 9;	59, 14; 61, 9; 61, 25;	122, 2; 124, 12; 126, 11;
135, 1; 138, 21; 142, 8;	155, 7; 166, 14; 173, 18;	63, 6; 64, 9; 64, 11;	128, 23; 154, 7; 173, 15;
142, 19; 145, 20; 145, 21;	173, 25;	66, 10; 66, 22; 68, 15;	173, 17;
146, 18; 148, 21; 155, 25;	<b>testing</b> [2] 12, 15; 57, 8;	73, 6; 75, 18; 112, 8;	<b>throughout</b> [1] 169, 20;
158, 14; 165, 9; 166, 22;	<b>tewksbury</b> [1] 126, 16;	121, 6; 122, 21; 130, 14;	<b>throw</b> [1] 162, 24;
167, 22; 168, 11;	<b>text</b> [1] 171, 13;	130, 14; 130, 16; 141, 17;	<b>thrown</b> [1] 148, 3;
<b>teaching</b> [6] 133, 21;	<b>thank</b> [64] 4, 3; 4, 5;	145, 15; 149, 5; 153, 18;	<b>thumb</b> [5] 42, 10; 42, 21;
133, 21; 133, 22; 158, 6;	10, 13; 10, 15; 25, 2;	154, 7; 155, 8; 162, 5;	43, 5; 71, 2; 71, 10;
165, 8; 167, 14;	29, 21; 30, 10; 34, 13;	162, 15; 164, 2; 167, 14;	<b>thursday</b> [1] 176, 14;
<b>team</b> [9] 129, 7; 129, 12;	34, 18; 47, 4; 47, 4; 47, 5;	173, 11; 175, 14; 176, 13;	<b>thursdays</b> [1] 176, 11;
129, 16; 129, 17; 131, 2;	47, 8; 47, 9; 51, 14;	177, 4; 177, 13; 177, 16;	<b>thyroid</b> [2] 36, 20;
144, 22; 164, 12; 169, 15;	56, 25; 57, 4; 60, 14;	178, 20; 179, 1;	50, 25;
171, 22;	63, 8; 65, 23; 69, 2; 69, 7;	<b>thinking</b> [2] 6, 12;	<b>timeframe</b> [2] 95, 9;
<b>tear</b> [2] 42, 22; 71, 2;	74, 16; 75, 4; 75, 5; 75, 8;	104, 11;	176, 5;
<b>technically</b> [2] 112, 10;	75, 11; 75, 15; 76, 2;	<b>third</b> [12] 8, 18; 12, 17;	<b>times</b> [14] 20, 4; 20, 21;



32, 18; 32, 19; 84, 22;  
105, 4; 115, 24; 144, 10;  
149, 5; 149, 9; 151, 8;  
163, 14; 163, 18; 170, 8;  
**timing** [2] 170, 19;  
171, 17;  
**tiny** [2] 27, 17; 63, 3;  
**tip** [1] 55, 7;  
**tissue** [1] 17, 18;  
**tissues** [2] 39, 10; 54, 20;  
**title** [1] 11, 17;  
**today** [6] 8, 25; 10, 5;  
60, 1; 146, 21; 150, 1;  
175, 3;  
**toes** [2] 105, 8; 175, 15;  
**together** [10] 17, 8;  
53, 5; 64, 14; 66, 9; 84, 7;  
120, 22; 137, 14; 164, 1;  
177, 24; 179, 10;  
**tone** [1] 158, 8;  
**tool** [5] 134, 2; 143, 14;  
144, 8; 144, 19; 147, 22;  
**tool-specific** [1] 141, 17;  
**tools** [3] 133, 21; 143, 6;  
143, 13;  
**top** [24] 16, 18; 27, 9;  
31, 7; 31, 17; 32, 14;  
32, 19; 33, 15; 38, 10;  
38, 15; 39, 3; 39, 5; 39, 7;  
41, 21; 41, 24; 43, 8;  
43, 9; 48, 16; 53, 3; 72, 7;  
74, 12; 84, 17; 128, 11;  
136, 1; 159, 3;  
**top-to-bottom** [1] 31, 8;  
**topic** [1] 132, 1;  
**topics** [1] 66, 5;  
**torso** [12] 30, 5; 30, 7;  
30, 14; 30, 18; 40, 6;  
40, 7; 40, 20; 40, 24;  
53, 6; 62, 15; 63, 25;  
64, 2;  
**torso/entire** [1] 41, 2;  
**total** [1] 126, 10;  
**totality** [13] 134, 5;  
134, 6; 134, 7; 134, 20;  
134, 22; 135, 1; 135, 6;  
135, 10; 135, 15; 136, 14;  
137, 12; 168, 4; 168, 11;  
**totally** [1] 27, 14;  
**touch** [1] 139, 16;  
**touching** [1] 38, 1;  
**toward** [4] 12, 19;  
42, 10; 71, 10; 71, 14;  
**towards** [5] 90, 2; 91, 1;  
91, 2; 91, 10; 119, 9;  
**town** [2] 77, 1; 77, 3;  
**towns** [4] 77, 22; 77, 22;  
129, 10; 169, 19;

**toxicologist** [1] 58, 7;  
**toxicology** [10] 11, 20;  
12, 15; 14, 6; 53, 21;  
53, 23; 55, 22; 56, 8;  
56, 21; 57, 3; 60, 12;  
**trachea** [2] 36, 21;  
50, 25;  
**tracheal** [1] 36, 22;  
**track** [5] 8, 12; 32, 5;  
47, 20; 47, 25; 64, 12;  
**tracks** [2] 64, 13; 78, 11;  
**tract** [1] 37, 22;  
**traffic** [1] 83, 11;  
**train** [8] 19, 16; 127, 5;  
127, 7; 133, 2; 142, 21;  
143, 18; 144, 6; 144, 16;  
**trained** [18] 58, 7;  
80, 15; 96, 5; 96, 6;  
117, 20; 123, 11; 128, 15;  
128, 17; 132, 10; 132, 10;  
137, 6; 141, 22; 141, 25;  
142, 14; 142, 16; 142, 17;  
146, 6; 153, 22;  
**trainers** [1] 129, 18;  
**training** [36] 12, 2; 12, 8;  
12, 11; 12, 11; 12, 17;  
12, 20; 12, 23; 19, 18;  
19, 19; 58, 4; 58, 7;  
79, 17; 79, 23; 79, 24;  
95, 21; 96, 1; 96, 1;  
122, 16; 122, 22; 124, 8;  
124, 11; 126, 24; 126, 25;  
127, 13; 127, 20; 128, 1;  
128, 24; 131, 23; 133, 17;  
136, 7; 141, 23; 145, 24;  
154, 2; 157, 19; 162, 8;  
167, 12;  
**trainings** [2] 80, 2; 80, 6;  
**trains** [1] 128, 25;  
**transcribed** [1] 16, 13;  
**transport** [1] 57, 16;  
**transported** [1] 44, 5;  
**trauma** [2] 148, 2;  
149, 7;  
**travel** [8] 44, 6; 47, 20;  
48, 6; 48, 17; 48, 20;  
49, 20; 51, 15; 170, 14;  
**traveling** [3] 27, 20;  
52, 14; 83, 3;  
**travels** [1] 31, 16;  
**traversing** [1] 36, 16;  
**tremendous** [1] 71, 3;  
**triangle** [10] 134, 5;  
134, 6; 134, 7; 134, 20;  
135, 6; 135, 10; 135, 15;  
136, 15; 137, 12; 166, 15;  
**tried** [3] 83, 10; 83, 11;  
99, 20;

**trigger** [1] 67, 13;  
**triple-decker** [1] 84, 12;  
**trivial** [1] 51, 18;  
**troop** [1] 9, 13;  
**trooper** [43] 10, 4; 10, 4;  
76, 4; 76, 5; 76, 12;  
77, 10; 77, 12; 77, 17;  
78, 18; 84, 1; 84, 4; 84, 4;  
95, 14; 95, 16; 96, 4;  
98, 4; 101, 5; 101, 7;  
102, 9; 102, 11; 107, 10;  
107, 22; 107, 24; 108, 10;  
108, 18; 108, 19; 109, 4;  
109, 23; 110, 6; 110, 10;  
113, 3; 113, 8; 115, 11;  
118, 16; 120, 4; 122, 7;  
122, 9; 122, 13; 123, 6;  
123, 8; 124, 18; 124, 25;  
125, 13;  
**trooper's** [1] 111, 4;  
**troopers** [4] 9, 4; 9, 18;  
10, 2; 75, 17;  
**trucks** [1] 110, 22;  
**true** [2] 15, 21; 30, 22;  
**try** [33] 7, 5; 9, 14;  
17, 14; 81, 23; 88, 25;  
96, 11; 131, 11; 134, 8;  
142, 7; 143, 5; 143, 6;  
143, 6; 148, 11; 148, 15;  
148, 21; 149, 21; 151, 16;  
151, 21; 152, 2; 155, 17;  
155, 21; 155, 22; 156, 7;  
156, 24; 157, 2; 160, 1;  
160, 1; 164, 11; 164, 12;  
165, 21; 168, 1; 168, 11;  
178, 4;  
**trying** [23] 58, 18; 81, 8;  
81, 15; 81, 16; 97, 20;  
101, 10; 105, 6; 105, 14;  
105, 14; 106, 9; 114, 6;  
114, 22; 116, 12; 116, 16;  
121, 9; 144, 19; 145, 3;  
145, 3; 158, 8; 161, 11;  
162, 12; 175, 4; 179, 2;  
**turn** [3] 19, 12; 157, 12;  
159, 3;  
**turned** [10] 16, 13; 35, 5;  
50, 23; 61, 17; 61, 20;  
62, 13; 72, 1; 82, 19;  
99, 19; 161, 15;  
**turns** [1] 148, 18;  
**tussle** [1] 119, 12;  
**twelfth** [3] 40, 10; 54, 21;  
54, 22;  
**twice** [3] 149, 4; 149, 9;  
162, 16;  
**two** [40] 8, 19; 8, 24;  
12, 19; 17, 17; 18, 7;

21, 21; 24, 21; 27, 5;  
28, 18; 29, 20; 30, 3;  
33, 8; 35, 12; 37, 18;  
41, 8; 41, 10; 48, 18;  
49, 1; 49, 11; 64, 1; 64, 4;  
64, 14; 80, 20; 81, 4;  
81, 7; 84, 16; 91, 16;  
104, 20; 109, 20; 111, 15;  
123, 23; 128, 12; 130, 13;  
130, 17; 137, 14; 140, 7;  
155, 18; 165, 24; 174, 5;  
176, 15;  
**two-page** [1] 56, 13;  
**type** [10] 8, 3; 104, 8;  
129, 14; 145, 24; 146, 4;  
147, 2; 147, 6; 150, 8;  
156, 6; 166, 17;  
**types** [1] 26, 23;  
**typical** [3] 26, 10; 38, 17;  
40, 8;  
**typically** [1] 38, 18;  
  
**U**  
  
**ulna** [2] 42, 3; 63, 3;  
**ulnar** [1] 73, 17;  
**ultimately** [1] 32, 20;  
**unable** [2] 48, 17; 48, 18;  
**unavailable** [1] 174, 14;  
**unaware** [1] 9, 3;  
**unburned** [2] 33, 20;  
34, 6;  
**under** [10] 11, 22;  
11, 25; 59, 7; 59, 8; 59, 9;  
135, 1; 142, 20; 147, 20;  
157, 13; 164, 16;  
**underarm** [1] 38, 15;  
**undergraduate** [1] 12, 4;  
**underneath** [5] 27, 15;  
31, 13; 41, 11; 50, 11;  
52, 6;  
**understand** [11] 4, 20;  
14, 15; 19, 12; 46, 23;  
67, 4; 73, 23; 75, 20;  
102, 18; 114, 9; 154, 6;  
176, 23;  
**understanding** [1] 96, 11;  
**understood** [5] 8, 16;  
46, 21; 49, 3; 160, 14;  
160, 14;  
**undressed** [2] 15, 20;  
15, 23;  
**unexpectedly** [1] 14, 16;  
**unfold** [1] 116, 20;  
**unfortunately** [1] 24, 18;  
**unholster** [1] 88, 21;  
**unholstered** [1] 118, 11;  
**unholstering** [1] 168, 18;

<b>uniform</b> [12] 78, 15; 78, 17; 78, 18; 78, 19; 78, 20; 78, 23; 78, 23; 79, 3; 111, 3; 111, 3; 111, 4; 138, 12; <b>union</b> [4] 9, 1; 9, 1; 9, 13; 75, 17; <b>unit</b> [1] 129, 18; <b>united</b> [2] 128, 25; 133, 3; <b>universal</b> [1] 58, 24; <b>university</b> [2] 12, 6; 12, 20; <b>unless</b> [1] 45, 2; <b>unlike</b> [2] 19, 18; 39, 18; <b>unnatural</b> [1] 14, 17; <b>unresolved</b> [1] 175, 7; <b>unsafe</b> [1] 168, 15; <b>unsure</b> [1] 112, 4; <b>until</b> [4] 145, 7; 175, 20; 176, 25; 178, 13; <b>unwilling</b> [1] 132, 3; <b>unzipped</b> [1] 37, 13; <b>up</b> [84] 4, 21; 10, 25; 18, 10; 27, 9; 27, 22; 29, 3; 31, 10; 31, 18; 31, 19; 38, 6; 41, 17; 43, 14; 46, 1; 47, 25; 48, 21; 49, 25; 50, 1; 51, 1; 51, 2; 51, 6; 53, 6; 56, 12; 61, 24; 64, 1; 64, 9; 65, 14; 70, 2; 70, 5; 73, 10; 73, 12; 74, 13; 75, 16; 80, 1; 82, 22; 84, 7; 84, 10; 84, 12; 85, 12; 86, 7; 86, 9; 86, 21; 87, 19; 87, 19; 87, 23; 88, 6; 90, 4; 90, 14; 90, 24; 91, 7; 91, 8; 99, 4; 100, 21; 105, 24; 112, 25; 113, 11; 113, 12; 113, 18; 113, 21; 113, 23; 114, 2; 115, 3; 115, 11; 116, 17; 119, 15; 124, 2; 131, 2; 145, 11; 146, 8; 149, 6; 150, 1; 150, 12; 155, 1; 156, 2; 161, 13; 162, 3; 162, 13; 168, 20; 169, 6; 170, 8; 171, 12; 172, 16; 176, 14; 176, 22; 178, 21; <b>update</b> [1] 179, 8; <b>upon</b> [4] 68, 3; 83, 5; 132, 23; 154, 18; <b>upper</b> [4] 23, 21; 38, 7; 44, 7; 80, 22; <b>upstairs</b> [6] 83, 21; 84, 1; 84, 3; 88, 5; 113, 11;	121, 9; <b>upward</b> [2] 41, 25; 41, 25; <b>upwards</b> [1] 41, 14; <b>use</b> [77] 17, 4; 17, 5; 28, 20; 78, 8; 79, 18; 79, 21; 79, 22; 79, 24; 80, 3; 80, 5; 80, 21; 87, 24; 89, 11; 101, 15; 127, 14; 128, 5; 131, 20; 131, 23; 132, 9; 132, 11; 132, 12; 133, 5; 133, 9; 133, 13; 133, 21; 133, 23; 134, 4; 134, 4; 139, 23; 139, 25; 140, 8; 141, 13; 141, 14; 142, 5; 143, 3; 143, 5; 143, 6; 143, 13; 143, 18; 144, 6; 144, 12; 144, 22; 144, 25; 145, 2; 145, 4; 147, 8; 148, 6; 148, 15; 151, 15; 151, 17; 151, 18; 151, 25; 151, 25; 152, 2; 152, 15; 152, 15; 153, 11; 154, 18; 154, 19; 155, 24; 156, 9; 156, 24; 156, 24; 157, 19; 157, 23; 159, 9; 159, 17; 161, 4; 162, 11; 163, 9; 164, 22; 165, 4; 165, 12; 166, 20; 167, 1; 176, 24; 179, 13; <b>use-of-force</b> [29] 101, 18; 101, 20; 127, 9; 128, 16; 132, 21; 133, 23; 133, 24; 133, 24; 134, 1; 135, 5; 135, 8; 135, 10; 135, 12; 135, 17; 149, 1; 152, 15; 153, 4; 158, 12; 161, 19; 166, 15; 166, 18; 166, 22; 166, 24; 166, 25; 167, 5; 167, 5; 167, 11; 167, 12; 167, 17; <b>used</b> [13] 13, 20; 19, 8; 40, 3; 81, 2; 102, 3; 120, 7; 144, 3; 144, 10; 152, 25; 154, 3; 162, 12; 162, 17; 166, 11; <b>uses</b> [1] 171, 8; <b>using</b> [12] 29, 18; 81, 24; 101, 16; 132, 17; 137, 16; 141, 2; 141, 2; 141, 6; 151, 15; 157, 19; 159, 25; 163, 20; <b>usual</b> [1] 38, 20; <b>usually</b> [9] 14, 6; 15, 20; 45, 4; 46, 6; 46, 12; 50, 2; 58, 17; 59, 7; 59, 8; <b>utilize</b> [2] 151, 23; 157, 18;	<b>V</b>  <b>value</b> [1] 142, 25; <b>vantage</b> [3] 99, 13; 102, 24; 103, 19; <b>variable</b> [2] 163, 22; 163, 25; <b>variables</b> [3] 81, 21; 148, 19; 163, 20; <b>variably</b> [1] 31, 12; <b>varies</b> [1] 15, 3; <b>various</b> [3] 20, 7; 22, 19; 170, 11; <b>vehicle</b> [6] 58, 22; 80, 8; 96, 5; 138, 17; 138, 17; 161, 9; <b>vehicles</b> [3] 77, 21; 131, 12; 131, 14; <b>vein</b> [3] 36, 19; 50, 8; 51, 17; <b>veins</b> [1] 53, 17; <b>vena</b> [1] 53, 16; <b>venous</b> [1] 53, 16; <b>verbal</b> [4] 84, 19; 84, 21; 139, 8; 154, 21; <b>verbally</b> [2] 97, 16; 154, 15; <b>versus</b> [3] 44, 7; 168, 12; 168, 12; <b>vertebrae</b> [3] 40, 17; 54, 23; 55, 1; <b>vertical</b> [2] 44, 6; 69, 24; <b>very</b> [36] 15, 6; 19, 1; 26, 9; 27, 12; 30, 1; 31, 7; 33, 4; 33, 15; 33, 15; 35, 14; 37, 16; 39, 13; 41, 25; 43, 2; 43, 15; 44, 18; 45, 3; 51, 6; 52, 12; 53, 11; 53, 14; 53, 14; 54, 2; 54, 2; 59, 4; 59, 16; 62, 21; 63, 25; 72, 17; 99, 16; 104, 6; 144, 4; 147, 1; 159, 19; 159, 20; 178, 1; <b>vessels</b> [1] 53, 16; <b>vest</b> [5] 150, 3; 150, 3; 150, 6; 150, 8; 150, 9; <b>victims</b> [1] 58, 20; <b>view</b> [9] 7, 19; 11, 20; 96, 14; 147, 24; 155, 21; 167, 16; 179, 22; 179, 24; 180, 4; <b>viewed</b> [2] 24, 23; 34, 16; <b>violation</b> [1] 138, 18; <b>violence</b> [1] 58, 24; <b>violent</b> [3] 140, 18; 141, 15; 142, 9; <b>violently</b> [2] 147, 5;	147, 5; <b>visual</b> [1] 134, 2; <b>visualize</b> [1] 97, 12; <b>voice</b> [1] 106, 3; <b>volatile</b> [4] 135, 25; 136, 6; 136, 9; 137, 10; <b>vs</b> [2] 133, 3; 166, 23;  <b>W</b>  <b>waist</b> [3] 81, 16; 81, 17; 166, 3; <b>waist-length</b> [1] 74, 21; <b>waistline</b> [1] 80, 22; <b>wait</b> [2] 167, 9; 167, 11; <b>waiting</b> [1] 105, 7; <b>walk</b> [2] 30, 16; 65, 17; <b>walked</b> [1] 85, 15; <b>wall</b> [10] 7, 22; 8, 4; 38, 22; 39, 17; 52, 2; 94, 2; 96, 24; 114, 3; 115, 18; 116, 22; <b>waltham</b> [9] 126, 7; 126, 8; 126, 20; 127, 10; 129, 2; 130, 7; 169, 22; 169, 24; 170, 13; <b>want</b> [27] 5, 24; 8, 6; 8, 8; 8, 20; 16, 24; 34, 11; 45, 21; 46, 5; 48, 8; 73, 5; 73, 23; 83, 25; 91, 16; 105, 7; 110, 4; 113, 18; 122, 6; 135, 18; 142, 4; 147, 13; 147, 17; 155, 11; 164, 25; 167, 10; 173, 15; 174, 4; 175, 13; <b>wanted</b> [9] 6, 10; 9, 5; 12, 17; 87, 20; 99, 25; 113, 12; 116, 16; 146, 15; 177, 2; <b>wants</b> [1] 112, 3; <b>warnings</b> [1] 154, 20; <b>warrant</b> [1] 129, 13; <b>wash</b> [1] 16, 8; <b>washed</b> [3] 16, 7; 16, 8; 25, 20; <b>washing</b> [1] 25, 23; <b>watching</b> [2] 88, 2; 102, 20; <b>watertown</b> [2] 130, 16; 169, 24; <b>waving</b> [2] 147, 4; 147, 5; <b>way</b> [33] 12, 13; 24, 18; 27, 2; 39, 14; 39, 18; 43, 12; 43, 14; 46, 11; 51, 1; 51, 11; 51, 12; 53, 9; 54, 1; 57, 11; 70, 13; 81, 6; 82, 24;
--	--	--	---

83, 13; 84, 12; 85, 21;  
85, 21; 95, 2; 112, 12;  
113, 15; 122, 1; 135, 7;  
135, 7; 137, 12; 138, 21;  
140, 7; 143, 16; 165, 9;  
169, 6;  
**ways** [5] 51, 9; 71, 12;  
74, 24; 116, 7; 140, 7;  
**weapon** [7] 33, 23; 34, 6;  
81, 2; 142, 11; 145, 22;  
149, 13; 149, 21;  
**weapons** [10] 68, 2;  
140, 24; 140, 24; 140, 25;  
141, 1; 141, 3; 141, 4;  
145, 20; 149, 15; 149, 19;  
**wear** [4] 78, 18; 78, 24;  
79, 8; 150, 9;  
**wearing** [12] 22, 23;  
38, 20; 78, 17; 78, 19;  
79, 1; 79, 10; 82, 2;  
85, 19; 88, 18; 111, 12;  
138, 12; 150, 2;  
**week** [2] 79, 20; 79, 21;  
**weeklong** [1] 96, 1;  
**weeks** [4] 6, 22; 12, 16;  
18, 14; 176, 5;  
**weigh** [1] 22, 9;  
**weighed** [1] 22, 11;  
**welcome** [1] 87, 6;  
**well-respected** [1] 153, 3;  
**west** [17] 45, 21; 69, 6;  
69, 9; 69, 10; 73, 1;  
102, 7; 102, 10; 102, 11;  
123, 4; 123, 7; 123, 8;  
150, 24; 151, 2; 151, 5;  
152, 21; 153, 8; 154, 11;  
**whatever's** [3] 10, 20;  
108, 24; 125, 19;  
**whether** [16] 4, 8; 4, 17;  
6, 22; 14, 20; 18, 10;  
24, 4; 58, 5; 61, 24; 80, 8;  
94, 6; 98, 18; 107, 4;  
120, 4; 167, 1; 172, 17;  
177, 20;  
**whichever** [1] 76, 6;  
**whole** [5] 29, 25; 29, 25;  
87, 23; 103, 9; 108, 5;

**wide** [1] 160, 23;  
**will** [19] 5, 18; 6, 12;  
35, 10; 65, 14; 75, 24;  
131, 1; 131, 3; 131, 5;  
133, 4; 134, 16; 137, 7;  
137, 15; 143, 1; 143, 2;  
144, 12; 157, 20; 176, 25;  
177, 14; 179, 1;  
**windows** [1] 162, 13;  
**winter** [2] 78, 23; 111, 3;  
**within** [8] 31, 3; 68, 20;  
68, 24; 92, 1; 134, 9;  
146, 22; 146, 24; 150, 13;  
**without** [10] 15, 16;  
18, 12; 42, 22; 50, 7;  
75, 24; 149, 9; 154, 18;  
160, 7; 160, 7; 165, 11;  
**witness** [33] 6, 11; 10, 5;  
10, 13; 11, 1; 46, 18;  
47, 14; 60, 19; 63, 9;  
64, 18; 66, 2; 69, 8; 75, 9;  
76, 12; 95, 14; 97, 5;  
101, 5; 102, 9; 107, 10;  
107, 22; 108, 16; 109, 4;  
122, 7; 123, 6; 124, 25;  
125, 23; 145, 16; 151, 1;  
169, 12; 172, 10; 173, 4;  
173, 8; 173, 10; 174, 13;  
**witnesses** [4] 4, 14; 8, 25;  
101, 9; 153, 19;  
**wobbling** [1] 26, 15;  
**woman** [3] 161, 8;  
161, 12; 161, 14;  
**wonder** [1] 41, 8;  
**word** [8] 8, 24; 8, 25;  
99, 6; 106, 5; 106, 8;  
106, 13; 106, 18; 106, 19;  
**words** [2] 78, 22;  
114, 18;  
**work** [31] 7, 15; 11, 11;  
11, 13; 14, 8; 14, 14;  
27, 2; 59, 16; 59, 17;  
76, 20; 76, 21; 77, 7;  
77, 8; 98, 19; 99, 2;  
109, 16; 110, 21; 117, 16;  
121, 9; 124, 12; 126, 6;  
126, 7; 138, 12; 143, 14;

144, 1; 144, 4; 144, 11;  
147, 24; 150, 4; 171, 2;  
177, 13; 177, 14;  
**workable** [1] 176, 22;  
**worked** [7] 67, 1; 76, 22;  
109, 18; 110, 17; 126, 8;  
127, 12; 158, 11;  
**working** [20] 20, 20;  
78, 3; 78, 4; 78, 5; 78, 6;  
78, 7; 78, 12; 78, 13;  
79, 8; 82, 10; 82, 12;  
82, 15; 103, 24; 110, 3;  
110, 6; 110, 14; 110, 25;  
124, 17; 158, 18; 166, 9;  
**works** [3] 137, 12;  
138, 21; 163, 15;  
**worse** [1] 151, 23;  
**wound** [57] 16, 23;  
17, 19; 27, 10; 29, 2;  
31, 4; 31, 15; 32, 15;  
32, 22; 33, 18; 34, 16;  
35, 3; 35, 7; 35, 8; 35, 9;  
35, 10; 35, 14; 35, 14;  
35, 24; 36, 9; 37, 14;  
38, 17; 38, 18; 39, 5;  
39, 21; 40, 2; 40, 3; 40, 3;  
40, 8; 41, 1; 41, 15;  
41, 21; 42, 2; 42, 19;  
42, 24; 43, 9; 43, 14;  
47, 23; 48, 2; 51, 14;  
51, 25; 52, 2; 52, 12;  
52, 22; 54, 16; 54, 17;  
61, 10; 63, 15; 63, 20;  
64, 12; 64, 13; 65, 1;  
69, 13; 69, 20; 71, 19;  
73, 14; 74, 4; 74, 13;  
**wounds** [52] 17, 14;  
18, 24; 18, 25; 19, 4;  
19, 22; 19, 23; 19, 24;  
22, 20; 24, 20; 25, 22;  
26, 4; 26, 6; 26, 8; 26, 9;  
26, 10; 27, 5; 27, 17;  
27, 17; 28, 8; 28, 11;  
29, 7; 29, 22; 30, 12;  
30, 14; 32, 12; 33, 5;  
33, 6; 39, 12; 42, 5; 42, 8;  
43, 1; 43, 3; 43, 11;

43, 17; 43, 19; 43, 25;  
53, 5; 54, 13; 59, 24;  
63, 12; 63, 15; 63, 22;  
63, 23; 64, 2; 64, 7;  
64, 11; 66, 6; 66, 12;  
67, 2; 69, 13; 73, 22;  
74, 2;  
**wrist** [2] 41, 22; 42, 4;  
**writing** [1] 29, 8;  
**wrong** [2] 106, 18;  
106, 19;

## X

**x-rays** [1] 62, 23;

## Y

**y-shaped** [1] 16, 19;  
**year** [13] 12, 8; 12, 17;  
12, 23; 19, 9; 19, 12;  
19, 20; 19, 21; 58, 12;  
58, 12; 59, 2; 77, 5;  
79, 25; 106, 18;  
**years** [16] 12, 10; 12, 11;  
12, 19; 20, 16; 22, 3;  
58, 11; 76, 23; 109, 20;  
126, 10; 127, 4; 127, 12;  
127, 25; 129, 6; 146, 9;  
158, 6; 167, 20;  
**yell** [2] 122, 13; 122, 17;  
**yelled** [2] 122, 21;  
122, 22;  
**yelling** [4] 90, 15; 114, 4;  
114, 8; 158, 8;  
**yellow** [4] 23, 18; 24, 16;  
24, 16; 78, 24;  
**yesterday** [1] 97, 2;  
**yet** [2] 4, 11; 51, 6;  
**young** [2] 45, 3; 45, 3;

## Z

**zoom** [2] 179, 11;  
179, 14;